

Annual Report

Fiscal Year 2015

Introduction

The U.S. 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 but are not limited to:

- promulgating sentencing guidelines to be determined, calculated, and considered in all federal criminal cases;
- collecting sentencing data systematically to detect new criminal trends, to determine if federal crime policies are achieving their goals, and to 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 federal sentencing issues, including application of the guidelines.

The Commission sits at the intersection of all three branches of government and synthesizes the interests of the three branches to effectuate sound federal sentencing policy. Consistent with statutory guidance and Supreme Court case law, the Commission has continued to meet its core mission of promulgating new guidelines and guideline amendments in response to legislation, sentencing data, and information and feedback from sentencing courts, Congress, the Executive Branch, federal defenders, and others in the federal criminal justice system. In addition, the Commission is committed to delivering effective and specialized training on federal sentencing issues. Training provided by the Commission includes application and impact(s) of the guidelines, and is delivered to federal judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and others.

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, 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, is an ex-officio member of the Commission, as is the chair of the United States Parole Commission.

Organization

The Commission staff of 93 employees in FY 2015 is divided into the offices of the Staff Director, General Counsel, Education and Sentencing Practice, Research and Data, Legislative and Public Affairs, and Administration.

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 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 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 a "HelpLine" to respond to guideline application questions from the Judiciary branch.

The **Office of Research and Data** provides statistical and other social science research and analyses on specific sentencing issues and federal crime. As part of its work, the office receives documents from the federal courts concerning the sentences imposed on individual offenders, analyzes and enters information from those documents into a comprehensive computer database created and maintained by the Commission, and creates annual datafiles of sentencing information. Individual offender datafiles (without individual identifiers) from fiscal year 2002 to the present are available on the 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.

As part of its ongoing work, the Office of Research and Data studies a wide 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. Using Commission data, 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, the punishments imposed, and the manner in which the sentencing guidelines were applied. The office also provides projections of the effect 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 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 agencies, 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, Congress, academia, and government agencies. The office plays a primary role coordinating the production, editing, printing, and dissemination of all Commission publications, including the *Guidelines Manual* and reports to Congress, and is responsible for the Commission's website. 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-related activities. This office also contains the Information Technology Unit, which maintains and services the Commission's computer hardware and software.

Budget and Expenditures

For fiscal year 2015, the Commission received an annual appropriation of \$16,894,000 under Public Law 113-235. The Commission's fiscal year 2015 annual financial plan was an increase of \$694,000 (4.3%) over the FY 2014 appropriation. The Commission obligated \$16,690,000 (98.8%) of the annual budget at the close of the fiscal year. Unobligated balances are retained and available to the Commission for obligation adjustments for an additional five-year period.

FY 2015 Activity Overview

In fiscal year 2015, the Commission took a leading role in reducing costs associated with rising prison populations, increasing the fairness and efficiency of sentencing, and improving recidivism outcomes, thereby saving additional taxpayer funds. The subsequent sections of this report demonstrate the Commission's commitment to these principles and in meeting its statutory requirements:

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

Conducting Research

Research is a critical component of the Commission's overall mission. The Commission's research staff regularly analyze the current and prior fiscal years' data to identify the manner in which the courts are sentencing offenders and using the guidelines. The Commission routinely uses these analyses when considering proposed changes to the guidelines. Similarly, some analyses are published by the Commission as a resource for policy-makers and the larger criminal justice community.

In FY 2015, the Commission focused on making its data and research more readily accessible and more easily understandable to its stakeholders: Congress, the courts, the public, and the press. The Commission expanded its *Quick Facts* series first introduced in FY 2013. The *Quick Facts* series is designed to provide the concise facts about a single area of federal crime in an easy-to-read, two-page format. The Commission released additional publications in the *Quick Facts* series in FY 2015 covering topics including economic crime, Native American offenders, and offenders in prison. Eight distinct *Quick Facts* documents were produced or updated during the fiscal year. All of the *Quick Facts* may be accessed at <http://www.ussc.gov/research-and-publications/quick-facts>.

In FY 2015, the Commission also introduced a series of short reports on various topics of interest. Some examples of these publications included reports on [*Federal Sentencing: The Basics, Alternative Sentences in the Federal Criminal Justice System, Illegal Reentry Offenses, Life Sentences in the Federal System, and Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment*](#).

In FY 2015, the Commission issued its *Report to the Congress: The Impact of the Fair Sentencing Act of 2010*, analyzing the impact of Public Law No. 111-220, which addressed long-standing disparities between the mandatory minimum sentences for crack cocaine and powder cocaine and which required the Commission to report on the impact of these changes on the federal criminal justice system. The Commission made four primary observations. First, many fewer crack cocaine offenders had been prosecuted annually since enacted of the Fair Sentencing Act of 2010, although the number was still substantial. Second, the crack cocaine offenders who had been prosecuted were, on average, not more serious offenders than those prosecuted before enactment of the Fair Sentencing Act of 2010. Third, rates of crack cocaine offenders cooperating with law enforcement had not changed despite changes in penalties. Lastly, on average, crack cocaine sentences were close to powder cocaine sentences.

The Commission also continued to work with Congress on policy recommendations set forth in a number of reports, including its *2011 Mandatory Minimum Report to Congress*. These comprehensive reports provide policy-makers with relevant and important sentencing information and data, as well as the most relevant social science research and case law.

The Commission continued its work on a multi-year study on recidivism of federal offenders in FY 2015. The recidivism study draws on partnerships across the federal criminal justice system and will combine data from the Commission, the Department of Justice, and the Administrative Office of the U.S. Courts to develop a comprehensive trajectory of offenders prior to incarceration, during incarceration, and following reentry into the community. The Commission believes this research will contribute significantly to the consideration of federal sentencing policy by Congress and others in FY 2016 and beyond.

Collecting and Reporting Sentencing Data

In order to conduct the type of research outlined in the previous section and produce accurate and timely reports, 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 policy-makers and the federal criminal justice community.

The Commission's data collection, analysis, and reporting requirements are impacted by the high volume of cases sentenced in the federal system annually. The Commission will receive documentation on more than 360,000 documents for more than 71,000 original sentencings, 24,700 resentencings and other modifications of sentence, and 8,300 appeals decided in fiscal year 2015. Select highlights from FY 2015 data are outlined below:

- In fiscal year 2015, the courts reported 71,003 felony and Class A misdemeanor individual original cases to the Commission. This represents a decrease of 4,833 cases from the prior fiscal year.
- The race of federal offenders remained largely unchanged from prior years. In FY 2015, 52.7 percent of all offenders were Hispanic, 23.5 percent were White, 19.8 percent were Black, and 4.1 percent were of another race. Non-U.S. citizens accounted for 41.5 percent of all offenders, a slight decrease, compared to 42.0 percent in FY 2014.
- Drug cases accounted for the largest single group of offenses in FY 2015, comprising 31.8 percent of all reported cases. Cases involving immigration, fraud, and firearms were the next most common types of offenses after drug cases. Together these four types of offenses accounted for 81.6 percent of all cases reported to the Commission in FY 2015.
- Among drug cases, offenses involving methamphetamine were most common, accounting for 28.5 percent of all drug cases.
- Drug sentences decreased for all drug types in fiscal year 2015. The largest reduction in sentences occurred in cases involving crack cocaine, with average length of imprisonment decreasing by nine months, or 9.7 percent, from FY 2014. In fiscal year 2015, 45.8 percent of drug offenders were convicted of an offense carrying a mandatory minimum penalty, compared to 62.2 percent of drug offenders in fiscal year 2013 – the year that the U.S. Attorney General directed all U. S. Attorneys to change their sentencing practices.

Overall, 78.8 percent of all sentences imposed in FY 2015 were either within the applicable guidelines range, above the range, or below the range at the request of the government. Slightly less than half (47.3 percent) of all cases were sentenced within the guidelines range, compared to 46.0 percent in fiscal year 2014. In FY 2015, 21.3 percent of the sentences imposed were departures or variances below the guideline range other than at the government's request, compared to 21.4 percent in fiscal year 2014.

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 this *Annual Report* and the *Sourcebook of*

Federal Sentencing Statistics, which is available both in print and on its website. In order to provide the timeliest information on national sentencing trends and practices, 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.

The Commission continued to improve and expand use of its *Interactive Sourcebook of Federal Sentencing Statistics* in FY 2015. The *Interactive Sourcebook* allows users to create and customize tables and figures, for example by circuit, district, or state, and has improved the transparency and accessibility of the Commission's sentencing data to the public. Additionally, the *Interactive Sourcebook* provides analyses not found elsewhere, including analyses of sentence length by the primary guideline the court used at sentencing, amount of loss in fraud cases, and age of offenders in drug cases for each major drug type. Beginning in FY 2014 and continuing into FY 2015, additional analyses were added to this resource, including several new figures that examine trends in sentencing data over time.

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, and sex offenses. It also 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 take into account 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.

In FY 2015, the Commission continued to prioritize ways the guidelines could be made fairer, more efficient, and more effective. In light of the increasing costs of incarceration and the ongoing overcapacity of the federal prison system, the Commission has made implementing its mandate at Section 994(g) of the Sentencing Reform Act, which requires that the guidelines "minimize the likelihood that the federal prison population will exceed the capacity of the federal prisons," an overarching policy priority. Consistent with that goal, in FY 2014 the Commission reexamined the guideline covering federal drug trafficking offenses since federal drug offenders account for over half of the federal prison population,

and promulgated an amendment in late FY 2014 that reduced the guideline penalties based on the quantity of drugs involved in an offense. Section 994(u) of the Sentencing Reform Act also required that the Commission consider whether to make the drug amendment retroactive. After extensive consideration, the Commission decided to make the amendment retroactive with a one-year delay in implementation.

Beginning on November 1, 2014, judges were authorized to review sentences imposed prior to that date to determine if those sentences should be reduced in a manner consistent with the 2014 drug guidelines amendment. At the suggestion of the Criminal Law Committee of the Judicial Conference of the United States and the Federal Bureau of Prisons, the Commission delayed the effective date for any release of eligible offenders for a full year – until November 1, 2015. The delay allowed the Federal Bureau of Prisons time to provide the necessary transitional services for those determined to be eligible, as well as providing additional time for courts to make individualized determinations and for probation services to prepare for the additional supervisory responsibilities.

As of the end of FY 2015, the Commission had received documentation for 27,824 motions for retroactive application of the 2014 drug guidelines amendment, which had been decided by the courts. Commission action required a federal judge in each case to consider the impact, if any, on public safety before deciding a motion for retroactive application of the guideline and 75.5 percent of these motions were approved. In the cases in which the motion was granted, the average sentence reduction was 23 months or 17.3 percent. The Federal Bureau of Prisons reports that approximately 6,500 offenders determined to be eligible by a court pursuant to retroactive application of the amendment, were scheduled to be released on or about November 1, 2015.

In more than half of the cases (58.1 percent) in which the motion was denied, the defendant was found not eligible for relief for a reason such as the applicability of a mandatory minimum penalty or the impact of the career offender guideline. The courts specifically cited public safety as a factor in 2.6 percent of the cases where the motion was denied. Additional data from the analysis may be found in the Commission's [2014 Drug Guidelines Amendment Retroactivity Data Report](#).

The 2014 drug amendment and its retroactive application are important first steps toward addressing prison costs and populations with proportionate guidelines, without negatively impacting public safety. The Commission plans to continue to report timely data to Congress and the public on how retroactivity is proceeding as more cases are reported to the Commission. This reporting will include quarterly reports and an upcoming series of reports on recidivism, anticipated to begin in FY 2016.

The Commission also promulgated several amendments in FY 2015, the most significant of which was in the area of economic crime. Following a formal survey of federal district judges in 2010, and a subsequent multi-year review, the Commission determined that the fraud guideline produced some problematic results for some cases with high loss amounts, particularly for first time low level offenders who gain little from the offense.

The Commission refined the guideline to better account for victim harm and focus more on offender culpability, by adopting amendments that make five important refinements. First, the Commission revised the victims' enhancement to focus more on the qualitative nature of the harm to individual victims rather than only counting the number of victims. Second, the Commission narrowed the scope of the offender's "intended loss" – when there is no actual loss to victims – to only the amounts the defendant purposefully sought to inflict. Third, the Commission narrowed the scope of the enhancement

for sophisticated means to instruct the court to consider only defendant's own intentional conduct, as opposed to the conduct of everyone involved in the conspiracy. Fourth, the Commission amended the mitigating role adjustment to encourage courts to apply that reduction to fraud offenders who play a lesser role than co-conspirators. And fifth, the Commission applied an inflationary adjustment to the loss table as it had not been comprehensively modified since 2001, as well as to the other monetary tables in the *Manual*. The Commission estimates that this inflationary adjustment will save almost 1,000 prison beds over five years.

In addition, the Commission promulgated an amendment that changed the way the primary drug trafficking guideline calculates a defendant's drug quantity in cases involving hydrocodone in response to recent administrative actions by the Food and Drug Administration and the Drug Enforcement Administration. The amendment adopted a marijuana equivalency for hydrocodone based on the weight of the hydrocodone alone. Moreover, based on proportionality considerations and the Commission's assessment that, for purposes of the drug guideline, hydrocodone and oxycodone should be treated equivalently, the amendment adopted a marijuana equivalency for hydrocodone (actual) that is the same as the existing equivalency for oxycodone (actual): 1 gram equals 6,700 grams of marijuana.

During FY 2015, the Commission continued its multi-year review of the definition of crime of violence but accelerated its review of current guideline practices and decisions in response to the Supreme Court's decision in *Johnson v. United States* in which the court struck down as unconstitutionally vague the residual clause portion of the statutory definition of "violent felony" in the Armed Career Criminal Act (ACCA). While the sentencing guidelines were not before the Court in *Johnson* and, therefore, the opinion does not address them, the residual clause in ACCA is identical to language contained in the career offender guideline, as well as other guidelines such as the firearms guideline that enhance sentences based on prior convictions for a crime of violence.

Given the ensuing litigation over what, if any, impact *Johnson* has on the guidelines, the Commission began its own subsequent review of the guidelines. In August 2015, the Commission voted to publish a proposed amendment that, consistent with *Johnson*, would eliminate the residual clause from the guideline definition of crime of violence and provide definitions for several enumerated crimes of violence. The Commission published its proposed guideline amendment on an accelerated timeline with the expectation an amendment would be promulgated at the earliest date possible in FY 2016.

Training and Outreach

The Commission continued to fulfill its statutory duty to provide seminars, workshops, and training programs for judges, probation officers, law clerks, prosecutors and defense attorneys on federal sentencing issues, including application of the guidelines in FY 2015. Commissioners and Commission staff conducted nearly 100 discrete education and training programs to persons connected with the sentencing process from almost all 94 federal districts. The training events included programs for specific districts and circuits, specialized training for new probation officers, and training for newly appointed judges.

In September 2015, the Commission held its annual national training seminar in New Orleans, Louisiana with nearly 1,000 attendees, including more than 70 federal judges appointed within the past

five years. Commissioners and Commission staff also participated in academic programs, symposia, and circuit conferences as part of the ongoing discussion of federal sentencing issues.

The Commission has developed a more robust program of distance and online learning in FY 2015. To meet the increased demand from both the judicial and criminal justice communities and the public, the Commission has sought to increase distance learning as a means of imparting timely information to its constituents and increasing effectiveness of training by incorporating adult learning theory.

In doing so, the Commission increased the number of sentencing-related webinars and webcasts it conducted throughout FY 2015. In October 2015, the Commission released on its website an interactive e-Learning program to educate the public as well as judges, probation officers, and practitioners, about the guideline amendments that took effect on November 1, 2015. The Commission anticipates a strong focus on interactive distance learning in the coming years.

The Commission is also expanding its capabilities for dissemination and public outreach through social media. The Commission established its first Twitter account on September 30, 2014. Since that time, the Commission gained a significant number of followers and the account has generated substantial interest around key announcements and statements, as well as driving more users to the Commission's website. In addition, we have seen an increase in web traffic of approximately 14.7 percent. As a result of all of these efforts, the Commission is also averaging around 37,855 visitors to its website each month. The Commission will continue to improve its website and online education and outreach efforts in furtherance of its mission.

Summary

As demonstrated in this annual report, the U. S. Sentencing Commission continues to fulfill its statutory responsibilities, including 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. By refining its data collection, analysis, and reporting efforts on an ongoing basis to provide up-to-date data about federal sentencing practices and trends, the Commission is able to monitor and disseminate sentencing information and its application. Further, the Commission is committed to providing this current data and guidance to federal Judges through training and online information resources. All of the Commission's work in these areas enables the Commission to effectively advise Congress on federal sentencing policy.

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.