

UNITED STATES SENTENCING COMMISSION

Final Priorities for Amendment Cycle

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In June 2018, the Commission published a notice of proposed policy priorities for the amendment cycle ending May 1, 2019. See 83 FR 30477 (June 28, 2018). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

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 Congress not later than the first day of May each year pursuant to 28 U.S.C. § 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy 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 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) 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.

(3) Consideration of possible amendments to §4B1.2 (Definitions of Terms Used in Section 4B1.1) to (A) allow courts to consider the actual conduct of the defendant, rather than only the elements of the offense (*i.e.*, “categorical approach”), in determining whether an offense is a crime of violence or a controlled substance offense; and (B) address various application issues, including the meaning of “robbery” and “extortion,” and the treatment of inchoate offenses and offenses involving an offer to sell a controlled substance.

(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 conduct constituting a violation of a condition of supervision that does not result in an arrest, criminal charge, or conviction for a federal, state, or local offense punishable by a term of imprisonment (other than an arrest for the violation of the condition of supervision itself); and (B) whether a downward departure may be warranted in cases in which prior sentences for misdemeanor and felony offenses arising from the same arrest or criminal conduct are considered separate sentences under §4A1.2(a)(2).

(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 possible amendments to §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) in light of Koons v. United States, 138 S. Ct. 1783 (2018).

AUTHORITY: 28 U.S.C. § 994(a), (o); USSC Rules of Practice and Procedure 5.2.

William H. Pryor Jr.,

Acting Chair