

**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, 2011.

**DATE:** Public comment should be received on or before August 18, 2010.

**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) 502-4597.

**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, 2011. 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, 2011. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2011.

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

(1) Continuation of its work with the congressional, executive, and judicial branches of government, and other interested parties, to study the manner in which United States v. Booker, 543 U.S. 220 (2005), and subsequent Supreme Court decisions have affected federal sentencing practices, the appellate review of those practices, and the role of the federal sentencing guidelines. The Commission anticipates that it will issue a report with respect to its findings,

possibly including (A) an evaluation of the impact of those decisions on the federal sentencing guideline system; (B) development of recommendations for legislation regarding federal sentencing policy; (C) an evaluation of the appellate standard of review applicable to post-Booker federal sentencing decisions; and (D) possible consideration of amendments to the federal sentencing guidelines. Such findings will be informed by the testimony received at seven regional public hearings the Commission held in 2009-2010, feedback received from the judiciary contained in the Results of Survey of United States District Judges January 2010 through March 2010 issued in June 2010, and other information and input.

(2) Continuation of its study of and, pursuant to the directive in section 4713 of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, Pub. L. 111–84, 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). The findings of the report will be informed by the testimony received at the hearing on statutory mandatory minimum penalties the Commission held on May 27, 2010, the regional public hearings and survey of United States District Judges referred to in paragraph (1), and other information and input.

(3) Study of and, pursuant to the directive in section 107(b) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. 111–195, report to Congress regarding violations of section 5(a) of the United Nations Participation Act of 1945 (22 U.S.C. § 287c(a)), sections 38, 39, and 40 of the Arms Export Control Act (22 U.S.C. §§ 2278, 2279, and 2780), and the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.), including consideration of amendments to §2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services

Without Required Validated Export License) or other guidelines in Part K or Part M of Chapter Two of the Guidelines Manual that might be appropriate in light of the information obtained from such study.

(4) Implementation of the directive in section 10606(a)(2)(A) of the Patient Protection and Affordable Care Act, Pub. L. 111–148, regarding health care fraud offenses and any other crime legislation enacted during the 111th Congress warranting a Commission response.

(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; possible consideration of amending the Drug Quantity Table in §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) across drug types; and development of appropriate guideline amendments in response to any related legislation enacted during the 111th Congress.

(6) Continuation of its review of child pornography offenses and possible 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) possible recommendations to Congress on any statutory changes that may be appropriate.

(7) Continuation of its review of departures within the guidelines, including provisions in Parts H and K of Chapter Five of the Guidelines Manual, and the extent to which pertinent statutory provisions prohibit, discourage, or encourage certain factors as forming the basis for departure from the guideline sentence.

(8) Continuation of its multi-year study of the statutory and guideline definitions of "crime of violence", "aggravated felony", "violent felony", and "drug trafficking offense", including (A) an examination of relevant circuit conflicts regarding whether any offense is categorically a "crime of violence", "aggravated felony", "violent felony", or "drug trafficking offense" for purposes of triggering an enhanced sentence under certain federal statutes and guidelines; (B) possible consideration of an amendment to provide an alternative approach to the "categorical approach", see Taylor v. United States, 495 U.S. 575 (1990); Shepard v. United States, 544 U.S. 13 (2005), for determining the applicability of guideline enhancements; and (C) possible consideration of an amendment to provide that the time period limitations in subsection (e) of §4A1.2 (Definitions and Instructions for Computing Criminal History) apply for purposes of determining the applicability of enhancements in §2L1.2 (Unlawfully Entering or Remaining in the United States).

(9) Consideration of a possible amendment to provide a reduction in the offense level for certain deportable aliens who agree to a stipulated order of deportation.

(10) Examination of, and possible amendments to, the guidelines and policy statements in Part D of Chapter Five of the Guidelines Manual pertaining to supervised release.

(11) Continued study of alternatives to incarceration, including possible consideration of any changes to the Guidelines Manual that might be appropriate in light of the information obtained from that study.

(12) 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.

(13) Multi-year review of the guidelines pertaining to environmental crimes, with particular consideration of whether the fine provisions in Part C of Chapter Eight of the Guidelines Manual should apply to such offenses.

(14) Consideration of miscellaneous guideline application issues coming to the Commission's attention from case law and other sources.

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, 2011. 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.

William K Sessions III

Chair