



NEWS RELEASE

Administrative Office of the U.S. Courts

September 23, 2003

Contact: David Sellers

Judicial Conference Seeks Restoration of Judges' Sentencing Authority

Because the Judiciary and the U.S. Sentencing Commission were not consulted prior to enactment, the federal courts' policy-making body voted today to support repeal of a new law that severely limits the ability of trial judges to depart from Sentencing Guidelines and requires reports to Congress on any federal judge who does so.

The Judicial Conference of the United States also agreed to expand remote public access to electronic court documents by allowing access to criminal case files. The new policy will be implemented as soon as operational guidance to all federal courts can be developed and approved.

Sentencing

The Conference voted to support repeal of the following provisions of the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act, known as the PROTECT Act:

- The requirement that directs the Sentencing Commission to make available to the House and Senate Judiciary Committees all underlying documents and records it receives from the courts without established standards on how these sensitive and confidential documents will be handled and protected from inappropriate disclosure;
- The requirement that the Sentencing Commission release data files containing judge-specific information to the Attorney General;
- The requirement that the Department of Justice submit judge-specific sentencing guideline departure information to the House and Senate Judiciary Committees;
- The requirement that the Sentencing Commission promulgate guidelines and policy statements to limit departures;
- The requirement that the Sentencing Commission promulgate a policy statement limiting the authority of the courts and U.S. Attorneys' Offices to develop and implement early disposition programs; and
- The amendment of 28 U.S.C. §991(a) to limit the number of judges who may be members of the Sentencing Commission.

The PROTECT Act, fast-moving legislation that passed both houses of Congress and was signed by the President in just over 30 days, provides protection for children by expanding to national coverage a rapid-response system to help find kidnaped children. When the legislation was considered on the House floor, an amendment was added to limit judges' sentencing flexibility. The Judiciary was not asked for its views on this amendment, nor was it advised of its consideration. After the PROTECT Act passed the House and the sentencing provisions came to the attention of the Judiciary, the Judicial Conference, the

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Chief Justice, and the Sentencing Commission expressed serious concerns. The bill was signed into law on April 30, 2003. The Judicial Use of Discretion to Guarantee Equity in Sentencing Act of 2003, known as the JUDGES Act, is pending in the Senate as S.1086 and in the House as H.R. 2213. These companion bills would repeal many of the sentencing provisions in the PROTECT Act.

Case Files

In September 2001, the Conference adopted a policy for remote public electronic access to civil, bankruptcy, and appellate case files. But at that time it decided not to allow for similar access to criminal case files. In March 2002, the Conference established a pilot program for 10 district courts and one appellate court to allow Internet access to criminal case files.

The Federal Judicial Center has studied the experience of the pilot courts and found no evidence of harm to any individual and also found that a majority of those interviewed in the pilot courts —judges, court staff, and counsel — extolled the advantages of electronic access. The Conference Committees on Court Administration and Case Management, Criminal Law, and Defender Services will work together in drafting appropriate implementation guidance for the courts. The pilot program will continue access during the implementation period.

Once implemented, the policy requires that certain personal identifier information should be partially redacted by the filer of the document, whether it is filed electronically or in paper form. For example, Social Security and financial account numbers should be reported as the last four digits only and the names of minor children should be listed only by their initials. This is the policy currently in effect for civil cases.

Remote access to federal court files has been made possible by the Case Management/Electronic Case Files (CM/ECF) system, which is in the process of being implemented throughout the federal courts. As of September 1, 2003, 25 district courts and 60 bankruptcy courts are using the system. More than 10 million cases are on the CM/ECF system and more than 40,000 attorneys and others have filed documents over the Internet. Electronic access to these documents is available through the Public Access to Court Electronics Records (PACER) program.

In other action, the Conference

- Agreed to seek legislation to permit emergency special court sessions outside the district or circuit in which a court is located. The need for this legislation became apparent following the events of September 11, 2001, when court operations, particularly in New York City, were impacted.
- Declared courthouse space emergencies in Los Angeles, California; El Paso, Texas; San Diego, California; and Las Cruces, New Mexico. The Conference's Security and Facilities Committee said that intolerable security and operational problems exist in the three courts along the southwest border and in Los Angeles, which justifies the Judicial Conference designation of these locations as a space emergency.

The Judicial Conference of the United States is the principal policy-making body for the federal court system. The Chief Justice serves as the presiding officer of the Conference, which is composed of the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade. The Conference meets twice a year to consider administrative and policy issues affecting the court system and to make recommendations to Congress concerning legislation involving the Judicial Branch. A list of Conference members is attached.

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JUDICIAL CONFERENCE OF THE UNITED STATES

September 2003

Chief Justice William H. Rehnquist, Presiding

Chief Judge Michael Boudin Judge D. Brock Hornby	First Circuit District of Maine
Chief Judge John M. Walker, Jr. Chief Judge Frederick J. Scullin, Jr.	Second Circuit Northern District of New York
Chief Judge Anthony J. Scirica Chief Judge Sue L. Robinson	Third Circuit District of Delaware
Chief Judge William W. Wilkins Judge David C. Norton	Fourth Circuit District of South Carolina
Chief Judge Carolyn Dineen King Judge Martin L.C. Feldman	Fifth Circuit Eastern District of Louisiana
Chief Judge Boyce F. Martin, Jr. Chief Judge Lawrence P. Zatkoff	Sixth Circuit Eastern District of Michigan
Chief Judge Joel M. Flaum Judge Marvin E. Aspen	Seventh Circuit Northern District of Illinois
Chief Judge James B. Loken Chief Judge James M. Rosenbaum	Eighth Circuit District of Minnesota
Chief Judge Mary M. Schroeder Chief Judge David Alan Ezra	Ninth Circuit District of Hawaii
Chief Judge Deanell R. Tacha Judge Frank Howell Seay	Tenth Circuit Eastern District of Oklahoma
Chief Judge J. L. Edmondson Judge J. Owen Forrester	Eleventh Circuit Northern District of Georgia
Chief Judge Douglas H. Ginsburg Chief Judge Thomas F. Hogan	District of Columbia Circuit District of Columbia
Chief Judge Haldane Robert Mayer	Federal Circuit
Chief Judge Gregory W. Carman	Court of International Trade

Conference Secretary:

Leonidas Ralph Mecham, Director
Administrative Office of the U.S. Courts