

Case 3

The U.S. Sentencing Commission (USSC), an independent federal agency in the judiciary branch of the government, is responsible for compiling and updating the U.S. sentencing guidelines for federal criminal offenses in accordance with the 1984 Sentencing Reform Act. Prior to the Act federal judges were not required to apply the same sentencing standards, which led to increasing disparities in federal sentences and absence of certainty of punishment. The Act aimed to bring uniformity and fairness in the federal courts' sentencing procedures by providing rules that ensured similar sentences for criminals convicted of similar offences. Based on the seriousness of criminal behavior and the defendant's criminal record, judges use tables to determine the range of allowable sentences. The Act also, however, allows judges discretion, under diverse circumstances, to decree sentences, referred to as "downward departures," which fall below the otherwise allowable range. National statistics for the year 2001 show that downward departures were decreed in 10,026 cases or 18.3% of the total 54,851 cases adjudicated in federal courts that year.

In April 2003, Congress enacted the PROTECT Act (i.e. the Amber Alert Bill), a series of legislative mandates aimed to protect children against sex crimes and pornography and directly amended the federal guidelines by limiting the federal judges' discretionary authority to award reduced sentences in such crimes. In addition, the Act charged USSC with further amending the guidelines to broadly "ensure that the incidence of downward departures is substantially reduced". Shortly thereafter, Attorney General John Ashcroft directed that, in seeking criminal penalties at trials, federal prosecutors adhere to the limits specified in the Act, in all categories of federal prosecutions, rather than only in child related crimes.

Federal courts typically have decreed lesser sentences after considering such issues as prior criminal history, family ties and responsibilities, aberrant behavior, and other mitigating circumstances, which are too personalized to be adequately provided for in the guidelines. The amended guidelines, which went into effect on October 27, 2003, however, prohibit downward departures in a variety of circumstances, including those based on youth, aberrant behavior, family responsibilities, diminished capacity as well as factors not specifically mentioned in the Guidelines. Judge David F. Hamilton, who testified during a hearing on the downward departure guidelines, criticized them on the ground that "departures provide (a judge with) the flexibility needed to assure adequate consideration of circumstances that the Guidelines cannot adequately capture."

In addition, all U.S. attorneys are now required to a) charge the offender "with the most serious, readily provable offense" and b) report to the Department of Justice all lenient sentencing decisions, not only those with which they disagreed and wished to appeal. How this information will be used is not yet certain. Chief Justice and prominent conservative William Rehnquist has warned that collecting data on judges' sentencing practices "could amount to an unwarranted and ill-considered effort to intimidate

individual judges”. In June, U.S. District Judge John S. Martin Jr. resigned from his Manhattan federal court accusing Congress of attempting “to intimidate judges”. Minnesota District Court judge James Rosenbaum, a Republican, who testified to the U.S. Senate Judiciary Committee last year that federal judges exercise sentencing discretion in pursuit of fairness forced by the overly strict federal guidelines, particularly in cases of drug offenders, is currently under Congressional investigation for his sentencing practices.

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