

An Overview of the UNITED STATES SENTENCING COMMISSION



(Disclaimer: The characterizations in this overview are presented in simplified form and are not to be used for guideline interpretation, application, or authority; the characterizations do not necessarily represent the official position of the Commission.)

The United States Sentencing Commission is an independent agency in the judicial branch of government. Its principal purposes are: (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues, serving as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public.

The U.S. Sentencing Commission was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. The sentencing guidelines established by the Commission are designed to

- incorporate the purposes of sentencing (*i.e.*, just punishment, deterrence, incapacitation, and rehabilitation);
- provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating and mitigating factors;
- reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

The Commission is charged with the ongoing responsibilities of evaluating the effects of the sentencing guidelines on the criminal justice system, recommending to Congress appropriate modifications of substantive criminal law and sentencing procedures, and establishing a research and development program on sentencing issues.

A Brief History of Federal Sentencing Guidelines

Disparity in sentencing, certainty of punishment, and crime control have long been issues of interest for Congress, the criminal justice community, and the public. After more than a decade of research and debate, Congress decided that (1) the previously unfettered sentencing discretion accorded federal trial judges needed to be structured; (2) the administration of punishment needed to be more certain; and (3) specific offenders (*e.g.*, white collar and violent, repeat offenders)

needed to be targeted for more serious penalties. Consequently, Congress created a permanent commission charged with formulating national sentencing guidelines to define the parameters for federal trial judges to follow in their sentencing decisions.

The resulting sentencing guidelines went into effect November 1, 1987. Shortly after implementation of the guidelines, defendants began challenging the constitutionality of the Sentencing Reform Act (SRA) on the basis of improper legislative delegation and violation of the separation of powers doctrine. The U.S. Supreme Court rejected these challenges on January 18, 1989, in *Mistretta v. United States*, 488 U.S. 361 (1989), and upheld the constitutionality of the Commission as a judicial branch agency. Since nationwide implementation in January 1989, federal judges have sentenced more than 1,000,000 defendants under the guidelines.

In January of 2005, the U.S. Supreme Court decided *United States v. Booker*, 543 U.S. 220 (2005). The *Booker* decision addressed the question left unresolved by the Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004): whether the Sixth Amendment right to jury trial applies to the federal sentencing guidelines. In its substantive *Booker* opinion, the Court held that the Sixth Amendment applies to the federal sentencing guidelines. In its remedial *Booker* opinion, the Court severed and excised two statutory provisions, 18 U.S.C. § 3553(b)(1), which made the federal guidelines mandatory, and 18 U.S.C. § 3742(e), an appeals provision. Under the approach set forth by the Court, "district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing," subject to review by the courts of appeal for "unreasonableness." The Court also reaffirmed the constitutionality of the Commission and maintained all of the Sentencing Commission's statutory obligations under the Sentencing Reform Act. The subsequent Supreme Court decisions in *Rita v. United States*, 551 U.S. __ (2007), held that courts of appeal may apply a presumption of reasonableness when reviewing a sentence imposed within the guideline sentencing range. The Supreme Court continued to stress the importance of the federal sentencing guidelines in its most recent sentencing-related cases. *See Gall v. United States*, 128 S. Ct. 586 (2007) ("As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and initial benchmark" at sentencing); *Kimbrough v. United States*, 128 S. Ct. 558 (2007) (After *Booker*, "[a] district judge must include the Guidelines range in the array of factors warranting consideration").

How the Sentencing Guidelines Work

The sentencing guidelines provide federal judges with fair and consistent sentencing ranges to consult at sentencing. The guidelines take into account both the seriousness of the criminal conduct and the defendant's criminal record. Based on the severity of the offense, the guidelines assign most federal crimes to one of 43 "offense levels." Each offender is also assigned to one of six "criminal history categories" based upon the extent and recency of his or her past misconduct.

Innovations Under the Sentencing Reform Act

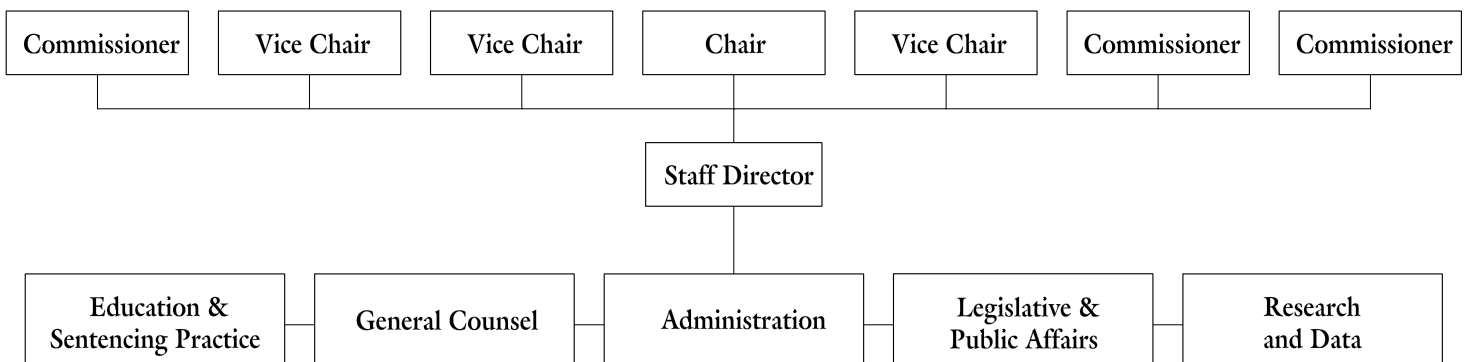
- Structured judicial discretion
- Appellate review of sentences
- Reasons for sentences stated on the record
- Determinate or "real time" sentencing
- Abolition of parole

The point at which the offense level and criminal history category intersect on the Commission’s sentencing table determines an offender’s guideline range. In order to provide flexibility, the top of each guideline range exceeds the bottom by six months or 25 percent (whichever is greater). Judges are advised to choose a sentence from within the guideline range unless the court identifies a factor that the Sentencing Commission failed to consider that should result in a different sentence. In these instances, the court may “depart” from the guideline range, while still providing a “guideline” sentence. Again, *Booker* held that federal courts, while not bound to apply the guidelines, must consult them.

Organization of the Sentencing Commission

Unlike many special purpose “study” commissions within the executive branch, Congress established the U.S. Sentencing Commission as an ongoing, independent agency within the judicial branch. The seven voting members on the Commission are appointed by the President and confirmed by the Senate, and serve six-year terms. No more than three of the commissioners may be federal judges and no more than four may belong to the same political party. The Attorney General is an *ex officio* member of the Commission, as is the chair of the U.S. Parole Commission.

The Commission staff of approximately 100 employees is divided into five offices with the director of each office reporting to the staff director who in turn reports to the chair. The five offices are — General Counsel, Education and Sentencing Practice, Research and Data, Legislative and Public Affairs, and Administration. The staff director supervises and coordinates all agency functions.



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