

Annual Report

Fiscal Year 2016

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 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 Chairperson of the United States Parole Commission. On January 3, 2017 Circuit Judge William H. Pryor, Jr. was named Acting Chair of the Commission, as the term of the former Chair, Chief Judge Patti B. Saris

expired at the end of the 114th congressional session. Remaining commissioners include Rachel E. Barkow, J. Patricia Wilson Smoot (*ex officio*, U.S. Parole Commission) and Jonathan Wroblewski (*ex officio*, U.S. Department of Justice). The Commission, by statute, must have at least four voting commissioners for a quorum.

Organization

The Commission staff of 94 employees in FY 2016 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 the "HelpLine" to respond to guideline application questions from the Judicial 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 in 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 the Commission's public hearings.

The **Office of Administration** provides general administrative support to commissioners and staff regarding budget and finance, information technology, contracting, human resources, facilities, and a variety of other office activities. This office also contains the Information Systems unit, which develops and maintains the Commission's extensive Oracle applications and the Commission's records management system (eCommission).

Budget and Expenditures

For FY 2016, the Commission received an annual appropriation of \$17,570,000 to continue to fulfill statutory duties envisioned by the Sentencing Reform Act of 1984. The Commission appreciates the funding Congress has provided for the Commission's fulfillment of its statutory responsibilities. The Commission did not request program increases for FY 2017. The Commission continues to maximize its existing resources by prioritizing cost-containment and efficiency.

FY 2016 Activity Overview

In FY 2016, 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 2016, the Commission continued its focus on making its data and research more readily accessible and in more easily understood ways to Congress, the courts, the public, and the press. The Commission updated and expanded its Quick Facts series first introduced in FY 2013. The Quick Facts series is designed to provide concise facts about a single area of federal crime in an easy-to-read, two-page format. The Commission updated nearly all of its publications in the Quick Facts series in FY 2016, on topics including offenders in the Federal Bureau of Prisons, mandatory minimum penalties, career offenders, Native American offenders, "white-collar" offenses, robbery offenses, drug trafficking offenses by drug type, and many more. The Commission will release new publications in FY 2017 and continue to update them regularly.

In FY 2016, the Commission published *Recidivism in the Federal Criminal Justice System: A Comprehensive Overview*, the first in a series of reports on the Commission's ongoing recidivism study of more than 25,000 federal offenders over an eight-year follow-up period. The study draws on partnerships across the federal criminal justice system and combines data from the Commission, the U.S. Department of Justice, and the Administrative Office of the U.S. Courts to develop a trajectory of offenders prior to incarceration, during incarceration, and following reentry into the community. In FY 2017 and beyond, the Commission will continue to publish additional findings from this recidivism study.

The Commission also published *Report to the Congress: Career Offender Sentencing Enhancements*, a report on the career offender directive from Congress. The report highlights sentencing and recidivism data for career offenders and demonstrates the impact the directive and relevant guidelines have on sentencing ranges. The report also contained several recommendations to Congress for statutory changes regarding the career offender directive.

In FY 2016, the Commission also published several short research reports, including *The Use of Federal Criminal Rule 35(b)* and *Weighing the Charges: Simple Possession of Drug in the Federal Criminal Justice System*. The Commission will continue this short publication series in FY 2017 and beyond.

The Commission continued to work with Congress on policy recommendations set forth in a number of reports, including its 2011 report *Mandatory Minimum Penalties in the Federal Criminal Justice System*. The Commission also published its annual *Sourcebook of Federal Sentencing Statistics*. The Commission will continue to provide policy-makers with relevant and important sentencing information and data, as well as the most relevant social science research and case law.

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 received approximately 315,000 documents for the 67,742 original sentencings that occurred in FY 2016. Select highlights from FY 2016 data are outlined below:

- In FY 2016, the courts reported 67,742 felony and Class A misdemeanor cases to the Commission. This represents a decrease of 3,261 cases from the prior fiscal year.
- The race of federal offenders remained largely unchanged from prior years. In FY 2016, 53.3 percent of all offenders were Hispanic, 22.3 percent were White, 20.4 percent were Black, and 4.0 percent were of another race. Non-U.S. citizens accounted for 41.7 percent of all offenders.
- Drug cases accounted for the largest single group of offenses in FY 2016, comprising 31.6 percent of all reported cases. Cases involving immigration, firearms, and fraud 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 2016.
- Among drug cases, offenses involving methamphetamine were most common, accounting for 30.8 percent of all drug cases.
- Drug sentences remained relatively stable across all drug types in fiscal year 2016. The average length of imprisonment increased slightly from FY 2015 in cases involving methamphetamines, from 87 months to 90 months, but decreased in marijuana cases, from 32 months to 28 months. In fiscal year 2016, 44.5 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, 79.2 percent of all sentences imposed in FY 2016 were either within the applicable guidelines range, above the range, or below the range at the request of the government. Slightly less than half (48.6 percent) of all cases were sentenced within the guidelines range, compared to 47.3 percent in FY 2015. In FY 2016, 20.8 percent of the sentences imposed were departures or variances below the guideline range other than at the government's request, compared to 21.3 percent in fiscal year 2015.

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 Sourcebook of Federal Sentencing Statistics*, which is available both in print and on the Commission's 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 2016. 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 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 central to the agency's mission. The sentencing guidelines 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 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 because federal drug offenders account for more than half of the federal prison population, and promulgated an amendment in late FY 2014 that, in part, 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, and provided additional time for courts to make individualized determinations and for probation services to prepare for the additional supervisory responsibilities.

As of January 2017, the Commission has received documentation for 44,529 motions for retroactive application of the amendment. 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. A total of 29,872 petitions (or 67.1%) were granted. In the cases where a motion was granted, the average sentence reduction was 25 months. In the cases where the motion was denied, 58.8 percent of the defendants were not eligible for relief for a reason such as a mandatory minimum penalty or the impact of the career offender guideline. The courts specifically cited protection of the public as a factor in 2.3 percent of the cases where the motion was denied. Additional data from the analysis can 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.

The Commission also adopted an amendment in January 2016, earlier than its usual practice, in light of ongoing litigation related to the definition of a “crime of violence” and the added uncertainty resulting from the Supreme Court’s decision in *Johnson v. United States*. The amendment revised the guideline definitions relating to the nature and impact of a defendant’s prior convictions for a “crime of violence.” As a matter of policy, the Commission also eliminated the so-called “residual clause” in the career offender guideline, which used the same statutory language the Supreme Court found unconstitutionally vague in the *Johnson* decision. This amendment took effect on August 1, 2016.

Several other guideline amendments took effect on November 1, 2016. The Commission modified the guideline for unlawfully entering or remaining in the United States. This guideline affects about one-quarter of the federal criminal caseload. The Commission’s changes to its immigration guidelines are a result of an extensive multi-year study. Based on analysis of Commission data and public comment, the Commission unanimously approved enhancements based on prior illegal reentry convictions, both before and after orders of deportation, and the length of sentences imposed for prior convictions. The amendment was intended to simplify the operation of this high volume guideline and significantly reduce the litigation about the extent to which previous sentencing enhancements applied.

The Commission also increased the guideline penalty for smugglers of unaccompanied minors into the United States. This Commission’s decision was informed by testimony regarding the rising number of unaccompanied minors smuggled into the United States and the increased dangers they face.

Additionally, the Commission revised the policy statement pertaining to the issue of compassionate release to broaden certain eligibility criteria and encourage the Director of the Bureau of Prisons to file a motion for compassionate release when “extraordinary and compelling reasons exist.” As a result of legislative changes made by Congress in 2008 and 2014, and in response to an unprecedented volume of public comment received in FY 2016, the Commission also modified the animal fighting guidelines to account for increased statutory penalties. Other amendments included changes to the conditions of probation and supervised release and an amendment addressing circuit conflicts and application issues related to the child pornography guidelines.

The Commission has identified new priorities that it will research and consider acting upon in the coming fiscal year. Some of these priorities are due to legislative changes, including increased penalties identified within the Bipartisan Budget Act. Other priorities are based on Commission research initiatives or issues raised by its advisory groups, such as the effect of the guidelines on youthful offenders and the availability of alternatives to incarceration for first-time offenders.

In light of the increase in synthetic drug cases in the federal docket, the Commission has undertaken a two-year study of drug offenses involving MDMA/Ecstasy, synthetic cannabinoids (such as JWH-018 and AM-2201), and synthetic cathinones (such as Methylone, MDPV, and Mephedrone). The Commission received comment from the U.S. Department of Justice about the difficulty of determining an appropriate guideline penalty for the growing number of synthetic drug cases particularly when some of these drugs are not individually referenced in the drug guideline. Synthetic drugs are an emerging area that will require careful consideration on the part of the Commission in FY 2017 and beyond.

Training and Outreach

The Commission continues 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 2016, commissioners and Commission staff conducted training programs to persons connected with the sentencing process from nearly all 94 federal districts, through discrete education programs, including programs for specific districts and circuits, specialized training for new probation officers, and training programs for newly appointed judges.

In FY 2016, the Commission identified a need for training of federal judges on sentencing guidelines and related issues. As a result, in June 2016 the Commission conducted its first training seminar tailored solely to federal judges. Approximately 100 federal judges attended the program in Chicago, Illinois. The training was so well received by the judiciary that the Commission has planned another such seminar for June 2017 in San Diego, California.

In September 2016, the Commission held its annual national training seminar in Minneapolis, Minnesota with more than 800 attendees, including federal probation officers, prosecutors, defense attorneys, and judges. The demand for training on a national level has increased such that in FY 2017 the Commission will hold two national programs—in Baltimore, Maryland, in May and Denver, Colorado in September. Commissioners and Commission staff also participated in numerous academic programs, symposia, and circuit conferences as part of the ongoing discussion of federal sentencing issues.

In FY 2016, in a collaborative effort, the Commission's Office of General Counsel, Office of Education and Sentencing Practice, and Office of Legislative Affairs and Public Affairs provided guideline and federal sentencing educational training to congressional offices at their request. The Commission also provided general educational trainings on the guidelines to interested public service and advocacy groups. The Commission stands ready in FY 2017 to continue to offer individualized educational training opportunities to congressional staff as Congress considers sentencing and crime policy.

The Commission has also created a more robust program of distance and online learning as part of its ongoing cost-containment efforts. The Commission increased the number of sentencing-related webinars and webcasts it conducted throughout FY 2016 and will continue to do so in FY 2017 and FY 2018. In FY 2016 for the second year the Commission released an online interactive e-Learning program to educate the public as well as judges, probation officers, and practitioners, about the guideline amendments that took effect on August 1, 2016 and November 1, 2016.

The Commission anticipates a strong focus on interactive distance learning in the coming years. At the same time, the Commission continues to coordinate with the Federal Judicial Center on dissemination of information to new judges and, in FY 2016, each newly appointed judge received a copy of the Commission's publication, *Federal Sentencing: The Basics*, a comprehensive primer on the federal sentencing system.

In FY 2016, the Commission redesigned its website, modernizing its aesthetic and improving search functionality. Focusing on the user experience, the redesigned site improves navigation of the online versions of the *Guidelines Manual* and *Sourcebook of Federal Sentencing Statistics*. The redesigned site is a more robust resource for policymakers and the federal courts but also describes and contextualizes the Commission's ongoing policy work for the general public, thereby increasing transparency and public engagement in the guideline amendment process. The Commission launched a beta version of the new site and performed usability testing with members of key stakeholder groups. The old site was retired in June 2016. In FY 2016, the Commission's website received nearly two million page views, an increase of more than eight percent over the last fiscal year. As a result of all of these efforts, the Commission is also averaging nearly 34,000 users to its website each month, an increase of about 1,000 users each month from the previous fiscal year.

The Commission is also expanding its capabilities for information sharing 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 sentencing policy, as well as driving more users to the Commission's website to research federal crime and sentencing policy. The Commission will continue to improve its website, social media, online education and outreach efforts in furtherance of its mission.

In FY 2016, the Commission received a very high volume of public comment as a result of the proposed animal fighting guideline amendment. To manage and streamline the public comment intake process, the Commission's Information Technology staff designed a digital public comment database. The database enables the Commission to organize, distribute, archive, and search for public comment in a comprehensive and timely fashion.

Summary

As demonstrated in this annual report, the United States 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.