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Since the start of 2019,
the Commission has released five new
reports and two new podcast series.



Featured:

2019 REVOCATION REPORT
Effects on Criminal History.....Pg. 1

HELPLINE CALLS
Have a look at recent significant questions fielded via our HelpLine!.....Pg. 2

CASE LAW
New Supreme Court Pending Cases...Pg. 3

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eLEARNING
Additional podcasts on the categorical approach and emerging technologies will be available on our website.....Pg. 4



Revocations Among Federal Offenders New Commission Study Released January 2019

The Commission has engaged in an ongoing study of the criminal history of federal offenders and has issued several reports examining the overall role and impact of its criminal history rules. The newest report explores a subset of the guidelines' criminal history rules—those regarding the revocation of terms of probation, parole, supervised release, special parole, and mandatory release. These rules affect an offender's criminal history score and Criminal History Category. Additionally, the report explores the impact of revocations upon safety valve relief and the career offender guideline. As part of this work, the Commission also analyzed the prevalence of revocations among federal offenders and the nature of the revocations.

Under USSG §4A1.2(k), a defendant's criminal history score can be affected by revocations of probation, parole, supervised release, special parole, and mandatory release. When a revocation has occurred, any term of imprisonment imposed for the violation that led to the revocation is added to the original sentence, and the total sentence is then used to assign criminal history points.

A majority of offenders (65.0%) with criminal history points under the federal sentencing guidelines did not have any revocations. Of those with revocations, 22.0 percent had one revocation; 7.7 percent had two revocations; and 5.3 percent had three or more revocations.

Cont. on Pg. 4

What Does Federal Economic Crime Really Look Like? Key Findings of the January 2019 Report

Offenders sentenced under USSG §2B1.1, the primary economic crime sentencing guideline, had criminal conduct that ranged from simple false statements to complex investment fraud schemes. Cases involving embezzlement and theft were the most common of those crimes in fiscal year 2017, accounting for 27.7 percent of all economic crime offenses.

Median loss amounts varied substantially, with four specific offense types involving median losses far exceeding the median loss amount of \$131,750 for all economic crime offenders: securities and investment fraud (\$2,105,620), health care fraud (\$1,086,205), mortgage fraud (\$999,721), and government procurement fraud (\$739,455). The two offense types with the lowest median loss amounts were mail-related fraud (\$1,815) and false statements (\$0). These differences are particularly noteworthy because the loss calculation is the primary driver of the guideline calculation under §2B1.1.

To review the report, go to:

<https://www.ussc.gov/research/research-reports/what-does-federal-economic-crime-really-look-like>



HELPLINE! Who's Calling & What's the Buzz?

Helpline: (202) 502-4545

QUESTIONS OF THE QUARTER

Have a look at how we addressed recent questions. Be sure to give our Helpline a call, we're here for you! And who knows, your call may be featured right here in our quarterly newsletter!

Defendant A pled guilty to obtaining stolen credit card numbers. Defendant A obtained 500 stolen numbers from a site hidden on the dark web, then sent 250 of the card numbers to Defendant B, who reencoded the stolen numbers onto professional-looking counterfeit credit cards. What is the loss amount for Defendant A?

\$500 x 500 cards, or \$250,000. Even though Defendant A only sent 250 cards for reencoding, the intended loss on 500 cards controls here. That's the number of card numbers the defendant obtained fraudulently. See §2B1.1, App. Note 3(A)(ii). The fact that she hasn't yet used the fraudulently obtained cards is immaterial. A special rule at §2B1.1 App. Note 3(F)(i) states that the loss for any counterfeit or unauthorized access device is not less than \$500 per access device.

Yes. The company must either be placed on probation or be required to pay a fine. See §8C2.2 and §8D1.1. The probation term could be short, for example, 30 or 90 days, to give the government enough time to obtain all of the forfeited property and assets.



...

The defendant pled guilty to a fraud offense. He stole money from an ATM by "jack potting" (bypassing regular ATM codes and installing malware, thus allowing the defendant to empty the ATM of all its money). Although the defendant was convicted in the District of Utah, the probation officer has information to suggest the defendant committed the same offense in Montana and South Dakota. Can the probation officer use the losses associated from the other states or are there any jurisdictional issues?

...

A company in New Mexico is no longer in operation; however, said company pled guilty to a criminal charge and agreed to forfeit all property and assets to pay restitution to Medicaid. Since the company is no longer in operation, must the Court put the company on probation pursuant to 18 U.S.C. § 3551(c)?

There is no jurisdictional issue *per se*. A relevant conduct analysis must be done to determine whether the offenses in Montana and South Dakota are part of the same course of conduct, or common scheme or plan. Since §2B1.1 is on the included list at §3D1.2, the correct relevant conduct analysis requires you to look beyond the offense of conviction to determine whether the losses from those additional states are in fact, relevant conduct.

Recidivism Among Federal Violent Offenders The Latest in a Series of Reports on Recidivism

Offenders who engaged in violent criminal activity—whether during the instant federal offense or as part of prior criminal conduct—generally recidivated at a higher rate, more quickly, and for more serious crimes than non-violent offenders.



CASE LAW UPDATE

U.S. v. Haymond, 869 F.3d 1153 (10th Cir. 2017), cert. granted, 139 S. Ct. 398 (2018)
Question Presented: Whether the U.S. Court of Appeals for the Tenth Circuit erred in holding “unconstitutional and unenforceable” the portions of 18 U.S.C. § 3583(k) that required the district court to revoke the respondent’s 10-year term of supervised release, and to impose five years of reimprisonment, following its finding by a preponderance of the evidence that the respondent violated the conditions of his release by knowingly possessing child pornography. Oral Argument: February 26, 2019

U.S. v. Davis, 903 F.3d 483 (5th Cir. 2018), cert. granted, __S. Ct.__, 2019 WL 98544 (2019)
Question Presented: Whether the subsection-specific definition of “crime of violence” in 18 U.S.C. § 924(c)(3)(B), which applies only in the limited context of a federal criminal prosecution for possessing, using or carrying a firearm in connection with acts comprising such a crime, is unconstitutionally vague. Oral Argument: April 17, 2019

U.S. v. Quarles, 850 F.3d 836 (6th Cir. 2017), cert. granted, __S. Ct.__, 2019 WL 166873 (2019)
Question Presented: Whether *Taylor v. United States*’ definition of generic burglary requires proof that intent to commit a crime was present at the time of unlawful entry or first unlawful remaining, as two circuits hold; or whether it is enough that the defendant formed the intent to commit a crime at any time while “remaining in” the building or structure, as the court below and three other circuits hold. Oral Argument: April 24, 2019

DID YOU KNOW?

In fiscal year 2017, 84.6% of §2B1.1 offenses involved loss amounts of \$1.5 million or less.

In fiscal year 2017, 70.2% of §2B1.1 offenders were assigned to Criminal History Category I.

In fiscal year 2017, 72.3% of §2B1.1 offenders were sentenced to imprisonment.

In fiscal year 2017, the average sentence length for §2B1.1 offenders was 23 months.

New: a #SentencingPracticeTalk series that focuses on one of our most frequently requested training topics: the “categorical approach.” [https://www.ussc.gov/education/trai ...](https://www.ussc.gov/education/trai...)



— SentencingCommission (@TheUSSCgov)
February 22, 2019

Guidelines Issue of the Quarter

Intra-City Differences in Federal Sentencing Practices

Released January 2019

The report examines variations in sentencing practices—and corresponding variations in sentencing outcomes—in the federal courts since the Supreme Court’s 2005 decision in *United States v. Booker*. Our analysis compared judges’ individual sentencing practices to average sentencing practices within their same city. Focusing on the average guideline minimum of the guideline range for each judge’s caseload, the Commission determined whether each judge on average sentenced below or above the guideline minimum and by how much.

There was a clear increase in the extent of differences in sentencing practices in a majority of the cities studied following the 2005 decision in *Booker* and continuing after the Court’s 2007 decisions in *Gall* and *Kimbrough*. The overall trend continued, although to a lesser extent, in the six years following the last period analyzed in the Commission’s 2012 *Booker* Report.

Not all of the 30 cities experienced the same changes in differences in sentencing practices since 2005. In some cities, particularly the ones with the largest number of judges, the increases in differences were substantial. However, in other cities, the increases were modest, and a few cities experienced decreases in the extent of sentencing differences among their judges since 2005.

In most cities, the length of a defendant’s sentence increasingly depends on which judge in the courthouse is assigned to his or her case.

For the complete report, go to:

<https://www.ussc.gov/research/research-reports/intra-city-differences-federal-sentencing-practices>



UPCOMING PROGRAMS

Defense Attorneys, Salt Lake City, Utah

Probation Officers, Dayton, Ohio

Court Family, Louisville, Kentucky

RECENT PROGRAMS

New Probation Officers, FLETC, Charleston, South Carolina

Probation Officers, Richmond, Virginia

FJC Phase I for New Judges, Redondo Beach, California

Revocations

Continued from Page 1

For the small number of offenders who did have at least one scored criminal history revocation, it often increased their criminal history score and resulting Criminal History Category. Among offenders with at least one scored conviction in their criminal history, three-fifths (60.2%) received additional criminal history points, and just under a third (30.9%) received an increase in Criminal History Category. For those offenders who received an increase into a higher Criminal History Category, the impact was generally limited to one Criminal History Category.

The report also reviewed the four most common offenders: those convicted of drug trafficking, immigration, firearms, or fraud. Firearms offenders were the most likely (54.3%) to have a scored conviction with a revocation, while immigration offenders were the least likely (20.9%). Among offenders who received additional criminal history points, those points resulted in a higher Criminal History Category most often for drug trafficking offenders (53.1%) and least often for firearms offenders (42.9%).

The Commission also analyzed sentencing documents to determine whether the underlying basis for each of the revocations was the result of a new crime or a technical violation. Technical violations are defined as violations of the conditions of supervision that typically do not involve the commission of new criminal offenses and that did not result in new criminal charges or convictions. New crime violations occur when an offender commits a new criminal offense, resulting in new criminal charges or convictions.

Unfortunately, the Commission cannot state with certainty how often revocations are based on new crimes versus technical violations because the underlying basis for the revocation could not be determined in 38.7 percent of the cases studied. However, between 38.9 percent and 77.5 percent of the revocations studied were for new crimes, and between 22.5 and 61.1 percent were for technical violations.

“Revocations affected a minority of offenders in the study, with only 35% having a scored conviction with a revocation.”

In the past, the Commission has received comment that revocations can effectively revive stale convictions, which in turn can impact an offender’s sentencing range in several ways. In addition to potentially adding criminal history points and thus increasing an offender’s Criminal History Category, revived convictions can affect an offender’s eligibility for safety valve relief under 18 U.S.C. § 3553(f) or trigger the career offender enhancement at §4B1.1. Of the drug trafficking offenders studied, only 2.3 percent appear to be ineligible for the safety valve based solely on scored convictions with revocations. Prior revocations had a more significant impact on offenders who received the career offender enhancement at §4B1.1. Of the career offenders studied, 10.7 percent qualified for the career offender enhancement in part because of scored convictions with revocations.

For additional information, you can review the entire report here:

<https://www.uscc.gov/research/research-reports/revocations-among-federal-offenders>

ESP TRAINING HIGHLIGHTS



• On March 11th, registration opened for the Commission’s Annual National Seminar on the Federal Sentencing Guidelines in New Orleans, September 3rd – 6th. [Click here for more information:](#)

<https://www.uscc.gov/education/annual-national-training-seminar/2019-national-seminars>

• In February, we released a new mini-series of Sentencing Practice Talk podcasts covering one of the most frequently requested training topics – the "Categorical Approach." We will also be releasing three podcasts focusing on emerging technologies including the dark web, bitcoin, and hacking and phishing schemes. All of the new podcasts can be found at:

<https://www.uscc.gov/education>

