



# UNITED STATES SENTENCING COMMISSION

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## RESEARCH NOTES

### **Introduction to the Collection of Individual Offender Data by the United States Sentencing Commission**

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The United States Sentencing Commission is an independent agency within the judicial branch of the federal government.<sup>1</sup> In addition to its statutory duty to promulgate and amend the federal sentencing guidelines, the Commission has other responsibilities, including (1) establishing a data collection, analysis, and research program to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on federal sentencing practices; (2) publishing data concerning the sentencing process; (3) collecting and disseminating information concerning sentences actually imposed and the relationship of such sentences to the factors set forth in 18 U.S.C. § 3553(a); and (4) collecting and disseminating information regarding the effectiveness of sentences imposed.<sup>2</sup>

To meet these responsibilities, the Commission receives and reviews sentencing documents from the federal courts. Within 30 days of entry of judgment in a criminal case, the chief judge of each sentencing court is required, under 28 U.S.C. § 994(w)(1), to submit a written report of sentence to the Commission that includes (1) the judgment and commitment order (J&C); (2) the statement of reasons (SOR); (3) any plea agreement; (4) the indictment or other charging document; (5) the presentence report (PSR); and (6) any other information the Commission finds appropriate. During fiscal year 2008, the federal courts submitted to the Commission reports of sentencing on 76,478

defendants that consisted of 355,849 individual documents.<sup>3</sup>

The Commission enters information from the submitted documents into several datafiles including the individual offender datafile, an organizational offender datafile, an appeals datafile, and special projects datafiles. The individual offender datafile is the Commission's largest datafile. The Commission collects information from the submitted documents pertaining to each case including: demographic information, statutes of conviction, complete guideline application information, sentencing information, and information about the sentence relative to the the guideline range. The organizational datafile consists of information about organizations that have been convicted of federal violations. The Commission reviews the submitted documents and collects information including company demographic information (e.g., size, business classification), guideline application, and the details of the sentence. The appeals datafile consists of information about offenders whose sentence and/or conviction has been appealed. The appeals file contains information about the party filing the appeal, the guideline and issue appealed, and the outcome of the appeal. The special project datafiles generally consist of data collected by the Commission for a special research topic—data that was not regularly collected in the fiscal year datafiles. For these datafiles, the Commission reviews the court documents and collects information that is not collected for the Commission's other datafiles. The information presented in this report concerns the individual offender fiscal year datafiles, although some information may also apply to the other datafiles the Commission maintains.

The Commission collects information only on criminal cases involving at least one felony or Class A misdemeanor conviction, with the exception that death penalty case information is not submitted to the Commission because these cases are considered non-guidelines cases.<sup>4</sup> Records of any federal criminal case involving petty offenses only, in which the defendant was acquitted of all charges, or where all charges were dismissed are not maintained by the Commission. Cases where a diversionary sentence was imposed also are not kept in the Commission's individual offender datafile. Finally, cases are not included if all of the offense conduct occurred before the guidelines were promulgated.<sup>5</sup>

Courts send the required documents to the Commission electronically. Prior to 2005, the Commission received documents only in paper copy format. In 2005, the Commission established its Electronic Submission System ("ESS") and, by June of 2006, all documents were being stored electronically in the Commission's Oracle database. Court personnel log into the ESS, enter case identifying information (e.g., offender name, docket identification number), identify the status of the documents (i.e., note which documents are attached, waived, or omitted), indicate if the documents involve an amendment to a prior judgment or a re-sentencing, and then attach PDF versions of the documents. All 94 federal judicial districts now submit electronic documents to the Commission. Ninety-three districts use the Commission's ESS to submit documents. Additionally, the Commission has a pilot program with one district, Southern California, that submits data electronically via the Commission's Web Services Interface ("WSI"). Court personnel in this district store the case identifier and document status information in a datafile and then "push" that data to the Commission through the WSI as well as send the necessary documents.

The sets of electronic documents are reviewed to determine if they are missing critical documents (the Commission considers the PSR,

J&C, and SOR to be the three critical documents for data collection) or if the documents provided do not match the document status information submitted by the district (e.g., if the document status states that a PSR was attached but the Commission did not receive a PSR, the case is rejected). If a case is rejected, an e-mail describing the problem is sent to the district that submitted the case. If the case is accepted, it proceeds into an analytical queue for processing. In general, cases are processed in order of sentencing date.<sup>6</sup>

At the analytic phase of case processing, Commission staff review each of the documents and extract demographic, sentencing, and guideline application information for each case. First, the PSR is reviewed and demographic information is entered.<sup>7</sup> Additional identifiers are also taken from the PSR to help the Commission match its data to other federal criminal datafiles.<sup>8</sup> Next, the Commission enters the case disposition (guilty plea vs. trial), statutes for each count of conviction, statutory ranges for each count of conviction, and offense type. The statutes of conviction are coded from the J&C and the statutory ranges are coded from the PSR. The offense type and the disposition are entered based on information taken from both documents (e.g., the J&C may note that the offender was convicted of counts 1-3 at trial, but the PSR must be reviewed to determine if the type of trial was jury or bench). The J&C is also reviewed for sentence length information and financial aspects of the offender's sentence.<sup>9</sup> Guideline application information is then extracted from the PSR, adjusting for any factual determinations (e.g., changes in the amount of drugs for which the offender is held accountable) that the court has documented on the SOR.<sup>10</sup> The SOR is then further reviewed to determine the final sentencing range and whether the sentence is inside or outside of the range.<sup>11</sup> Finally, for any case involving a sentence outside of the guideline range, information about the reasons why the sentence is outside of the range is collected.

Generally, courts use a standard form (AO245B) to impose judgment in a criminal case and provide reasons for that judgment.<sup>12</sup> The PSR generally provides information to the court in a standardized format.<sup>13</sup> Data entry screens at the Commission are designed to mimic the way the information is presented on the forms (*i.e.*, the same number of checkboxes in the same order).

Whenever older forms or district-modified forms are provided to the Commission, data collection issues can arise. For instance, the current SOR form clearly distinguishes between a sentence outside of the guideline range due to a departure and a sentence otherwise outside the guideline system.<sup>14</sup> When districts submit older or non-standard SORs, this distinction may not be as clearly indicated. Information such as who initiated the departure or sentence outside the guideline system may be missing. The Commission attempts to determine the fields that can be filled-in from these alternate forms. Matters of legal interpretation are resolved by the Commission's Office of General Counsel. Conversely, districts sometimes submit other documents in addition to or in place of standard forms. Some districts submit SORs that document that a sentence is outside of the guideline range, and the SOR refers to a sentencing transcript for the reasons. The district may submit portions of or the entire sentencing transcript. In these instances, the Commission examines the transcript to attempt to determine the reasons why a sentence is outside of the range. Some SORs may also simply indicate that the reason the sentence is outside of the range is the "plea agreement." In these instances, the Commission examines the plea agreement to try to determine the reason the sentence is outside of the range so that the specific reasons can be coded.<sup>15</sup> The resource cost to the Commission for cases that include one or more non-standard forms or cases where the standard form is not fully or correctly filled-out is much higher than for cases in which all standard forms are accurately and completely filled-out and submitted.

Sometimes the documents received for a single case contain conflicting information. When this happens, the Commission attempts to determine which information is accurate and should be entered. For example, occasionally the offender's name is not consistent on all of the documents received for a case. Sometimes this is due to misspellings or confusion over the order of names (which is common with hyphenated Hispanic surnames). Sometimes the offender has given one name initially to law enforcement and then at some point his or her true name is discovered and is used on subsequent documents. The Commission tries to determine the correct spelling/order of the name and enter it that way into the datafile. In other cases, the SOR states that the sentence is within the guideline range, but the sentence provided on the J&C is outside of the final guideline range provided on the SOR or statutory range provided in the PSR. In a case such as this, the Commission will review the documents to determine if a typographical error has been made on one of the documents (sometimes the final sentencing range on the SOR is mistyped for the given final offense level and criminal history category). If the conflict of information cannot be resolved, then the case is coded as having a sentence outside the guideline range with no reason provided. Multiple Commission staff members will review these cases to try to resolve these inconsistencies in the data.<sup>16</sup>

The Commission devotes significant resources to collecting data and trying to ensure that the data is as accurate and complete as possible.<sup>17</sup> In addition to the above reviews, the Commission reviews all cases sentenced outside of the applicable guideline range after they are analytically coded to verify critical information such as the sentence length, final guideline range, and the reasons given by the court for imposing a sentence outside of the range. The Commission has also developed a computerized edit program that identifies out of range values, unusual values, and logical inconsistencies between variables. Each case involving one or more of these "edits" is reviewed to verify the unusual or inconsistent information. Each year,

about 60 percent of the cases are reviewed in regard to one or more of the data fields.

The Commission submits an *Annual Report* to Congress (discussing the Commission's work during the year, a summary of the cases sentenced that year, the Commission's budget, etc.) and also a yearly *Sourcebook of Federal Sentencing Statistics* (which displays information from the Commission's data in various tables and charts). These resources and many others are available on the Commission's website at [www.ussc.gov](http://www.ussc.gov).<sup>18</sup>

The Commission releases its data on an annual basis to the public for research purposes. Persons interested in obtaining the Commission's publicly released datafiles may visit the website maintained by the Federal Justice Statistics Resource Center (FJSRC),<sup>19</sup> which is sponsored by the Bureau of Justice Statistics and developed by the Urban Institute. This website makes the Commission's data and corresponding datafile documentation (*i.e.*, codebooks describing the datafile composition) available for download. The FJSRC website also has data from other federal criminal justice agencies available for download as well as a point-and-click feature that allows users to select variables from pull-down menus and create cross-tabs without downloading the data. The Commission also provides data and datafile documentation to the Inter-University Consortium for Political and Social Research at the University of Michigan (ICPSR).<sup>20</sup> Note that the case identifiers (*e.g.*, offender's name, social security number) are removed from all publicly released data. Further information about both the Commission's public access policy and the data confidentiality agreement can be found at <http://www.ussc.gov/general/pubacces.PDF>.

## ENDNOTES

1. The United States Sentencing Commission is an independent agency in the judicial branch of government. Established by the Sentencing Reform Act of 1984, its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress, the federal judiciary, and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues.
2. The Commission's research and data duties are described in 28 U.S.C. § 995(a)(12) through (16).
3. See Table 1 of the Commission's *2008 Sourcebook of Federal Sentencing Statistics*.
4. The *2008 Guidelines Manual* specifies that the sentencing guidelines do not apply to Class B or C misdemeanors in §1B1.2(a). Additionally, the sentencing guidelines do not specifically contain any provisions that include the death penalty. If a statute of conviction includes a provision for the death penalty and the offender is ultimately sentenced to death, then this statutory punishment "trumps" the guideline sentence.
5. The guidelines became effective on November 1, 1987.
6. Occasionally, the Commission is interested in examining a particular subset of cases sentenced within a specific period of time. Specific date filters are applied so that cases sentenced within these dates will be given preference in the processing queues.
7. See Administrative Office of the United States Courts, *The Presentence Investigation Report: For Defendants Sentenced Under the Sentencing Reform Act of 1984* (March 2006). That report provides, "The aim of the presentence investigation is to provide a timely, accurate, objective, and comprehensive report to the court. The report should have enough information to assist the court in making a fair sentencing decision and to assist corrections and community corrections officials in managing offenders under their supervision." *Id.* at I-1. It also states, "The report is designed to provide the court with a complete and concise picture of the defendant." *Id.* at I-2. The PSR includes basic demographic information that the Commission collects, including gender, race, ethnic origin, citizenship, number of dependants, and education level. The PSR also includes a brief summary of custody issues (e.g., dates of arrest, bail/bond status), a description of the offense conduct, the guideline computation, the offender's criminal history, and personal information such as financial status and family information. The presentence report is a confidential document. *Id.* at VI-3. The Freedom of Information Act (FOIA) and the Privacy Act do not apply to the federal judiciary. *Id.* Therefore, the PSR is considered a sensitive document due to the nature of some of the information and is not publicly released/available.
8. Identifiers include social security number, Federal Bureau of Investigation number, U.S. Marshals Service number, Probation and Pretrial Services Automated Case Tracking Electronic Case Management System (PACTS/ECM) identification number, Bureau of Immigration and Customs Enforcement (ICE) number, and probation office. Twice each year, the Commission matches its data to data maintained by the Administrative Office of the U.S. Courts and notifies districts of any cases that have not been received by the Commission. The Commission undertakes this effort to assess the completeness of its datafile

and to make efforts to improve it. The Commission will also request any documents missing from cases that have been received. Additionally, the Commission may match its data against these and other datafiles for special projects.

9. The J&C details all aspects of the offender's sentence. The Commission collects many pieces of information about the sentence, including the length of the sentence, whether all or part of the sentence is time served, if any credit is given under USSG §5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment), months of alternative confinement, months of probation or supervised release, hours of community service, amount of special assessment, fine amount, cost of supervision, and restitution amount.

10. This includes the amendment year of the guidelines manual used to determine the base offense level (BOL), the specific offense characteristics (SOCs), the Chapter Three adjustments, criminal history points, multiple count levels, drug/chemical types and weights, and loss amounts.

11. The SOR is part of the same form as the J&C (AO245B). The SOR details information about final court findings with respect to any changes made at sentencing to information documented in the PSR as well as information about whether the sentence falls inside or outside of the guideline range and why. The Commission collects much of this information, including the final offense level, criminal history category, un-trumped (*i.e.*, statutory constraints not taken into account) guideline range, changes to guideline application from the PSR, court findings on the mandatory minimum status, whether the sentence is within/outside the guideline range, the reasons why the sentence is outside the range, and the attribution of the origin of the departure/sentence outside the guideline system.

12. In fiscal year 2008, the courts used AO Form 245B (Rev. 6/05) in 66,641 cases, or 87.1% of all 76,478 cases that year. A written statement of reasons not conforming to AO Form 245B was submitted in 8,094 cases (10.6%). No statement of reasons was submitted in 1,743 cases (2.3%). USSC, *Final Quarterly Data Report Fiscal Year 2008*, Table 28.

13. *The Presentence Investigation Report: For Defendants Sentenced Under the Sentencing Reform Act of 1984* (Publication 107, Revised March 2006) outlines the sections that should be included in a PSR.

14. Although the 2005 Supreme Court decision in *United States v. Booker*, 543 U.S. 220 (2005) clarified the authority of courts to impose sentences outside of the guideline range, the criteria for departing from the guideline range remained unchanged. Therefore, those subcategories of sentences outside of the range are captured separately in the Commission's datafile to enable more specific analysis of outside of the range sentences.

15. Some plea agreements stipulate to a sentence outside of the range because the offender provided substantial assistance to the government or qualified for a departure under an Early Disposition Program. Other plea agreements may cite specific departure reasons such as criminal history points over-representing the seriousness of the criminal history or diminished mental capacity. Some plea agreements do not specify reasons, but do stipulate to a specific sentence or a guideline range. The Commission records "stipulations" as the reason why the sentence is outside of the range. In cases in which no specific reason can be gleaned from the plea, the "plea agreement" indication from the SOR is entered as the only reason for why the sentence is outside of the range.

16. The data analyst initially enters the information. After all cases have been completed through analytical processing, the Commission runs the cases through an edit program. The edit program selects cases with logical inconsistencies and out-of-range values for a secondary review by members of the research staff. Any edits that cannot be resolved are referred to the Office of General Counsel for final decision.

17. See footnote 8 for a description of the Commission's data matching efforts addressing the completeness of the data.

18. The Commission's website ([www.ussc.gov](http://www.ussc.gov)) contains other statistical reports as well as reports to Congress and guideline manuals.

19. The website for the Federal Justice Statistics Resource Center can be found at <http://fjsrc.urban.org/index.cfm>.

20. The website for the Inter-University Consortium for Political and Social Research can be found at <http://www.ICPSR.umich.edu/>.



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