

UNITED STATES SENTENCING COMMISSION

Proposed Priorities for Amendment Cycle

AGENCY: United States Sentencing Commission.

ACTION: Notice; 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, 2015.

DATES: Public comment should be received on or before **July 29, 2014**.

ADDRESSES: Comments should be sent to the Commission by electronic mail or regular mail. The email address is pubaffairs@ussc.gov. The regular mail address is 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, Public Affairs Officer,
202-502-4502, jdoherty@ussc.gov.

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).

Pursuant to 28 U.S.C. § 994(g), the Commission intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority.

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2015. 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, 2015. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2015.

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

(1) Continuation of its work with Congress and other interested parties on statutory mandatory minimum penalties to implement the recommendations set forth in the Commission's 2011 report to Congress, titled Mandatory Minimum Penalties in the Federal Criminal Justice System, including its recommendations regarding the severity and scope of mandatory minimum penalties, consideration of expanding the "safety valve" at 18 U.S.C. § 3553(f), and elimination of the mandatory "stacking" of penalties under 18 U.S.C. § 924(c), and to develop appropriate guideline amendments in response to any related legislation.

(2) Continuation of its work on economic crimes, including (A) a comprehensive, multi-year study of §2B1.1 (Theft, Property Destruction, and Fraud) and related guidelines, including examination of the loss table, the definition of loss, and role in the offense; (B) a study of offenses involving fraud on the market; (C) a study of antitrust offenses, including examination of the fine provisions in §2R1.1 (Bid-Rigging, Price-Fixing or Market Allocation Agreements Among Competitors); and (D) consideration of any amendments to such guidelines that may be appropriate in light of the information obtained from such studies.

(3) Continuation of its multi-year study of statutory and guideline definitions relating to the nature of a defendant's prior conviction (e.g., "crime of violence," "aggravated felony," "violent felony," "drug trafficking offense," and "felony drug offense") and the impact of such definitions on the relevant statutory and guideline provisions (e.g., career offender, illegal reentry, and armed career criminal), possibly including recommendations to Congress on any

statutory changes that may be appropriate and development of guideline amendments that may be appropriate.

(4) Implementation of the directive to the Commission in section 10 of the Fair Sentencing Act of 2010, Pub. L. 111–220 (enacted August 3, 2010) (requiring the Commission, not later than 5 years after enactment, to "study and submit to Congress a report regarding the impact of the changes in Federal sentencing law under this Act and the amendments made by this Act").

(5) Study of the operation of §3B1.2 (Mitigating Role) and related provisions in the Guidelines Manual (e.g., the "mitigating role cap" in §2D1.1(a)(5)), and consideration of any amendments to the Guidelines Manual that may be appropriate in light of the information obtained from such study.

(6) Study of the guidelines applicable to immigration offenses and related criminal history rules, and consideration of any amendments to such guidelines that may be appropriate in light of the information obtained from such study.

(7) Continuation of its comprehensive, multi-year study of recidivism, including (A) examination of circumstances that correlate with increased or reduced recidivism; (B) possible development of recommendations for using information obtained from such study to reduce costs of incarceration and overcapacity of prisons; and (C) consideration of any amendments to the Guidelines Manual that may be appropriate in light of the information obtained from such study.

(8) Continuation of its multi-year review of federal sentencing practices pertaining to violations of conditions of probation and supervised release, including possible consideration of amending the policy statements in Chapter Seven of the Guidelines Manual.

(9) Continuation of its work with the legislative, executive, and judicial branches of government, and other interested parties, with respect to the Commission's December 2012 report to Congress, titled The Continuing Impact of *United States v. Booker* on Federal Sentencing, and development of appropriate guideline amendments in response to any related legislation.

(10) Continuation of its work with Congress and other interested parties on child pornography offenses to implement the recommendations set forth in the Commission's December 2012 report to Congress, titled Federal Child Pornography Offenses, including (A) possible development of appropriate guideline amendments in response to any related legislation; and (B) possible development of guideline amendments on the issue of victim restitution in light of Paroline v. United States, ___ U.S. ___, 134 S.Ct. 1710 (2014).

(11) Consideration of amending the policy statement pertaining to "compassionate release," §1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons).

(12) Beginning a multi-year effort to simplify the operation of the guidelines, including a review of (A) cross references in the Guidelines Manual, (B) the use of relevant conduct in offenses involving conspiracies, (C) the use of acquitted conduct in applying the guidelines, and (D) the use of departures.

(13) Implementation of any crime legislation enacted during the 113th Congress warranting a Commission response.

(14) 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.

(15) Study of the availability of alternatives to incarceration.

(16) Consideration of any 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, 2015. 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