

United States Sentencing Commission



1995 Annual Report

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MESSAGE FROM THE CHAIRMAN

The President,
The Congress, and
The Judicial Conference
of the United States of America

I am pleased to transmit this Annual Report which reviews the activities and accomplishments of the United States Sentencing Commission in 1995. The report also includes descriptive statistics on implementation of the sentencing guidelines by judicial district, circuit, and across the nation.

The Sentencing Commission continued its role as a resource to all three branches of government on criminal justice issues. This responsibility was highlighted this year by four special reports to Congress on issues ranging from cocaine to fraud offenses committed against elderly victims. At the same time, we continued to fulfill our fundamental mission to develop and monitor the sentencing guidelines, conduct research and serve as a clearinghouse of information on sentencing issues, and train judges, attorneys, and probation officers on guideline application.

In 1995, the Commission identified comprehensive review of the sentencing guidelines as a top agency priority. The objective of this review is to reduce the complexity of guideline application and to assess how well the guidelines are meeting the congressional objectives outlined in the Sentencing Reform Act of 1984 and subsequent legislation.

We remain committed to developing and implementing effective sentencing policies for the federal criminal justice system in cooperation with all branches of government.

Respectfully,

Richard P. Conaboy
Chairman

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Introduction

The United States Sentencing Commission, an independent agency in the judicial branch of government, is charged with developing and monitoring sentencing policies and practices for the federal courts. The Commission promulgates sentencing guidelines, subject to congressional review, that prescribe the appropriate form and severity of punishment for offenders convicted of federal crimes. The agency's activities are directed by seven Commissioners, appointed by the President and confirmed by the Senate, and two non-voting, *ex-officio* members.

The sentencing reform provisions of the Comprehensive Crime Control Act, Pub. L. No. 98-473 (1984), established the Commission. The Commission's authority and duties are set out in chapter 58 of title 28, United States Code, with procedures for implementing guideline sentencing prescribed in chapter 227 of title 18.

The Commission's sentencing guidelines, as specified in 28 U.S.C. § 991(b)(1), are designed:

- to effectuate the sentencing purposes enumerated in 18 U.S.C. § 3553(a)(2), (*i.e.*, just punishment, deterrence, incapacitation, and rehabilitation);
- to provide certainty and fairness in meeting these purposes by avoiding unwarranted sentencing disparity among offenders with similar characteristics convicted of similar criminal conduct while permitting sufficient judicial flexibility to account for relevant aggravating and mitigating factors; and
- to reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

In addition, the Commission is directed by

28 U.S.C. § 991(b)(2) to “develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing....”

Organized in October 1985, the Commission submitted to Congress on April 13, 1987, its original sentencing guidelines and policy statements. Prior to this submission, the Commission held 13 public hearings, published two drafts for public comment, and received more than 1,000 letters and position papers from hundreds of individuals and organizations. The guidelines became effective November 1, 1987, following the requisite period of congressional review; they apply to all offenses committed on or after that date.

Shortly after implementation of the guidelines, defendants throughout the country challenged the constitutionality of the Sentencing Reform Act and the Commission on the basis of improper legislative delegation and violation of the separation of powers doctrine. The U.S. Supreme Court rejected these challenges January 18, 1989, in Mistretta v. United States, and upheld the constitutionality of the Commission as an independent judicial branch agency. This decision cleared the way for nationwide implementation of the guidelines. Since nationwide implementation in January 1989, federal judges have sentenced nearly 250,000 defendants under the guidelines.

Since the Mistretta decision, the Commission amends the guidelines as necessary and addresses its significant responsibilities in research, sentence monitoring, evaluation, and training. It also serves as a clearinghouse of sentencing information for Congress, criminal justice practitioners, and the public.

The Commission's comprehensive data collection system tracks guideline application and provides support for other Commission activities. Staff members routinely extract, code, and enter data from judgment and commitment orders, present-

tence reports, indictments, statements of reasons, and written plea agreements for cases sentenced under the guidelines. These monitoring data inform the Commission's working group and guideline amendment processes and provide support for other Commission activities.

Current Commission research includes studies on substantial assistance, selective incapacitation, prison impact, and just punishment. In addition, the Commission routinely responds to requests from Congress, the courts, and the Executive Branch for sentencing data and analyses. During deliberations on crime legislation, the Commission provides Congress with extensive empirical information about the possible impact of proposed legislation. Along with legal and drafting assistance, the Commission provides comprehensive analyses of crime bill sentencing provisions.

For example, following passage of the Violent Crime Control and Law Enforcement Act of 1994, the Commission examined the Act's 85 sentencing-related provisions. In February 1995, the Commission completed the Act's required reports on sentencing practices related to crack and powder cocaine, victim-related adjustments for fraud offenses against elderly victims, sentencing in federal rape cases, and willful exposure to HIV.

On May 1, 1995, the Commission presented to Congress for its review 27 guideline amendments, the majority responding to directives contained in the Act. On October 30, 1995, the President signed legislation passed by the House and Senate to disapprove two proposed amendments – equalization of base penalties for crack and powder cocaine, and revision and consolidation of the money laundering guidelines. This was the first time in the Commission's history that guideline amendments submitted to Congress for their review were disapproved prior to taking effect.

Also in May, the Sentencing Commission identified comprehensive review of the federal guidelines system as a top agency priority. The objective of this review is to reduce the complexity of guideline application ("simplification") and im-

prove federal sentencing by working closely with the judiciary and others to refine the guidelines. Commission working groups will comprehensively assess each major section of the guidelines, critique application complexities, and develop options for Commission consideration. This project is expected to be a two-year initiative that may produce amendments in the 1996-97 amendment cycle for submission to Congress not later than May 1, 1997.

In September 1995, 450 people attended the Commission's second Symposium on Crime and Punishment in the United States. The symposium, "Corporate Crime in America: Strengthening the 'Good Citizen' Corporation," focused on changes in corporate and business culture since sentencing guidelines for corporations became effective in 1991. The organizational sentencing guidelines provide incentives to organizations, in the form of lower penalties, to establish rigorous internal compliance and voluntary disclosure programs.

This annual report covers fiscal year 1995 (October 1, 1994, through September 30, 1995). Unless otherwise noted, "1995" refers to fiscal year 1995.