

UNITED STATES SENTENCING COMMISSION
Salaries and Expenses
SUMMARY STATEMENT OF ACCOUNT REQUIREMENTS

Fiscal Year 2024 Assumed Appropriation	\$22,072,000
Fiscal Year 2025 Requested Appropriation	\$23,288,000
Requested Increase from Fiscal Year 2024 Assumed Appropriation	\$1,216,000

APPROPRIATION LANGUAGE

UNITED STATES SENTENCING COMMISSION
SALARIES AND EXPENSES

For the salaries and expenses necessary to carry out the provisions of chapter 58 of title 28, United States Code, [~~\$22,072,000~~]*\$23,288,000*, of which not to exceed \$1,000 is authorized for official reception and representation expenses.

(H.R. 4664/S. 2309 - Financial Services and General Government Appropriations Act, 2024, updated to reflect the judiciary's fiscal year 2024 assumed appropriation)

**SUMMARY OF REQUEST
 UNITED STATES SENTENCING COMMISSION
 SALARIES AND EXPENSES
 FISCAL YEAR 2025
 (Dollar amounts in thousands)**

Fiscal Year 2025 Resource Requirements:

	<u>FTEs</u>	<u>Amount</u>
Fiscal Year 2024 Assumed Obligations.....	96	23,741
Carryforward balance from the Judiciary Information Technology Fund.....	-	(1,669)
Fiscal Year 2024 Assumed Appropriation	96	22,072

Page No. Adjustments to Base to Maintain Current Services:

A. PERSONNEL

Pay and Benefit Adjustments

10.14	1. Proposed 2025 pay adjustment (2.0% for nine months).....	-	315
10.14	2. Annualization of the 2024 pay adjustment (5.2% for three months).....	-	270
10.14	3. Promotions and within-grade increases.....	-	217
10.14	4. Benefits increases.....		
	a. Health benefits.....	-	172
	b. FICA Adjustment	-	22

**SUMMARY OF REQUEST
 UNITED STATES SENTENCING COMMISSION
 SALARIES AND EXPENSES
 FISCAL YEAR 2025
 (Dollar amounts in thousands)**

		<u>Original Request</u>	
		<u>FTEs</u>	<u>Amount</u>
B. Other Adjustments			
<i>General Inflationary Adjustments</i>			
10.15	5. Inflationary increases in charges for contracts, services, supplies, and equipment.....	-	220
Subtotal, Adjustments to Base to Maintain Current Services.....		-	1,216
Total Current Services Appropriation Required.....		96	23,288
Total, Fiscal Year 2025 Appropriation Required.....		96	23,288
Total Appropriation Increase.....		-	1,216
Total Estimated Obligations, Fiscal Year 2025.....		-	23,288

UNITED STATES SENTENCING COMMISSION
SALARIES AND EXPENSES
Obligations by Activity (\$000)

Activity	FY 2023 Actual	FY 2024 Assumed Obligations	FY 2025 Request
Total Obligations	21,567	23,741	23,288
Unobligated Balance, Start of Year: Judiciary Information Technology Fund	(1,669)	(1,669)	-
Deposits and Other Adjustments: Judiciary Information Technology Fund	-	-	-
Unobligated Balance, End of Year: Judiciary Information Technology Fund	1,669	-	-
<i>Subtotal, Other Obligations</i>	-	(1,669)	-
Direct Obligations	21,567	22,072	23,288
Unobligated Balance, End of Year	74	-	-
Less Offsetting Collections	-	-	-
Appropriation Total	21,641	22,072	23,288

Obligations by Budget Object Class (\$000)

Description	FY 2023 Actual	FY 2024 Assumed Obligations	FY 2025 Request
11 Personnel compensation	12,233	12,773	13,041
12 Personnel benefits	4,595	4,762	4,890
21 Travel	432	356	375
22 Transportation of things	5	7	7
23 Rent, communications and utilities	27	27	27
24 Printing and reproduction	157	130	130
25 Other services	1,789	2,089	1,863
26 Supplies and materials	136	153	161
31 Equipment	2,193	1,775	2,794
Direct Obligations	21,567	22,072	23,288
Other Obligations (JITF Obligations)	-	1,669	-
Total Obligations	21,567	23,741	23,288

UNITED STATES SENTENCING COMMISSION
SALARIES AND EXPENSES
Relation of Obligations to Outlays (\$000)

	FY 2023 Actual	FY 2024 Assumed Obligations	FY 2025 Request	Difference (+) or (-)
Direct obligations incurred	21,567	22,072	23,288	1,216
Obligated balance, start of year	3,179	3,173	3,167	(6)
Adjustments of prior year activity	(915)	(336)	(355)	(19)
Obligated balance, end of year	<u>(3,173)</u>	<u>(3,167)</u>	<u>(3,161)</u>	<u>6</u>
Total Outlays	20,658	21,742	22,939	1,197
Less Offsets	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net Outlays	20,658	21,742	22,939	1,197

Personnel Summary

	FY 2023 Actual	FY 2024 Assumed	FY 2025 Request	Difference (+) or (-)
Total compensable workyears:				
Full-time equivalent employment	89	96	96	0

GENERAL STATEMENT AND INFORMATION

The Sentencing Reform Act of 1984 created the United States Sentencing Commission (Commission) as an expert independent agency within the judicial branch, whose seven voting members, including the Chair, are nominated by the President and confirmed by the Senate. By statute, no more than four Commissioners can be from the same political party, and at least three must be federal judges, ensuring a bipartisan Commission of diverse backgrounds.

The statutory duties of the Commission include:

- promulgating federal sentencing guidelines that judges must calculate and consider in all federal criminal cases;
- collecting, analyzing, and reporting sentencing data to detect trends, assess federal sentencing policies, and serve generally as a clearinghouse for federal sentencing statistics;
- conducting research and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and
- providing specialized training to judges, probation officers and other court personnel, prosecutors and defense attorneys, and others concerning the federal sentencing guidelines and federal sentencing generally.

On August 4, 2022, the Senate confirmed a full slate of seven new commissioners – Judge Carlton W. Reeves (Chair), Judge Luis Felipe Restrepo (Vice Chair), Laura Mate (Vice Chair), Claire Murray (Vice Chair), Judge Claria Horn Boom, former Judge John Gleeson, and Candice C. Wong. Their confirmation marked the first time since 2018 that the Commission had a voting quorum.

Despite having been confirmed four months into the guideline amendment cycle, the new Commission quickly addressed the backlog of work that had amassed during the previous four years. Working under an abbreviated schedule, the Commission held six public meetings, considered thousands of public comments, and weighed volumes of sentencing data, culminating in the Commission submitting 11 guideline amendments to Congress on May 1, 2023, which became effective on November 1, 2023.

The Commission prioritized implementation of legislation, chief among them the First Step Act of 2018 (Pub. L. No. 115-391), which expanded the availability of reductions in sentence under 18 U.S.C. § 3582(c)(1) and relief from drug mandatory minimum penalties under 18 U.S.C. § 3553(f), and the Bipartisan Safer Communities Act (Pub. L. No. 117-159), which increased penalties for certain firearms offenders, including straw purchasers. The Commission implemented more than a dozen pieces of crime legislation that created new offenses, modified penalties, and included congressional directives.

The work of the full Commission fueled public interest in federal sentencing to historic highs. In FY 2023, the Commission launched a new, easy to use, public comment portal which facilitated the receipt of more than 8,000 public comments from Congress, judges, prosecutors and defense attorneys, advocacy groups, victims, currently and formerly incarcerated individuals and their families, and others -- more than the last several years combined. The Commission's website received more than two million hits, an increase of approximately one-third in one year. *Judiciary Sentencing Information* (JSIN), an online tool launched in FY 2022 that provides granular sentencing data, is now accessed by approximately 4,500 judges, prosecutors, defense attorneys, and others each month.

Strategic investment in technology, automation, and cybersecurity enables the Commission to meet the increasing demand for its work product efficiently and securely. The Commission continually audits and updates its cybersecurity measures and must continue these investments to remain current, secure, and responsive to unexpected or changing circumstances.

The Commission's FY 2025 budget request is \$23,288,000 to maintain current services. The Commission is not requesting any program increases.

ONGOING ACTIVITIES

Policy Priorities

By statute, the Commission must submit guideline amendments to Congress for review no later than May 1 of each year. In its initial abbreviated amendment cycle, the Commission focused on sentencing legislation enacted during the four years it lacked a voting quorum.

The first priority was implementation of the First Step Act of 2018 (the “FSA”). This landmark legislation expanded the availability and use of reductions in terms of imprisonment motions under 18 U.S.C. § 3582(c)(1)(A) (referred to in shorthand as “compassionate release” but courts may also reduce or modify terms of imprisonment under the statute) by authorizing defendants for the first time to file motions on their own. Most courts of appeal then held that the Commission’s compassionate release policy statement, §1B1.13, did not apply to motions filed by the defendant. In the absence of a governing policy statement, various courts of appeal reached differing conclusions as to what could constitute an “extraordinary and compelling” circumstance, and district courts granted such motions at vastly differing rates across the nation.

In response, the Commission amended §1B1.13 to reflect that defendants are authorized to file such motions. The amendment also expanded the list of extraordinary and compelling reasons for compassionate release to better account for the plain language of section 3582(c)(1)(A) and its legislative history, to reflect the reasons relied upon by many courts after passage of the FSA, and to account for recent lessons learned during the COVID-19 pandemic.

The FSA also expanded eligibility for the statutory safety valve, which provides relief from specified drug offenses carrying mandatory minimum penalties, to include certain individuals with more than one criminal history point. The Commission amended §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences) to reflect the broader class of eligible individuals.

The Commission also prioritized implementation of the 2022 Bipartisan Safer Communities Act (the “BCSA”). The BCSA created two new offenses at 18 U.S.C. §§ 932 and 933 further proscribing straw purchasing and trafficking of firearms, increased the statutory maximum penalties for certain firearms offenses, and included a corresponding directive to the Commission requiring consideration of several aggravating and mitigating factors. The Commission passed a multipart amendment that expands an existing enhancement, adds two new enhancements covering knowing participation in a criminal organization and “ghost guns,” and provides a new decrease for less culpable straw purchasers.

The Commission also responded to a request from the Drug Enforcement Administration (DEA) regarding fentanyl and “fake pills,” illicitly manufactured pills represented as legitimate pharmaceutical pills. According to the DEA, in FY 2022, over 50 million “fake pills” were seized, 70 percent of which contained fentanyl. The Commission added a new 2-level enhancement targeting individuals who act with willful blindness that the substance the individual misrepresented as legitimate contains fentanyl or fentanyl analogue.

The Commission made significant changes in how the guidelines account for criminal history. Because new data suggested status points improve the predictive value of the criminal history score less than previously believed, the Commission amended the guidelines to target “status points” to individuals with seven or more criminal history points and decreasing their impact by one point. Second, informed by studies showing that individuals with zero criminal history points are significantly less likely to be rearrested than those with even one point, the Commission created a new guideline, §4C1.1 (Adjustment for Certain Zero-Point Offenders) that provides a targeted 2-level decrease for individuals with zero criminal history points whose instant offense did not involve specified aggravating factors. The Commission also expanded the availability of alternatives to imprisonment and added a departure provision regarding prior simple possession of marijuana offenses in light of the shifting legal landscape in many states.

Because the criminal history amendment reduced the guideline range for a certain category of offenders, the Commission was required by 28 U.S.C. § 994(u) to consider whether it should apply retroactively to currently incarcerated individuals. After considering expert testimony and public comment, the Commission voted to make these reductions retroactive, but courts can grant retroactivity only after considering all the factors at 18 U.S.C. § 3553(a), in particular public safety. The Commission delayed implementation of retroactivity until February 1, 2024, to provide all parties adequate time to carefully review petitions and prepare those who are granted reduced sentences for successful reentry. The Commission estimates that 11,495 incarcerated individuals with status points and 7,272 with zero criminal history points are eligible for retroactivity, resulting in significant prison cost savings over time.

In its ongoing commitment to transparency and accessibility of its work, all the amendments are summarized in an easy to understand “Amendments in Brief” series the Commission launched on its website in FY 2023.

Among its published policy priorities for the amendment cycle ending May 1, 2023, the Commission is examining the degree to which certain practices of the Federal Bureau of Prisons are effective in meeting the purposes of sentencing. The Commission is also considering whether courts should continue to be permitted to consider acquitted conduct at sentencing. In the Supreme Court’s recent denial of a writ of certiorari, *McClinton v. United States*, 23 F.4th 732 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 4300 (2023), three Justices urged the Commission to take the lead in addressing acquitted conduct before it considers the question.

The Commission also continues to prioritize promoting alternatives to incarceration and recently launched an “Alternatives to Incarceration” (ATI) resource page on its website. This webpage includes information on the Commission’s related work and publications as well as an interactive map for users to explore ATI programs in various federal districts. The Commission is also

reviewing how youthful, sentenced individuals are treated under the guidelines, examining the definition of “crimes of violence” in the guidelines to reduce litigation and avoid odd results, and considering the enforceability of guideline commentary in light of evolving appellate and Supreme Court caselaw on administrative rulemaking. In addition, the Commission continues to work on a long-term goal of simplifying the guidelines to more fully reflect their advisory nature.

Conducting Research

Research is a critical part of the Commission’s mission and provides a valuable resource to policy makers and the Commission’s stakeholders. The Commission regularly analyzes data to monitor how courts sentence individuals and use the guidelines, and routinely uses these analyses to inform its policy making. The Commission publishes many of its analyses as a resource for Congress, the executive branch, and the criminal justice community.

The Commission recently released three research projects of interest, including *Weighing the Impact of Simple Possession of Marijuana: Trends and Sentencing in the Federal System* (January 2023) and *Federal Escape Offenses* (September 2023). Of note, in November 2023, the Commission released “*Demographic Differences in Federal Sentencing*” which updates its previous work on this important topic. The report provides judges, policy makers, and practitioners the most up-to-date information on the extent to which federal sentencing differences are associated with demographic characteristics, using an updated methodology and the most current data.

In FY 2022, more than one-third of the federal caseload were drug offenses, and the predominate drug type by far continues to be methamphetamine (nearly one-half of all drug offenses). In FY 2024, the Commission plans to publish a comprehensive report examining methamphetamine drug offenses, including trafficking patterns, purity, offender functions, and sentencing practices.

The Commission plans to release a publication studying the relationship between level of education and involvement in the federal criminal justice system. The Commission also is exploring ways to study and quantify the so-called “trial penalty,” the generally longer prison terms associated with going to trial instead of accepting a plea bargain.

Collecting, Analyzing, and Reporting Sentencing Data

Each year the Commission collects and analyzes data regarding every felony and Class A misdemeanor offense sentenced during that year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: the charging document, plea agreement (where one exists), Presentence Report, Judgment and Commitment Order, and Statement of Reasons form. The Commission analyzes these documents to report information of interest and importance to policymakers and the federal criminal justice community.

In FY 2023, the Commission reviewed approximately 300,000 court documents. These documents reported on more than 63,500 original sentencings and 2,400 resentencings or other sentencing modifications, as well as 2,800 motions for a sentence reduction that were denied.

The Commission processes this large volume of sentencing documents by continuously investing in means to automatically extract as much data and information as possible. These efforts improve the efficiency and accuracy of its data collection and expand the type of information the Commission can routinely collect and analyze. For example, the Commission can now analyze and report data regarding the nature of more than 300,000 criminal history events each year because of technology investments. This data is valuable to researchers and policymakers and has been used by the Commission to respond to numerous congressional inquiries.

Each year the Commission compiles its annual sentencing dataset into one comprehensive publication. In March 2023, the Commission released the *2022 Annual Report and Sourcebook of Federal Sentencing Statistics*. The Sourcebook provides detailed analyses of the 64,142 individuals sentenced in FY 2022.

In June 2020, the Commission launched the Interactive Data Analyzer (IDA). With IDA, Congress, judges, litigants, the media, and the general public can easily and independently analyze federal sentencing data by district, circuit, or state and can refine their inquiry to a specific crime type. This interactive tool uses the most current data visualization techniques and enables the Commission to easily add features.

In September 2021, the Commission released a new tool titled Judiciary Sentencing INformation (JSIN). The platform provides quick and easy online access to sentencing data for similarly situated defendants, including the types of sentences imposed and average and

median sentences of imprisonment. Since its launch, JSIN has been accessed over 53,000 times by approximately 17,300 users and now averages 4,500 sessions per month.

Congressional Data Inquiries and Briefings

Each year, the Commission receives frequent requests from Congress to complete prison and sentencing impact assessments of proposed legislation using real-time sentencing data. These assessments are often complex, time-sensitive, and require the Commission's highly specialized resources. Members of Congress and their staff have found the Commission's data highly valuable to the legislative process.

The Commission also provides circuit, district, and state-wide data analyses to the House and Senate Judiciary Committees and on an as-requested basis, to other members of Congress. Additionally, the Commission provides frequent briefings to Members of Congress and their staff on the Commission's work and data reports.

Specialized Training

The Commission continues to provide specialized seminars, workshops, and training programs for judges, probation officers, law clerks, prosecutors, and defense attorneys on application of the guidelines and federal sentencing generally. In FY 2023, the Commission trained individuals from all 94 federal districts.

The Commission's ongoing investments in eLearning, remote training platforms, and other online resources continue to provide effective and efficient training. In FY 2023, the Commission conducted 33 virtual training sessions attended by more than 5,500 individuals. The Commission's recorded courses were accessed over 1,200 times, and its eLearning courses were accessed more than 3,000 times.

In FY 2023, the Commission conducted 58 in-person training programs attended by more than 3,500 individuals. For the first time since the pandemic, the Commission held its Annual National Seminar, with almost 1,000 judges, probation officers, defense attorneys, and prosecutors participating, and its annual Judges' Seminar was attended by more than 80 judges from twelve circuits.

In addition to leading several panels at the above-mentioned programs and seminars, Commissioners themselves provided training and interacted with judges and practitioners by visiting nearly every circuit conference, participating in various bench and bar conferences, as well as programs sponsored by the Federal Judicial Center and other public and private organizations.

In FY 2023, the Commission answered over 2,800 HelpLine inquiries from judges, practitioners, and probation officers regarding proper guideline application. The HelpLine is accessible by phone and online.

Public Interface

The Commission continues to expand its public outreach. In FY 2023, the Commission's website received over two million hits and averaged 53,900 users per month. These numbers reflect an increase in users (32%) from the previous year, and an increase in sessions (33%) for the fifth consecutive year. The Commission also leverages social media and cloud-based tools to disseminate information and updates broadly and efficiently to the public.

FISCAL YEAR 2024 APPROPRIATIONS

The Judiciary built the FY 2025 discretionary budget request for the United States Sentencing Commission on the FY 2024 assumed appropriation of \$22,072,000, which is the midpoint between the FY 2024 House and Senate marks. The amount requested in FY 2025, \$23,288,000, maintains current services. For bill language, the judiciary used the language from H.R. 4664 and S. 2309 - Financial Services and General Government Appropriations Bills, 2024, as the closest approximation of the eventual enacted FY 2024 appropriation language, updated with the assumed level as described above.

ADJUSTMENTS TO BASE TO MAINTAIN CURRENT SERVICES

A. PERSONNEL

Pay and Benefit Adjustments

1. Proposed 2025 pay adjustment

Requested Increase: \$315,000

The judiciary is assuming federal pay rates will increase by 2.0 percent in January 2025. The requested increase provides for the cost of nine months of the anticipated pay raise in FY 2025, from January 2025 to September 2025. (If the pay adjustment included in the President’s FY 2025 budget request is different from this 2.0 percent, the judiciary will revise this line item in its FY 2025 budget re-estimate.)

2. Annualization of 2024 pay adjustment

Requested Increase: \$270,000

The requested increase provides for the annualized costs of a 2024 pay adjustment for Employment Cost Index (ECI) and locality pay. As a result of an ECI and locality adjustment, federal pay rates increased by an average of 5.2 percent, effective as of January 2024. The requested increase provides for the cost of three months (from October 2024 to December 2024) of the 2024 pay increase in FY 2025.

3. Promotions and within-grade increases

Requested Increase: \$217,000

The requested increase provides for promotions and within-grade increases for personnel. The salary plan for judicial support personnel provides for periodic within-grade increases for staff who receive at least a satisfactory performance rating.

4. Benefits increases

a. Health benefits

Requested Increase: \$172,000

Based on information from the Office of Personnel Management, health benefit premium contributions are projected to increase by an average of 5.0 percent in January 2024 and January 2025. The requested increase annualizes the 2024 premium increase and includes a nine-month provision for the increase anticipated for FY 2025.

b. FICA adjustment

Requested Increase: \$22,000

Based on information from the Social Security Administration, employer contributions to the Old Age, Survivor, and Disability Insurance (OASDI) portion of the FICA tax will increase in 2024. The salary cap for OASDI increased from \$160,200 to \$168,600 in January 2024. The requested amount is needed to pay the Commission’s contribution in FY 2025.

B. OTHER ADJUSTMENTS

General Inflationary Adjustments

5. Inflationary increases in charges for contracts, services, supplies, and equipment

Requested Increase: \$220,000

Consistent with guidance from the Office of Management and Budget, this requested increase is required to fund inflationary adjustments of 2.2 percent for operating expenses such as travel, communications, printing, contractual services, supplies and materials, and furniture and equipment.

FINANCING THE FISCAL YEAR 2025 REQUEST

Utilization of the Judiciary Information Technology Fund

Estimated Obligations: \$1,669,000

At the beginning of FY 2024, \$1,669,000 was available in carryforward balances from the Judiciary Information Technology Fund. Of this amount, the Commission is planning to use the entire \$1,669,000 during FY 2024 to support continued efforts in cybersecurity and other projects.

Key cybersecurity initiatives include strengthening security processes and protocols, leveraging recent developments in encryption technology, and auditing authorized users to avoid

data compromises. Additional work in automation includes database enhancements and maintenance, data extraction, data warehousing and other efforts to enhance the security of the Commission's internal systems. The planned introduction of the probation and pretrial services case management system (PACTS) in the federal courts will also require significant resources to interface with the Commission's data collection systems.