



ANNUAL REPORT

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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.

The Commission continually releases a substantial amount of new and informative sentencing data, research, and training materials. As a result, interest in the work of the Commission by sentencing courts, Congress, the Executive Branch, and the general public continues to increase. For example, in fiscal year 2019, the Commission’s website received over 1.5 million hits and averaged approximately 34,000 visitors per month. These numbers reflect an impressive increase in visitors (+22%), sessions (+24%), and pages viewed (+16%) from the previous fiscal year and demonstrate how the Commission disseminates information broadly, efficiently, and cost-effectively.

Agency Overview

Commissioners

The Commission consists of up to seven voting members 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 much of fiscal year 2019 and into fiscal year 2020, the Commission has operated with only two voting commissioners—Chief Judge Danny C. Reeves and Senior Judge Charles R. Breyer. Other commissioners included Patricia K. Cushwa (*ex officio*, U.S. Parole Commission) and David C. Rybicki (*ex officio*, U.S. Department of Justice). As a result, the Commission has lacked the minimum of four affirmative votes required by statute to promulgate amendments to the federal sentencing guidelines, but the Commission’s other statutory duties are unaffected by the lack of four voting commissioners.

Organization

In fiscal year 2019, the Commission staff 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 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 also 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 guideline practitioners.

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 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 impact 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 and hearings, analyzes legislative proposals, and takes the lead role in responding to congressional inquiries, including specific requests for federal sentencing data. 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 analyses of proposed and recently enacted legislation.

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*, original research publications, and reports to Congress. The unit is also responsible for the Commission's website and social media communications. The office coordinates the Commission's public hearings and meetings.

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 fiscal year 2019, the Commission received an annual appropriation of \$18,953,000 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 fiscal year 2020. The Commission continues to maximize its existing resources by prioritizing cost-containment and efficiency.

The Commission did not request program increases for FY20.

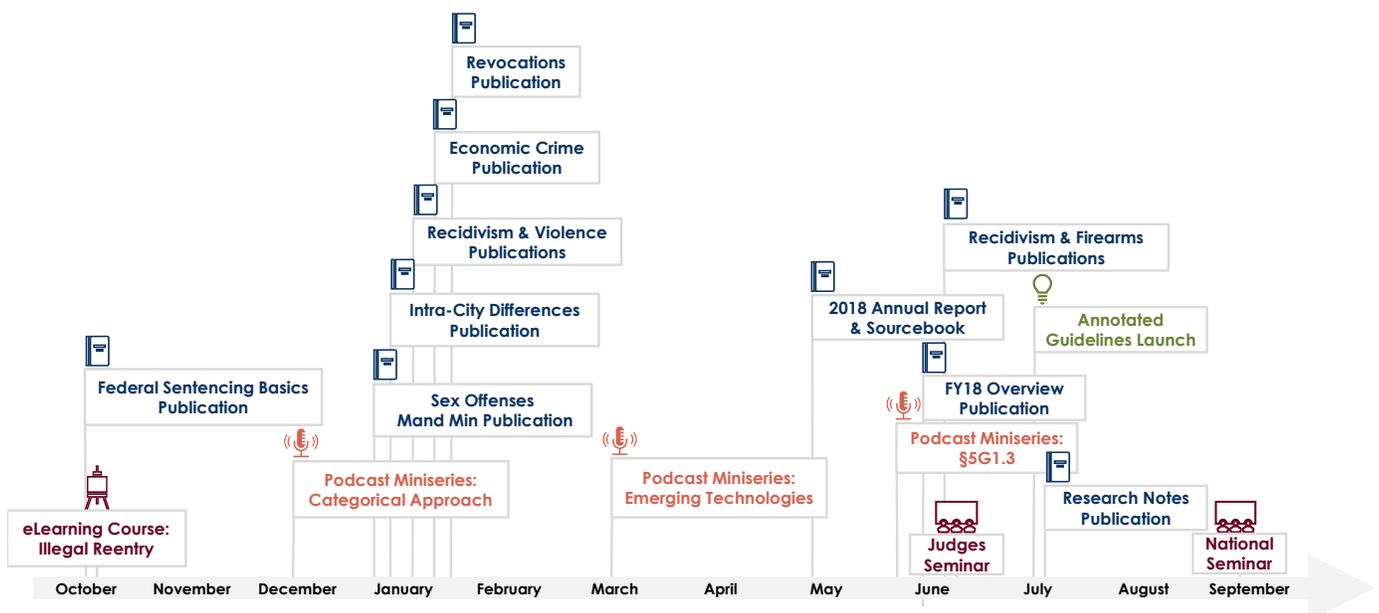
Fiscal Year 2019 Activity Overview

In fiscal year 2019, 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

The Commission also has prioritized improving access to the *Guidelines Manual*, its most widely used and essential work product. In fiscal year 2018, the Commission launched a mobile application that enables users to conveniently access the *Guidelines Manual* on a smartphone. This Guidelines App has been well received by practitioners and enhanced features will be added in fiscal year 2020. Building on the success of the app, the Commission unveiled the *Guidelines Manual Annotated*—an enhancement to the online version of the Manual that provides the amendment history of each guideline provision. The product provides more accessibility to and transparent understanding of the policy rationale and sentencing data underlying each guideline provision. An increasing number of guideline users have accessed the *Guidelines Manual* using this new online resource since its launch in July 2019.

Fiscal Year 2019 Major Events and Product Releases



The Commission is in the process of updating and transforming the Interactive Sourcebook (ISB)—an online tool that replicates and customizes the Commission’s annual sentencing data. Launching in mid-2020, the Interactive Data Analyzer (IDA) will answer frequently asked data questions and reflect the latest trends in data visualization. The Commission believes IDA will be an online resource used for years to come by judges, Congress, the Executive Branch, probation officers, lawyers, academia, and the media.

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 and data reports as a resource for policymakers and the criminal justice community.

In January of 2019, the Commission released its sixth and final report in its series on federal mandatory minimum penalties titled *Mandatory Minimum Penalties for Federal Sex Offenses*. Each of the reports in this series 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. 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.

Fiscal Year 2019 Publications



November 2018

Federal Sentencing: The Basics



January 2019

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



January 2019

Intra-City Differences in Federal Sentencing Practices



January 2019

Recidivism Among Federal Violent Offenders



January 2019

What Does Federal Economic Crime Really Look Like?



January 2019

Revocations Among Federal Offenders



May 2019

2018 Annual Report and Sourcebook of Federal Sentencing Statistics



June 2019

FY 2018 Overview of Federal Criminal Cases



June 2019

Recidivism Among Federal Firearms Offenders

The Commission also 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. In fiscal year 2019, the Commission released two additional reports in this series, *Recidivism Among Federal Firearms Offenders* and *Recidivism Among Federal Violent Offenders*.

Building upon the Commission's 2012 *Booker Report*, in January of 2019, the Commission released *Intra-City Differences in Federal Sentencing Practices*, which examined demographic 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. This report evaluated variations in sentencing practices among judges within the same city, in other words intra-city variations. The report found overall increasing differences in sentencing practices among judges within the same cities, a consistent finding from the Commission's 2012 *Booker Report*.

In January 2020, the Commission released *Inter-District Differences in Federal Sentencing Practices*, which built upon the *Intra-City* report. This report studied sentencing practices across districts, comparing each district's sentencing practices to the average sentencing practices of all districts in the analysis. Recognizing the potential impact of regional differences in caseload, the analysis was conducted separately for each of the four major offense types—fraud, drug trafficking, firearms, and immigration—and only includes those districts with a minimum of 50 cases sentenced based on the relevant guideline during the period of being sentenced. The report found that, consistent with the findings of the Commission's 2012 *Booker Report*, sentencing outcomes continue to depend at least in part upon the district in which the defendant is sentenced.

The Commission also released important research in other areas. The report *What Does Federal Economic Crime Really Look Like?* examined the wide range of economic crime that accounts for approximately ten percent of the federal criminal caseload. Although these offenses often are grouped under one sentencing guideline, the Commission's report provided data and analysis on 29 specific areas of economic crime. The Commission's report *Revocations Among Federal Offenders* provided information about offenders serving sentences of probation, supervised release, special parole, and mandatory release. The report analyzed how often the courts revoked these sentences, and the impact of those revocations upon safety valve relief and career offender status in later convictions.

Again in fiscal year 2019, the Commission continued to prioritize making its data and research more easily accessible to Congress, the courts, the public, and the press. For example, 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 offenses carrying mandatory minimum penalties, career offenders, "white-collar" offenders, drug trafficking offenders by drug type, robbery offenders, and many more. In 2019, the Commission added new releases in the series, discussing fentanyl trafficking, child pornography, and sexual abuse cases.

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 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 policymakers and the federal criminal justice community.

The Commission received approximately 353,834 documents for 76,538 individual original sentencings that occurred in fiscal year 2019. Select highlights from fiscal year 2019 data are outlined below:

Approximately 353,000 sentencing-related documents were received and analyzed by the Commission in FY19.

- In fiscal year 2019, the courts reported 76,538 felony and Class A misdemeanor cases to the Commission. This represents an increase of 7,113 cases from the prior fiscal year, and the second consecutive year with an increase.
- The race of federal offenders remained largely unchanged from prior years. In fiscal year 2019, 56.3 percent of all offenders were Hispanic, 20.2 percent were Black, 19.9 percent were White, and 3.6 percent were of another race. Non-U.S. citizens accounted for 44.6 percent of all offenders.
- Immigration cases accounted for the largest single group of offenses in fiscal year 2019, comprising 38.4 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 84.4 percent of all cases reported to the Commission in fiscal year 2019.
- Among drug cases, offenses involving methamphetamine were most common, accounting for 42.2 percent of all drug cases.
- Drug sentences remained relatively stable across all drug types in fiscal year 2019. The average length of imprisonment in methamphetamine cases was unchanged from fiscal year 2018 at 95 months, as was the average sentence in crack cocaine cases (78 months), but decreased in powder cocaine cases (from 73 to 70 months), and increased in heroin cases (from 69 to 70 months). In fiscal year 2019, 65.0 percent of drug offenders were convicted of an offense carrying a mandatory minimum penalty, compared to 58.0 percent of drug offenders in fiscal year 2018.
- In fiscal year 2019, 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 (51.4%) of all sentences were within the guidelines range, compared to 51.0 percent in fiscal year 2018.

75% of all offenders received sentences under the *Guidelines Manual* in FY19.

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 the *Annual Report and Sourcebook of Federal Sentencing Statistics*, which is available both in print and on the Commission’s website, and *Interactive Sourcebook of Federal Sentencing Statistics*, which allow 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.

As noted earlier, throughout much of fiscal year 2019, the Commission operated with only two voting commissioners—Chief Judge Danny C. Reeves and Senior Judge Charles R. Breyer. As a result, the Commission lacked the minimum four affirmative votes required to promulgate amendments to the federal sentencing guidelines. The Commission, however, continued to work on several important policy priorities while it awaited appointment of at least two new voting commissioners.

Chief among the Commission’s policy priorities was full implementation of the First Step Act, the landmark bipartisan sentencing and prison reform legislation enacted at the end of the 115th Congress. The First Step Act was consistent with several recommendations first set forth in the Commission’s 2011 *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, and further informed by numerous sentencing and prison impact analyses requested by Members of Congress.

While most of the First Step Act was directed at the Federal Bureau of Prisons and the Attorney General, full implementation of the Act requires action by the Commission in two important areas. First, a newly constituted Commission will need to amend the United States Sentencing Commission *Guidelines Manual* at §1B1.13 to reflect the new authority for a defendant to file a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A).

Second, the Commission will need to consider amending the *Guidelines Manual* to respond to the broadened eligibility criteria for the statutory safety valve set forth in 18 U.S.C. § 3553(f), which relieves certain drug trafficking defendants from otherwise applicable drug mandatory minimum penalties. The safety valve criteria are incorporated into the *Guidelines Manual* in two ways, in the drug trafficking guideline at §2D1.1 and the guideline instructing the court regarding the statutory safety valve at §5C1.2.

In the meantime, the Commission began collecting data on implementation of another important section of the First Step Act, the retroactive application of the statutory reductions in crack cocaine penalties previously enacted in the Fair Sentencing Act of 2010. The Fair Sentencing Act increased the threshold for the 5- and 10-year mandatory minimum penalties for crack cocaine offenses from 5 and 50 grams, respectively, to 28 and 280 grams. Although the Commission made the guideline amendment implementing the Fair Sentencing Act reductions retroactive in 2011, Congress did not make the statutory reductions retroactive until now. Under the newly enacted law, the defendant, the Director of the Bureau of Prisons, the attorney for the government, or the court itself may make a motion to retroactively apply the statutory reductions for crack cocaine offenses provided in the Fair Sentencing Act of 2010.

In its most recent retroactivity report, First Step Act of 2018 (February 2020), the Commission reported that 2,387 defendants were granted a reduced sentence as a result of retroactive application of the Fair Sentencing Act, with their average sentences reduced by 71 months (26%) from 258 to 187 months.

In addition to the First Step Act, several published proposed amendments await action by a newly constituted Commission. The most significant of these policy initiatives concerns application of the categorical approach to the guideline definition of “crime of violence,” which has overwhelmed the federal courts in litigation over whether an offense qualifies as such under the guidelines.

After the Supreme Court’s decision in *Johnson v. United States*, the Commission published an analysis of career offenders and made statutory recommendations in its 2016 *Report to the Congress: Career Offender Sentencing Enhancements* and amended the guideline definition of “crime of violence” to delete the residual clause and revise the list of enumerated offenses. The Commission’s goal with the revision was to establish a more precise definition that would be easier to apply and reduce litigation.

To some extent, this goal was achieved. However, the Department of Justice has raised as pressing policy concerns to the Commission both discrete application issues, such as ambiguities over the meaning of “robbery” and “extortion,” and broader concerns about the “categorical approach” in its entirety. The complexities and odd results stemming at times from the categorical approach is of particular concern given the risk to public safety posed by this category of offenders. The Commission continues to study different approaches to simplify this determination and to ensure more logical and uniform sentencing outcomes.

Another top priority is the Commission's ongoing examination of the overall structure and operation of the guidelines post-*United States v. Booker*, the Supreme Court decision that rendered the guidelines advisory in nature. In fiscal year 2018, the Commission reported on persistent demographic disparities in sentencing, and in fiscal year 2019, the Commission released its second in this series, *Intra-City Differences in Federal Sentencing Practices*. In this report, the Commission analyzed the sentencing practices of federal district judges in 30 major cities throughout the country to determine the extent of the judges' variations in imposing sentences in relation to their particular city's average. In fiscal year 2020, the Commission released the third report in the series, *Inter-District Differences in Federal Sentencing Practices*. On the day of the report's release, the Commission's website received more than 1,300 visits to the report's landing page and more than 1,800 downloads of the report itself.

Training and Outreach

The Commission continues to fulfill its statutory duty to provide specialized seminars, workshops, and training programs for judges, probation officers, law clerks, prosecutors and defense attorneys on application of the guidelines and federal sentencing generally. In fiscal year 2019, Commissioners and staff trained personnel from nearly all 94 federal districts, each program specifically tailored to the needs of the particular audience.

The Commission also has initiated training exclusively for federal judges as they have unique training needs. Approximately 100 judges attended the Commission's 2019 annual judges' seminar in Chicago, Illinois, and similar participation is expected at its 2020 seminar in Boston, Massachusetts. The Commission intends to meet the training needs of judges on an annual basis.

Each year the Commission also holds a national training seminar for a broader array of members of the federal criminal justice system. More than 850 federal probation officers, prosecutors, defense attorneys, and judges attended its 2019 national training seminar in New Orleans, Louisiana, and the Commission is planning a similarly sized 2020 national seminar in Chicago, Illinois.

The Commission is increasingly relying on distance and online learning in order to expand the reach of its training and contain costs. In fiscal year 2019, the Commission expanded significantly its podcast series on frequently recurring sentencing issues, including a ten-episode miniseries on the categorical approach—one of the most common requested training topics and a source of extensive litigation. The Commission will continue to produce podcasts and update its glossary and case law summaries in fiscal years 2020 and 2021.

In FY19 approximately 100 federal judges attended the judges seminar.

More than 850 professionals attended the national seminar.

In fiscal year 2020, the Commission launched an interactive quarterly newsletter as another means of providing sentencing training. The newsletter is available online and distributed electronically to interested constituents. These updates contain guideline application pointers, case law updates, and answers to frequently asked questions.

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.

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.

Resources

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

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