



ANNUAL REPORT

ANNUAL REPORT CONTENTS

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Introduction

The United States Sentencing Commission (“the Commission”) was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. The Commission is an independent agency in the Judicial Branch of the federal government, with statutory duties that include:

- promulgating sentencing guidelines to be considered by sentencing judges in all federal criminal cases;
- collecting, analyzing, and reporting sentencing data systematically to detect new criminal trends, assess federal sentencing policies, and serve as a clearinghouse for federal sentencing statistics;
- conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and
- providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on application of the federal sentencing guidelines and federal sentencing.

The Commission continually releases a substantial amount of new and informative sentencing data, research, and training materials. As a result, interest in the work of the Commission continues to generate strong interest from sentencing courts, Congress, the Executive Branch, and the general public. For example, in FY 2021, the Commission’s website received approximately 1.9 million hits and averaged approximately 37,000 visitors per month.

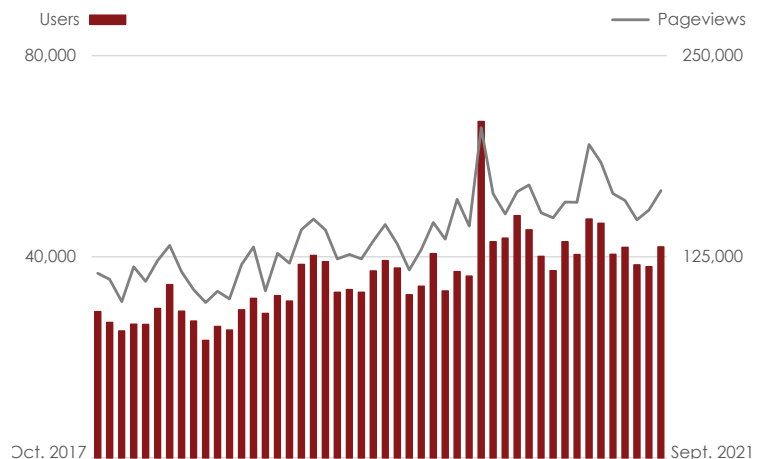
Agency Overview

Commissioners

The Commission consists of up to seven voting members appointed to staggered six-year terms by the President with the advice and consent of the Senate. By statute, at least three of the commissioners shall be federal judges, and no more than four may be members of the same political party. The Attorney General (or the Attorney General’s designee) and the Chairperson of the United States Parole Commission are *ex officio* members of the Commission.

Beginning in FY 2021 and continuing into FY 2022, the Commission has operated with only one voting commissioner, Senior District Judge Charles R. Breyer (N.D. California), and therefore lacked the minimum four affirmative votes required to promulgate amendments to the federal sentencing guidelines. Other commissioners include Patricia K. Cushwa (*ex officio*, U.S. Parole Commission) and Jonathan J. Wroblewski (*ex officio*, U.S. Department of Justice). Although the Commission has lacked the minimum of four affirmative votes required by statute to promulgate amendments to the federal sentencing guidelines, the Commission’s other statutory duties are unaffected by the lack of four voting commissioners.

Monthly Website Traffic (www.usc.gov)



Commissioners

(Fiscal Year 2021)

EX OFFICIO
U.S. PAROLE COMMISSION



PATRICIA K. CUSHWA

COMMISSIONER

COMMISSIONER

COMMISSIONER

ACTING CHAIR



SENIOR U.S. DISTRICT JUDGE
CHARLES R. BREYER

COMMISSIONER

COMMISSIONER

COMMISSIONER

EX OFFICIO
U.S. DEPARTMENT OF JUSTICE



JONATHAN J. WROBLEWSKI

Organization



Organization

In FY 2021, the Commission staff was divided into the Offices of the Staff Director, General Counsel, Education and Sentencing Practice, Research and Data, Legislative Affairs, and Administration and Technology.

The **Office of the Staff Director** supervises and coordinates all agency functions. The director of each office outlined above reports to the staff director, who in turn reports to the Commission chair. The Office of Public Affairs also falls under the purview of the Office of the Staff Director.

The **Office of General Counsel** supports the Commission on a variety of legal issues, including the formulation and application of the guidelines and guideline amendments, legislative proposals, and statutory interpretations. Legal staff monitor the district and circuit courts’ application and interpretation of the guidelines and advise commissioners about statutes affecting the Commission’s work. The legal staff also 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 coordinates the Commission’s policy initiatives.

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 Administrative Office of the U.S. Courts and the Federal Judicial Center to create webcasts that are aired on the Commission’s website, and helps inform the Commission about current guideline application practices. The office also operates the “HelpLine” to respond to guideline application questions from guideline practitioners.

The **Office of Research and Data** provides statistical and other social science research and analyses on specific sentencing issues and federal crime. The office receives documents from the federal courts concerning the sentences imposed, analyzes, and enters information from those documents into the Commission's comprehensive computer database, and creates annual datafiles of sentencing information. Individual offender datafiles (without individual identifiers) from fiscal year 2002 to the present are available on the Commission's website. Working with the Office of the General Counsel, the Office of Research and Data also collects information on organizations convicted of crimes and on appeals filed in individual and organizational cases.

The office studies a variety of sentencing issues, including changes in the types and severity of federal crimes, changes in the demographic characteristics and criminal history of federal offenders, and sentencing trends in the federal courts. The office creates periodic reports on federal sentencing practices and tracks the application of the sentencing guidelines. These reports provide data concerning the types of crimes committed, the offenders who commit those crimes, and how courts sentence offenders and use the guidelines. The office also provides projections of the impact on the federal prison population of proposed legislation and proposed guideline amendments. The reports are distributed to the courts, Congress, the Executive Branch, and the public.

The **Office of Legislative Affairs** serves as the Commission's liaison with Congress on sentencing matters, monitors Congress's criminal law agenda and hearings, analyzes legislative proposals, and takes the lead role in responding to congressional inquiries, including specific requests for federal sentencing data. The office also provides services and information to other external entities, including the judiciary, Executive Branch agencies, academia, and advocacy groups. The office works closely with the Office of General Counsel on analyses of proposed and recently enacted legislation.

The **Office of Administration and Technology** provides general support to commissioners and staff regarding budget and finance, contracting, human resources, facilities, and a variety of other office activities. This office also contains two technology-related units: the Information Technology unit and the Information Systems unit. Together, these two units provide the Commission the technological support necessary to operate its computer networks, remote capabilities, cybersecurity, website, records management, and its extensive information systems applications.

Budget and Expenditures

For FY 2021, the Commission received an annual appropriation of \$19,965,000 to continue to fulfill statutory duties envisioned by the Sentencing Reform Act of 1984. The Commission did not request program increases for FY 2022 or FY 2023. The Commission continues to maximize its existing resources by prioritizing cost-containment and efficiency.

FY 2021 Activity Overview

In fiscal year 2021, the Commission took a leading role in providing data and analysis relating to the fairness and effectiveness of sentencing and improving recidivism outcomes, with the goal of using federal resources efficiently and appropriately. The subsequent sections of this report demonstrate the Commission's commitment to these principles and to meeting its statutory requirements:

- Conducting Research
- Collecting and Reporting Sentencing Data
- Sentencing Policy Development
- Training and Outreach

The Commission's sustained strategic investment in technology, automation, and cybersecurity enabled it to maintain operations without significant disruption throughout the pandemic by maximizing telework while still protecting personally identifiable information in confidential sentencing documents. The Commission continually audits and updates its cybersecurity measures and expands its technological capacity and must continue investing in these areas to remain current, secure, and agile to respond to changing circumstances.

With these investments, the Commission has met the growing demand for its work product, information, and services. Innovations such as the *Interactive Data Analyzer*, mobile *Guidelines App*, and most recently *Judiciary Sentencing INformation* have made the Commission's guidelines, data, and information more accessible and user friendly. The Commission continually releases sentencing data and publications addressing timely topics from fentanyl offenses to compassionate release in light of the pandemic. The Commission expects this heightened interest in, and use of, its work product to extend through FY 2022 and beyond.

Conducting Research

Research is a critical part of the Commission's mission. The Commission regularly analyzes data to monitor how courts sentence offenders and use the guidelines, and the agency routinely uses these analyses to inform its proposed changes to the guidelines. The Commission publishes many of its analyses as a resource for Congress and the criminal justice community.

In recent years, the Commission has focused on recidivism research to help inform Congress and others on how best to protect public safety while targeting scarce prison resources on the most dangerous offenders.

In FY 2020, the Commission launched a recidivism study of federal offenders released from incarceration or sentenced to a term of probation in 2010, combining data regularly collected by the Commission with data compiled from criminal history records from the Federal Bureau of Investigation (FBI).

In September 2021, the Commission published the first report in this series, *Recidivism of Federal Offenders Released in 2010*, which provides an overview of recidivism for these offenders and information on key offender and offense characteristics related to recidivism. This report found that over an eight-year follow-up period, nearly one-half (49.3%) of federal offenders released in 2010 were rearrested, with a median time to rearrest of 19 months.

These figures are virtually the same as for federal offenders released in 2005 even though two intervening major developments in the federal criminal justice system occurred: the Supreme Court's decision in *United States v. Booker* which rendered the guidelines advisory and increased use of evidence-based practices in federal supervision.

Data Questions?



Research staff can answer general questions from the public about Commission data or datasets.

Contact us at AskORD@ussc.gov.



Additionally, in November 2021 as part of its recidivism series, the Commission published a report entitled *Recidivism of Federal Firearms Offenders Released in 2010*. This report provides an overview of the recidivism of federal firearms offenders released from incarceration or sentenced to a term of probation in 2010, and information on key offender and offense characteristics related to recidivism. The report found that firearms offenders recidivated at a higher rate than all other offenders. Over two-thirds (69.0%) of firearms offenders were rearrested during the eight-year follow-up period compared to less than half of all other offenders (45.1%).

In March 2021, the Commission released a report titled *Federal Armed Career Criminals: Prevalence, Patterns, and Pathways*. In FY 2019, 84 percent of armed career criminals had prior convictions for violent offenses, and 58 percent had three or more such convictions. The recidivism rates for armed career criminals, however, varies significantly depending on whether and how many prior convictions they had for violent offenses. While the recidivism rate was 59 percent for all armed career

criminals released between 2009 and 2011, it was only 36 percent for armed career criminals with prior drug trafficking convictions but no prior violent convictions.

In January 2022, the Commission issued a recidivism report on drug trafficking offenders. This report will be followed by an examination of recidivism of violent offenders.

The Commission also continues to research specific issues of ongoing congressional concern and deliberation. In January 2021, the Commission released a report on the emerging problem of fentanyl and fentanyl analogues. *Fentanyl and Fentanyl Analogues: Federal Trends and Trafficking Patterns* notes that since 2015, the number of fentanyl offenders has increased 3,592 percent, to 886 offenders. And since 2016, the number of fentanyl analogue offenders has increased 5,725 percent, to 233 offenders. These are particularly dangerous substances – 30 times more potent than heroin – and they account for more than three-quarters of all drug trafficking offenders whose offense of conviction established that death or serious bodily injury resulted from use of the substance.

In 2021, the Commission released two reports updating its 2012 report to Congress on child pornography offenses. The first, *Federal Sentencing of Child Pornography: Non-Production Offenses*, focuses on offenders sentenced under §2G2.2 for possession, receipt, and distribution of child pornography. The report provides updated data from fiscal year 2019 demonstrating the increasingly voluminous and graphic nature of child pornography collections, the degree of offenders' involvement in internet communities devoted to child pornography, and the offenders' level of engagement in sexually abusive or exploitative conduct.

The report concludes that the guideline sentencing enhancements have not kept pace with technological changes in how these offenses are committed and, as a result, the section 2G2.2 is both overinclusive and underinclusive. For example, in fiscal year 2019, more than 95 percent of non-production child pornography offenders received enhancements for use of a computer and for the age of the victim (images depicting victims under age 12).

Because section 2G2.2 is largely the result of statutory mandatory minimum penalties, congressional directives, and direct amendments to the guidelines by Congress in the PROTECT Act of 2003, the report reiterates the Commission's earlier recommendation for express authorization from Congress to amend the guideline to differentiate among offenders more effectively in terms of the seriousness of the offense and culpability.

The second report, *Federal Sentencing of Child Pornography Production Offenses*, provides the Commission's most in-depth study of child pornography production offenses with a thorough analysis of three primary factors: the offenders' proximity to the victim, participation in the production, and propensity to engage in other abusive behaviors. The report provides new insights into how offenders exploit victims

and technology to produce child pornography, and the factors courts consider in imposing sentences for these offenses.

The Commission also continues to issue research reports of topical interest such as its October 2021 publication, *Federal Offenders Who Served in the Armed Forces*. Over 10,000 veteran offenders were in the custody of the Federal Bureau of Prisons at the end of 2019. This report for the first time analyzes the relatively small number of veterans each year who are sentenced under the guidelines, examines their prior military service, the crimes they committed, and how their military service was considered at sentencing.

Collecting and Reporting Sentencing Data

To conduct the type of research outlined in the previous section, the Commission collects data regarding every felony and class A misdemeanor offense sentenced each year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case:

1. the charging document;
2. the plea agreement;
3. the presentence investigation report;
4. the judgment and commitment order; and
5. the statement of reasons form.

The Commission analyzes these documents and collects information of interest and importance to policymakers and the federal criminal justice community.



57,287
Individual Offenders
Sentenced



270,000
Documents
Received, Analyzed



31.3%
Drug
Offenses



69.0%
Sentenced
Under the Manual

Fiscal Year 2021 Data Highlights



In fiscal year 2021, the courts reported 57,287 felony and Class A misdemeanor cases to the Commission. This represents a decrease of 7,278 cases from fiscal year 2020.

The race of federal offenders remained largely unchanged from prior years. In fiscal year 2021, 50.0 percent of all offenders were Hispanic, 23.1 percent were Black, 22.6 percent were White, and 4.3 percent were of another race. Non-U.S. citizens accounted for 33.6 percent of all offenders, a decrease of 13 percentage points from the prior year.

Drug offenses accounted for the largest single group of offenses in fiscal year 2021, comprising 31.3 percent of all reported cases. Immigration cases accounted for the next largest group, at 29.6 percent, but decreased by more than one-third from the total number of those cases in fiscal year 2020. Cases involving firearms, and fraud were the next most common types of offenses after immigration cases. Together these four types of offenses accounted for 83.1 percent of all cases reported to the Commission in fiscal year 2021.

Among drug cases, offenses involving methamphetamine were most common, accounting for 48.0 percent of all drug cases.

The average length of imprisonment in methamphetamine cases was 90 months, a decrease of five months from fiscal year 2020 at 95 months. However, the average sentence imposed varied across the other major drug types: in crack cocaine cases (69 months), powder cocaine cases (68 months), fentanyl cases (60 months), heroin cases (60 months), and marijuana cases (30 months).

In fiscal year 2021, 67.7 percent of drug offenders were convicted of an offense carrying a mandatory minimum penalty, compared to 66.9 percent of drug offenders in fiscal year 2020.

In fiscal year 2021, 69.0 percent of all offenders received sentences under the *Guidelines Manual*, in that the sentence was within the applicable guidelines range or was outside the applicable guidelines range and the court cited a departure reason from the *Guidelines Manual*. Less than half (42.8%) of all sentences were within the guidelines range, compared to 50.4 percent in fiscal year 2020.

The Commission makes its sentencing data available to the public in several ways. Analyses of the data extracted from the sentencing documents are reported in the *Annual Report and Sourcebook of Federal Sentencing Statistics*, which is available both in print and on the Commission's website, and its *Interactive Sourcebook of Federal Sentencing Statistics*, which allows users to create and customize tables and figures. The Commission also disseminates on its website key aspects of this data on a quarterly basis and provides trend analyses of the changes in federal sentencing practices over time.

In June 2020, the Commission launched a new *Interactive Data Analyzer*. Using this tool, Congress, judges, litigants, the media, and the general public can now easily and independently analyze sentencing data by their state, district, or circuit, and can refine their inquiry to data relating to the specific type of crime of interest. This new interactive tool utilizes the most current data visualization techniques and technology that will enable the Commission to easily add features and new data in years to come.

In September 2021, the Commission released a new tool called *Judicial Sentencing Information (JSIN)*. JSIN is an online sentencing data resource specifically developed with the needs of judges in mind, although it is available to prosecutors, defense attorneys, and the public at large through the Commission's website. The platform provides quick and easy online access to sentencing data for similarly situated defendants, including the types of sentences imposed and average and median sentences. JSIN expands upon the Commission's longstanding practice of providing sentencing data at the request of federal judges by making some of the data provided through these special requests more broadly and easily available. JSIN was used more than 3,500 times in the first four months after its launch.

As required by 28 U.S.C. § 994(g) and 18 U.S.C. § 4047, the Commission considers the impact of guideline amendments on the federal prison population. Since FY 2012, the Commission has made its prison and sentencing impact analyses available to the public on its website. The Commission is also often asked by Congress to complete prison and sentencing impact assessments for proposed legislation. In addition, the Commission responds to more general data requests from Congress on issues such as drugs, immigration, fraud, firearms, and sex offenses. It provides district, state-wide, and circuit data analyses to House and Senate Judiciary Committee members and, on an as-requested basis, to other members of Congress. The Commission also responds to requests for data analyses from federal judges, including specific data requests relating to pending cases.

Sentencing Policy Development

Established by the Commission, the sentencing guidelines are core to the agency's mission. They provide federal judges with fair and consistent sentencing ranges to consult at sentencing by:

- incorporating the purposes of sentencing (*i.e.*, just punishment, deterrence, incapacitation, and rehabilitation);
- providing 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 consider relevant aggravating and mitigating factors; and
- reflecting, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

As noted previously, throughout fiscal year 2021, the Commission operated with only one voting commissioner, Senior District Judge Charles R. Breyer. As a result, the Commission lacked the minimum four affirmative votes required to promulgate amendments to the federal sentencing guidelines. The Commission, however, continued to work on several important policy priorities while it awaited appointment of new voting commissioners.

In order to inform a newly constituted Commission and to provide Congress and others a timely assessment of the First Step Act's impact, the Commission is already collecting, analyzing, and reporting data on implementation of the Act. While most of the Act is directed at the Executive Branch, the Commission must implement important statutory changes concerning compassionate release (18 U.S.C. § 3582(c)(1)(A)) and safety valve relief from certain mandatory minimum penalties (18 U.S.C. § 3553(f)).

The Commission has continued collecting, analyzing, and reporting data on the impact of the First Step Act. In August 2020, the Commission released *The First Step Act of 2018: One Year of Implementation*, and throughout FY 2021 the Commission released updated data regarding compassionate release motions filed during the pandemic.

This work will position the Commission to act as soon as possible after it is reconstituted, which is increasingly pressing. The First Step Act expanded the availability of compassionate release by authorizing defendants to file motions under 18 U.S.C. § 3582(c)(1)(A), whereas before only the Director of the Bureau of Prisons could file such motions. Many courts of appeals have since held that the Commission's policy statement governing compassionate release, §1B1.13, does not apply to motions filed by the defendant. This is cause for concern for two reasons. First, in the absence of guidance from the Commission, courts are left to fill the void themselves, a difficult task to accomplish in the uniform manner contemplated by either the Sentencing Reform Act or the First Step Act itself.

Second, this absence of guidance comes at a time when courts could use it the most, as courts have been inundated with compassionate release motions during the pandemic. With the cooperation of the Federal Bureau of Prisons and the courts, the Commission has identified over 20,000 compassionate release motions that were decided by the courts from January 2020 through June 2021. Courts granted 3,608 motions and denied 16,957 motions.

The statutory safety valve expansion also requires action as soon as possible because the two-level reduction in the drug guideline is still tied to outdated statutory criteria. Responding to this aspect of the First Step Act, however, may be complicated by an emerging circuit split between the 9th and 11th Circuit Courts of Appeals interpreting the revised statutory eligibility criteria at 18 U.S.C. § 3553(f) regarding criminal history. The sentencing impact of these two differing interpretations is significant, and the Commission will continue to monitor the ensuing caselaw to inform its response to this part of the First Step Act.

Training and Outreach

The Commission continues to provide specialized seminars, workshops, and training programs for judges, probation officers, law clerks, prosecutors, and defense attorneys on application of the guidelines and federal sentencing generally. In FYs 2020 and 2021, the Commission trained judges, attorneys, probation officers, law clerks, and others from nearly all 94 federal districts.

The Commission's previous investments in eLearning, remote training platforms, and other online resources have provided effective and efficient training throughout the pandemic. In FY 2021, the Commission conducted 115 virtual training sessions and more than 13,000 individuals attended live, online, or on-demand prerecorded training sessions. This three-fold increase over the number of trainees in a typical year could not have been achieved absent the Commission's investments in technology.

In addition, the Commission continues to build its online resources resulting in increased training-related web activity. The interactive quarterly newsletter the Commission launched in FY 2020 garnered more than 2,000 views in FY 2021, and views of the Commission’s online caselaw resources more than doubled in FY 2021.

The Commission also maintains its HelpLine that responds to dozens of questions each week from judges, practitioners, and probation officers regarding proper guideline application. In order of frequency in FY 2021, HelpLine was accessed by US Probation Officers, Assistant United States Attorneys, Criminal Justice Act panel attorneys, the private defense bar, assistant federal public defenders, and members and staff of the US Courts, including district court and appellate judges, their law clerks, and circuit staff attorneys.

In FYs 2022 and 2023, the Commission plans to continue expanding its online and remote learning opportunities, while standing ready to resume in-person training offerings when conditions permit.

Additionally, the Commission prioritizes its outreach to Congress, keeping Members of Congress and their staff apprised of the Commission’s work and reports, as well as responding to requests for information.

Training Resources

eLearning Courses



The Commission offers self-guided eLearning modules.

Visit <https://www.uscc.gov/product-type/elearning>.

HelpLine



The HelpLine assists practitioners in applying the guidelines.

Contact: (202) 502-4545

Hours: 8:30 a.m.- 5:00 p.m. (ET)
Monday – Friday

Virtual Training



We conduct remote training sessions via video conferencing technology.

Our virtual sessions are interactive and tailored to fit your training needs.

Email Training@uscc.gov to arrange a remote training session.

Summary

The United States Sentencing Commission continues to fulfill its statutory responsibilities, including evaluating the fairness and effectiveness of the sentencing guidelines, advising Congress on federal sentencing policy, and serving as a clearinghouse of timely sentencing research and data. Furthermore, the Commission is committed to providing this current data and guidance to federal judges through training and online information resources.

The Commission's efforts are calibrated to protect public safety and provide that the statutory purposes of sentencing are achieved. The Commission will continue these efforts going forward and is prioritizing ways to make the guidelines work better, thus promoting efficiency and effectiveness and reducing unnecessary litigation.

Contact Us



@TheUSSCGov



United States Sentencing Commission



www.ussc.gov



PubAffairs@ussc.gov

Additional Resources

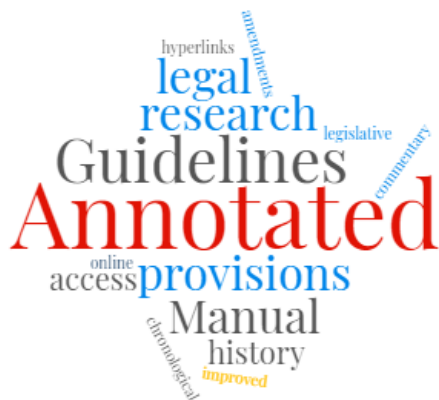
Accessing the Guidelines Manual




PRINTED

Guidelines Manuals are distributed free-of-charge by the Administrative Office of the U.S. Courts and U.S. Department of Justice to federal judges, prosecutors, defenders, and probation officers. If you have questions about how to obtain a copy, please feel free to contact the Public Affairs team at PubAffairs@ussc.gov.

Guidelines Manuals are also publicly available for purchase through the Government Publishing Office's U.S. Government Bookstore.



ANNOTATED

The *Guidelines Manual Annotated* is an online HTML version of the *Guidelines Manual* that provides quick access to the history of specific guideline and commentary provisions. Use the  icon next to a provision to access a list of related amendments. The list is arranged in chronological order and provides hyperlinks to the full text of the amendments.

GUIDELINES APP

The Guidelines App is a web-based app that provides easy access to the full contents of the *Guidelines Manual* on mobile devices, or desktop and laptop computers. Features include:

- quick-search by guideline, amendment, statute, or keyword;
- calculate drug equivalencies and ranges;
- bookmark, highlight text, and take notes; and
- easily share text of the manual.

