



October 21, 2003

To Recipients of the Guidelines Manual:

The enclosed emergency amendment to the 2002 Guidelines Manual has been promulgated by the United States Sentencing Commission in response to the Congressional directive in section 401(m) of the "Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003" or "PROTECT Act," Pub. L. 108-21. The PROTECT Act was enacted on April 30, 2003, and directed the Commission, not later than 180 days after the enactment of the Act, to promulgate (1) appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures is substantially reduced, (2) a policy statement authorizing a downward departure of not more than 4 levels if the Government files a motion for such departure pursuant to an early disposition program authorized by the Attorney General and the United States Attorney; and (3) any other necessary conforming amendments, including a revision of paragraph 4(b) of part A of Chapter One and a revision of section 5K2.0 (Grounds for Departure).

The Commission worked hard during a short period of time to gather as much information as possible to inform our deliberations. We conducted an extensive empirical study of downward departures, reviewed departure case law and literature, solicited and weighed public comment, and held two public hearings at which we heard testimony from the Department of Justice, judges, federal defenders and prosecutors, and experts in the criminal law. In the process we considered the particular concerns regarding downward departures raised by Congress in the PROTECT Act as well as the Sentencing Reform Act of 1984 and its legislative history, with particular attention to the role of departures.

The emergency amendment makes several modifications to §5K2.0 (Grounds for Departure), §5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction), §5H1.6 (Family Ties and Responsibilities), §5H1.7 (Role in the Offense), §5H1.8 (Criminal History), §5K2.10 (Victim's Conduct), §5K2.12 (Coercion and Duress), §5K2.13 (Diminished Capacity), §5K2.20 (Aberrant Behavior), §4A1.3 (Departures Based on Inadequacy of Criminal History Category), and §6B1.2 (Standards of Acceptance of Plea Agreements). The amendment also creates one new policy statement, §5K3.1 (Early Disposition Programs), and one new guideline, §1A1.1 (Authority), among other changes.

Under the deadline set by the PROTECT Act, the enclosed amendment is effective on

October 27, 2003, and the Congressional directive necessarily delayed the publication of the 2003 Guidelines Manual. The 2003 edition will include this emergency amendment, the amendments in the Supplement to the 2002 Guidelines Manual effective April 30, 2003, and the regular amendments effective November 1, 2003. We expect the 2003 Guidelines Manual to be delivered early in December 2003.

The enclosed document contains the new October 27 amendment. The Supplement to the 2002 Guidelines Manual effective April 30, 2003 was issued at the end of April. These, together with the 2002 Guidelines Manual (dark teal color), make up the operative Guidelines Manual effective October 27, 2003. The amendments promulgated during the regular amendment cycle with an effective date of November 1, 2003 will be available on the Commission's website, [www.ussc.gov](http://www.ussc.gov), on November 1.

Please be assured that we are working to get you the 2003 Guidelines Manual as quickly as possible. All the component parts of the new manual are available to you in the meantime.

Sincerely,

Judge Diana E. Murphy  
Chair