

Overview of Federal Criminal Cases Fiscal Year 201



UNITED STATES SENTENCING COMMISSION



United States Sentencing Commission

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September 2012

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Fiscal Year 2011

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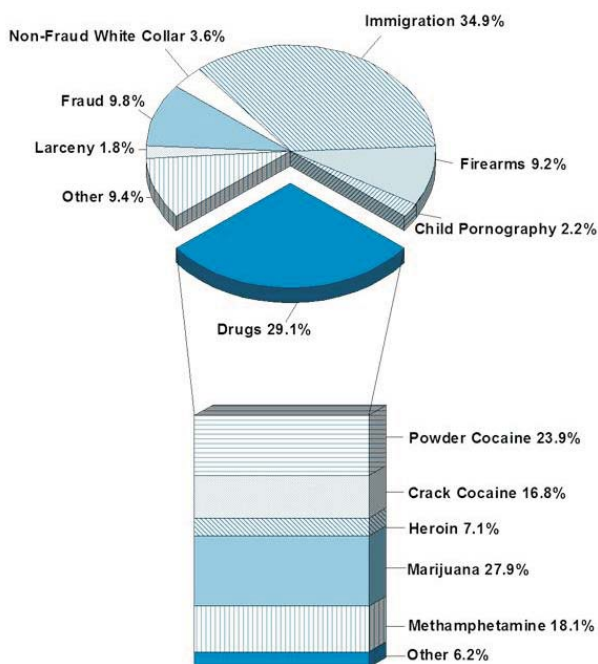
The United States Sentencing Commission¹ received information on 86,361 federal criminal cases in which the offender was sentenced in fiscal year 2011.² Among these cases, 86,201 involved an individual offender and 160 involved a corporation or “organizational” offender. This publication provides a brief overview of those cases.

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 2011, the increase was 2.7 percent over the number of such cases in fiscal year 2010. 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 2011, these crimes accounted for 83.0 percent of all cases reported to the Commission.

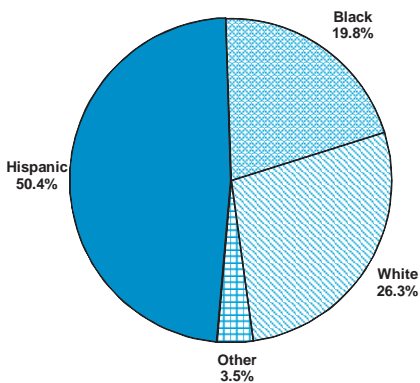
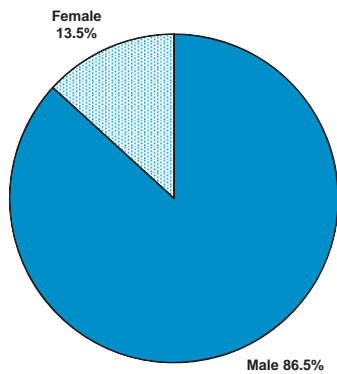
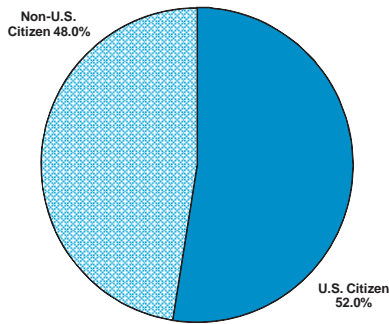
Immigration cases continued to be the fastest growing segment of cases in the federal system. In fiscal year 2011, there were 29,717 immigration cases reported to the Commission, an increase of 1,213 cases from the prior fiscal year. In the last ten fiscal years, the number of cases of this type has increased by 153.2 percent, while the total federal caseload has grown by 33.9 percent. As a result, the portion of the annual caseload attributable to immigration cases has increased from 18.6 percent in fiscal year 2002 to 34.9 percent in fiscal year 2011. Immigration cases have been the most common serious federal crime since fiscal year 2009.

OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2011



¹Of the 86,201 guideline cases, 25,813 were drug cases. Of these, 1,079 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. Descriptions of these variables are provided in Appendix A of the 2011 Sourcebook of Federal Sentencing Statistics.

SOURCE: U.S. Sentencing Commission, 2011 Datafile, USSCFY11.



The number of drug cases has been relatively stable over the last five fiscal years, but because of the overall increase in federal cases, the portion of the criminal caseload attributable to those cases decreased to 29.1 percent in fiscal year 2011. While this is a decrease compared with fiscal year 2007, when 34.4 percent of the criminal caseload was attributed to drug cases, it represents a slight increase from last year, when 28.9 percent of the criminal caseload was comprised of drug cases. Firearms cases were 9.2 percent of the caseload in fiscal year 2011, a decrease of 2.4 percentage points from five years ago. The proportion of fraud cases over that period also was relatively stable at 9.8 percent in fiscal year 2011, but has declined slightly from 10.7 percent in fiscal year 2007.

Offender Characteristics

In fiscal year 2011, 52.0 percent of all offenders were United States citizens. However, the percentage of non-citizen offenders has risen substantially over the last ten years, up 10.6 percentage points from fiscal year 2007, and up 14.4 percentage points from fiscal year 2002. Most non-citizens offenders committed an immigration offense (69.5%), followed by drug trafficking offenses (18.7%).

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 2011, 86.5 percent of all offenders were men, compared with 86.5 percent in fiscal year 2007, and 86.0 percent in fiscal year 2002. Among female offenders, the most common crime was drug trafficking (28.8% of all women offenders). Embezzlement was the only crime for which female offenders outnumber male offenders (50.3% to 49.7%).

In fiscal year 2011, 50.4 percent of all offenders were Hispanic, while 26.3 percent were White and 19.8 percent were Black. However, the racial composition of offenders varied widely across offense types, and most Hispanic offenders (87.0%) were sentenced for one of two types of offenses — immigration or drug trafficking 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 2011 (52.0%) had not completed high school, and only 5.5 percent of offenders had completed college. The average age of offenders in fiscal year 2011 was 35 years; this average has remained relatively unchanged over time.

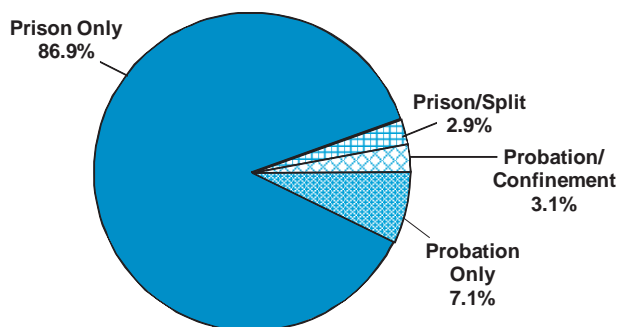
Case Disposition

The vast majority of convicted defendants plead guilty. In fiscal year 2011, more than 96 percent of all offenders did so, a rate that has been largely the same for ten years. When offenders pled guilty, 44.0 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 61 percent (61.5%) of these below range sentences were requested by the government, usually because the defendant had provided substantial assistance to the government or had agreed to have his or her case handled as part of an early disposition program.

In the 3.1 percent of cases in which offenders did not plead guilty, 34.4 percent received a sentence below the guideline range. Approximately six percent (6.1%) of these 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 2011, 7.1 percent of offenders received a sentence of probation

The percentage of non-citizen offenders has continued to rise.



The majority of offenders received a prison term of less than five years.

(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 3.1 percent were sentenced to periods of both probation and some type of confinement, and 2.9 percent were sentenced to a combination of imprisonment and community confinement, such as in a half-way house or through home confinement.

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 2011, 72.7 percent of offenders received a sentence of less than five years, 15.5 percent of offenders received a sentence of five or more years but less than ten years, and 11.8 percent received a sentence of ten or more years, excluding life imprisonment. In addition, 206 offenders were sentenced to life imprisonment and no offenders were sentenced to death.

Monetary fines were imposed in 9.0 percent of all cases in which an individual was sentenced in fiscal year 2011, either as the sole punishment or combined with some other sanction. Fines were most commonly imposed in antitrust cases (60.0%), environmental cases (57.2%), and gambling/lottery cases (55.0%). When the offender was an organization, courts imposed a fine in seven out of every ten cases (70.6%).

Courts ordered restitution to be paid to the victim of the crime in 13.3 percent of all cases in which the offender was an individual. Restitution was most commonly ordered in cases involving arson (87.3%) embezzlement (86.7%), robbery (82.3%), auto theft (74.1%), and larceny (68.6%). Restitution was ordered in 32.5 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 2011, 92.4 percent of offenders sentenced to incarceration also were sentenced to serve a period of supervised release. The average length of supervised release imposed was 46 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 34.9 percent of the federal criminal case load for fiscal year 2011. The majority of these offenses involved either the unlawful reentry into the United States or remaining in the United States without authority (83.4%). Another 10.0 percent involved alien smuggling activities.

The offenders sentenced under immigration guidelines are very different from other offenders. For example, although United States citizens committed the majority of all federal crimes (52.0%), the overwhelming majority (93.8%) of immigration offenses were committed by non-citizens.⁵ Similarly, Hispanics accounted for only 31.3 percent of non-immigration offenders, but 89.3 percent of immigration offenders. Immigration offenders 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 (84.4%) federal crimes not involving an immigration offense, men committed an even higher proportion of immigration crimes (93.3%).

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 2011, 25,813 offenders were convicted of a drug crime, the majority involving the manufacture, sale, or transportation of a drug. Of these, 902 offenders were convicted of an offense involving simple possession of a drug.⁷

Offenses involving cocaine, in either powder form or base (crack) form, were the most common drug crimes, accounting for 41.2 percent of the offenders sentenced under the Chapter Two drug guidelines. These cases were almost evenly split until fiscal year 2008. After that, powder cocaine cases became the more prevalent of the two forms of cocaine. The gap between them is

More than a third of federal criminal cases involved immigration offenses.

Methamphetamine cases have become more prevalent than crack cocaine cases.

widest this year, with powder cocaine accounting for 23.9 percent of drug offenses and crack cocaine accounting for 17.3 percent of drug offenses. After cocaine offenses (which combines powder and crack cocaine offenses), marijuana offenses were the next most common, representing 27.5 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 18.0 percent of all drug crimes. This is the first year in which methamphetamine cases exceeded the proportion of crack cocaine cases. Heroin cases were the least common of the major drug offenses, accounting for 7.2 percent of all drug crimes.

DRUG TYPE	TOTAL	U.S. CITIZEN		NON-U.S. CITIZEN	
		Number	Percent	Number	Percent
TOTAL	25,253	17,630	69.8	7,623	30.2
Powder Cocaine	6,029	4,029	66.8	2,000	33.2
Crack Cocaine	4,360	4,239	97.2	121	2.8
Heroin	1,807	1,224	67.7	583	32.3
Marijuana	6,953	3,688	53.0	3,265	47.0
Methamphetamine	4,554	3,055	67.1	1,499	32.9
Other	1,550	1,395	90.0	155	10.0

DRUG TYPE	TOTAL	WHITE		BLACK		HISPANIC		OTHER	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	25,215	6,086	24.1	6,684	26.5	11,692	46.4	753	3.0
Powder Cocaine	6,022	949	15.8	1,474	24.5	3,518	58.4	81	1.3
Crack Cocaine	4,353	265	6.1	3,614	83.0	434	10.0	40	0.9
Heroin	1,804	268	14.9	608	33.7	911	50.5	17	0.9
Marijuana	6,942	1,567	22.6	555	8.0	4,614	66.5	206	3.0
Methamphetamine	4,546	2,161	47.5	105	2.3	2,051	45.1	229	5.0
Other	1,548	876	56.6	328	21.2	164	10.6	180	11.6

Most drug offenders were United States 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 United States citizens, while only 53.0 percent of marijuana offenders were United States citizens. Non-citizens were most often convicted of an offense involving marijuana. In fiscal year 2011, 42.8 percent of all non-citizen drug offenders committed an offense involving marijuana.

The race of drug offenders varied even more widely by type of drug involved in the offense. More than 45 percent (46.4%) of all drug offenders convicted in federal court were Hispanic, with Black offenders accounting for 26.5 percent of all drug offenders and White offenders representing 24.1 percent of all drug offenders. Yet, in cases involving methamphetamine, 47.5 percent of the offenders were White. In crack cocaine cases, 83.0 percent of those convicted were Black.

Weapons were involved in drug crimes 15.6 percent of the time. As above, the rate of weapon involvement varied depending on the type of drug involved, ranging from 25.8 percent of crack cocaine cases to 7.3 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 2011, the average punishment for drug crimes ranged from a high of 104 months of imprisonment for crack cocaine offenders (with a median sentence of 84 months) to 36 months for marijuana offenders (with a median sentence of 24 months).

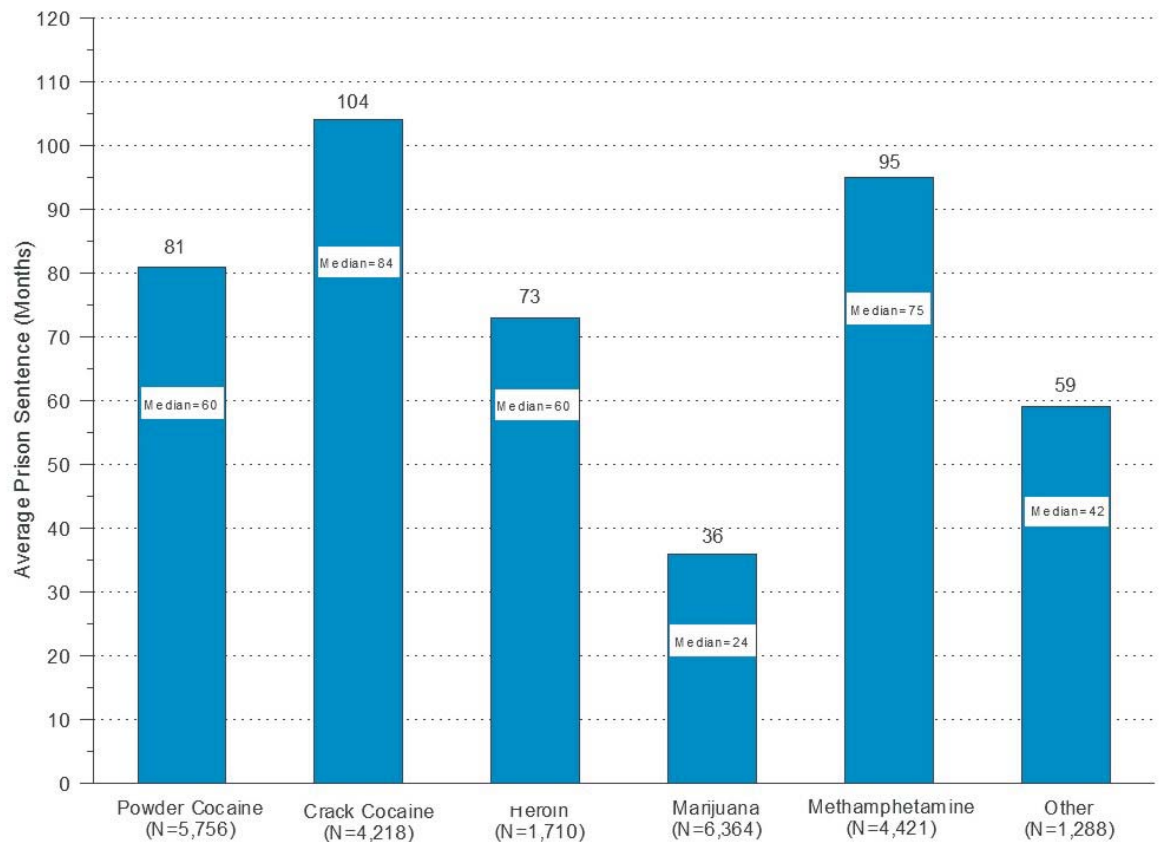
An offender's role in the offense also can affect the guideline range that judges consider when imposing punishment. In fiscal year 2011, judges in 18.0 percent of all drug cases determined that the

Eighteen percent of all drug cases received a lower guideline range for minor or minimal role.

Six percent of all drug cases received a higher guideline range for aggravating role.

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 25.7 percent of the time. In contrast, courts found such an adjustment warranted in only 3.6 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 2011, crack cocaine offenders and



powder cocaine offenders were convicted of an offense that provided for the imposition of a mandatory minimum sentence at virtually the same rate (74.0% for crack cocaine offenders and 76.0% for powder cocaine offenders).⁸ However, 32.2 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 10 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 2011, 60.7 percent of powder cocaine offenders were assigned to CHC I while only 20.2 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 2011, 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 6.6 percent of powder cocaine cases, whereas crack cocaine offenders were assigned to that category in 26.9 percent of all crack cocaine cases. In contrast, 53.3 percent of heroin offenders were assigned to CHC I and 13.2 percent assigned to CHC VI. In methamphetamine cases, 50.0 percent of offenders were assigned to CHC I and 9.4 percent to CHC VI. Offenders convicted of marijuana offenses generally had the least serious criminal histories, with 68.0 percent assigned to CHC I and 3.3 percent to CHC VI.¹¹

Fraud

Crimes involving fraud accounted for the third largest portion (9.8%) of federal criminal cases in fiscal year 2011. The losses in

More than three times as many powder cocaine offenders as crack cocaine offenders were assigned to Criminal History Category I.

The median loss amount in fraud cases was \$91,124.

these cases ranged from \$0 (no loss, 995 cases) to \$583,573,600, with an average loss amount of \$1,631,634 and a median loss amount of \$91,124. Identity theft crimes accounted for a relatively small number (775) of these cases in fiscal year 2011. While this is a substantial increase from the 577 such crimes reported in fiscal year 2007, it is a reduction from fiscal year 2009 when there were 901 such cases.

Firearms and other weapons

Firearms crimes¹³ were 9.2 percent of the total federal criminal convictions for fiscal year 2011. Of the 7,858 firearms cases reported to the Commission, 24.3 percent (1,911) involved the possession or use of a firearm in connection with a crime of violence or drug trafficking crime.¹⁴ Half of the cases (3,992) 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 2011, in 7.8 percent of cases (5,946 cases) a sentence was enhanced (either through application of an SOC when available or statutorily) because a firearm or other dangerous weapon (e.g., knife) was involved in the offense. However, a weapon was involved twice as often in drug cases (15.6%). Weapons were present most often in crack cocaine cases (25.8%) and least often in marijuana cases (7.3%).

Organizational Cases

Organizations such as corporations and partnerships can be prosecuted for violating federal criminal law, and 160 organizations were sentenced for at least one federal criminal offense in fiscal year 2011. This number is a 7.4 percent increase from the 149 cases reported in fiscal year 2010, however 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.

More than ninety-four percent of the organizational offenders sentenced in fiscal year 2011 pled guilty to one or more charges. The most common crimes for which organizational defendants were convicted were fraud and environmental crimes.

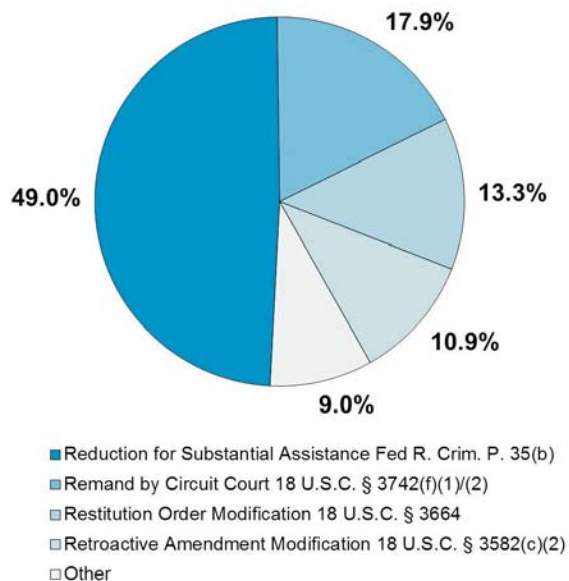
Half of firearms cases involved illegal possession of a weapon by a felon.

Organizational cases increased by more than seven percent in fiscal year 2011.

Organizational offenders were sentenced to pay only a fine in 85 cases. In an additional 28 cases the offender was sentenced to pay restitution to the victim of the crime as well as to pay a fine. In 24 cases, the organization was sentenced to pay restitution only. No fine or restitution was imposed in 23 cases, although other sanctions were imposed in some of these cases. Additionally, of the 160 organizational offenders, 111 received some term of probation, and 31 were ordered to make improvements in compliance or ethics procedures.

Resentencings and Other Modifications of Sentence

In fiscal year 2011, the Commission received documentation on 3,588 resentencings or other modifications of sentence. Almost half of these were a reduction in sentence for substantial assistance to the government after sentencing (49.0%).¹⁶ The next most common type of resentencing, at 17.9%, occurred after remand of a case that had been appealed to a circuit court. The third most common type of resentencing was orders for modifications of restitution (13.3%).



For More Information

More information on these cases can be found in the Commission's *2011 Annual Report*, *2011 Sourcebook of Federal Sentencing Statistics*, and *Guideline Application Frequencies for Fiscal Year 2011*. 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 fiscal year 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: Seventeen Years of Growth in the Federal Sentencing Caseload* (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 22.6 percent of federal crimes other than immigration crimes in fiscal year 2011.
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 the Controlled Substances Act (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 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. See Fed R. Crim. P. 35(b).