

Chapter One

Commission Overview

Introduction

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 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, serving as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public.

The Commission was created by the Sentencing Reform Act (“SRA”) provisions of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98–473, and its authority and duties are specified in chapter 58 of title 28, United States Code. Procedures for implementing guideline sentencing are prescribed in chapter 227 of title 18, United States Code.

The sentencing guidelines established by the Commission are designed to take into account the purposes of sentencing: just punishment, rehabilitation, deterrence, and incapacitation. The guidelines are intended to promote fairness through the establishment of sanctions proportionate to the severity of the crime and the avoidance of unwarranted disparity by setting similar penalties for similarly situated offenders. At the same time, the guidelines permit judicial flexibility to account for relevant aggravating and mitigating factors. The guidelines are constructed to reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

A Brief History of Federal Sentencing Reform

Disparity in sentencing has long been a concern for Congress, the criminal justice community, and the public. After decades of research and debate, Congress created the Commission as a permanent agency charged with formulating national sentencing standards to guide federal trial judges in their sentencing decisions.

Organized in October 1985, the Commission submitted to Congress its original sentencing guidelines and policy statements on April 13, 1987. Prior to this submission, the Commission held 13 public hearings, published two drafts for public comment, and received more than 1,000 letters and position papers from individuals and organizations. The guidelines became effective November 1, 1987, following the requisite period of congressional review, and apply to felonies and Class A misdemeanors committed on or after that date.

Shortly after implementation of the guidelines, defendants throughout the country challenged the constitutionality of the SRA and the Commission on the basis of improper legislative delegation and violation of the separation of powers doctrine. The Supreme Court of the United States rejected these challenges on January 18, 1989, in *Mistretta v. United States*,¹ and upheld the constitutionality of the Commission as an independent judicial branch agency. This decision cleared the way for nationwide implementation of the guidelines.

On January 12, 2005, the United States Supreme Court decided *United States v. Booker*,² and *United States v. Fanfan*.³ The Court held that the imposition of an enhanced sentence under the federal sentencing

¹ 488 U.S. 361 (1989).

² 543 U.S. 220 (2005).

³ 543 U.S. 220 (2005).

guidelines based on the sentencing judge's determination of a fact (other than a prior conviction) that was not found by the jury or admitted by the defendant violated the Sixth Amendment. To remedy the constitutional defect, the Court severed the provision of the sentencing guidelines statute that made the guidelines mandatory and a related appellate review provision, thus rendering the federal sentencing guidelines effectively advisory. The Court reaffirmed the constitutionality of the Commission and stated that "the Sentencing Commission remains in place, writing Guidelines, collecting information about actual district court sentencing decisions, undertaking research, and revising the Guidelines accordingly." Subsequent Supreme Court decisions continue to stress the importance of the federal sentencing guidelines.⁴

In keeping with the evolutionary notion of sentencing guidelines, the Commission has carefully monitored the guidelines and has amended them where necessary. Since January 1989, federal judges have sentenced more than 1,000,000 defendants under the guidelines.

Agency Overview

Commissioners

The Commission's seven voting members are appointed to staggered six-year terms by the President with the advice and consent of the Senate. By statute, no more than three of the commissioners shall be federal judges, and no more than four may

be members of the same political party.⁵ The Attorney General, or the Attorney General's designee, is an *ex-officio* member of the Commission, as is the chair of the United States Parole Commission.

Organization

The Commission staff of approximately 100 employees is organized into five offices with the director of each office reporting to the staff director, who in turn reports to the chair and other commissioners (see Figure A). The five offices are — General Counsel, Education and Sentencing Practice, Research and Data, Legislative and Public Affairs, and Administration. The staff director supervises and coordinates all agency functions.

The **Office of General Counsel** provides support to the Commission on a variety of legal issues, including the formulation and application of guidelines and guideline amendments, legislative proposals, and statutory interpretations. Legal staff members monitor district and circuit court application and interpretation of the guidelines and advise commissioners about statutes affecting the Commission's work. The legal staff provides training support in conjunction with the Office of Education and Sentencing Practice.

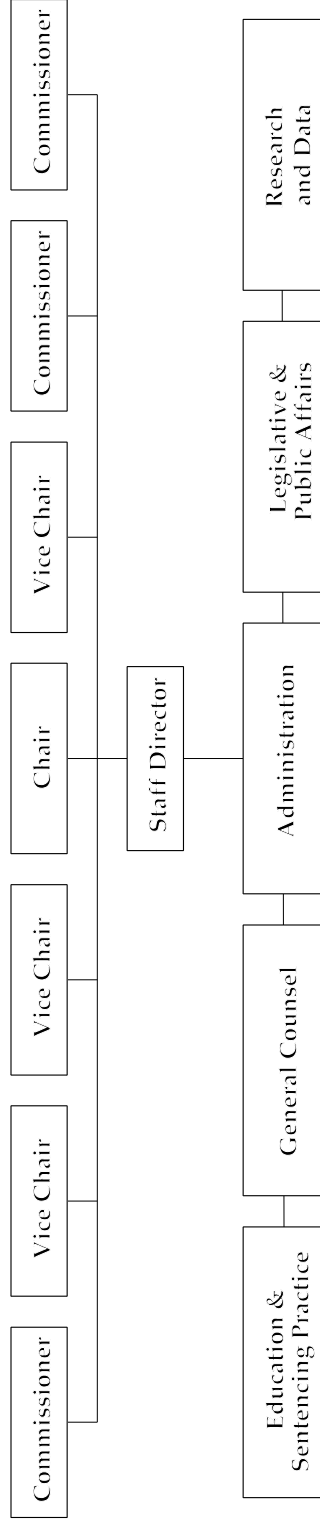
In addition, the office performs all drafting services for the Commission, prepares the *Guidelines Manual* for printing, formally manages and maintains all papers and exhibits received by the Commission that constitute requests for Commission action on sentencing policy development, and regularly tracks the Commission's policy initiatives.

⁴ See *Rita v. United States*, 551 U.S. 338 (2007) (holding that courts of appeal may apply a presumption of reasonableness when reviewing a sentence imposed within the guideline sentencing range); *Gall v. United States*, 128 S. Ct. 586 (2007) ("As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and initial benchmark" at sentencing); *Kimbrough v. United States*, 128 S. Ct. 558 (2007) (After *Booker*, "[a] district judge must include the Guidelines range in the array of factors warranting consideration").

⁵ The Judicial Administration and Technical Amendments Act of 2008 (Pub. L. No. 110-406) amended 28 U.S.C. § 991 to provide that at least three commissioners shall be federal judges, effective October 13, 2008. Previously the statute had provided that "[n]ot more than 3 of the members shall be Federal judges. . . ."

Figure A

ORGANIZATION OF THE
UNITED STATES SENTENCING COMMISSION



The **Office of Education and Sentencing Practice** performs the lead role in teaching guideline application to judges, probation officers, prosecuting and defense attorneys, and other criminal justice professionals. The staff develops training materials, participates in the sentencing guideline segments of training programs sponsored by other agencies, works in conjunction with the Federal Judicial Center to create broadcasts that are aired on the Federal Judicial Television Network, and helps inform the Commission about current guideline application practices. The office also operates a “HelpLine” to respond to guideline application questions from members of the court family.

The **Office of Research and Data** maintains a comprehensive automated data collection system to report on federal sentencing practices and to track application of the sentencing guidelines. The office receives sentencing documentation; analyzes and enters case information; and produces periodic reports about the types of crimes committed each year, the punishment imposed for those crimes, and guideline application in those cases. These reports inform the Commission as it monitors use of the guidelines or considers amending them. In addition to information related to individual offenders, the office collects information on organizations convicted of crimes and, in conjunction with the Office of General Counsel, appeals in individual and organizational cases.

Working with the Commission’s comprehensive sentencing database and other data sources, the office provides short- and long-term guideline and sentencing-related research and analyses for the Commission and for the public. The office studies a variety of research topics including projections of the effect of proposed guideline amendments on the federal prison population, sentencing practices related to organizational defendants, and appeals. In addition, the office provides data and analyses on specific criminal justice issues at the request of Congress, the courts, and others. The office maintains a master file of guideline sentencing data, available to the public through the Inter-University Consortium

for Political and Social Research at the University of Michigan.

The **Office of Legislative and Public Affairs** serves as the Commission’s liaison with Congress on sentencing and appropriations matters, monitors Congress’s criminal law agenda, analyzes legislative proposals, drafts congressional testimony, and takes the lead role in responding to congressional inquiries. The office also provides services and information to other external entities, including the judiciary, executive branch, academia, and advocacy groups. The office works closely with the Office of General Counsel on statutory interpretations and analyses.

The office is also responsible for the agency’s public information functions, responding to inquiries and requests for information from the media, the public, attorneys, the criminal justice community, Congress, academia, and government agencies. The office plays a primary role in the coordination, drafting, and editing of many Commission publications (*e.g.*, annual reports, newsletters) and coordinates the production, printing, and dissemination of all hard-copy Commission publications, including the *Guidelines Manual* and reports to Congress. The office also plays a key role in the coordination of Commission public hearings.

The **Office of Administration** provides general administrative support to commissioners and staff regarding budget and finance, contracting, personnel management, library reference services, facilities, and a variety of other office activities. This office also contains the Information Systems Unit, which maintains and services the Commission’s computer hardware and software.

Staffing

During fiscal year 2009, the Commission used staff resources totaling 102.71 workyears. Approximately 50 percent of staff resources was devoted to the Commission’s Office of Research and Data, 16 percent to the Office of Administration, 14 percent to the Office of General Counsel, ten percent to the Office of Education and Sentencing Practice,

five percent to the Office of Legislative and Public Affairs, three percent to the Staff Director’s Office, and two percent to the commissioners’ offices.

Budget and Expenditures

For fiscal year 2009, the Commission received an appropriation of \$16,225,000 under Public Law 111–8. See Table 1. The Commission’s fiscal year 2009 financial plan was a continuation of the 2008 level with inflationary increases. The Commission returned to the Treasury \$73,000.

Appropriation Amount	FY2009
	\$16,225
Personnel Compensation	8,858
Personnel Benefits	2,561
Travel and Transportation	939
Communications, Utilities and Other Rent	88
Printing and Reproduction	289
Other Services	2,508
Supplies and Equipment	909
Total	\$16,152

The year 2009, as used in this report, refers to the fiscal year 2009 (October 1, 2008, through September 30, 2009).