

Practice TIPS

FEDERAL SENTENCING, PRISON AND POST-CONVICTION NEWS

February 24, 2015

Approximately 97% of all federal criminal defendants plead guilty. Of those who proceed to trial, 75% are convicted. Almost 99% will ultimately be sentenced. Over 87% will be sentenced to prison. Thus, for most offenders “How much time am I going to do?”, “Where am I going to do it?” and “How soon am I going to get home?” are the three key concerns. The following tips are offered in an effort to secure the lowest possible sentence.

DISPARITY, DISPARITY, DISPARITY: ARGUE SENTENCING TRENDS

Below-guideline variance sentences are on the rise, while sentences within the guidelines continue to decrease.

According to statistics compiled by the U.S. Sentencing Commission since Booker, non-government-sponsored (e.g., non-§5K1.1 departures) the number of below-guideline sentences imposed increased from 12% of all sentences in 2006 to 20.8% in 2014.

The increase in below-guideline sentences is even more dramatic when looking at particular offense categories. For example, non-government-sponsored below-guideline sentences for child pornography offenses—perhaps the most controversial

of all types of guideline sentences—have more than doubled from only 20.8% of all such sentences imposed in 2006 to 43.6% in 2014. Fraud offenders constitute nearly 10% of the overall federal sentencing caseload--the fourth largest of all major offense categories (behind Immigration, Drug Trafficking, and Firearms).

The courts sentenced below the guideline range on their initiative 28.4% of the time—a rate that has nearly doubled from 15.8% in 2006. The chart below shows the trends for non-government-sponsored below-guidelines sentences in the top five offense categories, as well as the trend for sentences overall.

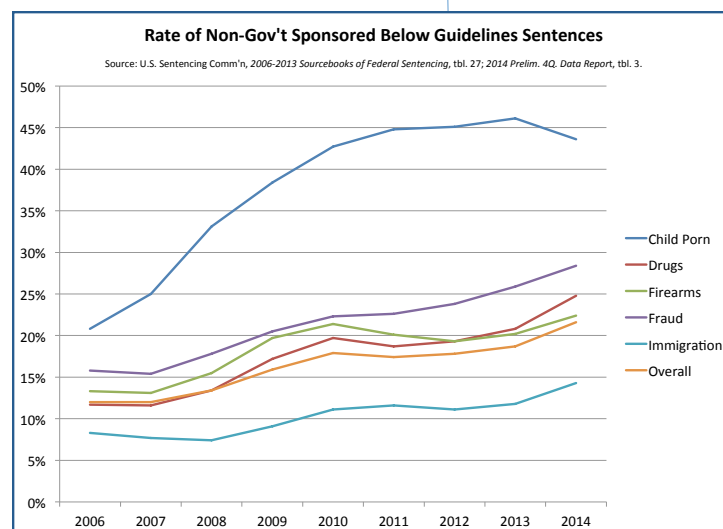


Chart Courtesy of Mark H. Allenbaugh, Esq.

A PRISON SENTENCE NEED NOT BE SERVED IN PRISON

A prison sentence need not be served in prison.

Judges sometimes impose a split sentence, that is, a sentence that combines incarceration and home confinement.

Zone C of the Federal Sentencing Guidelines Table allows a judge to impose a split sentence with guideline ranges 10-16 months or 12-18 months. The period of incarceration will likely be served in a federal prison camp. In some cases, however,

an offender may be designated by the Bureau of Prisons to serve the sentence in a detention facility's Work Cadre Program.

To ensure that the client does not have to be incarcerated in a federal prison camp, let alone a detention facility which houses all sorts of inmates, suggest that a sentence of probation or time served plus supervised release conditioned upon the same amount of time in a Residential Reentry Center (RRC) be imposed. You may

even want to suggest more time in the RRC than called for by the guidelines, or a period of additional home confinement.



ABOUT THE LAW OFFICES OF ALAN ELLIS

The Law Offices of Alan Ellis is a federal sentencing, prison and post-conviction, appeal and 2255 motion law firm representing federal criminal defendants and inmates throughout the United States. The firm endeavors to obtain for its clients the lowest possible sentence and if it is one of incarceration, the best facility possible with release at the earliest opportunity. Alan Ellis, a Past President of the National Association of Criminal Defense Lawyers (NACDL), has defended 1,000+ cases over 47 years. He has authored over 120 articles and books, including the Federal Sentencing Guidebook and the Federal Prison Guidebook. He is a frequent speaker and has more than 70 lectures and speaking engagements to his credit.

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