

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, 2019.

DATES: Public comment should be received by the Commission on or before **August 10, 2018**.

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, 2019. Other factors, such as legislation requiring Commission action, may affect the Commission's ability to complete work on any or all identified priorities by May 1, 2019. Accordingly, the Commission may continue work on any or all identified priorities after that date or may decide not to pursue one or more identified priorities.

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 has identified the following tentative priorities:

(1) Continuation of its multiyear examination of the structure of the guidelines post-Booker and consideration of legislative recommendations or guideline amendments to simplify the guidelines, while promoting proportionality and reducing sentencing disparities, and to account appropriately for the defendant’s role, culpability, and relevant conduct.

(2) A multiyear study of synthetic drug offenses committed by organizational defendants, including possible consideration of amendments to Chapter Eight (Sentencing Organizations) to address such offenses.

(3) Continuation of its work with Congress and others to implement the recommendations of the Commission’s 2016 report to Congress, 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 others to implement the recommendations of the Commission’s 2011 report to Congress, 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 preparation of a series of publications updating the data in the report.

(5) Continuation of its comprehensive, multiyear study of recidivism, including the circumstances that correlate with increased or reduced recidivism.

(6) Implementation of any legislation warranting Commission action.

(7) Study of Chapter Four, Part A (Criminal History), focusing on (A) how the guidelines treat revocations under §4A1.2(k) for violations of conditions of supervision for conduct that does not constitute a federal, state, or local offense punishable by a term of imprisonment; and (B) whether unwarranted sentencing disparities arise under the single sentence rule at §4A1.2(a)(2) as a result of differences in state practices.

(8) Resolution of circuit conflicts as warranted, pursuant to the Commission's authority under 28 U.S.C. § 991(b)(1)(B) and Braxton v. United States, 500 U.S. 344 (1991).

(9) Consideration of other miscellaneous issues, including (A) possible amendments to the commentary of §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) in light of Koons v. United States, No. 17-5716 (June 4, 2018); (B) study of the operation of §5H1.6 (Family Ties and Responsibilities (Policy Statement)) with respect to the loss of caretaking or financial support of minors; and (C) study of whether §1B1.13 (Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A) (Policy Statement)) effectively encourages the Director of the Bureau of Prisons to file a motion for compassionate release when "extraordinary and compelling reasons" exist.

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, 2019. 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