

**UNITED STATES SENTENCING COMMISSION**

**Possible Formation of Tribal Issues Advisory Group**

**AGENCY:** United States Sentencing Commission.

**ACTION:** Request for public comment on possible formation of Tribal Issues Advisory Group.

**SUMMARY:** The Commission is interested in forming a new Tribal Issues Advisory Group, on an ad hoc or continuing basis, or establishing other means to study issues that have been raised in recent years related to the operation of the federal sentencing guidelines in Indian Country and areas that have significant American Indian population. Therefore, the Commission hereby requests comment on the merits of forming such a group, including comment on the scope, duration, and potential membership of any such advisory group.

**DATES:** Public comment should be received on or before **October 20, 2014**.

**ADDRESSES:** Comments should be sent to the Commission by electronic mail or regular mail. The email address is [pubaffairs@ussc.gov](mailto:pubaffairs@ussc.gov). The regular mail address is United States Sentencing Commission, One Columbus Circle, NE, Suite 2-500, South Lobby, Washington, DC

20002-8002, Attention: Public Affairs – Tribal Issues Comment.

**FOR FURTHER INFORMATION CONTACT:** Jeanne Doherty, Public Affairs Officer,  
202-502-4502, jdoherty@ussc.gov.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. § 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. § 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. § 994(p). Under 28 U.S.C. § 995 and Rule 5.4 of the Commission’s Rules of Practice and Procedure, the Commission may create standing or ad hoc advisory groups to facilitate formal and informal input to the Commission. Upon creating an advisory group, the Commission may prescribe the policies regarding the purpose, membership, and operation of the group as the Commission deems necessary or appropriate.

In 2002, the Commission established the Native American Advisory Group (NAAG) with the purpose of considering “any viable methods to improve the operation of the federal sentencing guidelines in their application to Native Americans under the Major Crimes Act.” The NAAG was convened as an ad hoc group tasked with writing an interim and a final report. The membership of the advisory group was diverse in terms of geography, tribal affiliation, and

professional background, and included federal judges, Assistant United States Attorneys, a United States Probation Officer, an Assistant Federal Public Defender, a Victim/Witness specialist, private legal practitioners, academics, and representatives from the Department of Justice, the Department of Interior, the Bureau of Indian Affairs, the United States Commission on Civil Rights, and the National Indian Gaming Commission.

The Final Report issued by the group in 2003 made specific recommendations on offenses that had a significant percentage of American Indian offenders (manslaughter, sexual abuse, aggravated assault, and the use of alcohol as an aggravating factor), and it encouraged the Commission to continue tribal involvement in the development of federal sentencing policy. (The 2003 Report of the NAAG may be accessed through the Commission's website at [www.ussc.gov](http://www.ussc.gov).) For the Commission's amendments in response to this report, see USSG App. C, Amends. 652, 663.

Since the NAAG issued its final report, new issues and concerns have arisen involving American Indian defendants and victims, and there have been important changes in tribal criminal jurisdiction. For example, in 2010, the Tribal Law and Order Act of 2010 (Pub. L. 111–211) was enacted to address high rates of violent crime in Indian Country by improving criminal justice funding and infrastructure in tribal government, and expanding the sentencing authority of tribal court systems. In 2013, the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4) was enacted to expand the criminal jurisdiction of tribes to prosecute, sentence, and convict Indians and non-Indians who assault Indian spouses or dating partners or

violate a protection order in Indian Country. It also established new assault offenses and enhanced existing assault offenses. Both Acts increased criminal jurisdiction for tribal courts, but also required more robust court procedures and provided more procedural protections for defendants. For the Commission's response to the Violence Against Women Reauthorization Act of 2013, see Amendment 2 of the amendments submitted to Congress on April 30, 2014, 79 FR 25996 (May 6, 2014).

Furthermore, in 2009 and 2010, the Commission held a series of regional public hearings regarding federal sentencing policy to coincide with the 25th anniversary of the Sentencing Reform Act. At regional hearings in Denver and Phoenix, the Commission heard testimony on Indian Country issues. The testimony expressed concern about the perception in tribal communities that American Indian offenders prosecuted federally receive more severe sentences than other offenders prosecuted at the state level, the disparity in the application of the federal sentencing guidelines on American Indians in Indian Country, and how tribal court convictions are taken into account for purposes of sentencing and risk assessment, among other uses. More recently, the Commission received written submissions and testimony during the public comment period and public hearings on the amendments in response to the Violence Against Women Reauthorization Act of 2013, that expressed the same concerns heard in the testimony at the regional hearings, but also addressed additional matters for consideration, such as ensuring accountability for Indian and non-Indian offenders who victimize American Indians, the need to better acknowledge tribal court protection orders in the guidelines, and the importance of consultation with tribal communities on sentencing issues that affect them. (The testimony and

written submissions are available through the Commission’s website at [www.ussc.gov](http://www.ussc.gov).)

In 2014, the Commission received a letter from the United States Attorneys who make up the Native American Issues Subcommittee and the Racial Disparities Working Group of the Attorney General’s Advisory Group at the Department of Justice. (The letter is available through the Commission’s website at [www.ussc.gov](http://www.ussc.gov).) The letter urged the Commission to consider “forming a new American Indian Sentencing Advisory Group to study whether American Indian defendants in federal court face disparities in sentencing.” It noted that since the NAAG Report of 2003, the issue of potential sentencing disparities has remained a subject of great debate, citing academic research and concerns heard from tribal leaders and members of the Federal Judiciary. The letter also explained that because the NAAG’s work was completed prior to the United States Supreme Court decision in United States v. Booker, 543 U.S. 220 (2005), further review is appropriate.

In light of this, the Commission is considering whether to form a new Tribal Issues Advisory Group, on an ad hoc or continuing basis, or establishing other means to study the issues that have been raised in recent years. Therefore, the Commission hereby requests comment on the merits of forming such a group, including comment on the scope, duration, and potential membership of any such advisory group.

Public comment should be sent to the Commission as indicated in the ADDRESSES section above.

**AUTHORITY:** 28 U.S.C. § 994(a), (o), (p), § 995; USSC Rules of Practice and Procedure 5.2,  
5.4.

Patti B. Saris

Chair