

UNITED STATES SENTENCING COMMISSION

Final Priorities for Amendment Cycle

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In October 2022, the Commission published a notice of proposed policy priorities for the amendment cycle ending May 1, 2023. See 87 FR 60438 (October 5, 2022). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

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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 Congress not later than the first day of May each year pursuant to 28 U.S.C. § 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2023. Other factors, such as legislation requiring Commission action, may affect the Commission's ability to complete work on any or all identified priorities by May 1, 2023. Accordingly, the Commission may continue work on any or all identified priorities after that date or may decide not to pursue one or more identified priorities.

Pursuant to 28 U.S.C. § 994(g), the Commission intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority.

The Commission has identified the following priorities for the amendment cycle ending May 1, 2023:

(1) Consideration of possible amendments to §1B1.13 (Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A) (Policy Statement)) to (A) implement the First Step Act of 2018 (Pub. L. 115–391); and (B) further describe what should be considered

extraordinary and compelling reasons for sentence reductions under 18 U.S.C. § 3582(c)(1)(A).

(2) Consideration of possible amendments to §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)), §2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), and related provisions in the Guidelines Manual, to implement the First Step Act of 2018 (Pub. L. 115–391).

(3) Consideration of possible amendments to §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to (A) implement the Bipartisan Safer Communities Act (Pub. L. 117–159); and (B) make any other changes that may be warranted to appropriately address firearms offenses.

(4) Resolution of circuit conflicts as warranted, pursuant to the Commission’s authority under 28 U.S.C. § 991(b)(1)(B) and Braxton v. United States, 500 U.S. 344 (1991), including the circuit conflicts concerning (A) whether the government may withhold a motion pursuant to subsection (b) of §3E1.1 (Acceptance of Responsibility) because a defendant moved to suppress evidence; and (B) whether an offense must involve a substance controlled by the Controlled Substances Act (21 U.S.C. § 801 et seq.) to qualify as a “controlled substance offense” under subsection (b) of §4B1.2 (Definitions of Terms Used in Section 4B1.1).

(5) Implementation of any legislation warranting Commission action.

(6) Continuation of its multiyear work on §4B1.2 (Definitions of Terms Used in Section 4B1.1), including possible amendments to (A) provide an alternative approach to the “categorical approach” in determining whether an offense is a “crime of violence” or a “controlled substance offense”; and (B) address various application issues, including the meaning of “robbery” and “extortion,” and the treatment of inchoate offenses and offenses involving an offer to sell a controlled substance.

(7) In light of Commission studies, consideration of possible amendments to the Guidelines Manual relating to criminal history to address (A) the impact of “status” points under subsection (d) of §4A1.1 (Criminal History Category); (B) the treatment of defendants with zero criminal history points; and (C) the impact of simple possession of marijuana offenses.

(8) Consideration of possible amendments to the Guidelines Manual addressing 28 U.S.C. § 994(j).

(9) Consideration of possible amendments to the Guidelines Manual to prohibit the use of acquitted conduct in applying the guidelines.

(10) Consideration of possible amendments to the Guidelines Manual to address sexual abuse or contact offenses against a victim in the custody, care, or supervision of, and committed

by law enforcement or correctional personnel.

(11) Multiyear study of the Guidelines Manual to address case law concerning the validity and enforceability of guideline commentary.

(12) Continuation of its multiyear examination of the structure of the guidelines post-Booker to simplify the guidelines while promoting the statutory purposes of sentencing.

(13) Multiyear study of court-sponsored diversion and alternatives-to-incarceration programs (e.g., Pretrial Opportunity Program, Conviction And Sentence Alternatives (CASA) Program, Special Options Services (SOS) Program), including consideration of possible amendments to the Guidelines Manual that might be appropriate.

(14) Consideration of other miscellaneous issues, including possible amendments to (A) §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses) to address offenses involving misrepresentation or marketing of a controlled substance as another substance; (B) §3D1.2 (Grouping of Closely Related Counts) to address the interaction between §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) and §3D1.2(d); and

(C) §5F1.7 (Shock Incarceration Program (Policy Statement)) to reflect that the Bureau of Prisons no longer operates a shock incarceration program.

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

Carlton W. Reeves,

Chair