

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities.

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 Commission is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2009.

DATES: Public comment should be received on or before September 8, 2008.

ADDRESSES: 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: Michael Courlander, Public Affairs Officer,

Telephone: (202) 502-4590.

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, 2009. 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 of the tentative priorities by the statutory deadline of May 1, 2009. Accordingly, it may be necessary to continue work on some of these issues beyond the amendment cycle ending on May 1, 2009.

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

(1) Continuation of its work on federal sentencing policy with the congressional, executive, and judicial branches of the government, and other interested parties, in light of United States v. Booker and subsequent Supreme Court decisions, possibly including (A) an evaluation of the impact of those decisions on the federal sentencing guideline system, (B)

development of amendments to the federal sentencing guidelines, (C) development of recommendations for legislation regarding federal sentencing policy, and (D) a study of statutory mandatory minimum penalties;

(2) Consideration of alternatives to incarceration, including preparation and dissemination of information and materials from the "Symposium on Crime and Punishment in the United States: Alternatives to Incarceration," hosted by the Commission on July 14-15, 2008, in Washington, DC;

(3) Implementation of crime legislation enacted during the 110th or 111th Congress warranting a Commission response, including (A) the Court Security Improvement Act of 2007, Pub. L. 110–177; and (B) any other legislation authorizing statutory penalties or creating new offenses that requires incorporation into the guidelines;

(4) Continuation of its work with Congress and other interested parties on cocaine sentencing policy to implement the recommendations set forth in the Commission's 2002 and 2007 reports to Congress, both entitled Cocaine and Federal Sentencing Policy, and to develop appropriate guideline amendments in response to any related legislation;

(5) A multi-year study of the definition of "crime of violence" used in both statutes and guidelines;

(6) Continuation of its efforts, in light of recent Supreme Court jurisprudence and pursuant to the Commission's ongoing authority and responsibility under 28 U.S.C. § 995(a)(17), (18), and (21), to receive feedback and provide expanded training on the federal sentencing guidelines, including possibly holding regional public hearings;

(7) 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; and

(8) Consideration of miscellaneous guideline application issues regarding (A) offenses involving counterfeit bearer obligations of the United States, (B) application of §3C1.3 (Commission of Offense While on Release), and (C) other miscellaneous 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, 2009. Further, with respect to item (7), the Commission requests specific comment regarding what circuit conflict issues it should address. To the extent practicable, public comment should include the following: (1) A statement of the issue, including 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 decisions; 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.

Ricardo H. Hinojosa,

Chair