

Fact Sheet: Regional Differences in Federal Sentencing

The Supreme Court's decision in *United States v Booker*, 543 U.S. 220 (2005), solved a Sixth Amendment constitutional violation with the federal sentencing guidelines.

- The guidelines are now “effectively advisory,” and subsequent decisions, such as *Rita*, *Gall*, *Kimbrough*, and *Pepper*¹ reaffirmed the importance of judicial discretion in assuring the constitutionality of the guidelines.
- In a 2012 report,² the U.S. Sentencing Commission found that the guidelines “have remained the essential starting point in all federal sentences and have continued to exert significant influence on federal sentencing trends over time.” (USSC Report, Part A, at 3)
- Nonetheless, the Commission has proposed several statutory changes that would restore a mandatory guidelines system. (USSC Report, Part A, at 111-114)³
- The “Key Findings” of the 2012 report include: “The influence of the guidelines . . . has varied by circuit” (USSC Report, Part A, p. 6); “sentencing outcomes increasingly depend upon the district in which the defendant is sentenced;” and “[p]rosecutorial practices have contributed to disparities in federal sentencing” (USSC Report, Part A p. 7).

Federal sentencing practices varied by region before the sentencing guidelines, and under the mandatory sentencing guidelines, and they continue to vary to some extent today.

- Congress recognized in the Sentencing Reform Act and in subsequent legislation that some regional variation in sentencing practices may be reasonable and even desirable.⁴
- Like previous reports,⁵ the new USSC Report confirms that most of the variation among districts is due to differences in case characteristics, prosecutorial practices, and applicable guidelines and statutes. In every circuit, changes in sentences imposed closely track changes in the applicable guidelines and statutes (USSC Report, Part C, pp. 25-30).
- Districts vary in the rates of government sponsored below-range sentences, including substantial assistance and early disposition program sentences (USSC Report, Part C, pp. 33, 38, 43). Variation in the rates (measured by the inter-quartile range⁶) and average reduction below the guideline range for these sentences have remained relatively stable since the PROTECT Act period (pp. 33, 35).
- The average reduction below the guideline range is higher for government-sponsored below-range sentences than for non-government sponsored below-range [NGS below-range] sentences (USSC Report, Part C, pp. 35, 55).
- Both the rate of NGS below-range sentences and variation among districts in those rates (measured by the inter-quartile range) has increased since the PROTECT Act (USSC Report, Part C, p. 53). The average percent of reduction below the guideline range has remained relatively constant, however, and variation in the percent of reduction was highest during the PROTECT Act period (p. 55).

¹*Rita v. United States*, 551 U.S. 338 (2007); *Gall v. United States*, 552 U.S. 38 (2007); *Kimbrough v. United States*, 552 U.S. 85 (2007); *Pepper v. United States*, 131 S. Ct. 1229 (2011).

²U.S. Sentencing Commission, *Report on the Continuing Impact of United States v. Booker on Federal Sentencing* (2012).

³Amy Baron-Evans & Thomas W. Hillier, II, *The Commission's Legislative Agenda to Restore Mandatory Guidelines*, (forthcoming) 25 Federal Sentencing Reporter (April, 2013). Available at SSRN: <http://ssrn.com/abstract=2252105>

⁴Commentary explaining the desirability of some local variations in federal sentencing was recently summarized in Adam J. Richardson, *Harnessing Local Variations in Federal Sentencing to Increase the System's Moral Credibility*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1422823. For an earlier discussion of the inevitability and desirability of regional differences, see *Panel II: The Effects of Region, Circuit, Caseload and Prosecutorial Policies on Disparity*, 15 Federal Sentencing Reporter 165 (2003).

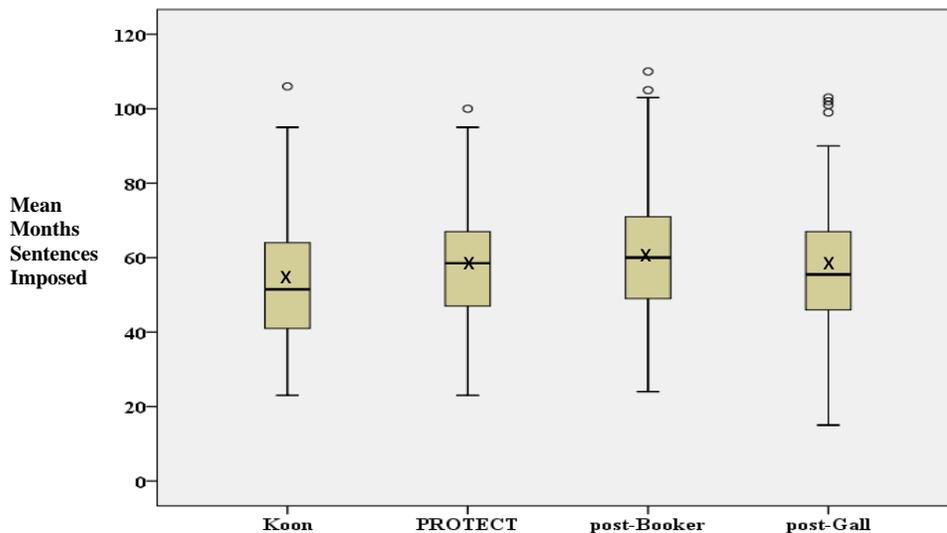
⁵U.S. Sentencing Commission, *Fifteen Years of Guidelines Sentencing* (2004), 99-112.

⁶The interquartile range is the difference in rates between the districts at the 25th and 75th percentiles. The Commission uses the interquartile range as the most representative measure of variation (USSC Report, Part C, p. 6).

Data and research on variation in sentence length among districts show that this important measure has *not* increased following *Booker* or *Gall*.

- The Commission highlights only variation in *rates* of NGS below-range sentences, but a more complete picture would look at the bottom line: whether variation among districts in *sentence length* has grown over time.
- Sentence length reflects the influence of judges *and* prosecutors, the mix of cases in a district, changes in guidelines and statutes, rates and extents of variances/departures, and other factors.
- The USSC Report lists data on average sentence lengths in each circuit and district, in each of the four time periods (USSC Report, Part C, p 81-83), but does not display it graphically.⁷
- The chart below was prepared from that data. The boxes show the interquartile range in average sentences among all federal districts.⁸ The horizontal line in the box shows the median sentence; the x shows the mean sentence. (The “whiskers” show the range from minimum to maximum average sentence, with ‘o’s above the whiskers representing districts that are statistical outliers.)

Range of Average Sentences Imposed Among Federal District Courts



- As shown by the size of the boxes on the chart, the interquartile range has changed very little, varying from a low of 21 months in both the PROTECT Act and *Gall* periods to a high of 23 months in the earliest *Koon* period. The combined effects of all actors and influences on sentence lengths has resulted in remarkable stability, and provides no evidence that sentence lengths depend increasingly on the district in which a defendant is sentenced.

- Researchers outside the Commission have concluded from multivariate regression analyses that unexplained regional variation in sentences has not grown since *Booker*, and has even decreased.
 - Ulmer, Light and Kramer found that the percentage of sentence length variation explained by differences among districts was 6.6% before the PROTECT Act, 5.8% after the PROTECT Act, 5.2% after *Booker*, and 6.3% after *Gall* through 2009.⁹
 - Lynch and Omori, analyzing drug cases from 1993 through 2009, found that the proportion of variation in sentence length due to differences among districts was 14.1% before *Koon*, 12% after *Koon*, 13.6% after the PROTECT Act, 13.9% after *Booker*, and 13.1% after *Kimbrough*.¹⁰

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⁷These data reflect all sentences for which information is available. Probation sentences are counted as 0 months; life and other sentences of imprisonment are capped at 470 months.

⁸The Commission uses the interquartile range as the most representative measure of variation (USSC Report, Part C, p. 6).

⁹See Jeffery Ulmer et al., *The “Liberation” of Federal Judges’ Discretion in the Wake of the Booker/Fanfan Decision: Is There Increased Disparity and Divergence Between Courts?*, 28 JUSTICE Q. 799, 816 (2011).

¹⁰See Lynch & Omari, *Legal Change and Sentencing Norms in the Wake of Booker: The Impact of Time and Place on Drug Trafficking Cases in Federal Court* at 46, tbl.3, Criminology, Law and Society, University of California, Irvine, Paper presented at Conference on Empirical Legal Studies, Stanford Law School (Nov. 2012).