



Alternative Sentencing in the
Federal Criminal Justice System



UNITED STATES SENTENCING COMMISSION



United States Sentencing Commission

One Columbus Circle, N.E.

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Courtney R. Semisch, Ph.D.
Senior Research Associate
Office of Research and Data

Introduction

In January 2009 the United States Sentencing Commission issued a report, *Alternative Sentencing in the Federal Criminal Justice System*. The report analyzed data from the prior decade concerning the imposition of alternative sentences by federal courts.¹ In particular, that report found “the proportion of federal offenders sentenced to alternatives . . . remained low and decreased slightly” during the prior decade.²

As a supplement to the 2009 publication, the Commission is releasing this new report, using data from 2005 through 2014, to examine more recent trends in the rates of alternative sentences using a methodology that expands that of the prior report. Notably, this new report updates the previous analysis to include federal sentencing data since the U.S. Supreme Court’s December 2007 decision in *Gall v. United States*,³ which reinforced sentencing courts’ discretion to vary below the sentencing ranges recommended by the *Guidelines Manual*.⁴

This current report examines how sentencing courts use their discretion to impose alternative sentences, specifically combinations of probation and confinement options that substitute for the full prison terms permitted by law. This analysis shows a continued decreasing trend in the imposition of alternative sentences and explores factors associated with the decrease. In examining these trends, this report demonstrates:

- Alternative sentences were imposed for a small proportion of federal offenders, in part, as a result of the large number of federal offenders who were ineligible for such sentences due to convictions under certain statutes or their status as deportable aliens.
- During the past ten years, rates of alternative sentences declined among U.S. citizen federal offenders who were eligible for such sentences despite 1) a steady overall increase in sentences below the guideline range due to downward departures or variances and 2) overall consistency in offense severity and criminal history among those offenders.
- In recent years, the decrease in *rates* of alternative sentences for eligible offenders, in part, is a reflection of the Commission’s 2010 amendment that expanded Zones B and C of the Sentencing Table. The amendment added to Zones B and C offenders whose sentencing ranges previously were in Zones C and D, thereby increasing the *proportion* of offenders eligible for alternatives. However, as to be expected, courts imposed alternatives for these more serious offenders less frequently than for offenders whose

sentencing ranges otherwise were in Zones B and C. This has contributed to the decrease in the rate of alternative sentences for eligible offenders.

- Alternative sentences were imposed at notably different rates for offenders in different race categories with White offenders receiving such sentences at higher rates than Black and Hispanic offenders.
- During the past ten years, alternative sentences have been imposed at a consistently low rate among U.S. citizen offenders whose sentencing ranges were in Zone D of the Sentencing Table.

Background

The Sentencing Reform Act of 1984 (the “Act”)⁵ envisioned sentences other than imprisonment as “generally appropriate[] . . . in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.”⁶ The Act established probation as a stand-alone sentencing option, rather than as an instrument used in suspending prison sentences.⁷ Alternative sentencing options were further expanded by the Anti-Drug Abuse Amendment Act of 1988,⁸ which authorized the use of home detention and electronic monitoring for offenders sentenced to probation and those serving terms of supervised release.⁹ The Commission incorporated these policies into the federal sentencing guidelines along with other probation and intermediate confinement options for less serious and first-time offenders.¹⁰

Sentencing Table and Zones

The guidelines’ Sentencing Table (*see Guidelines Manual*, Chapter Five, Part A) provides sentencing ranges based on an offender’s final offense level and Criminal History Category.¹¹ The table is subdivided into four zones (A, B, C, and D) that determine confinement options for each sentencing range.¹² The four options, in increasing order of severity, are:

- Probation-only (zero months of confinement);
- Probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment;
- Imprisonment followed by a term of supervised release with a condition or combination of conditions that substitute community confinement or home detention (split sentence); and
- Prison-only.

Sentencing ranges in Zone A are from zero to six months of confinement. At the sentencing court’s discretion, the zero-to-six month range may consist of probation-only, probation with a confinement condition, a split sentence, or imprisonment.

Sentencing ranges in Zone B include confinement terms ranging from one to 15 months. The guidelines advise that Zone B allows probation terms to be substituted for imprisonment, provided that the probation term includes confinement conditions (community confinement,

intermittent confinement, or home detention).¹³ For offenders whose sentencing ranges fall into Zone B and who are sentenced to prison, the guidelines provide that a minimum of one month of the total term imposed must be imprisonment. The remainder of the sentence also may be imprisonment or a substitution of probation that includes community confinement or home detention. Any sentence for offenders whose sentencing ranges fall into Zone B and who are sentenced to probation (without any term of confinement) necessarily constitutes either a downward departure or variance.¹⁴

Sentencing ranges in Zone C of the Sentencing Table include confinement terms ranging from ten to 18 months. The guidelines advise that Zone C sentences must include a term of imprisonment equivalent to at least half of the minimum of the applicable guideline range. The remaining half of the term requires supervised release with a condition of community confinement or home detention.¹⁵ Alternatively, the court has the option of imposing an imprisonment term for offenders whose sentencing ranges are in Zone C. Any sentence for offenders whose sentencing ranges fall into Zone C and are sentenced to probation (whether or not with a condition of confinement) necessarily constitutes a downward departure or variance.

Finally, sentencing ranges in Zone D of the Sentencing Table require a term of imprisonment ranging from 15 months to life. Any sentence of probation or any split sentence as a substitute for imprisonment for offenders whose sentencing ranges are in Zone D necessarily constitutes a downward departure or variance.

Expansion of Zones B and C

In November 2010, the Commission provided a greater range of sentencing options to courts with respect to certain offenders by expanding Zones B and C of the Sentencing Table.¹⁶ Each of the two zones was expanded by one level. Specifically, Zone B was expanded to include offense level 11 on the Sentencing Table so that offenders with sentencing ranges of 8-14 months and 9-15 months whose sentencing ranges previously were in Zone C are now in Zone B. Similarly, Zone C was expanded to include offense level 13 so that offenders with sentencing ranges of 12-18 months whose

SENTENCING TABLE
(in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

sentencing ranges previously were in Zone D are now in Zone C. The darker shaded areas in each of Zones B and C on the Sentencing Table on page 3 of this report indicate the previously existing sentencing ranges for each zone. The lighter shaded areas in each of Zones B and C indicate the sentencing ranges added to each zone by the 2010 amendment.

Statutory Limitations on Eligibility for Alternative Sentences

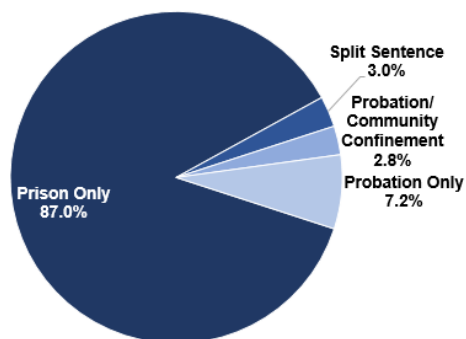
Certain offenders are not eligible for alternative sentences. Federal statutes limit the use of probation for some federal offenders.¹⁷ Specifically, a sentence of probation may not be imposed in the event: (1) the offense of conviction is a Class A or Class B felony,¹⁸ (2) the offense of conviction expressly precludes probation as a sentence (e.g., many federal drug trafficking offenses¹⁹), or (3) the defendant is sentenced at the same time to a sentence of imprisonment for the same or a different offense.²⁰ The federal sentencing guidelines incorporate the statutory limitations on probation and also provide for sentences of probation if (1) the applicable guideline range is in Zone A of the Sentencing Table, or (2) the applicable guideline range is in Zone B of the Sentencing Table and the court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention.²¹

In 2014, 13.0 percent of federal offenders were sentenced to some type of alternative.

The Sentencing Reform Act of 1984, in its directives to the Commission, provides further guideline limitations on probation for specific offenders. The Act directs that the guidelines provide for substantial imprisonment terms for offenders with two or more prior felonies, offenses that comprise a pattern of criminal conduct, offenders who manage or supervise racketeering conspiracies, offenders who commit a crime of violence while under supervision, and drug offenses involving substantial quantities.²²

The other type of alternative sentence used in the federal system, a split sentence, involves a relatively short term of imprisonment (typically six months or less) followed by some amount of custody in home detention or community confinement.²³ Split sentences are available for some offenders who are not eligible for probation. Offenders sentenced to mandatory minimum prison terms, however, generally are not eligible for such split sentences in view of the length of such mandatory terms.

Figure 1
Type of Sentence Imposed for Federal Offenders
Fiscal Year 2014 (N=75,175)



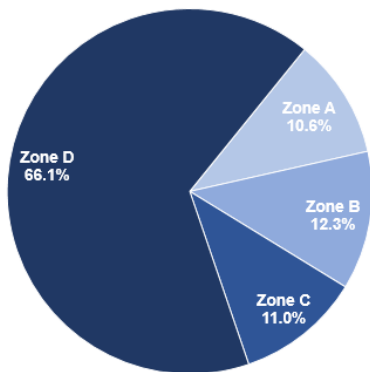
The restrictive effect of mandatory minimum convictions is reflected, in part, in the overall low rates of alternative sentences imposed for federal offenders. Figure 1 shows that, in 2014, 13.0 percent of federal offenders were sentenced to some type of alternative sentence while the overwhelming majority, 87.0 percent were sentenced to imprisonment.²⁴ Probation-only sentences were the most commonly imposed alternative sentence at 7.2 percent. Split sentences and probation with conditions of community confinement or home detention were imposed less often with rates of 3.0 percent and 2.8 percent, respectively. This low rate of alternative sentences is, in part, attributable to

the fact that nearly one-quarter (22.7%) of federal offenders have convictions under statutes that carry mandatory minimum sentences.²⁵

The purpose of this report is to examine how courts use their discretion to impose alternative sentences. Because mandatory minimum sentences are a key limitation on courts' discretion to impose alternatives, offenders who were subject to a statutory mandatory minimum penalty at the time of sentencing were excluded from the remaining analyses in this report.

Citizenship Status Limitations on Eligibility for Alternative Sentences

Figure 2
Federal Offenders in Each Sentencing Table Zone
Fiscal Year 2014 (N=51,707)



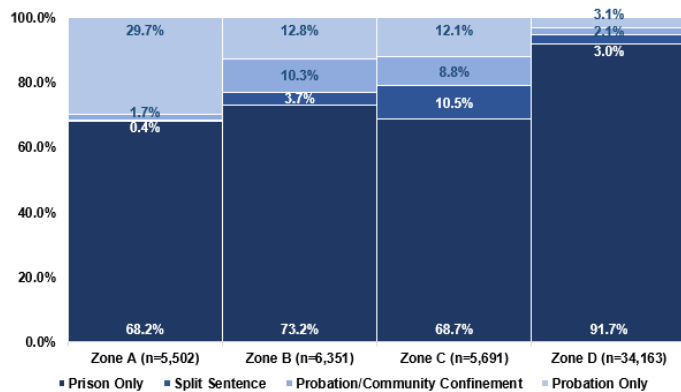
Although most federal offenders were not convicted of an offense carrying a mandatory minimum penalty, alternative sentences are imposed for only small proportion of federal offenders not convicted of such an offense. Overall, 17.5 percent of those offenders were sentenced to some type of alternative sentence in 2014.²⁶ This low rate primarily is due to the predominance of offenders whose sentencing ranges were in Zone D of the Sentencing Table, in which the guidelines provide for a term of imprisonment.

As shown in Figure 2, two-thirds (66.1%) of federal offenders sentenced in 2014 had sentencing ranges in Zone D of the Sentencing Table and were, absent a downward departure or

variance, subject to imprisonment.²⁷ The remaining one-third (33.9%) of offenders had sentencing ranges in Zones A, B, or C, the three sentencing zones allowing alternative sentences under the guidelines. As shown in the figure, nearly equal percentages of offenders were sentenced in Zones A (10.6%), B (12.3%), and C (11.0%) in 2014.

As shown in Figure 3, the majority of offenders were sentenced to imprisonment, regardless of zone.²⁸ Because the guidelines do not provide for alternative sentences for offenders whose sentencing ranges are in Zone D, the predominance of imprisonment for those offenders (91.7%) is expected. However, imprisonment sentences also predominated for offenders with sentencing ranges in the other three zones. In fact, imprisonment rates were somewhat similar for offenders with sentencing ranges in Zones A (68.2%), B (73.2%), and C (68.7%). Therefore, despite the increased eligibility for a variety of alternative sentences for offenders with sentencing ranges in Zones A through C, the majority were not sentenced according to those options.

Figure 3
Type of Sentence Imposed for Federal Offenders in
Each Sentencing Table Zone
Fiscal Year 2014 (N=51,707)

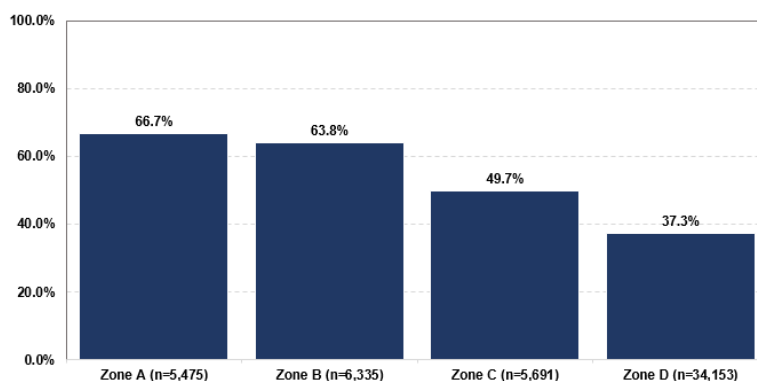


The low rate of alternative sentences for offenders whose sentencing ranges are in Zones A, B, and C is, in part, attributable to the large number of non-citizen offenders with sentencing ranges in those zones. Non-citizens, as a practical matter, are ineligible for most alternatives because of their status as deportable aliens (resulting in immigration detainers that prevent their release into the community). Aliens convicted of many types of federal offenses are subject to deportation from the United States as “aggravated felons.”²⁹ Because of these immigration policies, rates of alternative sentences are substantially impacted by the proportion of non-citizens in the federal offender population.

As shown in Figure 4, non-citizen offenders predominated in the three zones for which the guidelines provide for alternative sentences. In 2014, non-citizens constituted the majority of offenders with sentencing ranges in Zones A (66.7%) and B (63.8%) and nearly half of offenders in Zone C (49.7%).³⁰ In 2014 immigration-related offenses accounted for 87.6 percent of convictions for non-citizens with sentencing ranges in Zones A through C. In comparison, immigration-related offenses accounted for a slightly smaller proportion of convictions for non-citizens with sentencing ranges in Zone D (72.7%) due to the larger proportion of drug-related offenses in that zone.

Because non-citizens generally are precluded from receiving alternative sentences, those offenders were excluded from the remaining analyses in this report.

Figure 4
Non-Citizen Federal Offenders in Each Sentencing Table Zone
Fiscal Year 2014 (N=23,247)



Methodology

As discussed above, the zones on the Sentencing Table provide for different combinations of probation and confinement as alternatives to the full prison terms permitted by law. For purposes of this report, the term “alternative sentences” is defined to account for any of those combinations. However, because the sentencing guidelines provide for different sanctions based on the zone into which an offender’s sentencing range falls, alternative sentences are defined differently in this report for offenders whose sentencing ranges are in Zone A than for offenders whose sentencing ranges are in Zones B through D.

Under the guidelines, within range sentences for offenders whose sentencing ranges fall within Zone A can span from probation-only to a prison term of six months; however, a probation-only sentence satisfies the requirements of the sentencing guidelines for these offenders. In fact, the guidelines provide that “a sentence of imprisonment is not required” for Zone A sentences.³¹ Sentences that involve any amount of incarceration are in excess of the least restrictive sentence available, and so cannot be said to be an “alternative” to the sentence that would otherwise be imposed. In order to reflect this nuance of guideline sentencing options, the term “alternative sentences” for offenders with sentencing ranges in Zone A is defined as any probation sentence (including those with conditions of community confinement or home detention). A split sentence (*i.e.*, a sentence involving any amount of incarceration) is not considered an alternative sentence for offenders whose sentencing ranges are in Zone A.³²

In contrast, probation-only sentences are not among the available sentencing ranges for offenders whose sentencing ranges fall in Zones B, C, or D of the Sentencing Table. For offenders whose sentencing ranges are in Zones B and C, the guidelines provide that the minimum term may be satisfied by a “sentence of imprisonment” but further provide for combinations of probation or supervised release with different types of confinement that substitute for imprisonment also satisfy the requirements for those zones.³³ Therefore, for purposes of this report, these specific substitutes for a sentence of imprisonment are considered alternative sentences for these offenders, as is any probation sentence imposed.

Within range sentences for offenders whose sentencing ranges are in Zone D are limited by the guidelines to sentences of imprisonment only. Therefore, any sentence other than prison-only sentence is considered an alternative sentence for these offenders.

The analysis that follows includes U.S. citizen offenders without convictions carrying mandatory minimum sentences whose sentences were either within or below the guideline range. The inclusion of offenders sentenced below the guideline range is a key methodological change from the 2009 report, which was limited to offenders sentenced within the guideline range. This expanded analysis provides a more comprehensive examination of sentencing courts’ exercise of discretion by examining the imposition of alternative sentences relative to the parameters of the guidelines for all offenders.

Trends in Alternative Sentences for United States Citizens

During the past ten years, the proportion of United States citizen federal offenders eligible for alternative sentences (*i.e.*, those offenders with sentencing ranges in Zones A, B, or C and who were not statutorily ineligible) decreased slightly from 27.6 percent in 2005 to 24.6 percent in 2014.

As shown in Figure 5, the percentage of offenders with sentencing ranges in Zone A decreased steadily from 10.6 percent to 6.4 percent during the time period.³⁴ Zones B and C show a different trend. From 2005 through 2010 the proportion of offenders with sentencing ranges in Zone B decreased steadily and those with sentencing ranges in Zone C remained relatively consistent. However, beginning in 2011 (following the Commission’s November 1, 2010 expansion of those zones), the proportion of offenders with sentencing ranges in those two zones increased. As discussed previously, the zone expansion effectively moved offenders with sentencing ranges of 8-15 months from Zone C to Zone B and moved offenders with sentencing ranges of 12-18 months from Zone D to Zone C.

Figure 5
Trend of U.S. Citizen Federal Offenders in Each Sentencing Table Zone
Fiscal Years 2005-2014 (N=267,384)

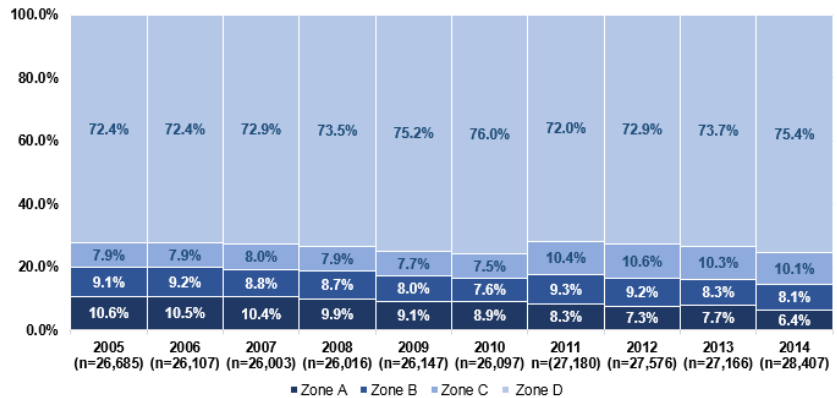


Figure 5 shows, in part, that the increase in the percentage of offenders with sentencing ranges in Zones B and C was associated with a corresponding decrease for Zone D from 2011 through

2013. However, the data for 2014 indicate a possible shift in that trend. In 2014 the percentage of offenders with sentencing ranges in Zone D increased to 75.4 percent, which is comparable to the percentages observed prior to the zone expansion.

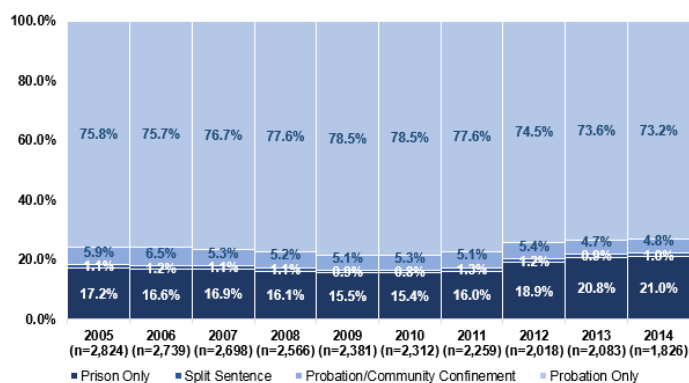
In contrast to the moderate decrease in the proportion of offenders eligible for alternative sentences (with sentencing ranges in Zones A through C), there was a larger decrease in the proportion of those offenders actually sentenced to an alternative. The proportion of eligible offenders sentenced to an alternative decreased from 71.9 percent to 65.0 percent during that time period.³⁵ The following analyses examine the decreases in rates of alternative sentences for each sentencing zone.

Decreases in Alternative Sentences in Each Zone

Zone A

During the past ten years, the proportion of offenders with sentencing ranges in Zone A who were sentenced to an alternative (any probation sentence, including probation with community confinement or home detention) decreased slightly from 81.8 percent to 78.0 percent. Figure 6 shows that this decrease is attributable to increases in sentences of imprisonment for those offenders from 17.2 percent to 21.0 percent.³⁶ Probation-only sentences consistently were the most commonly imposed alternative for offenders with sentencing ranges in Zone A, accounting for approximately three-quarters of those sentences during the time period.

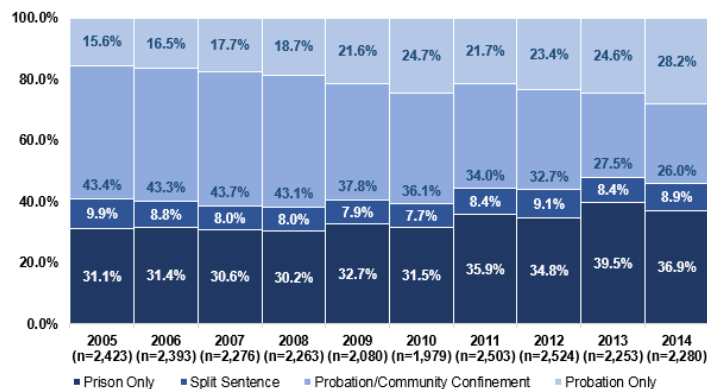
Figure 6
Trend in Type of Sentence Imposed for U.S. Citizen Federal Offenders with Sentencing Ranges in Zone A
Fiscal Years 2005-2014 (N=23,706)



Zone B

During the past ten years, the overall trend for offenders with sentencing ranges in Zone B has been a decrease in alternative sentences (all types of probation sentences and split sentences) from 68.9 percent to 63.1 percent. Figure 7 shows that, despite an overall decrease in alternative sentences, when courts did impose alternatives, the trend was increasingly toward the less severe type of alternative sentences.³⁷ This is evidenced by the substantial shift in the types of probation imposed for offenders with sentencing ranges in Zone B. Between 2005 and 2014 the proportion of offenders with sentencing ranges in Zone B who were sentenced to probation with confinement conditions decreased by close to half

Figure 7
Trend in Type of Sentence Imposed for U.S. Citizen Federal Offenders with Sentencing Ranges in Zone B
Fiscal Years 2005-2014 (N=22,974)

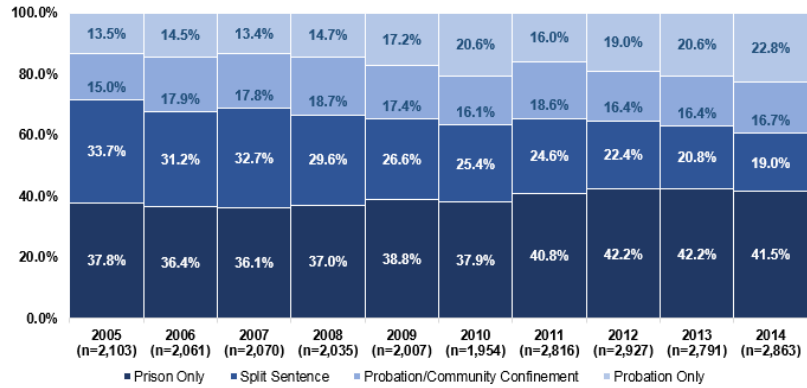


(43.4% to 26.0%) but the proportion of those offenders sentenced to probation-only nearly doubled (15.6% to 28.2%).³⁸

Zone C

Following the patterns for Zones A and B during the past ten years, the overall trend for offenders with sentencing ranges in Zone C has been a decrease in the rate of alternative sentences (all types of probation and split sentences) from 62.2 percent to 58.5 percent. Similar to trends for Zone B, Figure 8 shows that, despite the overall decrease in rates of alternative sentences, when courts did impose alternatives, they imposed less severe types of alternative sentences.³⁹ Rates of probation-only sentences increased for offenders with sentencing ranges in Zone C, primarily due to a decrease in the imposition of split sentences. The rate of split sentences accounted for 33.7 percent of sentences for offenders with sentencing ranges in Zone C in 2005 and decreased substantially to 19.0 percent in 2014. The largest corresponding increase was in the rate of probation-only sentences, which accounted for 13.5 percent of sentences for offenders with sentencing ranges in Zone C in 2005 and 22.7 percent in 2014. The shift in the types of sentences imposed for offenders with sentencing ranges in Zone C resulted in a relatively equal imposition of the three types of alternatives for those offenders by 2014.

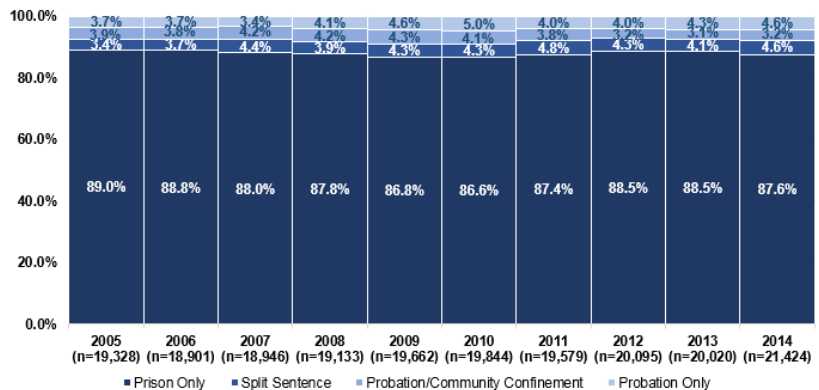
Figure 8
Trend in Type of Sentence Imposed for U.S. Citizen Federal Offenders with Sentencing Ranges in Zone C Fiscal Years 2005-2014 (N=23,627)



Zone D

During the past ten years, and consistent with the guidelines, the vast majority of offenders with sentencing ranges in Zone D have been sentenced to imprisonment. Figure 9 demonstrates that this has been a relatively stable trend with imprisonment rates ranging from 89.0 percent in 2005 to 87.6 percent in 2014.⁴⁰

Figure 9
Trend in Type of Sentence Imposed for U.S. Citizen Federal Offenders with Sentencing Ranges in Zone D Fiscal Years 2005-2014 (N=196,932)



Factors Associated with the Decrease in Alternative Sentences

Though relatively modest, there has been a clear trend of a decreased rate of alternative sentences during the past ten years. The remainder of this report examines a number of factors that are associated with the imposition of alternative sentences to provide insight into this trend.

Sentences Relative to the Guideline Range

Rates of within range sentences have decreased steadily and consistently since the U.S. Supreme Court declared that the guidelines were “effectively advisory” in *United States v. Booker*.⁴¹ Rates of within range sentences for the U.S. citizen offenders eligible for alternative sentences decreased substantially from 65.4 percent to 41.9 percent from 2005 to 2014. And, these decreases were equally distributed among offenders with sentencing ranges in Zones B through D.⁴²

Rates of alternative sentences decreased regardless of whether offenders were sentenced within or below the guideline range.

The substantial decrease in rates of within range sentences seems inconsistent with the decreased rates of alternative sentences during the time period. The substantial increase in lenience, as evidenced by the increased rates of below range sentences, could reasonably be expected to coincide with a trend toward increasing lenience in terms of sentence type. In other words, the increase in departures and variances would seem to be associated with an increase in alternative sentences. Given this expectation, the decrease in rates of alternative sentences would be expected to occur primarily among within range sentences. The data indicate, however, that this was not the trend.

Rates of alternative sentences decreased regardless of whether offenders were sentenced within or below the guideline range. Table 1 compares rates of alternative sentences in 2005 and 2014 for offenders with sentencing ranges in Zones A through C who were sentenced within and below the guideline range.⁴³ As would be expected, alternatives were imposed less often for within range sentences compared to below range sentences. However, the overall trend was toward decreased rates of alternatives for offenders sentenced within the guideline range (70.5% to 59.7%) and offenders with non-government sponsored below range sentences (85.8% to 76.7%). This trend was consistent, albeit to a lesser extent, for offenders with §5K1.1 departures (84.9% to 78.2%). In contrast, the rate of alternative sentences for offenders with other government sponsored below range sentences increased during the time period (65.1% to 71.8%).⁴⁴

Table 1
Comparison of Rates of Alternative Sentences Imposed for Each Category of Sentence Relative to the Guideline Range for U.S. Citizen Federal Offenders with Sentencing Ranges in Zones A, B, and C Fiscal Years 2005 and 2014

Sentence Relative to the Guideline Range	Alternative Imposed							
	Total Zones A-C		Zone A		Zone B		Zone C	
	2005 (n=5,261)	2014 (n=4,536)	2005 (n=2,307)	2014 (n=1,424)	2005 (n=1,656)	2014 (n=1,438)	2005 (n=1,298)	2014 (n=1,674)
Within Range	70.5 %	59.7%	82.7%	79.5%	66.3%	53.8%	48.3%	32.8%
§5K1.1 Departure	84.9%	78.2%			83.2%	80.8%	85.6%	77.1%
Other Gov't Sponsored Below Range	65.1%	71.8%			64.1%	71.0%	64.5%	72.3%
Non-Gov't Sponsored Below Range	85.8%	76.7%			85.8%	78.4%	85.9%	75.7%

Despite the increased discretion that courts have used to vary from the guidelines after *Gall*, the data seem to demonstrate that courts are not using that discretion to impose alternative sentences at a greater rate. This apparent incongruity of lower rates of alternatives imposed in combination with higher rates of below range sentences, particularly for offenders with sentencing ranges in Zone B and C, raises the question of which factors contribute to the decision to impose such sentences. The following sections assess the association of various factors with the rate of alternative sentences for offenders with sentencing ranges in Zones B and C.

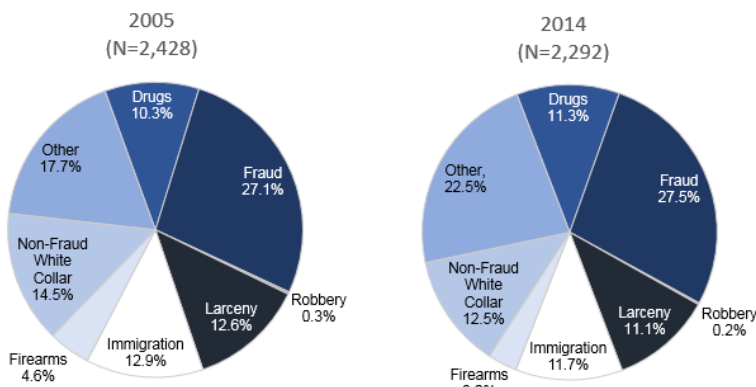
Offense Type and Offender Seriousness

As discussed earlier, the Commission incorporated provisions of both the Sentencing Reform Act of 1984 and the Anti-Drug Abuse Amendment Act of 1988 into the federal sentencing guidelines to provide sentencing options for less serious offenders. Considering the options provided for in the guidelines, it follows that the decreased rates of alternative sentences may be due to a shift in the nature of the offenses. The following sections explore this possibility by examining the types of offenses as well as the severity of those offenses during the past ten years for offenders with sentencing ranges in Zones B and C.

Zone B

In general, the data suggest that the decrease in the use of alternative sentences for offenders with sentencing ranges in Zone B is not a result of increased offense type seriousness. The rate at which courts sentenced offenders with sentencing ranges in Zone B to alternatives decreased during the past ten years from 68.9 percent in 2005 to 63.1 percent in 2014. Figure 10 shows that there has been very little change in the types of offenses resulting in sentencing ranges in Zone B; the general makeup is the same comparing 2005 and 2014.⁴⁵ For example, fraud offenses constituted the single largest offense category in each year, accounting for approximately 27 percent. The “other” offense category⁴⁶ consistently has constituted a substantial proportion of offenses with sentencing ranges in Zone B, and that proportion increased somewhat during the time period from 17.7 percent to 22.5 percent. However, the composition of the “other” category has not changed substantially; administration of justice, prison, and gambling/lottery offenses accounted for the largest proportion of that category in each year.

Figure 10
Offense Types for U.S. Citizen Federal Offenders with
Sentencing Ranges in Zone B
Fiscal Years 2005 and 2014



Further evaluation of offenders with sentencing ranges in Zone B shows few notable changes during the past ten years in terms of various statutory and guideline-related measures of severity. Changes in criminal history and drug type are the only indicators of increased offense severity among offenders with sentencing ranges in Zone B. As shown in Table 2, the percentage of offenders with sentencing ranges in Zone B in Criminal History Category I

decreased slightly from 65.1 percent in 2005 to 62.3 percent in 2014, indicating a slight increase in offender severity in terms of extent of criminal history.⁴⁷ The percentage of drug offenses with sentencing ranges in Zone B involving marijuana⁴⁸ decreased during the time period from 45.7 percent to 37.5 percent.⁴⁹

Other measures of offense severity remained relatively consistent during the time period for offenders with sentencing ranges in Zone B. Table 2 compares conviction rates for Class A or B felonies among offenders with sentencing ranges in Zone B, a type of conviction that disqualifies offenders from receiving probation.⁵⁰ The proportion of Class A and B felony convictions remained essentially unchanged (6.3% to 6.0%) during the time period. Offense severity measured in terms of monetary harm remained consistent with the median loss amount for fraud offenders increasing slightly from \$18,000 in 2005 to \$23,832 in 2014. This small increase in median loss amount is not indicative of increased severity for fraud offenses as both amounts qualify for the same 4-level increase from the loss table in USSG §2B1.1 (for loss amounts greater than \$10,000). Non-fraud white collar offenses⁵¹ show a small but similarly insubstantial decrease in monetary harm with medians decreasing from \$15,000 in 2005 to \$10,144 in 2014.

**Table 2
Selected Data Comparing U.S. Citizen Federal Offenders
with Sentencing Ranges in Zone B
Fiscal Years 2005 and 2014**

	Offenders with Sentencing Ranges in Zone B	
	2005 (n=2,423)	2014 (n=2,280)
Alternative Imposed	68.9%	63.1%
Class A or B Felony Conviction	6.3%	6.0%
Criminal History Category I	65.1%	62.3%
Drug Offenses Involving Marijuana	45.7%	37.5%
Median Loss: Fraud Offenses	\$18,000	\$23,832
Median Loss: Non-Fraud White Collar Offenses	\$15,000	\$10,144

Expansion of Zone B

As discussed above, the Commission expanded Zone B on the Sentencing Table in 2010, to include offenders with sentencing ranges of 8-14 months and 9-15 months. These sentencing ranges previously were in Zone C. In the years since the amendment, a total of 23.0 percent of offenders with sentencing ranges in Zone B were sentenced in the new Zone B cells.⁵² Alternative sentences were imposed for offenders with sentencing ranges in the new Zone B cells at a lower rate (55.0%) compared to those sentenced in the previously existing cells (65.1%). Offenders with sentencing ranges in the new Zone B cells are more serious than those in the original Zone B cells to the extent that their guideline calculations resulted in final offense levels and Criminal History Categories that provide for higher guideline ranges. The decreased rates of alternatives for offenders with sentencing ranges in Zone B, therefore, might be expected given the increased offense and offender severity introduced by inclusion of the new cells.

The data indicate that the expansion of Zone B to include more serious offenders does not entirely account for the decreases. An analysis of only those Zone B offenders sentenced in the original cells (excluding offenders with sentencing ranges in the new Zone B cells), demonstrates that the decrease in rates of alternative sentences was occurring independently of the change to the table. In 2005, 68.9 percent of offenders with sentencing ranges in Zone B

were sentenced to alternatives, compared to 65.1 percent of Zone B offenders sentenced in the old cells in 2014.⁵³

Although the expansion of Zone B alone does not by itself explain the decrease in rates of alternative sentences for offenders with sentencing ranges in Zone B, it is, nevertheless, noteworthy that offenders with sentencing ranges in the new Zone B cells were sentenced to alternatives at lower rates, as would be expected. The following analysis compares offenders with sentencing ranges in the old and new Zone B cells.

Table 3 shows twice the rate of convictions for Class A or B felonies among offenders with sentencing ranges in the new Zone B cells (11.4%) compared to those with sentencing ranges in the old cells (4.2%).⁵⁴ In addition, the percentage of offenders in Criminal History Category I was substantially lower for offenders with sentencing ranges in the new Zone B cells (41.6%) compared to those with sentencing ranges in the old cells (66.5%). Considering specific offense types, offenders with sentencing ranges in the new Zone B cells sentenced for drug and fraud offenses were more serious compared to those offenders with sentencing ranges in the old cells. Specifically, the percentage of drug offenses involving marijuana was substantially lower for offenders with sentencing ranges in the new Zone B cells (34.8%) compared to those offenders sentenced in the old cells (48.1%).⁵⁵ In addition, the median loss amounts for fraud offenses for offenders with sentencing ranges in the new Zone B cells (\$32,382) was greater than those offenders with sentencing ranges in the old cells (\$19,871); loss amounts corresponding to a 6-level and 4-level increase from the loss table USSG §2B1.1, respectively.

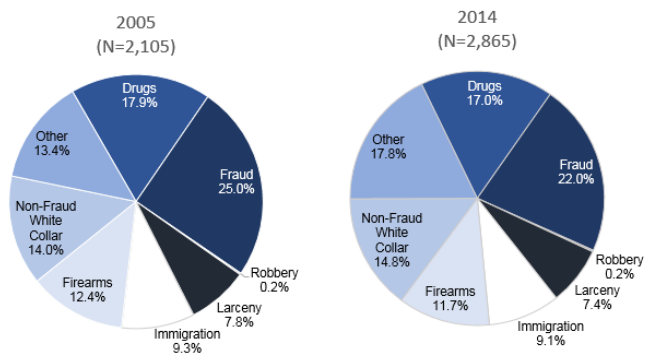
Table 3
Selected Data Comparing Offenders in Old and New Cells for U.S. Citizen Federal Offenders with Sentencing Ranges in Zone B Fiscal Years 2011-2014

	Offenders with Sentencing Ranges in Zone B After Zone Expansion Effective November 1, 2010	
	Old Cells (n=6,957)	New Cells (n=2,082)
Alternative Imposed	65.1%	55.0%
Class A or B Felony Conviction	4.2%	11.4%
Criminal History Category I	66.5%	41.6%
Drug Offenses Involving Marijuana	48.1%	34.8%
Median Loss: Fraud Offenses	\$19,871	\$32,382
Median Loss: Non-Fraud White Collar Offenses	\$10,137	\$10,268

Zone C

A comparison of offense types for offenders with sentencing ranges in Zone C shows a combination of increases and decreases in severity during the time period. The rate at which courts imposed alternative sentences for those offenders decreased during the past ten years from 62.2 percent in 2005 to 58.5 percent in 2014. Figure 11 shows very little change in the types of offenses that resulted in sentencing ranges in Zone C.⁵⁶ For example, fraud offenses constituted the single largest offense category in each year, although the percentage of fraud

Figure 11
Offense Types for U.S. Citizen Federal Offenders with Sentencing Ranges in Zone C Fiscal Years 2005 and 2014



offenses decreased somewhat from 25.0 percent in 2005 to 22.0 percent in 2014. Drug offenses constituted the second largest category accounting for 17.9 percent of offenders with sentencing ranges in Zone C in 2005 and 17.0 percent in 2014. Similarly, the “other” category consistently accounted for a substantial proportion of offenders with sentencing ranges in Zone C and the proportion increased from 13.4 percent in 2005 to 17.8 percent in 2014. In each year, however, the “other” category primarily comprised of minor property offenses and other miscellaneous offenses.⁵⁷

Following a similar pattern, Table 4 shows that conviction rates for Class A or B felonies among offenders with sentencing ranges in Zone C decreased by about half from 9.7 percent in 2005 to 4.0 percent in 2014, resulting in an increase in offenders eligible for probation.⁵⁸ Another decrease in severity is indicated by the increase in the proportion of offenders with little or no criminal history. The percentage of offenders with sentencing ranges in Zone C assigned to Criminal History Category I increased from 66.0 percent in 2005 to 75.5 percent in 2014. These decreases in severity, however, were offset by other increases. The rate of more serious drug offenses increased, as evidenced by the decrease in the percentage of offenders sentenced for drug offenses involving marijuana from 56.5 percent in 2005 to 45.6 percent in 2014. The severity of monetary harm also increased, with the median loss amount for offenders with sentencing ranges in Zone C sentenced for fraud increasing by more than half from \$44,267 in 2005 to \$70,544 in 2014. The increase in median loss corresponds to a two level increase on the loss table in USSG §2B1.1 from 6-levels (for more than \$30,000) to 8-levels (for more than \$70,000). Similarly, the median monetary harms for non-fraud white collar offenses increased by nearly half from \$45,058 in 2005 to \$61,733 in 2014.

Table 4
Selected Data Comparing U.S. Citizen Federal Offenders
with Sentencing Ranges in Zone C
Fiscal Years 2005 and 2014

	Offenders with Sentencing Ranges in Zone C	
	2005 (n=2,105)	2014 (n=2,863)
Alternative Imposed	62.2%	58.5%
Class A or B Felony Conviction	9.7%	4.0%
Criminal History Category I	66.0%	75.5%
Drug Offenses Involving Marijuana	56.5%	45.6%
Median Loss: Fraud Offenses	\$44,267	\$70,544
Median Loss: Non-Fraud White Collar Offenses	\$45,058	\$61,733

Expansion of Zone C

As discussed above, the Commission expanded Zone C in 2010 to include offenders with sentencing ranges of 12-18 months that previously were in Zone D and thus ineligible for alternative sentences under the guidelines. In the years since the amendment, 54.4 percent of offenders with sentencing ranges in Zone C were sentenced in the new cells.⁵⁹ Offenders with sentencing ranges in the new Zone C cells are more serious than those in the original Zone C cells, to the extent that their guideline calculations resulted in final offense levels and Criminal History Categories that provide for higher guideline ranges. The decreasing rates of alternatives for offenders with sentencing ranges in Zone C, therefore, might be expected given the increased offense and offender severity introduced by the inclusion of the new cells.

The data indicate that the expansion of Zone C alone does not entirely account for the decreasing rates of alternative sentences. Analysis of only those Zone C offenders sentenced in the original cells (excluding offenders with sentencing ranges in the new Zone C cells) demonstrates a small decrease in rates of alternatives. In other words, those offenders who

would have been eligible for an alternative sentence even before the zone expansion received such sentences less often than in the past. In 2005, 62.2 percent of offenders with sentencing ranges in Zone C were sentenced to alternatives, compared to 59.8 percent of offenders sentenced in the old Zone C cells in 2014.

Although the expansion of Zone C alone does not explain the decrease in rates of alternative sentences for offenders with sentencing ranges in Zone C, it is again noteworthy that offenders with sentencing ranges in the new Zone C cells were sentenced to alternatives at lower rates, as would be expected. The following analysis compares offenders with sentencing ranges in Zone C sentenced in the old and the new cells.

As shown in Table 5, alternative sentences were imposed for offenders with sentencing ranges in the new Zone C cells at a lower rate (55.1%) compared to those in the old cells (61.8%).⁶⁰ Although constituting a relatively small percentage, Class A or B felony convictions were more common for offenders with sentencing ranges in the new Zone C cells (6.1%) compared to those in the old cells (1.4%). Offense severity, as measured by monetary harm, also indicates

Table 5
Selected Data Comparing Offenders in Old and New Cells for U.S. Citizen Federal Offenders with Sentencing Ranges in Zone C Fiscal Years 2011-2014

	Offenders with Sentencing Ranges in Zone C After Zone Expansion Effective November 1, 2010	
	Old Cells (n=4,984)	New Cells (n=5,936)
Alternative Imposed	61.8%	55.1%
Class A or B Felony Conviction	1.4%	6.1%
Criminal History Category I	75.8%	74.7%
Drug Offenses Involving Marijuana	50.0%	54.7%
Median Loss: Fraud Offenses	\$52,328	\$81,637
Median Loss: Non-Fraud White Collar Offenses	\$44,389	\$78,549

differences. Fraud offenders with sentencing ranges in the new Zone C cells had a substantially higher median loss amount of \$81,637 (corresponding to an 8-level increase from the loss table in §2B1.1 for more than \$70,000) compared to fraud offenders with sentencing ranges in the old Zone C cells, \$52,328 (corresponding to a 6-level increase from the loss table in §2B1.1 for more than \$30,000). Similarly, the monetary harm for non-fraud white collar fraud offenders with sentencing ranges in the new Zone C cells was greater with a median of \$78,549 compared to offenders with sentencing ranges in the old Zone C cells with a median of \$44,389. The two groups of offenders, however, were similar in terms of criminal history and drug type. Considering offenders with sentencing ranges in both the new and old Zone C cells, approximately three-quarters of offenders in each group were in Criminal History Category I and approximately half of the drug offenses in each group involved marijuana.

Offender Characteristics

In addition to offense and offender severity, the data indicate demographic differences in imposition of alternative sentences. Table 6 shows rates of alternatives imposed for offenders in demographic categories with sentencing ranges in Zones A through C in 2014.⁶¹ As was true for all offenders, the proportion of offenders sentenced to an alternative sentence generally decreased in the more serious sentencing zones. More than half of offenders in each race category were sentenced to an alternative. However, there was a notable and consistent difference in the rates of alternative sentences comparing the groups of offenders with sentencing ranges in each of Zones A through C. Alternatives were more often imposed for

White offenders than for other groups of offenders. As shown in Table 6, 81.8 percent of White offenders with sentencing ranges in Zone A were sentenced to alternatives, 69.1 percent for Zone B, and 65.9 percent for Zone C. Black offenders and offenders in the Other Race category had rates of alternatives below those of White offenders.⁶² For example, alternative sentences were imposed for 78.7 percent of Black offenders with sentencing ranges in Zone A, 63.4 percent for Zone B, and 51.8 percent for Zone C. Alternative sentences were imposed for 72.5 percent of offenders in the Other Race category with sentencing ranges in Zone A, 55.3 percent for Zone B, and 64.8 percent for Zone C. The rates of alternatives were consistently lowest for Hispanic offenders with sentencing ranges in each of the zones: A (68.8%), B (53.3%), and C (49.6%).

Table 6
Rates of Alternative Sentences for Each Demographic Group for U.S. Citizen Federal Offenders with Sentencing Ranges in Zones A, B, and C Fiscal Year 2014

	Percent with Alternative Imposed			
	Total Zone A-C (n=4,506)	Zone A (n=1,407)	Zone B (n=1,433)	Zone C (n=1,666)
Race				
White	71.6%	81.8%	69.1%	65.9%
Black	62.1%	78.7%	63.4%	51.8%
Hispanic	54.8%	68.8%	53.3%	49.6%
Other	64.2%	72.5%	55.3%	64.8%
Gender				
Male	59.3%	73.8%	55.9%	53.9%
Female	75.6%	84.0%	75.4%	68.6%
Age				
Under 21	58.9%	69.2%	54.2%	56.9%
21-29	55.9%	69.8%	52.0%	50.0%
30-39	60.9%	78.6%	57.2%	52.8%
40-49	68.7%	80.8%	68.5%	60.5%
50 and older	75.3%	83.7%	77.0%	69.3%

Black and Hispanic offenders consistently were sentenced to alternatives less often than White offenders. The data indicate some differences in criminal history and offense severity that provide some insight to this finding. Black offenders had more serious criminal history scores compared to the other groups. Considering all offenders sentenced in Zones A through C represented in Table 6, 65.6 percent of Black offenders were in Criminal History Category I, compared to more than 75 percent for each of the other three groups. In addition, the four major drug types punished most severely under the guidelines, powder cocaine, crack cocaine, heroin, and methamphetamine accounted for 56.4 percent of drug offenses involving Black offenders, compared to less than 30 percent for each of the other three groups. Among Hispanic drug offenders sentenced in Zones A through C, the predominant drug type was marijuana, accounting for 71.7 percent of those offenses. As noted earlier, marijuana is subject to the least severe penalties of the five most common drug types and these penalty differences would seem to indicate offenses of lesser severity. However, Hispanic drug offenders were overwhelmingly (90.0%) sentenced under the drug trafficking guideline (USSG §2D1.1), a higher rate than drug offenders in the other three groups. In turn, offenders in the other three groups were sentenced under the simple possession guideline (USSG §2D2.1) at rates about twice as high as for Hispanic offenders.⁶³

Table 6 also shows that, for offenders with sentencing ranges in each of Zones A through C, female offenders were sentenced to alternatives at higher rates than male offenders. This difference is especially apparent for offenders with sentencing ranges in Zone B, in which 75.4 percent of female offenders were sentenced to alternatives compared to 55.9 percent of male offenders.

In general, alternative sentences were imposed for more than half of offenders in each age group. Excluding offenders under the age of 21, there was a clear trend of increasing rates of alternatives as the age of the offender increased, and this trend was consistent across the sentencing zones. The rates of alternative sentences for offenders under the age of 21 are less

consistent and are actually lowest for offenders with sentencing ranges in Zone B rather than for those with sentencing ranges in Zone C.

Offenders with Sentencing Ranges in Zone D Sentenced to Alternatives

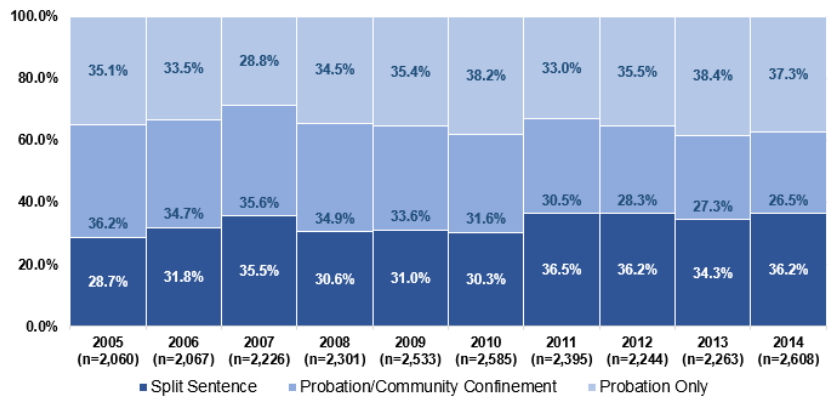
As noted, offenders with sentencing ranges in Zone D of the Sentencing Table are ineligible for alternative sentences under the guidelines absent a downward departure or variance. Specifically, USSG §5C1.1(f) states: “If the applicable guideline range is in Zone D of the Sentencing Table, the minimum term shall be satisfied by a sentence of imprisonment.”

The percentage of offenders with sentencing ranges in Zone D sentenced to alternatives has averaged about 12 percent during the past ten years.

Given this limitation, it is not surprising that rates of alternative sentences are relatively low for offenders with sentencing ranges in Zone D. The percentage of offenders with sentencing ranges in Zone D sentenced to alternatives has averaged about 12 percent during the past ten years. Whereas the proportion of offenders sentenced to alternatives with sentencing ranges in Zones A through C declined during the past ten years, it increased marginally for those in Zone D from 11.0 percent in 2005 to 12.4 percent in 2014 (see Figure 9).⁶⁴

Figure 12 shows the types of alternative sentences imposed for offenders with sentencing ranges in Zone D.⁶⁵ During the past ten years, offenders with sentencing ranges in Zone D sentenced to alternatives consistently have been sentenced in roughly equal percentages to probation-only, probation with confinement conditions, and split sentences. Probation-only was the most commonly imposed alternative for offenders with sentencing ranges in Zone D in 2014 (37.3%), having surpassed probation with confinement conditions in 2009 as the most commonly imposed type of alternative sentence.

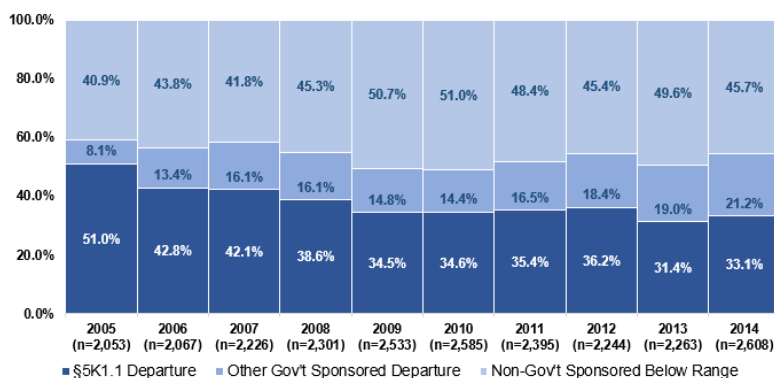
Figure 12
Trend in Types of Alternative Sentences Imposed for U.S. Citizen Federal Offenders with Sentencing Ranges in Zone D Fiscal Years 2005-2014



Despite the relative consistency with which courts have imposed alternative sentences for offenders with sentencing ranges in Zone D, the means by which they arrived at those sentences has changed. As shown in Figure 13, the proportion of offenders with sentencing ranges in Zone D sentenced to an alternative pursuant to a §5K1.1 departure decreased from

51.0 percent in 2005 to 33.1 percent in 2014.⁶⁶ During the ten-year period, there was a corresponding increase in the proportion of offenders with sentencing ranges in Zone D sentenced to an alternative by means of one of the other two below range options. The rate of non-government sponsored below range sentences increased from 40.9 percent to 45.7 percent. The rate of other government sponsored below range sentences more than doubled from 8.1 percent to 21.2 percent.

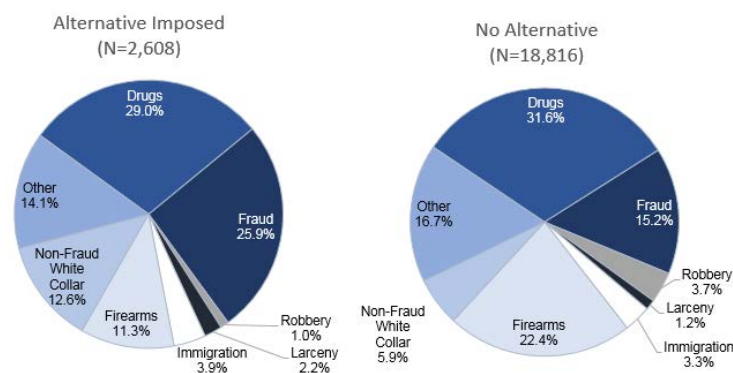
Figure 13
Trend in Types of Below Range Sentences for U.S. Citizen Federal Offenders with Sentencing Ranges in Zone D Sentenced to Alternatives Fiscal Years 2005-2014



Considering that under the guidelines, offenders with sentencing ranges in Zone D only can be sentenced to an alternative as the result of a departure or variance, it is noteworthy to examine more closely the types of cases in which courts have imposed such sentences. The following analysis compares offenders with sentencing ranges in Zone D sentenced to an alternative to those sentenced to imprisonment in 2014.

Figure 14 shows notable differences in offense types for the two groups of offenders with sentencing ranges in Zone D.⁶⁷ Fraud offenses were more common among offenders sentenced to alternatives (25.9%) compared to those sentenced to imprisonment (15.2%). Similarly, non-fraud white collar offenses (12.6%) were more common among offenders sentenced to alternatives compared to those sentenced to imprisonment (5.9%). Conversely, firearms offenses occurred at half the rate among offenders sentenced to alternatives (11.3%) compared to those sentenced to imprisonment (22.4%).

Figure 14
Offense Types and Imposition of Alternative Sentences for U.S. Citizen Federal Offenders with Sentencing Ranges in Zone D Fiscal Year 2014



Comparing the severity of offense types for offenders with sentencing ranges in Zone D, there are some differences and some similarities regarding those sentenced to alternatives versus those sentenced to imprisonment.

Table 7 shows the median loss amount for fraud offenders sentenced to alternatives was \$391,461 compared to a median loss of \$636,261 for those sentenced to imprisonment.⁶⁸ While the median loss amount for the offenders sentenced to imprisonment was markedly greater, the corresponding offense level increases for those amounts on the loss table in USSG §2B1.1 are 12-levels and 14-levels, respectively. The median monetary harms for the non-fraud white collar offenses showed very little difference at \$220,890 and \$195,744. Finally, convictions for Class A or B felonies were somewhat less common among offenders sentenced to alternatives (5.4%) compared to those sentenced to imprisonment (8.2%).

**Table 7
Selected Data Comparing Imposition of Alternative Sentences for U.S. Citizen Federal Offenders with Sentencing Ranges in Zone D Fiscal Year 2014**

	Offenders with Sentencing Ranges in Zone D	
	Alternative Imposed (n=2,608)	No Alternative (n=18,816)
Average Final Offense Level	19	22
Class A or B Felony Conviction	5.4%	8.2%
Criminal History Category I	70.9%	37.2%
Drug Offenses Involving Marijuana	20.1%	12.7%
Median Loss: Fraud Offenses	\$391,461	\$636,261
Median Loss: Non-Fraud White Collar Offenses	\$220,890	\$195,744

A comparison of drug offenses, however, demonstrates notable differences. The proportion of drug offenders with sentencing ranges in Zone D sentenced to alternatives (29.0%) was roughly equal to the proportion of those sentenced to imprisonment (31.6%); however, the nature of those drug offenses was substantially different. Drug offenses involving marijuana were nearly twice as common among offenders sentenced to alternatives (20.1%) compared to such offenders sentenced to imprisonment (12.7%).⁶⁹

Further comparisons of offenders with sentencing ranges in Zone D demonstrate noteworthy patterns in the imposition of alternative sentences. The final offense level is the fundamental measure of offense severity under the federal sentencing guidelines. Notably, a comparison of the average final offense levels for offenders with sentencing ranges in Zone D and their relative proximity to Zone C demonstrated little difference. The average final offense level for offenders sentenced to alternatives was 19 compared to 22 for those sentenced to imprisonment. Offense levels for Zone D range from 14 to 43, putting the averages for both groups of offenders in the lower third of Zone D, relatively low on the Sentencing Table and in similar proximity to Zone C.

Whereas offense seriousness as indicated by the final offense level does not appear to be related to the rate of imposition of alternative sentences, the other component of the Sentencing Table, Criminal History Category, does. A comparison of offenders with sentencing ranges in Zone D shows a substantial difference in the rates of alternative sentences. More than two-thirds (70.9%) of offenders with sentencing ranges in Zone D sentenced to alternatives were in Criminal History Category I compared to half as many (37.2%) who were sentenced to imprisonment.

Offender Characteristics

Alternative sentences were imposed less often for offenders with sentencing ranges in Zone D compared to those in Zone A through C, but the trends for the various demographic groups, as shown in Table 8, were similar. Overall, White offenders with sentencing ranges in Zone D (14.9%) were sentenced to alternatives at a higher rate than other racial groups.⁷⁰ The rates of alternative sentences for Black offenders were the lowest among each of the groups (8.2%). To some extent, this difference may be accounted for by criminal history and its relationship with alternative sentences as previously described. Half as many (23.3%) Black offenders were in Criminal History I compared to the other groups. Approximately half of White (50.8%), Hispanic (48.0%), and “Other” offenders (54.4%) were in Criminal History Category I.⁷¹ In addition to criminal history, there also were differences in offense severity comparing Zone D offenders in different racial groups. Nearly one-third (31.5%) of Black offenders in Zone D were sentenced for firearms offenses, compared to 18 percent and less for the other three groups. In addition, drug offenses involving marijuana were much less common among Black offenders, accounting for 6.7 percent of those offenses, compared to 13 to 25 percent for the other three groups.

Female offenders with sentencing ranges in Zone D were sentenced to alternatives (22.8%) at twice the rate of their male counterparts (10.0%).

The pattern of imposition of alternative sentences for offenders in different age groups for offenders with sentencing ranges in Zone D is similar that of the other sentencing zones discussed earlier. Excluding offenders under the age of 21, there is a general trend for increasing rates of alternative sentences with increasing age for offenders with sentencing ranges in Zone D. Offenders under the age of 21 had rates of alternative sentences that were contrary to the trend, however, with their rates falling in between offenders in their 30s and 40s.

Conclusion

The federal sentencing guidelines provide for a variety of alternative sentences that can be substituted for imprisonment by means of a combination of probation and confinement in Zones A through C on the Sentencing Table. The Commission expanded these options to a larger proportion of offenders by way of its 2010 expansion of Zones B and C on the Sentencing Table. Despite the array of sentencing options available to sentencing courts, there have been decreases during the past ten years in both the proportion of offenders eligible for such sentences, as well as in the proportion of such sentences imposed for those eligible.

This decrease in alternative sentences occurred despite increased discretion for courts to sentence offenders below the applicable guideline range since *Booker* and *Gall*. Since those two decisions, there has been a steady overall increase in sentences below the guideline range

Table 8
Rates of Alternative Sentences for Each Demographic Group for U.S. Citizen Federal Offenders with Sentencing Ranges in Zone D Fiscal Year 2014

	Percent with Alternative Imposed	
	Alternative Imposed (n=2,608)	No Alternative (n=18,816)
Race		
White	14.9%	85.1%
Black	8.2%	91.8%
Hispanic	12.8%	87.2%
Other	14.3%	85.7%
Gender		
Male	10.0%	90.0%
Female	22.8%	77.2%
Age		
Under 21	12.1%	87.9%
21-29	9.8%	90.2%
30-39	9.6%	90.4%
40-49	13.9%	86.1%
50 and older	18.5%	81.5%

due to downward departures or variances, but the increased use of that discretion has not resulted in the imposition of higher rates of alternative sentences as one might expect.

The decreasing trend in the imposition of alternative sentences in part is due to the Commission's 2010 expansion of Zones B and C on the Sentencing Table. The 2010 zone expansions introduced relatively more serious offenders into Zones B and C. Offenders with sentencing ranges in the expanded cells received alternative sentences at lower rates compared to offenders with sentencing ranges in previously existing cells. The 2010 zone expansions, however, may only partially explain the lower rates of alternative sentences because this steady trend began prior to 2010, and those earlier decreasing trends did not appear to be related to any otherwise notable increases in offense or offender severity for those eligible offenders. During the same time period studied, sentencing courts have used their departure or variance authority to impose alternative sentences at a low but relatively consistent rate for offenders with sentencing ranges in Zone D.

It is noteworthy that, in addition to the overall trend of decreasing imposition of alternatives, there are substantial differences in the rates of alternative sentences for eligible offenders in different racial groups. Eligible White offenders were sentenced to alternative sentences at higher rates than eligible Black, Hispanic, and offenders in the Other race category. Differences in criminal history and offense severity may account for some of these differences.

While this reports identifies several possible reasons for the decreasing rates of alternative sentences and the demographic differences observed, this is an area that may warrant further study in the future.

¹ The Commission is an independent agency in the judicial branch of government. Established by the Sentencing Reform Act of 1984, its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress, the federal judiciary, and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues.

² COURTNEY SEMISCH, U.S. SENT'G COMM'N, *ALTERNATIVE SENTENCING IN THE FEDERAL CRIMINAL JUSTICE SYSTEM* 5 (2009).

³ 552 U.S. 38 (2007). In *Gall*, the Court affirmed as “reasonable” the district court’s sentence of probation, which was a substantial downward variance from the guideline-recommended sentencing range of 30-37 months of incarceration. See *id.*, at 59-60 (“On abuse-of-discretion review, the Court of Appeals should have given due deference to the District Court’s reasoned and reasonable decision that the [18 U.S.C.] § 3553(a) factors, on the whole, justified the sentence.”).

⁴ The impact of *Gall* is reflected in the Commission’s decision to analyze sentencing data in the periods before and after *Gall*. See U.S. SENT'G COMM'N, *REPORT ON THE CONTINUING IMPACT OF UNITED STATES V. BOOKER ON FEDERAL SENTENCING* 53 (2012). The Commission’s 2009 report analyzed data only through the end of fiscal year 2007, which predated the Court’s decision in *Gall*.

⁵ Pub. L. No. 98–473.

⁶ See 28 U.S.C. § 994(j).

⁷ Probation terms are authorized for certain felony offenders for one to five years and for misdemeanor offenders for no more than five years. See 18 U.S.C. § 3561(c).

⁸ Pub. L. No. 100–690.

⁹ See 18 U.S.C. §§ 3563 and 3583.

¹⁰ See U.S. SENT'G COMM'N, *GUIDELINES MANUAL* §§5B1.1-5B1.3, 5C1.1(b)-(e) (2014) [hereinafter USSG].

¹¹ The offense level is calculated using offense specific aggravating and mitigating factors prescribed by the guidelines. The Criminal History Category is based on the recency and severity of an offender’s prior sentences and supervision status. The sentencing range is determined by the intersection of the offense level and Criminal History Category on the Sentencing Table. For example, an offender at offense level nine and Criminal History Category III faces a sentencing range of eight to 14 months. See USSG §1B1.1 for an overview of guideline application, including offense level and Criminal History Category computations.

¹² See USSG §5C1.1.

¹³ Although these options are conditions of probation, the guidelines allow them to be substituted for incarceration in order to meet the conditions of 28 U.S.C. § 994(b)(2). In the Sentencing Reform Act of 1984, Congress directed that the maximum of a sentencing range could not exceed the minimum by more than six months or 25 percent of the minimum. The guidelines allow non-prison sentences for Zone B offenders, creating sentencing ranges larger than six months because the minimum confinement term for a probation sentence is zero months (the maximum terms in Zone B begin at seven months). The guidelines avoid sentencing ranges greater than six months for Zone B offenders by requiring probation terms for these to include intermediate confinement.

¹⁴ Non-guideline sentences are sentences imposed below the guideline range that only mention *United States v. Booker*, 543 U.S. 220 (2005), 18 U.S.C. § 3553, or related factors as a reason for a below-range sentence, or do not provide sufficient information to be classified as a departure. This category includes cases that cite departure reasons that are not affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal *Guidelines Manual* and cases that do not provide any reason for the sentence below the guideline range.

¹⁵ For example, a sentence range of ten to 16 months associated with a final offense level of 12 and Criminal History Category of I is in Zone C of the Sentencing Table. If the court sentences the offender to the minimum of ten months, it may impose a term of supervised release with conditions of community confinement for up to five of the ten months.

¹⁶ See USSG App. C, amend. 738 (eff. November 1, 2010).

¹⁷ See 18 U.S.C. § 3561.

¹⁸ Class A felonies carry sentencing terms of life or death. Class B felonies carry sentences of 25 years or more. See 18 U.S.C. § 3559.

¹⁹ See, e.g., 21 U.S.C. § 841(b)(1)(A) (“Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph.”).

²⁰ See 18 U.S.C. § 3561(a)(1)-(3).

²¹ See USSG §§5B1.1 and 5C1.1.

²² See 18 U.S.C. § 994(i).

²³ See USSG §5C1.1(c)(2) & (d)(1).

²⁴ Of the 75,836 cases received by the Commission in fiscal year 2014, a total of 660 were excluded because they did not involve sentences of probation or prison. An additional case was excluded due to missing information on type of sentence imposed.

²⁵ Of the 75,836 cases received by the Commission in fiscal year 2014, a total of 2,177 were excluded due to missing information on statutory minimum sentence.

²⁶ Of the 75,836 cases received by the Commission in fiscal year 2014, a total of 19,275 were excluded because they involved convictions under a statute requiring a mandatory minimum sentence or were missing information on statutory minimums.

²⁷ Of the 75,836 cases received by the Commission in fiscal year 2014, a total of 19,275 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (16,606) or were missing information on statutory minimum (2,669). Of the remaining 56,561 cases, 4,765 were excluded due to incomplete guideline application information. An additional 89 cases were excluded because they did not involve sentences of prison or probation.

²⁸ Of the 75,836 cases received by the Commission in fiscal year 2014, a total of 19,275 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (16,606) or were missing information on statutory minimum (2,669). Of the remaining 56,561 cases, 4,765 were excluded due to incomplete guideline application information. An additional 89 cases were excluded because they did not involve sentences of prison or probation.

²⁹ See *Moncrieffe v. Holder*, 133 S.Ct. 1678, 1682 (2013) (“[I]f a noncitizen has been convicted of [an] . . . ‘aggravated felon[y],’ then he is not only deportable, [8 U.S.C.] § 1227(a)(2)(A)(iii), but also ineligible for these discretionary forms of relief. See §§ 1158(b)(2)(A)(ii), (B)(i); §§ 1229b(a)(3), (b)(1)(C).”); see also 8 U.S.C. § 1101(a)(43) (list of “aggravated felonies” which, upon conviction, will result in deportation). Among aggravated felonies are federal drug-trafficking offenses, federal firearms offenses, illegal reentry by a previously deported alien, and fraud offenses with loss amounts exceeded \$10,000. See 8 U.S.C. § 1101(a)(43)(B), (E), (M) & (O). Those four types of offenses alone account for the vast majority of federal offense types. See 2014 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, FIGURE A (2015). Most other common federal offenses types – e.g., bank robbery (for which a term of imprisonment of one year or more was imposed), child pornography offenses, and alien-smuggling offenses – also qualify as “aggravated felonies.” See 8 U.S.C. § 1101(a)(43)(F), (I) & (N).

³⁰ Of the 75,836 cases received by the Commission in fiscal year 2014, a total of 19,275 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (16,606) or were missing information on statutory minimum (2,669). Of the remaining 56,561 cases, 4,765 were excluded due to incomplete guideline application information. An additional 89 cases were excluded because they did not involve sentences of prison or probation. An additional 28,460 cases were excluded because they involved U.S. citizens (28,407) or were missing information on citizenship (53).

³¹ See USSG §5C1.1(b).

³² The definition of “alternative sentence” for offenders whose sentencing ranges are in Zone A is different than in the 2009 report. In that report sentences to probation-only for offenders whose sentencing ranges were in Zone A were defined as alternatives.

³³ See USSG §5C1.1(c)-(e).

³⁴ Of the 785,953 cases received by the Commission from fiscal years 2005 through 2014, a total of 237,052 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (201,975) or were missing information on statutory minimum (35,077). Of the remaining 548,901 cases, 49,580 were excluded due to incomplete (49,429) or missing guideline application information (151). An additional 986 cases were excluded because they did not involve sentences of prison or probation (823) or were missing information on sentence imposed (163). An additional 230,950 cases were excluded because they involved non-citizens (229,878) or were missing information on citizenship (1,072). One case was excluded because it was missing information on sentencing zone.

³⁵ Of the 148,298 cases received by the Commission in fiscal years 2005 and 2014, a total of 42,868 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (35,927) or were missing information on statutory minimum (6,941). Of the remaining 105,430 cases, 9,836 were excluded due to incomplete (6,790) or missing guideline application information (151). An additional 230 cases were excluded because they did not involve sentences of prison or probation (196) or were missing information on sentence imposed (34). An additional 40,271 cases were excluded because they involved non-citizens (40,006) or were missing information on citizenship (265). An additional 40,753 cases were excluded because they involved sentencing ranges in Zone D (40,752) or were missing information on sentencing zone (1).

³⁶ Of the 785,953 cases received by the Commission from fiscal years 2005 through 2014, a total of 237,052 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (201,975) or were missing information on statutory minimum (35,077). Of the remaining 548,901 cases, 49,580 were excluded due to incomplete (49,429) or missing guideline application information (151). An additional 986 cases were excluded because they did not involve sentences of prison or probation (823) or were missing information on sentence imposed (163). An additional 230,950 cases were excluded because they involved non-citizens (229,878) or were missing information on citizenship (1,072). An additional 243,679 cases were excluded because they involved sentencing ranges in Zones B, C, or D (234,678) or were missing information on sentencing zone (1).

³⁷ Of the 785,953 cases received by the Commission from fiscal years 2005 through 2014, a total of 237,052 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (201,975) or were missing information on statutory minimum (35,077). Of the remaining 548,901 cases, 49,580 were excluded due to incomplete (49,429) or missing guideline application information (151). An additional 986 cases were excluded because they did not involve sentences of prison or probation (823) or were missing information on sentence imposed (163). An additional 230,950 cases were excluded because they involved non-citizens (229,878) or were missing information on citizenship (1,072). An additional 244,313 cases were excluded because they involved sentencing ranges in Zones A, C, or D (244,312) or were missing information on sentencing zone (1). An additional 98 cases were excluded because their alternative sentence involved a total sentence that was above the applicable guideline range.

³⁸ As discussed above, a sentence of probation-only imposed for an offender with a sentencing range in Zone B would be a downward departure or variance.

³⁹ Of the 785,953 cases received by the Commission from fiscal years 2005 through 2014, a total of 237,052 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (201,975) or were missing information on statutory minimum (35,077). Of the remaining 548,901 cases, 49,580 were excluded due to incomplete (49,429) or missing guideline application information (151). An additional 986 cases were excluded because they did not involve sentences of prison or probation (823) or were missing information on sentence imposed (163). An additional 230,950 cases were excluded because they involved non-citizens (229,878) or were missing information on citizenship (1,072). An additional 243,711 cases were excluded because they involved sentencing ranges in Zones A, B, or D (243,710) or were missing information on sentencing zone (1). An additional 45 cases were excluded because their alternative sentence involved a total sentence that was above the applicable guideline range.

⁴⁰ Of the 785,953 cases received by the Commission from fiscal years 2005-2014, a total of 237,052 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (201,975) or were missing information on statutory minimum (35,077). Of the remaining 548,901 cases, 49,580 were excluded due to incomplete (49,429) or missing guideline application information (151). An additional 986 cases were excluded because they did not involve sentences of prison or probation (823) or were missing information on sentence imposed (163). An additional 230,950 cases were excluded because they involved non-citizens (229,878) or were missing information on citizenship (1,072). An additional 70,453 cases were excluded because they involved sentencing ranges in Zones A, B, or C (70,452) or were missing information on sentencing zone (1).

⁴¹ 543 U.S. 220, 245 (2005); see also U.S. SENT'G COMM'N, REPORT ON THE CONTINUING IMPACT OF *UNITED STATES V. BOOKER* ON FEDERAL SENTENCING 69 (2012).

⁴² The rate of within range sentences in Zone B decreased from 74.0% to 52.8%, in Zone C from 56.9% to 36.5%, and in Zone D from 60.5% to 36.7%. Nearly 100% of Zone A offenders consistently were sentenced within the applicable guideline range during the time period.

⁴³ Of the 148,298 cases received by the Commission in fiscal years 2005 and 2014, a total of 42,868 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (35,927) or were missing information on statutory minimum (6,941). Of the remaining 105,430 cases, 9,836 were excluded due to incomplete (6,790) or missing guideline application information (151). An additional 230 cases were excluded because they did not involve sentences of prison or probation (196) or were missing information on sentence imposed (34). An additional 40,271 cases were excluded because they involved non-citizens (40,006) or were missing information on citizenship (265). An additional 40,753 cases were excluded because they involved sentencing ranges in Zone D (40,752) or were missing information on sentencing zone (1). In addition, 1,302 cases were excluded because they involved sentences above the applicable guideline range (1,210) or were missing information on sentence relative to the guideline range (92).

⁴⁴ Other government sponsored below range sentences, as a category, include a number of non-§5K1.1 below range sentences in which an assessment of the reasons given by the court indicates that the government otherwise sponsored the sentence. This category includes cases for which the origins of the departure are indicated by the court's use of the check boxes on the Statement of Reasons (SOR) form. Additionally, all cases with one or more of the following reasons were classified as being sponsored by the government regardless of whether the SOR indicated sponsorship: pursuant to a plea agreement (binding, non-binding, or unknown), fast track, savings to the government, early plea, deportation, waiver of indictment and/or appeal, other government motion, global disposition, due to stipulations, facilitated early release of a material witness, joint recommendation, and large number of immigration cases. It is possible that those involving plea agreements and other stipulations may include an alternative sentence in these instances.

⁴⁵ Of the 148,298 cases received by the Commission in fiscal years 2005 and 2014, a total of 42,868 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (35,927) or were missing information on statutory minimum (6,941). Of the remaining 105,430 cases, 9,836 were excluded due to incomplete (6,790) or missing guideline application information (151). An additional 230 cases were excluded because they did not involve sentences of prison or probation (196) or were missing information on sentence imposed (34). An additional 40,271 cases were excluded because they involved non-citizens (40,006) or were missing information on citizenship (265). An additional 50,373 cases were excluded because they involved sentencing ranges in Zones A, C, or D (50,372) or were missing information on sentencing zone (1).

⁴⁶ The "other" category consists of murder, manslaughter, kidnapping, sexual abuse, assault, arson, burglary, auto theft, racketeering, gambling/lottery, civil rights, pornography/prostitution, child pornography, prison offenses, environmental offenses, national defense, antitrust, food and drug and other regulatory offenses.

⁴⁷ Of the 148,298 cases received by the Commission in fiscal years 2005 and 2014, a total of 42,868 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (35,927) or were missing information on statutory minimum (6,941). Of the remaining 105,430 cases, 9,836 were excluded due to incomplete (6,790) or missing guideline application information (151). An additional 230 cases were excluded because they did not involve sentences of prison or probation (196) or were missing information on sentence imposed (34). An additional 40,271 cases were excluded because they involved non-citizens (40,006) or were missing information on citizenship (265). An additional 50,373 cases were excluded because they involved sentencing ranges in Zones A, C, or D (50,372) or were missing information on sentencing zone (1). An additional 17 cases were excluded because their alternative sentence involved a total sentence that was above the guideline range. Cases missing information for a variable were excluded from the analysis for that variable.

⁴⁸ See USSG §2D1.1 for sentencing of offenders convicted of drug trafficking offenses. Marijuana is subject to the least severe penalties of the five most common drug types sentenced in the federal system (crack cocaine, heroin, marijuana, methamphetamine, and powder cocaine).

⁴⁹ The decrease in marijuana offenses primarily is accounted for by an increase in oxycodone offenses from 8.6% to 33.3% during the time period.

⁵⁰ Pursuant to 18 U.S.C. § 3561(a)(1) offenders convicted of Class A and B felonies (with statutory maximum penalties of 25 years or more) are ineligible for probation.

⁵¹ The non-fraud white collar category includes embezzlement, forgery/counterfeiting, bribery, money laundering, and tax offenses.

⁵² Of the 326,245 cases received by the Commission from fiscal years 2011 through 2014, 90,595 were excluded because they involved convictions under statutes requiring a mandatory minimum (77,365) or were missing information on statutory minimum (13,320). Of the remaining 235,650 cases, 20,722 were excluded due to incomplete guideline application information. An additional 321 cases were excluded because they did not involve sentences of prison or probation (309) or were missing information on sentence imposed (12). An additional 104,278 cases were excluded because they involved non-citizens (104,093) or were missing information on citizenship (185). An additional 100,720 cases were excluded because they involved sentencing ranges in Zones A, C, or D. An additional 49 cases were excluded because their alternative sentence involved a total sentence that was above the applicable guideline range. An additional 521 cases were excluded because they were sentenced using a *Guidelines Manual* in effect prior to November 1, 2010.

⁵³ Of the 785,953 cases received by the Commission from fiscal years 2005 through 2014, a total of 237,052 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (201,975) or were missing information on statutory minimum (35,077). Of the remaining 548,901 cases, 49,580 were excluded due to incomplete (49,429) or missing guideline application information (151). An additional 986 cases were excluded because they did not involve sentences of prison or probation (823) or were missing information on sentence imposed (163). An additional 230,950 cases were excluded because they involved non-citizens (229,878) or were missing information on citizenship (1,072). An additional 246,401 cases were excluded because they did not involve sentencing ranges in the original Zone B cells (246,400) or were missing information on sentencing zone (1). An additional 92 cases were excluded because their alternative sentence involved a total sentence that was above the applicable guideline range.

⁵⁴ Of the 326,245 cases received by the Commission from fiscal years 2011 through 2014, a total of 90,595 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (77,365) or were missing information on statutory minimum (13,230). Of the remaining 235,650 cases, 20,722 were excluded due to incomplete guideline application information. An additional 321 cases were excluded because they did not involve sentences of prison or probation (309) or were missing information on sentence imposed (12). An additional 104,278 cases were excluded because they involved non-citizens (104,093) or were missing information on citizenship (185). An additional 100,720 cases were excluded because they involved sentencing ranges in Zones A, C, or D. An additional 49 cases were excluded because their alternative sentence involved a total sentence that was above the applicable guideline range. An additional 521 cases were excluded because they were sentenced using a *Guidelines Manual* in effect prior to November 1, 2010. Cases missing information for a variable were excluded from the analysis for that variable.

⁵⁵ Marijuana also is the predominant drug type for Zone B offenders sentenced in the new cells, but there are larger proportions of powder cocaine, crack cocaine, and heroin offenses compared to the old cells.

⁵⁶ Of the 148,298 cases received by the Commission in fiscal years 2005 and 2014, a total of 42,868 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (35,927) or were missing information on statutory minimum (6,941). Of the remaining 105,430 cases, 9,836 were excluded due to incomplete (6,790) or missing guideline application information (151). An additional 230 cases were excluded because they did not involve sentences of prison or probation (196) or were missing information on sentence imposed (34). An additional 40,271 cases were excluded because they involved non-citizens (40,006) or were missing information on citizenship (265). An additional 50,123 cases were excluded because they involved sentencing ranges in Zones A, B, or D (50,122) or were missing information on sentencing zone (1).

⁵⁷ See 2014 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, APPENDIX A (2015) for a list of offenses in each category.

⁵⁸ Of the 148,298 cases received by the Commission in fiscal years 2005 and 2014, a total of 42,868 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (35,927) or were missing information on statutory minimum (6,941). Of the remaining 105,430 cases, 9,836 were excluded due to incomplete (6,790) or missing guideline application information (151). An additional 230 cases were excluded because they did not involve sentences of prison or probation (196) or were missing information on sentence imposed (34). An additional 40,271 cases were excluded because they involved non-citizens (40,006) or were missing information on citizenship (265). An additional 50,123 cases were excluded because they involved sentencing ranges in Zones A, B, or D (50,122) or were missing information on sentencing zone (1). An additional two cases were excluded because their alternative sentence involved a total sentence that was above the guideline range. Cases missing information for a variable were excluded from the analysis for that variable.

⁵⁹ Of the 326,245 cases received by the Commission from fiscal years 2011 through 2014 90,595 were excluded because they involved convictions under statutes requiring a mandatory minimum (77,365) or were missing information on statutory minimum (13,230). Of the remaining 235,650 cases, 20,722 were excluded due to incomplete guideline application information. An additional 321 cases were excluded because they did not involve sentences of prison or probation (309) or were missing information on sentence imposed (12). An additional 104,278 cases were excluded because they involved non-citizens (104,093) or were missing information on citizenship (185). An additional 98,913 cases were excluded because they involved sentencing ranges in Zones A, B, or D. An additional 19 cases were excluded because their alternative sentence involved a total sentence that was above the guideline range. An additional 477 cases were excluded because they were sentenced using a *Guidelines Manual* in effect prior to November 1, 2010.

⁶⁰ Of the 326,245 cases received by the Commission from fiscal years 2011 through 2014, a total of 90,595 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (77,365) or were missing information on statutory minimum (13,230). Of the remaining 235,650 cases, 20,722 were excluded due to incomplete guideline application information. An additional 321 cases were excluded because they did not involve sentences of prison or probation (309) or were missing information on sentence imposed (12). An additional 104,278 cases were excluded because they involved non-citizens (104,093) or were missing information on citizenship (185). An additional 98,913 cases were excluded because they involved sentencing ranges in Zones A, B, or D. An additional 19 cases were

excluded because their alternative sentence involved a total sentence that was above the guideline range. An additional 477 cases were excluded because they were sentenced using a *Guidelines Manual* in effect prior to November 1, 2010. Cases missing information for a variable were excluded from the analysis for that variable.

⁶¹ Of the 75,836 cases received by the Commission in fiscal year 2014, a total of 19,275 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (16,606) or were missing information on statutory minimum (2,669). Of the remaining 56,561 cases, 4,765 were excluded due to incomplete guideline application information. An additional 89 cases were excluded because they did not involve sentences of prison or probation. An additional 23,300 cases were excluded because they involved non-citizens (23,247) or were missing information on citizenship (53). An additional 6,983 cases were excluded because they involved sentencing ranges in Zone D. Cases missing information for a variable were excluded from the analysis for that variable.

⁶² The “Other” category primarily consists of Native Americans (46.8%) and Asian/Pacific Islanders (46.0%). The remainder are classified as mixed race (0.1%) and other (7.1%).

⁶³ Of the 75,836 cases received by the Commission in fiscal year 2014, a total of 19,275 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (16,606) or were missing information on statutory minimum (2,669). Of the remaining 56,561 cases, 4,765 were excluded due to incomplete guideline application information. An additional 89 cases were excluded because they did not involve sentences of prison or probation. An additional 23,300 cases were excluded because they involved non-citizens (23,247) or were missing information on citizenship (53). An additional 6,983 cases were excluded because they involved sentencing ranges in Zone D. Cases missing information for a variable were excluded from the analysis for that variable.

⁶⁴ Of the 785,953 cases, a total of 237,052 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (201,975) or were missing information on statutory minimum (35,077). Of the remaining 548,901 cases, 49,580 were excluded due to incomplete (49,429) or missing guideline application information (151). An additional 986 cases were excluded because they did not involve sentences of prison or probation (823) or were missing information on sentence imposed (163). An additional 230,950 cases were excluded because they involved non-citizens (229,878) or were missing information on citizenship (1,072). An additional 70,453 cases were excluded because they involved sentencing ranges in Zones A, B, or C (70,452) or were missing information on sentencing zone (1).

⁶⁵ Of the 785,953 cases received by the Commission from fiscal years 2005 through 2014, a total of 237,052 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (201,975) or were missing information on statutory minimum (35,077). Of the remaining 548,901 cases, 49,580 were excluded due to incomplete (49,429) or missing guideline application information (151). An additional 986 cases were excluded because they did not involve sentences of prison or probation (823) or were missing information on sentence imposed (163). An additional 230,950 cases were excluded because they involved non-citizens (229,878) or were missing information on citizenship (1,072). An additional 70,453 cases were excluded because they involved sentencing ranges in Zones A, B, or C (70,452) or were missing information on sentencing zone (1). An additional 173,645 cases were excluded because they involved prison sentences.

⁶⁶ Of the 785,953 cases received by the Commission from fiscal years 2005 through 2014, a total of 237,052 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (201,975) or were missing information on statutory minimum (35,077). Of the remaining 548,901 cases, 49,580 were excluded due to incomplete (49,429) or missing guideline application information (151). An additional 986 cases were excluded because they did not involve sentences of prison or probation (823) or were missing information on sentence imposed (163). An additional 230,950 cases were excluded because they involved non-citizens (229,878) or were missing information on citizenship (1,072). An additional 70,453 cases were excluded because they involved sentencing ranges in Zones A, B, or C (70,452) or were missing information on sentencing zone (1). An additional 173,645 cases were excluded because they involved prison sentences. An additional seven cases were excluded due to insufficient information in the case documentation to determine sentence relative to the guideline range.

⁶⁷ Of the 75,836 cases received by the Commission in fiscal year 2014, a total of 19,275 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (16,606) or were missing information on statutory minimum (2,669). Of the remaining 56,561 cases, 4,765 were excluded due to incomplete guideline application information. An additional 89 cases were excluded because they did not involve sentences of prison or probation. An additional 23,300 cases were excluded because they involved non-citizens (23,247) or were missing information on citizenship (53). An additional 6,983 cases were excluded because they involved sentencing ranges in Zones A, B, or C.

⁶⁸ Of the 75,836 cases received by the Commission in fiscal year 2014, a total of 19,275 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (16,606) or were missing information on statutory minimum (2,669). Of the remaining 56,561 cases, 4,765 were excluded due to incomplete guideline application information. An additional 89 cases were excluded because they did not involve sentences of prison or probation. An additional 23,300 cases were excluded because they involved non-citizens (23,247) or were missing information on citizenship (53). An additional 6,983 cases were excluded because they involved sentencing ranges in Zones A, B, or C. Cases missing information for a variable were excluded from the analysis for that variable.

⁶⁹ Methamphetamine is the predominant drug type among drug offenders with sentencing ranges in Zone D not sentenced to alternatives, accounting for 24.3% of drug offenders sentenced to prison only.

⁷⁰ Of the 75,836 cases received by the Commission in fiscal year 2014, a total of 19,275 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (16,606) or were missing information on statutory minimum (2,669). Of the remaining 56,561 cases, 4,765 were excluded due to incomplete guideline application information. An additional 89 cases were excluded because they did not involve sentences of prison or probation. An additional 23,300 cases were excluded because they involved non-citizens (23,247) or were missing information on citizenship (53). An additional 6,983 cases were excluded because they involved sentencing ranges in Zones A, B, or C. Cases missing information for a variable were excluded from the analysis for that variable.

⁷¹ Of the 75,836 cases received by the Commission in 2014, a total of 19,275 were excluded because they involved convictions under statutes requiring a mandatory minimum sentence (16,606) or were missing information on statutory minimum (2,669). Of the remaining 56,561

cases, 4,765 were excluded due to incomplete guideline application information. An additional 89 cases were excluded because they did not involve sentences of prison or probation. An additional 23,300 cases were excluded because they involved non-citizens (23,247) or were missing information on citizenship (53). An additional 6,983 cases were excluded because they involved sentencing ranges in Zones A, B, or C.