

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities. Request for public comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the United States Sentencing Commission is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2010.

DATE: Public comment should be received on or before August 24, 2009.

ADDRESS: Send comments to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2-500, South Lobby, Washington, DC 20002-8002, Attention: Public Affairs - Priorities Comment.

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

Telephone: (202) 502-4590.

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).

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2010. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2010. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2010.

As so prefaced, the Commission has identified the following tentative priorities:

(1) Continuation of its efforts, in light of recent Supreme Court jurisprudence and pursuant to the Commission's ongoing authority and responsibility under 28 U.S.C. § 995(a)(21), to solicit information regarding federal sentencing practices, including through ongoing regional public hearings. The Commission has held regional public hearings in Atlanta, GA (February

10-11, 2009) and Palo Alto, CA (May 27-28, 2009) and intends to hold additional regional public hearings in New York, NY (July 9-10, 2009), Chicago, IL (September 9-10, 2009), Denver, CO (October 20-21, 2009), Austin, TX (November 19-20, 2009), and Phoenix, AZ (January 20-21, 2010). The Commission is soliciting information at these regional public hearings on topics that include the manner in which United States v. Booker and subsequent Supreme Court decisions have affected federal sentencing practices and appellate review of those practices, the role of the federal sentencing guidelines, and recommendations, if any, for appropriate revisions to federal sentencing policy. The Commission anticipates that it will compile and publish the information and testimony received at these regional public hearings and issue a report with respect to its findings.

(2) Continuation of its work on federal sentencing policy with the congressional, executive, and judicial branches of the government, and other interested parties, in light of United States v. Booker and subsequent Supreme Court decisions, possibly including (A) an evaluation of the impact of those decisions on the federal sentencing guideline system; (B) development of amendments to the federal sentencing guidelines; (C) development of recommendations for legislation regarding federal sentencing policy; (D) a study of, and possible report to Congress on, statutory mandatory minimum penalties, including a review of the operation of the “safety valve” provision at 18 U.S.C. § 3553(e); and (E) a study and report on the appellate standard of review applicable to post-Booker federal sentencing decisions.

(3) A review of departures within the guidelines, including (A) a review of the extent to which pertinent statutory provisions prohibit, discourage, or encourage certain factors as forming the basis for departure from the guideline sentence; and (B) possible revisions to the departure provisions in the Guidelines Manual, including in Chapter Two and in Parts H and K of Chapter Five, in light of that review and any other information coming to the Commission's attention, as well as potential technical and conforming amendments to the Guidelines Manual to facilitate ease of use.

(4) Continued study of, and a possible report on, alternatives to incarceration, including (A) a study of sentencing alternatives that may be appropriate at the time of the original sentencing; and (B) consideration of any potential changes to the zones incorporated in the Sentencing Table in Chapter Five and/or other changes to the guidelines that might be appropriate in light of the information obtained from that study.

(5) Continuation of its work with Congress and other interested parties on cocaine sentencing policy to implement the recommendations set forth in the Commission's 2002 and 2007 reports to Congress, both entitled Cocaine and Federal Sentencing Policy, and to develop appropriate guideline amendments in response to any related legislation.

(6) Continuation of its multi-year study of the statutory and guideline definitions of "crime of violence", "aggravated felony", "violent felony", and "drug trafficking crime", including an examination of relevant circuit conflicts regarding whether any offense is

categorically a "crime of violence", "aggravated felony", "violent felony", or "drug trafficking crime" for purposes of triggering an enhanced sentence under certain federal statutes and guidelines. This study may culminate in guideline amendments and/or a report to Congress recommending statutory changes.

(7) Resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. § 991(b)(1)(B) and Braxton v. United States, 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts.

(8) Multi-year review of the guidelines and their application to human rights offenses, including genocide under 18 U.S.C. § 1091, war crimes under 18 U.S.C. § 2441, torture and maiming to commit torture under 18 U.S.C. §§ 2340A and 114, respectively, and child soldier offenses under 18 U.S.C. § 2442, and possible promulgation of guidelines or guideline amendments with respect to these offenses.

(9) Review of child pornography offenses, and possible promulgation of guideline amendments and/or a report to Congress as a result of such review. It is anticipated that any such report would include (A) a review of the incidence of, and reasons for, departures and variances from the guideline sentence; (B) a compilation of studies on, and analysis of, recidivism by child pornography offenders; and (C) recommendations to Congress on any statutory changes that may be appropriate.

(10) Consideration of miscellaneous guideline application issues including (A) clarification of the extent to which restitution is mandatory or discretionary in various circumstances; (B) examination of, and possible guideline amendments relating to, the computation of criminal history points under §4A1.1(e); and (C) other miscellaneous issues coming to the Commission's attention from case law and other sources.

(11) Implementation of crime legislation enacted during the 111th Congress warranting a Commission response.

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2010. To the extent practicable, public comment should include the following: (1) a statement of the issue, including, where appropriate, the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

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

Ricardo H. Hinojosa,

Acting Chair