

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding technical and conforming amendments to federal sentencing guidelines effective November 1, 2011.

SUMMARY: On April 28, 2011, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2011, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the Federal Register. 76 FR 24960 (May 3, 2011). The Commission has made technical and conforming amendments, set forth in this notice, to commentary provisions related to those amendments.

DATES: The Commission has specified an effective date of November 1, 2011, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Office of Legislative and

Public Affairs, (202) 502-4502.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States government, is authorized by 28 U.S.C. § 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. See 28 U.S.C. § 994(o), (p). Absent an affirmative disapproval by Congress within 180 days after the Commission submits its amendments, the amendments become effective on the date specified by the Commission (typically November 1 of the same calendar year). See 28 U.S.C. § 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary are necessary. This notice sets forth technical and conforming amendments to commentary that will become effective on November 1, 2011.

AUTHORITY: USSC Rules of Practice and Procedure 4.1.

Patti B. Saris,

Chair

1. Amendment: The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 3(A) by striking ", and 2D2.1(b)(1)"; and inserting "and" before "2D1.12(c)(1)".

The Commentary to §2J1.1 captioned "Application Notes" is amended in each of Note 2 and Note 3 by striking "§2B1.1(b)(8)(C)" and inserting "§2B1.1(b)(9)(C)".

The Commentary to §2K2.4 captioned "Application Notes" is amended in Note 4 in the third paragraph by striking "§2K2.1(b)(6)" and inserting "§2K2.1(b)(6)(B)" in both places.

The Commentary following §3D1.5 captioned "Illustrations of the Operation of the Multiple-Count Rules" is amended in Note 3 by striking "§2B1.1(b)(9)" and inserting "§2B1.1(b)(10)".

Reason for Amendment: This amendment makes certain technical and conforming changes in connection with certain recently promulgated amendments. See 76 Fed. Reg.

24960 (May 3, 2011). The technical and conforming changes are as follows:

- (1) Amendment 1 renumbered specific offense characteristics in §2B1.1 (Theft, Property Destruction, and Fraud), including the specific offense characteristic for violation of a prior, specific order (from (b)(8)(C) to (b)(9)(C)) and the specific offense characteristic for sophisticated means (from (b)(9) to (b)(10)). To reflect these renumberings, conforming changes are made to Application Notes 2 and 3 to §2J1.1 (Contempt) and to the Commentary following §3D1.5 (Determining the Total Punishment).
- (2) Amendment 2 amended §2D2.1 (Unlawful Possession; Attempt or Conspiracy) to delete a cross-reference at subsection (b)(1). To reflect this deletion, a conforming change is made to Application Note 3(A) to §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy).
- (3) Amendment 5 renumbered the specific offense characteristic in §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) for using or possessing a firearm in connection with another felony offense from (b)(6) to (b)(6)(B). To reflect this renumbering, conforming changes are made to Application Note 4 to §2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in

Relation to Certain Crimes).