



## **Fact Sheet: United States Sentencing Commission**

Since 1987, the U.S. Sentencing Commission (USSC) has been writing and updating the federal sentencing guidelines, which are used when calculating sentences in federal criminal cases. The guidelines are advisory (unlike mandatory minimum sentencing laws), but are a critical component in federal sentencing. Federal district court judges across the country must calculate the advisory guidelines before they impose a sentence in any case and often rely on the guideline range as a litmus test for what constitutes a reasonable sentence.

The seven-member USSC cannot update the federal sentencing guidelines without a quorum. Since 2019, the USSC has had only one voting member. As a result, courts and lawyers across the country have had to rely on outdated sentencing guidance in a number of areas such as compassionate release. Other sentencing laws amended by the First Step Act of 2018 also await guideline updates. The lack of a functioning Commission affects sentencing nationwide, forcing judges to correct for defunct guidelines in a manner that may result in nationwide inconsistencies.

But the USSC's role goes beyond updating the guidelines to reflect acts of Congress. The USSC has proven a critical incubator of reform in the criminal justice system. Often times, the USSC is the expert body that helps push criminal justice reform initiatives in Congress by issuing reports and amendments that spur congressional action. Breathing life into this agency may well encourage sentencing guidelines that reflect contemporary criminal justice norms.

### **What are the Guidelines?**

The guidelines are a non-binding “choose your own adventure” type book that guide federal judges through the sentencing process.

Guidelines set out categories of crimes (i.e., financial crimes, drug crimes, weapons crimes, etc.) and assign them to space on a grid or table of punishment called the offense level. It is based on the category of crime, and various enhancements and adjustments. After finding the offense level, judges then use the guidelines to calculate the individual's criminal history. All this information leads to a “guideline range” on the grid, usually a range of months that may be appropriate for the defendant to serve in a federal prison.

Finding the guideline range is just the first step in sentencing. Judges must impose a sentence that will be sufficient to meet the purposes of punishment. To do that, judges use a roadmap to individualize sentencing. That roadmap is found in federal law at 18 U.S.C. § 3553(a), which requires the judge to weigh a variety of factors related to the defendant and the offense of conviction. Judges then impose a sentence, which may exceed the guideline range or fall below it (as long as the sentence comports with statutory mandatory minimums and maximums). Even though they are advisory, guidelines are a key tool used by judges, lawyers, and individuals across the country to determine the potential punishment for criminal activity. They exert a profound gravitational pull on sentencing decisions, while giving the courts flexibility to individualize sentences.



## **Who makes up the USSC?**

The USSC is bipartisan, and composed of up to seven voting members. The seven members include a chair. All voting members must be nominated by the President and confirmed by the Senate. At least three Commissioners must be federal judges, and no more than four can be from the same political party.

The Commissioners serve six year, staggered terms. There must be a quorum of at least four voting members for the Commissioners to fully operate.

## **Powers of the USSC**

The USSC requires the vote of a majority of the members to fulfill the power delegated to the agency by Congress. Only when there is a quorum can the Commissioners undertake their critical responsibilities, such as:

- Establishing the guidelines which determine the contours of a federal sentence and include:
  - Setting the range of imprisonment
  - Establishing categories of offenses
  - Determining whether to impose a sentence to probation, a fine, or a term of imprisonment
  - Determining the appropriate amount of the fine or length of probation or imprisonment
  - Determining the applicability of supervised release after imprisonment
  - Determining whether sentences to multiple convictions should run concurrently or consecutively
- Amending the guidelines;
  - Each amendment cycle (generally a year, when there is a quorum), the USSC invites a list of policy priorities from advocates and the public for the Commission to consider. The Department of Justice and Federal Public Defenders also provide input. The Commission settles on a set of priority areas for the year and generally starting in the fall, publishes proposed amendments. The Commission invites the public to comment on the proposals and also holds hearings to listen to invited experts, the public, and criminal justice actors about whether the proposed amendments should be amended, adopted, or abandoned.
  - The amendment cycle is an excellent opportunity for advocates and stakeholders to participate in the rulemaking process. A few examples of amendments that modernized various guideline provisions can be found below.
- Conducting studies and research to analyze the impact of certain criminal laws and certain sentencing practices

## **USSC as an engine of reform**

*Reduced crack cocaine penalties* - In 2007, the USSC issued a comprehensive report to Congress and called for reform of the cocaine sentencing disparity (offenses for crack cocaine carry an exponentially higher penalty than offenses for powder cocaine. In 2007, the ratio was 100:1). The mandatory minimum penalty structure was widely criticized as it resulted in unwarranted racial disparity in



sentencing of individuals convicted of crack cocaine offenses, the majority of whom were Black and who received sentences three to six times longer than those meted out for powder cocaine convictions. Federal law anchored the sentencing guidelines to the mandatory minimums. Judges increasingly found this disparity troubling and often sentenced crack defendants below guidelines recommendation, undermining the credibility of these guidelines. The 2007 report to Congress that incorporated critical input from advocates and stakeholders drove a set of amendments to the guidelines which modestly reduced the impact of the crack cocaine disparity at sentencing. The Commission made those reductions retroactive, so that people serving sentences imposed before the new crack guideline were able to ask the court to reduce their sentence to the new levels. Approximately [16,500](#) people benefitted from the reform.

The USSC's report along with the guidelines amendment helped spur congressional action. In 2010, President Obama signed the Fair Sentencing Act which reduced the crack/cocaine disparity from 100:1 to 18:1 and eliminated a mandatory minimum for crack cocaine possession. The USSC was directed to implement these changes. The Commission amended the crack cocaine guideline and, once again, voted to implement the reduction retroactively, benefitting thousands of people serving sentences that Congress had eliminated.

*Reduced drug penalties* – In [2014](#), the USSC voted unanimously to reduce the offense levels for drug offenders by two levels. This change reduced the overall guideline range for many drug defendants. The amendment was made after a study evidenced the lack of recidivism that would follow from a modest reduction in sentences for drug convictions. The USSC also made this amendment, like the crack amendments before it, retroactive, allowing individuals to file a motion for a resentencing if they were sentenced under the outdated guidelines calculation.

*Compassionate release* – Federal law strictly limits opportunities to revisit a sentence once it has been finalized. One exception is for so-called “compassionate release.” Congress gave the USSC the job of describing what conditions constitute “extraordinary and compelling” reasons that permit a court to reduce an individual’s prison term. And, it gave the Bureau of Prisons (BOP) sole responsibility to bring compassionate release motions to the courts. The BOP rarely did. In response to public comment and testimony regarding the failure of the Bureau of Prisons to file compassionate release motions on behalf of aging, debilitated, and terminally ill individuals in prison, the USSC amended the compassionate release guidelines. This 2016 amendment broadened the guidance on what constitutes an “extraordinary and compelling” reason for compassionate release. The amendment also encouraged the BOP to file motions for compassionate release for individuals who fit the criteria under the guidelines.

In another example of how USSC action can lead to congressional action, two years after the compassionate release amendment, Congress passed the First Step Act in response to the BOP's failure to pursue release for people who met the amended criteria. The First Step Act changed compassionate release criteria as well as the process for compassionate release, including by permitting incarcerated people to bring motions if the BOP neglects or rejects their compassionate release request. Thousands of medically vulnerable people petitioned the courts for compassionate release at the height of the pandemic and 1,805 were granted release. Of those, the BOP brought only 1.2%, or roughly 22 motions.

