



# Guidelines

News from the U.S. Sentencing Commission

January 1999

## New Crime Laws Will Require Amendments to Guidelines

By Judith Sheon (with Andy Purdy contributing)

While the 105<sup>th</sup> Congress did not enact an “omnibus” crime bill, it did pass a number of crime and sentencing-related laws focused on discrete issues that likely will necessitate guideline amendments. Included among these laws are some that contain directives to the Commission relating to copyright infringement, the cloning of wireless telephones, identity theft and assumption, and the sexual abuse of children. Before Congress adjourned (thereby ending the service of three of the four remaining commissioners), the Commission voted to publish proposed amendments and issues for comment pertaining to several of these matters. Additionally, looking ahead to the appointment of new commissioners, outgoing Chairman Richard P. Conaboy worked closely with staff to develop a comprehensive plan to guide staff preparatory work on all of the various issues growing out of the recently enacted legislation. A number of these new sentencing-related laws deal with economic crimes. For example, the No Electronic Theft Act directs the Commission to (1) provide that the

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## Timothy B. McGrath Named Interim Staff Director

By Jeanne Doherty

The U.S. Sentencing Commission has named Timothy B. McGrath as its Interim Staff Director, succeeding Dr. John H. Kramer, who returned this fall to the Pennsylvania State University, where he is a tenured Professor of Sociology and Criminal Justice. Dr. Kramer’s departure, after a two-year assignment as Staff Director, coincided with the culmination of the assessment phase of the Commission’s comprehensive re-engineering effort. “John expertly led the Commission through a most challenging course — one in which the Commission assessed its organizational goals, structures, and processes — and we greatly appreciate all his hard work and dedication,” remarked Judge Conaboy, former Commission Chairman.

Photos for this document are not online; for a hard copy contact the Publications Request Line: 202-502-4568.

Timothy B. McGrath is the Sentencing Commission’s top administrator.

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Twin Lens Photo

# Chairman Conaboy Resigns to Clear Path for New Appointees

To give the President the opportunity to appoint a new, full slate of commissioners to the seven-member Sentencing Commission, Judge Richard P. Conaboy resigned his post as chairman effective October 31, 1998.

“I am convinced that it would be most appropriate for the President to designate a new chairman at the same time that six new members will be joining the Commission,” said Judge Conaboy. “My leaving at this juncture ultimately is in the best interests of the Commission. Both sentencing policy and the operation of the Commission are better served if the incoming commissioners are accompanied by a new chairman. Otherwise, the very important work of the Commission is disrupted by my departure a year or so into the new commissioners’ terms.”

“My only regret is that I won’t be working as closely with so many people I have come to respect and admire. I am immensely proud of the work we have accomplished.”

C Judge Richard P. Conaboy

Continued Judge Conaboy, “My only regret is that I won’t be working as closely with so many people I have come to respect and admire. I am immensely proud of the work we have accomplished...” The holdover status of Commissioners Michael S. Gelacak, Michael Goldsmith, and Judge Deanell R. Tacha expired with the adjournment of the 105<sup>th</sup> Congress on October 21, 1998. The remaining three positions had been vacant for some time. Commissioners are appointed by the President and confirmed by the Senate, and serve six-year terms. At least three of the commissioners must be federal judges and no more than four may belong to the same political party.

“Much of my last few weeks at the Commission was spent delegating certain authority to the staff director and other appropriate parties. I met daily with the staff director and senior staff to develop and put into place a work program that will continue well into 1999. By virtue of this work plan, the staff will have finalized for the commissioners’ consideration, a variety of reports that address all of the recent congressional directives and other issues such as the economic crimes package. According to the work plan, these reports will be ready in time for the new commissioners to make decisions on Commission policy and the upcoming agenda.”

By the time Judge Conaboy was confirmed as Chairman on October 6, 1994, the federal sentencing guidelines had been in effect for seven years and the Sentencing Commission had entered a new era of guideline refinement and revision. While the primary focus of the early Commission had been to create the sentencing guidelines, Judge Conaboy recognized that the future work lay not just in continued guideline refinement but in building better communication, cooperation, and coordination with other key decisionmakers in the criminal justice system.

## Guidelines

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Toward that end, Judge Conaboy regularly traveled across the country, personally meeting with federal judges to listen to them about ways in which the federal sentencing process might be improved. He also continued the extensive training the Commission provides to judges, probation officers, and prosecutors, and expanded the training provided the defense bar. As a result of his goal to improve outreach, the Commission also developed a comprehensive World Wide Web site which continues to grow in popularity. Under his leadership, the Commission this year worked “hand in glove” with key groups in the criminal justice field to revise sentencing guidelines for economic crimes.

During his tenure, Judge Conaboy also oversaw (1) an assessment and reorganization of the way in which the Commission operates; (2) a national symposium on the impact of the organizational sentencing

## Case Submission Rate Increases

By Karen Lies

Fiscal year 1997 saw a 15-percent increase in the number of cases submitted to the Sentencing Commission. In early 1997, the Commission launched a joint effort with the federal judiciary to improve submission of sentencing documents, and the majority of this increase is attributed to this effort. This effort also involved working closely with the Urban Institute (the grantee for the Bureau of Justice Statistics’s Federal Justice Statistics Program) to identify guideline cases that were present in the Administrative Office of the U.S. Courts’ Criminal Masterfile, but did not appear in the Commission’s Monitoring Datafile. Commission staff members also completed an aggregate comparison of the numbers of cases contained in the two files.

From the comparisons, it appeared that a number of guideline cases were not being submitted to the Commission. In December 1997, the Sentencing Commission requested the assistance of U.S. probation officers, judges, and clerks of court in order to address this discrepancy. Through this joint effort, the Commission received the additional cases from targeted districts.

The courts’ response significantly increased the case submission rate for fiscal year 1997. Between December 1997 and the end of January 1998, an additional 4,269 cases were submitted to the Commission; during the same time period the previous year, only 247 cases were submitted. The cases received included large numbers of Class A misdemeanors, many of which were immigration cases. Few additional drug cases were submitted, suggesting that document submission for these cases had been sufficient.

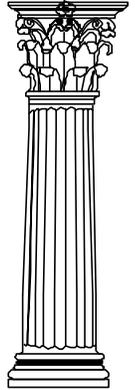
### Commission Phones Get New Numbers ☎

Ushered in with the new year are all new phone numbers at the Sentencing Commission. Effective immediately, to reach Commission departmental offices, please use the following extensions:

Main Switchboard	502-4500
Main Fax	502-4699
USSC HelpLine	502-4545
Office of the Staff Director	502-4510
Office of Legislative & Governmental Affairs	502-4627
Office of Special Counsel	502-4666
Office of Administration & Planning	502-4500, 502- 4610
Office of General Counsel	502-4520
Office of Monitoring	502-4620
Office of Policy Analysis	502-4530
Office of Education & Sentencing Practice	502-4540
Office of Publishing & Public Affairs	502-4590
Publications Request Line	502-4568

(All numbers have 202 area code.)

# Supreme Court Update



By Pamela G. Montgomery and Alan Dorhoffer

The U.S. Supreme Court recently issued three decisions on important sentencing-related matters. These cases involve (1) a discussion of judicial discretion in imposing a sentence for a drug conspiracy, (2) an interpretation of a key firearm statute, and (3) an interpretation of the recent immigration statute.

These cases involve (1) a discussion of judicial discretion in imposing a sentence for a drug conspiracy, (2) an interpretation of a key firearm statute, and (3) an interpretation of the recent immigration statute.

In *United States v. Edwards*, 118 S. Ct. 1475 (1998), the Supreme Court, in an unanimous opinion, held that the sentencing guidelines require the sentencing judge to determine both the amount and kind of drugs at issue in a drug conspiracy. The defendant had been charged under 21 U.S.C. §§ 841 and 846 with conspiracy to possess with intent to distribute mixtures containing powder cocaine and crack cocaine. The jury convicted the defendants, returning a general verdict which did not specify the object of the conspiracy. The judge then imposed a sentence based on his findings that each petitioner's illegal conduct had involved both powder cocaine and crack. The petitioners argued that the drug statutes and the Constitution require the judge to assume that the jury convicted them of the less severely punished object of the conspiracy, in this case powder cocaine. The Seventh Circuit rejected the defendant's argument and held that the guidelines require the sentencing judge, not the jury, to determine both the kind and the amount of the drugs at issue in a drug conspiracy. The Seventh Circuit rejected the reasoning of the Fifth, Eighth, and Tenth Circuits which had held that the judge had to sentence to the lesser object of the conspiracy. The Supreme Court, agreeing with the Seventh Circuit, stated that it was of no consequence whether the conviction was based solely on powder cocaine because the guidelines instruct the judge to sentence a drug conspiracy based on the offender's relevant conduct under USSG § 1B1.3. According to the Court, "[t]he Sentencing Guidelines instruct the judge in a case like this one to determine both the amount and the kind of 'controlled substances' for which a defendant should be held accountable – and then to impose a sentence that varies depending upon amount and kind."

In *United States v. Muscarello*, 118 S. Ct. 1911 (1998), the Supreme Court held that the phrase "carries a firearm" in 18 U.S.C. § 924(c) can apply to those who keep a gun locked in a car's glove compartment or trunk if it is transported in relation to a drug trafficking offense. In a 5-4 decision, the Supreme Court held that drug traffickers arrested while in or near their cars can be convicted of carrying a gun even if it were not immediately accessible. The Court consolidated two cases in which the First and Fifth Circuit found that the defendants had "carried" guns during and in relation to a drug trafficking offense while guns were in a glove compartment and in a locked trunk. The petitioners argued that the term "carry" should apply only when a firearm is on the person. The Supreme Court examined the origins of the word "carry," and Justice Breyer,

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writing for the majority stated: “[T]he generally accepted contemporary meaning of the word ‘carry’ includes the carrying of a firearm in a vehicle.” The Court concluded that “neither the statute’s basic purpose nor its legislative history support circumscribing the scope of the word ‘carry’ by applying an ‘on the person’ limitation.”

In *United States v. Almanderez-Torres*, 118 S. Ct. 1219 (1998), the Supreme Court, in a 5-4 opinion, held that 8 U.S.C. § 1326(b)(2), which authorizes a sentence of up to 20 years for any alien who illegally returned to the United States after having previously been deported following a conviction of an aggravated felony, was merely a penalty provision, and did not serve to define a separate immigration-related offense. Subsection (a) of 8 U.S.C. § 1326 provides a maximum two-year sentence if a deported alien returns to the United States without special permission. Subsection (b)(2) authorizes a sentence of up to 20 years for a deported alien under subsection (a) if the initial “deportation was subsequent to a conviction for the commission of an aggravated felony.” The defendant pled guilty to violating 8 U.S.C. § 1326, and the district court sentenced him to 85 months, rejecting the argument that since his indictment failed to mention his aggravated felony convictions, the court could not sentence him to more than the maximum two-years’ imprisonment authorized by section 1326(a). The Fifth Circuit also rejected this argument, holding that subsection (b)(2) is a penalty provision which simply permits the imposition of a higher sentence when the unlawfully returning alien also has a record of prior convictions.

The Supreme Court, resolving a conflict among the courts of appeals, concluded that subsection (b)(2) is a penalty provision that simply authorizes an enhanced sentence and does not describe a separate offense. The Supreme Court stated that the previous conviction need not be charged and proved again because subsection (b)(2) is a penalty provision

## Kenneth P. Cohen Named Director of Legislative Affairs

The Sentencing Commission announced in September the appointment of Kenneth P. Cohen as its Director of Legislative and Governmental Affairs. In this capacity, Mr. Cohen will serve as the Commission’s day-to-day liaison to Congress.

Mr. Cohen has served as Attorney Advisor to U.S. Sentencing Commissioner Deanell R. Tacha for the past year. His major involvements at the Commission include work on the Commission’s economic crimes package and its analyses of the No-Electronic Theft Act and telemarketing fraud issues.

Previously, Mr. Cohen was a practicing litigation attorney in Washington, D.C., with the firm of Covington & Burling. Mr. Cohen received his J.D. in 1993 from Harvard Law School and his B.A. in 1988 from the University of Virginia. **O**

Crime Laws *Continued from page 1*

guideline range for intellectual property offenses is sufficiently stringent to deter those offenses; and (2) ensure that the pertinent guideline considers the retail value of the intellectual property infringed upon. In the summer of 1998, the Commission published for comment amendment options for implementing this directive. The Commission solicited additional input on the issue throughout the fall and winter.

Additionally, Congress enacted the Wireless Telephone Protection Act, which directs the Commission to review and amend the guidelines to provide an appropriate penalty for offenses involving the cloning of wireless telephones, and the Identity Theft and Assumption Deterrence Act of 1998, which directs the Commission to review and amend the guidelines to provide an appropriate penalty for offenses involving fraud in connection with assuming another person's identity. Because both of these provisions pertain to types of fraud, Commission staff is examining their impact on the guidelines in conjunction with a group of proposed amendments to the fraud, theft, and property destruction guidelines. In November, the Commission published for comment this amendment package which contains several elements: (1) proposed consolidation of the guidelines for theft, fraud, and property destruction; (2) revisions to the loss tables for theft, fraud, and tax offenses; (3) deletion of the provision for more-than-minimal planning; and (4) a revised definition of loss for the guidelines proposed for consolidation. Those familiar with the Commission's policy development work will recognize these elements as the principal components of the "economic crime package" extensively considered, but ultimately not adopted, by the Commission last year.

In November, the Commission published for comment this amendment package which contains several elements: (1) proposed consolidation of the guidelines for theft, fraud, and property destruction; (2) revisions to the loss tables for theft, fraud, and tax offenses; (3) deletion of the provision for more-than-minimal planning; and (4) a revised definition of loss for the guidelines proposed for consolidation.

With regard to the proposed comprehensive rewrite of the loss definition, over the summer the Commission "field tested" last spring's amendment proposal in conjunction with the Criminal Law Committee of the Judicial Conference. For this test, Committee members and other judges, with the assistance of probation officers, "applied" the new definition to a hypothetical fact scenario and to a group of recently sentenced, actual cases. Participants then completed a survey regarding loss definition issues.

Test participants then traveled to Washington, D.C., for a day-long debriefing session in September to discuss their findings and make recommendations. Representatives of the federal defenders, the Commission's Practitioners' Advisory Group, and the Department of Justice also attended. Commission staff is now in the process of analyzing these findings and recommendations.

Another of the recent congressional initiatives is the Protection of Children from Sexual Predators Act of 1998, which contains several directives to the Commission to review and amend the guidelines relating to the sexual abuse of children. Among other requirements, those directives mandate that the Commission provide a sentencing increase if the defendant used a computer in connection with a sexual abuse offense against a minor or engaged in a pattern of sexual abuse or exploitation of a minor.

Crime Laws *Continued on page 7*

Crime Laws *Continued from page 6*

Several other pieces of newly-enacted legislation do not contain explicit directives to the Commission but nevertheless may necessitate changes to the guidelines. The Methamphetamine Trafficking Penalty Enhancement Act of 1998 increases penalties for manufacturing, importing, or trafficking in methamphetamine by reducing by one-half the quantity of methamphetamine required to trigger various statutory minimum sentences. Changes to the drug quantity table in the drug guidelines will be needed if the guideline is to remain consistent with the new statutory quantities for methamphetamine.

In the firearms area, Congress enacted legislation to (1) prohibit certain aliens who are lawfully present in the United States under a non-immigrant visa from possessing a firearm; and (2) amend 18 U.S.C. § 924(c) to prohibit “possession” of a firearm in furtherance of a drug trafficking or violent crime (in addition to using or carrying a firearm during and in relation to such a crime). This latter bill also creates a tiered system of sentencing enhancement ranges, each with a mandatory minimum and presumed life maximum, in lieu of the former, fixed penalty of five years.

Finally, Congress created a number of new tax offenses apparently aimed at protecting the privacy interests of the taxpayer in certain situations, and it urged the Commission to examine guideline penalties for offenses involving nuclear, biological, and chemical weapons and materials. While the Commission awaits the appointment of new commissioners, the staff continues to thoroughly research these issues and prepare material and

For pending issues and proposed amendments to the sentencing guidelines, commentary, and policy statements, see 63 Fed. Reg. 65980 (also available on the Commission’s Internet web site at [www.ussc.gov](http://www.ussc.gov).)

Director *Continued from page 1*

Mr. McGrath, who also played an active role in the Commission’s assessment and restructuring, will lead the process of developing staff reports and options on all the various congressional mandates that the Commission received this past year. Mr. McGrath first joined the Commission upon the appointment of Judge Richard P. Conaboy as Chairman, and has supervised the daily operations of the Chairman’s Office since 1995. Previously he worked as Deputy Circuit Executive and as Assistant Circuit Executive for Finance, Facilities and Security for the Circuit Executive’s Office in the Third Judicial Circuit. Commenting on the appointment, Mr. McGrath said, “I’m pleased to be directing the daily activities of such a highly motivated and talented staff. While we await the appointment of new commissioners, staff will be engaged actively in research, legal, and administrative projects that will generate briefing materials for these commissioners and assist with their policy decisions.”

The change in office became effective August 21, 1998. Judge Conaboy noted, “Tim McGrath brings with him a vast range of administrative experience, much of it within the federal judiciary. Tim was instrumental this past year in coordinating the work of numerous teams that produced what we expect will be a more effective and efficient model for the Commission. And, as I expected, he has already made major contributions to our policy initiatives. I am confident that his appointment will assure stability and continuity both in the day-to-day work of the Commission, in the

# Guideline Amendments Presented to Congress

By Judith Sheon

On May 1, 1998, the Sentencing Commission sent to Congress 11 amendments to the federal sentencing guidelines. These amendments took effect November 1, 1998, after a six-month congressional review period. Some of these amendments respond to recently enacted law and other congressional initiatives. Most notably, in response to increased congressional concerns, the Commission adopted an amendment that provides (1) a sentence increase for fraud that involves mass marketing and (2) an additional sentence increase for fraud that is committed substantially outside the United States, involves relocating to another jurisdiction to evade law enforcement, or otherwise involves sophisticated concealment.

## Telemarketing Fraud Prevention Act of 1998

After these amendments were submitted, Congress passed the Telemarketing Fraud Prevention Act of 1998, which generally directed the Commission to provide for substantially increased sentences for telemarketing fraud offenses. As a result, the Commission on September 17, 1998, adopted amendments to the sentencing guidelines that build upon the May amendments – by expanding the “sophisticated concealment” enhancement to cover all forms of sophisticated means and by providing an enhancement if the offense impacted large numbers of vulnerable victims. These amendments also became effective November 1. Commission research staff estimate that the combined effect of the May and September amendments will be to increase sentences in telemarketing fraud cases from a current average of 21 months to a minimum of 33 months.

In response to congressional initiatives, the Commission also adopted an amendment to increase penalties for anyone convicted of transferring a gun to a felon or any other person prohibited from owning a firearm. In addition, the Commission implemented the Veterans’ Cemeteries Protection Act of 1997 by adopting an enhancement in the theft, property destruction, and arson guidelines for offenses involving the desecration of property in national cemeteries.

## Circuit Conflict Resolution

A number of the other amendments resolve circuit conflicts regarding the application of various guidelines. In addressing these conflicts, the Commission adopted amendments that –

- (1) clarify the procedure for determining the sentence of a defendant convicted of both failure to appear and an additional offense, while also ensuring a procedure that complies with the statutory mandate to impose a

Also available through the Commission’s Internet web site, USSC Online **C**

1998 Amendment Highlights

[www.ussc.gov/pdf/98hghlt.pdf](http://www.ussc.gov/pdf/98hghlt.pdf)

This document briefly summarizes the substantive and clarifying amendments to the Guidelines Manual effective November 1, 1998.  
(.PDF file format)

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- consecutive sentence on the failure to appear count;
- (2) apply the two-level sentence increase for abuse of a position of trust to an imposter as well as to a person who legitimately holds and abuses a position of trust;
- (3) apply the two-level sentence increase for obstruction of justice to a defendant who obstructs justice in cases closely related to his own;
- (4) specify that the two-level sentence increase for obstruction of justice does not apply to a defendant who falsely denies drug use while on pre-trial release; and
- (5) clarify the circumstances under which a departure below the guideline range is permitted for diminished capacity.

Finally, the Commission adopted an amendment that incorporates into the general policy statement on guideline departures the principal holding and key points from the United States Supreme Court's decision in *Koon v. United States*.<sup>o</sup>

## An Overview of the Organizational Guidelines

By Paula Desio

Organizations, like individuals, can be found guilty of criminal conduct, and the measure of their punishment for felonies and Class A misdemeanors is governed by Chapter Eight of the sentencing guidelines. While organizations cannot be imprisoned, they can be fined, sentenced to probation for up to five years, ordered to make restitution and issue public notices of conviction to their victim, and exposed to applicable forfeiture statutes. Data collected by the Sentencing Commission reflect that organizations are sentenced for a wide range of crimes, although the most commonly occurring offenses (in order of decreasing frequency) are fraud, environmental waste discharge, tax offenses, antitrust offenses, and food and drug violations.

Closely Held, Private Corporations Lead in Organizational Sentencings

In fiscal year 1997, the Commission received information on 220 organizations that were sentenced under Chapter Eight of the *Guidelines Manual*. Fines were imposed upon 183 organizations. In 26 of the cases in which no fines were imposed, the organization was unable to pay the fine after making restitution or had ceased operations and was insolvent at the time of sentencing. The majority of organizations sentenced in 1997 were closely held, private corporations. Other sentenced organizations included (1) a number of subsidiaries of major, publicly traded

*Organizations Continued on page 10*

### Commission Internet Web Site

Keeping up-to-date with Commission publications and information is as easy as bookmarking our web site: [www.ussc.gov](http://www.ussc.gov). Recent additions to the site include —

- Loss Definition Field Testing Report
- A Brief Overview of the Federal Sentencing Guidelines
- Federal Register Notice and Request for Public Comment (November 30, 1998)
- Guideline Training and Educational Materials
- Judicial Fellows Program Page

Organizations *Continued from page 9*

corporations; (2) four publicly traded corporations (the largest two of which employ 82,200 and 17,200 individuals, respectively); and (3) three major, international corporations headquartered outside the United States.

The organizational sentencing guidelines (which apply to corporations, partnerships, labor unions, pension funds, trusts, non-profit entities, and governmental units) became effective November 1, 1991, after several years of public hearings and analyses. These guidelines are designed to further two key purposes of sentencing: “just punishment” and “deterrence.” Under the “just punishment” model, the punishment corresponds to the degree of blameworthiness of the offender, while under the “deterrence” model, incentives are offered for organizations to detect and prevent crime.

### Effective Compliance Programs

Criminal liability can attach to an organization whenever an employee of the organization commits an act within the apparent scope of his or her employment, even if the employee acted directly contrary to company policy and instructions. An entire corporation, despite its best efforts to prevent wrongdoing in its ranks, can still be held criminally liable for any of its employees’ illegal actions. Consequently, when the Commission promulgated the organizational guidelines, it attempted to alleviate the harshest aspects of this institutional vulnerability by incorporating into the sentencing structure the preventive and deterrent aspects of systematic compliance programs. The Commission did this by mitigating the potential fine range – in some cases up to 400 percent – if an organization can demonstrate that it had put in place an effective compliance program. This mitigating credit under the guidelines is contingent upon prompt reporting to the authorities and the non-involvement of high-level personnel in the actual offense conduct.

### Sharing “Best Practices” Ideas

The innovative approach put forward in the sentencing guidelines has spawned complementary efforts by a number of regulatory and law enforcement authorities. Executive agencies such as the Environmental Protection Agency, the Department of Health and Human Services, and the Department of Justice’s Antitrust Division have developed, or are developing, model compliance programs, programs for self-reporting, and programs for amnesty – all of which are modeled after some aspect of the organizational sentencing guidelines. Industry and peer organizations are forming to share ideas on “best practices” for compliance training and ethics awareness.

The Commission will continue to study the effectiveness of these efforts to implement the compliance criteria of Chapter Eight. In particular, the Commission is interested in assessments of the viability of its efforts to encourage organizations — from large corporations to non-profit organizations to governmental units — to develop institutional cultures which discourage criminal conduct. ○

Chapter Eight outlines seven key criteria for establishing an “effective compliance program”:

- Compliance standards and procedures reasonably capable of reducing the prospect of criminal conduct
- Oversight by high-level personnel
- Due care in delegating substantial discretionary authority
- Effective communication to all levels of employees
- Reasonable steps to achieve compliance, which include systems for monitoring, auditing, and reporting of suspected wrongdoing without fear of reprisal
- Consistent enforcement of compliance standards, including disciplinary mechanisms
- Reasonable steps to respond to and prevent further similar offenses upon detection of a violation.

The organizational guidelines’ criteria embody broad principles that, taken together, describe a corporate “good citizenship” model, but do not offer precise details for implementation. This approach was deliberately selected in order to encourage flexibility and independence by organizations in designing programs that are best suited to their particular circumstances.

# Hate Crimes in the Federal System

By Jonathan Ladle

A federal hate crime has been committed when an offender has intentionally selected a victim or property as the target of an offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of a person.

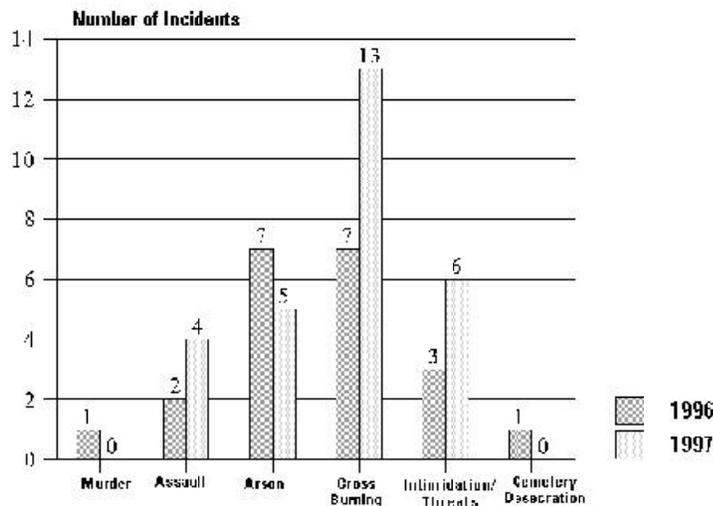
The Civil Rights Division of the Department of Justice has stated that, generally, any behavior that falls under the jurisdiction of federal hate crime law also likely involves a local or state law violation. When this is the case, deference is typically given to local prosecution. However, if local action is not taken or if the results of the state or local proceedings are viewed as insufficient, federal prosecution may be brought.

## Study Finds Racial Animus is Leading Motivation Behind Most Hate Crimes

A recent Sentencing Commission study examined defendants sentenced in 1996 and 1997 who (1) were convicted under a federal civil rights statute,

(2) were sentenced under a civil rights guideline (Part 2H of the *Guidelines Manual*), or (3) received a Chapter Three hate crime enhancement (USSG §3A1.1(a)). Presentence reports were examined to identify the nature of the crime and any evidence of hate motivation. It was found that in fiscal year 1996, 50 offenders committing 21 hate-crime offenses were successfully prosecuted by the Department of Justice. In 1997, 54 offenders were sentenced for committing 28 offenses. The study found that racial animus was the leading motivation behind the majority of hate crimes, with race cited in 46 offenses involving 100 offenders. Nearly all of these offenses were directed at African Americans (44 offenses). Among the other cases, one offense was directed against the victim due to religious hatred (Jewish), and two were directed at abortion clinics. During 1996 and 1997, federal hate crimes included 20 cross burnings, 12 arsons, nine intimidations/threats, six assaults, one murder, and one cemetery desecration (see Figure A).

Figure A  
NUMBER OF HATE CRIME INCIDENTS BY OFFENSE  
Fiscal Years 1996-1997



U.S. Sentencing Commission, 1997 - Hate Crime Data File

## Hate Crimes Sentencing Enhancement Increases Penalties

The Chapter Three sentence increase for hate motivation was implemented in response to 1994 legislation. Congress instructed the U.S. Sentencing Commission to increase sentences for hate crimes by not less than three offense levels – approximately a 36-percent increase in sentence length.

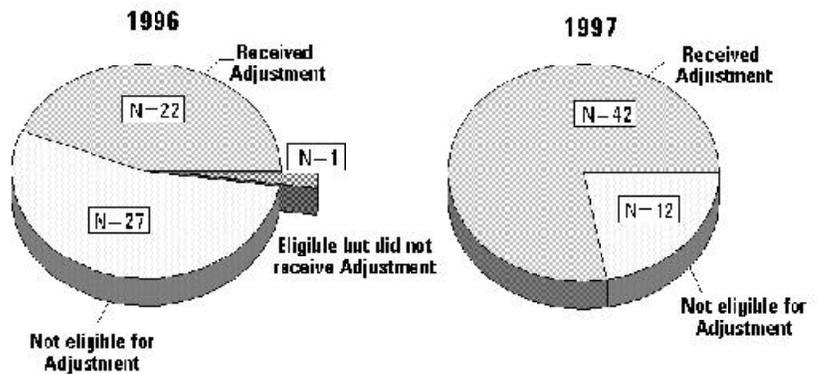
Hate Crimes *Continued on page 12*

Hate Crimes *Continued from page 11*

The Commission put into effect this three-level increase effective November 1, 1995.

Figure B illustrates the use of this increase for defendants in the Commission's study of 1996 and 1997 cases. The number of hate-motivated defendants who were ineligible for the increase (because their offenses occurred prior to the implementation date of the new law) decreased from 1996 to 1997. Among those who were eligible, virtually all received the increase.○

Figure B  
SENTENCING OF HATE-MOTIVATED OFFENDERS  
Fiscal Years 1996-1997



SOURCE: U.S. Sentencing Commission, 1997 Hate Crime Data File

## Commission's 1998 Statistical Sourcebook In Progress

The fiscal year 1998 Commission datafile, a compilation of information on federal sentencings for felonies and Class A misdemeanors, is the largest such file to date. A preliminary analysis of the data received through December 1998 indicates that slightly more than 50,000 cases were sentenced during the past year. This figure is approximately 2.7 percent greater than the number of cases received in 1997. This increase may be due to better reporting or an increase in actual case processing.

Drug trafficking remains the most frequently sentenced federal offense, continuing to account for approximately 40 percent of the federal caseload. A notable increase was experienced in the number of immigration cases sentenced in 1998, boosting it approximately 18 percent above the 1997 levels. With this increase, immigration cases are now the second most frequently sentenced offense type. And for the first time since the federal sentencing guidelines have been in effect, the number of immigration cases sentenced during a single year exceeds the number of fraud cases.

This work is preliminary as Commission staff continue to evaluate the completeness of reporting and work to check the dataset. The full Commission analysis will be available in the *1998 Sourcebook of Federal Sentencing Statistics* to be published in the summer of 1999. After this careful review, the datafile will be made available.○