

## **Statement of**

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**United States Sentencing Commission**

**to the**

**Defense Advisory Committee on Investigation, Prosecution, and Defense  
of Sexual Assault in the Armed Forces**

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Members of the Committee:

It is my pleasure to speak to you today about the work of the United States Sentencing Commission and, in particular, its Office of Research and Data, which I lead.

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.

The Commission was established by the Sentencing Reform Act of 1984, which, among other things, abolished parole in the federal criminal justice system and replaced it with a system of determinate sentencing. That act created the Commission, a bipartisan agency led by Commissioners appointed by the President and confirmed by the Senate, to provide advice to federal judges when determining the sentences to be imposed on persons convicted of federal crimes. The Commission does this principally through the promulgation of sentencing guidelines, which are amended each year to account for the changing nature of crime and the persons who commit them.

To support its work, Congress authorized the Commission to (1) establish a research and development program to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on federal sentencing practices; (2) to collect and disseminate information concerning sentences actually imposed and the relationship of such sentences to the factors set forth in section 3553(a) of title 18, United States Code; (3) to publish data concerning the sentencing process; and (4) to collect and disseminate information regarding the effectiveness of sentences imposed.

## Document Submission

Central to the Commission's work is its data collection effort. In fiscal year 2017, the Commission received documentation on almost 67,000 original sentencing. The Commission also received information on over 5,000 resentencings and other modifications of sentence, and 7,800 appeals. In total, Commission staff reviewed more than 325,000 court documents. The Commission has a staff of approximately 45 persons who enter this data into the Commission database, ensure that it accurate and complete, and then use it for a myriad of analyses. Since 1987, the Commission has amassed a database of approximately 1.6 million offender records.

To facilitate the Commission's work, Congress has required by statute<sup>1</sup> that the courts provide the following five documents to the Commission within 30 days after entry of judgment in a criminal case: (1) the indictment or other charging document; (2) any written plea agreement; (3) the presentence report (PSR); (4) the judgment and commitment order (J&C); and (5) the written statement of reasons (SOR). The Commission is required to submit to Congress at least annually an analysis of these documents and to report to Congress if any districts have not submitted the required information and documents.

As you might expect, compliance with the statutory directive to submit documents to the Commission is high. The Commission estimates that it receives documents for 99.8 percent of the cases for which documents are required to be submitted to the Commission, and that it receives 99.7 percent of all documents required to be submitted in those cases. Because of this, we consider our data to be the population and not a sample of the data on federal sentencing.

## Data Collection

Data from the five core documents submitted to the Commission are extracted and coded for input into computerized databases by Commission staff. For each case in its Offender Dataset, the Commission routinely collects information in the following areas: case identifiers, demographic information about the offender, the statutes of conviction and the maximum and any minimum penalty that applied at sentencing, all guideline provisions applied by the court in the case, the type and length of sentence imposed, and the reasons given by the court for sentences outside the guideline range. In addition, when particular research questions arise, the Commission reanalyzes these documents to collect additional information.

The Commission also maintains additional datasets to study a variety of other sentence issues. The Organizational Dataset captures information on organizations sentenced under Chapter Eight of the *Guidelines Manual*. The data includes organizational structure, size, and economic viability; offense of conviction; mode of adjudication; sanctions imposed; and application of the sentencing guidelines. The Appeals Dataset tracks appellate review of sentencing decisions. The data includes district; circuit; dates of appeal and opinion; legal issues; and the disposition of the case. The Resentencing Dataset, begun in fiscal year 2008, tracks information on the number and type of resentencings and other modifications of sentence.

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<sup>1</sup> 28 U.S.C. § 994(w)(1).

The Commission's computerized datasets, excluding offender and judge identifiers, are made available to the public through the Commission's website and through the Inter-University Consortium for Political and Social Research at the University of Michigan (ICPSR) so that other researchers can use this data in their work. The Commission also disseminates this data through a wide variety of publications and through Commissioner or staff presentations at professional conferences and other events.

### Commission Analysis

The Commission's research staff performs analyses for a number of stakeholders, foremost of which are the members of the Commission. Each year the Commissioners identify several subject areas as priority areas for study. The Commission's staff meet with them monthly to provide data and legal analyses relating to those subjects and analyses of proposals to amend the sentencing guidelines. Also, Members of Congress may request that Commission staff provide analyses of Commission data, or estimates of the impact of pending legislation, to inform their work. United States Judges may also request that the Commission's research staff provide data analyses of cases similar to those pending before them as a way to inform the judge's decision about the sentences to impose. Finally, the Commission performs data analyses for Executive Branch agencies when they are acting in a policy-making (as opposed to advocacy) role.

While the analyses performed for these stakeholders are confidential, the Commission also provides separate analyses of Commission data to the public through its many publications.

The Commission's data is regarded as one of the most complete and accurate datasets in social science research. There are several reasons for this:

1. Our data is a population and not a sample. Because the courts are required to provide to us the source materials that we use, our datasets reflect the total information available regarding the areas for which we collect data.
2. Our dataset is extremely accurate. Only Commission staff input data into our dataset. The Courts provide only the source materials but do not place any information into the datasets themselves. Although technology would allow us to pull some data from data collected by the courts, or to allow other court staff to push data into our system, we do not allow that. By limiting the number of people who are involved in our data coding and cleaning processes we can ensure that data is collected in a consistent manner, by our highly trained staff. The result is data that is very accurate.
3. Our data is extremely thorough. We are fortunate that Congress has authorized and appropriated the funding for such a large staff of social science professionals. Obviously, the more people who are available to work on a project the more data can be collected about the issue under study.

4. Our research staff are experts. Our social science staff all have advanced degrees in criminology or related fields, with a thorough understanding of research and analytical methods. As a result, our data is collected with a view toward the research questions that will be asked of us by the members of the Commission, by the courts, and by Congress.

These key factors — mandated data submission to a single agency, collection and analysis by a single staff dedicated solely to this task, which is large enough for the amount of data to be collected, and who have education and training in the social sciences — are what makes our data exceptional.

#### Limitations in Commission Data.

Despite the quality and completeness of Commission data, there are still limits to what it tells us about federal criminal cases. These limitations might be instructive to you as you consider the data that you would recommend be collected from courts-martial.

As the name of our agency suggests, the Sentencing Commission generally collects data only about the sentencing process. The Commission does not collect data on investigations by law enforcement agencies or decisions by prosecutors as to when to seek an indictment against a defendant. The Commission also does not collect data on cases that are filed but later dismissed, or on cases in which the defendant was acquitted. We also do not collect data about charges that are filed but later dropped as part of a plea agreement, even when the offender is convicted in that case. And the Commission does not collect data on program participation by offenders while in prison or while on supervised release.

Other government agencies do collect some of this data. The Executive Office for United States Attorneys collects some information about the prosecutorial decision-making process. The Federal Bureau of Prisons collects information about program participation by offenders. And the Probation and Pre-trial Services Office of the Administrative Office of the United States Courts keeps records regarding program participation while offenders are on supervised release. However, in general, this data is collected for operational purposes, not research purposes, and often is not as complete as researchers might like. Also, those agencies may have concerns about the public release of some of this data. Indeed, much of this data is not public. Therefore, from a research perspective, because all data is not collected by researchers and not available to a single research staff, it is not integrated in any comprehensive analysis of the federal criminal justice system.

Also, Commission data does not include information about facts that have no statutory or guideline relevance. For example, the Commission does not collect information about the victims of crimes, other than the number of victims in fraud and alien smuggling cases, and some victim impact information in fraud cases. This is because, generally speaking, the identity of the victim (*e.g.*, gender, age, relationship to the defendant) has no legal bearing under the statutes making conduct illegal or the sentencing guidelines that apply to them. Additionally, while the Commission does record the criminal history score that a court assigns to an offender under the sentencing guidelines, the Commission did not collect information about the specific type of

prior crimes committed until 2016. This is because the type of prior crime does not affect the criminal history score, only the sentence imposed for it. Finally, the Commission does not collect information about offender characteristics, such as previous employment history, mental health and drug abuse history, support to dependents, and military service, again because the substantive federal statutes and the related sentencing guidelines do not take those factors into account.

Of course, judges may legally consider any or all of these factors when imposing a sentence.<sup>2</sup> Interestingly, Congress directed the Commission to not consider some of these factors when creating the sentencing guidelines.<sup>3</sup> From a research point of view, however, it would be interesting to know which factors matter most to judges and to what degree. And certainly, DOD leadership and Congress may have an interest in this information. The Commission's decision to not collect this information should not be viewed as evidence of what constitutes "best practices" in research. Rather, the decision was made based on Congress' direction that many of these factors not be considered by the Commission and based on the factors on which the sentencing guidelines rely in determining a sentencing range. However, as this committee considers what information the Defense Department wishes to collect about the crimes prosecuted at courts-martial, you may wish to expand the data collection beyond what the Commission currently collects.

The Commission is happy to provide technical advice to this committee, to the Department of Defense, or to the Services as you and they work through a data collection program for military crimes. The Commission appreciates the invitation to provide information to this committee. I would be happy to answer any questions you might have about the work of the Commission.

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<sup>2</sup> See 18 U.S.C. §§ 3553(a); 3661.

<sup>3</sup> See 28 U.S.C. § 994(e).