

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, 2014. 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, 2014. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2014.

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) Review, and possible amendment, of guidelines applicable to drug offenses, including possible consideration of amending the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) across drug types.

(3) Continuation of its work with the congressional, executive, and judicial branches of government, and other interested parties, with respect to the Commission's December 2012 report to Congress, titled *The Continuing Impact of United States v. Booker on Federal Sentencing*, and development of appropriate guideline amendments in response to any related legislation.

(4) Continuation of its work on economic crimes, including (A) a comprehensive, multi-year study of § 2B1.1 (Theft, Property Destruction, and Fraud) and related guidelines,

including examination of the loss table and the definition of loss, and (B) consideration of any amendments to such guidelines that may be appropriate in light of the information obtained from such study.

(5) 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," and "drug trafficking 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.

(6) 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 (C) consideration of any amendments to the *Guidelines Manual* that may be appropriate in light of the information obtained from such study.

(7) Undertaking a multi-year review of federal sentencing practices pertaining to violations of conditions of probation and supervised release, including possible consideration of amending the policy statements in Chapter Seven of the *Guidelines Manual*.

(8) Possible consideration of amending the policy statement pertaining to "compassionate release," § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons).

(9) Continuation of its work with Congress and other interested parties on child pornography offenses to implement the recommendations set forth in the Commission's December 2012 report to Congress, titled *Federal Child Pornography Offenses*, and to develop appropriate guideline amendments in response to any related legislation.

(10) Implementation of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, and any other crime legislation enacted during the 112th or 113th 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.

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

Patti B. Saris,
Chair.

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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, 2013.

SUMMARY: On April 30, 2013, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2013, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the **Federal Register**, 78 FR 26425 (May 6, 2013). 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, 2013, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Public Affairs Officer, (202) 502-4502, pubaffairs@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, 2013.

Authority: USSC Rules of Practice and Procedure 4.1.

Patti B. Saris,
Chair.

1. Amendment

The Commentary to § 1B1.8 captioned “Application Notes” is amended in Note 3 by striking “(Inadmissibility of Pleas)” and inserting “(Pleas)”.

The Commentary to § 2M3.1 captioned “Application Notes” is amended in Note 1 by striking “12958” and inserting “13526”.

The Commentary to § 8B2.1 captioned “Background” is amended by striking “805(a)(2)(5)” and inserting “805(a)(5)”.

The Commentary to § 8D1.2 captioned “Application Note” is amended in Note

1 by striking “3561(b)” and inserting “3561(c)”.

Reason for Amendment

This proposed amendment makes certain technical changes to Commentary in the *Guidelines Manual*. The changes amend—

(1) Application Note 3 to § 1B1.8 (Use of Certain Information) to reflect a change to the heading of Rule 410 of the Federal Rules of Evidence;

(2) Application Note 1 to § 2M3.1 (Gathering or Transmitting National Defense Information to Aid a Foreign Government) to ensure that the Executive Order to which it refers is the most recent Executive Order; and

(3) the Background Commentary to § 8B2.1 (Effective Compliance and Ethics Program) and Application Note 1 to § 8D1.2 (Term of Probation—Organizations) to correct typographical errors in citations to certain statutes.

2. Amendment

The Commentary to § 1B1.11 captioned “Background” is amended in the first paragraph by striking “Although aware” and all that follows through “punishment.” and inserting “However, the Supreme Court has held that the *ex post facto* clause applies to sentencing guideline amendments that subject the defendant to increased punishment. *See Peugh v. United States*, 133 S. Ct. 2072, 2078 (2013) (holding that ‘there is an *ex post facto* violation when a defendant is sentenced under Guidelines promulgated after he

committed his criminal acts and the new version provides a higher applicable Guidelines sentencing range than the version in place at the time of the offense’).”; and in the paragraph that begins “Subsection (b)(3)” by striking “, *cert. denied*, 493 U.S. 1062 (1990)”.

Reason for Amendment

The Commission’s policy statement at § 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing) provides that the court should apply the Guidelines Manual in effect on the date the defendant is sentenced unless the court determines that doing so would violate the *ex post facto* clause, in which case the court shall apply the Guidelines Manual in effect on the date the offense of conviction was committed. *See* § 1B1.11(a), (b)(1).

This proposed amendment updates the Background Commentary to § 1B1.11 to reflect the Supreme Court’s decision in *Peugh v. United States*, 133 S. Ct. 2072 (2013), which held that “there is an *ex post facto* violation when a defendant is sentenced under Guidelines promulgated after he committed his criminal acts and the new version provides a higher applicable Guidelines sentencing range than the version in place at the time of the offense.” *Id.* at 2078. The amendment inserts new language to refer to the Supreme Court’s decision in *Peugh* and deletes obsolete language.

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