



Congress Considers Crime and Sentencing Legislation

Terrorism, Immigration, and Juvenile Justice Top the Agenda

Crime and sentencing policy remain near the top of the congressional agenda as the House and Senate consider numerous crime and sentencing-related bills. Perhaps the most prominent of these bills is the Antiterrorism and Effective Death Penalty Act of 1996, signed into law by President Clinton on April 24, 1996. The Act contains directives to the Commission relating to computer crime, mandatory restitution, and the guidelines' terrorism enhancement. The Commission has already begun work on many of these provisions and will be publishing proposed guideline amendments for comment in December.

On May 2, 1996, the Senate passed its version of immigration reform, which contains statutory penalty changes and directives to the Commission on alien smuggling, document fraud, and other immigration-related crimes. The Senate version also provides emergency amendment authority requiring the Commission to implement the directives contained in the bill "as soon as practicable." Earlier, the House passed an immigration bill containing different and more specific amendments. Conferees will be named soon to reconcile the two bills.

The 104th Congress is also considering bills dealing with crime against vulnerable victims, drug crime, telecommunications fraud, church burnings, and juvenile justice.

The vulnerable victim bill, introduced by Congressman Dick Chrysler (R - Michigan) and passed by the House on May 7, directs the Commission to amend its vulnerable victim guideline for crimes of violence against the elderly and the young. The bill also contains two different "two strike" sentencing provisions that provide for mandatory life imprisonment for certain second-time sex offenders.

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Guideline Simplification Priorities Announced

Options for modifying the Acceptance of Responsibility reduction and restricting the use of acquitted conduct in sentencing are just a few of the proposals currently being considered by the Sentencing Commission as part of its guideline simplification project.

On July 2nd, the Commission published for comment a list of simplification priorities in the *Federal Register*. Commissioners received feedback on these priorities and other guideline-related issues at a regional public hearing held August 12th at the U.S. Courthouse in Denver.

During the next four months, the Commission plans to consider additional guideline simplification proposals in preparation for a planned December *Federal Register* publication of a series of potential amendments.

The focus of the Commission's
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Commission's Web Page Provides Global Access

The Commission joined the Internet community several months ago by inaugurating a home page on the World Wide Web. The Commission's home page allows anyone with a computer, a modem, and an account with an Internet service provider to have 24-hour access to a wealth of information about the agency and federal and state sentencing practices.

Users can choose from six main informational categories in a format that allows documents to be read on-screen before a user elects to download or print the material. The home page is updated frequently to keep abreast of Commission meetings, hearings, legislative developments, and training and employment opportunities.

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U.S. Sentencing Commission

Congress from page 1

In the drug area, a bill that would raise penalties for methamphetamine offenses was introduced in July by Senators Hatch (R - Utah) and Biden (D - Delaware), and a bill to raise marijuana offense penalties was earlier introduced by Senator Mitch McConnell (R - Kentucky). Both bills are likely to be taken up by the Senate in the coming months. Also in July, the President signed into law legislation that would raise statutory penalties for desecrating a house of worship, and the House Crime Subcommittee reported legislation raising penalties for telemarketing fraud offenses.

Congress also plans to consider comprehensive legislation addressing juvenile crime before it adjourns in October. The Senate will also likely consider a bill introduced by Senators Hatch and Feinstein (D - California) to address gang violence. The bill would direct the Commission to provide a six-level enhancement for certain gang-related offenses, provide new guidelines for interstate transportation in aid of gang activity, and provide new guidelines for recruiting a minor to participate in gang activity. ■

(Internet from page 1)

Following are a few of the most commonly asked questions about Internet access to Commission information:

Q: *How do I find the Commission's Internet home page?*

A: The home page can be found at the address <http://www.usssc.gov>.

Q: *What are the categories of information that are offered electronically? What kinds of Commission materials are contained within these libraries?*

A: The six categories are: General Information, Research/Reports, Guidelines, Legislative/Reports, Training, and State Sentencing Commissions. Materials include background information about the Commission and Commissioners, notices for scheduled meetings and hearings, minutes of recent meetings, listings of Commission priorities and projects, outstanding public comment solicitations, recently promulgated amendments, the text of the *Guidelines Manual*, and Commission research and reports.

Q: *How many people use the Commission's home page?*

A: The home page has been accessed by 1800-2000 individuals during each of the last three months. Each month has seen an increased rate of access.

Q: *Do both the electronic bulletin board and the home page contain the same information?*

A: The home page and the bulletin board have the same files available for downloading. Because the Internet provides the capability to easily publish information on-line, additional information (*e.g.*, announcements) has been placed on the home page. At some point in time, the Commission anticipates discontinuing the electronic bulletin board and relying exclusively on the Internet home page. ■

Guide Lines

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Message From the Chairman

by Richard P. Conaboy

In the broad scheme of the operation of a democracy, citizens look to the act of sentencing those who break the law as a major factor in maintaining peace in our communities. It is, then, an important and very difficult task. We must, therefore, strive to make the sentencing process one that responds to these expectations; one that can be rationally used and understood; and one that results in rational decisions. To achieve these goals, the Commission looks constantly for input from all interested parties.

To that end, the Commission has 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.

As part of this project, in April 1996, the Commission convened a Judicial Advisory Group, which included representatives from each of the 12 circuits and the Committee on Criminal Law of the Judicial Conference. At the meeting, each member of the Group identified his or her most pressing guideline issues. Commission staff provided overviews of significant simplification topics and presented potential options for refinement. Some very informative discussions followed.

Throughout the simplification process, the Judicial Advisory Group will continue to work with the Commission in assessing various simplification proposals.

I would like to thank both the Judicial Advisory Group and the Committee on Criminal Law for their interest and efforts with regard to improving the sentencing guidelines. The Commission looks forward to continued cooperation from other interested parties such as the Probation Officers Advisory Group and

Judicial Advisory Group Assists In Guideline Simplification Effort

Defining the appropriate scope of relevant conduct, expanding departure options, and reducing the level of guideline detail were three of the topics discussed during the first meeting of the Commission's new Judicial Advisory Group. Convened in April to assist the Commission in its ongoing guideline simplification effort, the Advisory Group is composed of one judge from each of the 12 circuits and five members of the Criminal Law Committee of the Judicial Conference. Judge Anthony J. Scirica of the Third Circuit chairs the group. "The Commission will use the Advisory Group as sounding board for ideas and options that flow from our simplification project," said Judge Richard P. Conaboy, Commission Chairman. Judges have unique perspectives to offer as we examine the current system to ensure that the guidelines are achieving fairness in the least complex manner possible."

Members of the Judicial Advisory Group include:

- | | |
|--|--|
| Judge Michael Boudin First Circuit Court of Appeals | U.S. District Court, Los Angeles, CA |
| Chief Judge Michael A. Telesca U.S. District Court, Rochester, NY | Judge Dee V. Benson U.S. District Court, Salt Lake City, UT |
| Judge Anthony J. Scirica Third Circuit Court of Appeals | Judge Wm. Terrell Hodges U.S. District Court, Jacksonville, FL |
| Judge William L. Osteen, Sr. U.S. District Court, Greensboro, NC | Judge Norma H. Johnson U.S. District Court, Washington, DC |
| Judge Emilio M. Garza Fifth Circuit Court of Appeals | Judge Maryanne Trump Barry Chair, Criminal Law Committee |
| Chief Judge Julian A. Cook, Jr. U.S. District Court, Detroit, MI | Judge Richard J. Arcara Criminal Law Committee |
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| Judge Lourdes G. Baird | Judge George P. Kazen Criminal Law Committee |

the Practitioners Advisory Group.

A good bit of our time has been spent analyzing and developing guideline amendments that implement legislation. In this regard, Congress has recently enacted, or is expected to pass in this Session, a number of bills that may call for changes in the sentencing guidelines, including: The Church Arson Prevention Act, The Antiterrorism and Effective Death Penalty Act, The Telecommunications Act, The Sex Crimes Against Children Act, and comprehensive immigration legislation. The Commission just this month held a

regional public hearing in Denver to hear suggestions for simplifying the guidelines. In late December, the Commission plans to publish for comment in the Federal Register proposed amendments to the sentencing guidelines, including proposals stemming from both the simplification project and recently enacted legislation. A 60-to-90 day written public comment period will follow. In March 1997, we will hold a public hearing in Washington, D.C., to hear comment on specific proposed amendments. We look forward to your comments on these very important issues.■

Annual Report Highlights Sentencing Trends

Number of Sentencings Continues to Fall

[Graphic Omitted for On-Line Version]

For the second consecutive year, the number of criminal cases sentenced in federal courts declined, dropping 3.7 percent from 1994 totals. A corresponding drop in the number of drug sentences significantly contributed to this overall decrease, according to statistics from the Commission's recently released 1995 *Annual Report*.

Federal courts sentenced 38,500 cases under the guidelines in fiscal year 1995, compared to 39,971 the previous year. (See accompanying pie chart for distribution of 1995 cases by offense type.) The drop from 1993 (42,107 cases) to 1994 was 5.1 percent.

The Commission's report provides extensive information on federal criminal cases sentenced under the guidelines and describes the agency's varied research, training, and clearinghouse activities. Highlights include sentencing profiles of each judicial district,

detailed information on guideline departures, plea and trial rates by district and circuit, and data on appeals of sentencing decisions and organizational defendants.

Distribution of Offenses

Forty percent of all defendants sentenced under the guidelines in 1995 were convicted of drug offenses. Of the drug violations, the largest number involved powder cocaine, followed by marijuana and crack cocaine.

The other most common offenses of conviction were fraud (15.4%), immigration (8.3%), firearms (6.7%), and larceny (6.5%).

Trends in Offense Types

Since the guidelines were implemented, drug offenses have always constituted the largest group of cases sentenced in the federal system. The 15,288 drug cases in 1995 represent an

8.5 percent (n=1,412) decrease from 1994, coming on the heels of a 9.5 percent (n=1,752) decrease between 1993 and 1994. The 1995 decrease in drug cases is sufficient to account for this year's overall decrease (n=1,471) in the number of cases sentenced. Sizeable decreases for the past two years were also recorded in larceny and firearms violations, and from 1994 to 1995 in robberies. In contrast, there has been a steady increase in fraud cases since 1990, and a dramatic increase in immigration cases since 1993.

Trends in Drug Type

Between 1992 and 1995, the total number of drug cases decreased by 7.6 percent (16,034 cases in 1992 compared to 14,809 in 1995). However, during this period, some drug types experienced an increase in the number of cases. Sentencings

- declined for powder cocaine (36.5% fewer cases in 1995) and marijuana (7.0% fewer cases in 1995); and
- increased for crack cocaine (53.8% more cases in 1995), methamphetamine (34.6% more cases in 1995), and heroin (2.1% more cases in 1995).

The changes in the number of powder cocaine and crack cocaine cases during the past four years have been substantial. However, cocaine sentencings (combining both powder and crack cocaine cases) have consistently accounted for more than half of the drug guideline cases (59.0% in 1992 and 55.5% in 1995). Likewise, the proportional contribution to the total by each of the remaining drug types remained stable across the years.

[Graphic Omitted for On-Line Version]

Guideline Sentences and Departures

Overall departure rates (the combined rates for substantial assistance (§5K1.1) departures, other downward departures, and upward departures) increases steadily from 1989 through 1995. This increase, from 18 percent to 29 percent, has been driven primarily by increases in government

motions for substantial assistance granted by the court. However, in 1995, the increase in the substantial assistance departure rate slowed significantly from an average of 3.2 percentage points a year between 1989 and 1994, to a 0.2 percentage point increase in 1995.

Downward departures, other than for substantial assistance, constituted 8.4 percent of all cases sentenced in 1995. This is a small increase above the 1994 level and continues a slight increasing trend begun in 1992. The most frequent reasons given for
(Continued on page 6)

Length of Imprisonment by Selected Offense Types

| Offense Type | Number of Cases | Percent of Cases Receiving Imprisonment | Mean Sentence (in months) | Median Sentence (in months) |
|----------------------------------|-----------------|---|---------------------------|-----------------------------|
| Murder | 81 | 95.3 | 253.2 | 210.0 |
| Kidnapping/Hostage Taking | 61 | 98.4 | 183.3 | 130.0 |
| Robbery | 1,570 | 98.5 | 108.5 | 78.0 |
| Drug Trafficking | 13,362 | 94.7 | 89.7 | 60.0 |
| Racketeering/Extortion | 370 | 89.6 | 83.6 | 57.0 |
| Larceny | 943 | 38.6 | 13.6 | 10.0 |
| Environmental/Wildlife | 36 | 31.6 | 13.4 | 8.5 |
| Drug Possession | 389 | 51.2 | 12.1 | 6.0 |
| Antitrust | 12 | 66.7 | 9.2 | 7.0 |
| Embezzlement | 454 | 56.1 | 7.6 | 5.0 |

departing were pursuant to a plea agreement (22.9%) and criminal history category over-representing the defendant's involvement (15.1%).

Upward departures constituted only 0.9 percent of all cases in 1995. The most frequently cited upward departure reasons were inadequacy of criminal history in reflecting the offense seriousness (39.2%) and risk of future conduct based on prior conduct or record (13.3%).

Sentencing Alternatives to Prison

In 1995, 43.6 percent of the cases eligible for alternatives to imprisonment received a sentence of straight probation, 24.3 percent

received probation accompanying some form of confinement, and the remaining 32.1 percent received a prison term or a sentence split between prison and community confinement. Among these cases, larceny offenders were the least likely (21.0%) to be incarcerated and immigration violators the most likely (71.0%). The much higher rate of imprisonment for immigration cases, when compared against other offense types, may result from a lack of alternatives to imprisonment for non-citizens awaiting deportation.

Prison Sentences

More than three-fourths (78.7%) of all guideline sentences in 1995 included a

term of imprisonment. Of these, the vast majority (94% of the 29,982 cases) received straight prison time (*i.e.*, without a term of alternative confinement). The median length of imprisonment for all defendants sentenced to prison in 1995 was 33.0 months, while the mean length was 63.2 months; both measures continued a decline begun in 1993 when the median prison sentence was 37.0 months and the mean 67.0 months.

During 1995, murder was the most severely punished offense, with an average sentence of 253.2 months. The shortest prison sentences were for embezzlement offenses (average sentence 7.6 months).■

[Graphic Omitted for On-Line Version]

Legal Forum

Supreme Court Addresses Departures and Substantial Assistance

The Supreme Court issued two guideline-related opinions shortly before recessing, one of which could dramatically revise the way courts of appeal review departures. In Koon v. United States, No. 94-1664, 1996 WL 315800 (U.S. June 17, 1996), the Court examined the appellate review standard of the Sentencing Reform Act (SRA), 18 U.S.C. § 3742(e)(4), and unanimously held that the “appellate court should not review the departure decision *de novo*, but instead should ask whether the sentencing court abused its discretion.” Although the Court was divided as to how that standard applied to the particular factors in this case, the majority held that the Ninth Circuit Court of Appeals erroneously applied the *de novo* standard of review in rejecting departure factors relied upon by the district judge. The case was affirmed in part, reversed in part, and remanded.

The Koon decision focused on the Ninth Circuit’s reversal of the district judge’s eight-level downward departure in the sentences of two Los Angeles police officers, Stacey Koon and Laurence Powell. The officers were convicted of violating constitutional rights under color of law, 18 U.S.C. § 242, for their use of force in arresting Rodney King. Although the applicable guideline at section 2H1.4 set an imprisonment range of 70 to 87 months, the district court granted the defendants a five-level downward departure because the victim’s misconduct “contributed significantly to provoking the offense behavior,” (5K2.10) and an additional three-level departure based on a combination of four factors: (1) the officers’ susceptibility to abuse in prison, (2) their loss of not only their jobs, but their careers in the law enforcement profession, (3) the burden they had suffered from successive state and federal prosecutions, and (4) the low risk they posed for recidivism. The departure resulted in a sentencing range of 30 to 37 months, and the district judge sentenced each to 30 months imprisonment. On appeal, the Ninth Circuit reviewed the departure decision *de novo*, and rejected each rationale.

The Supreme Court agreed with the Ninth Circuit that the district court erred in considering career loss and low recidivism risk as departure factors because these factors were adequately considered by the guidelines. However, it held that the other factors – victim misconduct, susceptibility to prison abuse, and the burdens of successive prosecutions – were “sentencing determinations well within the sound discretion of the District Court.” The Court noted

that “whether a given factor is present to a degree not adequately considered by the Commission, or whether a discouraged factor nonetheless justifies departure because it is present in some unusual or exceptional way, are matters determined in large part by comparison with the facts of other Guidelines cases. District courts have an institutional advantage over appellate courts in making these sorts of determinations, especially given that they see so many more Guidelines cases.” But this does not mean appellate review is an “empty exercise,” the Court said. “The abuse of discretion standard includes review to determine that the discretion was not guided by erroneous legal conclusions.”

In Melendez v. United States, 95-5661, 1996 WL 327175 (U.S. June 17, 1996), the Supreme Court resolved a conflict among the courts of appeals by rejecting the argument that the Sentencing Commission created a “unitary” motion system for substantial assistance departures. The Court held that a government motion pursuant to policy statement §5K1.1 attesting to the defendant’s substantial assistance and requesting that the district court depart be-

...this does not mean appellate review is an “empty exercise,” the court said. “The abuse of discretion standard includes review to determine that the discretion was not

low the minimum of the applicable guideline range does not authorize a departure below a lower statutorily mandated minimum sentence. The Court ruled that there was nothing in 18 U.S.C. § 3553 or 28 U.S.C. § 994(n) that suggests “that the Commission itself may dispense with 18 U.S.C. § 3553(e)’s motion requirement, or alternatively ‘deem’ a motion requesting or authorizing different action – such as a departure below the guideline minimum – to be a motion authorizing the district court to depart below the statutory minimum.”

According to the Court, “Congress did not charge the Commission with ‘implementing’ section 3553(e)’s Government motion requirement, beyond adopting provisions constraining the district court’s discretion regarding the particular sentence selected.” ■

Commission Reports to Congress on Computer Crime

Do the sentencing guidelines deter computer fraud? This is the question Congress posed to the Commission in the Antiterrorism and Effective Death Penalty Act of 1996.

In responding to this question, the Commission reviewed its database of guideline convictions under the pertinent statute (18 U.S.C. § 1030(a)(4) and (5)), conducted a search to determine whether any recidivism had occurred within the group of persons convicted of violating that statute, developed a profile of a “typical offender” within that group, and conducted a literature review of deterrence studies of “white collar” crime.

However, no definitive assessment could be made of the deterrent effect of the existing guidelines on computer crime because of (1) an inability to determine how much computer crime was occurring before the guidelines went into effect, (2) the relatively small number (approximately 60) of guideline convictions to date under the pertinent statute, and (3) the general difficulty of determining the deterrent effect of any criminal sanction.

The “typical offender” profile indicated that computer criminals tend to be somewhat better educated individuals who have less significant criminal histories than those convicted of other fed-

eral crimes. The profile also indicated that, to date, the typical computer criminal has not been a sophisticated user but is, rather, likely someone with a pedestrian level of computer expertise who misuses his employer’s computer system in committing his offense.

A Commission working group is currently consulting with representatives of the Department of Justice’s Computer Crime Division about proposals to amend the guidelines to better account for an anticipated increase in the level of computer crime due to expanded use of the Internet and other technological developments. ■

Child Sex Offenders to Receive Tougher Sentences

The Sentencing Commission sent to Congress two amendments to the guidelines in late April that will significantly increase the penalties for individuals convicted of certain child sex offenses. The Commission also submitted a report to Congress that analyzed all 1994 and 1995 cases involving sexual abuse, child pornography, or the promotion of prohibited sexual contact. The amendments and report respond to congressional directives in the Sex Crimes Against Children Prevention Act of 1995 and the Telecommunications Act of 1996.

The amendments sent to Congress increase sentences for all pornography guidelines by approximately 25 percent. Sentences for promotion of prostitution and prohibited sexual conduct were increased by about one third. An additional 25-percent increase was provided for the use of a computer in child pornography offenses.

The amendments also increase pornography production sentences by 25 percent if computers were used to solicit participation in sexually explicit conduct by or with a minor for the production of child pornography. In order to ensure lengthy incarceration of the most dangerous repeat offenders, the Commission clarified the definition of a “pattern of activity” as used in the guidelines. These amendments will automatically become effective on November 1, 1996, after a 180-day period of congressional

review unless Congress enacts legislation to the contrary.

The Commission report notes that sex offenses against minors represent a tiny portion of all federal sentencings – 423 cases in two years studied – and only a small percentage of the total number of such cases nationwide are prosecuted federally. Because of the nature of federal jurisdiction, in recent years, 77 percent of federal offenders convicted of child sexual abuse were Native American. Child pornography offenders were more representative of the general population. The report notes that a significant portion of child pornography offenders have a criminal history that involves the sexual abuse or exploitation of children. Research suggests that those with such histories are at a greater risk of recidivism.

The Commission also recommended that Congress increase certain statutory maximum penalties so that the guideline amendments designed to increase sentences are allowed to operate to their full extent without being capped by existing statutory limits. ■

Commission Holds Denver Hearing on Guideline Simplification

The Sentencing Commission convened a public hearing on August 12, 1996, in the federal courthouse in Denver to hear suggestions for simplifying the federal sentencing guidelines. While the hearing was open to comment on all simplification issues, attention was focussed on three of the priority issues of the simplification project: acquitted conduct, drug offenses and role in the offense, and departures/offender characteristics.

The hearing was part of the multi-year project begun in 1995 to comprehensively assess and refine the federal sentencing guidelines. During the first phase of this review, Commission staff examined data on more than 250,000 cases sentenced under the guidelines, numerous

appellate decisions, academic literature, and extensive public comment. Commission staff prepared briefing papers on major guideline topics to provide a foundation for the project and to identify possible options for refinement.

Said Judge Richard P. Conaboy, Commission Chairman, "Perhaps the greatest criticism of the guidelines I have heard, apart from their severity in certain drug cases, a result driven in large part by mandatory minimum statutes, is their complexity and rigidity. The Commission plans to examine these criticisms through its simplification project and search for workable solutions."

The Commission will hold another hearing in March of

(Simplification from page 1)

guideline simplification efforts in the 1996-1997 amendment cycle include:

Relevant Conduct

- (1) clarifying/streamlining the relevant conduct guideline, assuming no substantive policy changes; and
- (2) developing options to limit the use of acquitted conduct at sentencing.

Level of Detail/Guideline Complexity

- (1) simplification of guidelines/specific offense characteristics through consolidation or elimination;
- (2) clarification of the definition of loss;
- (3) examination of problematic cross references; and
- (4) revision of the Acceptance of Responsibility adjustment.

Departures/Offender Characteristics

- (1) developing options for

revising/clarifying the language describing the "heartland concept" in Chapter One and departure policy statements in Chapter Five in light of the recent U.S. Supreme Court decision in Koon v. United States, No. 94-1664, 1996 WL 3155800 (U.S. June 17, 1996); and

- (2) focusing on family and community ties, age, and combinations of factors.

Criminal History

- (1) re-ordering and streamlining Chapter Four; and
- (2) revising assignment of criminal history points to better target serious, repeat offenders.

Appellate Litigation and Other Statutory Issues

- (1) consideration of the impact of the Koon decision on appellate review of guideline sentences and on the need to revise the introduction to the *Guidelines Manual* and Departure Section (§5K2.0) to address the deference appellate courts should afford district courts on guideline

determinations; and

- (2) consideration of widening the bands in monetary and drug tables to decrease litigation.

Drug Sentencing/Role in the Offense

- revising the Role in the Offense guideline to better reflect actual experience, case law development, and to provide sufficient flexibility when sentencing drug offenders.

Introduction to the Guidelines Manual

- updating the introduction to reflect the evolution of the guideline sentencing process.

Internet subscribers should check periodically the Commission's website at <http://www.ussc.gov> for details on the simplification process (including the dates of additional public hearings) and copies of proposed amendments as they are made available. ■

FJC Issues Survey Findings on Operation of Sentencing Guidelines

Focusing on ways the guidelines might be made “simpler, more flexible, and less burdensome,” the Federal Judicial Center (FJC) surveyed all district judges and chief probation officers on the operation of the guidelines.

Three hundred and fifty-four judges and 69 chief probation officers responded to the survey, which was conducted at the request of the Judicial Conference’s Committee on Criminal Law. In May 1996, the FJC issued its preliminary report detailing its findings. A few highlights:

District judges and chief probation officers were asked to rank the top five guideline issues requiring substantive change. The most common responses were:

- Departures;
- Alternatives to incarceration;
- Relevant conduct;
- Use of quantity in drug cases; and
- Role in the offense.

District judges rated the four following guideline changes as most important:

- Increasing the availability of downward departures;
- Amending the guidelines less frequently;
- Consolidating similar guidelines; and
- Providing greater guidance on the circumstances warranting departure.

Chief probation officers, on the other hand, rated as most important:

- Providing clearer and more consistent terms and definitions throughout the *Guidelines Manual*;
- Amending the guidelines less frequently;
- Consolidating similar guidelines; and
- Providing greater guidance on the mechanics of re-sentencing.

District judges rated the following issues as most difficult aspects of the guidelines sentencing process:

- Fashioning a non-§5K1.1 departure and supporting rationale;
- Determining monetary loss in fraud cases;
- Determining drug quantity in drug cases; and
- Applying the multiple count rules.

Chief probation officers rated as most difficult the following:

- Applying appellate case law;
- Determining monetary loss in fraud cases;
- Fashioning a non-§5K1.1 departure and supporting rationale; and
- Determining role adjustments.

Since the report’s release, the FJC has received a small number of additional responses which will be included in its final report. The final report, slated for a Fall release, will also include responses from a separate survey of appellate judges. ■

Sentencing Commission to Reconsider Cocaine Sentencing Policy

Congressional Directive Sets Parameters for Policy

Pursuant to a directive from Congress, the Sentencing Commission will reconsider the issue of cocaine and federal sentencing policy during its 1996-97 amendment cycle. The Commission first formally reviewed federal cocaine sentencing policy in response to a directive in the Violent Crime Control and Law Enforcement Act of 1994.

On February 28, 1995, the Commission issued a report to Congress in which it recommended that changes be made to the current cocaine sentencing scheme, including changes to the statutory 100-to-1 quantity ratio between crack cocaine and powder cocaine used in calculating sentences under the guidelines. The Commission subsequently sent to Congress proposed changes to the sentencing guidelines implementing recommendations made in the report.

On October 30, 1995, President Clinton signed legislation rejecting the Commission's proposed guideline amendments (Public Law 104-38). In that legislation, the Commission was directed to submit to Congress new recommendations regarding changes to the statutes and

sentencing guidelines governing sentences for cocaine offenses. The legislation sets out a number of factors that the Commission is required to consider in developing the new recommendations.

The Commission has been actively engaged in responding to the legislation. On January 2, 1996, and July 2, 1996, the Commission published notices in the *Federal Register* requesting comment regarding implementation of this congressional directive, including comment on appropriate enhancements for violence and other harms associated with crack and powder cocaine, as well as the quantity ratio that should be substituted for the current 100-to-1 ratio.

In addition, the Commission consulted with key congressional leaders regarding the timetable and procedures for its response to the 1995 legislation. Additional research is also being conducted that will draw significant new information from more than 2,000 federal cases to inform the Commission's judgment on the proper cocaine sentencing policy. ■

Sentencing Commission Tentative Meeting Calendar

Washington, D.C. Commission meetings are held in the Thurgood Marshall Federal Judiciary Building. Internet subscribers may access meeting agendas on the Commission's web page at <http://www.ussc.gov>.

| Date/Time | Activity | Location |
|--------------------------|---------------------------|------------------|
| September 19 - 9:30 a.m. | Public Commission Meeting | Washington, D.C. |
| October 29 - 9:30 a.m. | Public Commission Meeting | Washington, D.C. |
| November 13 - 9:30 a.m. | Public Commission Meeting | Washington, D.C. |
| December 10 - 9:30 a.m. | Public Commission Meeting | Washington, D.C. |