



BAC2210-40

UNITED STATES SENTENCING COMMISSION

Final Priorities for Amendment Cycle

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In June 2016, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2017. See 81 FR 37241 (June 9, 2016). 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: 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.

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, 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 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 the use of alternatives to incarceration.

(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.

(8) Examination of Chapter Four, Part A (Criminal History) to (A) study the treatment of revocation sentences under §4A1.2(k), and (B) consider a possible amendment of §4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)) to account for instances in which the time actually served was substantially less than the length of the sentence imposed for a conviction counted under the Guidelines Manual.

(9) Study of offenses involving MDMA/Ecstasy, synthetic cannabinoids (such as JWH-018 and AM-2201), and synthetic cathinones (such as Methylone, MDPV, and Mephedrone), and consideration of any amendments to the Guidelines Manual that may be appropriate in light

of the information obtained from such study.

(10) Possible consideration of whether the weapon enhancement in §2D1.1(b)(1) should be amended to conform to the “safety valve” provision at 18 U.S.C. § 3553(f) and §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases).

(11) Study of environmental offenses involving knowing endangerment resulting from mishandling hazardous or toxic substances, pesticides, or other pollutants, and consideration of any amendments to the Guidelines Manual that may be appropriate in light of the information obtained from such study.

(12) 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.

(13) 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.

(14) 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.

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

Patti B. Saris

Chair

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