



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 2022, the Commission’s website received approximately 1.9 million hits and averaged more than 44,000 visitors per month.

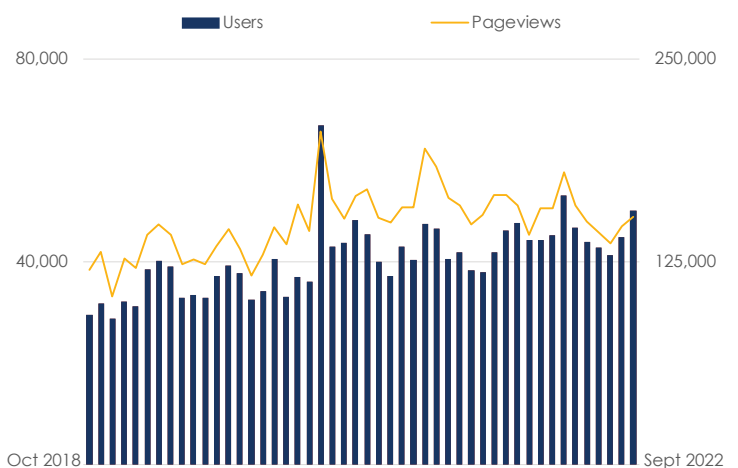
Agency Overview

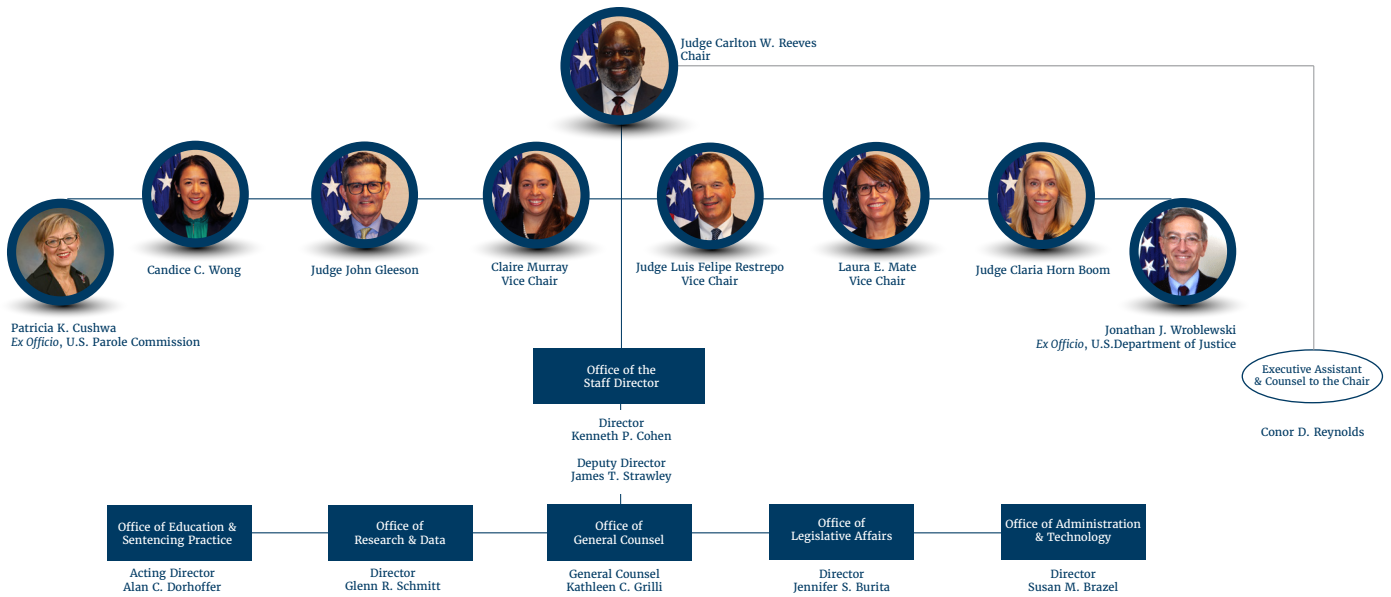
Commissioners

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.

On August 4, 2022, the Senate confirmed a full slate of seven new commissioners—Judge Carlton W. Reeves (Chair), Judge Luis Felipe Restrepo (Vice Chair), Laura Mate (Vice Chair), Claire Murray (Vice Chair), Judge Claria Horn Boom, Judge John Gleeson, and Candice C. Wong. (The commissioners’ bios can be found on the Commission website: www.usc.gov/commissioners.) The confirmation of these seven commissioners marks the first time since 2018 that the Commission has had a voting quorum—and the first time since 1999 that a full slate of seven voting commissioners was appointed at once. Other commissioners include Patricia K. Cushwa (*ex officio*, U.S. Parole Commission) and Jonathan J. Wroblewski (*ex officio*, U.S. Department of Justice).

Monthly Website Traffic (www.usc.gov)





Organization

In FY 2022, 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 works jointly with other offices to respond to requests for information, coordinate public events, and produce, edit, and disseminate Commission work product. The office is also responsible for the Commission’s website and social media communications.

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, coordinates the Commission’s policy initiatives, and oversees the annual guideline amendment cycle, including providing notice to the public of proposed amendments and obtaining witnesses for public hearings.

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 FY 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, demographic characteristics and criminal history of federal offenders, and sentencing trends. 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 and functions. This office has also included 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.

Consistent with its commitment to continuously strengthen and expand its technology and cyber security capabilities, in 2022, the Commission launched plans to separate the technology functions from the administration functions. The Commission decided not to fill the vacant position of Deputy Director of the Office of Administration and Technology and instead create a new position—Director of the Office of Technology—to oversee a separate Office of Technology. The Commission launched an extensive recruiting effort to fill this specialized position, and when the position is filled, the Commission will implement its plan to create the Office of Technology as a separate unit within the agency.

Budget and Expenditures

For FY 2023, the Commission received an annual appropriation of \$21,641,000 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 2022 Activity Overview

In FY 2022, 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:

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

In the absence of a voting quorum for four years, the Commission faces a significant backlog of policy work that directs Commission action in FY 2023 and 2024. The Commission prioritizes implementation of important criminal justice legislation, chief among them the First Step Act (FSA) of 2018 (Pub. L. No. 115-391). Among other provisions, the FSA expanded availability of compassionate release under 18 U.S.C. § 3582(c)(1) as well as the statutory safety valve under 18 U.S.C. § 3553(f). In addition, the Bipartisan Safer Communities Act (Pub. L. No. 117-159), increased penalties for certain firearms offenders.

Public interest in the Commission's work is at historic highs. On September 29, 2022, the newly reconstituted Commission published for comment its notice of proposed priorities for the amendment cycle ending May 1, 2023, and received more than 8,000 letters from members of Congress, the Department of Justice, judges, federal public defenders, probation officers, academics, advocacy groups, federal inmates and their family members, and concerned members of the public. This outpouring represented by far

the most public comment the Commission has ever received in response to proposed priorities.

The Commission continues to expand and strengthen its public outreach efforts in a cost-efficient manner. In 2022, the Commission's website received approximately 1.9 million hits and averaged more than 44,000 users per month. These numbers reflect an increase in users (+15.8%) from the previous year, and an increase in sessions (+9.6%) for the fourth consecutive year. The Commission also leverages social media and uses cloud communication tools to disseminate information broadly and efficiently and to provide frequent electronic public updates on its work.

The Commission's strategic investment in information technology, automation, and cybersecurity enables it to meet the ever-increasing demand for its work product, information, and services. For example, in September 2021, the Commission launched *Judiciary Sentencing Information* (JSIN), an online tool that provides comparative sentencing data, which was not previously publicly available. As of late 2022, JSIN was accessed by more than 1,300 judges, prosecutors, defense attorneys, and others each month and will provide the data for a two-year pilot program authorized by the Judicial Conference of the United States to include comparative sentencing data in presentence reports. In 2022, prior to the pilot launch, JSIN data was cited in more than 1,700 presentence reports.

Data Questions?



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

Contact us at AskORD@ussc.gov.

Sentencing Policy Development

The sentencing guidelines established by the Commission 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.

By statute, the Commission must submit guideline amendments to Congress for its review no later than May 1 of any given year. The Commission's policy priorities during its initial abbreviated amendment cycle ending May 1, 2023, focused on sentencing legislation signed into law during the four years that the Commission did not have a voting quorum.

The Commission's first priority is implementation of the First Step Act of 2018. The First Step Act expanded the availability of compassionate release by authorizing defendants to file motions on their own 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 appeal 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 primary 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.

The COVID-19 pandemic highlighted the fact that courts would benefit from clearer guidance from the Commission. According to a 2022 Commission report, *Compassionate Release: The Impact of the First Step Act and COVID-19 Pandemic*, courts decided 7,014 compassionate release motions in FY 2020, granting compassionate release to one-quarter (25.7%) of those offenders. The number of offenders granted relief increased more than twelvefold compared to 2019—the year immediately following passage of the First Step Act. The report found, however, that the likelihood of compassionate release motions succeeding varied significantly depending on the circuit or district in which they were filed. In late 2022, the Commission released an updated data report, *Compassionate Release Data Report for Fiscal Years 2020 to 2022*, showing similar findings.

The First Step Act also expanded eligibility for the safety valve to certain offenders with more than one criminal history point. The Commission is working to amend §5C1.2 to recognize this change but must also consider changes to the two-level reduction in the drug trafficking guideline for meeting the safety valve criteria. Responding to this aspect of the First Step Act, however, may be complicated by differing case law among the circuits regarding the scope of the new statutory safety valve criteria.

The Commission also prioritizes implementation of criminal provisions contained in the Bipartisan Safer Communities Act (Pub. L. No. 117-159), signed into law in June 2022. Among other provisions, this Act created two new offenses at 18 U.S.C. §§ 932 and 933 further proscribing straw purchasing and trafficking of firearms. The Act increased the statutory maximum penalties for certain

firearms offenses, and it revised several definitions. The Act also included a directive to the Commission to review and amend the guidelines to ensure that persons convicted of straw purchase violations and firearms trafficking offenses are subject to increased penalties in comparison to those currently provided under the guidelines.

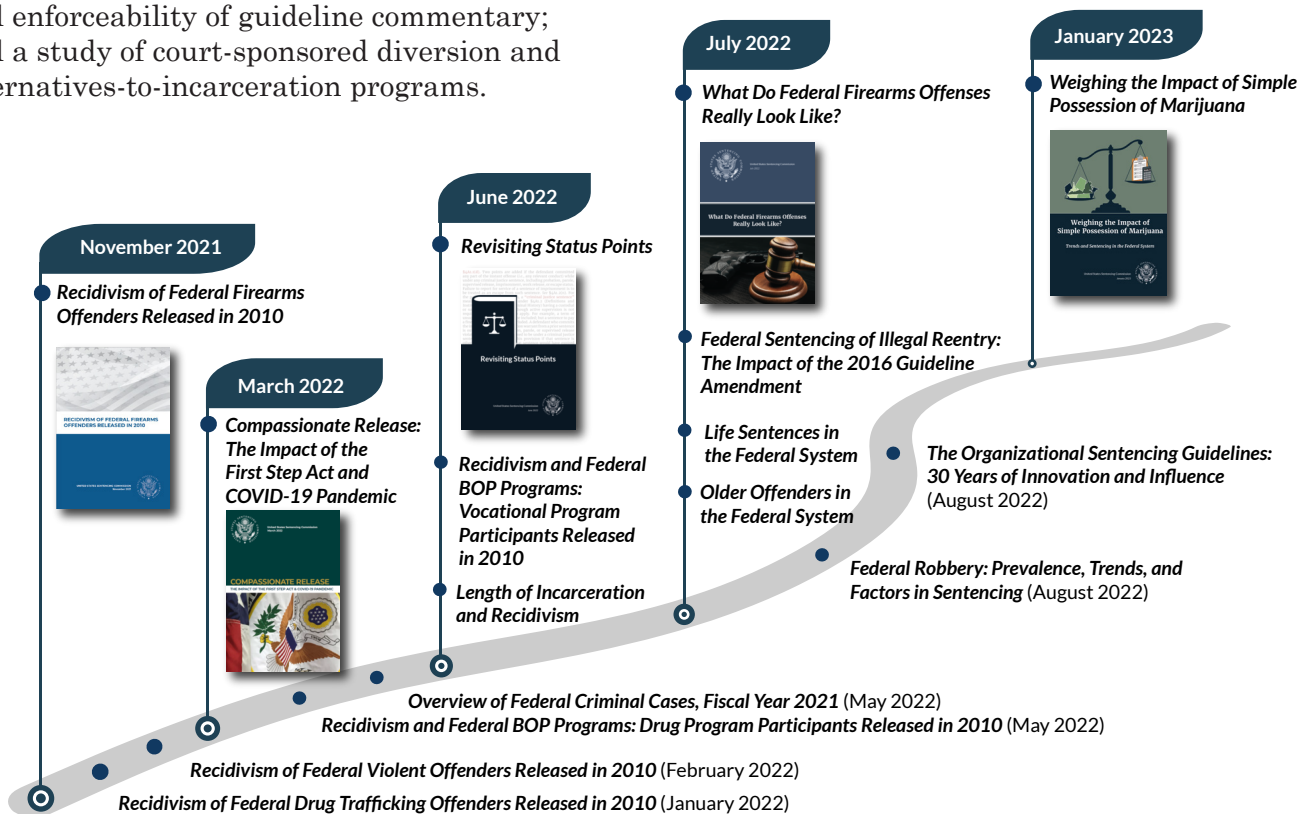
Additional multi-year priorities include continuation of the Commission’s examination of the categorical approach in determining, for example, whether an offense is a crime of violence or a controlled substance offense. Moreover, the Commission is considering amendments to the criminal history guidelines to account for recent recidivism research regarding offenders with zero criminal history points as well as the impact of status points at §4A1.1(d).

Multi-year priorities also include possible amendments to limit the use of acquitted conduct in applying the guidelines; simplification of the guidelines; an examination of conflicting case law concerning the validity and enforceability of guideline commentary; and a study of court-sponsored diversion and alternatives-to-incarceration programs.

Conducting Research

Research is a critical part of the Commission’s mission and provides a valuable resource to policymakers and the Commission’s stakeholders. 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, the Executive Branch, and the criminal justice community. Despite not having a voting quorum until late FY 2022, the Commission continued its robust research agenda, releasing 14 research reports in 2022 as well as numerous data reports.

Many of the research reports released in FY 2022 are informing the Commission’s policy priorities for the amendment cycle ending May 1, 2023.



For example, in May 2022, the Commission released *Compassionate Release: The Impact of the First Step Act and COVID-19 Pandemic*, which describes trends in compassionate release decisions during FY 2020, focusing on the impact of the First Step Act and the dramatic impact of the COVID-19 Pandemic. The Commission also released two reports relevant to its work implementing firearms legislation, *What Do Firearms Offenses Really Look Like?* (July 2022) and *Recidivism of Federal Firearms Offenders Released in 2010* (November 2021), and two reports relevant to its consideration of the criminal history rules, *Revisiting Status Points* (June 2022) and *Weighing the Impact of Simple Possession of Marijuana* (January 2023).

The Commission also continued its focus on studying recidivism, completing an extensive series of reports examining federal offenders released in 2010. In addition to the reports on firearms offenders and status points, the Commission released *Recidivism of Federal Drug Trafficking Offenders Released in 2010* (January 2022), *Recidivism of Federal Violent Offenders Released in 2010* (February 2022), *Length of Incarceration and Recidivism* (June 2022), *Recidivism and Federal Bureau of Prisons Programs: Drug Program Participants Released in 2010* (May 2022), and *Recidivism of Federal Bureau of Prisons Programs: Vocational Program Participants Released in 2010* (June 2022). The latter two reports are particularly noteworthy as the Commission's first ever studies of the impact programming provided by the Federal Bureau of Prisons has on the recidivism of federal offenders who participate.

The Commission also released several reports of topics of interest to Congress and others, such as *Federal Sentencing of Illegal Reentry: The Impact of the 2016 Guideline Amendment* (July 2022), *Life Sentences in the Federal System* (July 2022), *Older Offenders in the Federal System* (July 2022), *Federal Robbery:*

Prevalence, Trends, and Factors in Sentencing (August 2022), and *The Organizational Guidelines: Thirty Years of Innovation and Influence* (August 2022).

The Commission plans to continue its robust research agenda on timely and relevant topics throughout FY 2024 and beyond.

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.



64,142
Individual Offenders
Sentenced



303,948
Documents
Received, Analyzed



31.5%
Drug
Offenses



67.8%
Sentenced
Under the Manual

Fiscal Year 2022 Data Highlights

- In FY 2022, the courts reported 64,142 felony and Class A misdemeanor cases to the Commission. This represents an increase of 6,855 cases from FY 2021.
- The race of federal offenders remained largely unchanged from prior years. In FY 2022, 47.4 percent of all offenders were Hispanic, 25.2 percent were Black, 23.0 percent were White, and 4.4 percent were of another race.
- Non-U.S. citizens accounted for 31.2 percent of all offenders, a decrease of 2.4 percentage points from the prior year.
- Drug offenses accounted for the largest single group of offenses in FY 2022, comprising 31.5 percent of all reported cases. Immigration cases accounted for the next largest group, at 27.5 percent. Cases involving firearms and fraud, respectively, were the next most common types of offenses after immigration cases. Together these four types of offenses accounted for 82.1 percent of all cases reported to the Commission in FY 2022.
- Among drug cases, offenses involving methamphetamine were most common, accounting for 48.5 percent of all drug cases. The portion of drug cases involving fentanyl increased markedly over the last year, such that fentanyl cases were the third most common among all drug cases.
- The average length of imprisonment in methamphetamine cases was 94 months, an increase of four months from FY 2021. However, the average sentence imposed varied across the other major drug types: in crack cocaine cases (70 months), powder cocaine cases (68 months), fentanyl cases (65 months), heroin cases (66 months), and marijuana cases (33 months).
- In FY 2022, 64.7 percent of drug offenders were convicted of an offense carrying a mandatory minimum penalty, compared to 67.7 percent of drug offenders in FY 2021.
- In FY 2022, 67.8 percent of all offenders received sentences under the *Guidelines Manual*, in that the sentence was within the applicable guideline range or was outside the applicable guideline range and the court cited a departure reason from the *Guidelines Manual*. Of all sentences, 41.9 percent were within the guideline range, compared to 42.8 percent in FY 2021.

The Commission makes 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 Data Analyzer*, which allows users to create and customize tables and figures. As it does each year, the Commission issued short publication providing a broad summary of sentencing data for FY 2021, *Overview of Federal Criminal Cases, Fiscal Year 2021* (April 2022).

The Commission also disseminates on its website key aspects of this data on a quarterly basis, provides trend analyses of the changes in federal sentencing practices over time, and maintains updated data on topics of current concern, such as the *Compassionate Release Data Report for Fiscal Years 2020 to 2022*, which was released in December 2022.

In June 2020, the Commission launched its *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 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 an innovative tool called *Judiciary Sentencing Information* (JSIN). JSIN is an online sentencing data resource specifically developed with the needs of judges in mind and at the request of judges, 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 comparative sentencing data for similarly situated defendants, including the types of sentences imposed and average and

median sentences. As of late FY 2022, JSIN was accessed more than 1,300 times each month, and its data was cited in approximately 1,700 presentence reports during the same period.

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 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.

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 2022, 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 consistently provided effective and efficient training, even during the pandemic. In FY 2022, the Commission conducted 22 virtual training sessions. Some of these trainings involved multiple sessions within a day or over the course of several days, and more than 3,300 individuals attended live online.

Online, state-of-the-art resources the Commission has built over the past several years continue to provide training to all those connected to federal sentencing. In FY 2022, the Commission's recorded courses were accessed nearly 2,300 times, and eLearning courses were accessed more than 5,000 times.

In March 2022, the Commission returned to providing in-person training programs. During the fiscal year, the Commission conducted 28 in-person training programs attended by more than 1,100 individuals.

The Commission also maintains its HelpLine, accessible by phone and online, that responds to numerous questions each week from judges, practitioners, and probation officers regarding proper guideline application. In FY 2022, the HelpLine was accessed by United States Probation Officers, Assistant United States Attorneys, Criminal Justice Act panel attorneys, the private defense bar, assistant federal public defenders, and court personnel, including judges and law clerks.

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.ussc.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@ussc.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



INTERACTIVE DATA ANALYZER

The Interactive Data Analyzer (IDA) is an online tool that can be used to explore, filter, customize, and visualize federal sentencing data. IDA presents annual data that is refreshed periodically with the latest information collected, received, and edited by the Commission.

IDA offers prebuilt data dashboards for the four most common crime types in the federal caseload and for other common areas of interest. Users can filter data by fiscal year, jurisdiction, offender characteristic, and more.

JUDICIARY SENTENCING INFORMATION

The Judiciary Sentencing Information (JSIN) platform is an online sentencing data resource specifically developed with the needs of judges in mind. The platform provides quick and easy online access to sentencing data for similarly situated defendants, based on five years of cumulative sentencing data for offenders sentenced under the same primary guideline, and with the same Final Offense Level and Criminal History Category.



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.

