Alternative Sentencing in the Federal Criminal Justice System

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During the past ten years, alternatives to incarceration[1] have been imposed for between 15 and 25 percent of federal offenders. The true extent to which courts impose these alternatives is not apparent in this trend, however, because of the unique composition of the federal sentencing population. Specifically, a large proportion of non-citizen federal offenders (who often are ineligible for alternative sentences) are imprisoned. This paper analyzes alternative sentences for federal offenders and, specifically, United States citizens sentenced under various types of alternatives. This analysis describes current federal sentencing policy governing alternative sentences and examines offenders with alternative sentences using the United States Sentencing Commission's data.[2] An analysis of factors associated with alternative sentences imposed for eligible offenders provides insight into considerations made by federal sentencing courts in determining whether to impose alternatives.

Background

A number of correctional issues that arose during the 1980s increased interest in alternative sanctions in the criminal justice system at both the federal and state level. Across the United States, increased use of probation sentences for felony offenders was burdening under-funded and under-staffed probation departments.[3] At the same time, more than half of the states were under court order or facing court order to reduce prison crowding.[4] Criticism of indeterminate sentences also was increasing.[5] In addition, mandatory penalties were changing the composition of the incarcerated population by substantially increasing the number of incarcerated low-level drug offenders.[6]

Increasingly, criminal justice professionals have argued that dwindling prison space should be reserved for the most serious and dangerous offenders, necessitating a reconsideration of alternative sanctions for first-time and nonviolent offenders.

Increasingly, criminal justice professionals have argued that dwindling prison space should be reserved for the most serious and dangerous offenders, necessitating a reconsideration of alternative sanctions for first-time and nonviolent offenders. The appeal of alternatives to incarceration has continued to increase in the wake of reports of the ever-growing prison population. As of 2008, more than one in every 100 adults are incarcerated in the United States.[7] That large, and still growing, population cost the states more than $49 billion in 2007.[8] In addition to the monetary

costs, social costs of imprisonment include the separation of families, isolation from the community, and transitional difficulties when offenders re-enter the community.

In response to both the increasing monetary and social costs of incarceration, a growing number of states have begun implementing money-saving, public safety-oriented solutions.[9] These solutions include diverting low-risk offenders from prison, implementing alternative sanctions, and shortening prison terms. Federal criminal courts have used these tools over the years primarily for fraud and white collar offenders and, most importantly, for United States citizens.

Federal Sentencing Policy

Federal statutes and the United States sentencing guidelines provide the foundation for federal sentencing. The Sentencing Reform Act of 1984 (the "Act")[10] requires that the federal sentencing guidelines "reflect the general appropriateness of imposing a sentence *other than imprisonment* 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…." [Emphasis added][11] The Act established probation as an actual sentencing option, rather than an instrument used in suspending prison sentences.[12] Four years later, the Anti-Drug Abuse Amendment Act of 1988[13] authorized the use of home detention and electronic monitoring for offenders sentenced to probation and supervised release.[14] The Commission incorporated these policies into the guidelines with other probation and intermediate confinement options for less serious and first-time offenders.

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Federal statutes and the sentencing guidelines both limit offender eligibility for probation sentences.[15] Defendants found guilty of a federal offense are eligible for a term of probation unless (1) the individual is convicted of a Class A or Class B felony,[16] (2) probation has been expressly precluded for the offense, or (3) the defendant is sentenced at the same time to a sentence of imprisonment for any offense.

The Sentencing Reform Act of 1984 further excludes probation for some offenders. Specifically, the Act directs that the guidelines provide for substantial imprisonment terms for defendants with two or more prior felonies, offenses that constitute 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.[17] The conditions of probation, both mandatory[18] and discretionary,[19] also are stipulated by federal statute and the sentencing guidelines. Confinement conditions are among discretionary special conditions of probation provided for by the guidelines.[20] These conditions include community confinement (residence in a community treatment center, halfway house, or similar facility), home detention, and intermittent confinement (custody for specified intervals of time).

Determining a Guideline Sentence

The guidelines' sentencing table (see *Guidelines Manual*, Chapter Five, Part A) provides sentencing ranges based on an offender's

offense level and Criminal History Category.[21] The sentencing table is subdivided into four zones (A, B, C, and D) that determine confinement options for each sentencing range.[22] 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 (zero months of confinement), probation with confinement, prison with community confinement, or imprisonment.

Zone B sentences include confinement terms ranging from one to 12 months. 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).[23] For Zone B offenders sentenced to prison, however, 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. Any Zone B term of probation without a term of confinement necessarily constitutes a departure from the sentencing guidelines or a non-guideline sentence.[24]

Zone C of the sentencing table provides ranges of a minimum of eight to a maximum of 16 months. The guidelines require that Zone C sentences include a term of imprisonment equivalent to at least half of the minimum of the range. The remaining half of the term requires supervised release with conditions of community confinement.[25] Alternatively, the court has the option of imposing a full prison term for Zone C offenders. Any sentence with no term of confinement for offenders in Zone C necessarily constitutes a departure from the sentencing guidelines or a non-guideline sentence.

Finally, sentences in Zone D of the sentencing table require a term of imprisonment ranging from one year to life. Any sentence of probation or community confinement for Zone D offenders necessarily constitutes a departure from the sentencing guidelines or a non-guideline sentence.

Table 1[26] shows the number of offenders sentenced in each of the four sentencing table zones in fiscal year 2007.[27] Only a small proportion of federal offenders are sentenced in Zones A (7.9%) and B (6.8%) and are eligible for non-prison sentences. Similarly, a small proportion of offenders (6.8%) are in Zone C of the sentencing table and eligible for a prison term followed by community confinement. Most federal offenders (78.5%) are sentenced in Zone D and are required to serve prison terms.

Despite the availability of alternative sentencing options for nearly one-fourth of federal offenders, federal courts most often impose prison for offenders in each of the sentencing table zones. As shown in Table 2,[28] nearly half (48.4%) of Zone A offenders are sentenced to prison only, and more than one-half of both Zone B (58.4%) and Zone C (66.4%) offenders are sentenced to prison only. As would be expected, the overwhelming majority of Zone D offenders (94.6%) are sentenced to prison.

Despite the availability of alternative sentencing options for nearly one-fourth of federal offenders, federal courts most often impose prison for offenders in each of the sentencing table zones.

Table 1
Offenders in Each Sentencing Table Zone
Fiscal Year 2007

ZONE	NUMBER	PERCENT
TOTAL	**63,906**	**100.0**
ZONE A	5,054	7.9
ZONE B	4,333	6.8
ZONE C	4,384	6.8
ZONE D	50,135	78.5

Table 2
Sentence Imposed for Offenders in Each Sentencing Table Zone
Fiscal Year 2007

ZONE		PRISON ONLY		PRISON/COMMUNITY SPLIT		PROBATION AND CONFINEMENT		PROBATION ONLY	
	TOTAL	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
TOTAL	**63,767**	**55,211**	**86.5**	**2,083**	**3.3**	**2,530**	**4.0**	**3,943**	**6.2**
ZONE A	**4,970**	2,406	48.4	32	0.6	157	3.2	2,375	47.8
ZONE B	**4,322**	2,525	58.4	217	5.0	1,085	25.1	495	11.5
ZONE C	**4,376**	2,905	66.4	762	17.4	392	9.0	317	7.2
ZONE D	**50,099**	47,375	94.6	1,072	2.1	896	1.8	756	1.5

The Citizenship Effect

Closer examination of offenders sentenced in Zones A, B, and C reveals an important aspect of the federal criminal caseload as well as federal detention policies regarding criminal aliens. The federal sentencing caseload is composed of a substantial proportion of non-United States citizens. In fiscal year 2007, more than one-third (37.4%) of offenders are non-citizens, the overwhelming majority of whom are illegal aliens.[29] Illegal aliens are subject to deportation from the United States.[30] The Bureau of Prisons assigns deportable aliens to confinement at their second highest custody level, which requires a normal level of institutional supervision and prohibits work details or other programs outside the secure perimeter of the institution.[31]

Table 3
Citizenship Status of Offenders in Each Sentencing Table Zone
Fiscal Year 2007

		ZONE A		ZONE B		ZONE C		ZONE D	
	TOTAL	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	Percent	Number	Percent
TOTAL	**63,753**	**4,990**	**100.0**	**4,314**	**100.0**	**4,371**	**100.0**	**50,078**	**100.0**
U.S. CITIZEN	**40,830**	2,810	56.3	2,371	55.0	2,151	49.2	33,498	66.9
NON-U.S. CITIZEN	**22,923**	2,180	43.7	1,943	45.0	2,220	50.8	16,580	33.1

Because of these sentencing policies, rates of alternative sentences are substantially different for United States citizen and non-citizen offenders.[32] Table 3[33] shows the citizenship status of offenders in each of the four sentencing table zones; offenders in Zones A, B, and C are approximately equally divided among United States citizens and non-citizens.[34] Despite this fairly equal representation of non-citizens in each sentencing table zone, non-citizens rarely are sentenced to alternatives, for the reasons stated above. Table 4[35] shows that the majority of non-citizens in Zones A (86.3%), B (89.8%), and C (94.3%) are sentenced to prison.

In contrast, United States citizens are substantially more likely to receive alternative sentences in Zones A, B, and C. See Table 5.[36] Three-quarters (75.5%) of United States citizens in Zone A are sentenced to probation. The majority of Zone B and C

Table 4
Sentence Imposed for Non-United States Citizen Offenders in Each Sentencing Table Zone
Fiscal Year 2007

ZONE		PRISON ONLY		PRISON/COMMUNITY SPLIT		PROBATION AND CONFINEMENT		PROBATION ONLY	
	TOTAL	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
TOTAL	**22,898**	**22,081**	**96.4**	**169**	**0.7**	**173**	**0.8**	**475**	**2.1**
ZONE A	**2,166**	1,870	86.3	1	0.1	12	0.6	283	13.1
ZONE B	**1,941**	1,743	89.8	25	1.3	86	4.4	87	4.5
ZONE C	**2,218**	2,092	94.3	70	3.2	21	1.0	35	1.6
ZONE D	**16,573**	16,376	98.8	73	0.4	54	0.3	70	0.4

Table 5
Sentence Imposed for United States Citizen Offenders in Each Sentencing Table Zone
Fiscal Year 2007

ZONE		PRISON ONLY		PRISON/COMMUNITY SPLIT		PROBATION AND CONFINEMENT		PROBATION ONLY	
	TOTAL	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
TOTAL	**40,720**	**33,022**	**81.1**	**1,907**	**4.7**	**2,351**	**5.8**	**3,440**	**8.4**
ZONE A	**2,744**	497	18.1	31	1.1	145	5.3	2,071	75.5
ZONE B	**2,362**	771	32.6	191	8.1	996	42.2	404	17.1
ZONE C	**2,145**	808	37.7	688	32.1	370	17.2	279	13.0
ZONE D	**33,469**	30,946	92.5	997	3.0	840	2.5	686	2.1

offenders also are sentenced to available alternatives. A large proportion (42.2%) of Zone B offenders are sentenced to probation with confinement and an additional 17.1 percent, with departures or non-guideline sentences, are sentenced to probation only. Nearly one-third (32.1%) of Zone C offenders are sentenced to a prison/community split and an additional 30.2 percent, with departures or non-guideline sentences are sentenced to probation and confinement (17.2%) and probation only (13.0%). Finally, as would be expected, the vast majority (92.5%) of Zone D offenders are sentenced to prison.

Trends in Sentence Types

The predominance of prison sentences has been consistent and has been accompanied by slightly increasing rates over the past ten years. In contrast, as Figure 1[37] shows, the proportion of federal offenders sentenced to alternatives has remained low and decreased slightly during the same time period. Prison rates have increased ten percentage points since fiscal year 1997 from 75.4 percent to 85.3 percent.[38] That increase corresponds to declines in each of the other sentence categories, probation (13.1% to 7.7%), probation with alternatives (7.1% to 3.9%), and prison with alternatives (4.4% to 3.1%).

The decreasing trend in alternative sentences, again, is attributable to the non-citizen offenders in the federal sentencing

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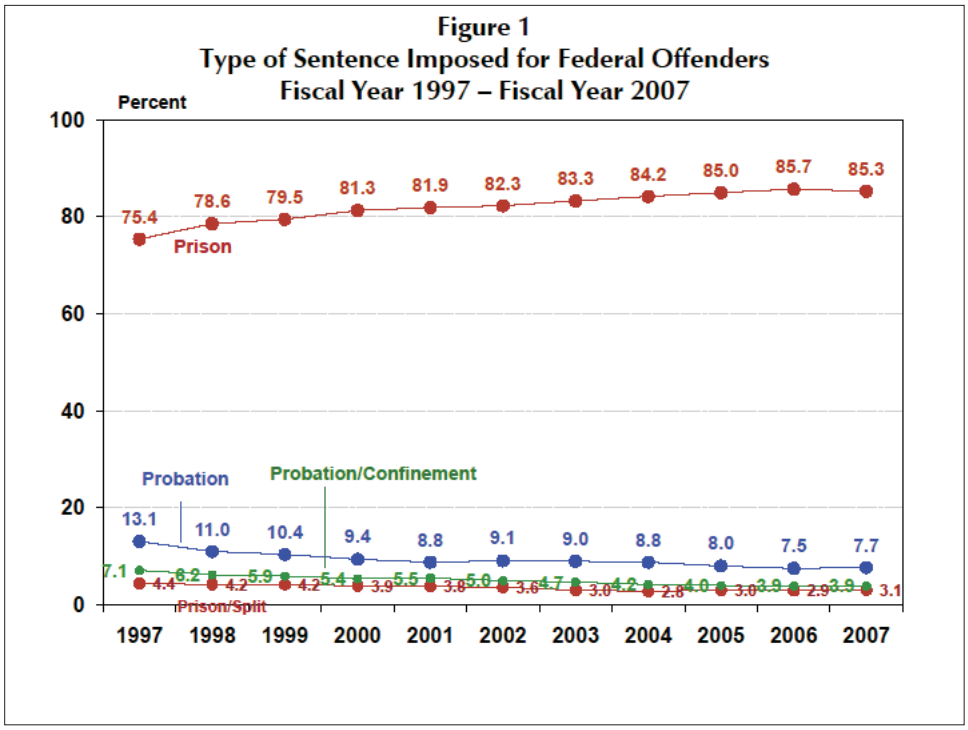
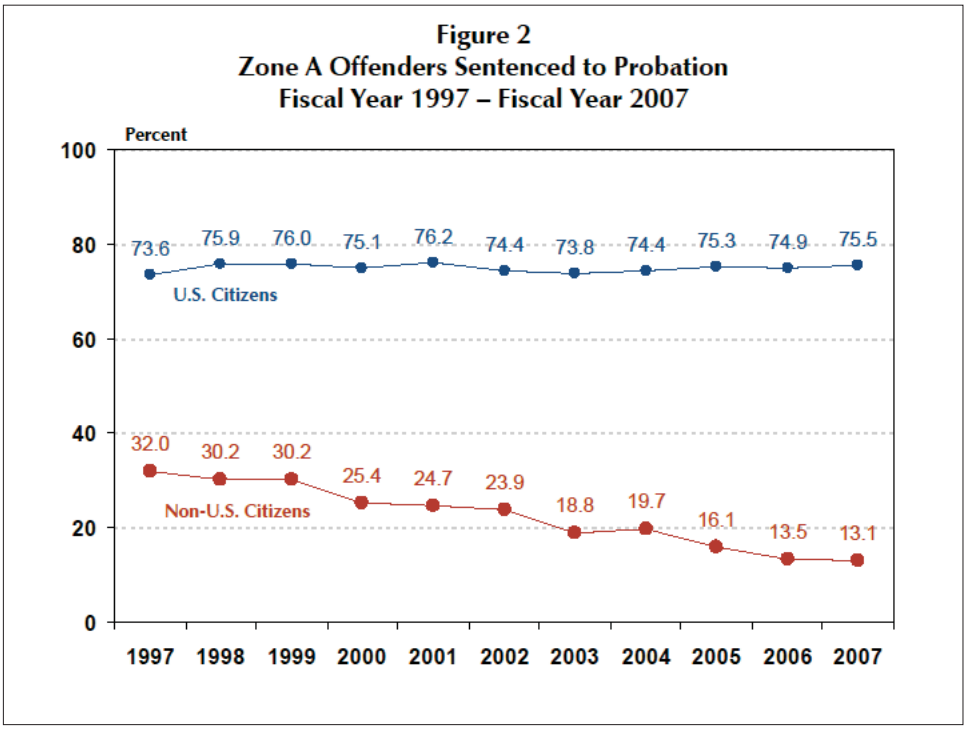
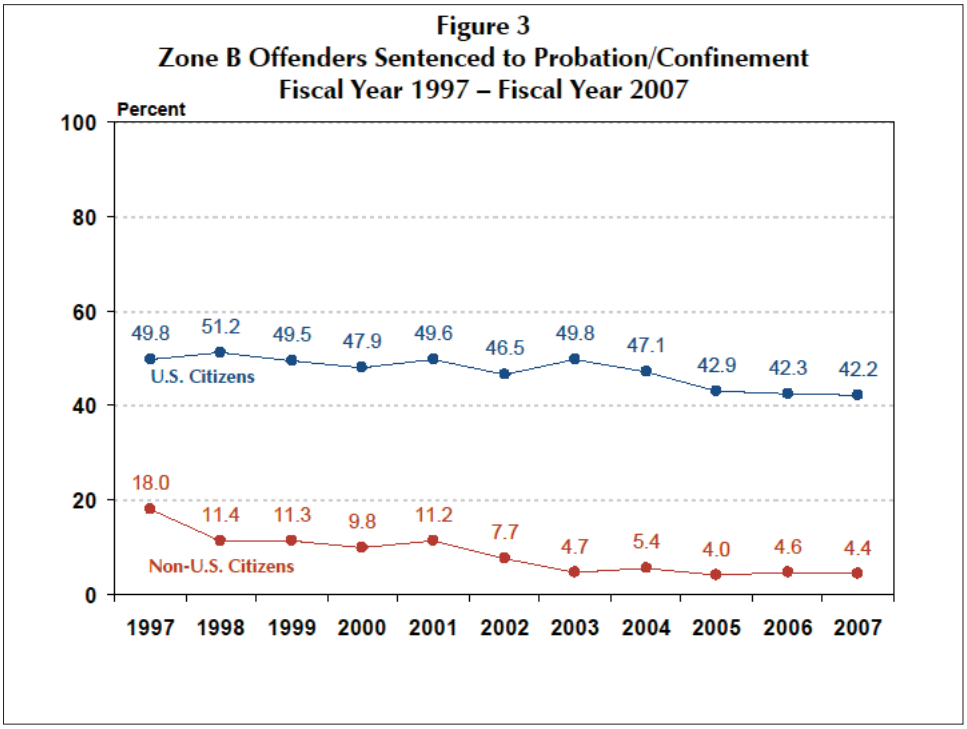
population. As shown in Figure 2,[39] United States citizen offenders in Zone A consistently have been sentenced to probation at the rate of about 75.0 percent from fiscal year 1997 through fiscal year 2007. The proportion of non-citizen offenders sentenced to probation steadily has dropped during this same time period, from approximately one-third (32.0%) in fiscal year 1997 to 13.1 percent in fiscal year 2007. The trends are similar for offenders in Zones B







and C of the sentencing table. Figure 3[40] shows that the rates of probation with confinement options for United States citizens in Zone B have remained somewhat constant, between 40 and 50 percent, and decreased slightly in recent years. Non-citizens in Zone B, on the other hand, consistently have lower rates of probation with confinement, and that rate notably has dropped from 18.0 percent to 4.4 percent.

Figure 4[41] demonstrates the same trend, but with a narrower gap between United States citizens and non-citizens in Zone C sentenced to prison/community split. Between fiscal year 1997 and fiscal year 2007, consistently approximately one-third of United States citizens have been sentenced to prison/community split sentences. In contrast, the proportion of non-citizens in Zone C with prison/community split sentences dropped from 13.0 percent in fiscal year 1997 to 3.2 percent in fiscal year 2007.[42]

Offenders committing certain types of offenses more frequently receive alternative sentences.

Sentencing of United States Citizens

United States citizens are the focus of the remaining analyses because they comprise the majority of federal offenders sentenced to alternatives. The following sections examine and compare United States citizen federal offenders sentenced to prison, prison/community split, probation with confinement, and probation.

Offense Types

Offenders committing certain types of offenses more frequently receive alternative sentences. Table 6[43] shows that larceny offenders have the greatest likelihood of receiving alternative sentences with nearly two-thirds (61.2%) sentenced to prison/community split, probation with confinement, or probation. Offenders convicted of fraud and other white collar offenses,[44] while still primarily sentenced to prison, also more often are

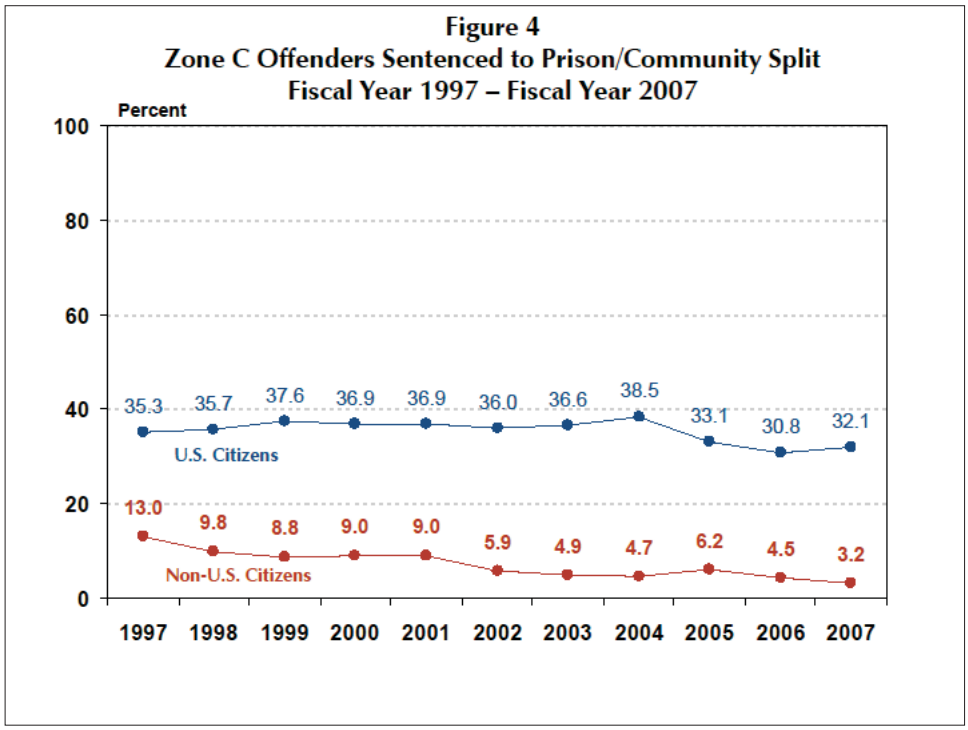


Table 6
Selected Offense and Offender Characteristics for United States Citizen Federal Offenders with Each Sentencing Option
Fiscal Year 2007

		PRISON ONLY		PRISON/ COMMUNITY SPLIT		PROBATION WITH CONFINEMENT		PROBATION ONLY	
		NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
TOTAL	**35,014**	**80.8**		**2,020**	**4.7**	**2,511**	**5.8**	**3,807**	**8.8**
OFFENSE TYPE									
Robbery	**1,081**	1,048	97.0	15	1.4	8	0.7	10	0.9
Drugs	**17,592**	16,206	92.1	538	3.1	332	1.9	516	2.9
Firearms	**7,658**	7,033	91.8	179	2.3	221	2.9	225	2.9
Larceny	**1,308**	508	38.8	72	5.5	228	17.4	500	38.2
Fraud	**5,826**	3,480	59.7	513	8.8	751	12.9	1,082	18.6
Non-Fraud White Collar	**2,809**	1,601	57.0	265	9.4	412	14.7	531	18.9
Immigration	**1,827**	1,304	71.4	228	12.5	136	7.4	159	8.7
Other	**5,251**	3,834	73.0	210	4.0	423	8.1	784	14.9
CRIMINAL HISTORY CATEGORY									
I	**18,417**	12,283	66.4	1,347	7.3	1,813	9.8	2,974	16.5
II	**4,500**	3,844	85.4	178	4.0	240	5.3	238	5.3
III	**5,937**	5,367	90.4	222	3.7	190	3.2	158	2.7
IV	**3,657**	3,472	94.9	87	2.4	58	1.6	40	1.1
V	**2,392**	2,340	97.8	18	0.8	19	0.8	15	0.6
VI	**5,817**	5,716	98.3	55	1.0	31	0.5	15	0.3

sentenced to alternatives; approximately one-third of fraud and white collar offenders are sentenced to prison alternatives. In contrast, the overwhelming majority of offenders convicted of robbery (97.0%), drug (92.1%), and firearms (91.8%) offenses are sentenced to prison. See Table 6.

Offenders convicted of fraud and other white collar offenses, while still primarily sentenced to prison, also more often are sentenced to alternatives; approximately one-third of fraud and white collar offenders are sentenced to prison alternatives.

Criminal History

Criminal History Category, in combination with offense level, determines an offender's sentencing guideline range. Criminal History Category I includes offenders with little or no prior involvement with the criminal justice system. Criminal History Category VI is composed of offenders with the most extensive and serious criminal records.

Offenders in Criminal History Category I are sentenced to the four sentencing options at the same rate as the overall federal population. The majority (66.4%) of offenders in Criminal History Category I are sentenced to prison, followed by probation (16.5%), probation and confinement (9.8%), and prison/community split (7.3%).

Offenders in the more serious Criminal History Categories are even more likely to be sentenced to prison. The overwhelming majority of offenders in Criminal History Category II (85.4%),

Table 7
Sentences Imposed for United States Citizen Federal Offenders with Each Sentencing Option
Fiscal Year 2007

	PRISON ONLY		PRISON/COMMUNITY SPLIT		PROBATION WITH CONFINEMENT		PROBATION ONLY	
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
TOTAL	**35,014**	**100.0**	**2,020**	**100.0**	**2,511**	**100.0**	**3,807**	**100.0**
AVERAGE SENTENCE (MONTHS)								
Prison		76		9	-	-	-	-
Probation	-	-	-	-		39		33
Alternative	-	-	-	6	-	6	-	-
ALTERNATIVE TYPE								
Home Confinement	-	-	1,494	74.0	2,259	90.0	-	-
Community Confinement	-	-	464	23.0	142	5.7	-	-
Intermittent Confinement	-	-	17	0.8	30	1.2	-	-
Combination of Alternatives	-	-	45	2.2	80	3.1	-	-
MONETARY PENALTIES								
No Monetary Penalty	24,959	71.5	1,005	49.9	929	37.1	1,335	35.1
Fine/Supervision Cost/ Restitution	9,950	28.5	1,010	50.1	1,575	62.9	2,465	64.9
MEDIAN MONETARY PENALTY		$6,000		$20,568		$11,591		$3,834
SENTENCE RELATIVE TO GUIDELINE RANGE								
Within Range	21,447	61.6	813	40.5	1,103	44.6	2,252	61.4
Above Range	595	1.7	29	1.4	8	0.3	0	0.0
Govt.-Sponsored Below Range	8,451	24.3	658	32.8	689	27.9	837	22.8
Other Below Range	4,300	12.4	507	25.3	672	27.2	577	15.7

III (90.4%), IV (94.9%), V (97.8%), and VI (98.3%) are sentenced to prison.

Sentences Imposed

Prison sentences account for 81.1 percent of sentences imposed for United States citizens in fiscal year 2007. See Table 5. The remaining sentences are probation (8.4%), probation with confinement (5.8%), and prison split with community confinement (4.7%). For United States citizens, the average prison sentence is 76 months. The average prison sentence for offenders sentenced to prison/community split is nine months. See Table 7.[45] Average sentence lengths for the two categories of offenders sentenced to probation are about three years; the average term for offenders sentenced to probation only is 33 months, and the average for offenders sentenced to probation with confinement is 39 months. Home confinement is the most commonly imposed alternative sentence. Three-quarters (74.0%) of offenders sentenced to prison/community split are sentenced to home confinement. A substantial proportion (23.0%) also are sentenced to community confinement (*i.e.*, residence in a community treatment center, halfway house, or similar facility). Prison/community split sentences average nine months of prison and six months of alternative confinement. Nearly all (90.0%) offenders sentenced to probation with confinement received home confinement. Probation and confinement sentences average six months confinement and 39 months of overall probation.

Prison sentences account for 81.1 percent of sentences imposed for United States citizens in fiscal year 2007. The remaining sentences are probation (8.4%), probation with confinement (5.8%), and prison split with community confinement (4.7%).

Overall, monetary penalties (fine, cost of supervision, and/or restitution) are imposed for approximately one-third (34.7%) of United States citizen offenders in fiscal year 2007 and are more commonly imposed for offenders sentenced to alternatives. Two-thirds of offenders sentenced to probation (64.9%) and offenders sentenced to probation with confinement (62.9%) also have monetary penalties imposed.[46] Half (50.1%) of offenders sentenced to prison/community split are ordered to pay monetary penalties. In contrast, fewer than one-third (28.5%) of offenders sentenced to prison also are ordered to pay monetary penalties. The median[47] monetary penalties (for those offenders ordered to pay them) range from $3,834 for offenders sentenced to probation, to $20,568 for offenders sentenced to prison/community split.

Sentences Relative to the Guideline Range

More than half (59.7%) of sentences imposed on United States citizens in fiscal year 2007 are within the guideline range. These rates reflect the within-range rates for United States citizen offenders sentenced to prison (61.6%) and probation (61.4%). Offenders sentenced to community confinement, however, have substantially lower rates of within-range sentences. Fewer than half of offenders sentenced to prison/community split (40.5%) and probation with confinement (44.6%) are sentenced within the guideline range. The higher rates of downward departures and non-guideline sentences primarily are responsible for the difference. Rates of non-government sponsored downward departures and non-guideline sentences are greater for offenders sentenced to prison/community split (25.3%) and probation and confinement (27.2%) compared to those sentenced to probation (15.7%) and prison (12.4%).

More than half (59.7%) of sentences imposed on United States citizens in fiscal year 2007 are within the guideline range.

Despite the different rates of downward departures and non-guideline sentences among United States citizen offenders sentenced to each of the four options, the reasons cited by the courts for the below-range sentences are the same, and most often cite the factors established by Congress in the Sentencing Reform Act of 1984 as those to be considered in imposing a sentence.[48] The three most commonly cited reasons for non-government sponsored below-range sentences for each of the four groups are— nature and circumstances of the offense and the history and characteristics of the defendant; to reflect the seriousness of the offense/to promote respect for the law/to provide just punishment for the offense; and to afford adequate deterrence to criminal conduct.

Additional sentencing factors identified by Congress round out the most frequently cited reasons courts give for imposing below-range sentences: to protect the public from further crimes of the defendant; to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and to provide restitution to any victims of the offense.

Nearly equal proportions of White (38.7%) and Black (37.6%) United States citizen offenders are sentenced to prison.

Offender Characteristics

The demographic characteristics of individual offenders are excluded for consideration at sentencing; but there is some variation in the imposition of alternative sentences for some groups.[49] Nearly equal proportions of White (38.7%) and Black (37.6%) United States citizen offenders are sentenced to prison. White offenders comprise approximately half of those sentenced to each of the alternative categories (ranging from 48.6% to 54.5%) while the proportion of Black offenders is approximately one-fourth (ranging from 24.3% to 28.3%). Among United States citizens, those with Hispanic backgrounds account for a smaller proportion (19.3%) of offenders sentenced to prison, as well as

Table 8
United States Citizen Federal Offenders with Each Sentencing Option
Fiscal Year 2007

	PRISON ONLY		PRISON/COMMUNITY SPLIT		PROBATION WITH CONFINEMENT		PROBATION ONLY	
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
TOTAL	**35,014**	**100.0**	**2,020**	**100.0**	**2,511**	**100.0**	**3,807**	**100.0**
RACE								
White	13,520	38.7	982	48.6	1,290	51.5	2,047	54.5
Black	13,161	37.6	491	24.3	709	28.3	997	26.6
Hispanic	6,745	19.3	441	21.8	347	13.9	457	12.2
Other	1,551	4.4	105	5.2	158	6.3	253	6.7
GENDER								
Male	30,684	87.6	1,397	69.2	1,642	65.4	2,361	62.1
Female	4,328	12.4	623	30.8	869	34.6	1,440	37.9
AVERAGE AGE								
		35		37		40		39

The average age of federal offenders sentenced to prison is 35 years, compared to 37 years for prison/community split, 40 years for probation with confinement, and 39 years for probation.

those sentenced to each of the alternative categories (ranging from 12.2% to 21.8%). See Table 8.[50]

While male offenders make up the vast majority (87.6%) of imprisoned offenders, men account for only two-thirds of offenders sentenced to any of the three alternatives to prison (ranging from 62.1% of probation only to 69.2% of prison/community split). Offenders sentenced to prison also are younger than offenders sentenced to one of the three alternatives. The average age of federal offenders sentenced to prison is 35 years, compared to 37 years for prison/community split, 40 years for probation with confinement, and 39 years for probation.

Which Eligible Offenders are Sentenced to Alternatives?

Sentencing courts generally do not provide specific, written reasons for imposing sentences within the guideline range.[51] Because of this, the question of why courts impose alternative sentences for some eligible offenders but not others cannot definitively be answered. However, it is possible to identify which eligible offenders receive alternatives, thereby suggesting factors considered by sentencing courts when deciding whether to impose alternatives to incarceration. This analysis identifies a number of factors associated with offenders receiving alternatives, distinguishing offenders who receive alternative sentences from those who do not.

The analysis that follows demonstrates that sentencing zone ultimately determines whether offenders are sentenced to alternatives. Specifically, guideline offense level and Criminal History Category, alone or in combination, are the principal factors determining whether an offender receives an alternative sentence. Some additional guideline and demographic characteristics also are associated with offenders' receipt of an alternative sentence; however, these factors also are associated with one or both of the zone determinants.

Specifically, guideline offense level and Criminal History Category, alone or in combination, are the principal factors determining whether an offender receives an alternative sentence.

In fiscal year 2007, 5,378 United States citizens were sentenced within the sentencing guideline range and were located in Zones A, B, or C. Limiting analysis to within-range sentences allows a clear comparison of offenders who are sentenced according to their guideline calculation and eligible for an alternative sentence, independent of a government motion or other departure or variance. Because statutory mandatory minimum sentences confound an offender's eligibility for alternatives, offenders subject to statutory mandatory minimums also were excluded for this analysis.[52] The following analysis compares offenders sentenced to the non-incarceration (or reduced incarceration) alternatives available in their respective zones to offenders with sentences of confinement in excess of available alternatives.[53]

The Association of Sentencing Zone and Alternative Sentences[54]

As explained previously, guideline offense level and Criminal History Category combine to determine an offender's final sentencing range and the zone on the sentencing table in which that range is located. These factors also determine whether eligible offenders receive alternative sentences. Table 9[55] shows that offenders sentenced in the lower zones receive alternative sentences more often than those in the higher sentencing zones.

Table 9
Imposition of Alternative Sentences for Eligible Offenders
Fiscal Year 2007

		ALTERNATIVE APPLIED		ALTERNATIVE NOT APPLIED				ALTERNATIVE APPLIED		ALTERNATIVE NOT APPLIED	
	TOTAL	n	%	n	%		TOTAL	n	%	n	%
	5,378	**3,677**	**68.4**	**1,701**	**31.6**		**5,378**	**3,677**	**68.4**	**1,701**	**31.6**
SENTENCING ZONE						**GENDER**					
Zone A	**2,673**	2,070	77.4	603	22.6	Male	**3,451**	2,195	63.6	1,256	36.4
Zone B	**1,624**	1,068	65.8	556	34.2	Female	**1,927**	1,482	76.9	445	23.1
Zone C	**1,081**	539	49.9	542	50.1	**RACE**					
CRIMINAL HISTORY CATEGORY						White	**2,537**	1,801	71.0	736	29.0
I	**3,970**	3,071	77.4	899	22.6	Black	**1,621**	1,117	68.9	504	31.1
II	**487**	280	57.5	207	42.5	Hispanic	**860**	495	57.6	365	42.4
III	**572**	234	40.9	338	59.1	Other	**353**	258	73.1	95	26.9
IV	**192**	60	31.2	132	68.8	**AGE**					
V	**75**	13	17.3	62	82.7	Under 21	**280**	190	67.9	90	32.1
VI	**82**	19	23.2	63	76.8	21-25	**807**	510	63.2	297	36.8
OFFENSE TYPE						26-30	**828**	543	65.6	285	34.4
Robbery	**11**	5	45.5	6	54.5	31-35	**701**	458	65.3	243	34.7
Drugs	**734**	479	65.3	255	34.7	36-40	**694**	469	67.6	225	32.4
Firearms	**282**	168	59.6	114	40.4	41-50	**1,109**	778	70.1	331	29.9
Larceny	**707**	531	75.1	176	24.9	Over 50	**955**	726	76.0	229	24.0
Fraud	**1,634**	1,175	71.9	459	28.1	**EDUCATION**					
Other White Collar	**747**	537	71.9	210	28.1	No H.S.	**1,417**	832	58.7	585	41.3
Immigration	**370**	169	45.7	201	54.3	H.S. Grad.	**1,932**	1,354	70.1	578	29.9
Other	**893**	613	68.6	280	31.4	Some College	**1,386**	1,006	72.6	380	27.4
ACCEPTANCE OF RESPONSIBILITY						College Grad.	**567**	441	77.8	126	22.2
Reduction	**5,129**	3,554	69.3	1,575	30.7						
No Reduction	**249**	123	49.4	126	50.6						

Zone A offenders are sentenced to available alternatives most often (77.4%); Zone B offenders are sentenced to available alternatives less often (65.8%); and Zone C offenders are sentenced to available alternatives least often (49.9%).

Stricter sentencing for Zone C offenders is related to their more serious nature (relative to Zones A and B). This sentencing pattern persists for different categories of offenders. The following analysis examines this pattern for different types of offenders and demonstrates the relationship between their receipt of alternative sentences and sentencing zone (which is a proxy for offense severity, or, alternatively, offender culpability).

Zone A offenders are sentenced to available alternatives most often (77.4%); Zone B offenders are sentenced to available alternatives less often (65.8%); and Zone C offenders are sentenced to available alternatives least often (49.9%).

Criminal History

Although Criminal History Category is a component of an offender's sentencing zone, it also plays a separate role in determining whether offenders are sentenced to alternatives. Less serious offenders, as measured by prior criminal record, more frequently receive alternative sentences. Table 9 shows that the majority (77.4%) of offenders in Criminal History Category I who are eligible for alternative sentences receive them. This proportion is substantially higher than for the other categories, which range from 57.5 percent for Category II offenders to 17.3 percent for

About 80 percent of Category I offenders in Zones A (80.2%) and B (80.8%) are sentenced to alternatives.

Category V offenders. The tendency of sentencing courts to impose alternatives sparingly for offenders with more extensive criminal records is consistent with the guidelines' statement at USSG §5C1.1 Application Note 7 which states: "The use of substitutes for imprisonment as provided in subsections (c) and (d) is not recommended for most defendants with a criminal history category of III or above. Generally, such defendants have failed to reform despite the use of such alternatives."

Table 10[56] shows a consistent impact of sentencing zone in conjunction with Criminal History Category. About 80 percent of Category I offenders in Zones A (80.2%) and B (80.8%) are sentenced to alternatives. However, that proportion drops to 62.8 percent, for Category I offenders in Zone C. Offenders in the remaining five Criminal History Categories similarly are sentenced to alternatives at higher rates in Zone A compared to Zones B and C.

The placement within Criminal History Category and sentencing zone of female offenders accounts for their higher rates of alternative sentences when they qualify for alternatives. Table 9 shows that female offenders (76.9%) more often are sentenced to alternatives than male offenders (63.6%). A larger proportion of female offenders (80.8%) than male offenders (69.9%) are in

Table 10
Sentencing Zones and Alternatives for Eligible Offenders
Fiscal Year 2007

			ZONE A					ZONE B					ZONE C			
			ALTERNATIVE APPLIED		ALTERNATIVE NOT APPLIED			ALTERNATIVE APPLIED		ALTERNATIVE NOT APPLIED			ALTERNATIVE APPLIED		ALTERNATIVE NOT APPLIED	
	TOTAL	Total	n	%	n	%	Total	n	%	n	%	Total	n	%	n	%
TOTAL	**5,378**	**2,673**	**2,070**	**77.4**	**603**	**22.6**	**1,624**	**1,068**	**65.8**	**556**	**34.2**	**1,081**	**539**	**49.9**	**542**	**50.1**
CRIMINAL HISTORY CATEGORY																
I	**3,970**	**2,340**	1,876	80.2	464	19.8	**952**	769	80.8	183	19.2	**678**	426	62.8	252	37.2
II	**487**	**160**	110	68.7	50	31.3	**204**	129	63.2	75	36.8	**123**	41	33.3	82	66.7
III	**572**	**152**	77	50.7	75	49.3	**239**	103	43.1	136	56.9	**181**	54	29.8	127	70.2
IV	**192**	**10**	5	50.0	5	50.0	**109**	38	34.9	71	65.1	**73**	17	23.3	56	76.7
V	**75**	**11**	2	18.2	9	81.8	**44**	10	22.7	34	77.3	**20**	1	5.0	19	95.0
VI	**82**	**0**	0	-	0	-	**76**	19	25.0	57	75.0	**6**	0	-	6	100.0
OFFENSE TYPE																
Robbery	**11**	**5**	2	-	3	-	**3**	1	-	2	-	**3**	2	-	1	-
Drugs	**734**	**342**	247	72.2	95	27.8	**160**	96	60.0	64	40.0	**232**	136	58.6	96	41.4
Firearms	**282**	**99**	66	66.7	33	33.3	**83**	58	69.9	25	30.1	**100**	44	44.0	56	56.0
Larceny	**707**	**451**	377	83.6	74	16.4	**199**	123	61.8	76	38.2	**57**	31	54.4	26	45.6
Fraud	**1,634**	**838**	646	77.1	192	22.9	**528**	389	73.7	139	26.3	**268**	140	52.2	128	47.8
Other White Collar	**747**	**373**	288	77.2	85	22.8	**231**	160	69.3	71	30.7	**143**	89	62.2	54	37.8
Immigration	**370**	**81**	54	66.7	27	33.3	**151**	78	51.7	73	48.3	**138**	37	26.8	101	73.2
Other	**893**	**484**	390	80.6	94	19.4	**269**	163	60.6	106	39.4	**140**	60	42.9	80	57.1
ACCEPTANCE OF RESPONSIBILITY																
Reduction	**5,129**	**2,558**	2,007	78.5	551	21.5	**1,549**	1,032	66.6	517	33.4	**1,022**	515	50.4	507	49.6
No Reduction	**249**	**115**	63	54.8	52	45.2	**75**	36	48.0	39	52.0	**59**	24	40.7	35	59.3

Criminal History Category I. See Table 12.[57] In addition, female offenders (56.8%) are sentenced in Zone A at a higher rate than male offenders (45.7%), and male offenders (23.2%) are sentenced in Zone C at a higher rate than female offenders (14.5%). See Table 11.[58]

Table 11
Sentencing Zones for Offenders Eligible for Alternative Sentences
Fiscal Year 2007

		ZONE A		ZONE B		ZONE C	
	TOTAL	n	%	n	%	n	%
TOTAL	**5,378**	**2,673**	**49.7**	**1,624**	**30.2**	**1,081**	**20.1**
CRIMINAL HISTORY CATEGORY							
I	**3,970**	2,340	58.9	952	24.0	678	17.1
II	**487**	160	32.9	204	41.9	123	25.3
III	**572**	152	26.6	239	41.8	181	31.6
IV	**192**	10	5.2	109	56.8	73	38.0
V	**75**	11	14.7	44	58.7	20	26.7
VI	**82**	0	0.0	76	92.7	6	7.3
ACCEPTANCE OF RESPONSIBILITY							
Reduction	**5,129**	2,558	49.9	1,549	30.2	1,022	19.9
No Reduction	**249**	115	46.2	75	30.1	59	23.7
OFFENSE TYPE							
Robbery	**11**	5	45.5	3	27.3	3	27.3
Drugs	**734**	342	46.6	160	21.8	232	31.6
Firearms	**282**	99	35.1	83	29.4	100	35.5
Larceny	**707**	451	63.8	199	28.1	57	8.1
Fraud	**1,634**	838	51.3	528	32.3	268	16.4
Other White Collar	**747**	373	49.9	231	30.9	143	19.1
Immigration	**370**	81	21.9	151	40.8	138	37.3
Other	**893**	484	54.2	269	30.1	140	15.7
GENDER							
Male	**3,451**	1,579	45.7	1,070	31.0	802	23.2
Female	**1,927**	1,094	56.8	554	28.7	279	14.5
RACE							
White	**2,537**	1,388	54.7	705	27.8	444	17.5
Black	**1,621**	825	50.9	533	32.9	263	16.2
Hispanic	**860**	259	30.1	273	31.7	328	38.1
Other	**353**	197	55.8	111	31.4	45	12.8
AGE							
Under 21	**280**	141	50.4	62	22.1	77	27.5
21-25	**807**	396	49.1	233	28.9	178	22.1
26-30	**828**	399	48.2	275	33.2	154	18.6
31-35	**701**	332	47.4	218	31.1	151	21.5
36-40	**694**	344	49.5	208	30.0	142	20.5
41-50	**1,109**	555	50.1	343	30.9	211	19.0
Over 50	**955**	502	52.6	285	29.8	168	17.6
EDUCATION							
No High School	**1,417**	562	39.7	471	33.2	384	27.1
H.S. Grad.	**1,932**	988	51.1	587	30.4	357	18.5
Some College	**1,386**	740	53.4	408	29.4	238	17.2
College Grad.	**567**	341	60.1	129	22.8	97	17.1

The importance of Criminal History Category also is demonstrated in the differences between the imposition of alternative sentences for White and Black offenders. There is virtually no difference between the proportions of eligible White (76.8%) and Black (77.9%) Zone A offenders sentenced to alternatives. See Table 13.[59] There are differences, however, comparing alternative sentences imposed for White and Black offenders sentenced in Zones B and C. A larger proportion of White offenders in Zone B (69.9%) and Zone C (54.5%) are sentenced to alternatives compared to Black offenders in Zone B (64.5%) and Zone C (49.4%). See Table 13.

The overwhelming majority of White (87.2%) and Black (85.9%) offenders sentenced in Zone A, in which there is a similar rate of alternative sentences, are in Criminal History Category I. However, in Zones B and C, where rates of alternative sentences

Table 12
Criminal History Categories for Offenders Eligible for Alternative Sentences
Fiscal Year 2007

		CATEGORY I		CATEGORY II		CATEGORY III		CATEGORY IV		CATEGORY V		CATEGORY VI	
	TOTAL	n	%	n	%	n	%	n	%	n	%	n	%
TOTAL	**5,378**	**3,970**	**73.8**	**487**	**9.1**	**572**	**10.6**	**192**	**3.6**	**75**	**1.4**	**82**	**1.5**
OFFENSE TYPE													
Robbery	**11**	7	63.6	1	9.1	2	18.2	1	9.1	0	0.0	0	0.0
Drugs	**734**	553	75.3	59	8.0	81	11.0	21	2.9	11	1.5	9	1.2
Firearms	**282**	213	75.5	25	8.9	30	10.6	6	2.1	4	1.4	4	1.4
Larceny	**707**	527	74.5	57	8.1	67	9.5	25	3.5	14	2.0	17	2.4
Fraud	**1,634**	1,234	75.5	160	9.8	137	8.4	51	3.1	25	1.5	27	1.6
Other White Collar	**747**	566	75.8	62	8.3	78	10.4	30	4.0	7	0.9	4	0.5
Immigration	**370**	231	62.4	55	14.9	70	18.9	11	3.0	2	0.5	1	0.3
Other	**893**	639	71.6	68	7.6	107	12.0	47	5.3	12	1.3	20	2.2
GENDER													
Male	**3,451**	2,413	69.9	329	9.5	424	12.3	153	4.4	63	1.8	69	2.0
Female	**1,927**	1,557	80.8	158	8.2	148	7.7	39	2.0	12	0.6	13	0.7
RACE													
White	**2,537**	1,947	76.7	203	8.0	242	9.5	81	3.2	31	1.2	33	1.3
Black	**1,621**	1,095	67.6	177	10.9	207	12.8	66	4.1	39	2.4	37	2.3
Hispanic	**860**	631	73.4	81	9.4	101	11.7	33	3.8	5	0.6	9	1.1
Other	**353**	292	82.7	25	7.1	21	6.0	12	3.4	0	0.0	3	0.8
AGE													
Under 21	**280**	221	78.9	21	7.5	30	10.7	8	2.9	0	0.0	0	0.0
21-25	**807**	585	72.5	80	9.9	105	13.0	24	3.0	7	0.9	6	0.7
26-30	**828**	539	65.1	97	11.7	118	14.3	35	4.2	21	2.5	18	2.2
31-35	**701**	482	68.8	67	9.6	75	10.7	38	5.4	19	2.7	20	2.8
36-40	**694**	490	70.6	77	11.1	72	10.4	27	3.9	10	1.4	18	2.6
41-50	**1,109**	832	75.0	85	7.7	119	10.7	44	4.0	13	1.2	16	1.4
Over 50	**955**	817	85.5	60	6.3	53	5.5	16	1.7	5	0.5	4	0.4
EDUCATION													
No High School	**1,417**	877	61.9	163	11.5	238	16.8	83	5.9	27	1.9	29	2.1
H.S. Grad.	**1,932**	1,392	72.0	189	9.8	207	10.7	72	3.7	31	1.6	41	2.1
Some College	**1,386**	1,136	82.0	97	7.0	103	7.4	28	2.0	15	1.1	7	0.5
College Grad.	**567**	516	91.0	28	4.9	14	2.5	8	1.4	1	0.2	0	0.0

differ by race, larger proportions of White offenders are in Criminal History Category I (61.4% in Zone B and 68.2% in Zone C), compared to Black offenders, 46.3 percent in Zone B and 52.8 percent in Zone C.

Criminal History Category also is related to the varying rates of alternative sentences for offenders with different levels of education. Offenders with higher levels of education are more likely than less educated offenders to be sentenced to alternatives. Table 9 shows that more than three-quarters (77.8%) of offenders with at least a college degree were sentenced to an alternative. In contrast, less than two-thirds (58.7%) of offenders without a high school diploma were sentenced to an alternative. These two groups of offenders also differ substantially in their Criminal History Categories. The overwhelming majority (91.0%) of college graduates are in Criminal History I, compared to less than two-thirds (61.9%) of high-school dropouts. See Table 12.

Offenders with higher levels of education are more likely than less educated offenders to be sentenced to alternatives.

Criminal History Category has a lesser impact on the rates of alternative sentences for offenders in different age groups. Offenders older than 50 years are sentenced to alternatives (76.0%) more often than offenders in the younger age groups. Rates of alternative sentences for the younger age groups range from 63.2 percent for offenders aged 21-25 years to 70.1 percent for offenders aged 41-50 years. See Table 9. The overwhelming

Table 13
Sentencing Zones and Alternatives for Eligible Offenders
Fiscal Year 2007

			ZONE A					ZONE B					ZONE C			
			ALTERNATIVE APPLIED		ALTERNATIVE NOT APPLIED			ALTERNATIVE APPLIED		ALTERNATIVE NOT APPLIED			ALTERNATIVE APPLIED		ALTERNATIVE NOT APPLIED	
	TOTAL	Total	n	%	n	%	Total	n	%	n	%	Total	n	%	n	%
TOTAL	**5,378**	**2,673**	**2,070**	**77.4**	**603**	**22.6**	**1,624**	**1,068**	**65.8**	**556**	**34.2**	**1,081**	**539**	**49.9**	**542**	**50.1**
GENDER																
Male	**3,451**	**1,579**	1,179	74.7	400	25.3	**1,070**	656	61.3	414	38.7	**802**	360	44.9	442	55.1
Female	**1,927**	**1,094**	891	81.4	203	18.6	**554**	412	74.4	142	25.6	**279**	179	64.2	100	35.8
RACE																
White	**2,537**	**1,388**	1,066	76.8	322	23.2	**705**	493	69.9	212	30.1	**444**	242	54.5	202	45.5
Black	**1,621**	**825**	643	77.9	182	22.1	**533**	344	64.5	189	35.5	**263**	130	49.4	133	50.6
Hispanic	**860**	**259**	198	76.4	61	23.6	**273**	153	56.0	120	44.0	**328**	144	43.9	184	56.1
Other	**353**	**197**	159	80.7	38	19.3	**111**	77	69.4	34	30.6	**45**	22	48.9	23	51.1
AGE																
Under 21	**280**	**141**	106	75.2	35	24.8	**62**	38	61.3	24	38.7	**77**	46	59.7	31	40.3
21-25	**807**	**396**	295	74.5	101	25.5	**233**	137	58.8	96	41.2	**178**	78	43.8	100	56.2
26-30	**828**	**399**	290	72.7	109	27.3	**275**	173	62.9	102	37.1	**154**	80	52.0	74	48.0
31-35	**701**	**332**	258	77.7	74	22.3	**218**	129	59.2	89	40.8	**151**	71	47.0	80	53.0
36-40	**694**	**344**	265	77.0	79	23.0	**208**	136	65.4	72	34.6	**142**	68	47.9	74	52.1
41-50	**1,109**	**555**	438	78.9	117	21.1	**343**	234	68.2	109	31.8	**211**	106	50.2	105	49.8
Over 50	**955**	**502**	415	82.7	87	17.3	**285**	221	77.5	64	22.5	**168**	90	53.6	78	46.4
EDUCATION																
No High School	**1,417**	**562**	415	73.8	147	26.2	**471**	259	55.0	212	45.0	**384**	158	41.2	226	58.8
H.S. Grad.	**1,932**	**988**	775	78.4	213	21.6	**587**	393	67.0	194	33.0	**357**	186	52.1	171	47.9
Some College	**1,386**	**740**	575	77.7	165	22.3	**408**	296	72.5	112	27.5	**238**	135	56.7	103	43.3
College Grad.	**567**	**341**	273	80.1	68	19.9	**129**	108	83.7	21	16.3	**97**	60	61.9	37	38.1

Sentencing zone is of less importance for rates of alternative sentences for offenders of different ages. The rates of offenders sentenced in Zone A are nearly equal for each offender age group; approximately half of the offenders in each age group is sentenced in this zone. However, offenders over 50 years do have the smallest proportion of offenders sentenced in Zone C.

majority of offenders older than 50 years (85.5%) is in Criminal History Category I. Rates of younger offenders in Criminal History Category I range from 65.1 percent for offenders age 26-30 years to 78.9 percent for offenders under the age of 21 years. See Table 12. Sentencing zone is of less importance for rates of alternative sentences for offenders of different ages. The rates of offenders sentenced in Zone A are nearly equal for each offender age group; approximately half of the offenders in each age group is sentenced in this zone. However, offenders over 50 years do have the smallest proportion of offenders sentenced in Zone C.

Offense Severity

Table 10 shows that, in general, the likelihood of an offender receiving an alternative sentence decreases in the higher sentencing zones regardless of offense type, as would be expected with the confinement requirements for those zones. However, firearms (59.6%) and immigration (45.7%) offenders are less likely, overall, to receive alternative sentences. See Table 9. The more serious conduct of firearms and immigration offenders, as indicated by guideline factors, is associated with their lower rates of alternative sentences.

Of the firearms offenders sentenced under USSG §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition),[60] the majority (89.1%) have guideline base offense levels of 12 or 14. These offenders' guideline calculations, therefore, originate in the two most serious Zones, C or D, of the sentencing table. Despite the fact that the final offense levels for firearms offenders ultimately leave them equally distributed among Zones A (35.1%), B (29.4%), and C (35.5%) (Table 11), they are sentenced to alternatives comparatively less often than other offenders. The seriousness of firearms offenses in general, and as measured by guideline base offense levels, are associated with their lower rates of alternative sentences.[61]

The more serious conduct of firearms and immigration offenders, as indicated by guideline factors, is associated with their lower rates of alternative sentences.

Immigration offenders also are less likely to receive alternative sentences compared to other offenders. Offense severity also is relevant to sentences for immigration offenders (all of whom are United States citizens). All of the offenders sentenced under the immigration guideline (USSG §2L1.1, Smuggling, Transporting, or Harboring an Unlawful Alien)[62] and eligible for alternative sentences have relatively serious (Zone C) guideline base offense levels of 12. However, sentences for these offenders largely are influenced by sentencing practices in a single district. The largest proportion (48.4%) of immigration offenders sentenced under USSG §2L1.1 is in the Southern District of Texas. Sentences for immigration offenders in that district are particularly relevant because (1) a larger proportion of immigration offenders in that district (61.3%) are in Zone C compared to all other districts (30.8%) and (2) a smaller proportion of immigration offenders in that district (31.4%) are sentenced to alternatives compared to all other districts (56.2%).

This sentencing pattern for immigration offenders also is reflected in the rates of alternative sentences for Hispanic offenders. Overall, White (71.0%) and Black (68.9%) offenders are sentenced to alternatives at rates substantially higher than Hispanic offenders

(57.6%). See Table 9. Hispanic offenders account for more than two-thirds (68.6%) of the immigration offenders described above. The overrepresentation of Hispanic offenders among immigration offenders accounts for their lower rates of alternative sentences compared to White and Black offenders.

Offenders sentenced for offenses other than firearms and immigration are more likely to receive alternative sentences. Offenders sentenced for the financial crimes of larceny (75.1%), fraud (71.9%), and other white collar offenses (71.9%) are most often sentenced to alternatives (Table 9), and these offenders are more likely to be sentenced in Zones A and B. See Table 11. Offense severity also is relevant for sentences for these offenders. Most of these financial offenders (83.5% of the larceny, fraud, and other white collar offenses, combined) are sentenced under the theft and fraud guideline (USSG §2B1.1) which has base offense levels (six and seven) in Zone A. The majority (56.9%) of the offenders sentenced under the theft and fraud guideline ultimately are sentenced in Zone A. Aside from offense severity, financial offenses may be more suited to alternative sentences because of restitution. A substantial proportion of larceny (67.6%), fraud (65.2%), and other white collar (58.9%) offenders were ordered to pay restitution as part of their sentences. To the extent that these offenders are sentenced to prison alternatives, they may be better positioned to pay restitution.

Drug offenders eligible for alternative sentences receive those alternatives at a relatively high rate (65.3%).

Drug offenders eligible for alternative sentences also receive those alternatives at a relatively high rate (65.3%). See Table 9. That such a large proportion of drug offenders receive alternative sentences is unexpected because so many (31.6%) (Table 11) are sentenced in Zone C and offenders sentenced in Zone C are less likely, overall, to receive alternative sentences compared to offenders in Zones A and B.

Criminal History Category and drug type combine to reduce the Zone C effect on alternative sentences for drug offenders. More than half (54.6%) of the drug offenders are marijuana offenders. Marijuana offenders account for an even larger proportion (64.7%) of the drug offenders sentenced in Zone C. Nearly two-thirds (65.3%) of marijuana offenders sentenced in Zone C are sentenced to alternatives. Criminal History Category also is a factor influencing alternative sentences for drug offenders. Nearly all (92.0%) of the Zone C marijuana offenders are in Criminal History Category I. The predominance of marijuana offenders with little or no prior records contributes to the unusually high rate of alternative sentences for Zone C drug offenders.

The overwhelming majority (95.4%) of offenders eligible for alternative sentences receive offense level decreases for acceptance and, among those, 69.3 percent are sentenced to available alternatives.

Another indicator of offender seriousness is the application of Acceptance of Responsibility (USSG §3E1.1). This guideline provision provides for a two- or three-level offense level decrease for offenders who clearly accept responsibility for their offenses.[63] Offenders who receive these offense level reductions are more likely to receive alternative sentences. The overwhelming majority (95.4%) of offenders eligible for alternative sentences receive offense level decreases for acceptance and, among those, 69.3 percent are sentenced to available alternatives. Among the minority of offenders (4.6%) who do not receive offense level decreases for Acceptance of Responsibility, only half (49.4%) are sentenced to available alternatives. See Table 9.

Sentencing zone also is relevant in the relationship between Acceptance of Responsibility and offenders receiving alternative sentences. The overwhelming majority of offenders with offense level decreases for Acceptance of Responsibility in Zones A (78.5%) and B (66.6%) receive alternative sentences, compared to one-half (50.4%) sentenced in Zone C. A similar pattern exists for offenders without offense level decreases for Acceptance of Responsibility, but the very small numbers of offenders in those categories make the comparison less meaningful. See Table 10.

Conclusion

Effective alternative sanctions are important options for federal, state, and local criminal justice systems. For the appropriate offenders, alternatives to incarceration can provide a substitute for costly incarceration.

In the Sentencing Reform Act of 1984, Congress stated, in part, that "The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or otherwise serious offense."[64] In turn, the Commission incorporated a mix of sentence types into the guidelines so that courts have the necessary flexibility to sentence appropriately all types of offenders.

Federal sentencing courts have used these tools over the years, primarily for fraud and white collar offenses, and, most importantly, for United States citizens. The issues regarding non-citizen offenders, while beyond the scope of this monograph, are of legal and social interest and consequence to the federal criminal justice community. With respect to United States citizens, it is impossible to discern from available data the exact reasons sentencing courts have in mind when deciding whether to impose alternative sentences. This analysis, however, suggests some factors that are relevant to those decisions, particularly for less serious offenders and offenders with little or no prior criminal history.

Effective alternative sanctions are important options for federal, state, and local criminal justice systems. For the appropriate offenders, alternatives to incarceration can provide a substitute for costly incarceration. Ideally, alternatives also provide those offenders opportunities by diverting them from prison (or reducing time spent in prison) and into programs providing the life skills and treatment necessary to become law-abiding and productive members of society.

Endnotes

1. For the purposes of this paper, alternative sentences are defined as those involving probation and community confinement as described in the federal sentencing guidelines at USSG §5C1.1.

2. The United States Sentencing 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. Data for the analyses in this paper are from the United States Sentencing Commission's fiscal year datafiles.

3. Caputo, Gail A. 2004. *Intermediate Sanctions in Corrections.* University of North Texas Press.

4. *Id.*

5. *Id.*

6. Benda, Brent B. 2005. *Introduction: Boot Camps Revisited: Issues, Problems, Prospects* in Rehabilitation Issues, Problems, and Prospects in Boot Camp. Ed. Brent B. Benda and Nathaniel J. Pallone. Hawthorne Press.

7. The PEW Center on the States. 2008. *One in 100: Behind Bars in America 2008.*

8. *Id*.

9. *Id*.

10. Pub. L. No. 98–473.

11. *See* 28 U.S.C. § 994(j).

12. Probation terms are authorized for felony offenders for one to five years and for misdemeanor offenders for no more than five years.

13. Pub. L. No. 100–690.

14. *See* 18 U.S.C. § 3563 and 18 U.S.C. § 3583.

15. *See* 18 U.S.C. § 3561 and USSG §5B1.1.

16. 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.

17. *See* 28 U.S.C. § 994(i).

18. For example, mandatory conditions of probation prohibit probationers from committing a new crime and unlawfully possessing and/or using controlled substances. *See* 18 U.S.C. § 3563. The law also requires that offenders, as appropriate, attend domestic violence rehabilitation programs, provide DNA samples, submit to drug testing, and/or adhere to fine payment schedules.

19. Discretionary conditions of probation at the court's disposal include requiring the offender to provide family support and/or restitution, maintain consistent employment, refrain from any substance use, and obtain specified medical or psychiatric treatment. *See* 18 U.S.C. § 3563(b). Policy statements of both the United States Sentencing Commission (at USSG §§5B1.3(c) and (d)) and the Judicial Conference of the United States distinguish between *standard* and *special* discretionary conditions of probation.

20. *See* USSG §5B1.3(e).

21. 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

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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.

22. *See* USSG §5C1.1.

23. 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.

24. Non-guideline sentences are sentences imposed below the guideline range that only mention *U.S. v. Booker*, 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.

25. For example, a sentence range of eight to 14 months associated with a final offense level of 13 and Criminal History Category of III is in Zone C of the sentencing table. If the court sentences the offender to the minimum of eight months, it may impose a term of supervised release with conditions of community confinement for up to four of the eight months.

26. Of the 72,865 cases sentenced in fiscal yesar 2007, 63,906 have complete sentencing guideline application information and are included in the table.

27. This analysis is limited to information contained in the sentencing documents submitted to the Commission. Courts are required to submit sentencing documentation for felonies and Class A misdemeanors. Sentences for petty offenses are not included in the Commission's datafile. In fiscal year 2007, the Administrative Office of the United States Courts reported 67,759 convictions for petty offenses (*See Judicial Business of the United States Courts, 2007*). Offenders convicted of petty offenses are more likely to be sentenced to alternatives to prison compared to offenders convicted of felonies or Class A misdemeanors. In addition, drug possessing offenders receiving special probation under 18 U.S.C. § 3607 do not have judgments of conviction and are not included in the Commission's datafile.

28. Of the 72,865 cases sentenced in fiscal year 2007, 63,906 have complete sentencing guideline application information. Of the 63,906 cases, 96 have been excluded that were not sentenced to prison or probation. An additional 43 cases have been excluded due to missing information on type of sentence imposed. Prison/Community Split includes all cases in which offenders received prison and conditions of confinement as defined in USSG §5C1.1.

29. Of the 72,865 offenders sentenced in fiscal year 2007, 3,346 were excluded from this calculation due to missing citizenship status. Of the 26,016 non-citizen offenders, 80.3 percent are in the United States illegally.

30. *See* 8 U.S.C. § 1227.

31. Deportable alien status is one of a number of public safety factors considered in the assessment of an inmate's overall custody classification. Federal Bureau of Prisons. Inmate Security Designation and Custody Classification Program Statement. 2006. *http://www.bop.gov/policy/progstat/5100_008.pdf*.

32. A total of 817 non-United States citizens were sentenced to non-prison sentences in fiscal year 2007. Slightly more than half (58.1%) of these offenders were sentenced to probation only. Primarily, these offenders were convicted of immigration (28.0%) and fraud (28.3%) offenses.

33. Of the 72,865 cases sentenced in fiscal year 2007, 63,906 have complete sentencing guideline application information. Of these, 153 have been excluded due to missing information on citizenship status.

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34. The proportions of offenders in Zone D who are United States citizens (66.9%) and non-citizens (33.1%) reflect more closely the proportion of each group in the overall federal offender population.

35. Of the 72,865 cases sentenced in fiscal year 2007, 63,906 have complete sentencing guideline application information. Of these, 22,923 are non-United States citizens. Of the 22,923 non-citizens, 12 have been excluded that were not sentenced to prison or probation. An additional 13 cases have been excluded due to missing information on type of sentence imposed. Prison/Community Split includes all cases in which offenders received prison and conditions of confinement as defined in USSG §5C1.1.

36. Of the 72,865 cases sentenced in fiscal year 2007, 63,906 have complete sentencing guideline application information. Of these, 40,830 are United States citizens. Of the 40,830 cases, 80 have been excluded that were not sentenced to prison or probation. An additional 30 cases have been excluded due to missing information on type of sentencing imposed. Prison/Community Split includes all cases in which offenders received prison and conditions of confinement as defined in USSG §5C1.1.

37. Of the 697,451 cases sentenced from fiscal year 1997 through fiscal year 2007, 5,416 have been excluded that were not sentenced to prison or probation. An additional 3,772 cases have been excluded due to missing information on sentence imposed.

38. The increased rate of imprisonment is, in part, attributable to the higher proportion of immigration offenders, who are not eligible for alternative sentences, in the federal caseload. For example, immigration offenses accounted for 13.7% of the federal caseload in 1997 (*1997 Sourcebook of Federal Sentencing Statistics*) and nearly doubled to 24.3% in 2007 (*2007 Sourcebook of Federal Sentencing Statistics*).

39. Of the 697,451 cases sentenced from fiscal year 1997 through fiscal year 2007, 103,454 have been excluded due to incomplete sentencing guideline application information. Of the remaining 593,997 cases, six have been excluded due to missing information on sentencing zone. An additional 2,828 cases have been excluded due to missing information on citizenship status. An additional 1,163 cases have been excluded that were not sentenced to terms of prison or probation, and 943 cases have been excluded due to missing information on type of sentence imposed. Of the remaining cases, the 50,115 sentenced in Zone A are represented.

40. Of the 697,451 cases sentenced from fiscal year 1997 through fiscal year 2007, 103,454 have been excluded due to incomplete sentencing guideline application information. Of the remaining 593,997 cases, six have been excluded due to missing information on sentencing zone. An additional 2,828 cases have been excluded due to missing information on citizenship status. An additional 1,163 cases have been excluded that were not sentenced to terms of prison or probation, and 943 cases have been excluded due to missing information on type of sentence imposed. Of the remaining cases, the 45,679 sentenced in Zone B are represented.

41. Of the 697,451 cases sentenced from fiscal year 1997 through fiscal year 2007, 103,454 have been excluded due to incomplete sentencing guideline application information. Of the remaining 593,997 cases, six have been excluded due to missing information on sentencing zone. An additional 2,828 cases have been excluded due to missing information on citizenship status. An additional 1,163 cases have been excluded that were not sentenced to terms of prison or probation, and 943 cases have been excluded due to missing information on type of sentence imposed. Of the remaining cases, the 36,892 sentenced in Zone C are represented.

42. Criminal aliens are subject to deportation and therefore are ineligible for community-based sentences. *See* 8 U.S.C. § 1227(a)(2).

43. Of the 43,503 cases sentenced in fiscal year 2007 involving United States citizens, 111 cases that were not sentenced to prison or probation have been excluded. An additional 40 cases missing information on sentence imposed have been excluded. The Drug category includes the following offense types: Trafficking, Use of a Communication Facility, and Simple Possession. The Non-Fraud White-Collar category includes the following offense types: Embezzlement, Forgery/Counterfeiting, Bribery, Money Laundering, and Tax. The Other category includes a variety of offense types. *See* Appendix A of the *2007 Sourcebook of Federal Sentencing Statistics*. Of the 43,352 cases, 2,632 have been excluded due to missing sentencing guideline application information.

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44. The Non-Fraud White Collar category includes the following offense types: Embezzlement, Forgery/Counterfeiting, Bribery, Money Laundering, and Tax. *See* Appendix A in *2007 Sourcebook of Federal Sentencing Statistics* for definitions of offense type categories.

45. Of the 43,503 cases sentenced in fiscal year 2007 involving United States citizens, 111 cases that were not sentenced to prison or probation have been excluded. An additional 40 cases missing information on sentence imposed have been excluded. Cases missing information on length of sentence imposed have been excluded. Calculations for average prison terms exclude 323 cases sentenced to life. The Combination of Alternatives category includes cases with two or more alternative sentences imposed: home confinement, community confinement, and/or intermittent confinement. Of the 42,352 cases, 124 have been excluded due to missing information on monetary penalties. Monetary penalties include fine, cost of supervision, and/or restitution. Of the 43,228 cases with monetary penalties imposed, 65 have been excluded due to missing information on penalty amount. The median represents the midpoint, so that half of the cases have values below the median and the remaining half have values above the median. Of the 43,352 cases, 414 have been excluded due to missing information on sentence relative to the guideline range. The Above Range category includes both departures and variances above the guideline range. The Government-Sponsored Below Range category includes USSG §5K1.1 Substantial Assistance Departures, USSG §5K3.1 Early Disposition Program Departures, and other government-sponsored downward departures. The Other Below Range category includes both departures and variances below the guideline range.

46. *See* USSG §§5E1.1 and 5E1.2 for information on the imposition of restitution and fines.

47. The median represents the midpoint such that half of the monetary penalties are less than the median value and the remaining half of monetary penalties are greater than the median value.

48. *See* 18 U.S.C. § 3553(a).

49. Congress, in 28 U.S.C. § 994(d), directs the Commission to "assure that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders." The Commission considers certain offender characteristics such as age as "not ordinarily relevant in determining whether a departure is warranted" but "[u]nless expressly stated, this does not mean that the Commission views such circumstances as necessarily inappropriate to the determination of the sentence. . . ." *See* USSG §5H.

50. Of the 43,503 cases sentenced in fiscal year 2007 involving United States citizens, 111 cases that were not sentenced to prison or probation have been excluded. An additional 40 cases missing information on sentence imposed have been excluded. Of the 43,352 cases, 98 have been excluded due to missing information on offender race. Of the 43,352 cases, eight have been excluded due to missing information on offender gender. Of the 43,352 cases, 41 have been excluded due to missing information on offender age.

51. *See* 18 U.S.C. § 3553(c) for instances requiring the sentencing court to provide reasons for a sentence.

52. United States Attorney's offices in the federal judicial districts decline to prosecute cases for a number of reasons. To the extent that (presumably) less serious offenses are not prosecuted, the proportion of offenders eligible for alternative sentences in a district may be lowered. Finally, the data cannot account for the court's considerations of such crucial issues as availability of appropriate alternative resources in a district, or other information that may be known to the court at the time of sentencing.

53. For this analysis, Zone A probation sentences are considered alternatives and any confinement sentence for Zone A offenders is considered in excess of available alternatives. Zone B sentences of probation with confinement conditions and split sentences that include imprisonment are considered alternatives; sentences of only prison are considered in excess of the available alternatives. Zone C sentences that include any length of community confinement substituted for imprisonment are considered alternatives; sentences of only prison are considered in excess of the available alternatives.

54. A number of factors were included in this analysis. However, only those factors that demonstrated some association with alternative sentences are reviewed here.

55. Of the 72,865 cases sentenced in fiscal year 2007, 5,378 are included in this table with complete sentencing guideline application information. Only United States citizens are included. Offenders with complete information on type of sentence imposed, sentenced in Zones A, B, or C in the Sentencing Table, and

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sentenced within the sentencing guideline range are included. Offenders subject to mandatory minimum sentences have been excluded. Of the 603 Zone A offenders not sentenced to alternatives, 109 were sentenced to time served. Of the 556 Zone B offenders not sentenced to alternatives, 104 were sentenced to time served. Of the 542 Zone C offenders not sentenced to alternatives, 37 were sentenced to time served. Definitions of offense type categories are in Appendix A of the *2007 Sourcebook of Federal Sentencing Statistics.*

56. Of the 72,865 cases sentenced in fiscal year 2007, 5,378 are included in this table with complete sentencing guideline application information. Only United States citizens are included. Offenders with complete information on type of sentence imposed, sentenced in Zones A, B, or C in the Sentencing Table, and sentenced within the sentencing guideline range are included. Offenders subject to mandatory minimum penalties have been excluded. Definitions of offense type categories are in Appendix A of the *2007 Sourcebook of Federal Sentencing Statistics.*

57. *Id*.

58. *Id*.

59. *Id*.

60. Of the 282 firearms offenders sentenced in fiscal year 2007, 248 (87.9%) were sentenced under USSG §2K2.1 and included in this part of the analysis.

61. The firearms category contains a relatively small number of offenders. Because of the small numbers of cases in each category, caution should be used in making generalizations or conclusions about these offenders.

62. Of the 370 immigration offenders sentenced in fiscal year 2007, 283 (76.5%) were sentenced under USSG §2L1.1 and included in this part of the analysis.

63. *See* USSG §3E1.1 for requirements for the two- and three-level decreases.

64. *See* 28 U.S.C. § 994(j).