

**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, 2012.

**DATE:** Public comment should be received on or before August 26, 2011.

**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:** Jeanne Doherty, Office of Legislative and Public Affairs, 202-502-4502.

**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, 2012. 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, 2012. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2012.

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

(1) Continuation of its work on statutory mandatory minimum penalties, including (A) 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); and (B) its 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. §§ 2778, 2779, and 2780), and the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.).

(2) Continuation of its work on implementation of the directives in section 1079A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, regarding securities fraud offenses and fraud offenses relating to financial institutions or federally related mortgage loans; and implementation of any other crime legislation enacted during the 111th or 112th Congress warranting a Commission response.

(3) 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.

(4) Continuation of its multi-year review of §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and possible consideration of amendments to the federal sentencing guidelines for drug offenses.

(5) Continuation of its review of child pornography offenses and 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.

(6) 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) possible consideration of an amendment to specify the types of documents to be considered under 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; (B) 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; and (C) possible report to Congress making recommendations on any statutory changes that may be appropriate to relevant statutes, such as 8 U.S.C. § 1326.

(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 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) 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.

(10) Consideration of (A) §5K2.19 (Post-Sentencing Rehabilitative Efforts) (Policy Statement) in light of Pepper v. United States, 131 S.Ct. 1229 (March 2, 2011); (B) whether to provide a specific reference for N-Benzylpiperazine (BZP) in the Drug Quantity Table in §2D1.1; and (C) any other 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, 2012. 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.

Patti B. Saris

Chair