

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also provides multiple issues for comment, some of which are contained within proposed amendments.

The specific proposed amendments and issues for comment in this notice are as follows: (1) Proposed amendments that implement directives to the Commission contained in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 ("PROTECT Act"), Public Law 108–21, regarding child pornography and sexual abuse offenses, and related issues for comment; (2) proposed amendments to Chapter Eight (Sentencing of Organizations) to provide a new guideline regarding compliance programs, and related issues for comment; (3) proposed new guideline at § 2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons) that addresses the new offense at 18 U.S.C. 931 pertaining to the possession of body armor by certain prohibited persons; (4) proposed amendments to Chapter Two, Part C (Offenses Involving Public Officials) that increase the penalties for offenses involving public corruption, and related issues for comment; (5) proposed amendments that (A) address the directive in section 608 of the PROTECT Act pertaining to increased penalties for offenses involving gamma hydroxybutyric acid ("GHB"); (B) provide a penalty structure for controlled substance analogues in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt and Conspiracy); (C) add white phosphorous and hypophosphorous acid to the Drug

Quantity Table in § 2D1.1(c); and (D) make various technical changes to §§ 2D1.1, 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical; Attempt and Conspiracy), and Appendix A (Statutory Index), and related issues for comment; (6) proposed amendment to repeal the "mitigating role cap" in § 2D1.1(b)(3) and replace it with an alternative approach, and a related issue for comment; (7) proposed amendments to the homicide and assault guidelines that implement the directive in section 11008(e) of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, and that address proportionality concerns, and related issues for comment; (8) proposed amendments that makes various technical and conforming amendments to the guidelines, and related issues for comment; (9) proposed amendment to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) that increases the penalties for offenses involving man-portable air defense systems ("MANPADS") and other similar destructive devices, and related issues for comment; (10) an issue for comment regarding aberrant behavior; and (11) issues for comment regarding the treatment under the guidelines of offenses involving the illegal transportation of hazardous materials.

DATES: Written public comment regarding the proposed amendments and issues for comment set forth in this notice, including public comment regarding retroactive application of any of the proposed amendments, should be received by the Commission not later than March 1, 2004.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

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 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 of each year pursuant to 28 U.S.C. 994(p).

The Commission seeks comment on the proposed amendments, issues for comment, and any other aspect of the sentencing guidelines, policy statements, and commentary.

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part on comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

The Commission also requests public comment regarding whether the Commission should specify for retroactive application to previously sentenced defendants any of the proposed amendments published in this notice. The Commission requests comment regarding which, if any, of the proposed amendments that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range).

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at www.ussc.gov.

Authority: 28 U.S.C. § 994(a), (o), (p), (x); USSC Rules of Practice and Procedure, Rule 4.4.

Diana E. Murphy,
Chair.

Proposed Amendment 1: Child Pornography and Sexual Abuse of Minors

Synopsis of Proposed Amendment: This proposed amendment contains a number of proposals designed to implement the directives to the Commission regarding child pornography and sexual abuse offenses in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, (the "PROTECT Act"), Public Law 108–21.