



ANNUAL REPORT

ANNUAL REPORT CONTENTS

Introduction	2
Agency Overview	2
Commissioners	2
Organization	3
Budget and Expenditures	4
Fiscal Year 2020 Activity Overview	4
Conducting Research	5
Collecting and Reporting Sentencing Data	6
Sentencing Policy Development	8
Training and Outreach	10
Summary	11

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 FY 2020, the Commission’s website received approximately 1.8 million hits and averaged approximately 37,000 visitors per month. For the second straight year, these numbers reflect an impressive increase in visitors (+26%), sessions (+20%), and pages viewed (+16%) from the previous fiscal year and demonstrate how the Commission disseminates information broadly, efficiently, and cost-effectively.

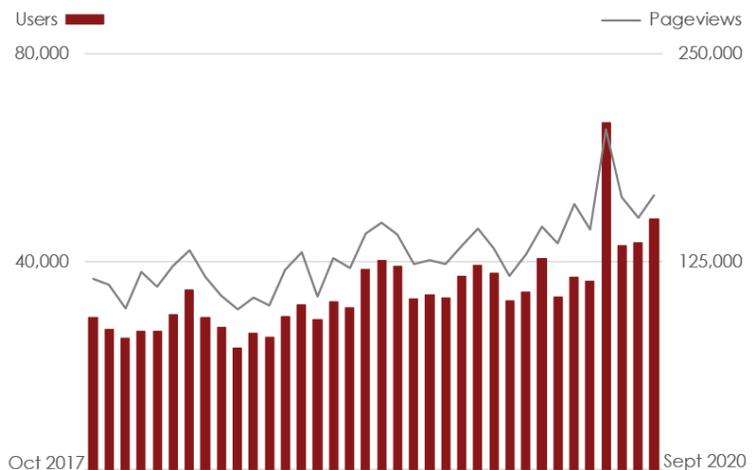
Agency Overview

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.

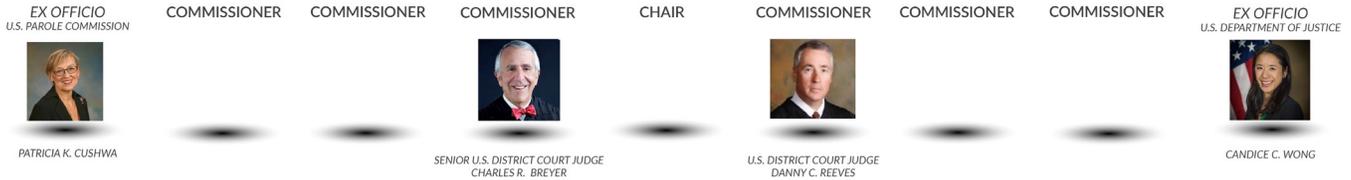
Throughout much of FY 2020 and into FY 2021, the Commission operated with only two voting commissioners—Chief Judge Danny C. Reeves and Senior Judge Charles R. Breyer. Other commissioners include Patricia K. Cushwa (*ex officio*, U.S. Parole Commission) and Candice C. Wong (*ex officio*, U.S. Department of Justice). Judge Reeves’s term, however, has since expired at the conclusion of the 116th Congress. Although the Commission has lacked the minimum of four affirmative votes required by statute to promulgate amendments to the federal sentencing guidelines, the Commission’s other statutory duties are unaffected by the lack of four voting commissioners.

Monthly External Website Traffic (www.ussc.gov)



Commissioners

(Fiscal Year 2020)



Organization



Organization

In FY 2020, the Commission staff was divided into the Offices of the Staff Director, General Counsel, Education and Sentencing Practice, Research and Data, Legislative Affairs, and Administration and Technology.

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 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, 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 FY 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 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 of Administration and Technology** provides general support to commissioners and staff regarding budget and finance, contracting, human resources, facilities, and a variety of other office activities. This office also contains two technology-related units: the Information Technology unit and the Information Systems unit. Together, these two units provide the Commission the technological support necessary to operate its computer networks, remote capabilities, cybersecurity, website, records management, and its extensive information systems applications.

Budget and Expenditures

For FY 2020, the Commission received an annual appropriation of \$19,670,000 to continue to fulfill statutory duties envisioned by the Sentencing Reform Act of 1984. The Commission did not request program increases for FY 2021. The Commission continues to maximize its existing resources by prioritizing cost-containment and efficiency.

FY 2020 Activity Overview

In FY 2020, 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**

While COVID-19 has had a significant impact on work processes, the Commission's sustained strategic investment in technology, automation, and cybersecurity enabled it to quickly pivot and maintain continuity of operations by maximizing telework while protecting personal identifying information contained in confidential sentencing documents. Consistent with the priorities of the Judicial Branch and in coordination with the Administrative Office of the United States Courts, the Commission continually audits and updates its cybersecurity measures and expands its technological capacity and must continue investing in these areas to remain current and secure.

With these investments, even with the challenges presented by COVID-19, the Commission has been able to meet the growing demand for Commission work products, information, and services, as evidenced by an impressive increase of over 20 percent in the Commission's website traffic for the second year in a row. This increase is driven in significant part by innovations such as the *Interactive Data Analyzer* and mobile *Guidelines App* that have made the Commission's guidelines, data, and information more accessible and easily used by Congress, judges, litigants, researchers, and members of the general public. The Commission expects this heightened interest in, and use of, its reliable and timely sentencing data and information to extend through FY 2021 and beyond.



Research staff can answer general questions from the public about Commission data or datasets.

Contact AskORD@ussc.gov.



The Commission continues its recidivism research to help inform Congress and others on how best to protect public safety while targeting scarce prison resources on the most dangerous offenders.

Conducting Research

Research is a critical part of the Commission's mission. The Commission regularly analyzes data to monitor how courts sentence offenders and use the guidelines, and the agency routinely uses these analyses to inform its proposed changes to the guidelines. The Commission publishes many of its analyses as a resource for Congress and the criminal justice community.

In recent years, the Commission has focused on recidivism research to help inform Congress and others on how best to protect public safety while targeting scarce prison resources on the most dangerous offenders. In FY 2020, the Commission released the last in a series of reports that examined in great detail the 25,431 U.S. citizen federal offenders released from prison or placed on probation in 2005 and studied their recidivism over an eight-year follow-up period. The last report in the series, *Length of Incarceration and Recidivism*, (April 2020) found that offenders incarcerated longer than 120 months were 30 to 45 percent less likely to recidivate than a comparable group who received shorter sentences. At the other end of the spectrum, however, the study could not find sufficiently reliable evidence to conclude that shorter incarceration lengths of 12 to 24 months have either a criminogenic or deterrent effect.

In FY 2020, the Commission released a study on the impact of the retroactive application of the Commission's 2014 "Drugs Minus Two" amendment on recidivism. The



“Drugs Minus Two” amendment reduced by two the offense levels assigned to each drug quantity in the drug trafficking guideline, and as a result approximately 31,000 federal offenders received a retroactive sentence reduction of 25 months on average. The Commission compared these offenders with a comparable group who served their full sentences and found no statistical difference in their recidivism rates (approximately 28% for the retroactivity group and 30% for the full sentence group). This Commission believes this positive outcome may be attributed in part to the eligibility criteria required by the Commission and the careful attention to those criteria—particularly public safety considerations—paid by judges. These findings may help inform the ongoing consideration of drug penalties by Congress and others.

In FY 2021, the Commission will release another report studying the recidivism of offenders sentenced under the Armed Career Criminal Act.

Recidivism research will continue to be a major focus of the Commission in FY 2021, 2022 and beyond. The Commission plans to update and expand its recidivism research with a study of two more current groups of federal offenders who were released in 2010 and 2015. This will enable the Commission to examine the impact on recidivism of both the Supreme Court’s *Booker* decision in 2005 and more recent implementation of evidence-based practices in supervision by federal probation officers.

The issue of supervision is significant as the number of individuals under federal supervision ranged from 130,000 to 136,000 between 2013 and 2017, more than the number of individuals incarcerated in the Federal Bureau of Prisons at any one time. In FY 2020, the Commission released its first-ever report analyzing data relating to revocation hearings. The report, *Federal Probation and Supervised Release Violations* presented data on approximately 108,000 violation hearings between 2013 and 2017, and examined the prevalence, types, and locations of federal supervision violations.

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.



Fiscal Year 2020 Data Highlights

The courts submitted approximately 300,000 documents reporting **64,565 felony and Class A misdemeanor cases** to the Commission. This represents a **decrease of 11,973 cases** from fiscal year 2019 and reflects the effect of the COVID-19 pandemic on the work of the courts.

The **race** of federal offenders remained **largely unchanged** from prior years. In fiscal year 2020, 58.1 percent of all offenders were Hispanic, 19.3 percent were White, 19.1 percent were Black, and 3.4 percent were of another race. Non-U.S. citizens accounted for 46.2 percent of all offenders, an increase of 1.6 percentage points from the prior year.

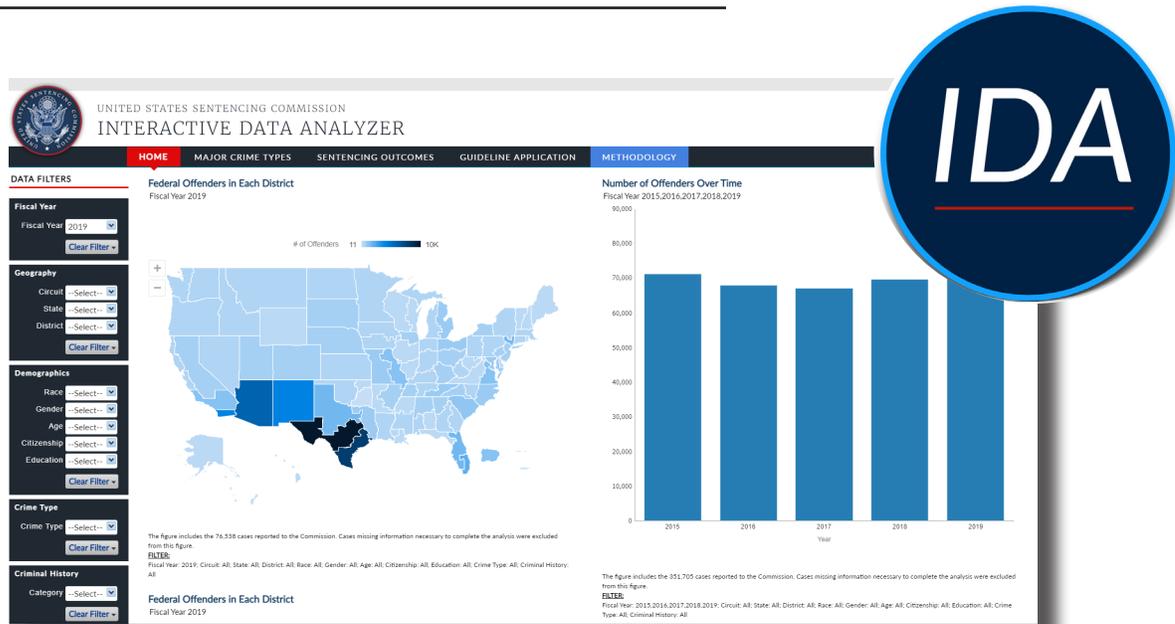
Immigration cases accounted for the **largest single group of offenses** in fiscal year 2020, comprising 41.1 percent of all reported cases, an increase from the 38.4 percent of the cases reported in the prior year. Cases involving **drugs, firearms, and fraud** were the next most common types of offenses after immigration cases. Together these **four types of offenses** accounted for **86.4 percent of all cases** reported to the Commission in fiscal year 2020.

Among drug cases, offenses involving **methamphetamine** were **most common**, accounting for 45.7 percent of all drug cases.

The **average length of imprisonment** in **methamphetamine** cases was **unchanged** from fiscal year 2019 at 95 months. However, the **average sentence imposed decreased across the other major drug types**: in crack cocaine cases (from 78 to 74 months), powder cocaine cases (from 70 to 66 months), heroin cases (from 70 to 66 months), and marijuana cases (from 31 to 29 months).

Two-thirds (66.9%) of drug offenders were convicted of an offense carrying a **mandatory minimum** penalty, compared to 65.7 percent of drug offenders in fiscal year 2019.

Almost three-quarters (73.7%) of all offenders received sentences under the Guidelines Manual, in that the sentence was within the applicable guideline range or was outside the applicable guideline range and the court cited a departure reason from the *Guidelines Manual*. Half (50.4%) of all sentences were within the guideline range, compared to 51.4 percent in fiscal year 2019.



In June 2020, the Commission launched a new *Interactive Data Analyzer*. Using this tool, Congress, judges, litigants, the press, and the general public can now easily and independently analyze sentencing data by their state, district or circuit, and can refine their inquiry to data relating to the specific type of crime of interest. This new interactive tool utilizes the most current data visualization techniques and technology that will enable the Commission to easily add features and new data in years to come.

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, 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 FY 2020, 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 new voting commissioners.

In order to inform a newly constituted Commission and to provide Congress and others a timely assessment of the First Step Act's impact, the Commission is already collecting, analyzing, and reporting data on implementation of the Act. In August 2020, the Commission released *The First Step Act of 2018: One Year of Implementation*, a comprehensive report analyzing the law's impact on the statutory safety valve, statutory enhancements under 21 U.S.C. § 851 for certain drug recidivists, stacking of 18 U.S.C. § 924(c) penalties, compassionate release, and retroactive application of the statutory reductions for crack cocaine offenses previously enacted in the Fair Sentencing Act of 2010.

Among the findings, drug offenders were more likely to receive the safety valve since the statutory criteria was expanded. One-fifth (19.2%) of safety valve recipients were eligible because of the new expanded statutory criteria. After one year, 2,387 crack cocaine offenders had their sentences reduced by retroactive application of the Fair Sentencing Act, and those numbers continued to rise in FY 2020. As of September 29, 2020, 3,613 crack cocaine offenders had their sentences retroactively reduced, and the reductions have been substantial, on average 71 months.

Courts also granted 145 motions for compassionate release during the first year after enactment of the First Step Act, a five-fold increase over 2018. Of the motions granted, about two-thirds were filed by the defendant, which was newly authorized by the Act. Since then, however, COVID-19 has had a substantial impact on compassionate release as the volume of motions has surged. The Commission is collecting data on how compassionate release is



The Commission is already collecting, analyzing, and reporting data on implementation of the First Step Act of 2018.

being applied in light of both the First Step Act and the COVID-19 pandemic to inform Congress and the public, as well as its own policymaking.

The Commission will need to amend 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. Achieving the full sentencing impact contemplated by the First Step Act will require the Commission to amend both guideline provisions.

In FY 2019, the Commission adopted an amendment effectively raising the guideline penalties for fentanyl analogues by clarifying the guidelines to be more consistent with the relevant statutory provisions. While fentanyl and fentanyl analogue offenders remain a small portion of the overall federal drug trafficking caseload (5.8%), the number of fentanyl offenders and fentanyl analogue offenders has sharply increased over the last several years with no sign of abating. The Commission, therefore, continues to study this urgent problem as Congress considers legislation to stem the tide of fentanyl, fentanyl analogues, and opioid abuse. To that end, in January 2021, the Commission released *Fentanyl and Fentanyl Analogues: Federal Trends and Trafficking Patterns*. The report notes that since FY 2015, the number of fentanyl offenders reported to the Commission more than doubled each fiscal year, resulting in a 3,592 percent increase, from 24 to

886 offenders. Additionally, since FY 2016, the number of fentanyl analogue offenders increased 5,725 percent, from four to 233 offenders. The report also discusses the harms associated with fentanyl and fentanyl analogues, which account for over three-quarters of all drug trafficking offenders sentenced where the offense of conviction established that death or serious bodily injury resulted from the substance's use.

One of the Commission's ongoing priorities has been to examine the overall structure and operation of the guidelines post-*United States v. Booker*, the Supreme Court decision that rendered the guidelines advisory. In FY 2018, the Commission reported persistent demographic disparities in sentencing (*Demographic Differences in Sentencing: An Update to the 2012 Booker Report* (November 2017)). In FY 2019, the Commission reported increasing sentencing disparities among federal judges who sit within the same courthouses in 30 major cities across the country (*Intra-City Differences in Federal Sentencing Practices* (January 2019)). And in FY 2020, the Commission reported increasing geographical disparities in sentencing across the 94 federal judicial districts (*Inter-District Differences in Federal Sentencing Practices* (January 2020)).

In FY 2021, the Commission issued another report in this series examining the influence of the guideline range on average sentences imposed (*The Influence of the Guidelines on Federal Sentencing* (December 2020)). Using sentencing data collected from 2005 to 2017, the analysis compares the average guideline minimum with the average sentence imposed under all guidelines in the aggregate and six individual guidelines across three time periods. This important report found several overarching trends indicating that, while varying substantially depending on the type of offense, the guidelines generally continue to have a substantial impact on sentences imposed after *Booker*. The Commission expects to update and keep current the information contained in these reports in FY 2022 and beyond to inform Congress and the public, as well as its own policymaking.

Training and Outreach

The Commission continues 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 FY 2019 and 2020, the Commission trained judges, attorneys, probation officers, and law clerks from nearly all 94 federal districts.

In FY 2020, the COVID-19 pandemic forced the Commission to suspend all in-person training and seminars. However, the Commission's ongoing investments in eLearning allowed its training efforts to continue unabated. For several years the Commission has been leveraging distance and online learning to expand the reach of its training and contain costs. When in-person training was cancelled, the Commission quickly pivoted to several remote learning platforms that allowed it to train groups even larger than ordinarily possible with in-person training. More than 1,500 individuals attended the Commission's virtual trainings during FY 2020.

In FY 2020, the Commission also updated and expanded its eLearning library of courses, including "Federal Sentencing: The Basics," its most frequently accessed online course, as well as foundational courses on relevant conduct, the cornerstone of the guidelines, and two courses on determining criminal history. More than 3,100 individuals accessed one of the Commission's eLearning courses during FY 2020.

In FY 2020, the Commission launched an interactive quarterly newsletter as another means of providing sentencing training. These updates contain guideline application pointers, case law updates, and answers to frequently asked questions. More than 1,000 individuals accessed these newsletters.

In addition, the Commission maintains a *HelpLine* that responds to dozens of questions each week from judges, practitioners, and probation officers regarding proper guideline application.



In FY 2020, the COVID-19 pandemic forced the Commission to suspend all in-person training and seminars. However, the Commission's ongoing investments in eLearning allowed its training efforts to continue unabated.

In FY 2021 and 2022, the Commission plans to continue expanding its eLearning library and remote learning opportunities, while standing ready to resume in-person training offerings when conditions permit.

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.

Training Resources

eLearning Courses



The Commission offers self-guided eLearning modules.

Visit <https://www.ussc.gov/product-type/elearning>.

HelpLine



The HelpLine assists practitioners in applying the guidelines.

Contact: (202) 502-4545

Hours: 8:30 a.m.- 5:00 p.m. (ET)
Monday – Friday

Virtual Training



We conduct remote training sessions via video conferencing technology.

Our virtual sessions are interactive and tailored to fit your training needs.

Email Training@ussc.gov to arrange a remote training session.

Contact Us



@TheUSSCGov



www.usc.gov



United States Sentencing Commission



PubAffairs@usc.gov