Annual Report

Fiscal Year 2017

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. Other commissioners include Professor Rachel E. Barkow, Senior District Judge Charles R. Breyer, Judge Danny C. Reeves, J. Patricia Wilson Smoot (*ex officio*, U.S. Parole Commission) and Zachary C. Bolitho (*ex officio*, U.S. Department of Justice). The Commission, by statute, must have at least four voting commissioners for a voting quorum.

Organization

The Commission staff of 94 employees in FY 2017 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. 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.

The Office of Research and Data studies a variety of sentencing issues, including changes in the types and severity of federal crimes, changes in the demographic characteristics and criminal history of federal offenders, and sentencing trends in the federal courts. The office creates periodic reports on federal sentencing practices and tracks the application of the sentencing guidelines. These reports

provide data concerning the types of crimes committed, the offenders who commit those crimes, and how courts sentence offenders and use the guidelines. The office also provides projections of the 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 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 and social media presence. 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 information systems applications and the Commission's records management system.

Budget and Expenditures

For FY 2017, the Commission received an annual appropriation of $18,100,000 to continue to fulfill statutory duties envisioned by the Sentencing Reform Act of 1984. The Commission did not request program increases for FY 2018. The Commission continues to maximize its existing resources by prioritizing cost-containment and efficiency.

FY 2017 Activity Overview

In FY 2017, the Commission took a leading role in increasing the fairness and effectiveness of sentencing, and improving recidivism outcomes, thereby saving federal resources. 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 how courts sentence offenders and use the guidelines. The Commission routinely uses these analyses when considering proposed changes to the guidelines. Similarly, many analyses are published by the Commission as a resource for policy-makers and the larger criminal justice community.

In FY 2017, the Commission continued to work to making its data and research more readily accessible 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. It also introduced several new publications in the series, on health care fraud, government benefits fraud, credit card fraud, mortgage fraud, securities & investment fraud, bribery of public officials, and non-U.S. citizens offenders. The Commission will continue to update these publications regularly.

In FY 2017, the Commission published two new reports in its ongoing study of the recidivism 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 the Commission published *Recidivism Among Federal Drug Trafficking Offenders* and *Criminal History and Recidivism of Federal Offenders*. In FY 2018, the Commission will publish additional findings from this recidivism study.

In FY 2017 the Commission published *2017 Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System*. This publication assesses the impact of mandatory minimum penalties on federal sentencing. It continues the Commission's work in this area by highlighting recent developments regarding the charging of offenses carrying a mandatory minimum penalty and providing updated sentencing data regarding the use and impact of mandatory minimum penalties. This publication builds on the Commission's previous reports and publications—particularly, its *2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*. In FY 2018, the Commission will publish additional publications on the impact of mandatory minimum penalties for specific offense types.

The Commission also published *Federal Alternative-to-Incarceration Court Programs*, which discusses the nature of emerging federal alternative-to-incarceration court programs and highlights several legal and social science issues relating to these programs and two short research reports, *Youthful Offenders in the Federal System* and *An Analysis of the Implementation of the 2014 Clemency Initiative*.

Collecting and Reporting Sentencing Data

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 310,000 documents for the 66,873 individual original sentencings that occurred in FY 2017. To put this caseload in perspective, in FY 1995, the Commission received documentation for 38,500 original sentencings. Select highlights from FY 2017 data are outlined below:

- In FY 2017, the courts reported 66,873 felony and Class A misdemeanor cases to the Commission. This represents a decrease of 869 cases from the prior fiscal year.
- The race of federal offenders remained largely unchanged from prior years. In FY 2017, 53.2 percent of all offenders were Hispanic, 21.5 percent were White, 21.1 percent were Black, and 4.2 percent were of another race. Non-U.S. citizens accounted for 40.7 percent of all offenders.
- Drug cases accounted for the largest single group of offenses in FY 2017, comprising 30.8 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 82.4 percent of all cases reported to the Commission in FY 2017.
- Among drug cases, offenses involving methamphetamine were most common, accounting for 34.6 percent of all drug cases.
- Drug sentences remained relatively stable across all drug types in fiscal year 2017. The average length of imprisonment increased slightly from FY 2016 in cases involving methamphetamines, from 90 months to 91 months, and also in marijuana cases, from 28 months to 29 months. In fiscal year 2017, 44.2 percent of drug offenders were convicted of an offense carrying a mandatory minimum penalty.

Overall, 79.8 percent of all sentences imposed in FY 2017 were either within the applicable guidelines range, above the range, or below the range at the request of the government. Slightly less than half (49.1 percent) of all cases were sentenced within the guidelines range, compared to 48.6 percent in FY 2016. In FY 2017, 20.1 percent of the sentences imposed were departures or variances below the guideline range other than at the government's request, compared to 20.8 percent in fiscal year 2016.

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. 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 2017. 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.

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 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.

From January 3, 2017 until March 21, 2017, the Commission lacked four voting commissioners, the minimum number of voting commissioners required by the Sentencing Reform Act to promulgate amendments to the federal sentencing guidelines. The lack of a voting quorum for a critical portion of the Commission's amendment cycle prevented the Commission from promulgating amendments to the guidelines in fiscal year 2017. The Commission, however, continued to hold public hearings and issue requests for public comment on its proposed amendments. These actions provided a sound basis for considering guideline amendments in FY 2018 and FY 2019.

As a result, in August 2017 the Commission published several proposed amendments to the guidelines held over from the previous amendment cycle. Among the proposed amendments are an expansion of the availability of alternatives to incarceration for certain federal offenders. The Commission is also considering amendments that would respond to recent legislative actions including implementation of the Bipartisan Budget Act of 2015, which increases penalties relating to fraudulent claims under social security programs. The Commission continues to address recommendations from its Tribal Issues Advisory Group regarding how tribal convictions are treated in Chapter Four of the *Guidelines Manual* and the definition of "court protection order" in the guidelines. The Commission also voted on several long-term priorities, including an ongoing multi-year examination of the overall structure of the guidelines post-*Booker*.

The Commission has also continued its work on the emerging and urgent issue of public concern—synthetic drugs. In FY 2017, the Commission continued studying 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 issued requests for public comment pertaining to these substances and held a public hearing on the issue of synthetic drugs in FY 2017. The expertise provided by witnesses at these hearings and the comments received from the public will be considered by the Commission as it further analyzes this important topic.

The Commission continues to review recent and prospective Supreme Court litigation that may directly or indirectly affect the Commission's priorities and workload. For example, the Commission previously undertook an accelerated review of the guideline definition of "crime of violence" in the career offender guideline in response to uncertainty created by 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). The Commission has released a publication related to this subject titled *Report to the Congress: Career Offender Sentencing Enhancements*. The report also contained the Commission's recommendations to Congress to narrow the scope of the directive in Section 994(h) to offenders with violence either in their instant offense or in their past, and the need for a uniform definition of "crime of violence." These recommendations were set forth in the Commission's 2016 Report to Congress, and the Judicial Conference of the United States, at the recommendation of the Criminal Law Committee, has endorsed them.

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 2017, commissioners and Commission staff conducted training programs to persons connected with the federal sentencing process from nearly all 94 federal districts, through discrete education programs, including programs for specific districts and circuits, specialized training programs for new probation officers and Criminal Justice Act attorneys, among others.

In FY 2016, the Commission identified a need to train federal judges on sentencing guidelines and related issues, and as a result, held its first training conference tailored specifically to the training needs of federal judges that year. In June 2017, the Commission conducted its second annual training seminar for judges in San Diego, California. More than 150 federal judges attended the seminars, and a third is planned for June 2018 in San Francisco, California.

In FY 2017, the Commission held two annual national training seminars in Baltimore, Maryland, in May, and Denver, Colorado, in September. More than 850 guidelines users, including federal probation officers, prosecutors, defense attorneys, and judges, attended the seminars. 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 continues to develop a more robust program of distance and online learning as part of its ongoing cost-containment efforts. In FY 2017 for the third year, the Commission released an online interactive e-Learning program to educate the public, as well as judges, probation officers, and practitioners, about recurring issues in guideline application related to criminal history determinations. Earlier in the year, the Commission turned its comprehensive primer on the federal sentencing system,

"Federal Sentencing: The Basics," into an interactive e-Learning course. The primer is sent to each newly appointed judge, and the online course is assigned by the Federal Judicial Center as a prerequisite for attending Phase I training for District Court Judges. "The Basics" has become a standard recommended course for those new to federal sentencing, or for those wanting a refresher before attending an in-district Commission training program. The Commission plans to release several scenario-based e-Learning courses on frequently recurring guideline application issues in FY 2018.

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. Further, 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.