

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding technical and conforming amendments to federal sentencing guidelines effective November 1, 2009.

SUMMARY: On May 1, 2009, the Commission submitted to Congress amendments to the federal sentencing guidelines and published these amendments in the Federal Register on May 8, 2009. See 74 FR 21750. The Commission has made technical and conforming amendments, set forth in this notice, to commentary provisions related to those amendments.

DATES: The Commission has specified an effective date of November 1, 2009, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer,
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SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States government, is authorized by 28 U.S.C. § 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. See 28 U.S.C. § 994(o), (p). Absent an affirmative disapproval by Congress within 180 days after the Commission submits its amendments, the amendments become effective on the date specified by the Commission (typically November 1 of the same calendar year). See 28 U.S.C. § 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary are necessary. This notice sets forth technical and conforming amendments to commentary that will become effective on November 1, 2009.

AUTHORITY: USSC Rules of Practice and Procedure 4.1.

Ricardo H. Hinojosa,

Acting Chair

Technical and Conforming Amendments

1. Amendment: The Commentary to §2A6.2 captioned "Application Notes" is amended in Note 4 in the second paragraph by striking "2" after "Note" and inserting "3".

The Commentary to §2B1.1 captioned "Application Notes", as amended by Amendment 1 submitted to Congress on May 1, 2009 (74 FR 21750), is further amended in Note 1, in the paragraph that begins "'Personal information' means", by striking "(i)" and inserting "(A)"; by striking "(ii)" and inserting "(B)"; by striking "(iii)" and inserting "(C)"; by striking "(iv)" and inserting "(D)"; by striking "(v)" and inserting "(E)"; by striking "(vi)" and inserting "(F)"; and by striking "(vii)" and inserting "(G)".

The Commentary to §2B1.1 captioned "Application Notes" is amended in Note 3(F)(iii) by striking "276a" and inserting "3142".

The Commentary to §2B1.1 captioned "Application Notes" is amended in Note 4(C)(iii) by striking "his" and inserting "the addressee's".

The Commentary to §2B1.1 captioned "Application Notes" is amended in Note 7(E) by striking "Enhancements" and inserting "Chapter Three Adjustments".

The Commentary to §2B1.1 captioned "Application Notes" is amended in Note 8(C) by

striking "Enhancement" and inserting "Chapter Three Adjustment".

The Commentary to §2B1.1 captioned "Application Notes" is amended in Note 9 by striking the paragraph that begins "'Telecommunications service' has the meaning"; and by inserting after the paragraph that begins "'Produce' includes manufacture" the following:

"'Telecommunications service' has the meaning given that term in 18 U.S.C. § 1029(e)(9)."

The Commentary to §2B1.1 captioned "Application Notes", as amended by Amendment 1 submitted to Congress on May 1, 2009 (74 FR 21750), is further amended in Note 14(A) by striking "this subsection" and inserting "subsection (b)(17)"; in the paragraph that begins "'Commodities law'" by striking "Commodities" before "Exchange" and inserting "Commodity"; by striking "Commodities" before "Futures" and inserting "Commodity"; in the paragraph that begins "'Commodity pool operator'" by striking "(4)" and inserting "(5)" each place it appears; by striking "Commodities" and inserting "Commodity"; in the paragraph that begins "'Commodity trading advisor'" by striking "(5)" and inserting "(6)" each place it appears; by striking "Commodities" and inserting "Commodity";

in the paragraph that begins "“Futures commission merchant”" by striking "Commodities" and inserting "Commodity";

in the paragraph that begins "“Introducing broker”" by striking "Commodities" and inserting "Commodity";

in the paragraph that begins "“Investment adviser”" by inserting "(a)(11)" after "202";

in the paragraph that begins "“Person associated with a broker or dealer”" by striking "(48)" and inserting "(18)";

and in the paragraph that begins "“Person associated with an investment adviser”" by inserting "(a)(17)" after "202".

The Commentary to §2D1.6 captioned "Application Notes" is amended in Note 1 by inserting "a minimum offense level of 8 where the offense involves flunitrazepam (§2D1.1(c)(16));" after "(§2D1.1(c)(14));".

The Commentary to §2G1.1 captioned "Application Notes" is amended in Note 1 in the paragraph that begins "“Commercial sex act”" by striking "(c)(1)" and inserting "(e)(3)".

The Commentary to §2G1.3 captioned "Application Notes" is amended in Note 1 in the

paragraph that begins "Commercial sex act" by striking "(c)(1)" and inserting "(e)(3)".

The Commentary to §2G2.1 captioned "Statutory Provisions" is amended by striking "(b)" and inserting "(a)".

The Commentary to §2H3.1 captioned "Application Notes", as amended by Amendment 1 submitted to Congress on May 1, 2009 (74 FR 21750), is further amended in Note 4, in the paragraph that begins "'Personal information' means", by striking "(i)" and inserting "(A)"; by striking "(ii)" and inserting "(B)"; by striking "(iii)" and inserting "(C)"; by striking "(iv)" and inserting "(D)"; by striking "(v)" and inserting "(E)"; by striking "(vi)" and inserting "(F)"; and by striking "(vii)" and inserting "(G)".

The Commentary to §2H3.1 captioned "Application Notes" is amended in Note 5 by striking "(i)" and inserting "(A)"; and by striking "(ii)" and inserting "(B)".

The Commentary to §2J1.5 captioned "Statutory Provisions" is amended by striking "Provision" and inserting "Provisions"; and by striking "(2)" and inserting "(1)(B)".

The Commentary to §2J1.5 captioned "Application Notes" is amended in Note 2 by striking "this offense" and inserting "an offense under 18 U.S.C. § 3146(b)(1)(B)".

The Commentary to §2J1.5 captioned "Background" is amended by striking "This offense

covered by this section" and inserting "The offense under 18 U.S.C. § 3146(b)(1)(B)".

The Commentary to §3B1.2 captioned "Application Notes" is amended in Note 6 by striking "(3)" and inserting "(5)".

The Commentary following §3D1.5 captioned "Illustrations of the Operation of the Multiple-Count Rules" is amended in example 3 by striking "he" and inserting "the defendant"; and by striking "(8)" and inserting "(9)".

Appendix A (Statutory Index), as amended by Amendment 8 submitted to Congress on May 1, 2009 (74 FR 21750), is further amended by striking the line that begins "50 U.S.C. App. § 527(e)";

and by inserting after the line that begins "50 U.S.C. App. § 462" the following:

"50 U.S.C. App. § 527(e) 2X5.2".

Reason for Amendment: This amendment makes certain technical and conforming changes to commentary.

First, it updates obsolete statutory and guideline references in §§2A6.2 (Stalking or Domestic Violence), Application Note 4; 2B1.1 (Theft, Property Destruction, and Fraud),

Application Notes 3(F)(iii) and 14(A); 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor), Application Note 1; 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor), Application Note 1; 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), Statutory Provisions; 2J1.5 (Failure to Appear by Material Witness), Statutory Provisions; 3B1.2 (Mitigating Role), Application Note 6; and the Illustrations following 3D1.5 (Determining the Total Punishment).

Second, it makes clerical and stylistic changes to the Commentary to §2B1.1; the Commentary to §2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information); and the Illustrations following §3D1.5.

Third, it amends §2D1.6 (Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy), Application Note 1, to ensure that its description of the various minimum offense levels that apply to controlled substances under §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) is more comprehensive (i.e., by

including in that description the minimum offense level that applies to flunitrazepam).

Finally, it amends Appendix A (Statutory Index) to ensure that the line reference to 50 U.S.C. App. § 527(e) is placed in the appropriate order.