



Fiscal Year 2021

Overview of Federal Criminal Cases

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Fiscal Year 2021

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By

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The United States Sentencing Commission¹ received information on 57,377 federal criminal cases in which the offender was sentenced in fiscal year 2021.² Among these cases, 57,287 involved an individual offender and 90 involved a corporation or other “organizational” offender. The Commission also received information on 4,680 cases in which the court resentenced the offender or otherwise modified the sentence that had been previously imposed. This publication provides an overview of these cases.



Federal Caseload at a Glance

The 57,287 individual original cases reported to the Commission in fiscal year 2021 represent a decrease of 7,278 cases (11.3%) from fiscal year 2020 and the lowest number of cases since fiscal year 1999.³ The number of offenders sentenced in the federal courts reached a peak in fiscal year 2011⁴ and the number of cases reported in fiscal year 2021 was 33.5 percent below that level.

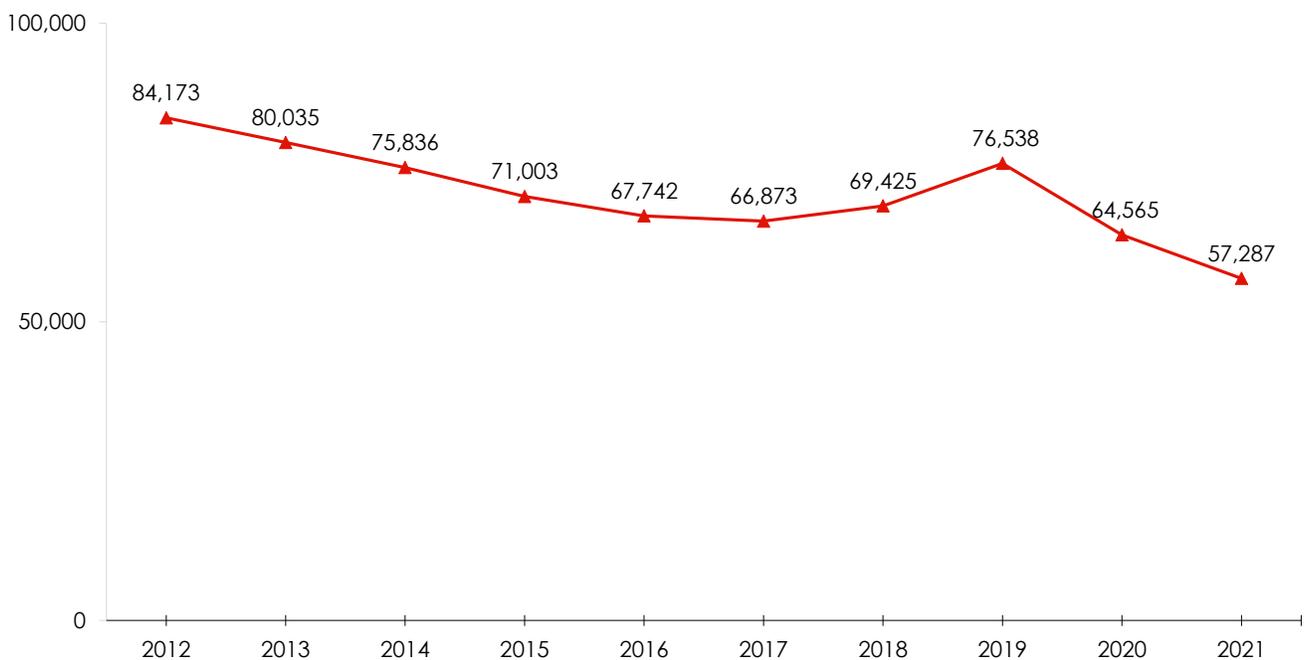
Despite the decrease in overall caseload, fewer than half of all crime types decreased in number in fiscal year 2021. The largest decrease occurred in immigration cases, which fell by 9,624 (36.2%) from the year before. The next largest decrease was seen in drug possession cases, which fell by 29.6 percent. Fraud, theft, and embezzlement was the only other major crime type with a decrease in cases, falling 5.2 percent from fiscal year 2020. Two major crime types increased in number: drug trafficking cases increased by 7.4 percent and firearms cases increased by 8.1 percent from the year before. Sizeable increases were also reported in cases involving sex abuse (20.5%), child pornography (18.8%), and money laundering (16.8%).

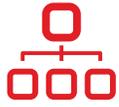
Despite the decrease in overall caseload, sizeable increases were reported in drug trafficking, firearms, sex abuse, child pornography and money laundering cases.

Five judicial districts accounted for 38.7 percent of all individual offenders sentenced in fiscal year 2021. The Southern District of Texas reported 14.1 percent of all individual offenders sentenced, followed by the Western District of Texas (9.2%), the District of Arizona (7.6%), the Southern District of California (5.1%), and the Northern District of Texas (2.7%). Historically, the higher numbers of offenders in these five districts have been

driven largely by immigration cases. While this remained the case in the Southern District of Texas (78.7%), the Western District of Texas (65.9%), and the District of Arizona (76.1%), drug trafficking surpassed immigration as the largest portion of the caseload in the Southern District of California (60.2%) and the Northern District of Texas (40.8%).

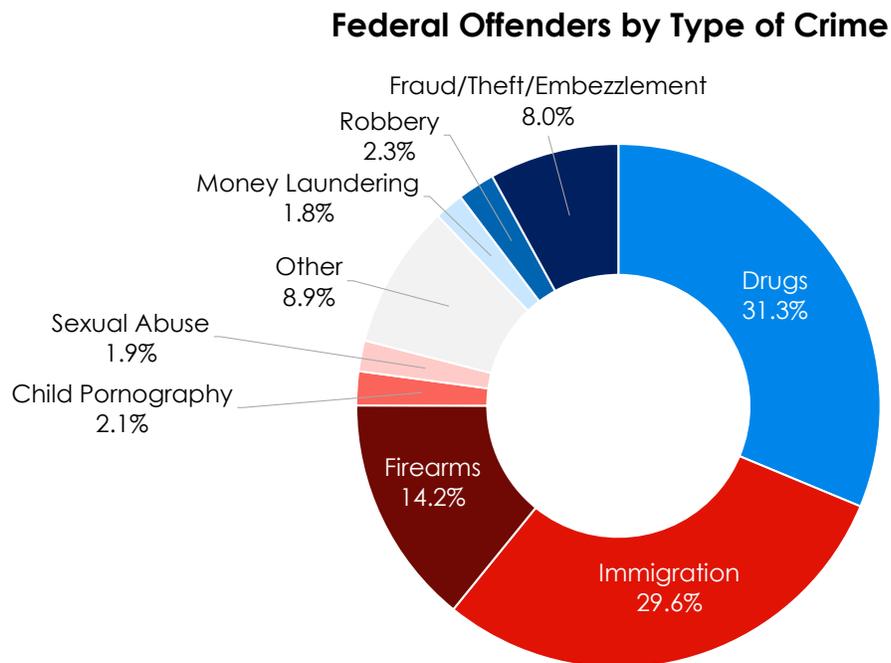
Number of Federal Offenders Over Time





Federal Offenders by Type of Crime

For more than 25 years, four crime types have comprised the majority of federal felonies and Class A misdemeanors: drugs, immigration, firearms, and fraud, theft, or embezzlement. This trend continued in fiscal year 2021, as these crime types accounted for 83.1 percent of all cases reported to the Commission. Felony offenses were 96.8 percent of all the cases reported.



» Drugs

Drug offenses overtook immigration offenses as the most common federal crime in fiscal year 2021, accounting for 31.3 percent of the total caseload. The 17,917 total drug cases reported to the Commission in fiscal year 2021 represent a 6.5 percent increase from the proportion of those cases in fiscal year 2020.

» Immigration

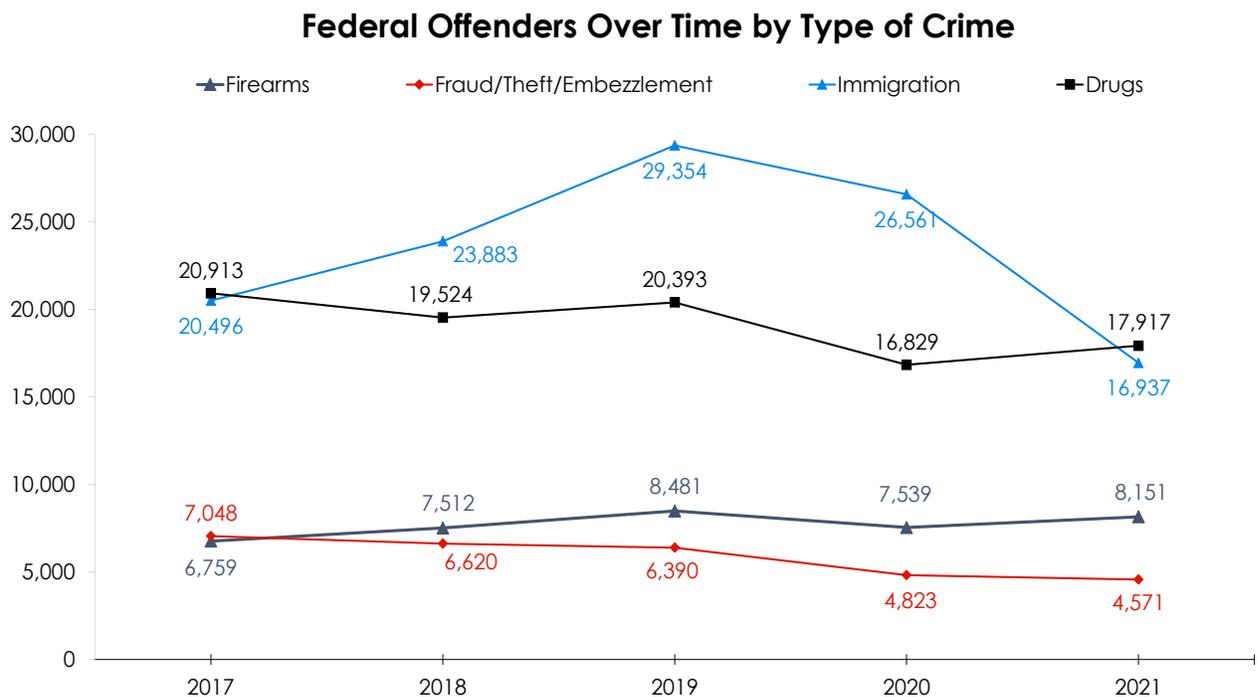
Immigration offenses were the second most common at 29.6 percent of all cases. These cases accounted for the largest percentage decrease among the four major crime types, as the 16,937 total immigration cases represented a decrease of 9,624 cases (36.2%) from the year before.

» Firearms

Firearms cases represented the third most common federal offense in fiscal year 2021. There were 8,151 firearms cases reported to the Commission, accounting for 14.2 percent of all cases; a slightly higher portion than the year before. The number of firearms cases increased by 612 cases from fiscal year 2020, an 8.1 percent increase.

» Fraud, Theft, or Embezzlement

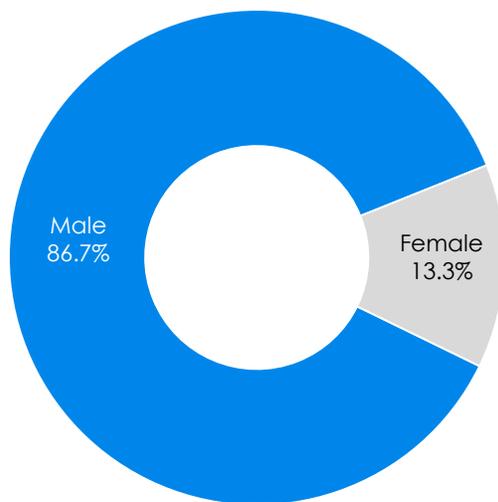
Cases involving fraud, theft, or embezzlement accounted for 8.0 percent of the total federal caseload last year. The 4,571 cases represented a decrease of 252 cases (5.2%) from fiscal year 2020.





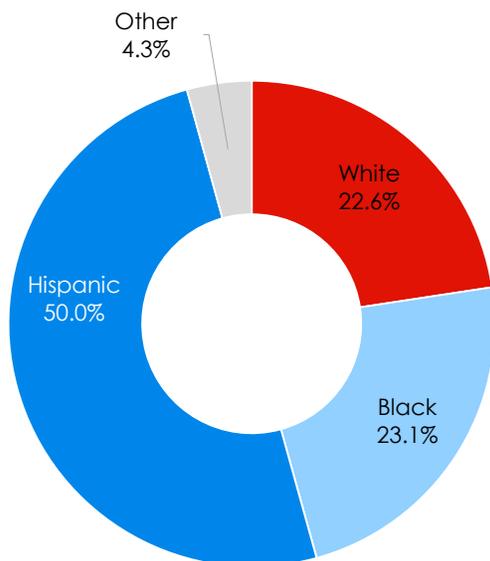
Individual Offender Characteristics

Gender



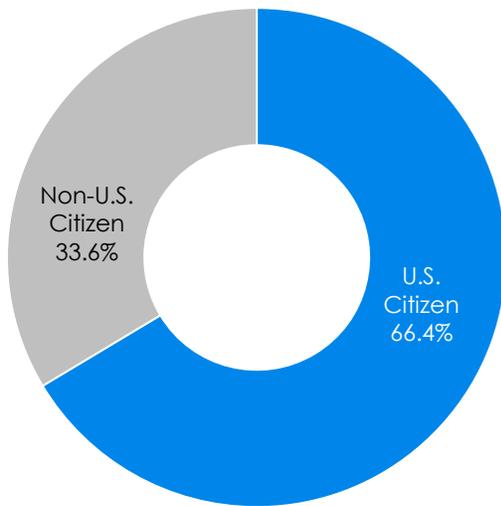
Men accounted for 86.7 percent of the offenders sentenced in fiscal year 2021. Male offenders most commonly were sentenced for an immigration offense (31.4% of all men sentenced), while female offenders most commonly were involved in drug trafficking offenses (41.7% of all women sentenced).

Race



The decrease in immigration cases accounted for a sizable change in the racial distribution of offenders. Half of all federal offenders (50.0%) in fiscal year 2021 were Hispanic compared to 58.1 percent in fiscal year 2020. White offenders accounted for 22.6 percent of all offenders and 23.1 percent were Black.⁵ The racial distribution of offenders varied greatly across offense types. For example, Hispanic offenders made up 95.1 percent of immigration offenders, while four out of five offenders (80.1%) in child pornography cases were White. Hispanic offenders were most commonly sentenced for immigration offenses (56.4% of all Hispanic offenders), while White and Black offenders were most commonly sentenced for drug trafficking (35.7% and 34.6%, respectively).

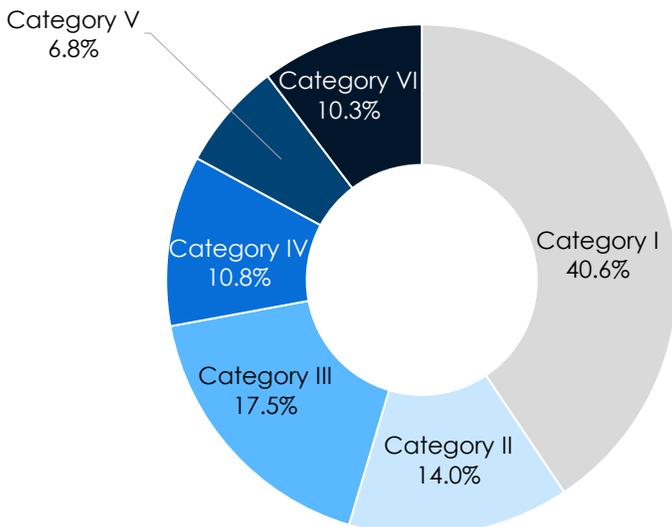
Citizenship



The decrease in immigration cases also affected the statistics on citizenship of offenders. Two-thirds (66.4%) of all federal offenders were United States citizens in fiscal year 2021, compared with 53.8 percent in fiscal year 2020. Most non-citizen offenders committed an immigration offense; 74.1% of all non-citizens committed an immigration offense. Citizens were most likely to commit a drug trafficking offense, as 38.5% of all citizen offenders committed that offense. Non-citizens received prison-only sentences in 97.4 percent of the cases in which they were the offender, compared to 84.4 percent of cases involving a citizen.

The average age of offenders in fiscal year 2021 was 37, similar to prior years. More than one in ten offenders (12.2%) were over the age of 50 at sentencing, while just 2.7 percent were under 21. Offenders in all age groups, except those over 60, were most likely to commit either an immigration or drug trafficking offense; offenders under 21 and age 36 to 50 were most likely to commit an immigration offense, while offenders aged 21 to 35 and 51 to 60 were most likely to commit a drug trafficking offense. Offenders over the age of 60 were most likely to commit a fraud, theft, or embezzlement offense, followed by a drug trafficking offense. Two in five federal offenders sentenced in fiscal year 2021 (43.5%) had not completed high school while 5.6 percent of offenders were college graduates.

Criminal History Category



The largest group of federal offenders (40.6%) were assigned to Criminal History Category (CHC) I, the lowest category. About one-third of fiscal year 2021 offenders were assigned to CHC II (14.0%) or CHC III (17.5%). The remaining 27.9 percent fell into CHC IV (10.8%), CHC V (6.8%), and CHC VI (10.3%). In fiscal year 2021, 1,246 offenders were sentenced as “career offenders”⁶ and 264 offenders were sentenced as “armed career criminals.”⁷

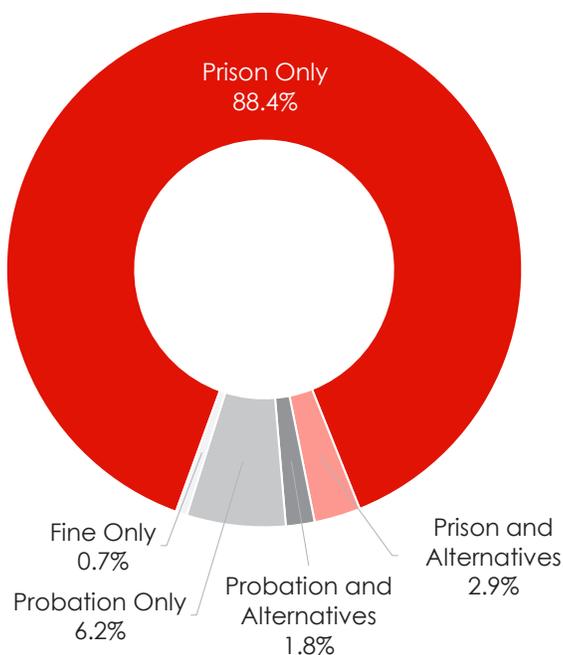


Case Disposition and Sentence Imposed

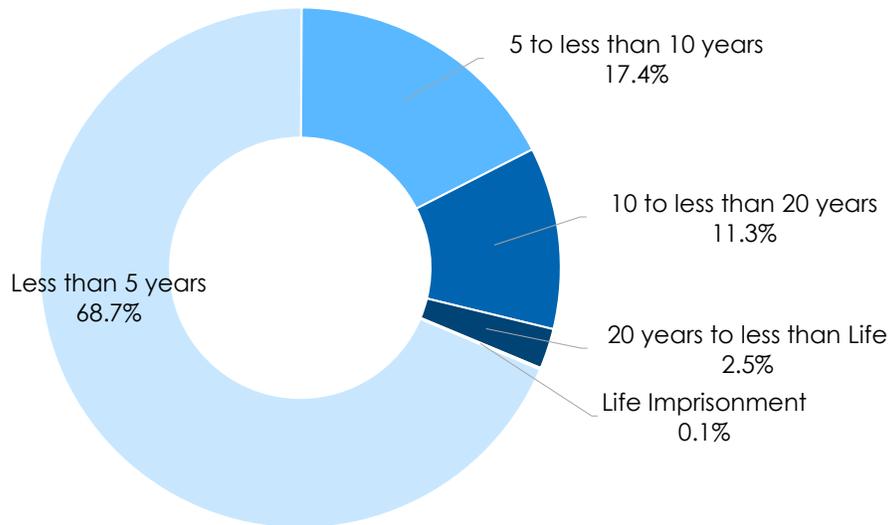
In fiscal year 2021, the vast majority of offenders (98.3%) pleaded guilty. This rate has been consistent for more than 20 years but reached an all-time high last year.⁸ In general, offenders charged with more serious crimes pleaded guilty less often; in more than ten percent of murder, kidnapping, and individual rights cases the offenders went to trial.

Most federal offenders received a sentence of incarceration. In fiscal year 2021, a prison-only sentence was imposed on 88.4 percent of all offenders. Another 6.2 percent of offenders received a sentence of probation only (*i.e.*, where no type of confinement was imposed). An additional 1.8 percent of offenders were sentenced to periods

Sentence Imposed



Average Length of Imprisonment

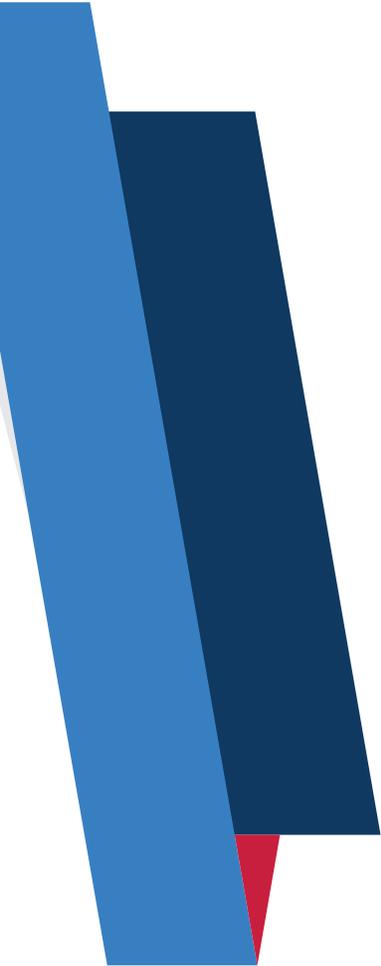


of probation and some type of alternative confinement, and 2.9 percent were sentenced to a combination of imprisonment and alternative confinement, such as in a half-way house or home confinement.⁹ Finally, 0.7 percent of offenders received a fine-only sentence.

The average sentence imposed in federal cases in fiscal year 2021 was 48 months, an eight-month increase from 2020. This increase can be attributed largely to the reduction in immigration cases as a portion of the total caseload, as immigration offenders generally receive lower sentences than offenders in the other major crime types. The length of sentence varied greatly by the seriousness of the offense.¹⁰ For example, offenders convicted of murder received the longest sentences, at 244 months on average, while drug possession was punished least severely, receiving sentences of one month, on average.

The average sentence for most crime types was similar to the year before; however, the sentences imposed for some crimes varied more noticeably. The average sentence in child pornography cases increased from 102 months to 108 months, and the average sentence for sexual abuse increased from 201 months to 211 months. The average sentence in bribery cases also increased, from 15 to 20 months. Conversely, the average sentence imposed in kidnapping cases decreased from 195 months to 166 months. The average sentence in assault cases also decreased, from 64 months to 57 months.¹¹

Overall, 68.7 percent of offenders received a sentence of less than five years, 17.4 percent received a sentence of five years or longer but less than ten years, and 13.8 percent received a sentence of ten years or longer, excluding life imprisonment. In fiscal year 2021, 60 offenders were sentenced to life imprisonment. No offenders were sentenced to death last year.



Courts imposed fines in 7.5 percent of all cases in which an individual offender was sentenced in fiscal year 2021, either as the sole punishment or combined with some other sanction. Fines were most commonly imposed in antitrust (100.0%), environmental (56.1%), drug possession (55.3%), and food and drug (51.1%) cases. When the offender was an organization, courts imposed a fine in more than two-thirds of the cases (67.7%).

Courts ordered restitution to be paid to the victim of the crime in 12.4 percent of all cases in which an individual was the offender. Restitution was most commonly ordered in cases involving tax (85.7%), arson (75.9%), fraud, theft, or embezzlement (74.5%), and forgery, counterfeit, or copyright infringement (67.9%). The total amount of restitution ordered in individual cases was \$8,466,655,419. In cases involving organizational offenders, restitution was ordered 27.7 percent of the time, for a total of \$220,609,930.

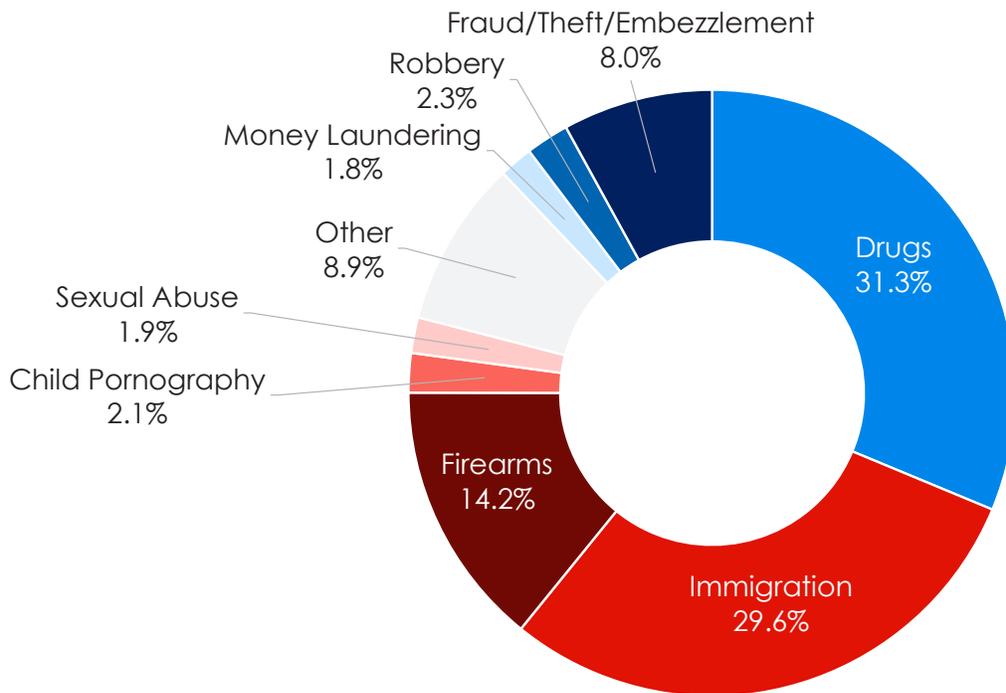
Most individual offenders were sentenced to serve a period of supervised release—79.8 percent of all offenders sentenced in fiscal year 2021. In immigration cases, however, supervised release was imposed in 63.4 percent of the cases, reflecting the fact that many immigration offenders are ordered deported from the United States once they complete their incarceration sentence.¹² Supervised release was imposed in 86.7 percent of all cases not involving immigration.

The average length of supervised release imposed was 47 months. Sexual abuse and child pornography offenders were sentenced to substantially longer periods of supervised release than other offenders. The average length of supervised release imposed was 218 months in sexual abuse cases and 192 months in child pornography cases.



The Most Common Crimes

Federal Offenders by Type of Crime





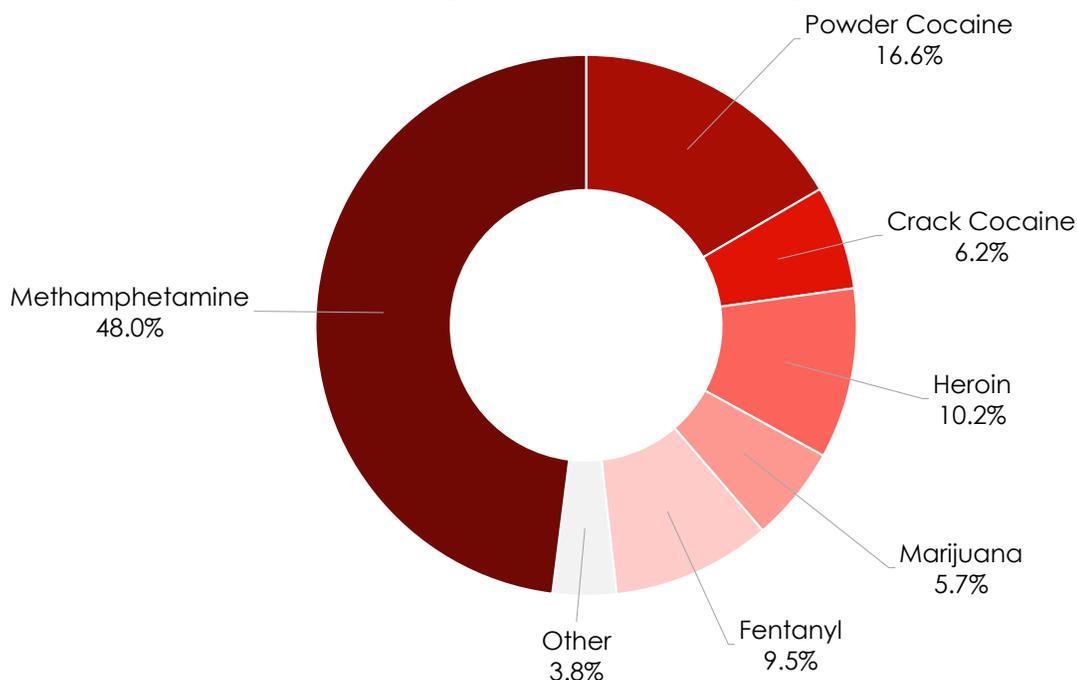
Drug Offenses

As discussed above, drug offenses were the most common federal crime in fiscal year 2021. Almost all of the 17,917 drug cases reported to the Commission involved the manufacture, sale, or transportation of a drug;¹³ just 309 involved a conviction for drug possession. Drug possession cases continued a five-year downward trend, decreasing 29.6 percent from fiscal year 2020, while the number of drug trafficking cases rose 7.4 percent after reaching a five-year low in 2020.¹⁴

Methamphetamine remained the most prevalent drug type in these cases. The 8,494 methamphetamine cases accounted for 48.0 percent of all drug crimes. The proportion of methamphetamine cases has increased steadily since fiscal year 2017, when those cases accounted for 36.6 percent of all drug cases.¹⁵

Offenses involving cocaine, in either powder form or base (crack) form, were the second most common drug crimes. The 2,940 powder cocaine cases accounted for 16.6 percent of all drug cases while the 1,097 crack cocaine cases accounted for 6.2 percent. However, the number of crack cocaine cases has fallen by 82.2 percent since fiscal year 2008, the year in which the largest number of those cases was reported to the Commission.¹⁶ That year, the 6,168 crack cocaine cases represented 24.3 percent of all drug cases.¹⁷

Primary Drug Type in Federal Drug Cases

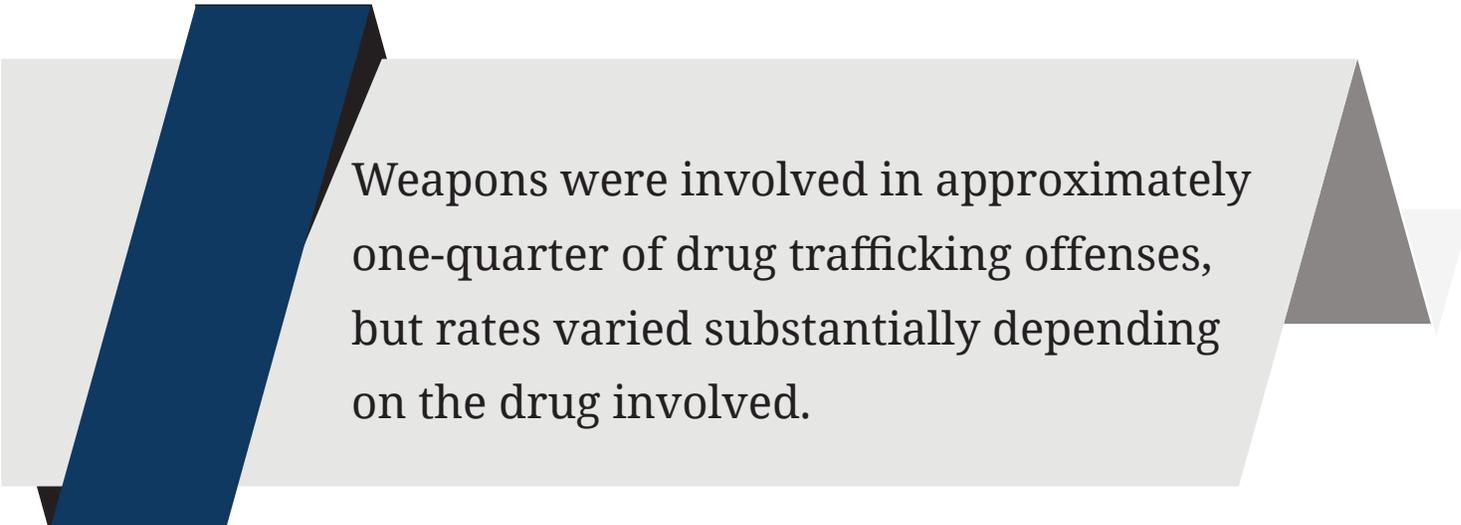


Of the remaining drug cases, heroin cases accounted for 10.2 percent of the cases, fentanyl for 9.5 percent, marijuana for 5.7 percent, and cases involving “other” drugs, mostly synthetic or semi-synthetic drugs such as oxycodone, accounted for 3.8 percent of all drug offenses. The number of fentanyl cases increased 45.2 percent from the year before and now constitute the fourth most numerous drug type. In contrast, the proportion of the drug caseload involving heroin and marijuana has steadily decreased over the last five years.¹⁸

As discussed, almost all (17,520) drug offenders were sentenced under one of the seven primary drug trafficking guidelines.¹⁹

Most were United States citizens (82.7%), although citizenship varied depending on the type of drug involved in the offense. For example, United States citizens accounted for 97.8 percent of drug trafficking offenses involving crack cocaine, but only 60.0 percent of those involving marijuana.

The race of drug trafficking offenders varied even more widely by the type of drug involved in the offense. The largest racial group was Hispanic (45.0%), followed by White offenders (26.0%) and Black offenders (25.8%). The higher percentage of Hispanic offenders was driven largely by powder cocaine and marijuana trafficking offenses, of which they accounted for 67.0



Weapons were involved in approximately one-quarter of drug trafficking offenses, but rates varied substantially depending on the drug involved.

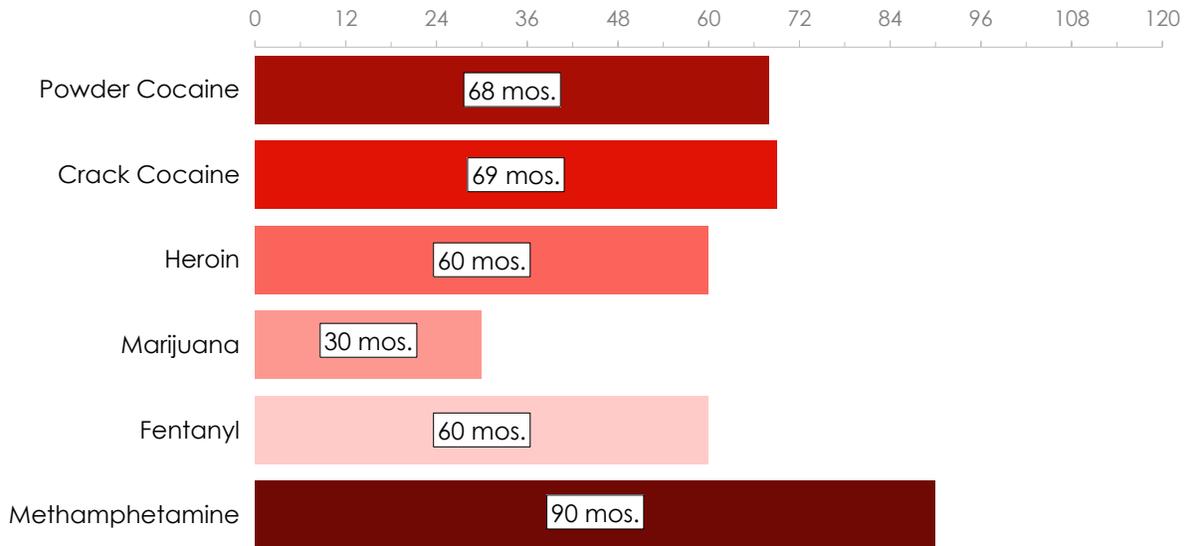
and 64.0 percent, respectively. In contrast, Black offenders were the most common racial group in crack cocaine trafficking offenses (77.7%). Methamphetamine trafficking offenses were split between Hispanic (42.4%) and White (38.5%) offenders, while heroin and fentanyl trafficking offenses were similarly split between Hispanic and Black offenders—42.5 percent and 37.4 percent respectively for heroin offenses and 40.1 percent and 38.9 percent respectively for fentanyl offenses.

Most drug trafficking offenders (82.0%) were men. They outnumbered women most often in convictions for trafficking crack cocaine (91.4% compared to 8.6%). Of the 3,145 female drug traffickers, 62.4 percent were involved in trafficking methamphetamine. Approximately half (50.3%) of all drug trafficking offenders were 35 or younger.

Weapons were involved in 23.9 percent of all drug trafficking offenses. As with the other aspects of these cases, the rate of weapon involvement varied depending on the type of drug involved, ranging from 38.8 percent in crack cocaine cases to 18.7 percent in marijuana cases.

Sentences were highest for trafficking offenses involving methamphetamine (90 months on average) and lowest for those involving marijuana (30 months on average). The average length of drug trafficking sentences decreased from 2020 for all drug types except powder cocaine and marijuana. Over the last five years, sentences for all drugs other than methamphetamine and marijuana have decreased.²⁰

Average Sentence Length of Drug Trafficking Offenders (in months)

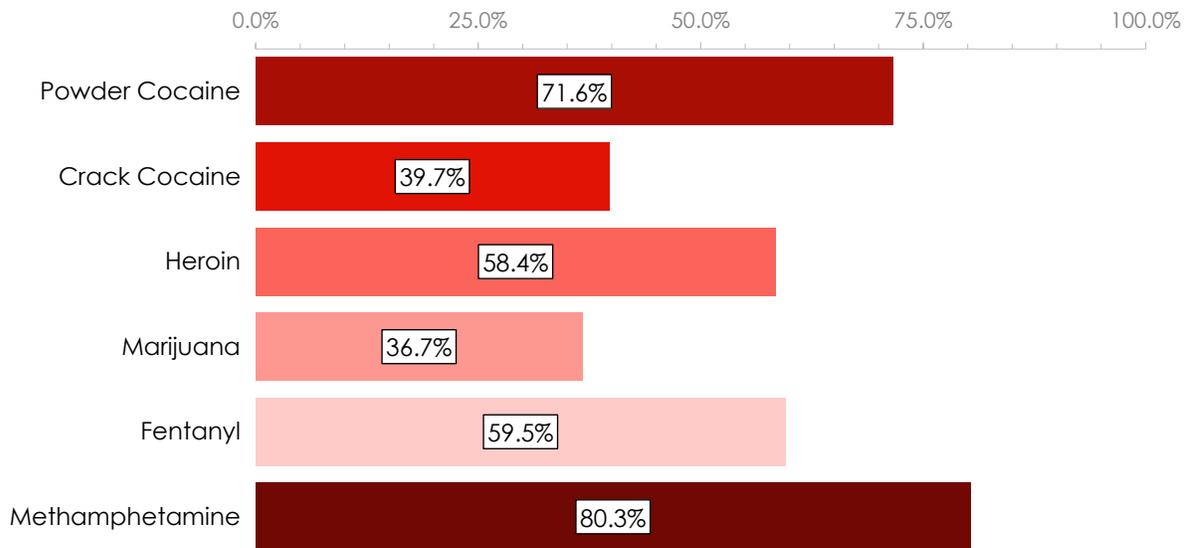


Several factors can affect the sentence imposed in drug trafficking offenses, including statutory mandatory minimum penalties, the quantity of the drugs involved in the case, the prior criminal history of the offender, and whether the offender assisted the government in the investigation of his or her crime and other crimes. Mandatory minimum penalties enacted by Congress²¹ play a large part in determining the sentence for drug trafficking offenders, either outright or through the impact of these statutes on the structure of the guidelines.²² In fiscal year 2021, approximately two-thirds (67.7%) of all drug trafficking offenders were convicted of an offense carrying a mandatory minimum penalty.

In fiscal year 2021, methamphetamine and powder cocaine drug trafficking offenders were convicted of an offense that carried a mandatory minimum penalty at the highest rates—80.3 percent in methamphetamine cases and 71.6 percent in powder cocaine cases. Mandatory minimum penalties were least common in drug trafficking cases involving marijuana, applying in 36.7 percent of those cases.

In fiscal year 2021, the government sought enhanced penalties under 21 U.S.C. § 851 in 827 drug trafficking cases where the offender had been convicted previously of one or more predicate offenses. However, in 29.6 percent of those cases the government eventually withdrew the enhancement prior to sentencing.²³ The 582 cases in which the enhancement did apply at sentencing represented just 3.3 percent of all drug trafficking cases.

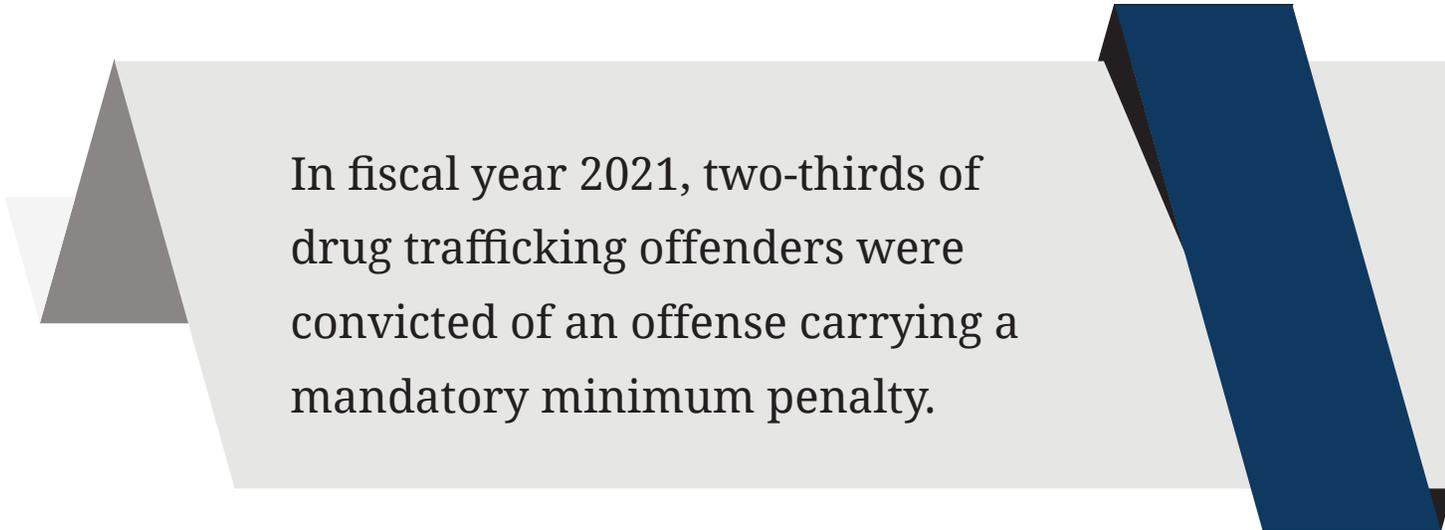
Application of Mandatory Minimum Penalties in Drug Trafficking Cases



Among all drug trafficking offenders convicted under a statute carrying a mandatory minimum penalty, 59.0 percent received relief from that penalty in fiscal year 2021, either through the “safety valve” exception to such sentences or by providing substantial assistance to the government.²⁴ Nearly half of offenders (45.1%) convicted of an offense carrying a mandatory minimum penalty obtained relief from that penalty through the safety valve, which requires courts to sentence the offender without regard to any otherwise applicable mandatory minimum punishment when certain conditions are met.²⁵ Marijuana drug trafficking offenders obtained relief from a mandatory minimum sentence through the safety valve exception most often, in 64.3 percent of all marijuana trafficking cases in which the offender was convicted under a statute carrying a mandatory minimum

penalty. In contrast, only 15.2 percent of crack cocaine drug trafficking offenders obtained this relief.

This difference is due largely to the differing criminal histories of marijuana and crack cocaine drug trafficking offenders. To be eligible for the statutory safety valve, offenders must meet specific limits on the extent and nature of their past criminal history.²⁶ In fiscal year 2021, 89.1 percent of all marijuana drug trafficking offenders were assigned to one of the three lowest criminal history categories (66.9% of all marijuana drug trafficking offenders were assigned to CHC I). This compares with 52.3 percent of crack cocaine drug trafficking offenders assigned to the three lowest CHCs, and just 18.9 percent of crack cocaine offenders assigned to CHC I.



In fiscal year 2021, two-thirds of drug trafficking offenders were convicted of an offense carrying a mandatory minimum penalty.

Crack cocaine offenders continue to have more serious criminal histories than any other group of drug traffickers.²⁷ Of that group, 23.3 percent were assigned to the most serious criminal history category (CHC VI). In contrast, marijuana drug trafficking offenders were assigned to CHC VI in only 4.3 percent of cases. By comparison, 17.5 percent of methamphetamine drug trafficking offenders, 14.7 percent of heroin drug trafficking offenders, and 14.3 percent of fentanyl drug trafficking offenders were assigned to CHC VI.

An offender's role in the offense also can affect the guideline range. In fiscal year 2021, the applicable guideline range was lowered in 20.4 percent of all drug trafficking cases because of the offender's minor or minimal role in the offense.²⁸ This adjustment applied in 32.1 percent of marijuana cases compared to only 4.2 percent of crack cocaine cases. In 5.9 percent of all drug trafficking cases, the applicable guideline range was increased because of the offender's role as an organizer, leader, manager, or supervisor.²⁹



Immigration Offenses

Immigration cases were the second most common federal crime in fiscal year 2021. The 16,937 immigration offenses represented 29.6 percent of the cases reported to the Commission, the lowest percentage of the overall caseload for that crime type in the past five years.³⁰ The number of immigration cases was a 36.2 percent decrease from the year before.

Almost all of the decrease in immigration cases occurred in cases involving the unlawful reentry into the United States or unlawfully remaining in the United States without authority. Those cases decreased by 8,089 in fiscal year 2021, to 11,565. In the last two fiscal years, these cases have decreased by almost half (47.6%). In contrast, immigration cases involving alien smuggling increased by 4.7 percent in fiscal year 2021, from 3,392 to 3,551.

Offenders sentenced under the immigration guidelines were more likely to be non-citizens, Hispanic, male, and less educated than non-immigration offenders. Non-citizens accounted for 83.6 percent of immigration offenses. Similarly, while Hispanics accounted for only 31.0 percent of non-immigration offenders, they comprised 95.1 percent of immigration offenders. Immigration offenders more often had less than a high school education (76.6%) compared with offenders convicted of other crimes (30.9%). Finally, while men committed a majority (84.5%) of non-immigration offenses, they committed an even higher proportion of immigration crimes (92.0%).



Firearms Offenses

Crimes involving firearms³¹ were the third most common federal crimes in fiscal year 2021. The 8,151 firearms cases represented 14.2 percent of the cases reported to the Commission. The number of firearms cases was an increase of 8.1 percent from the year before.

Almost all firearms offenders (8,164) were sentenced under one of the five primary firearms guidelines.³² Most (94.7%) involved the unlawful receipt, possession, or transportation of firearms or ammunition, or were prohibited transactions involving firearms or ammunition. Just over two-thirds of firearms cases (66.8%) involved the illegal possession of a firearm, usually by a convicted felon.³³ Of all firearms cases, 5.8 percent involved the possession or use of a firearm in connection with a crime of violence or drug trafficking crime,³⁴ and in 4.0 percent of firearms cases this was the only count of conviction.

Firearms offenders were primarily United States citizens (96.3%) and male (96.2%). Just over half (55.2%) were Black, 24.1 percent were White, and 17.4 percent were Hispanic. In fiscal year 2021, almost two-thirds (64.1%) of firearms offenders were age 35 or younger. More than one-third (35.7%) did not complete high school while 46.4 percent completed high school and 17.9 percent attended or completed college.



In fiscal year 2021, 8.5% of firearms offenders were convicted of an offense carrying a mandatory minimum penalty.

In fiscal year 2021, 8.5 percent of firearms offenders were convicted of a firearm offense carrying a mandatory minimum penalty.³⁵ Among those offenders convicted of possession or use of a firearm in connection with a crime of violence or drug trafficking crime, more than two-thirds (68.9%) were convicted of an offense carrying a five-year mandatory minimum penalty; 16.5 percent were convicted of an offense carrying a seven-year minimum penalty, and 14.5 percent were convicted of an offense carrying a mandatory minimum penalty of ten years or longer.

In certain other types of cases, the court may also consider the possession or use of a dangerous weapon when determining the sentence. Among the cases with complete guideline application information reported to the Commission in fiscal year 2021, the sentences imposed in 11.4 percent of all cases were enhanced because a firearm or other dangerous weapon (e.g., knife) was involved in the offense, either through application of a specific offense characteristic under the sentencing guidelines or by statute.



Economic Offenses

A total of 5,841 offenders were sentenced under one of the basic economic crime guidelines in fiscal year 2021. Among those cases, the 4,571 fraud, theft, or embezzlement cases reported to the Commission accounted for the fourth largest portion (8.0%) of all federal criminal convictions for fiscal year 2021; however, that number was a decrease of 5.2 percent from the number of those cases in 2020. Among all economic crime cases, offenders sentenced under one guideline – the guideline applying to theft, property destruction, or fraud offenses – were the largest group, accounting for 4,235 offenders.

Approximately 40 percent (37.7%) of economic crime offenders were White, 36.2 percent were Black, and 18.7 percent were Hispanic. Most were United States citizens (88.0%), and about three-fourths (75.5%) were male. These offenders were, on average, older and more educated than other offenders. Almost half of economic crime offenders were age 41 and older (45.4%) and 47.3 percent completed at least some college.

The losses in these cases ranged from no loss (in 346 cases) to \$2.95 billion (in two cases), with average loss amount of \$4,055,877 and a median loss amount of \$65,112.



Organizations

Organizations such as corporations and partnerships can be prosecuted for violating federal criminal law, and 90 organizations were sentenced in fiscal year 2021, a slight decrease from the prior year. This number was the lowest since fiscal year 1994, and a sizable decrease from the all-time high of 304 offenders sentenced in 2000.³⁶ Among these defendants sentenced in fiscal year 2021, 52.3 percent were corporations and 40.5 percent were limited liability companies. Sole proprietorships and associations each represented 2.4 percent and partnerships and public entities each represented 1.2 percent.

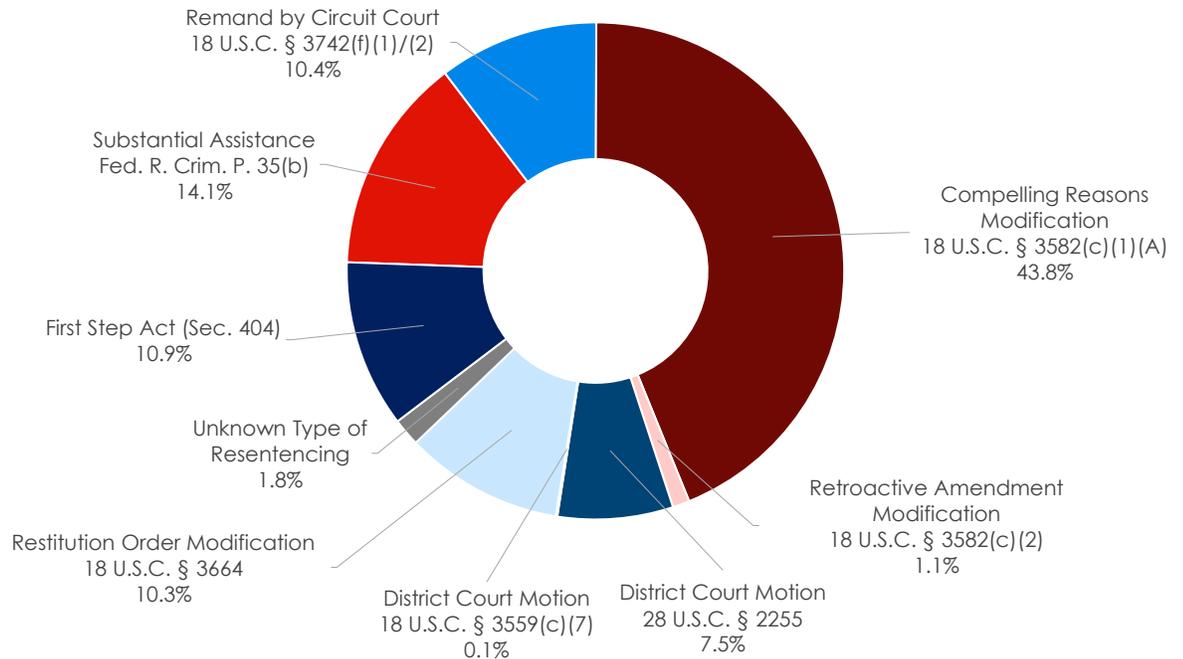
Most organizational offenders (85.5%) had fewer than 50 employees. Only 8.1 percent had 1,000 or more employees. One in five organizations (20.0%) were in the health care services and supplies sector and about 15 percent (15.6%) were in the retail trade.

Of the 90 organizational offenders, 95.6 percent pleaded guilty to one or more charges in fiscal year 2021. The most common crimes for which organizational defendants were convicted were environmental crimes and fraud. In 48 cases, a fine was the sole financial component of the sentence imposed. In an additional 13 cases, the court ordered the organization to pay restitution to the victim of the crime as well as to pay a fine. In 12 cases, the sole financial component of the sentence was the payment of restitution. Courts ordered organizations to pay \$220,609,930 in restitution and \$580,935,098 in fines, for a total of \$801,545,028. No fine or restitution was imposed in 17 cases, although other sanctions were ordered in some of these cases. Additionally, of the 90 organizational offenders, 58 were sentenced to some term of probation, and 15 were ordered to institute, or make improvements to, a compliance or ethics program.



Resentencings

Resentencings and Other Modifications of Sentence



In fiscal year 2021, the Commission received documentation on 4,680 resentencings and other modifications of sentence, a 20.1 percent decrease from the previous year. Orders granting “compassionate release”³⁷ to incarcerated offenders accounted for 2,050 (43.8%) of all resentencings and modifications of sentence, larger than any other category, largely due to continuing concerns over the effect of COVID-19 among inmates in the federal prisons.³⁸ Changes in the law made by the First Step Act of 2018³⁹ authorized offenders to seek this type of relief directly in federal court under certain conditions.⁴⁰

The next most common reason was sentence reductions for offenders who provided substantial assistance to the government in its investigation or prosecution of another person after the offender was sentenced. Those 658 cases accounted for 14.1 percent of all resentencings and other modifications of sentence. Modifications of sentence under another section of the First Step Act, which applied to some offenders incarcerated for a crack cocaine offense,⁴¹ accounted for another 10.9 percent (n=508) of all resentencings or sentence modifications.

Endnotes

1 The United States Sentencing Commission is an independent agency in the judicial branch of government. Its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress and the executive branch in the development of effective and efficient crime policy; (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues; and (4) to devise and conduct seminars and workshops providing continuing studies for persons engaged in the sentencing field. *See* 28 U.S.C. § 995(a)(12)–(20).

2 The Commission receives information from the courts on cases in which the defendant has been convicted of a felony or a Class A misdemeanor. *See* U.S. SENT'G COMM'N, *Guidelines Manual*, §1B1.9 (Nov. 2021) [hereinafter USSG]. The fiscal year for the federal government begins on October 1 and ends on September 30. The fiscal year is designated by the calendar year in which it ends.

3 In fiscal year 1999, 55,557 individual offenders were sentenced. *See* U.S. SENT'G COMM'N, 1999 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (2000). Commission materials cited herein are available on the Commission's website at www.ussc.gov.

4 In fiscal year 2011, 86,201 individual offenders were sentenced. U.S. SENT'G COMM'N, 2011 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (2012).

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

6 *See* USSG §4B1.1 for the definition of career offender.

7 *See* USSG §4B1.4 for the definition of armed career criminal.

8 In fiscal year 2000, the plea rate was 95.5%. It has not fallen below that level since. U.S. SENT'G COMM'N, 2000 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 20 fig.C (2001) [hereinafter 2000 SOURCEBOOK].

9 For more information concerning the use of alternative sentences in the federal system, *see generally* COURTNEY R. SEMISCH, U.S. SENT'G COMM'N, ALTERNATIVE SENTENCING IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2015).

10 Probation sentences are included in the calculation of average sentence as zero months. Over half of environmental offenders (61.8%) and more than 40% of food and drug offenders (40.4%) received a sentence of probation with no type of confinement. More than half of environmental offenders (56.1%) and food and drug offenders (51.1%) were fined as part of their sentence.

11 U.S. SENT'G COMM'N, 2021 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (2022) [hereinafter 2021 SOURCEBOOK].

- 12 The sentencing guidelines recommend that courts “ordinarily should not impose a term of supervised release in a case in which supervised release is not required by statute and the defendant is a deportable alien who likely will be deported after imprisonment.” USSG §5D1.1(c).
- 13 This number also includes persons convicted of one or more crimes in addition to a drug offense.
- 14 See 2021 SOURCEBOOK, *supra* note 11, and U.S. SENT’G COMM’N, 2020 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (2021).
- 15 U.S. SENT’G COMM’N, 2017 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS S-104 tbl.33 (2018). The number reported in 2017 was 36.7% due to slight differences in the methodology used at that time to report drug cases.
- 16 See 2021 SOURCEBOOK, *supra* note 11, and U.S. SENT’G COMM’N, 2008 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (2009) [hereinafter 2008 SOURCEBOOK].
- 17 2008 SOURCEBOOK, *supra*, at tbl.33.
- 18 See 2021 SOURCEBOOK, *supra* note 11, at 125 fig.D-4.
- 19 The drug trafficking guidelines are USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life While Manufacturing), or 2D1.14 (Narco-Terrorism).
- 20 See 2021 SOURCEBOOK, *supra* note 11, at 126 fig.D-5.
- 21 For more information on the use of mandatory minimum penalties generally, see U.S. SENT’G COMM’N, AN OVERVIEW OF MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2017). For information on the use of mandatory minimum penalties in drug cases, see U.S. SENT’G COMM’N, MANDATORY MINIMUM PENALTIES FOR DRUG OFFENSES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2017).
- 22 The Commission’s general practice has been to incorporate statutory minimum penalties into the structure of the guidelines. For example, in drug trafficking cases, the offense levels that correspond to the drug quantities that trigger the statutory mandatory minimum penalties provide for a sentencing range for an offender with no prior criminal history that includes the statutory penalty. The remaining sentencing ranges are extrapolated upward and downward from the guideline ranges that include the mandatory minimum penalties. See *generally* USSG, App. C, amend. 782 (effective Nov. 1, 2014).
- 23 For more information about the use of enhanced penalties in drug trafficking cases, see U.S. SENT’G COMM’N, APPLICATION AND IMPACT OF 21 U.S.C. § 851: ENHANCED PENALTIES FOR FEDERAL DRUG TRAFFICKING OFFENDERS (2018).

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

25 See 18 U.S.C. § 3553(f).

26 To be eligible, offenders must have no more than four criminal history points (as offenses are scored under the *Guidelines Manual*) not counting points resulting from one-point prior offenses, have no three-point prior offenses, and have no two-point violent prior offenses. 18 U.S.C. § 3553(f)(1).

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

28 See USSG §3B1.2.

29 See USSG §3B1.1.

30 See 2021 SOURCEBOOK, *supra* note 11, at tbl.4.

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

32 The primary firearms guidelines are USSG §§2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials), 2K1.4 (Arson or Property Damage by Use of Explosives), 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition), 2K2.4 (Use of Firearm During or in Relation to Certain Crimes), and 2K2.5 (Possession of Firearm or Dangerous Weapon in Federal Facility or in School Zone). Some arson offenders are included in this part of the report because they were sentenced under USSG §2K1.4.

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

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

35 Mandatory minimum penalties apply to violations of 18 U.S.C. § 924(c) and some violations of 18 U.S.C. § 922(g).

36 See U.S. SENT'G COMM'N, 1994 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (1995) (on file with the Commission); 2000 SOURCEBOOK, *supra* note 8, at 97 n.1.

37 See 18 U.S.C. § 3582(c)(1)(A) (authorizing courts to reduce a term of imprisonment when “extraordinary and compelling reasons warrant such a reduction.”); see also USSG §1B1.13 (listing additional requirements that apply in these cases).

38 JULIE ZIBULSKY, CHRISTINE KITCHENS, ALYSSA PURDY & KRISTEN SHARPE, U.S. SENT’G COMM’N, COMPASSIONATE RELEASE: THE IMPACT OF THE FIRST STEP ACT AND COVID-19 PANDEMIC (2022).

39 Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239. The First Step Act of 2018 went into effect on December 21, 2018. Section 603 of the Act amended section 3582(c)(1)(A) of title 18 to authorize “defendants” (i.e., inmates) to file a motion for compassionate release “after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” *Id.*

40 Previously, only the Director of the Bureau of Prisons could make a motion for compassionate release. See 18 U.S.C. § 3582(c)(1)(A) (2017).

41 Pub. L. No. 115-391, § 404, 132 Stat. 5194 at 5222. Section 404 of the First Step Act provides that any defendant sentenced before the effective date of the Fair Sentencing Act, which was August 3, 2010, who did not receive the benefit of the statutory penalty changes made by that Act is eligible for a sentence reduction “as if Sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time” the offender was sentenced. Section 2 of the Fair Sentencing Act increased the quantity of crack cocaine that triggered mandatory minimum penalties. Section 3 of the Fair Sentencing Act eliminated the statutory mandatory minimum sentence for simple possession of crack cocaine. Pub. L. No. 111-220, §§ 2-3, 124 Stat. 2372 (2010). The First Step Act authorizes the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court to make a motion to reduce an offender’s sentence. Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5222.



United States Sentencing Commission

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For More Information

More information on federal sentencing data can be found in the Commission's 2021 *Sourcebook of Federal Sentencing Statistics*, its *Guideline Application Frequencies for Fiscal Year 2021*, and the publications in its *Research Notes* series. The *Sourcebook* is available in hard copy format through the Commission. These documents, together with other reports on sentencing data, are also available in electronic format at the Commission's website at www.ussc.gov.

Selected federal sentencing data is also available through the Commission's online Interactive Data Analyzer or "IDA." The IDA tool enables users to easily examine data from multiple fiscal years, and to sort data by judicial district or circuit as well as by demographic variables, crime type, and sentencing guideline. IDA is available at <https://ida.ussc.gov>.

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