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RESEARCH NOTES

Federal Sentencing Data and Analysis Issues

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This paper explains the way in which the United States Sentencing Commission collects sentencing information, and discusses analytical issues that may arise when using the Commission's sentencing data.¹ This paper also describes some of the key sentencing variables collected in the Commission's individual offender datafile.

To conduct its research and data activities, the Commission relies on sentencing documents submitted by the courts. Within 30 days after entry of judgment in a federal criminal case, the chief judge of the district is required by statute to ensure the Commission is provided copies of (1) the judgment and commitment order (J&C); (2) a written statement of reasons (SOR) for the sentence imposed; (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.² During fiscal year 2009, the federal courts submitted to the Commission 81,372 cases, consisting of 374,922 documents.³

The J&C contains information about the offender's sentence (e.g., the length and type of the sentence imposed). If the offender received a term of imprisonment, the J&C also states whether the offender received a period of supervised release after incarceration, and, if so, the length of supervision. Monetary aspects of the sentence such as fines, restitution, and special assessment fees are also set forth in the J&C. The Commission collects all of this sentencing information from every J&C form submitted to the Commission.

In the federal criminal justice system, the recommended length of an offender's sentence is determined by the sentencing table set forth in the *Guidelines Manual*.⁴ The sentencing table is a grid with a vertical axis corresponding to the offender's final offense level (ranging from one to 43) and a horizontal axis reflecting the offender's criminal history category (ranging from I to VI). Once the offender's final offense level and criminal history category have been determined, the court finds the intersection of those two axes on the sentencing table at which is located a cell containing a recommended sentencing range.⁵

Each cell in the sentencing table is contained inside a sentencing zone. There are four sentencing zones, designated A to D.⁶ Zone A represents the low end of the sentencing table and includes only sentencing ranges of zero to six months. The court may sentence offenders in Zone A to straight probation, one or more alternatives to prison, a split sentence (i.e., a sentence composed of prison and at least one alternative form of confinement), or a term of imprisonment only.⁷ Zone B is the second lowest portion of the sentencing table and includes sentencing ranges from one to seven months to six to 12 months. The court may sentence offenders in Zone B to a sentence involving at least one alternative form of confinement, a split sentence, or a term of imprisonment only. Zone C is the second highest portion of the sentencing table and includes sentencing ranges from eight to 14 months to ten to 16 months. The court may sentence offenders in Zone C to a split sentence, provided that at least one half of the minimum term of the guideline range is served in imprisonment. Otherwise, an offender in Zone C must receive a sentence of imprisonment only. Zone D is the highest (and largest) portion of the sentencing table and includes sentencing ranges from 12 to 18 months to life sentences. Offenders in Zone D must serve all of the

sentence as imprisonment only. The Commission collects the sentencing zone of each case in a variable [ZONE] which is imputed from the information provided about the final guideline range on the SOR.⁸ Of course, the court may impose a sentence above or below the applicable guideline range. If so, the Commission records that case as outside the applicable guideline range.

Sentence Length

The Commission collects the length of the term of imprisonment imposed from the J&C. The Commission collects this information in several variables. The length of the term of imprisonment imposed initially is captured in two variables, a months variable [TOTPRISN] and a days variable [TOTDAYS]. Additionally, the Commission datafile has specific values that denote special instances such as sentences of life, less than one day in prison (*i.e.*, hours), unspecified length, and the death penalty.⁹ These values are all included in the prison months imposed variable [TOTPRISN].¹⁰

The Commission also collects information on the months [TIMSERVM] and days [TIMSERVD] of time already served sentences.¹¹ In some cases, the court will specify a sentence of two months' time already served, meaning that the offender already has served the full sentence of two months. Occasionally, the court will simply state "Time Served" on the J&C and not specify a sentence length. In those instances, analysts at the Commission review the PSR to determine the amount of time already served. In some cases, the PSRs will report the number of days the offender spent in custody prior to the sentencing date. In other cases, the document may provide the original arrest date and report that the offender was in custody the entire time before sentencing. In such a case, the length of time already served can be determined by comparing the difference between the arrest date and the sentence date. If the amount of time already served cannot be determined, then a specific code is used to denote that a sentence of time already served was given but the exact amount is unknown.¹²

An offender may be sentenced for a federal offense while in state custody for another offense. Special rules may apply when the conduct underlying the state offense played a role in determining the sentence imposed for the federal offense. These rules are discussed in USSG §5G1.3 of the *Guidelines Manual*.¹³ If the court determines that the federal portion of the offender's sentence will run either concurrently with, or consecutively to, the stated term of imprisonment, the court may adjust the federal sentence for time already served on the undischarged term of imprisonment. The Commission collects the presence of this type of credit in an indicator variable¹⁴ [CH5G13YN]. The Commission also collects the length of credit in months [CH5G13ST]. Occasionally, the court will indicate on the J&C that credit is being given to an offender under USSG §5G1.3, but the exact amount of the credit is not specified. In such a case, the indicator variable is "Yes," but the variable capturing the length of the credit granted under USSG §5G1.3 is blank or missing because the exact amount of time is unknown.

The Commission also collects information about the months of alternative sentences imposed.¹⁵ Months of home detention [MOHOMDET], community confinement [MOCOMCON], and intermittent confinement [MOINTCON] are collected. Additionally collected are any hours of community service [HRCOMSRV] specified on the J&C as part of the offender's sentence. Information about an alternative sentence is collected in the same variables whether the alternative is a condition of probation or supervised release.

In addition to the information that is collected from the J&C, the Commission creates some research variables to facilitate analysis. Additionally, other more specific indicator variables are created to note the particular type of alternative sentence, such as home detention [HOMDUM], community confinement [COMDUM], and intermittent confinement [INTDUM]. One example is an indicator variable that denotes the presence of an alternative sentence [ALTDUM].

For simplicity in reporting purposes, the Commission creates four research sentencing variables that describe the total sentence imposed on an offender. Generally, the Commission recommends that researchers use one of these four variables because they combine all of the separate variables for prison imposed, time already served, USSG §5G1.3 months, alternative sentences, and probation added together.

The first sentencing research variable [SENTTOT] adds together the imprisonment days and months, including the time already served and the months of a concurrent state sentence (USSG §5G1.3).¹⁶ This variable does not include any months of probation or months of alternative confinement (*i.e.*, if an offender received four months of home detention only, then the value for this variable [SENTTOT] would be reported as blank or missing because there was no prison involved). This sentencing variable [SENTTOT] should be used only when total imprisonment sentences (imposed or already served) are of interest (*e.g.*, when researching the question: “What is the average length of imprisonment for drug trafficking offenders?”).

The second sentencing research variable [SENTTOT0] adds together the imprisonment days and months, including the time already served amounts and the USSG §5G1.3 months. This variable does not include any months of alternative confinement (*e.g.*, if an offender received four months of home detention, then the value for this variable would be reported as missing because there was no prison term involved). However, sentences of probation only are added in as zero months (*e.g.*, an offender who received a sentence of 12 months’ probation only would have a value of “missing” for the previously discussed sentencing variable [SENTTOT] but a value of “zero” for this sentencing field [SENTTOT0]). This sentencing variable [SENTTOT0] should be used when a researcher wants to include sentences of probation only as zero months of imprisonment when calculating sentence averages.

The third sentencing research variable [SENSPLT] adds together the imprisonment days and months, including the time already served and the concurrent state sentence months (USSG §5G1.3). This variable does include any term of alternative confinement (*e.g.*, if an offender received four months of home detention and four months of imprisonment, then the value for this variable [SENSPLT] would be reported as eight months). However, sentences of probation only are recorded as “missing” and are not included in sentence averages. This variable [SENSPLT] should be used when a researcher wants to include both prison and alternative sentences but not sentences of probation.

The fourth sentencing research variable [SENSPLT0] adds together the imprisonment days and months, including the time already served, the USSG §5G1.3 concurrent state sentence months, and any months of alternative confinement, and treats probation only sentences as “zero” months. For example, if an offender received four months of home detention and four months of imprisonment, then the value for this variable [SENSPLT0] is reported as eight months. However, if an offender received four months of probation, then this variable is reported as zero months because only a sentence of probation was received. This variable [SENSPLT0] should be used when a researcher wants to include all types of sentences (imprisonment, alternative sentences, and sentences of probation).

It should be noted that for all of the above sentencing variables (*i.e.*, [SENTTOT], [SENTTOT0], [SENSPLT], [SENSPLT0]), sentences of “life” are listed as 470 months. This number of months was calculated as the average life expectancy for prisoners at the time the variables were first created. By coding life sentence cases in this way, researchers are able to include cases with life sentences in analyses of average sentences. In fiscal year 1999, the Commission switched data entry software. In the newer system, the sentence length variable was expanded to four digits, to allow sentences of 1,000 months or more to be collected accurately.

As an example, the court may impose a sentence of 1,200 months (perhaps due to multiple counts of conviction with consecutive statutory minimums). These values are not recoded to “life” in the Commission’s datafile, and the individual researcher must determine if recoding is desirable. If these values are not recoded, then these sentences will actually appear to be longer than the life sentences, which are recorded as 470 months. Additionally, these values may skew the average sentence length upwards. Therefore, if the researcher does not choose to recode these values, he or she may wish to review and report both mean and median values.

To refer to sentence types, the Commission uses specific terminology in its tables, charts, and reports. When Commission documents refer to “average sentence,” usually all of the sentence fields are included (*i.e.*, [SENSPLT0] is used). However, when Commission documents refer to “average length of imprisonment,” usually only prison sentences are included [SENTTOT]. Commission documents generally describe in the footnotes the types of sentences that are included in the tables, clearly stating whether alternative sentences or probation sentences are included or excluded.

If most of the cases of interest involve “imprisonment only” sentences (*e.g.*, in fiscal year 2009, 94.1% of drug trafficking cases were sentenced to imprisonment only¹⁷), then using a prison only sentencing variable [SENTTOT] is probably the best choice. If the focus of the research is on offenders who are generally in sentencing zones that include eligibility for alternative sentences or sentences of probation (*e.g.*, white collar offenders), then another sentencing variable may be a better choice. For example, using [SENSPLT0] would allow the researcher to include all of the alternative sentences and sentences of probation in the sentence average.

The Commission collects from the J&C the length of probation sentences [PROBATN] and the amount of supervised release [SUPREL]

imposed at sentencing. These values are expressed in months. Furthermore, research variables are created from the probation and supervised release variables to indicate the presence of supervised release [SUPRDUM] and probation [PROBDUM].

The variable that indicates the sentencing zone [ZONE] is created based on the final offense level and criminal history category collected in the datafile. Sentencing zone is reported prior to any increase or decrease in the sentence based on departure or variance. The Commission datafile also contains a variable [SENTIMP] that reviews the various sentencing variables and divides cases into the categories of prison only, prison plus alternatives, probation plus alternatives, straight probation, and fine only cases. The Commission has several variables for sentencing data, so researchers are able to tailor their analyses according to the focus of their research. The decision of which sentence length variable to use ultimately is up to the individual researcher. Reviewing variables such as the type of sentence imposed [SENTIMP] and sentencing zone [ZONE] in the datafile may be helpful in making the decision.¹⁸

An additional consideration when using Commission data is the issue of sentence imposed versus time actually served. Generally speaking, the Sentencing Reform Act of 1984¹⁹ eliminated the use of parole in the federal criminal justice system for offenders sentenced after November 1, 1987. A prisoner serving a term of imprisonment of more than one year (other than a term of life imprisonment) may receive credit toward the service of the prisoner’s sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner’s term of imprisonment subject to the determination of the Bureau of Prisons.²⁰ Because the Commission collects information only through the sentencing phase, the Commission does not have data on how much good-conduct credit an offender actually accrues while incarcerated.

Other Types of Sentences

Any other type of sentence stated on the J&C (e.g., denial of federal benefits, suspended terms of imprisonment, and orders to pay the cost of prosecution) are documented in the “other type of sentence” indicator variable [TYPEOTHS]. If the court imposes a sentence other than that described in the “Sentence Length” portion of this paper, then a value of “other” is coded and a brief descriptive text is supplied [TYPEOTTX]. As with all variables collected by the Commission, the documents submitted for an offender must contain information about a variable for a value to be collected. Cases with “other” types of sentences are rare. To impose certain types of “other” sentences, the court must attach extra pages to the J&C and submit those to the Commission to detail the punishment. Examples of unusual sentences are — denial of federal benefits, a suspended prison term, and an order to pay the cost of prosecution. It is unclear how often these other types of penalties are applied in cases for which this documentation is not sent in to the Commission. Therefore, analyses of these unusual sentences should be approached with caution.

Monetary Amounts

In addition to sentence length information, details about the monetary aspects of the offender’s sentence also are collected in the Commission’s datafile.²¹ The Commission collects information about the imposed amounts of fines [FINE], restitution [TOTREST], the special assessment fees [SPECASSM], and the supervision costs [COSTSUP]. Some of these variables are combined, or the values associated with them are collapsed, to form special research variables. For example, a research indicator variable is created for the cost of supervision [COSTSDUM] to more easily enable researchers to identify cases in which the court requires the offender to pay the cost of supervision by “screening on” cases where [COSTDUM] has a value of one. Combinations of the monetary variables are also created. An example is the dollar amount of the fine and cost of supervision

added together [AMTFINEC]. Another combination is a version of restitution with values of “some restitution given but exact amount unknown” recoded from a specific value to missing [AMTREST]. The Commission also reports the dollar amount of fine, cost of supervision, and restitution amount combined [AMTTOTAL]. This allows researchers to analyze easily the total amount of monetary penalties the court imposed. Finally, the Commission created a variable to indicate the types of monetary punishments that were imposed [TYPEMONY].

In fiscal year 2009, approximately 800 cases were submitted to the Commission in which the court did not impose a prison sentence, an alternative to imprisonment, or a probationary sentence.²² In these types of cases, the court usually imposes only monetary penalties such as fines and special assessments. Researchers will have to decide how to classify these types of offenders in any sentencing analysis. The sentence type imposed variable [SENTIMP] identifies these cases.

For examples of publicly released Commission data on sentencing, see the Sentencing Information section of the *2009 Sourcebook of Federal Sentencing Statistics*. Questions about specific sentencing variables and data questions generally may be directed to the Commission at 202-502-4500 or at askORD@ussc.gov.

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 Judicial Branch, 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. See 28 U.S.C. §§ 991-994.
2. See 28 U.S.C. § 994(w)(1)(A)-(F). The Commission collects sentencing information only for cases in which at least one of the counts of conviction are classified as a felony or Class A misdemeanor because the federal sentencing guidelines do not apply to petty offenses (see United States Sentencing Commission, *Guidelines Manual*, §1B1.9 (2009) (hereinafter *USSG*)). For more information about the origin of the Commission's data and the types of information that the Commission collects, see CHRISTINE KITCHENS, INTRODUCTION TO THE COLLECTION OF INDIVIDUAL OFFENDER DATA BY THE UNITED STATES SENTENCING COMMISSION (May 2009), available at the Commission's website at <http://www.ussc.gov>.
3. See UNITED STATES SENTENCING COMMISSION, 2009 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Table 1 (2010) (hereinafter *2009 Sourcebook*).
4. See *USSG*, *supra* note 2, at Chapter Five to view the sentencing table and to obtain more detailed information about determining an offender's sentence under the federal sentencing guidelines.
5. The guideline range in the sentencing table does not account for any statutory mandatory minimum or maximum ranges that may "trump" lesser or greater guideline ranges. For more information on the ways in which the guideline ranges and statutory ranges interact in determining the total sentence, see *USSG*, *supra* note 2, at Chapter Five, Part G.
6. See *USSG*, *supra* note 2, at *USSG* §5C1.1 for more information about the types of sentences applicable in each sentencing zone.
7. The Commission collects information about the following types of alternative confinement for inclusion in the sentencing variables: home detention (with or without electronic monitoring), community confinement (generally time spent in a half-way house), and intermittent confinement (generally a specified number of weekends in jail).
8. The names given to sentencing variables are provided in this paper in capital letters.
9. The sentencing guidelines do not specifically contain any provisions including 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 is considered to have "trumped" the guideline sentence. The special values are as follows: 9992 for less than one day in prison (*i.e.*, a number of hours), 9996 for life sentences, 9997 for cases in which prison was clearly ordered but the exact amount of time is unknown, and 9998 for death penalty sentences.
10. For more information about the sentencing variables, see the Commission's publicly available datasets and codebook describing the length and values of the variables available at <http://fjsrc.urban.org/index.cfm> or www.icpsr.umich.edu. Additional sentencing research and guideline information can be obtained at the Commission's website, <http://www.ussc.gov>.

11. Federal offenders can be granted credit for the time spent in custody after the arrest for the instant offense but prior to sentencing according to 18 U.S.C. § 3585(b).
12. When the court notes on the J&C “Time Served,” but the exact amount of that time the offender already served has not been specified, then a code of “997” is entered into the time already served months [TIMSERVM] and days [TIMSERVD] variables.
13. For example, an offender who committed an assault or robbery with a firearm might be convicted of that conduct in state court. If police officers found a firearm when searching the offender and determined that he was a felon who was prohibited from possessing a firearm, that portion of the conduct from the state offense may result in a federal conviction. See *USSG, supra* note 2, at USSG §5G1.3 for more information on credit for undischarged terms of imprisonment *available at* <http://www.ussc.gov/guidelin.htm>.
14. For some fields, the Commission creates an indicator or “dummy” variable to indicate the presence of whatever the variable is measuring. As an example, the indicator variable for USSG §5G1.3 credit [CH5G13YN] will have a value of one for all cases in which the court granted credit towards the offender’s sentence under USSG §5G1.3. When the court did not grant credit under USSG §5G1.3, the indicator variable will have a value of zero.
15. See *USSG, supra* note 2, at Chapter Five for further information about the definitions of alternative confinement and in what sentencing zones they are applicable. See also COURTNEY SEMISCH, PH.D., ALTERNATIVE SENTENCING IN THE FEDERAL CRIMINAL JUSTICE SYSTEM, *available at* http://www.ussc.gov/general/20090206_Alternatives.pdf for more information about alternative sentences in the federal system.
16. All of the Commission’s sentence length variables report sentences in terms of months. When sentences consist of days only or as both months and days, the days are converted to a fraction of a month. As an example, sentences of 12 months and one day are recorded as 12.03 months.
17. See *2009 Sourcebook, supra* note 3, at Table 12.
18. See *2009 Sourcebook, supra* note 3, at the section titled “Sentencing Information.”
19. Sentencing Reform Act of 1984, Pub. L. No. 98–473, 98 Stat. 2019 (1987).
20. See 18 U.S.C. § 3624(b).
21. One of the monetary penalties about which the Commission does not collect information is forfeitures. Although some courts list forfeiture statutes on the J&C, the Commission does not record these as statutes of conviction because they do not have minimum or maximum penalties as do the other statutes of conviction.
22. Cases that do not fit into one of the four sentencing type categories of “prison only,” “prison plus alternatives,” “probation plus alternatives,” or “probation only” are designated with the value of zero for the type of sentence [SENTIMP] variable. For example, in some of these cases an alternative form of confinement is imposed, but no months of prison or probation are specified. These cases are not designated as one of the above categories. However, most cases in the “no prison, no probation” category are cases in which a fine is the only penalty.



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