

UNITED STATES SENTENCING COMMISSION  
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June 17, 2003

MEMORANDUM TO: CHIEF JUDGES, UNITED STATES DISTRICT COURTS  
DISTRICT COURT EXECUTIVES  
CLERKS, UNITED STATES DISTRICT COURTS  
CHIEF PROBATION OFFICERS

SUBJECT: **Documentation Required by Congress to be Sent to the Sentencing Commission**

This memorandum deals with the data collection requirements contained in the PROTECT Act, which became effective April 30, 2003. This memorandum supersedes a March 12, 1997, memorandum from the Administrative Office and the Sentencing Commission relating to required sentencing documents. Sentencing data is important to the judiciary because this data helps develop rational sentencing policy and makes it more likely that statutory and guideline changes can be well grounded in empirical data.

Section 401(h) of the PROTECT Act requires the chief judge of each district to ensure that within 30 days after entry of judgment in a criminal case, the sentencing court submit to the Commission a written report of the sentence; the offense, the age, race, and sex of the offender; and information regarding relevant guideline factors. The report is also required to include: 1) the judgment and commitment order; 2) the statement of reasons (including the reasons for any departures); 3) any plea agreement; 4) the indictment or other charging document; 5) the presentence report; and 6) any other information the Commission needs. The Commission is required to submit to Congress at least annually an analysis of these documents, as well as any recommendations for legislation thought to be warranted, and to report to Congress if any district has not submitted the required information and documents.

The Administrative Office, the Criminal Law Committee of the Judicial Conference, and the Sentencing Commission have consulted about these new legislative directives. The legislation requires that the chief judge of each district ensure that the following documents are submitted to the Sentencing Commission within 30 days of entry of judgment in any criminal case, (not including Class B or C misdemeanors or infractions):

1) **Judgment in a Criminal Case** – A copy of the Judgment in a Criminal Case (AO 245B) is required for all original sentencings.

2) **Statement of Reasons** – Under the PROTECT Act, reasons are required to be stated with specificity in the judgment and commitment order and must include the reasons for any departure. The current Statement of Reasons form is adequate, but it is anticipated that the forms for both the Judgment and Statement of Reasons will be revised and available for use after the Judicial Conference meets in September.

3) **Plea Agreement** – Include if there is a written agreement.

4) **Indictments or Other Charging Documents** – A copy of the original indictment or information and any superceding indictment or information for each defendant.

5) **Presentence Report** – Include any addenda, attachments, and face sheets. The Commission's use of the presentence report will remain subject to a general agreement between the Commission and the Administrative Office to protect the confidentiality of the report, except to the extent that the PROTECT Act requires the Commission to make records available to the Judiciary Committees.

6) **Amended Judgments or Orders That Change a Sentence** – If the judgment is amended for any reason subsequent to the original sentencing, a copy of the Amended Judgment in a Criminal Case (AO 245C) or Order should be submitted. Reasons for an Amended Judgment or Order include:

- (a) Correction of sentence on remand (18 U.S.C. § 3742(f))
- (b) Reduction of sentence for changed circumstances (that is, for subsequent substantial assistance) (F.R.Cr.P. 35(b))
- (c) Correction of sentence by sentencing court for an arithmetical, technical, or other clear error (F.R.Cr.P. 35(a)), or for clerical mistake (F.R.Cr.P. 36)
- (d) Modification of supervision conditions (18 U.S.C. § 3563(c) or § 3583(e))
- (e) Modification of term of imprisonment for extraordinary and compelling reasons (18 U.S.C. § 3582(c)(1))
- (f) Modification of term of imprisonment for retroactive amendment(s) to the sentencing guidelines (18 U.S.C. § 3282(c)(2))
- (g) Motion to vacate or set aside sentence (28 U.S.C. § 2255) (civil motion)

- (h) Resentencing of mandatory life imprisonments (upon overturning of prior conviction) (18 U.S.C. § 3559(c)(7))
- (i) Modification of restitution order (18 U.S.C. §§ 3663A, 3664)

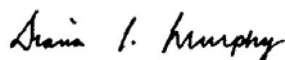
**Please note:** The Amended Judgment in a Criminal Case (AO 245C) provides a checklist including these possible reasons, and the applicable reason should be checked.

7) **Revocation Proceeding** – The following documents are requested in each guideline case involving a hearing on revocation of probation or supervised release, whether or not revocation results: (a) violation worksheets submitted to the court; (b) violation report or petition for action; and (c) summary of the violation hearing form. When there is a revocation, a Judgment in a criminal Case for Revocation (AO 245D) or Order should also be submitted.

In order to comply with the new statute, these required documents must also be accompanied by a brief written report. The requirement of a written report is satisfied by submission of a cover sheet captioned “Report of Sentence” which indexes the enclosed documents and states that they comprise the basis for the sentence and that any subsequent modification to the sentence will be reported to the Commission.

The Sentencing Commission, the Administrative Office, and the Criminal Law Committee of the Judicial Conference will be exploring procedures to ensure that the Commission receives the required documents and that such receipt is acknowledged. In the interim, Courts should consider using procedures such as certified mail return receipt requested. Documents should be directed to the following address:

United States Sentencing Commission  
One Columbus Circle, NE, Suite 2-500  
Washington, DC 20002-8002  
**Attention: Office of Data Collection**



Judge Diana E. Murphy  
Chair, United States  
Sentencing Commission



Judge Sim Lake  
Chair, Committee on Criminal Law  
of the Judicial Conference  
of the United States