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Last month, the Commission formally
announced tentative priorities for the
upcoming amendment cycle.

Priorities

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Get Involved!

The Commission Seeks Public Comment on Proposed Priorities

June marked the beginning of the next guideline amendment cycle. Last month, the Commission formally announced tentative priorities for that cycle. The cycle ends on May 1, 2019, the deadline for submitting any amendments to Congress. Absent Congressional action, such amendments would take effect on November 1, 2019, and would be included in the 2019 version of the *Guidelines Manual*.

With the publication of tentative priorities in the Federal Register, the Commission invites specific stakeholder groups, such as the Criminal Law Committee of the

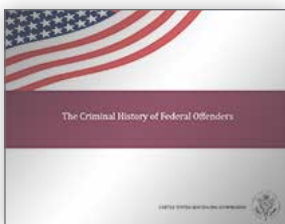
Judicial Conference, the Federal Public Defender community, the Criminal Division of the United States Department of Justice, and the Probation Officers' Advisory Group, as well as the general public, to comment on those priorities. Comment must be received by August 10, 2018, and specific instructions for sending comment, by regular mail or email, are provided on the Notice of Proposed Priorities, which can be accessed here:

<https://www.ussc.gov/policymaking/federal-register-notice/federal-register-notice-proposed-2018-2019-priorities>

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The Criminal History of Federal Offenders

Released May 17, 2018



The Commission's Criminal History of Federal Offenders report utilizes recent technological improvements that expand the scope of information the Commission can now collect. In completing this report, the Commission was able to extract and analyze the criminal histories of 61,946 of the 67,742 offenders sentenced in fiscal year 2016.

Some of the key findings include that almost three-quarters (72.8%) of federal offenders sentenced in fiscal year 2016 had been convicted of a prior offense. The average number of previous convictions was 6.1 among offenders with criminal history. Public order was the most common prior offense; 43.7 percent of offenders with prior criminal history had at least one conviction for a public order offense. For additional key findings of the study and the complete report see:



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!

The defendant pleaded guilty to two counts. The first count is distribution of fentanyl resulting in death of victim A. The second count is distribution of fentanyl resulting in death of victim B. The guideline applicable to both counts is §2D1.1. Each offense of conviction establishes that death resulted from the use of the fentanyl. Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?



The defendant is a pharmacist tech who used her position to generate and create fraudulent scripts for opioid medication. Through her position, she had access to use the computer to create fake prescriptions and then process them using either children's names or fake names to obtain the pills herself. The defendant pled guilty to five counts of acquiring a controlled substance by fraud, a violation of 21 U.S.C. § 843(a)(3). The guideline applicable to all counts is §2D2.2. Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?

These counts group under §3D1.2(d), so no units will be assigned. The two counts use the same guideline (§2D1.1), and that guideline is included under §3D1.2(d). Therefore, §2D1.1 will be applied one time based upon the aggregate relevant conduct for both counts of conviction. The offense level for the aggregate conduct is the offense level for the group of closely related counts.

...

These counts group under §3D1.2(b), so no units will be assigned. A separate guideline calculation should be completed for each count. The counts do involve the same victim* – the same societal interest (the interests protected by laws governing controlled substances) is harmed. The counts involve two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan. Counts involving the same victim and two or more acts connected by a common criminal objective group under §3D1.2(b). As a result, the higher offense level from the two counts will be used to determine the combined offense level for this group of closely related counts.

*"Victim" is defined in Application Note 2 at §3D1.2: "for an offense in which there are no identifiable victims (e.g. drug or immigration offenses where society at large is the victim), the 'victim' for purposes of subsections (a) and (b) is the societal interest that is harmed."

Overview of Criminal History

Average Number of Prior Convictions by Type of Instant Offense

For The Criminal History of Federal Offenders report, the Commission separately analyzed the criminal histories of offenders sentenced for five of the most common offense types. The Commission found substantial differences in the criminal history of these groups of offenders, both in the prevalence of prior convictions and in the nature of their past offenses.

5.4 **3.6** **4.4** **6.7** **8.9**
FRAUD CHILD PORNOGRAPHY IMMIGRATION DRUG TRAFFICKING FIREARMS

SCOTUS LAW UPDATE

Sessions v. Dimaya, No. 15-1498, 584 U.S. ____ (Apr. 17, 2018). The residual clause of the definition of “crime of violence” in 18 U.S.C. § 16(b) is unconstitutionally vague. That clause defines a “crime of violence” as any felony that, “by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.”

Lagos v. United States, No. 16-1519, 584 U.S. ____ (May 29, 2018). The Mandatory Victim Restitution Act provision requiring a defendant “to reimburse the victim for . . . expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense” (18 U.S.C. § 3663A(b)(4)) is limited to government investigations and criminal proceedings and does not include expenses related to private investigations and civil or bankruptcy proceedings.

Hughes v. United States, No. 17-155, 584 U.S. ____ (June 4, 2018). A defendant who entered into a binding plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C) providing for a sentence below the then applicable guidelines range was eligible for a sentence reduction under section 3582(c)(2) when the Commission later amended the guidelines to lower the applicable range (and made the amendment retroactive). A defendant has been sentenced to a term of imprisonment “based on a sentencing range that has subsequently been lowered by the Sentencing Commission” within the meaning of section 3582(c)(2) if that range was part of the framework the district court relied on in imposing the sentence or in accepting the plea agreement.

Koons v. United States, No. 17-5716, 584 U.S. ____ (June 4, 2018). Defendants who were subject to statutory mandatory minimum penalties but received sentences below the applicable minimums pursuant to 18 U.S.C. § 3553(e) and §5K1.1 (Substantial Assistance to Authorities) were not eligible for further reductions under section 3582(c)(2) after the Commission amended the guidelines to lower the sentencing ranges that would have applied to them absent the statutory mandatory minimums (and made the amendment retroactive). The defendants’ sentences were not “based on” the guidelines ranges that were subsequently lowered but were instead “based on” the applicable mandatory minimum penalties and the substantial assistance that the defendants provided.

DID YOU KNOW?

39.5% of federal offenders with criminal history in 2016 had at least one prior violent offense.

Of those offenders with a prior violent offense, the most common violent offense was assault (29.5%) followed by robbery (8.1%) and rape (4.4%). Just under two percent had a prior homicide offense.

Around half of fraud offenders (52.4%) and child pornography offenders (48.2%) had at least one prior conviction.

The nature of offenders’ criminal histories varied considerably by their federal instant offense. Firearms offenders were the most likely to have violence in their criminal histories (62%) and fraud offenders were the least likely (26.2%).



Did you see the Commission’s most recent **#QuickFacts** release? New updates include FY17 data on the issues of mandatory minimum penalties and career offenders. Find them at...
...<https://www.ussc.gov/research/quick-facts>

— SentencingCommission (@TheUSSCgov)
June 14, 2017

Guidelines Issue of the Quarter

Mandatory Minimum Penalties for Firearms Offenses

Key findings of the Commission’s study. Released March 2018.

- In fiscal year 2016, offenders convicted under section 924(c) received an average sentence of over 12 years (151 months) of imprisonment, which is 13 months less than in fiscal year 2010
- The majority of section 924(c) offenders (85.5%) were also convicted of another offense.
- In fiscal year 2016, Black offenders accounted for 52.6 percent of offenders convicted under section 924(c), followed by Hispanic offenders (29.5%), White offenders (15.7%) and Other Race offenders (2.2%).
- In fiscal year 2016, Black offenders convicted under section 924(c) received an average sentence of 165 months, compared to 140 months for White offenders

and 130 months for Hispanic offenders. Only Other Race offenders received longer average sentences (170 months), but they accounted for only 2.2 percent of section 924(c) offenders.

- Similarly, Black offenders convicted of an offense carrying a mandatory minimum penalty under the Armed Career Criminal Act received longer average sentences than any other racial group at 185 months, compared to 178 months for White offenders, 173 months for Hispanic offenders, and 147 months for Other Race offenders.



**UPCOMING
PROGRAMS**

Court Family,
Louisville, Kentucky

Defender Services,
San Antonio, Texas

Court Family,
Puerto Rico

**RECENT
PROGRAMS**

2018 National Seminar,
San Antonio, Texas

AUSAS, National
Advocacy Center,
Columbia,
South Carolina

Law Clerks,
Santa Fe, New Mexico

Sentencing Symposium,
Boston College of Law

Public Comment on Proposed Priorities

Continued from Page 1

After receiving and reviewing public comment, the Commission decides on final priorities and publishes them in August. Then, over the course of the amendment cycle, the Commission seeks additional public input by seeking public comment on a set of proposed amendments and holding public hearings on the proposed amendments. Extensive public comment is a critical part of process. An example of this is the recent amendment on synthetic drugs, which was finalized after three requests for comment specific to synthetic drugs, and four public hearings.

Similarly, the Commission follows case law developments in proposing and adopting amendments. An example of this is the recent amendment to the illegal reentry guideline, which the Commission had substantially revised in 2016. The amendment addressed two circuit court decisions about how to treat revocation sentences and the timing of certain prior convictions under the new guideline.

This year's proposed priorities cover both possible guideline amendments and research and data. While some priorities can be completed within one amendment cycle, others may take years to complete. Now is the time to weigh in on these proposed priorities.

"The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. § 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. § 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. § 994(p)."

For a complete list, see the formal notice, but here's a summary:

- A multi-year examination of the structure of the guidelines, including simplification of the guidelines;
- Continuation of its work with Congress and others on career offenders, including the Commission's recommendation to focus the guideline on those offenders who have committed at least one "crime of violence";
- Continuation of its work with Congress to implement the Commission's recommendations on mandatory minimum penalties;
- Continuation of its multi-year study on recidivism; and
- Resolution of circuit conflicts.

ESP HIGHLIGHTS



• Please be sure to check out the Commission's website <https://www.ussc.gov/education/2018-national-seminar> for information about the 2018 National Seminar, which took place in San Antonio, Texas, in May. You can review the seminar materials, including the agenda and PowerPoint Presentations online. Find answers to the scenarios presented at the seminar by clicking on the Teacher's Edition of the workbook. The workbook is an excellent learning resource for training coordinators and federal court practitioners.

• Save the Date! Next year's National Seminar will be held from May 29th through the 31st 2019 at the Marriott New Orleans.

