

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In July 2007, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2008. See 72 FR 41795 (July 31, 2007). 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: 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).

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, 2008, and possibly continuing into 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 or all of its identified priorities by the statutory deadline of May 1, 2008. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2008.

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

(1) Implementation of crime legislation enacted during the 110th Congress warranting a Commission response, including (A) the Animal Fighting Prohibition Enforcement Act of 2007, Pub. L. 110-22 ; and (B) any other legislation authorizing statutory penalties or creating new offenses that requires incorporation into the guidelines;

(2) 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;

(3) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on appropriate responses to United States v. Booker and United States v. Rita, including any appropriate amendments to the guidelines or other changes to the Guidelines Manual with respect to those decisions and other cases that may be adjudicated during this amendment cycle, as well as continuation of its monitoring and analysis of post-Booker federal sentencing practices, data, case law, and other feedback, including reasons for departures and variances stated by sentencing courts;

(4) Continuation of its policy work regarding immigration offenses, specifically, offenses sentenced under §§2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States) and implementation of any immigration legislation that may be enacted;

(5) Continuation of its policy work, in light of the Commission's prior and ongoing research on criminal history, to develop and consider possible options that might improve the operation of Chapter Four (Criminal History).

(6) Continuation of guideline simplification efforts with consideration and possible

development of options for guideline amendments that might improve the operation of the sentencing guidelines;

(7) Resolution of a number 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) Consideration of a limited number of miscellaneous guideline application issues, including issues concerning the determination of harm and the definition of "victim" in certain types of cases; the treatment under the guidelines of counterfeit controlled substances, human growth hormone (HGH), Prescription Drug Marketing Act of 1987 (Pub. L. 100-293) offenses, and other food and drug violations; specific concerns regarding application of the Chapter Three enhancements for abuse of trust and obstruction; and other miscellaneous priority issues coming to the Commission's attention; and

(9) Preparation and dissemination, pursuant to the Commission's authority under 28 U.S.C. § 995(a)(12)-(16), of research reports on various aspects of federal sentencing policy and practice, such as updating the Commission's 1991 report to Congress entitled Mandatory Minimum Penalties in the Federal Criminal Justice System and studying alternatives to incarceration, including information on and possible development of any guideline amendments that might be appropriate in response to any research reports.

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

Ricardo H. Hinojosa,

Chair