

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, 2013.

SUMMARY: On April 30, 2013, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2013, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the Federal Register. 78 FR 26425 (May 6, 2013). The Commission has made technical and conforming amendments, set forth in this notice, to commentary provisions and policy statements related to those amendments.

DATES: The Commission has specified an effective date of November 1, 2013, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, 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 and policy statements 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 and policy statements in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary and policy statements are necessary. This notice sets forth technical and conforming amendments to commentary and policy statements that will become effective on November 1, 2013.

AUTHORITY: USSC Rules of Practice and Procedure 4.1.

Patti B. Saris,

Chair

1. Amendment:

The Commentary to §1B1.8 captioned "Application Notes" is amended in Note 3 by striking "(Inadmissibility of Pleas" and inserting "(Pleas".

The Commentary to §2M3.1 captioned "Application Notes" is amended in Note 1 by striking "12958" and inserting "13526".

The Commentary to §8B2.1 captioned "Background" is amended by striking "805(a)(2)(5)" and inserting "805(a)(5)".

The Commentary to §8D1.2 captioned "Application Note" is amended in Note 1 by striking "3561(b)" and inserting "3561(c)".

Reason for Amendment:

This proposed amendment makes certain technical changes to Commentary in the Guidelines Manual. The changes amend—

- (1) Application Note 3 to §1B1.8 (Use of Certain Information) to reflect a change to the heading of Rule 410 of the Federal Rules of Evidence;

- (2) Application Note 1 to §2M3.1 (Gathering or Transmitting National Defense Information to Aid a Foreign Government) to ensure that the Executive Order to which it refers is the most recent Executive Order; and
- (3) the Background Commentary to §8B2.1 (Effective Compliance and Ethics Program) and Application Note 1 to §8D1.2 (Term of Probation - Organizations) to correct typographical errors in citations to certain statutes.

2. Amendment:

The Commentary to §1B1.11 captioned "Background" is amended in the first paragraph by striking "Although aware" and all that follows through "punishment." and inserting "However, the Supreme Court has held that the ex post facto clause applies to sentencing guideline amendments that subject the defendant to increased punishment. See Peugh v. United States, 133 S. Ct. 2072, 2078 (2013) (holding that 'there is an ex post facto violation when a defendant is sentenced under Guidelines promulgated after he committed his criminal acts and the new version provides a higher applicable Guidelines sentencing range than the version in place at the time of the offense')."; and

in the paragraph that begins "Subsection (b)(3)" by striking ", cert. denied, 493 U.S. 1062 (1990)".

Reason for Amendment:

The Commission's policy statement at §1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing) provides that the court should apply the Guidelines Manual in effect on the date the defendant is sentenced unless the court determines that doing so would violate the ex post facto clause, in which case the court shall apply the Guidelines Manual in effect on the date the offense of conviction was committed. See §1B1.11(a), (b)(1).

This proposed amendment updates the Background Commentary to §1B1.11 to reflect the Supreme Court's decision in Peugh v. United States, 133 S. Ct. 2072 (2013), which held that "there is an ex post facto violation when a defendant is sentenced under Guidelines promulgated after he committed his criminal acts and the new version provides a higher applicable Guidelines sentencing range than the version in place at the time of the offense." Id. at 2078. The amendment inserts new language to refer to the Supreme Court's decision in Peugh and deletes obsolete language.