



# A SURVEY OF ARTICLE III JUDGES ON THE FEDERAL SENTENCING GUIDELINES

IN PREPARATION FOR A FIFTEEN YEAR REPORT ON THE  
SENTENCING COMMISSION'S LEGISLATIVE MANDATE

## PURPOSE

In its enabling legislation, codified at 28 U.S.C. § 994, the U.S. Sentencing Commission is charged with promulgating and distributing guidelines and policy statements that further the purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2).

As the federal guideline system approaches its fifteenth year, the Commission is undertaking a study to determine how judges view the guideline system in terms of these overarching legislative mandates. The results of the survey will be included in the Commission's Fifteen Year Report submitted to Congress. The Commission asks your help in providing accurate data in furtherance of this project.

## ANONYMITY

The survey is designed to obtain anonymous responses, but there is a space provided at the end of the questionnaire if you wish to provide your name and circuit. The U.S. Sentencing Commission will report only aggregate data and at no time will identify any respondent.

## PROCEDURE

The questionnaire is composed of two sections. The first section focuses on the statutory purposes of sentencing described in 18 U.S.C. § 3553 and 28 U.S.C. § 991. The second section contains questions about guideline operation in the context of the types of sentences available under the guidelines, statutory interpretations inherent in the guideline structure, and challenges you foresee for future guideline development. There is also opportunity to provide comments.

As a frame of reference, we ask that you generally consider the guideline sentencings that you have heard on appeal within the past two years, or that period of time within the past two years that you have been reviewing sentencing cases. Additionally, your responses are most helpful if you focus on the sentences as computed under the *Guidelines Manual*, prior to any departures that the district judge considered appropriate. This will help the Commission target the guidelines computations themselves.

## RETURN OF SURVEY INSTRUMENT

Please return your completed questionnaire in the accompanying addressed envelope. In order to begin analysis as soon as possible, we ask that you return the questionnaire by January 31, 2002. If you have any questions, please contact Dr. Linda Drazga Maxfield at 202-502-4500 or [USSCSurvey@ussc.gov](mailto:USSCSurvey@ussc.gov).





- Use a No. 2 pencil or blue or black ink pen only.
- Do not use pens with ink that soaks through the paper.
- Make solid marks that fill the oval completely.
- Make no stray marks on this form.
- Do not fold, tear, or mutilate this form.



CORRECT MARK



INCORRECT MARKS

**UNLESS OTHERWISE SPECIFIED**, please respond to questions in terms of the sentences that result from the **GUIDELINES COMPUTATIONS THEMSELVES**, prior to any applied departures (DOWNWARD, UPWARD, OR SUBSTANTIAL ASSISTANCE §5K1.1). Please answer the questions, not in terms of how the district judge actually sentenced the case, but in terms of how the case should have been sentenced under the guidelines.

Considering sentencing cases that have come to you on appeal, how often did the guideline sentences, as properly applied . . .

(Please respond to Question 1 through Question 10. As you do, consider the sentencing cases you personally have heard on appeal during the past two years.)

**1. . . . provide punishment levels that reflect the seriousness of the offense?** (18 U.S.C. § 3553(a)(2)(A))

(i) Of all your sentencing appeals:

Few Cases		Almost All Cases
①	②	③
④	⑤	⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	①	②	③	④	⑤	⑥
Firearms Trafficking	①	②	③	④	⑤	⑥
Fraud	①	②	③	④	⑤	⑥
Larceny/Theft/Embezzlement	①	②	③	④	⑤	⑥
Robbery	①	②	③	④	⑤	⑥
Alien Smuggling	①	②	③	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③	④	⑤	⑥

(iii) For those types of cases where you believe that the guideline punishment levels *do not* reflect the seriousness of the crime, was it because the punishment was generally *less* than appropriate, *more* than appropriate, or *sometimes* greater/*sometimes* less?

	Less	Greater	Sometimes Both
Drug Trafficking	(L)	(G)	(S)
Firearms Trafficking	(L)	(G)	(S)
Fraud	(L)	(G)	(S)
Larceny/Theft/Embezzlement	(L)	(G)	(S)
Robbery	(L)	(G)	(S)
Alien Smuggling	(L)	(G)	(S)
Unlawful Entry into U.S.	(L)	(G)	(S)

**2. . . . involve minimum statutory provisions that affect the court's ability to impose sentences that reflect the statutory purposes of sentencing?**

(i) For all your sentencing appeals where a mandatory minimum sentence is applicable:

Few Cases		Almost All Cases
①	②	③
④	⑤	⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes where a mandatory minimum sentence is applicable:

	Few Cases					Almost All Cases
Drug Trafficking	①	②	③	④	⑤	⑥
Firearms Trafficking	①	②	③	④	⑤	⑥
Fraud	①	②	③	④	⑤	⑥
Larceny/Theft/Embezzlement	①	②	③	④	⑤	⑥
Robbery	①	②	③	④	⑤	⑥
Alien Smuggling	①	②	③	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③	④	⑤	⑥



Considering sentencing cases that have come to you on appeal, how often did the guideline sentences, as properly applied . . .

**3. . . . afford adequate deterrence to criminal conduct? (18 U.S.C. § 3553(a)(2)(B))**

(i) Of all your sentencing appeals:

Few Cases Almost All Cases

① ② ③ ④ ⑤ ⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases			Almost All Cases		
Drug Trafficking	①	②	③	④	⑤	⑥
Firearms Trafficking	①	②	③	④	⑤	⑥
Fraud	①	②	③	④	⑤	⑥
Larceny/Theft/Embezzlement	①	②	③	④	⑤	⑥
Robbery	①	②	③	④	⑤	⑥
Alien Smuggling	①	②	③	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③	④	⑤	⑥

**4. . . . protect the public from further crimes of the defendant? (18 U.S.C. § 3553(a)(2)(C))**

(i) Of all your sentencing appeals:

Few Cases Almost All Cases

① ② ③ ④ ⑤ ⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases			Almost All Cases		
Drug Trafficking	①	②	③	④	⑤	⑥
Firearms Trafficking	①	②	③	④	⑤	⑥
Fraud	①	②	③	④	⑤	⑥
Larceny/Theft/Embezzlement	①	②	③	④	⑤	⑥
Robbery	①	②	③	④	⑤	⑥
Alien Smuggling	①	②	③	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③	④	⑤	⑥

**5. . . . where rehabilitation was appropriate, provide defendants with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner? (18 U.S.C. § 3553(a)(2)(D))**

(i) Of all your sentencing appeals where rehabilitation was appropriate:

Few Cases Almost All Cases

① ② ③ ④ ⑤ ⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes where rehabilitation was appropriate:

	Few Cases			Almost All Cases		
Drug Trafficking	①	②	③	④	⑤	⑥
Firearms Trafficking	①	②	③	④	⑤	⑥
Fraud	①	②	③	④	⑤	⑥
Larceny/Theft/Embezzlement	①	②	③	④	⑤	⑥
Robbery	①	②	③	④	⑤	⑥
Alien Smuggling	①	②	③	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③	④	⑤	⑥

**6. . . . avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct? (18 U.S.C. § 3553(a)(6), 28 U.S.C. § 991(b)(1)(B))**

(i) Of all your sentencing appeals:

Few Cases Almost All Cases

① ② ③ ④ ⑤ ⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases			Almost All Cases		
Drug Trafficking	①	②	③	④	⑤	⑥
Firearms Trafficking	①	②	③	④	⑤	⑥
Fraud	①	②	③	④	⑤	⑥
Larceny/Theft/Embezzlement	①	②	③	④	⑤	⑥
Robbery	①	②	③	④	⑤	⑥
Alien Smuggling	①	②	③	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③	④	⑤	⑥



Considering sentencing cases that have come to you on appeal, how often did the guideline sentences, as properly applied . . .

**7. . . . provide certainty in meeting the purposes of sentencing? (28 U.S.C. § 991(b)(1)(B))**

(i) Of all your sentencing appeals:

Few Cases							Almost All Cases						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 16.6%;">1</td> <td style="width: 16.6%;">2</td> <td style="width: 16.6%;">3</td> <td style="width: 16.6%;">4</td> <td style="width: 16.6%;">5</td> <td style="width: 16.6%;">6</td> </tr> </table>							1	2	3	4	5	6	
1	2	3	4	5	6								

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

**8. . . . provide fairness in meeting the purposes of sentencing? (28 U.S.C. § 991(b)(1)(B))**

(i) Of all your sentencing appeals:

Few Cases							Almost All Cases						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 16.6%;">1</td> <td style="width: 16.6%;">2</td> <td style="width: 16.6%;">3</td> <td style="width: 16.6%;">4</td> <td style="width: 16.6%;">5</td> <td style="width: 16.6%;">6</td> </tr> </table>							1	2	3	4	5	6	
1	2	3	4	5	6								

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

**9. . . . maintain sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices? (28 U.S.C. § 991(b)(1)(B))**

(i) Of all your sentencing appeals:

Few Cases							Almost All Cases						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 16.6%;">1</td> <td style="width: 16.6%;">2</td> <td style="width: 16.6%;">3</td> <td style="width: 16.6%;">4</td> <td style="width: 16.6%;">5</td> <td style="width: 16.6%;">6</td> </tr> </table>							1	2	3	4	5	6	
1	2	3	4	5	6								

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

**10. . . . provide just punishment? (18 U.S.C. § 3553(a)(2)(A))**

(i) Of all your sentencing appeals:

Few Cases							Almost All Cases						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 16.6%;">1</td> <td style="width: 16.6%;">2</td> <td style="width: 16.6%;">3</td> <td style="width: 16.6%;">4</td> <td style="width: 16.6%;">5</td> <td style="width: 16.6%;">6</td> </tr> </table>							1	2	3	4	5	6	
1	2	3	4	5	6								

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6



## PART II: SENTENCE DETERMINATION

11. The sentencing guidelines are required by statute to provide a means to determine the *type* of sentence to impose: probation, a fine, or a term of imprisonment (28 U.S.C. § 944(a)(1)(A)). Thus, the sentencing table in the *Guidelines Manual* precludes certain sentence types from some offenders. For example, in Zone B of the sentencing table, straight probation is not permitted unless there exists a condition providing the judge a basis to depart.

Please identify where you believe that changes in the availability of guideline *sentence types* would better promote the purposes of sentencing.

	Offense Type						
	Drug Trafficking	Weapon Trafficking	Fraud	Larceny/Theft/Embezz.	Robbery	Alien Smuggling	Alien Unlawful Entry
<b>Straight Probation Sentences</b> (§5B1.1)							
Should be <i>more</i> available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be <i>less</i> available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>OR: No change needed</b> (mark):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[For the questions below: Probation Confinement Conditions include intermittent confinement, community confinement, or home detention, as now permitted in Zones A and B.]

	Offense Type						
	Drug Trafficking	Weapon Trafficking	Fraud	Larceny/Theft/Embezz.	Robbery	Alien Smuggling	Alien Unlawful Entry
<b>Probation with Confinement Conditions</b> (§5B1.3(e))							
Should be <i>more</i> available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be <i>less</i> available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>OR: No change needed</b> (mark):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[For the questions below: Supervised Release Confinement Conditions include community confinement or home detention following a term of imprisonment, as now permitted in Zones A, B, and C.]

	Offense Type						
	Drug Trafficking	Weapon Trafficking	Fraud	Larceny/Theft/Embezz.	Robbery	Alien Smuggling	Alien Unlawful Entry
<b>Imprisonment plus Supervised Release Confinement Conditions</b> (§5C1.1)							
Should be <i>more</i> available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be <i>less</i> available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>OR: No change needed</b> (mark):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



**12. The sentencing guidelines are required by statute to address the relevance of certain defendant characteristics, although the importance of some characteristics is de-emphasized. (28 U.S.C. § 994(d),(e))**

**Based on the cases that you personally have heard on appeal, do you believe that the guidelines should place less or more emphasis on any of the following defendant characteristics for sentencing determination?**

*For each factor, please mark "L" (Less), "M" (More), or "NC" (No change needed).*

	Less L	More M	No Change NC		Less L	More M	No Change NC
Age (§5H1.1)	L	M	NC	Community ties (§5H1.6)	L	M	NC
Education (§5H1.2)	L	M	NC	Role in the offense (§5H1.7)	L	M	NC
Vocational skills (§5H1.2)	L	M	NC	Criminal history (§5H1.8)	L	M	NC
Mental condition (§5H1.3)	L	M	NC	Criminal livelihood (§5H1.9)	L	M	NC
Emotional condition (§5H1.3)	L	M	NC	Public service* (§5H1.11)	L	M	NC
Physical condition (§5H1.4)	L	M	NC	Employment-related contributions (§5H1.11)	L	M	NC
Drug dependence or abuse (§5H1.4)	L	M	NC	Prior good works (§5H1.11)	L	M	NC
Alcohol dependence or abuse (§5H1.4)	L	M	NC	Others (please specify):			
Employment record (§5H1.5)	L	M	NC	_____	L	M	NC
Family ties and responsibilities (§5H1.6)	L	M	NC	_____	L	M	NC

*\*Includes military, civic, charitable, or public service*

**13. The guidelines are required by statute to maintain neutrality with respect to certain defendant characteristics. (28 U.S.C. § 994(d))**

**Based on the cases that you personally have heard on appeal, do you believe that the guidelines maintain neutrality with respect to the characteristics listed below?**

*For each factor, please mark "R" (Rarely), "S" (Sometimes), "O" (Often), or "A" (Almost Always).*

	Rarely R	Sometimes S	Often O	Almost Always A		Rarely R	Sometimes S	Often O	Almost Always A
Religion	R	S	O	A	Gender	R	S	O	A
Creed	R	S	O	A	Socioeconomic status	R	S	O	A
National origin	R	S	O	A	Others (please specify):				
Race	R	S	O	A	_____	R	S	O	A
Ethnicity	R	S	O	A	_____	R	S	O	A



14. The Sentencing Commission is charged with establishing sentencing policies and practices for the federal criminal justice system that *avoid unwarranted sentencing disparity*. (28 U.S.C. § 991(b)(1)(B), 994(d))

Based on the cases that you personally have heard on appeal, do you believe that the guidelines *avoid unwarranted disparity* with respect to the characteristics listed below?

For each factor, please mark "R" (Rarely), "S" (Sometimes), "O" (Often), or "A" (Almost Always).

	Rarely	Sometimes	Often	Almost Always
Defendants with similar records and conduct	R	S	O	A
Sentencing Circuit	R	S	O	A
Sentencing District	R	S	O	A

  

	Rarely	Sometimes	Often	Almost Always
Sentencing Judge	R	S	O	A
Others (please specify): _____	R	S	O	A
_____	R	S	O	A

15. One listed statutory goal for the guidelines is "to promote respect for the law." (28 U.S.C. § 3553(a)(2)(A))

Do you believe that the sentencing guidelines have increased, decreased, or had no impact on *respect for the law* for these groups?

For each group, please mark "I" (Increase), "D" (Decrease), or "NI" (No impact).

	Increase	Decrease	No Impact
Federal Offenders	I	D	NI
Crime Victims	I	D	NI

  

	Increase	Decrease	No Impact
The General Public	I	D	NI
Other (please specify): _____	I	D	NI

16. What factors or conditions do you see as *challenges* for the sentencing guidelines in their attempt to promote the statutory purposes of sentencing?

Please list all factors, conditions, or issues you see as challenges for the guidelines. Attach additional paper if needed.

17. Of the factors, conditions, or issues listed in Question 16 above, which do you perceive as . . .

. . . the greatest challenge?

. . . the second greatest challenge?



18. For this question, consider all sentencing cases you have heard on appeal in the past two years, including those in which there was a departure from the guidelines.

Please mark on the scale below to indicate your rating of the federal sentencing guideline system's achievements in furthering the general purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2).



19a. If you served as a Federal District Judge, have you sentenced any federal felony offender under Old Law (i.e., "pre-guidelines")?

- Yes       No       Never served as District Judge

19b. While a Federal Circuit Judge, have you reviewed the sentence of any federal felony offender under Old Law (i.e., "pre-guidelines")?

- Yes       No

**20. Clarifications and/or Comments**

The Commission welcomes all comments that you believe will help the Commission in its analysis of how the guidelines are meeting the statutory purposes of sentencing. You are also encouraged to provide your thoughts regarding the statutory definitions of the purposes of sentencing, problem areas you are experiencing with sentences under the guidelines, research areas you would like to see the Commission address, or any other topic you wish to raise. *Attach additional paper if needed.*

21. We invite you to provide your name and circuit. We will keep your responses anonymous.

Name: \_\_\_\_\_ Circuit: \_\_\_\_\_

The Commission thanks you for your valuable assistance in its Congressional Report effort. Please return your completed questionnaire in the accompanying addressed envelope. If you have any questions, please contact Dr. Linda Drazga Maxfield at 202-502-4500 or [USSCSurvey@ussc.gov](mailto:USSCSurvey@ussc.gov).

