

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities. 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 priority policy issues for the amendment cycle ending May 1, 2013.

DATES: Public comment should be received on or before July 23, 2012.

ADDRESS: 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: Jeanne Doherty, Office of Legislative and Public Affairs, 202-502-4502.

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, 2013. 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 or all of its identified priorities by the statutory deadline of May 1, 2013. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2013.

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

(1) 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, and to develop appropriate guideline amendments in response to any related legislation.

(2) Continuation of its work with the congressional, executive, and judicial branches of government, and other interested parties, to study the manner in which United States v. Booker, 543 U.S. 220 (2005), and subsequent Supreme Court decisions have affected federal sentencing practices, the appellate review of those practices, and the role of the federal sentencing guidelines. The Commission anticipates that it will issue a report with respect to its findings, possibly including (A) an evaluation of the impact of those decisions on the federal sentencing guideline system; (B) recommendations for legislation regarding federal sentencing policy; (C) an evaluation of the appellate standard of review applicable to post-Booker federal sentencing decisions; and (D) possible consideration of amendments to the federal sentencing guidelines. The Commission also intends to work with the judicial branch and other interested parties to develop enhanced methods for collecting and disseminating information and data about the use of variances and the specific reasons for imposition of such sentences under 18 U.S.C. § 3553(a).

(3) Continuation of its review of child pornography offenses and report to Congress as a result of such review. It is anticipated that any such report would include (A) a review of the incidence of, and reasons for, departures and variances from the guideline sentence; (B) a compilation of studies on, and analysis of, recidivism by child pornography offenders; and (C) possible recommendations to Congress on any statutory and/or guideline changes that may be appropriate.

(4) Continuation of its work on economic crimes, including (A) a comprehensive, multi-year study of §2B1.1 (Theft, Property Destruction, and Fraud) and related guidelines, including examination of the loss table and the definition of loss, and (B) consideration of any amendments to such guidelines that may be appropriate in light of the information obtained from such study.

(5) Continuation of its multi-year study of the statutory and guideline definitions of “crime of violence”, possibly including recommendations to Congress on any statutory changes that may be appropriate and development of guideline amendments that may be appropriate in response to any related legislation.

(6) Undertaking a 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 (C) consideration of any amendments to the Guidelines Manual that may be appropriate in light of the information obtained from such study.

(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.

(8) Implementation of any crime legislation enacted during the 111th or 112th Congress warranting a Commission response.

(9) Consideration of (A) whether any amendments to the Guidelines Manual may be appropriate in light of Setser v. United States, ___ U.S. ___ (March 28, 2012); and (B) any miscellaneous guideline application 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, 2013. 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.

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Chair