

# INTRODUCTION

This is the second edition of the United States Sentencing Commission's *Sourcebook of Federal Sentencing Statistics*. This *Sourcebook* contains descriptive statistics on the application of the federal sentencing guidelines and provides selected district, circuit, and national sentencing data. The volume covers fiscal year 1997 (October 1, 1996, through September 30, 1997, hereinafter "1997").

The Commission collects and analyzes data on guideline sentences to support its varied activities. As authorized by Congress, the Commission's numerous research responsibilities include: (1) the establishment of a research and development program to serve as a clearinghouse and information center for the collection, preparation and dissemination of information on federal sentencing practices; (2) the publication of data concerning the sentencing process; (3) the systematic collection and dissemination of information concerning sentences actually imposed and the relationship of such sentences to the factors set forth in section 3553(a) of title 18, United States Code; and (4) the systematic collection and dissemination of information regarding the effectiveness of sentences imposed (28 U.S.C. § 995(a)).

The Sentencing Commission maintains a comprehensive, computerized data collection system which forms the basis for its clearinghouse of federal sentencing information and which, in large part, drives the agency's research mission. Pursuant to its authority under 28 U.S.C. §§ 994(w) and 995(a)(8), and after discussions with the Judicial Conference Committee on Criminal Law and the Administrative Office of the U.S. Courts, the Commission requested that each probation office in each judicial district submit the following documents on every offender sentenced under the guidelines:

- Indictment
- Presentence Report (PSR)
- Report on the Sentencing Hearing (statement of reasons for imposing sentence as required by 18 U.S.C. § 3553(c))
- Written Plea Agreement (if applicable)
- Judgment of Conviction

Data from these documents are extracted and coded for input into various databases. It should be noted that data collection is a dynamic rather than a static process. When research questions arise, the Commission either analyzes existing data or adds information to its monitoring system.

For each case in its **Offender Dataset**, the Commission routinely collects case identifiers, sentencing data, demographic variables, statutory information, the complete range of court guideline decisions, and departure information. Throughout 1997, the Commission continued to add data elements to its extensive computerized datafile on defendants sentenced under the guidelines.

This year the Commission initiated a special effort to monitor the percentage of cases received from the total population of convictions that were sentenced pursuant to the federal guidelines. A detailed accounting of the Commission's venture is presented below.

The Commission also maintains additional datasets to study a variety of sentencing-related issues. The **Organizational Dataset** captures information on organizations sentenced under Chapter Eight of the guidelines. The data collected describe organizational structure, size, and economic viability; offense of conviction; mode of adjudication; sanctions imposed; and application of the sentencing guidelines. The **Appeals Dataset** tracks appellate review of sentencing decisions. Information captured in this module includes district, circuit, dates of appeal and opinion, legal issues, and the court's disposition. In addition to its standard data collection, the Commission often codes additional variables to study various discrete issues (*e.g.*, immigration offenses, child sex offenses).

The Commission's 1997 USSC Dataset contains documentation on 48,848 cases sentenced under the Sentencing Reform Act between October 1, 1996, and September 30, 1997. A "case" is defined as one sentencing event for an individual defendant. In addition, the Commission received information on 220 organizations that were sentenced under Chapter Eight of the sentencing guidelines in 1997.

The Commission also tracks final opinions and orders, both published and unpublished, in federal criminal appeals. During 1997, the Commission supplemented these opinions and orders with cases available on computerized legal databases and with *habeas corpus* decisions (although technically civil matters) because such cases often involve sentencing issues. In 1997, the Commission gathered information on 6,496 appellate court cases of which 2,477 were "conviction only" cases.

The appeals data system uses both the "group" and the "defendant" units of analysis. Each group comprises individual records representing all codefendants participating in a consolidated appeal. Each defendant's record comprises the sentencing-related issues corresponding to that particular defendant. These records, linked together by a unique Commission-assigned appeals identification number, constitute a single group.

The Commission's computerized datasets, without individual identifiers, are available via tape and the Internet through the Inter-University Consortium for Political and Social Research at the University of Michigan (ICPSR).<sup>1</sup>



## Data Collection Issues

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In fiscal year 1997 (hereinafter "1997"), the Commission received documentation on 48,848 cases sentenced under the Sentencing Reform Act. While the 1997 reporting year includes cases sentenced between October 1, 1996, and September 30, 1997, it is important to note that the data collected and analyzed in the *1997 Annual Report* and *1997 Sourcebook of Sentencing Statistics*

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<sup>1</sup> The Consortium can be contacted using the following Internet address: <http://www.ICPSR.umich.edu>. For more information, contact Dr. Christopher S. Dunn, ICPSR, P.O. Box 1248, Ann Arbor, MI 48106 or call 1-800-999-0960 or (313) 763-5011.

reflect only cases reported to the Commission (*i.e.*, guideline cases for which the courts forwarded appropriate documentation to the Commission by January 30, 1998). Consequently, if a court fails to forward documentation on a case to the Commission, the Commission will not have a record of that particular sentencing. This reliance on physical receipt of court records by the Commission allows for three potential areas of guideline case underreporting: (1) court failure to submit case documentation; (2) a misunderstanding of the types of cases to be submitted; and (3) cases lost in-transit between a court and the Commission. The first area was explicitly addressed by the Commission's 1997 data completeness effort discussed below. In FY1998, the second two areas will be addressed by separate educational campaigns.

### ***Assessing the Completeness of Commission Case Receipt***

The Commission is committed to achieving total representation of all guideline cases, but lacks a definitive source for determining whether all cases sentenced under the guidelines are being forwarded to the Commission for processing. The federal criminal justice agency that provides the best yardstick for measuring the completeness of guideline case receipt is the Administrative Office of the U.S. Courts (AO), with its Criminal Masterfile. The AO database, however, includes *all* federal court sentences (also including those not covered by the federal sentencing guidelines) and counts offenders differently than does the Commission. For these and other reasons, the case counts for the Commission's datafile and the AO Criminal Masterfile differ.<sup>2</sup> In 1997, the Commission initiated a data completeness project<sup>3</sup> and worked closely with the Urban Institute, the grantee for the Bureau of Justice Statistics's Federal Justice Statistics Program,<sup>4</sup> to identify potential guideline cases that had not been reported to the Commission, but were present in the AO's Criminal

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<sup>2</sup> Sentencing Commission guideline cases are limited to felony convictions and Class A misdemeanors, and do not include the following cases that appear on the AO's Criminal Masterfile: Class B and Class C misdemeanors, juvenile cases, cases with corporate defendants, and witness protection cases. Additionally, the Commission defines an offender as a person for whom a conviction-specific sentencing event has occurred (a resentencing is not counted), while the AO counts each resentencing as a separate case. Some of the differences in case processing statistics collected by different federal criminal justice agencies are described in the brief report, *Comparing Case Processing Statistics* (U.S. Department of Justice, April 1998, NCJ-169274).

<sup>3</sup> A similar effort was undertaken in 1990 (and reported in the Commission's *1990 Annual Report*) using the AO's preguideline sentencing datafile (FPSSIS) as a basis for comparison to the then-developing Commission's guideline sentencing datafile. The Commission matched individual cases in its records with cases reported to the AO that appeared to meet the criteria for reporting to the Commission. Substantial variation in reporting completeness was found among districts, but nationwide the Commission's 1990 datafile had 2,013, or 6.5 percent, fewer cases than did the AO's FPSSIS datafile.

<sup>4</sup> The Inter-Agency Working Group on Criminal Case Processing Statistics, funded by a Department of Justice grant, is composed of the Commission, the Administrative Office of the U.S. Courts, the Executive Office for U.S. Attorneys, the Federal Bureau of Prisons, the Department of Justice's Criminal Division, and the Bureau of Justice Statistics. The Working Group is seeking ways to improve criminal justice data collection comparability across the entire federal system by accounting for valid differences in agency caseload counts due to the agencies' reporting universes, and reconciling commonly conceived variables such as offense type.

Masterfile. Matching cases in the two databases, it was found that 93 percent of the cases in the Commission's datafile corresponded with cases in the Masterfile. Approximately 3,000 cases in the Commission's datafile could not be matched with cases in the Masterfile, and approximately 11,000 cases in the Masterfile could not be matched with the Commission's datafile.<sup>5</sup>

These match statistics, however, overstate the level of case count differences. Comparing the two datafiles involves distinguishing Class A federal misdemeanors (which are guideline cases and thus to be submitted by the courts to the Commission) from petty offenses<sup>6</sup> (which are not covered by the guidelines and thus are not to be submitted). Because the AO datafile makes only limited distinctions between the different classes of misdemeanor offenses, it is often impossible to determine whether a specific case appearing in the AO Criminal Masterfile should appear in the Commission datafile. The Commission is working with the AO to find a way to improve the ability to distinguish these misdemeanor cases.

Nonetheless, the results of this data match raised the possibility that a substantial number of guideline cases were not being forwarded to the Commission. In December 1997, the Commission asked for the district courts' help in evaluating and improving case submission rates. A letter was sent to the Chief Judge of each district court, listing cases that appeared to be appropriate for reporting but for which the Commission had received no submission.

Between the mailing of the letter and the end of January 1998, documents for an additional 4,269 cases from 1997 were submitted to the Commission. During this same time period the previous year, only 247 cases were submitted, indicating that the courts' response to the letter contributed to this year's higher level of case reporting.

Based on input from various districts, the Commission also learned of additional criteria to help screen non-guideline cases from the AO Criminal Masterfile. This feedback was useful to the Commission's examination of differences between the two datafiles, and will be used to improve the Commission's future efforts to notify districts of suspected missing case submissions.

### ***Changes in the Number of Defendants in 1997***

Because of the efforts to improve the rate of document submission, caution should be exercised when interpreting the 1997 increase in the number of guideline offenders reported. The table below shows, for each fiscal year 1993-1997, the number of cases in the Commission's datafile and in the AO's Criminal Masterfile, and the percent change from the previous year.<sup>7</sup>

#### **USSC and AO Guideline Offenders and Percent Change**

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<sup>5</sup> Indications were that some cases were either missing from the datafiles or could not be matched using the available information.

<sup>6</sup> The term "petty offense" means a Class B misdemeanor, a Class C misdemeanor, or an infraction.

<sup>7</sup> Excluded from this table are Criminal Masterfile cases that are not included in the Commission's datafile (*i.e.*, juvenile, corporate, witness protection, duplicate, and petty offenses cases).

Fiscal Years 1993-1997

Fiscal Year	USSC		Administrative Office	
	Cases Reported	Percent Change	Cases Reported	Percent Change
1993	42,107	not applicable	50,660	not applicable
1994	39,971	-5.1	48,037	-5.5
1995	38,500	-3.7	44,953	-6.4
1996	42,436	+10.2	50,312	+11.9
1997	48,848	+15.1	53,886	+7.1

Note that the year-to-year changes in the numbers of cases recorded in the two systems have moved in relatively close parallel. The exception is 1997, as the Commission shows an increase of 6,412 cases, or 15.1 percent over 1996, while the Administrative office shows an increase of only 3,574, or 7.1 percent.

Approximately two-thirds of the 15.1 percent increase in 1997 guideline cases received by the Commission appears to be the direct result of the notice to districts identifying potentially missing cases. Adjusting the data to eliminate the estimated independent impact of this district notification campaign<sup>8</sup> results in an adjusted finding of a 5.6 percent increase over 1996. This percent increase differs by only 1.5 percent from the 1997 increase documented in the AO Criminal Masterfile.

It is reasonably concluded that the majority of the 1996-1997 increase in offenders in the Commission's datafile is due to the improved submission of cases from the districts. The data suggest that while there was an overall increase in the number of guideline cases sentenced in 1997, the increase was smaller than observed in 1996.

**Characteristics of Cases Received After the District Submission Request**

The improved case submission in 1997 can help identify possible previous years' underreporting to Commission datafiles. To evaluate one aspect of this issue, the characteristics of the 1997 cases received by the Commission after the district notification were compared with 1997 cases received prior to the notification.

The distribution of offense types received following the notice largely mirrored the

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<sup>8</sup> Eliminating the 4,022 cases received following the notification (the post-notification total number of cases received less the number received during the same period last year) results in an estimated 44,826 cases that would have been received by the Commission had the district notification not been used. This estimate of 44,826 cases represents a 5.6 percent increase of FY1997 cases over FY1996 cases.

distribution received before, with three exceptions. Cases received in 1997 after the district letter were:

- less likely to be drug trafficking convictions (20.8% of cases received after the notice compared to 38.5% before);
- more likely to be immigration convictions (20.6% compared to 13%); and
- more likely to be classified in the “Other” conviction category (15% compared to 1.3%). The great majority of these “Other” cases were motor vehicle offenses; about 90 percent were guideline convictions under 18 U.S.C. § 13, the Assimilated Crimes Act.

These findings suggest that previous years’ data may have underrepresented immigration cases and relatively minor offenses classified as “Other.” In addition, compared to other offense types, drug trafficking case submission appears to be relatively more complete than other types of federal offense type case submission.

### ***Assessing the Completeness and Representativeness of the Commission’s Datafile***

To assess the completeness of the Commission’s datafile for this year, aggregate-level comparisons (examining the numbers and types of cases) were made between the Commission’s monitoring datafile and in the AO’s Criminal Masterfile.<sup>9</sup>

The first step was to eliminate all potential non-guideline cases from the AO Criminal Masterfile. After this was done, there still remained a significant number of cases where Commission analysts could not accurately determine whether an AO case was a guidelines case. As discussed above, a significant reason for this difficulty was the inability to differentiate Class A misdemeanors from other classes of misdemeanors (*i.e.*, Class A misdemeanors that should have been (but were not) reported to the Commission, or petty offenses that mistakenly appear in the AO’s Criminal Masterfile as Class A misdemeanors). For these reasons, counts of Class A misdemeanors in the Commission’s data are problematic and should be interpreted with caution.<sup>10</sup>

As a result of this effort, Commission analysts identified a total of 53,886 cases in the AO Criminal Masterfile that fell into one of two categories: (1) cases that were clearly guideline cases; and (2) potential guideline cases – ones that could not be ruled out – but that perhaps were petty offenses.

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<sup>9</sup> Based on information received from the districts, a more comprehensive, one-to-one case match of the Commission datafile and the AO Criminal Masterfile is underway. Future work will identify potential areas of underreporting, and the Commission will work with districts to improve the completeness of the Commission datafile.

<sup>10</sup> Predictably, the individual districts that showed the greater differences between the AO case counts and the Commission case counts (more than 100 case differences) were those with military bases, federal parks, or Native American lands (*i.e.*, those districts in which large numbers of misdemeanor offenses are more likely).

In contrast, the Commission's 1997 datafile offender count was 48,848 cases. This difference of 5,038 offenders between the Commission and AO case counts is a "best estimate" of the magnitude of the reporting loss in the Commission dataset. However, it appears that the bulk of this difference results from the inability to adequately distinguish between Class A misdemeanors and petty offenses in the datasets.

A more precise estimate of the degree of underreporting was achieved by comparing the number of felonies that appear in the two datafiles. Greater confidence is placed in this comparison because the AO Criminal Masterfile contains a specific variable identifying felony guideline cases. Among felonies only, the Commission's datafile contains 43,712 cases and the AO Criminal Masterfile contains 45,365, leaving a gap of 1,653 offenders (3.6%). The distribution of offense types is quite similar in the two datafiles.

The felony case count for each separate district was compared using the Commission and the AO Criminal Masterfile databases. Among felony cases only, just four districts – the districts of Puerto Rico, Texas Western, Texas Southern, and California Southern – showed a case count difference of more than 100 cases. A comparison by offense type indicated a highly positive correlation between datasets, but was made difficult because of inconsistent offense definitions, particularly in the areas of fraud and immigration.

In summary, the data in the Commission's 1997 datafile is likely the most complete record of federal offenders who were convicted of serious crimes and sentenced under the guidelines that has yet been produced by the U.S. Sentencing Commission. The improved case submission begun in 1997 will continue in the coming years as the Commission strives to produce a complete accounting of federal guideline sentencing.