

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding technical and conforming amendments to federal sentencing guidelines effective November 1, 2014.

SUMMARY: On April 30, 2014, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2014, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the *Federal Register*, 79 FR 25996 (May 6, 2014). The Commission has made technical and conforming amendments, set forth in this notice, to commentary provisions and policy statements related to those amendments.

DATES: The Commission has specified an effective date of November 1, 2014, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Public Affairs Officer, (202) 502-4502, jdoherty@ussc.gov.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. *See* 28 U.S.C. 994(o), (p). Absent an affirmative disapproval by Congress within 180 days after the Commission submits its amendments, the amendments become effective on the date specified by the Commission (typically November 1 of the same calendar year). *See* 28 U.S.C. 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary and policy statements may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary and policy statements in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary

and policy statements are necessary. This notice sets forth technical and conforming amendments to commentary and policy statements that will become effective on November 1, 2014.

Authority: USSC Rules of Practice and Procedure 4.1.

Patti B. Saris,
Chair.

1. Amendment:

Chapter One, Part A, Subpart 2 (Continuing Evolution and Role of the Guidelines) is amended by striking “127 S. Ct. 2456” and inserting “551 U.S. 338”; by striking “2463” and inserting “347-48”; by striking “wholesale,” *id.*,” and inserting “wholesale[,]” *id.* at 348”; by striking “2464” and inserting “350”; by striking “127 S. Ct. at 2465” both places such term appears and inserting “551 U.S. at 351”; by striking “128 S. Ct. 586, 596” and inserting “552 U.S. 38, 49”; by striking “128 S. Ct. at 597” and inserting “552 U.S. at 51”; by striking “*Id.* at 2464” and inserting “*Rita*, 551 U.S. at 350”; by striking “128 S. Ct. at 594” and inserting “552 U.S. at 46”; by striking “128 S. Ct. 558” and inserting “552 U.S. 85”; and by striking “571” and inserting “103”.

The Commentary to § 1B1.1 captioned “Background” is amended by striking “128 S. Ct. 2198, 2200-03” and inserting “553 U.S. 708, 709-16”.

The Commentary to § 1B1.10 captioned “Background” is amended by striking “130 S. Ct. 2683” and inserting “560 U.S. 817”.

The Commentary to § 2M3.1 captioned “Application Notes” is amended by striking “50 U.S.C. § 435 note” and inserting “50 U.S.C. § 3161 note”.

The Commentary to § 5G1.3 captioned “Application Notes” is amended in Note 2(A) by striking “subsection (c)” and inserting “subsection (d)”.

Reason for Amendment:

This proposed amendment makes certain technical changes to the Introduction and the Commentary in the *Guidelines Manual*.

First, the proposed amendment makes clerical changes to provide U.S. Reports citations for certain Supreme Court cases. The changes are made to—

(1) Subpart 2 of Part A of Chapter One (Introduction, Authority, and General Application Principles);

(2) the Background Commentary to § 1B1.1 (Application Instructions); and

(3) the Background Commentary to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)).

Second, the proposed amendment makes a clerical change to Application

Note 1 to § 2M3.1 (Gathering or Transmitting National Defense Information to Aid a Foreign Government) to reflect the editorial reclassification of a section in the United States Code.

Finally, the proposed amendment makes a technical and conforming change to Application Note 2(A) to § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment) to reflect that subsection (c) was redesignated as subsection (d) by Amendment 8 of the amendments submitted by the Commission to Congress on April 30, 2014, 79 FR 25996 (May 6, 2014).

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UNITED STATES SENTENCING COMMISSION

Possible Formation of Tribal Issues Advisory Group

AGENCY: United States Sentencing Commission.

ACTION: Request for public comment on possible formation of Tribal Issues Advisory Group.

SUMMARY: The Commission is interested in forming a new Tribal Issues Advisory Group, on an ad hoc or continuing basis, or establishing other means to study issues that have been raised in recent years related to the operation of the federal sentencing guidelines in Indian Country and areas that have significant American Indian population. Therefore, the Commission hereby requests comment on the merits of forming such a group, including comment on the scope, duration, and potential membership of any such advisory group.

DATES: Public comment should be received on or before October 20, 2014.

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—Tribal Issues Comment.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Public Affairs Officer, 202-502-4502, jdoherty@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). Under 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure, the Commission may create standing or ad hoc advisory groups to facilitate formal and informal input to the Commission. Upon creating an advisory group, the Commission may prescribe the policies regarding the purpose, membership, and operation of the group as the Commission deems necessary or appropriate.

In 2002, the Commission established the Native American Advisory Group (NAAG) with the purpose of considering "any viable methods to improve the operation of the federal sentencing guidelines in their application to Native Americans under the Major Crimes Act." The NAAG was convened as an ad hoc group tasked with writing an interim and a final report. The membership of the advisory group was diverse in terms of geography, tribal affiliation, and professional background, and included federal judges, Assistant United States Attorneys, a United States Probation Officer, an Assistant Federal Public Defender, a Victim/Witness specialist, private legal practitioners, academics, and representatives from the Department of Justice, the Department of Interior, the Bureau of Indian Affairs, the United States Commission on Civil Rights, and the National Indian Gaming Commission.

The Final Report issued by the group in 2003 made specific recommendations on offenses that had a significant percentage of American Indian offenders (manslaughter, sexual abuse, aggravated assault, and the use of alcohol as an aggravating factor), and it encouraged the Commission to continue tribal involvement in the development of federal sentencing policy. (The 2003 Report of the NAAG may be accessed through the Commission's Web site at www.ussc.gov.) For the Commission's amendments in response to this report, see USSG App. C, Amends. 652, 663.

Since the NAAG issued its final report, new issues and concerns have arisen involving American Indian

defendants and victims, and there have been important changes in tribal criminal jurisdiction. For example, in 2010, the Tribal Law and Order Act of 2010 (Pub. L. 111-211) was enacted to address high rates of violent crime in Indian Country by improving criminal justice funding and infrastructure in tribal government, and expanding the sentencing authority of tribal court systems. In 2013, the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113-4) was enacted to expand the criminal jurisdiction of tribes to prosecute, sentence, and convict Indians and non-Indians who assault Indian spouses or dating partners or violate a protection order in Indian Country. It also established new assault offenses and enhanced existing assault offenses. Both Acts increased criminal jurisdiction for tribal courts, but also required more robust court procedures and provided more procedural protections for defendants. For the Commission's response to the Violence Against Women Reauthorization Act of 2013, see Amendment 2 of the amendments submitted to Congress on April 30, 2014, 79 FR 25996 (May 6, 2014).

Furthermore, in 2009 and 2010, the Commission held a series of regional public hearings regarding federal sentencing policy to coincide with the 25th anniversary of the Sentencing Reform Act. At regional hearings in Denver and Phoenix, the Commission heard testimony on Indian Country issues. The testimony expressed concern about the perception in tribal communities that American Indian offenders prosecuted federally receive more severe sentences than other offenders prosecuted at the state level, the disparity in the application of the federal sentencing guidelines on American Indians in Indian Country, and how tribal court convictions are taken into account for purposes of sentencing and risk assessment, among other uses. More recently, the Commission received written submissions and testimony during the public comment period and public hearings on the amendments in response to the Violence Against Women Reauthorization Act of 2013, that expressed the same concerns heard in the testimony at the regional hearings, but also addressed additional

matters for consideration, such as ensuring accountability for Indian and non-Indian offenders who victimize American Indians, the need to better acknowledge tribal court protection orders in the guidelines, and the importance of consultation with tribal communities on sentencing issues that affect them. (The testimony and written submissions are available through the Commission's Web site at www.ussc.gov.)

In 2014, the Commission received a letter from the United States Attorneys who make up the Native American Issues Subcommittee and the Racial Disparities Working Group of the Attorney General's Advisory Group at the Department of Justice. (The letter is available through the Commission's Web site at www.ussc.gov.) The letter urged the Commission to consider "forming a new American Indian Sentencing Advisory Group to study whether American Indian defendants in federal court face disparities in sentencing." It noted that since the NAAG Report of 2003, the issue of potential sentencing disparities has remained a subject of great debate, citing academic research and concerns heard from tribal leaders and members of the Federal Judiciary. The letter also explained that because the NAAG's work was completed prior to the United States Supreme Court decision in *United States v. Booker*, 543 U.S. 220 (2005), further review is appropriate.

In light of this, the Commission is considering whether to form a new Tribal Issues Advisory Group, on an ad hoc or continuing basis, or establishing other means to study the issues that have been raised in recent years. Therefore, the Commission hereby requests comment on the merits of forming such a group, including comment on the scope, duration, and potential membership of any such advisory group.

Public comment should be sent to the Commission as indicated in the **ADDRESSES** section above.

Authority: 28 U.S.C. 994(a), (o), (p), 995; USSC Rules of Practice and Procedure 5.2, 5.4.

Patti B. Saris,

Chair.

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