



## 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 policy priorities for the amendment cycle ending May 1, 2023.

**DATES:** Public comment should be received by the Commission on or before **October 17, 2022**.

**ADDRESSES:** Comments should be sent to the Commission by electronic mail or regular mail. The email address is [pubaffairs@ussc.gov](mailto: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:** Jennifer Dukes, Senior Public Affairs Specialist, (202) 502-4500, [pubaffairs@ussc.gov](mailto: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).

The Commission provides this notice to identify possible policy priorities for the amendment cycle ending May 1, 2023. Other factors, such as legislation requiring Commission action, may affect the Commission's ability to complete work on any or all identified priorities

by May 1, 2023. Accordingly, the Commission may continue work on any or all identified priorities after that date or may decide not to pursue one or more identified priorities. The Commission invites comment on the proposed priorities set forth below. Public comment should be sent to the Commission as indicated in the **ADDRESSES** section above.

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 proposed priorities for the amendment cycle ending May 1, 2023, are as follows:

(1) Consideration of possible amendments to §1B1.13 (Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A) (Policy Statement)) to (A) implement the First Step Act of 2018 (Pub. L. 115–391); and (B) further describe what should be considered extraordinary and compelling reasons for sentence reductions under 18 U.S.C. § 3582(c)(1)(A).

(2) Consideration of possible amendments to §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)), §2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), and related provisions in the Guidelines Manual, to implement the First Step Act of 2018 (Pub. L. 115–391).

(3) Consideration of possible amendments to §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to (A) implement the Bipartisan Safer Communities Act (Pub. L. 117–159); and (B) make any other changes that may be warranted to appropriately address firearms offenses.

(4) Resolution of circuit conflicts as warranted, pursuant to the Commission’s authority under 28 U.S.C. § 991(b)(1)(B) and Braxton v. United States, 500 U.S. 344 (1991), including the circuit conflicts concerning (A) whether the government may withhold a motion pursuant to subsection (b) of §3E1.1(Acceptance of Responsibility) because a defendant moved to suppress

evidence; and (B) whether an offense must involve a substance controlled by the Controlled Substances Act (21 U.S.C. § 801 et seq.) to qualify as a “controlled substance offense” under subsection (b) of §4B1.2 (Definitions of Terms Used in Section 4B1.1).

(5) Implementation of any legislation warranting Commission action.

(6) Continuation of its multiyear work on §4B1.2 (Definitions of Terms Used in Section 4B1.1), including possible amendments to (A) provide an alternative approach to the “categorical approach” in determining whether an offense is a “crime of violence” or a “controlled substance offense”; and (B) address various application issues, including the meaning of “robbery” and “extortion,” and the treatment of inchoate offenses and offenses involving an offer to sell a controlled substance.

(7) In light of the Commission’s studies on recidivism, consideration of possible amendments to the Guidelines Manual relating to criminal history to address (A) the impact of “status” points under subsection (d) of §4A1.1 (Criminal History Category); and (B) the treatment of defendants with zero criminal history points.

(8) Consideration of possible amendments to the Guidelines Manual addressing 28 U.S.C. § 994(j).

(9) Consideration of possible amendments to the Guidelines Manual to prohibit the use of acquitted conduct in applying the guidelines.

(10) Multiyear study of the Guidelines Manual to address case law concerning the validity and enforceability of guideline commentary.

(11) Continuation of its multiyear examination of the structure of the guidelines post-Booker to simplify the guidelines while promoting the statutory purposes of sentencing.

(12) Multiyear study of court-sponsored diversion and alternatives-to-incarceration programs (e.g., Pretrial Opportunity Program, Conviction And Sentence Alternatives (CASA) Program, Special Options Services (SOS) Program), including consideration of possible amendments to the Guidelines Manual that might be appropriate.

(13) Consideration of other miscellaneous issues, including possible amendments to (A) §3D1.2 (Grouping of Closely Related Counts) to address the interaction between §2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor) and §3D1.2(d); and (B) §5F1.7 (Shock Incarceration Program (Policy Statement)) to reflect that the Bureau of Prisons no longer operates a shock incarceration program.

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

Carlton W. Reeves,

Chair.

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