

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 policy priorities for the amendment cycle ending May 1, 2018.

DATES: Public comment should be received by the Commission on or before **July 31, 2017**.

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: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502-4500, pubaffairs@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).

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2018. The Commission recognizes, however, that other factors, such as the enactment of 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, 2018. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2018.

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

(1) Continuation of its multi-year examination of the overall structure of the guidelines post-Booker, possibly including recommendations to Congress on any statutory changes and development of any guideline amendments that may be appropriate. As part of this examination, the Commission intends to study possible approaches to (A) simplify the operation

of the guidelines, promote proportionality, and reduce sentencing disparities; and

(B) appropriately account for the defendant's role, culpability, and relevant conduct.

(2) Continuation of its multi-year study of offenses involving MDMA/Ecstasy, tetrahydrocannabinol (THC), synthetic cannabinoids (such as JWH-018 and AM-2201), and synthetic cathinones (such as Methylone, MDPV, and Mephedrone), and consideration of any amendments to the Guidelines Manual that may be appropriate. As part of this examination, the Commission more generally intends to study possible approaches to simplify the determination of the most closely related substance under Application Note 6 of the Commentary to §2D1.1.

(3) Continuation of its work with Congress and other interested parties to implement the recommendations set forth in the Commission's 2016 report to Congress, titled Career Offender Sentencing Enhancements, including its recommendations to revise the career offender directive at 28 U.S.C. § 994(h) to focus on offenders who have committed at least one "crime of violence" and to adopt a uniform definition of "crime of violence" applicable to the guidelines and other recidivist statutory provisions.

(4) 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). The Commission also

intends to release a series of publications updating the data in the 2011 report.

(5) 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 promote effectiveness of reentry programs; and (C) consideration of any amendments to the Guidelines Manual that may be appropriate, including possibly amending Chapter Four and Chapter Five to provide lower guideline ranges for “first offenders” generally and to increase the availability of alternatives to incarceration for such offenders at the lower levels of the Sentencing Table.

(6) Implementation of the Bipartisan Budget Act of 2015, Pub. L. 114–74, and any other crime legislation enacted during the 114th or 115th Congress warranting a Commission response.

(7) Continuation of its study of the findings and recommendations contained in the May 2016 Report issued by the Commission’s Tribal Issues Advisory Group and consideration of any amendments to the Guidelines Manual that may be appropriate, including (A) revising how tribal court convictions are addressed in Chapter Four, and (B) providing a definition of “court protection order” that would apply throughout the guidelines.

(8) Examination of Chapter Four, Part A (Criminal History) to study (A) how the guidelines account for prior federal and state convictions resulting from the same criminal

conduct under §4A1.2(a)(2); (B) the treatment of convictions for offenses committed prior to age eighteen; (C) the treatment of revocation sentences under §4A1.2(k); and (D) a possible amendment of §4A1.3 to account for instances in which the time actually served was substantially less than the length of the sentence imposed for a conviction counted in the criminal history score.

(9) Continuation of its study of alternatives to incarceration, including (A) issuing a publication regarding the development of alternative to incarceration programs in federal district courts, and (B) possibly amending the Sentencing Table in Chapter 5, Part A to consolidate Zones B and C, and other relevant provisions in the Guidelines Manual.

(10) 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.

(11) Consideration of any miscellaneous guideline application issues coming to the Commission's attention from case law and other sources, including consideration of whether a defendant's denial of relevant conduct should be considered in determining whether a defendant has accepted responsibility for purposes of §3E1.1.

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, 2018. 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 H. Pryor, Jr.,

Acting Chair