

UNITED STATES SENTENCING COMMISSION

Proposed Priorities for Amendment Cycle

AGENCY: United States Sentencing Commission.

ACTION: Notice; 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, 2017.

DATES: Public comment should be received by the Commission on or before **July 25, 2016**.

ADDRESSES: Comments should be sent to the Commission by electronic mail or regular mail. The email address is pubaffairs@ussc.gov. The regular mail address is 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: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502-4500, pubaffairs@ussc.gov.

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).

Pursuant to 28 U.S.C. § 994(g), the Commission intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority.

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2017. 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, 2017. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2017.

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, including its recommendations regarding the severity and scope of mandatory minimum penalties, consideration of expanding the "safety valve" at 18 U.S.C. § 3553(f), and elimination of the mandatory "stacking" of penalties under 18 U.S.C. § 924(c), and to develop appropriate guideline amendments in response to any related legislation.

(2) Continuation of its multi-year examination of the overall structure of the guidelines post-Booker, possibly including recommendations to Congress on any statutory changes and development of any guideline amendments that may be appropriate. As part of this examination, the Commission intends to study possible approaches to (A) simplify the operation of the guidelines, promote proportionality, and reduce sentencing disparities; and (B) appropriately account for the defendant's role, culpability, and relevant conduct.

(3) Continuation of its study of approaches to encourage use of alternatives to incarceration, including possible consideration of amending the Sentencing Table in Chapter 5, Part A to consolidate and/or expand Zones A, B, and C, and any other relevant provisions in the Guidelines Manual.

(4) Continuation of its multi-year study of statutory and guideline definitions relating to the nature of a defendant's prior conviction (e.g., "crime of violence," "aggravated felony," "violent felony," "drug trafficking offense," and "felony drug offense") and the impact of such

definitions on the relevant statutory and guideline provisions (e.g., career offender, illegal reentry, and armed career criminal), possibly including recommendations to Congress on any statutory changes that may be appropriate and development of guideline amendments that may be appropriate.

(5) Continuation of its 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 promote effectiveness of reentry programs; and (C) consideration of any amendments to the Guidelines Manual that may be appropriate in light of the information obtained from such study.

(6) Study of the findings and recommendations contained in the May 2016 Report issued by the Commission's Tribal Issues Advisory Group, and consideration of any amendments to the Guidelines Manual that may be appropriate in light of the information obtained from such study.

(7) Study of the treatment of youthful offenders under the Guidelines Manual, including possible amendments to Chapter Five, Part H.

(8) Study of the operation of Chapter Four, Part A of the Guidelines Manual, including (A) the feasibility and appropriateness of using the amount of time served by an offender, as opposed to the sentence imposed, for purposes of calculating criminal history under Chapter Four; and (B) the treatment of revocation sentences under §4A1.2(k).

(9) Study of offenses involving 3,4-Methylenedioxy-N-methylcathinone (Methylone) and consideration of any amendments to the Guidelines Manual that may be appropriate in light of the information obtained from such study.

(10) Implementation of the Bipartisan Budget Act of 2015, Pub. L. 114–74, and any other crime legislation enacted during the 114th or 115th Congress warranting a Commission response.

(11) 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.

(12) Consideration of any miscellaneous guideline application issues coming to the Commission’s attention from case law and other sources, including possible consideration of whether a defendant’s denial of relevant conduct should be considered in determining whether a defendant has accepted responsibility for purposes of §3E1.1.

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, 2017. 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.

Patti B. Saris

Chair