



Guidelines

News from the U.S. Sentencing Commission

October 2001

Amendment Pending for Offenses Involving National Defense

On May 1, 2001, the United States Sentencing Commission sent to Congress an amendment to the federal sentencing guidelines regarding offenses involving the use of nuclear, biological, and chemical weapons, and other weapons of mass destruction, and any threats, attempts, or conspiracies to use such weapons. Under the revised guidelines, which are effective November 1, 2001 unless Congress should decide otherwise, an offense committed with the intent to injure the United States of America or to aid a foreign nation or a foreign terrorist organization will be sentenced at a base offense level 42, which provides a sentence of imprisonment of 30 years to life. By submitting these changes to the guidelines, the Commission acknowledges and complies with the sense of Congress that penalties for such offenses involving national defense were inadequate. A copy of the staff report entitled *Nuclear, Biological, and Chemical Weapons Policy Team, Report to the Commission* (December 4, 2000) and the related guideline amendment passed unanimously by the Commission is posted on the Commission's website: www.usc.gov/whatnew.htm

Justice Ruth Bader Ginsburg, also a member of the award's selection panel, presented the Edward J. Devitt Award to Judge Diana E. Murphy at the September 10th ceremony held at the Cosmos Club in Washington, D.C.

Chair Diana E. Murphy Receives Devitt Award

Judge Murphy and Judge Frank M. Coffin Are Honored for A Lifetime of Distinguished Service to Justice

On September 10, 2001, U.S. Sentencing Commission Chair Diana E. Murphy received the 19th Annual Edward J. Devitt Distinguished Service to Justice Award. This award recognizes an Article III judge who has achieved an exemplary career and has made significant contributions to the administration of justice, the advancement of the rule of law and the improvement of society as a whole. Judge Murphy was one of two judges so honored. Judge Frank M. Coffin from the U.S. Court of Appeals for the First Circuit was the other recipient of this year's Devitt Award.

The September 10 ceremony, held at the Cosmos Club in Washington, D.C., was chaired by Supreme Court Justice Ruth Bader Ginsburg, who personally presented the awards. Circuit Court Judge James L. Oakes and District Court Judge Ortrie D. Smith joined Justice Ginsburg on the Devitt selection panel.

"In receiving this year's awards, Judge Coffin and Judge Murphy joined a distinguished list of jurists who have previously gained the Devitt honor," said Justice Ginsburg. "Like earlier award winners, Judge Coffin and Judge Murphy have served justice and their communities grandly throughout their

Devitt Continued on page 3

Photos and graphics unavailable online. Contact the Public Affairs

Office for a copy of this publication at 202-502-4568 or pubaffairs@ussc.gov.

Message from the Chair

In July 2001, the Sentencing Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2002. Many individuals and groups responded with thoughtful comments and suggestions, which we considered carefully. At our September meeting in Washington, D.C., we announced our priorities for the upcoming amendment cycle, possibly continuing into the amendment cycle ending May 1, 2003. You may wish to take a look at an accompanying article in this newsletter that details these priorities.

The Commission is also considering the possible formation of two advisory groups, one to study issues relating to the organizational guidelines and the other to study the impact of the federal sentencing guidelines on Native Americans in Indian Country.

The sentencing guidelines for organizations, found in Chapter Eight (Sentencing of Organizations), were promulgated on November 1, 1991. Approximately 250 to 300 cases per year currently are being sentenced under the organizational guidelines, and these have had a significant impact on the implementation of compliance and business ethics programs over the past ten years. The Commission has received suggestions that it examine the organizational guidelines with a view toward changes that might be made to improve their overall operation. Specific changes that have been suggested include (1) broadening compliance requirements to include ethics and integrity based systems, (2) developing criteria in §8A1.2 (Application Instructions - Organizations) that would create a "safe harbor" for reporting without fear of retribution, and (3) fostering a dialogue with interested parties for the purpose of reviewing the organizational guidelines and making further suggestions for change.

The Commission held a public hearing in Rapid City, South Dakota, on June 19, 2001, on the impact of the U.S. sentencing guidelines on Native Americans in Indian Country who are prosecuted in federal court for crimes that otherwise would be brought under state law. Witnesses testified about a variety of concerns, including that Native Americans receive harsher sentences under the federal guidelines than they would under state law. As a result of suggestions made at that hearing and subsequent written submissions, the Commission is considering forming an hoc advisory group on issues related to the impact of the federal sentencing guidelines on Native Americans in Indian Country.

The Commission has published a notice in the *Federal Register* seeking comment on the merits of forming such groups, including comment on the scope, duration, and membership of any such advisory group. We would appreciate hearing from those of you who are interested in these areas.

Finally, the Commission will be reexamining the guidelines on terrorism in light of recent developments. ■

—Judge Diana E. Murphy

Honorable Diana E. Murphy, chair of the United States Sentencing Commission; judge, United States Court of Appeals for the Eighth Circuit

Guidelines

is published periodically by the United States Sentencing Commission
One Columbus Circle, N.E.
Washington, DC 20002-8002
URL: www.ussc.gov
(202) 502-4500
Fax: (202) 502-4699

Diana E. Murphy — Chair
Ruben Castillo — Vice Chair
William K. Sessions, III — Vice Chair
John R. Steer — Vice Chair
Sterling Johnson, Jr. — Commissioner
Joe Kendall — Commissioner
Michael O'Neill — Commissioner
Edward F. Reilly, Jr. — ex officio
John P. Elwood — ex officio

Office of Publishing and Public Affairs
(202) 502-4590
HelpLine 8:30 a.m.–5:00 p.m. (E.S.T.)
(202) 502-4545

Please direct all inquiries and address changes to the Office of Publishing and Public Affairs at the above address.

Editor — Michael Courlander
Production — Jeanne Doherty

Devitt *continued from page 1*

work and days, as Judge Devitt did in his lifetime.... Judge Coffin and Judge Murphy topped our lists from the start, and after thorough deliberation, they became our enthusiastic, unanimous choices for the awards.”

Judge Murphy has served as a judge on the United States Court of Appeals for the Eighth Circuit since 1994 and as chair of the United States Sentencing Commission since 1999. Judge Murphy has been on the federal bench since 1980 when she was appointed to the United States District Court for the District of Minnesota. From 1992-1994, she served as that court’s chief judge. Judge Murphy was a state district court judge from 1976-1980 and in trial practice with Lindquist & Vennum from 1974-1976.

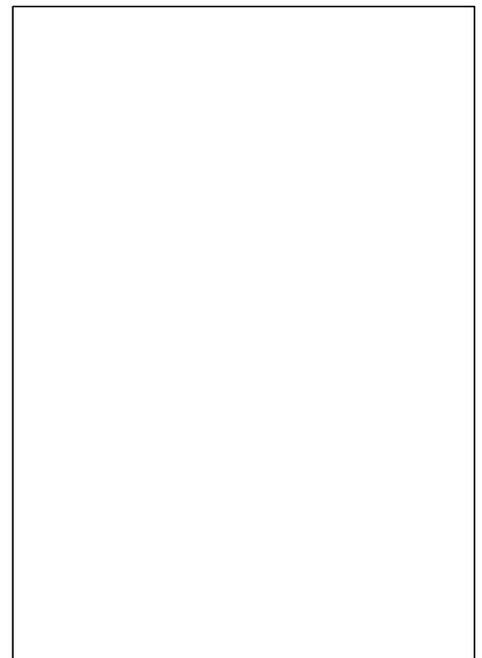
Judge Murphy has served as national president of the Federal Judges Association, chair of the board of the American Judicature Society, as a member of the board of the Federal Judicial Center, and as chair of the Judges Advisory Committee to the ABA Standing Committee on Ethics and Professional Responsibility. Judge Murphy received a B.A. degree from the University of Minnesota and a J.D. degree from the University of Minnesota School of Law. She attended the Johannes Gutenberg University in Mainz, Germany, on a Fulbright scholarship.

Judge Murphy is also active in a variety of nonprofit organizations. She is a trustee of both the University of Minnesota Foundation and the University of St. Thomas. She is a member of the board of directors of (1) the Association of Governing Boards of Universities and Colleges, (2) the Bush Foundation, and (3) the Minnesota Opera. She has served as board chair for many organizations including St. John’s University, Twin Cities Public Television, and the United Way of the Minneapolis Area.

The Edward J. Devitt Distinguished Service to Justice Award, named for the late Edward J. Devitt, chief judge of the U.S. District Court for the District of Minnesota, is administered by the American Judicature Society. ■

Commission Welcomes New *Ex-Officio* Member

Mr. John P. Elwood, of Alexandria, Virginia, was recently designated an *ex-officio* member of the U.S. Sentencing Commission, representing the Office of the Attorney General, U.S. Department of Justice. Mr. Elwood serves as counselor to the assistant attorney general for the Criminal Division of the Department of Justice. Prior to coming to Main Justice, he was a litigation partner in the Washington office of Baker Botts L.L.P. He has served in the U.S. Attorney’s Office for the Eastern District of Virginia and the Justice Department’s Criminal Division, Appellate Section. He clerked for Judge J. Daniel Mahoney on the U.S. Court of Appeals for the Second Circuit and for Justice Anthony M. Kennedy on the Supreme Court of the United States. Mr. Elwood received his A.B. from Princeton University *summa cum laude* and his J.D. from Yale Law School. The Commission sincerely thanks former *ex-officio* commissioner, Mr. Michael E. Horowitz, for his dedicated service and meaningful contributions during his tenure. ■



©Twin Lens Photo

From Documents to Datafile: An Overview of the Commission’s Data Collection Process

The United States Sentencing Commission was created by the Sentencing Reform Act (SRA) provisions of the Comprehensive Crime Control Act of 1984, and its authority and duties are specified in chapter 58 of title 28, United States Code. Among the Commission’s tasks are the collection and dissemination of guideline application information. Fulfilling this statutory requirement is a multi-step process.

- ❶ The probation officer and clerk of the court in each federal judicial district make copies of court documents, including the Pre-Sentence Report (PSR), Judgment of Conviction Order (J&C), Statement of Reasons (SOR), Indictment, and Written Plea Agreement (when applicable).
- ❷ Copies of the documents are then mailed to the Commission and forwarded to its Office of Monitoring.
- ❸ Upon receipt, each piece of mail is opened by the file room staff of the Monitoring Office, separated according to case type (*i.e.*, individual defendant, organizational defendant, or appellate case), stamped with the receipt date, and batched for database processing.
- ❹ The data technicians determine if the incoming documents constitute a new case or are part of an existing case by matching



variables such as defendant’s name, date of birth, district, and docket number against the existing database. If the documents do not match any existing cases, they are put in a new folder and assigned a unique Commission identification number. If the documents do match an existing case, the pertinent case folder is retrieved, the documents are placed inside, and any new or additional information in the documents is entered into the database.

❺ The data technicians enter the case into the Commission’s ongoing Oracle database by coding identifying information about the defendant, such as the district, the document status variables (which documents have been received), and the Commission’s unique identifier.

❻ The new case (or existing case with new documents) is then forwarded to the document analysis staff in the Monitoring Office. These staff members extract demographic, sentence, departure, and guideline application information from the documents and enter it into the Commission’s database.

❼ Once all information is entered, the cases undergo various quality control reviews. Any detected data entry errors are corrected.

❽ When all of the cases are entered for a fiscal year, official cuts of the databases are made and sent to the Commission’s Office of Policy Analysis to use for data analysis purposes such as creating the tables and charts for the *Sourcebook of Federal Sentencing Statistics*, conducting policy analysis work, performing prison and sentencing impact analyses, and completing special requests for the court, Congress, media, and others. The databases are then sent to the Federal Justice Statistics Resource Center at the Bureau of Justice Statistics and the Inter-University Consortium for Political and Social Research at the University of Michigan. Both centers disseminate the Commission’s databases for policy analysis and research by academicians and the general public.

❾ When cases are received after the fiscal year cutoff date for the official files, they are still processed by the Monitoring Department, are included in the Commission’s ongoing databases, and are used in various in-house analyses. ■

Policy Priorities for 2002 Amendment Cycle

At its September 2001 meeting, the Commission approved a list of policy priorities for the amendment cycle ending May 1, 2002. The Commission made clear, however, that various factors (e.g., the enactment of legislation requiring Commission action) may affect the Commission's ability to complete work on all of the identified policy priorities by the statutory deadline of May 1, 2002. In that event, the Commission could decide to address any unfinished policy work from this agenda during the amendment cycle ending May 1, 2003. The Commission identified the following priorities:

- A 15 Year Study (in anticipation of the fifteenth anniversary of the federal sentencing guidelines) composed of a number of projects designed to analyze guidelines in light of the goals of sentencing reform described in the Sentencing Reform Act and the statutory purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2);
- In conjunction with the 15 Year Study, an assessment of (and possibly the generation of guideline amendment proposals for) the following guideline areas: (i) Chapter Two, Part D (Offenses Involving Drugs) and (ii) Chapter Four (Criminal History);
- Implementation of any crime legislation that is enacted during the first session of the 107th Congress and that warrants a Commission response;
- Miscellaneous and discrete issues such as offenses involving damage to cultural heritage resources; and
- The resolution of any conflicts among the circuits related to the operation of the guidelines in the areas identified above. ■

Notice of these priorities was given in the September 19 issue of the Federal Register. See the Commission's website at <http://www.usc.gov/notice.htm>.

FJTN Broadcast on New Amendments Airs in November

On November 15, 2001, from 1:00 – 3:00 p.m. EST, and on subsequent dates, the Sentencing Commission and the Federal Judicial Center (FJC) will present "Sentencing & Guidelines: 2001 Amendments" on the Federal Judicial Television Network (FJTN). The program will feature senior members of the U.S. Sentencing Commission's training staff discussing the 2001 guideline amendments that take effect November 1, 2001. The program will highlight amendments regarding money laundering, fraud and theft, sexual abuse, drug offenses, and immigration offenses. Other amendments dealing with legislative directives and the resolution of specific circuit conflicts will also be addressed.

The program is designed primarily for probation officers (particularly officers who conduct presentence investigations), managers, judges, attorneys, and law clerks. Please check the FJTN Bulletin for the dates when the program will be re-broadcast. Approval for Continuing Legal Education (CLE) credit for this program is pending. Updated CLE information will be posted on the FJC's internal website at jnet.fjc.dcn

The Commission's web site currently provides material about the new amendments. Internet users can download a document summarizing the proposed amendments, "Highlights of Key Points – Amendments to the Federal Sentencing Guidelines (Effective November 1, 2001, unless modified or rejected by Congress)," by visiting www.usc.gov/training/amendhigh2001.pdf. The official text of the amendments sent to Congress is available at www.usc.gov/2001guid/congress2001.pdf and a "reader friendly" version is available at www.usc.gov/2001guid/userfriendly2001.pdf

Immigration Offenses Drive Increase in Federal Sentencings

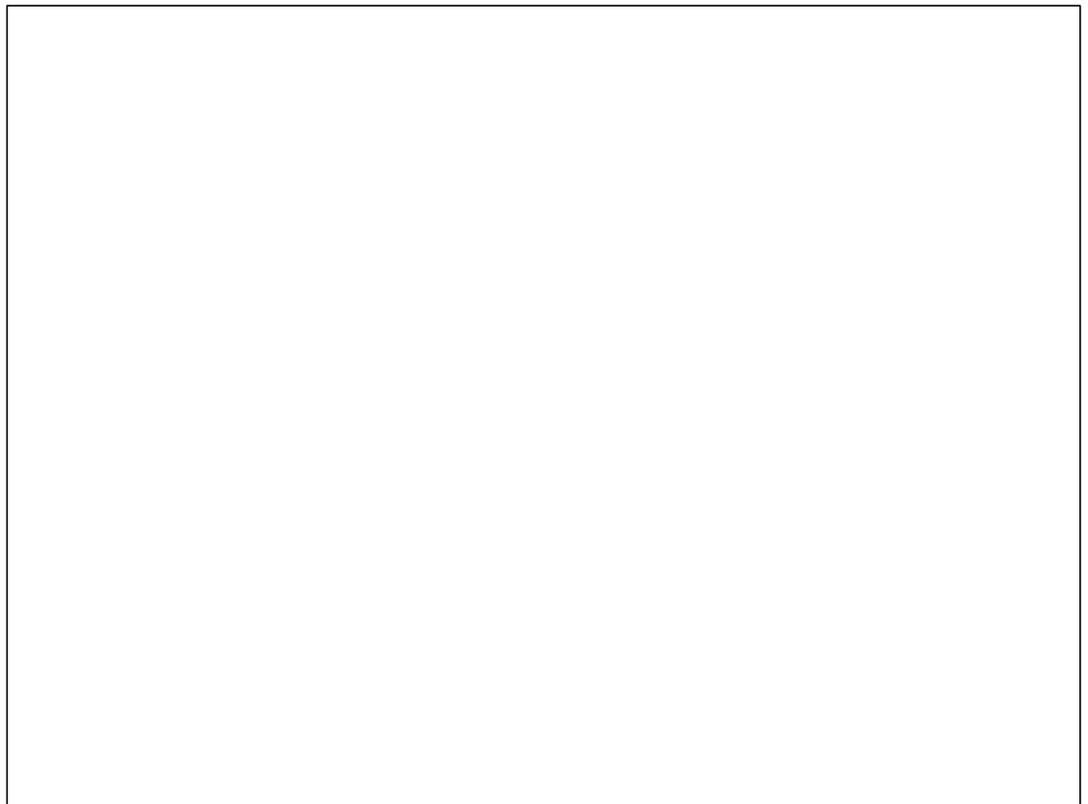
In 2000, the number of criminal cases sentenced in federal courts increased by 7.7 percent, according to statistics from the Commission's *Sourcebook of Federal Sentencing Statistics*. Federal courts sentenced 59,846 cases under the guidelines in fiscal year 2000, compared to 55,557 in 1999.

The Commission's *Sourcebook* provides extensive information about federal criminal cases sentenced under the guidelines. Highlights include sentencing profiles of judicial districts, detailed information on guideline departures, plea and trial rates by district and circuit, data on appeals of sentencing decisions, and information about organizational defendants.

Distribution of Offenses

Forty percent of all defendants sentenced under the guidelines in 2000 were convicted of drug offenses. Marijuana accounted for the largest number of drug violations (31.2%), followed by powder cocaine (22.8%) and crack cocaine (21.4%).

The other common crimes were immigration offenses (19.9%), fraud (10.7%), non-fraud white collar crimes (7.3%), and firearms offenses (6.0%).



Trends in Offense Types

Since the guidelines were implemented, drug offenses have always constituted the largest group of cases sentenced each year in the federal system. The 24,179 drug cases in 2000 represent a mere 4.8 percent (n=1,097) increase from 1999. Almost half of the overall increase in cases for 2000 (n=4,289) is attributable to the substantial increase in immigration offenses (n=2,020).

Trends in Drug Type

Between 1996 and 2000, the number of drug cases increased by 36.1 percent. During this period, several drug offenses experienced large fluctuations in frequency. The number of sentencing increased for methamphetamine (106.9%), marijuana (71.7%), and powder cocaine (19.6%).

The changes in the number of methamphetamine and marijuana cases during the past five years have been substantial. However, cocaine sentencing (combining both powder and crack cocaine cases) have consistently accounted for the greatest proportion of the drug guideline cases (52.8% in 1996 and 44.3% in 2000).

Guideline Sentencing and Departures

Overall departure rates (combined rates for substantial assistance (§5K1.1) departures, other downward departures, and upward departures) did not change from 1999 to 2000. This rate, 35.1 percent in 1999 and 35.5 percent in 2000, has remained constant due to a small increase (1.2%) in other downward departures and a corresponding small decrease (0.8%) in substantial assistance departures.

Downward departures other than for substantial assistance constituted 17.0 percent of all cases sentenced in 2000. This is a 1.2 percent increase above the 1999 level and continues an increasing trend that began in 1992. The most frequent reasons given for departing downward were pursuant to a plea agreement (18.3%) and general mitigating circumstances (14.9%).

Upward departures constituted only 0.7 percent of all cases in 2000. The most frequently cited reasons for upward departure were (1) the criminal history category did not reflect the seriousness of the offender's criminal past (33.4%), (2) extreme conduct (8.2%), and (3) general aggravating circumstances (8.2%).

Types of Sentences

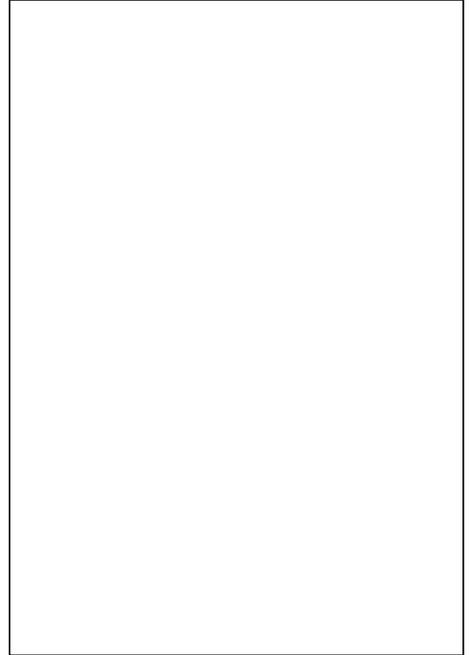
In 2000, 9.4 percent of all guideline sentences included straight probation and 5.4 percent included probation accompanying some form of confinement. More than three-fourths (85.2%) of all guideline sentences in 2000 included a term of imprisonment. Of these, the vast majority (95.4% or 47,663 cases) received straight prison time (*i.e.*, without a term of alternative confinement). A small percentage (3.9 %) received a sentence split between prison and community confinement. The median length of imprisonment for all defendants sentenced to prison in 2000 was 33 months, while the mean length was 56 months. ■

The Commission's Sourcebook of Federal Sentencing Statistics, Annual Report, and state-by-state data are available on the Commission's web site at www.ussc.gov.

Frances Cook is Named Executive Assistant to the Chair

The Commission announced in October that Ms. Frances Cook had joined the Commission as its executive assistant and counsel to the chair. Ms. Cook is on detail from the Department of Justice, where she is a counsel in the Violence Against Women Office (VAWO). There she is responsible for legal and policy analysis related to the Violence Against Women Acts of 1994 and 2000, including issues and legislation involving battered immigrant women and trafficking in persons. In August 2001, Ms. Cook received the Attorney General's John Marshall Award for Preparation and Handling of Legislation, in recognition of her work developing and implementing the Victims of Trafficking and Violence Protection Act of 2000. She joined VAWO in 1998 as a fellow under the Women's Law and Public Policy Fellowship Program at Georgetown University Law Center. Ms. Cook received her J.D. from Stanford Law School in 1997 and served as a judicial clerk for the U.S. Court of Appeals for the Eighth Circuit. She received her B.A. degree, *magna cum laude*, from Cornell University in 1993.

Ms. Cook succeeds Susan Hayes who left the Commission to take a position as chief, policy resource management staff, in the Office of Facilities and Security with the Administrative Office of the U.S. Courts.



Ms. Frances Cook, executive assistant and counsel to Chair Murphy, recently joined the Sentencing Commission's staff.

GuideLines

*United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, DC 20002-8002*