



Sentencings Increase by Ten Percent

In 1996, the number of criminal cases sentenced in federal courts increased by 10.2 percent, according to statistics from the Commission's *Sourcebook of Federal Sentencing Statistics*. Federal courts sentenced 42,436 cases under the guidelines in fiscal year 1996, compared to 38,500 in 1995. This overall increase is largely due to increases in the number of drug and immigration offenses. (See accompanying pie chart for distribution of 1996 cases by offense type).

The Commission's *Sourcebook* provides extensive information about federal criminal cases sentenced under the guidelines. Highlights include sentencing profiles of judicial districts, detailed information on guideline departures, plea and trial rates by district and circuit, and data on appeals of sentencing decisions and organizational defendants.

Distribution of Offenses

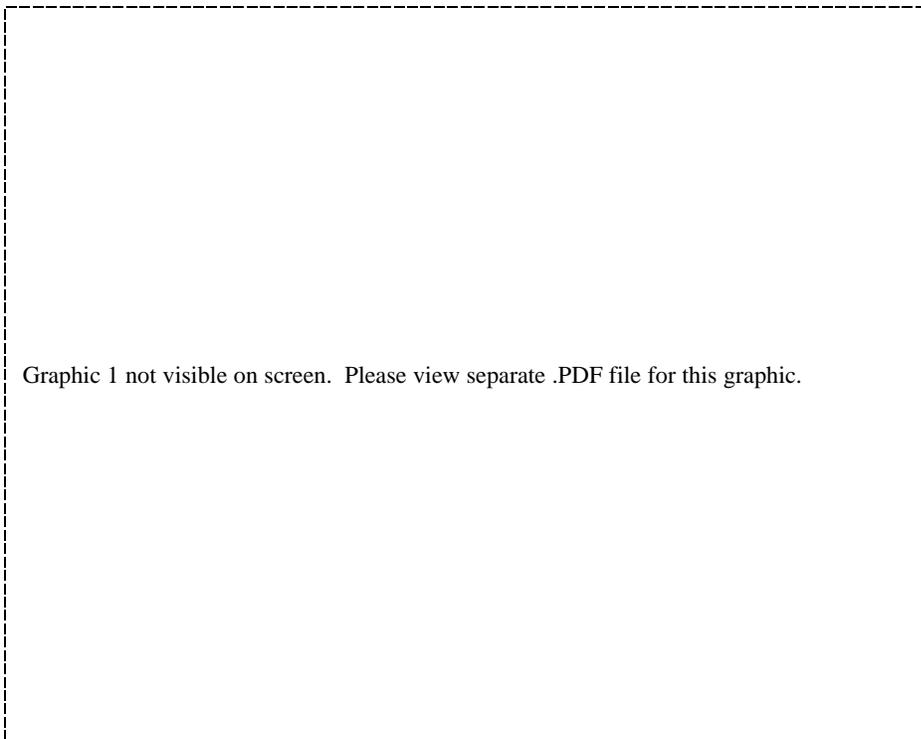
Forty-one percent of all defendants sentenced under the guidelines in 1996 were convicted of drug offenses. Crack cocaine accounted for the largest number of drug violations (26.6%), followed by powder cocaine (25.9%) and marijuana (24.8%).

The other most common offenses were fraud (14.2%), immigration (11.6%), firearms (6.0%), and larceny (5.7%).

Trends in Offense Types

Since the guidelines were implemented, drug offenses have always

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Comment Sought on Proposed Amendments

Options to fundamentally restructure the fraud and theft guidelines top the list of proposed amendments to the sentencing guidelines approved for publication by commissioners at their December 16th meeting.

Among the issues the Commission seeks public comment on are proposals to:

- revise the loss tables in the fraud and theft guidelines to substantially increase penalties for high-dollar losses;
- incorporate the adjustment for "more than minimal planning" into the loss table;
- combine the theft and fraud guidelines; and
- articulate a broadly applicable definition of "loss" and potentially address a number of discrete application issues involving determination of loss.

The Commission also voted to seek comment on whether to revise the homicide guidelines and options to resolve interpretive conflicts between the appellate courts on a variety of guideline application issues.

Full text of the amendment proposals is available on the Commission's website at www.ussc.gov. The Commission has scheduled two hearings to receive public comment on the proposed amendments: March 5, 1998, in San Francisco, CA, and March 12, 1998, in Washington, D.C. Contact Michael Courlander at (202) 273-4590 for more information. ■

Public Service Announcements Nationally Televised

The Sentencing Commission's two television public service announcements, intended to deter youth from drug involvement, have aired thousands of times and have received widespread support from the criminal justice community. The ads, endorsed by the National Association of Broadcasters and the Ad Council, were sent in September to more than 5,000 networks, cable stations, and specialized distributors. In addition, the ads are slated to be aired on military cable systems, the U.S. Postal Service's "Video Network" (which plays video messages in post offices nationwide), and the "Recovery Network" (a new national cable network devoted exclusively to the prevention and treatment of drug abuse).

The Sentencing Commission cannot pay for air time; however, stations in all 50 states are providing free air time for these announcements. Station managers have confirmed that they will broadcast the public service announcements frequently (17 times a day on some stations) and will place them in desirable time slots. Estimates are that the ads have already received millions of dollars worth of air time.

The Commission's announcements inform young people about the real life consequences of drug involvement – specifically, that federal drug crimes result in long-term sentences with no parole. ■

— Amy Schreiber

To ensure on-target results, ads were designed after conducting focus groups with at-risk youth. The above frame depicts the personal cost of incarceration to young people.

Money Laundering Guidelines Scrutinized

On September 18, 1997, the Sentencing Commission reported to Congress that the "broad and inconsistent use of money laundering penalties, coupled with an inflexible, arbitrarily determined guideline structure is resulting in substantial unwarranted disparity and disproportionality in the sentencing of money laundering conduct."

In its report, the Commission identified a number of factors that have contributed to the current situation, the most fundamental being the historical context in which the current penalty structure was devised. Because the money laundering guidelines took effect in November 1987, just six months after the money laundering laws were enacted by Congress, these particular guidelines were formulated without reference to actual prosecutorial or sentencing experience and without the benefit of judicial interpretation of the new laws.

Based on its understanding of the types of crimes about which Congress was most concerned in enacting the new

statutes, and information from the Department of Justice about how its organized crime and narcotics enforcement units intended to use the new laws, the Commission anticipated that money laundering prosecutions would address two main types of offenses. These are: (1) activities essential to the operation of organized crime, and (2) offenses in which financial transactions – separate from the underlying offense – encourage or facilitate further crime. As a result, the Commission set relatively high penalties and did not tie the money laundering guidelines to any guideline measurement of the underlying crime's seriousness.

Actual sentencing experience in the past decade, however, has demonstrated a different reality. The practical outcome of the current penalty structure is that substantially greater penalties attach to money laundering prosecutions when the underlying offense conduct is a less serious crime like fraud, and substantially lesser penalties may result for more serious money laundering crimes like drug trafficking.

The Commission's detailed analyses of actual sentencing practices indicates that: (1) money laundering sentences are being imposed for a much broader scope of conduct than anticipated;

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Guide Lines

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Message From the Chairman

In recent months, the United States Sentencing Commission has taken steps towards making itself more accessible. In June, the Commission adopted Rules of Practice and Procedure to inform the public and facilitate public participation in the Commission's work. This came after we published in the *Federal Register* a proposed draft of the Rules, solicited comment on them, and conducted a hearing to gain the insight of practitioners, academics, and other interested parties.

We have also taken steps to reach out to the academic and criminal justice research community by promoting the

use of our extensive public sentencing databases. Under our pilot Data Utilization Program, we solicited research proposals that would use our data archived at the Inter-University Consortium for Political and Social Research at the University of Michigan. To sort through the proposals and recommend awards, we assembled a peer review panel consisting of staff from the Commission and other federal research agencies. Proposals from The Urban Institute, The Pennsylvania State University, Washington State University, and Minot State University were approved for funding. The research is to be completed in a ten-month period

and requires periodic progress reports and presentations to the staff. By initiating this program, we hope to generate interest in the independent study of federal sentencing policy, provide the agency with new perspectives on research and policy issues, and ensure that our datasets contain relevant information to provide for informed public research.

As part of my four-point agenda adopted by the commissioners, we started working in August with Price Waterhouse, the nationally recognized
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Chairman Conaboy Speaks to English and Irish Officials

Judge Richard P. Conaboy, Chairman of the U.S. Sentencing Commission, spoke at the Tenth Anniversary International Conference of The Society for the Reform of Criminal Law held in London July 27 through August 1, 1997. The Society for the Reform of Criminal Law is an international association of high-ranking, criminal justice experts from the Americas, Australia, Asia, United Kingdom, Europe, Africa, the Far East, and the West Indies. The Society's mission is to exchange ideas and share experiences on an international level to positively influence the development and the administration of criminal justice.

At the conference, Judge Conaboy presented an overview of the United States's sentencing structure, emphasizing the legal and policy underpinnings of the current guidelines system. While in London, he sat with the judges of the Central Criminal Court, known throughout the world as the Old Bailey, and met with several members of the British parliament to discuss their country's sentencing policy.

Chairman Richard P. Conaboy describes the federal sentencing guidelines system to an international audience in the Grand Hall of Lincoln's Inn, while jurists of centuries past look on.

Prior to arriving in London, Judge Conaboy traveled to Dublin, Ireland, to lead a seminar on U.S. sentencing policy for members of the Irish judiciary and prosecutors. To share ideas about different criminal justice systems, he also met with the Taoiseach (Prime Minister) of Ireland, The Honorable Bertie Ahern; the Attorney General, The Honorable David Byrne; and members of the High Court, including The Honorable William Liam Hamilton, Chief Justice of the Supreme Court.

"I was gratified by the profound respect for and intense interest in the United States sentencing system," Judge Conaboy said. "Just as we struggle to strike the right balance among the purposes of sentencing, it is reassuring to know that our colleagues throughout the world face similar dilemmas in designing a fair justice system. I came away with a better understanding and appreciation for other nation's sentencing systems, but also have a renewed respect and confidence in the guideline system used in our country." ■

- Catherine DelPrete

Photo by Don Soroachan, Courtesy of Ronald L. Gainer

Report Shows Sentencings Up by Ten Percent

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constituted the largest group of cases sentenced each year in the federal system. The 17,261 drug cases in 1996 represent a 12.9 percent (n=1,973) increase from 1995. This follows two consecutive years in which the number of drug cases had declined (a decrease of 8.5% (n=1,412)) from 1994 to 1995 and a 9.5% (n=1,752) decrease from 1993 to 1994). The 1996 increase in drug cases accounts for half of this year's overall increase (n=3,936) in the number of cases sentenced. The remaining increase can largely be attributed to the increase in immigration offenses (n=1,760).

Trends in Drug Type

Between 1992 and 1996, the number of drug cases increased by 7.6 percent (16,034 cases in 1992 compared to 17,261 in 1996). During this period, several drug offenses experienced large fluctuations in frequency. Sentencings

- declined for powder cocaine (36.6% fewer cases in 1996); and

- increased for crack cocaine (87.1%), methamphetamine (89.2%), and heroin (26.3%).

The changes in the number of powder cocaine and crack cocaine cases during the past five years have been substantial. However, cocaine sentencings (combining both powder and crack cocaine cases) have consistently accounted for more than one half of the drug guideline cases (59.0% in 1992 and 52.8% in 1996). The proportional contribution to the total by other drug types has remained stable across the years.

Guideline Sentencing and Departures

Overall departure rates (combined rates for substantial assistance (§5K1.1) departures, other downward departures, and upward departures) have increased steadily from 1989 through 1994, but have remained consistent during 1995 and 1996. This increase, from 18 percent in 1992 to 30.4 percent in 1996, has been driven primarily by increases in downward departures for substantial assistance. However, in 1996, substantial assistance departures decreased slightly (by 0.5%) for the first time since 1989.

Graphic appended to the back of this document.

Graphic appended to this document.

Downward departures, other than for substantial assistance, constituted 10.3 percent of all cases sentenced in 1996. This is a 1.9 percent increase above the 1995 level and continues an increasing trend that began in 1992. The most frequent reasons given for departing downward were deportation (19.3%) and pursuant to a plea agreement (18.4%).

Upward departures constituted only 0.9 percent of all cases in 1996. The most frequently cited reasons for upward departure were: (1) the criminal history category did not reflect the seriousness of the offender's criminal past (35.0%); and (2) a risk of future criminal conduct based on prior conduct or record (12.6%).

Sentencing Alternatives to Prison

In 1996, 39.1 percent of the cases eligible for alternatives to imprisonment received a sentence of straight probation, 23.8 percent received probation accompanying some form of confinement, and the remaining 37.1 percent received a prison term or a sentence split between prison and community confinement. Among these cases, larceny offenders were least

likely to be incarcerated and immigration violators were the most likely. The much higher rate of imprisonment for immigration cases, when compared against other offense types, may result from the fact that many of these offenders are non-citizens awaiting deportation.

Prison Sentences

More than three-fourths (80.8%) of all guideline sentences in 1996 included a term of imprisonment. Of these, the vast majority (94.4% or 32,009 cases) received straight prison time (*i.e.*, without a term of alternative confinement). The median length of imprisonment for all defendants sentenced to prison in 1996 was 24.0 months, while the mean length was 50.7 months.

The Commission's *Sourcebook of Federal Sentencing Statistics, Annual Report*, and state-by-state data are available on the Commission web site at www.ussc.gov. ■

— Brandi Moore and Lou Reedt

Commission Public Meeting Calendar

All meeting locations are the Thurgood Marshall Federal Judiciary Building, Washington, D.C., unless otherwise noted.

- February 10, 1998 - Public Meeting
- March 5, 1998 - Public Hearing in San Francisco, CA
- March 12, 1998 - Public Hearing & Public Meeting
- April 7, 1998 - Public Meeting
- April 23, 1998 - Public Meeting

Trainings & Research

Commission Releases 1997 Guidelines Video

The Commission recently released a 20-minute videotape highlighting the most important amendments to the sentencing guidelines that took effect November 1, 1997. The majority of the amendments discussed in the video respond to congressional directives, including those that increase penalties for methamphetamine and immigration offenses and one that includes flunitrazepam (the “date rape” drug) in the guidelines’ drug quantity table.

The presentation is hosted by Washington, D.C., newscaster, Nathan Roberts, and uses a panel discussion format. Panel members are Susan Winarsky, Frank Larry, and Jerry Jones from the Commission’s training staff. The video concludes with remarks by Judge Richard P. Conaboy, Sentencing Commission Chairman.

The Commission has sent copies of the video to each Chief Appellate Judge, Chief District Court Judge, U.S. Attorney, Federal Public Defender, and Chief U.S. Probation Officer. Copies of the training video are available on loan from the Commission by calling (202) 273-4540 or (202) 273-7731. Accompanying the video is a written reference guide that provides additional information about all of the new amendments. Please feel free to make copies of this video and reference guide; copyright restrictions do not apply.

The Commission is also redesigning and expanding the training portion of its web site, *USSC OnLine*. A variety of training materials to assist in guideline application will soon be available, including worksheets, scenarios, and checklists. *USSC OnLine*, which offers users a wide selection of Commission publications and information, is located at <http://www.ussc.gov>. ■

– Frank Larry

Commission Releases Report on Substantial Assistance

The Sentencing Commission released in December an exploratory research report examining the guidelines’ “substantial assistance” policy statement in light of the guidelines’ overall statutory goal of fair and honest sentencing. The study did not find the expected correlations between the extent of the substantial assistance departure received and: (1) the type of cooperation provided, (2) the type of benefit or result received by the government, or (3) the making of a §5K1.1 motion. While limited data hampered significance testing, the consistency of the findings using the different

methodologies revealed four problems requiring further examination.

First, the definition of “substantial assistance” was not being consistently applied across the federal districts. Second, while the U.S. attorney offices are required to record the reason for making a substantial assistance motion, there is no provision that this information be made available for review. Third, the evidence consistently indicated that: (1) factors legally relevant to a §5K1.1 departure (*e.g.*, type of cooperation, benefit of cooperation, defendant’s role in the offense, relevant conduct, offense type) generally were found to be inadequate in explaining §5K1.1 departures; and (2) legally irrelevant factors (*e.g.*, gender, race, ethnicity, citizenship) were found to be statistically significant in explaining §5K1.1 departures. Finally, data indicate that, in determining departure lengths, judges do not rely solely on the extent of defendants’ cooperation; they relate the magnitude of departure to the length of the pre-departure sentence. In other words, the longer the sentence, greater the departure seems to be.

A substantial assistance departure (§5K1.1) permits the judge, upon the motion of the prosecutor, to reduce a defendant’s sentence below the guideline range as a reward to an offender who cooperates in the investigation or prosecution of another person who has committed an offense.

The Commission study focused on whether different districts’ policies and procedures were consistent and whether similar defendants were receiving similar sentence reductions for providing similar assistance. Consistent with the development of explicit and consistent sentencing guidelines in the judiciary, the research presumed that the U.S. Sentencing Commission and the Department of Justice should each require procedures and policies assuring that individuals providing similar assistance would receive similar sentence reductions.

Using data collected from seven different research methodologies, the analysis raises questions that could set a significant policy agenda for the U.S. Sentencing Commission and the Department of Justice.

The complete text and tables of the article, “Substantial Assistance: An Empirical Yardstick Gauging Equity In Current Federal Policy and Practice,” authored by the Sentencing Commission’s Dr. Linda Drazga Maxfield and Dr. John H. Kramer, can be downloaded from the Commission web site (<http://www.ussc.gov>) or received by writing the Commission’s Office of Legislative and Public Affairs. ■

– Linda Drazga Maxfield

Commission Staff Present Research at National Conference

As part of the Commission's continuing research efforts to study the operation of the guidelines system, several Commission staff members presented papers at the November 1997 meeting of the American Criminological Association in San Diego, California. These presentations were based on data gathered as part of a two-year Commission project called the Intensive Study Sample (ISS). In this project, detailed information on offender characteristics, offense conduct, and criminal history was collected for a five-percent random sample of cases.

Defendant drug use

The first paper, authored by Christine Kitchens and Paul Hofer, examined patterns of drug use among persons convicted of federal crimes to help explore whether the guidelines' current approach to drug-abusing offenders is appropriate. More than half of federal offenders had used two or more drugs in the past, and at least one quarter had been using a drug during the period that they committed their crime. It was found that some offenses, such as robbery, are more likely to be committed by persons who use drugs. Only a small fraction of offenders had undergone substance abuse treatment previously, and fewer than half of these reported that treatment had been successful.

Weapons and crime

Courtney Semisch and Linda Drazga Maxfield's paper examined how sentences are affected by the use or possession of a gun or other dangerous weapon. Under current law, drug trafficking and violent offenses are subject to guideline enhancements and, if charged, mandatory penalties under 18 U.S.C. § 924(c). However, ISS data show that fewer than half of the cases that appear to qualify for current statutory penalties actually receive them. The proportion of cases involving

weapons varies by the type of drug trafficked, with methamphetamine and crack cocaine trafficking cases much more likely to involve guns.

Criminal history computation

The third paper, authored by Linda Drazga Maxfield and Willie Martin, used the ISS data to explore the operation of the guidelines' criminal history calculations. Rules governing the time-frame of past offenses and rules excluding certain juvenile or foreign convictions cause some prior offenses – including some serious crimes – to be ignored for sentencing purposes. In addition, the way that prior convictions affect calculations often depends on the jurisdictions in which they occurred; this may result in different sentences for offenders with similar histories. By evaluating the ways that the current rules operate, the Commission hopes to identify methods to evaluate criminal history more fairly and simply, and to identify dangerous offenders more effectively.

The Commission staff is also continuing work on a variety of other research projects.

Disparity research

The Commission continues to study sentencing disparity based on legally irrelevant factors such as race, gender, and ethnicity. Previous Commission studies on disparity focused on judicial discretion and attempted to determine if racial or gender discrimination or unintended bias (e.g., the influence of stereotypes) may affect sentencing decisions. The Commission's prior analyses suggest that discrimination of this kind plays little, if any, role in federal sentencing – the last stage of the criminal justice process. By examining data reflecting decisions made at different stages in the criminal justice process, the Commission hopes to determine whether the current system dispropor-

tionately affects Black, Hispanic, or female defendants.

Case submission research

For its fiscal year 1997 data, the Commission is assessing the completeness of documentation it receives from the courts. Preliminary analysis indicates that case submission rates may vary widely by district, with a few districts accounting for the majority of missing cases. Using the datafile compiled by the Administrative Office of the U.S. Courts, the Commission research staff is matching defendant records with Commission records to determine the number and type of cases that are not being received. All districts will receive a list of their missing cases. During the coming months, the Commission's research staff will also arrange to meet with different districts to audit case submission operations to assure accurate guidelines data.

Guideline operation research

A large portion of research at the Commission concerns the effects of changes (e.g., statutory changes) to the guideline structure. Through participation in interdisciplinary working groups, research staff have evaluated the impact of various proposals for changing the quantity ratio of crack and powder cocaine that determine mandatory sentences. At the request of the Department of Justice, the Commission is studying the operation of the guidelines for manslaughter, and is identifying areas where changes may be appropriate. Further research explores the potential impact of combining the fraud and theft guidelines, as well as the adequacy of guideline provisions for telemarketing crimes that target the elderly. Bringing data to bear on these and other policy questions continues to be a core function of the Sentencing Commission. ■

– Paul Hofer

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accounting and business consulting firm, to conduct a full study of the internal operations of the agency. The study will be completed shortly, and the recommendations will be used to help develop a mission statement and strategic plan as the Commission enters its second decade of operation.

Finally, the Commission is holding periodic hearings, inviting recognized experts and practitioners to engage the Commissioners in an open dialogue on important policy issues facing the agency. For example, in October we heard from a panel on how the guidelines should define the concept of "loss." In November, the Commission heard from another panel on the adequacy of federal manslaughter penalties. In the future, we hope to schedule hearings on topics such as telemarketing fraud, the creation of sentencing guidelines for juveniles,

and alternatives to incarceration.

Of course, these are only a few of the positive steps taken this year to fulfill our mandate. We hope to expand and improve our deliberative process to include more meaningful opportunities for public input. Any suggestions or comments are always helpful and welcome.■

— *Chairman Richard P. Conaboy*



Laundering, continued from page 2

(2) there is distortion of the intended relationship between the harm caused and the measurement of offense seriousness; and (3) guideline application is resulting in a lack of sentencing proportionality and uniformity. The Commission's research graphically illustrates the extent of this imbalance;

there can be an 85-to-95 percent increase in penalties for the same offense conduct if money laundering is charged in addition to an underlying fraud offense. This contrasts with the possibility of a 75-to-86 percent decrease in the severity of the sentence if money laundering is charged instead of drug trafficking. The Commission also found significant judicial dissatisfaction with the current money laundering sentencing guidelines, noting that the departure rate for the past five years is 32 percent greater than the average for all offenses.

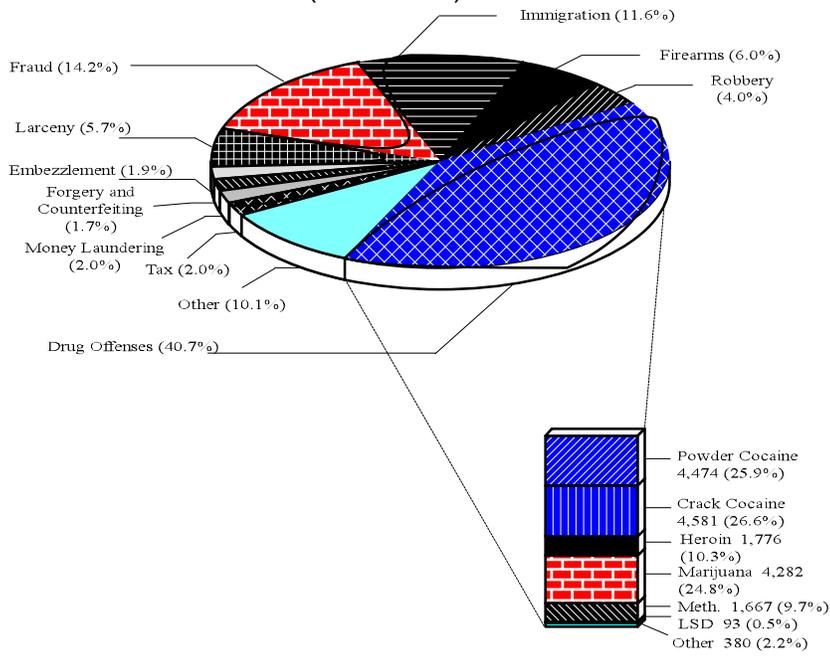
The Commission's Report to Congress and other studies of money laundering sentences can be found at the Commission's Internet site at <http://www.ussc.gov>.■

— *Paula Desio*

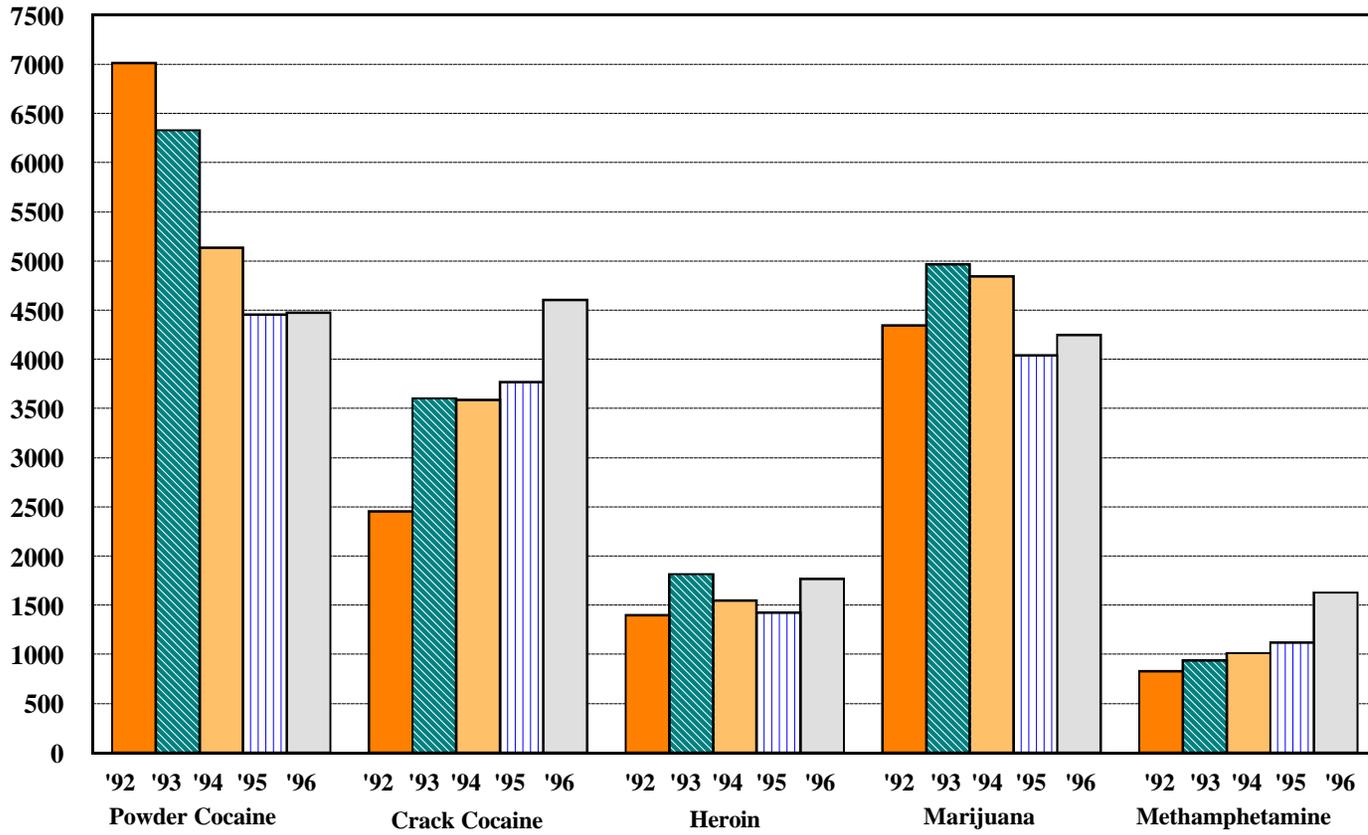
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Distribution of Sentenced Guideline Defendants By Primary Offense Category (1995-1996)



Number of Drug Defendants By Drug Type and Year (1991-1996)



Type of Departure By Sentencing Year (1989-1996)

