

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, 2010.

SUMMARY: On April 29, 2010, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2010, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the Federal Register, 75 FR 27388 (May 14, 2010). 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, 2010, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer,

Telephone: (202) 502-4597.

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, 2010.

AUTHORITY: USSC Rules of Practice and Procedure 4.1.

William K. Sessions III

Chair

Technical and Conforming Amendments

1. Amendment: The Commentary to §2B1.1 captioned "Application Notes" is amended in Note 1 by inserting "or Paleontological Resources" after "Resources" both places it appears.

The Commentary to §2B1.1 captioned "Application Notes" is amended in Note 3 in the last paragraph by inserting "or Paleontological Resources" after "Resources"; by inserting "or paleontological resource" before ", loss"; by striking "cultural heritage" after "to that" and by striking "cultural heritage" after "of the".

The Commentary to §2K1.3 captioned "Application Notes" is amended in Note 9 by striking "; §4A1.2, comment. (n.3)".

The Commentary to §2P1.1 captioned "Application Notes" is amended in Note 5 by striking the comma after "escape)" and inserting "and"; and by striking ", and §4A1.1(e) (recency)".

The Commentary to §3A1.2 captioned "Application Notes" is amended in Note 3 by striking "§2B3.1(a)" and inserting "§2B3.1(b)(1)".

The Commentary to §3C1.1 captioned "Application Notes", as amended by Amendment

9, submitted to Congress on April 29, 2010, is amended in Note 4(F) by inserting "judge" after "magistrate"; and in Note 5(B) by striking "4(g)" and inserting "4(G)".

The Commentary to §3C1.1 captioned "Application Notes" is amended in Note 9 by striking "his" and inserting "the defendant's"; and by striking "he" and inserting "the defendant".

The Commentary to §3C1.2 captioned "Application Notes" is amended in Note 5 by striking "his" and inserting "the defendant's" and by striking "he" and inserting "the defendant".

The Commentary to §3E1.1 captioned "Application Notes" is amended in Note 3 by striking "1(a)" and inserting "1(A)".

The Commentary to §4B1.3 captioned "Application Notes" is amended in Note 2 by striking "(1)" and inserting "(A)"; by striking "(2)" and inserting "(B)"; and by striking "his" and inserting "the defendant's".

The Commentary to §4B1.3 captioned "Background" is amended by striking "he" and inserting "the defendant"; and by striking "his" and inserting "the defendant's".

The Commentary to §5B1.1 captioned "Application Notes", as amended by Amendment

1, submitted to Congress on April 29, 2010, is amended in Note 1 by redesignating subdivisions (a) and (b) as (A) and (B).

The Commentary to §5D1.1 captioned "Application Notes" is amended in Note 1 by redesignating subdivisions (1) through (5) as (A) through (E).

The Commentary to §5E1.5 captioned "Background" is amended by striking "1302c-9" and inserting "1320c-9".

The Commentary to §5G1.2 captioned "Application Notes" is amended in Note 1 in the second paragraph by striking "(1)" and inserting "(A)" and by striking "(2)" and inserting "(B)".

The Commentary to §5G1.3 captioned "Application Notes" is amended in Note 2(C) by striking "Judgement" and inserting "Judgment".

The Commentary to §7B1.4 captioned "Application Notes" is amended in Note 2 by striking "Adequacy" and inserting "Departures Based on Inadequacy"; and in Note 3 by striking "he" and inserting "the defendant".

The Commentary to §8A1.2 captioned "Application Notes" is amended in Note 2 by striking "and" after "Procedures" and inserting a comma; by inserting ", and Crime

Victims' Rights" after "Agreements"; and in Note 3 by redesignating subdivisions (a) through (j) as subdivisions (A) through (J).

Reason for Amendment: This amendment makes certain technical and conforming changes to commentary in the Guidelines Manual.

First, the amendment makes certain technical and conforming changes in connection with the amendments that the Commission submitted to Congress on April 29, 2010. See 75 Fed. Reg. 27388 (May 14, 2010). Those conforming changes are as follows:

- (1) Amendment 8 expanded the scope of §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources) to cover not only cultural heritage resources, but also paleontological resources. To reflect this expanded scope, conforming changes are made to §2B1.1 (Theft, Property Destruction, and Fraud), Application Notes 1 and 3.
- (2) Amendment 9 made a technical change to §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition), Application Note 10, to correct an inaccurate citation. To address a parallel inaccurate citation in §2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), Application Note 9, a parallel

technical change is made there.

- (3) Amendment 5 eliminated the use of "recency" points in calculating the criminal history score. A conforming change is made in §2P1.1 (Escape, Instigating or Assisting Escape), Application Note 5, to delete an obsolete reference to "recency."

Second, the amendment makes certain other stylistic and clerical changes to commentary in the Guidelines Manual. It amends §3A1.2 (Official Victim), Application Note 3, to provide an accurate reference to an enhancement in the robbery guideline. It amends §3C1.1 (Obstructing or Impeding the Administration of Justice), Application Note 4, to replace the obsolete term "magistrate" with the term "magistrate judge." It amends §5E1.5 (Costs of Prosecution), Background, to correct a typographical error in a statutory citation. It amends §7B1.4 (Term of Imprisonment), Application Note 2, and §8A1.2 (Application Instructions - Organizations), Application Note 2, to provide accurate references to guideline titles. Finally, it makes certain other stylistic changes to promote stylistic consistency and gender neutrality.