



ANNUAL REPORT

ANNUAL REPORT CONTENTS

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Introduction

The United States Sentencing Commission (“the Commission”) was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. The Commission is an independent agency in the Judicial Branch of the federal government, with statutory duties that include:

- promulgating sentencing guidelines to be considered by sentencing judges in all federal criminal cases;
- collecting, analyzing, and reporting sentencing data systematically to detect new criminal trends, assess federal sentencing policies, and serve as a clearinghouse for federal sentencing statistics;
- conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and
- providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on application of the federal sentencing guidelines and federal sentencing generally.

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 precedent, the Commission has continued to meet its core mission to promulgate new guidelines and guideline amendments in response to legislation, sentencing data, and feedback from sentencing courts, Congress, the Executive Branch, federal defenders, and others in the federal criminal justice system.

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) and the Chairperson of the United States Parole Commission are *ex officio* members of the Commission.

Throughout fiscal year 2018, Circuit Judge William H. Pryor Jr., served as Acting Chair of the Commission, and Professor Rachel E. Barkow, Senior District Judge Charles R. Breyer, and Judge Danny C. Reeves served as commissioners. The terms of Judge Pryor and Professor Barkow, however, expired at the end of the 115th Congress. Consequently, as of the second quarter of fiscal year 2019, Judge Breyer and Judge Reeves are the only voting members of the Commission. Other commissioners include Patricia K. Cushwa (*ex officio*, U.S. Parole

Commission) and David Rybicki (*ex officio*, U.S. Department of Justice). The Commission, by statute, must have at least four voting commissioners to promulgate amendments to the guidelines, but the Commission's other statutory duties are unaffected by the lack of four voting commissioners.

Organization

In fiscal year 2018, the Commission staff of 92 employees was 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** supports the Commission on a variety of legal issues, including the formulation and application of the guidelines and guideline amendments, legislative proposals, and statutory interpretations. Legal staff monitor the district and circuit courts' application and interpretation of the guidelines and advise commissioners about statutes affecting the Commission's work. The legal staff 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 podcasts 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 the Commission's comprehensive computer database, and creates annual datafiles of sentencing information. Individual offender datafiles (without individual identifiers) from fiscal year 2002 to the present are available on the Commission's website. Working with the Office of the General Counsel, the Office of Research and Data also collects information on organizations convicted of crimes and on appeals filed in individual and organizational cases.

The Office 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 coordinating 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

In fiscal year 2018, the Commission received an annual appropriation of \$18,699,000 toward continued fulfillment of the statutory duties set forth in the Sentencing Reform Act of 1984. The Commission did not request program increases for fiscal year 2019. The Commission continues to maximize existing resources and prioritize cost-containment and efficiency.

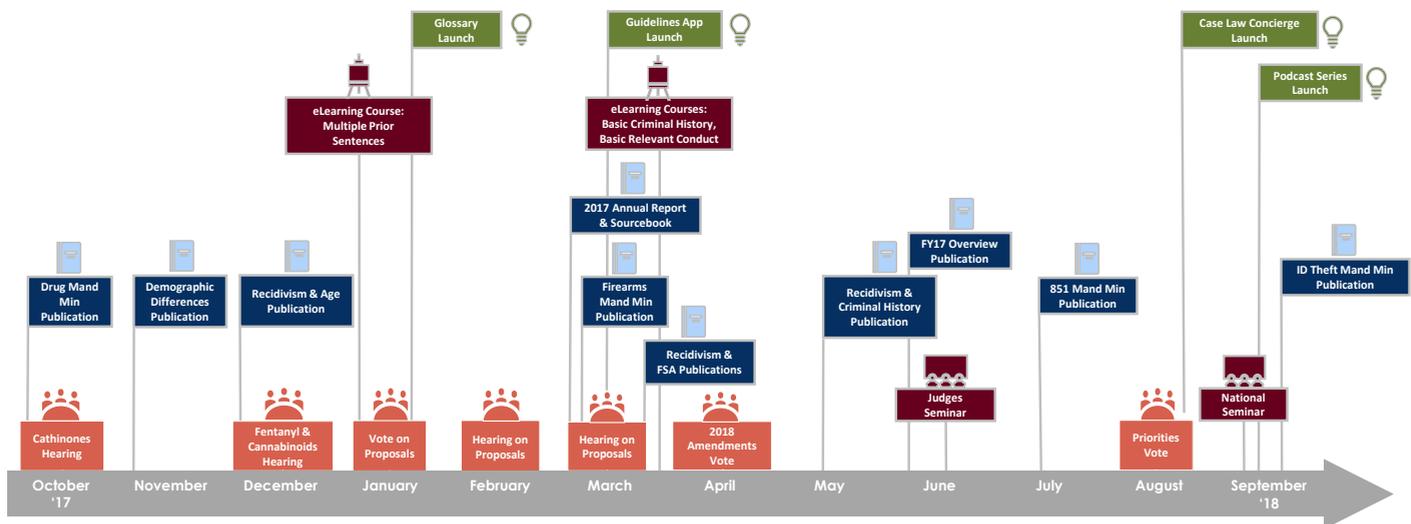
The Commission did not request program increases for FY19.

Fiscal Year 2018 Activity Overview

In fiscal year 2018, the Commission took a leading role in providing data and analysis relating to the fairness and effectiveness of sentencing and improving recidivism outcomes, with the goal of using federal resources efficiently and appropriately. The subsequent sections of this report demonstrate the Commission's commitment to these principles and to meeting its statutory requirements:

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

Major Events and Product Releases Fiscal Year 2018



Conducting Research

Research is a critical component of the Commission's overall mission. The Commission's research staff regularly analyzes 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, the Commission publishes many analyses as a resource for policymakers and the criminal justice community.

In fiscal year 2018, the Commission continued to issue reports on the impact of statutory mandatory minimum penalties, an important issue to policymakers because more than one-fifth (21.9%) of all offenders in fiscal year 2016 were convicted of an offense carrying a mandatory minimum penalty. In fiscal year 2018, the Commission released four additional reports in its series on mandatory minimum penalties: *Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System*; *Mandatory Minimum Penalties for Firearms Offenses in the Federal Criminal Justice System*; *Application and Impact of 21 U.S.C. § 851: Enhanced Penalties for Federal Drug Trafficking Offenders*; and *Mandatory Minimum Penalties for Identity Theft Offenses in the Federal Criminal Justice System*.

Each of these reports provides the prevalence of the mandatory minimum penalty studied, how often offenders receive statutory relief from the mandatory minimum penalty, the demographic breakdown of offenders affected, and the impact the mandatory minimum penalty has on sentences imposed and the population of the Federal Bureau of Prisons. In January of 2019, the Commission released its sixth and final updated report titled *Mandatory Minimum Penalties for Sex Offenses in the Federal Criminal Justice System*.

Commission Publications Fiscal Year 2018



October 2017

Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System



November 2017

Demographic Differences in Sentencing: An Update to the 2012 Booker Report



December 2017

The Effects of Age on Recidivism Among Federal Offenders



March 2018

2017 Annual Report and Sourcebook of Federal Sentencing Statistics



March 2018

Mandatory Minimum Penalties for Firearms Offenses in the Federal Criminal Justice System



March 2018

Recidivism Among Federal Offenders Receiving Retroactive Sentence Reductions: The 2011 Fair Sentencing Act Guideline Amendment



May 2018

The Criminal History of Federal Offenders



June 2018

Fiscal Year 2017 Overview of Federal Criminal Cases



June 2018

Application and Impact of 21 U.S.C. § 851: Enhanced Penalties for Federal Drug Trafficking Offenders



June 2018

Mandatory Minimum Penalties for Identity Theft Offenses in the Federal Criminal Justice System

The Commission believes these reports are a valuable source of data and information as Congress continues to assess the role of mandatory minimum penalties in the federal criminal justice system.

The Commission continues to focus its research on recidivism, drawing upon partnerships across the federal criminal justice system working to improve recidivism outcomes and public safety. The Commission's ongoing series examines U.S. citizen federal offenders released from prison or placed on probation in calendar year 2005 and studies their recidivism over an eight-year follow-up period. For example, in fiscal year 2018, the Commission released *The Effects of Aging on Recidivism Among Federal Offenders*, which analyzed the impact of the aging process on federal offender recidivism. Also, in fiscal year 2018, the Commission released *Recidivism Among Federal Offenders Receiving Retroactive Sentence Reductions: The 2011 Fair Sentencing Act Guideline Amendment*. This report analyzed the recidivism rates of a group of crack cocaine offenders whose sentences were reduced pursuant to retroactive application of the guideline amendment implementing the Fair Sentencing Act of 2010 and compares their recidivism rate to a comparable group of offenders who would have been eligible to seek a reduced sentence under that guideline amendment, but who were released before its effective date after serving their full sentence.

In fiscal year 2018, the Commission also released a report titled, *The Criminal History of Federal Offenders*, which provided, for the first time, complete information on the number of convictions and types of offenses in the criminal histories of federal offenders sentenced in a fiscal year. Demonstrating the Commission's commitment to strategic modernization, this research utilizes technological improvements to expand the scope of information related to an offender's criminal history that provides a more complete assessment and analysis for Congress.

The Commission has begun to update the analyses in its *Report to the Congress: Continuing Impact of United States v. Booker on Federal Sentencing* ("2012 Booker Report"). In fiscal year 2018, the Commission published *Demographic Differences in Sentencing: An Update to the 2012 Booker Report*, exploring the relationship between demographic factors and sentencing outcomes. Consistent with previous reports, the Commission's research demonstrates that sentence length continues to be associated with some demographic factors such as race. Then, in January of 2019, the Commission released *Intra-City Differences in Federal Sentencing Practices*, which examined differences in the sentencing practices of judges located within 30 large metropolitan areas across the nation, representing judicial districts in every circuit except the D.C. Circuit.

The Commission has continued to prioritize making its data and research more easily accessible to Congress, the courts, the public, and the press. For example, in fiscal year 2018 the Commission updated and expanded its Quick Facts series, which provides concise facts about a single area of federal crime in an easy-to-read, two-page format. The Quick Facts series includes overviews of offenders convicted of offenses carrying mandatory minimum penalties, career offenders, "white-collar" offenders, drug trafficking offenders by drug type, robbery offenders, and many more.

Collecting and Reporting Sentencing Data

To conduct the type of research outlined in the previous section, the Commission collects data regarding every felony and class A misdemeanor offense sentenced each year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: (1) the charging document, (2) the plea agreement, (3) the Presentence Report, (4) the Judgment and Commitment Order, and (5) the Statement of Reasons form. The Commission analyzes these documents and collects information of interest and importance to policymakers and the federal criminal justice community.

The Commission received approximately 321,000 documents for 69,425 individual original sentencings that occurred in fiscal year 2018. Select highlights from fiscal year 2018 data are outlined below:

Approximately 321,000 sentencing-related documents were received and analyzed by the Commission in FY18.

- In fiscal year 2018, the courts reported 69,425 felony and Class A misdemeanor cases to the Commission. This represents an increase of 2,552 cases from the prior fiscal year, and the first increase since fiscal year 2011.
- The race of federal offenders remained largely unchanged from prior years. In fiscal year 2018, 54.3 percent of all offenders were Hispanic, 21.2 percent were White, 20.6 percent were Black, and 3.8 percent were of another race. Non-U.S. citizens accounted for 42.7 percent of all federal offenders.
- Immigration cases accounted for the largest single group of offenses in fiscal year 2018, comprising 34.4 percent of all reported cases. Cases involving drugs, firearms, and fraud were the next most common types of offenses after immigration cases. Together these four types of offenses accounted for 82.9 percent of all cases reported to the Commission in fiscal year 2018.
- Among drug cases, offenses involving methamphetamine were most common, accounting for 39.8 percent of all drug cases.
- Drug sentences remained relatively stable across all drug types in fiscal year 2018. The average length of imprisonment increased slightly from fiscal year 2017 in cases involving methamphetamines, from 91 months to 95 months, but decreased in crack cocaine cases (from 84 to 78 months), powder cocaine cases (from 75 to 73 months), and in heroin cases (from 70 months to 69 months). In fiscal year 2018, 58.0 percent of drug offenders were convicted of an offense carrying a mandatory minimum penalty, compared to 44.2 percent of drug offenders in fiscal year 2017.
- In fiscal year 2018, 75.0 percent of all offenders received sentences under the *Guidelines Manual*, in that the sentence was within the applicable guidelines range, or was outside the applicable guidelines range and the court cited a departure reason from the *Guidelines Manual*. Just over half (51.0%) of all sentences were within the guidelines range, compared to 49.1 percent in fiscal year 2017.

75% of all offenders received sentences under the *Guidelines Manual* in FY18.

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, and its Interactive Sourcebook of Federal Sentencing Statistics, which allows users to create and customize tables and figures. 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.

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 fiscal year 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, firearms and sex offenses. It provides district, state-wide, and circuit data analyses to House and Senate Judiciary Committee members and, on an as-requested basis, to other members of Congress. The Commission also responds to requests for data analyses from federal judges, including specific data requests relating to pending cases.

Sentencing Policy Development

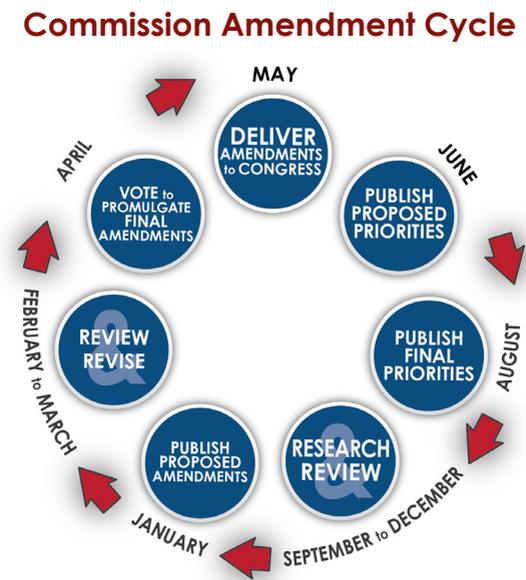
Established by the Commission, the sentencing guidelines are core to the agency's mission. They provide federal judges with fair and consistent sentencing ranges to consult at sentencing by:

- 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 fiscal year 2018, the Commission adopted several amendments to the guidelines that became effective November 1, 2018. These amendments reflected a collaborative data-driven approach to federal sentencing.

In response to the Bipartisan Budget Act of 2015, the Commission increased offense levels for certain social security fraud offenses. The Commission received valuable comment from the Senate Committee on Finance, the House of Representatives Ways and Means Committee, and the House of Representatives Judiciary Committee as well as the Social Security Administration. The Commission's action established an enhancement and a minimum offense level for individuals who violate certain positions of trust (*e.g.*, health care providers, claims representatives, and others).

The Commission also approved a multi-part synthetic drugs amendment, drawing upon public comment, expert testimony, and data analysis gathered during a multi-year study of synthetic drugs. Before the Commission's action, many new synthetic drugs were not referenced in the federal sentencing guidelines, which resulted in expensive and resource-intensive hearings in federal court. The Commission's actions reflected the evolving nature of these new drugs and will simplify and promote uniformity in sentencing these offenders. The amendment also included a new guideline definition of the term "fentanyl analogue" that effectively raised the guideline penalties for fentanyl analogues to a level more consistent with the statutory penalty structure. To address the severe dangers posed by fentanyl, the Commissioners also adopted a four-level sentencing enhancement for knowingly misrepresenting or knowingly marketing fentanyl or fentanyl analogues as another substance (which equates to an approximate 50 percent increase in sentence).



The multi-part synthetic drugs amendment also established drug ratios and minimum offense levels for two new classes of synthetics drugs: synthetic cathinones (often referred to as "bath salts") and synthetic cannabinoids (including, but not limited to, "K2" or "spice"). The Commission found that synthetic cathinones possessed a common chemical structure that is sufficiently similar to treat as a single class of synthetic drugs. The Commission also found that, while synthetic cannabinoids differ in chemical structure, the drugs induce similar biological responses and share similar pharmacological effects. In setting the new drug ratios, the Commission considered, among other factors, the severity of the medical harms to the user, the current ratios applied in similar cases, known trafficking behaviors, and concerns for public safety.

The Commission also added new commentary to the *Guidelines Manual* providing that judges should consider alternative sentencing options for "nonviolent first offenders" whose applicable guideline range falls within Zones A or B. Eligible defendants must not have any prior convictions and must not have used violence, credible threats of violence, or possessed a firearm or other dangerous weapon in the offense. This narrowly-tailored amendment is consistent with the statutory directive to the Commission in 28 U.S.C. § 994(j).

The Commission also addressed 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 continues to review Supreme Court jurisprudence 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" after the Supreme Court's decision in *Johnson v. United States* struck down as unconstitutionally vague the residual clause portion of the statutory definition of "violent felony" in the Armed

Career Criminal Act. The Commission deleted the identical residual clause in the guideline definition of “crime of violence” and revised the list of enumerated offenses covered by the guideline definition. These changes were intended to simplify and reduce litigation over whether an offense qualifies as a crime of violence under the guidelines.

Since then, discrete application issues have arisen regarding the revisions as well as broader concerns raised by the Department of Justice and others that the “categorical approach” that courts apply to the guidelines’ definition is overly complex and results in odd and disparate sentencing outcomes. In fiscal years 2018 and 2019, the Commission continued to consider ways to simplify this determination and ensure logical and more uniform sentencing outcomes. This ongoing effort is particularly important in light of the risk to public safety posed by violent recidivist offenders. In December of 2018, the Commission published a proposed amendment for public comment that would move the guidelines away from the categorical approach by allowing courts to consider the conduct that formed the basis of the defendant’s prior convictions to determine whether the conviction was a “crime of violence.” The proposed amendment would allow the court to examine the *Shepard*-approved documents to make this determination.

The Commission also published proposed amendments for public comment relating to recently enacted legislation, proposed revisions concerning how retroactive sentence reductions are determined when mandatory minimum penalties are present, and technical changes to the *Guidelines Manual*, in December of 2018.

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 fiscal year 2018, 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, and specialized training programs for new probation officers and Criminal Justice Act attorneys, among others.

In fiscal year 2018, the Commission conducted its third annual training seminar for judges in San Francisco, California. This program, which is specifically tailored to the needs of federal judges, was attended by more than 100 federal judges.

Each year the Commission also holds a national training seminar for a broader array of members of the federal criminal justice system. In fiscal year 2018, the Commission held its national training seminar in San Antonio, Texas, and more than 850 federal probation officers, prosecutors, defense attorneys, and judges attended. Commissioners and Commission staff also participated in academic programs, symposia, and circuit conferences as part of ongoing discussions on federal sentencing issues.

In FY18 more than 100 federal judges attended the Commission’s judges seminar.

More than 850 professionals attended the Commission’s national seminar.

Further, the Commission continues to develop a more robust program of distance learning through online resources. In fiscal year 2018, the Commission added numerous online resources useful to both criminal justice practitioners, and members of the public-at-large. One such resource is a new Case Law Concierge that allows users to search for sentencing-related cases by federal circuit or training topic. Another helpful new resource is the Commission's Glossary of Sentencing Terms.

The Commission also launched a podcast series, Sentencing Practice Talk, designed to serve as a tool for those seeking a deeper understanding of federal sentencing practice. Podcast episodes range from answers to frequently asked questions received on the Commission's HelpLine, to discussions on how recent case law developments affect sentencing. Sentencing Practice Talk aids practitioners in proper application of the guidelines by covering topics such as criminal history, base offense level, relevant conduct, conspiracy offenses, revocations, grouping of multiple counts, and more. In September 2018, the month it launched, the podcast page was visited by nearly 1,000 users. The Commission anticipates engagement will continue to expand as the podcast is updated with episodes on relevant issues. The Commission also launched a quarterly newsletter, Insider Express, which is released quarterly both online and via email to interested constituents. The newsletter contains regular updates on Commission work, guideline application pointers, case law updates, and answers to frequently asked questions.

Webinars and webcasts were yet another way the Commission offered training and education services more accessibly, while simultaneously keeping costs low. The Commission released an eLearning course on sentencing illegal reentry offenders, who comprise about one-third of federal offenders. Two other eLearning courses in the Commission's growing online education program included an introduction to basic relevant conduct analysis and basic criminal history.

The Commission also released an updated version of its primer, *Federal Sentencing: The Basics*, which provides judges and practitioners a general overview of the federal sentencing process, and pairs with an updated interactive eLearning course.

Commission Resources

- Case Law Concierge
- Case Law Quarterly
- eLearning Programs
- Glossary of Sentencing Terms
- HelpLine
- Insider Express Newsletter
- Primers
- Quick Facts
- Reports-At-A-Glance
- Sentencing Practice Talk Podcast

In addition to these newer resources, the Commission continues to staff a HelpLine that responds to dozens of questions each day from judges, practitioners, and probation officers regarding proper guideline application.

The Commission also continues to expand its social media presence. Using its social media accounts on Twitter and LinkedIn, as well as a cloud communications tool, the Commission provides frequent updates to the interested public on its policy work and research publications. In fiscal year 2018, the Commission's website received over 1.3 million hits and averaged approximately 24,000 users each month.

In fiscal year 2018, the Commission also launched a free interactive web-based application that enables users to access the full *Guidelines Manual* on mobile devices, desktop, or laptop computers. The app has been well-received by practitioners. Enhanced features will be added in fiscal years 2019 and 2020.

The Commission's website received over 1.3 million hits in FY18.

Summary

The United States Sentencing Commission continues to fulfill its statutory responsibilities, including evaluating the fairness and effectiveness of the sentencing guidelines, advising Congress on federal sentencing policy, and serving as a clearinghouse of timely sentencing research and data. Furthermore, the Commission is committed to providing this current data and guidance to federal judges through training and online information resources.

The Commission's efforts are calibrated to protect public safety and provide that the statutory purposes of sentencing are achieved. The Commission will continue these efforts going forward and is prioritizing ways to make the guidelines work better, thus promoting efficiency and effectiveness and reducing unnecessary litigation.

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