

# *An Overview of the* **UNITED STATES SENTENCING COMMISSION**



The United States Sentencing Commission is an independent agency in the judicial branch of government. Its principal purposes are: (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues, serving as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public.

The U.S. Sentencing Commission was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. The sentencing guidelines established by the Commission are designed to

- incorporate the purposes of sentencing (*i.e.*, just punishment, deterrence, incapacitation, and rehabilitation);
- provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating and mitigating factors;
- reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

The Commission is charged with the ongoing responsibilities of evaluating the effects of the sentencing guidelines on the criminal justice system, recommending to Congress appropriate modifications of substantive criminal law and sentencing procedures, and establishing a research and development program on sentencing issues.

In addition to creating the Sentencing Commission, the Sentencing Reform Act abolished parole for offenders sentenced under the guidelines so that the sentence received would be basically the sentence served. Under the law, inmates may earn up to 54 days of credit a year for good behavior.

## **A Brief History of Federal Sentencing Guidelines**

Disparity in sentencing, certainty of punishment, and crime control have long been issues of interest for Congress, the criminal justice community, and the public. Before guidelines were developed, judges could give a defendant a sentence that ranged anywhere from probation to the maximum penalty for the offense. After more than a decade of research and debate, Congress

decided that (1) the previously unfettered sentencing discretion accorded federal trial judges needed to be structured; (2) the administration of punishment needed to be more certain; and (3) specific offenders (*e.g.*, white collar and violent, repeat offenders) needed to be targeted for more serious penalties. Consequently, Congress created a permanent commission charged with formulating national sentencing guidelines to define the parameters for federal trial judges to follow in their sentencing decisions.

The resulting sentencing guidelines went into effect November 1, 1987. Shortly after implementation of the guidelines, defendants began challenging the constitutionality of the Sentencing Reform Act on the basis of improper legislative delegation and violation of the separation of powers doctrine. The U.S. Supreme Court rejected these challenges on January 18, 1989, in *Mistretta v. United States* and upheld the constitutionality of the Commission as a judicial branch agency. Since nationwide implementation in January 1989, federal judges have sentenced more than 700,000 defendants under the guidelines.

In January of 2005, the U.S. Supreme Court decided *United States v. Booker*, 125 S.Ct. 738 (2005). The *Booker* decision addressed the question left unresolved by the Court's decision in *Blakely v. Washington*, 124 S.Ct. 2531 (2004): whether the Sixth Amendment right to jury trial applies to the federal sentencing guidelines. In its substantive opinion, the Court held that the Sixth Amendment applies to the sentencing guidelines. In its remedial opinion, the Court severed and excised two statutory provisions, 18 U.S.C. § 3553(b)(1), which made the federal guidelines mandatory, and 18 U.S.C. § 3742(e), an appeals provision. Under the approach set forth by the Court, "district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing," subject to review by the courts of appeal for "unreasonableness." The Court also reaffirmed the constitutionality of the Commission and maintained all of the Sentencing Commission's statutory obligations under the Sentencing Reform Act.

## How the Sentencing Guidelines Work

The sentencing guidelines provide federal judges with fair and consistent sentencing ranges to consult at sentencing. The guidelines take into account both the seriousness of the criminal conduct and the defendant's criminal record. Based on the severity of the offense, the guidelines assign most federal crimes to one of 43 "offense levels." Each offender is also assigned to one of six "criminal history categories" based upon the extent and recency of his or her past misconduct.

### Innovations Under the Guidelines System

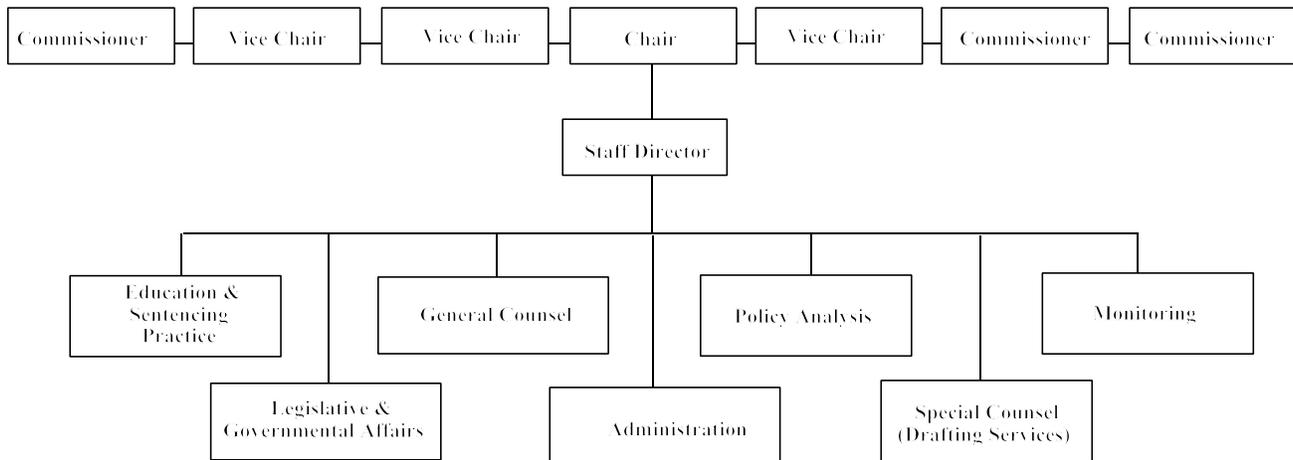
- Structured judicial discretion
- Appellate review of sentences
- Reasons for sentences stated on the record
- Determinate or "real time" sentencing
- Abolition of parole

The point at which the offense level and criminal history category intersect on the Commission's sentencing table determines an offender's guideline range. In order to provide flexibility, the top of each guideline range exceeds the bottom by six months or 25 percent (whichever is greater). Judges are advised to choose a sentence from within the guideline range unless the court identifies a factor that the Sentencing Commission failed to consider that should result in a different sentence. In these instances, the court may "depart" from the guideline range, while still providing a "guideline" sentence. Again, *Booker* held that federal courts, while not bound to apply the guidelines, must consult them.

## Organization of the Sentencing Commission

Unlike many special purpose “study” commissions within the executive branch, Congress established the U.S. Sentencing Commission as an ongoing, independent agency within the judicial branch. The seven voting members on the Commission are appointed by the President and confirmed by the Senate, and serve six-year terms. No more than three of the commissioners may be federal judges and no more than four may belong to the same political party. The Attorney General is an *ex officio* member of the Commission, as is the chair of the U.S. Parole Commission.

The Commission staff of approximately 100 employees is divided into seven offices with the director of each office reporting to the staff director who in turn reports to the chair. The four substantive policy offices are — General Counsel, Monitoring, Education and Sentencing Practice, and Policy Analysis. The three support offices are — Administration, Special Counsel, and Legislative and Governmental Affairs. The staff director supervises and coordinates all agency functions.



## **Information**

Visitors to the Commission's web site (*USSC OnLine*) at the address [www.ussc.gov](http://www.ussc.gov) can browse as well as download a wide selection of Commission documents and materials. The web site provides links to other federal judicial agencies, and, among many selections, features information about federal sentencing statistics by state and district, Commission meeting materials and hearing transcripts, and state sentencing commissions.

### **For additional information about the U.S. Sentencing Commission, contact:**

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