

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 Commission is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2005.

DATE: Public comment should be received on or before August 5, 2004.

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: 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).

For the amendment cycle ending May 1, 2005, and possibly continuing into the amendment cycle ending May 1, 2006, the Commission has identified the following tentative priorities:

- (1) implementation of crime legislation enacted during the second session of the 108th Congress warranting a Commission response;

- (2) continuation of its policy work regarding immigration offenses, specifically, offenses under §§2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien), and 2L1.2 (Unlawfully Entering or Remaining in the United States), and Chapter Two, Part L, Subpart 2 (Naturalization and Passports),

which also may involve the formation of an ad hoc advisory group on immigration offenses;

(3) continuation of its work on the "15 Year Study," which is composed of a number of projects geared toward analyzing the guidelines in light of the goals of sentencing reform described in the Sentencing Reform Act;

(4) continuation of its multi-year research, policy work, and possible guideline amendments relating to Chapter Four (Criminal History and Criminal Livelihood), which may include (A) assessment of the calculation of criminal history points for first time offenders and offenders who are in the highest criminal history categories; (B) assessment of the criminal history rules for the inclusion or exclusion of certain prior offenses; (C) assessment of the criminal history rules for related cases; and (D) consideration of other application issues relating to simplifying the operation of Chapter Four;

(5) continued review of data regarding the incidence of downward departures and fast-track programs, in view of the PROTECT Act;

(6) continuation of its work with Congress and other interested parties on cocaine sentencing policy in view of the Commission's 2002 report to Congress, Cocaine and Federal Sentencing Policy;

(7) a general review of the firearms guidelines in Chapter Two, Part K (Offenses Involving Public Safety), including an assessment of non-MANPADS destructive devices;

(8) consideration of policy statements pertaining to compassionate release programs;

(9) a general review of, and possible amendments pertaining to, hazardous materials, and possibly other environmental offenses under Chapter Two, Part Q (Offenses Involving the Environment);

(10) continued monitoring of, and/or possible amendments pertaining to, section 5 of the CAN-SPAM Act, Pub. L. 108–187;

(11) other miscellaneous and limited issues pertaining to the operation of the sentencing guidelines, including (A) resolution of a number of circuit conflicts, including the circuit conflict regarding the definition of "felony", as incorporated into §2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons) effective November 1, 2004; (B) continuation of policy work regarding offenses involving gamma-butyrolactone (GBL), a precursor for gamma-hydroxybutyric acid (GHB), sentenced under §2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy); (C) simulated controlled substances; (D) structural issues regarding the Sentencing Table in Chapter Five, Part A, particularly "cliff-like" effects occurring between levels 42 and 43, and a possible adjustment to the offense level computation when the offense level exceeds level 43; (E) commentary regarding the appropriate starting point for departures under §5K1.1 (Substantial Assistance), particularly in cases in which the government has moved for relief from imposition of an otherwise applicable mandatory minimum term of imprisonment; and (F) commentary to §3C1.1

(Obstructing or Impeding the Administration of Justice) regarding encryption; and

(12) amendments to the Commission's Rules of Practice and Procedure regarding retroactivity, public access to Commission materials, and access to nonpublic Commission meetings.

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, 2005, including short- and long-term research issues. To the extent practicable, comments submitted on such issues 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 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.

Vice Chair.