

included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: June 9, 2017.

R. Joseph Durbala,
Tax Analyst, IRS.

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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, 2018.

DATES: Public comment should be received by the Commission on or before July 31, 2017.

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—Priorities Comment.

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).

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2018. The Commission recognizes, however, that other factors, such as the enactment

of 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, 2018.

Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2018.

As so prefaced, the Commission has identified the following tentative priorities:

(1) 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.

(2) Continuation of its multi-year study of offenses involving MDMA/Ecstasy, tetrahydrocannabinol (THC), 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. As part of this examination, the Commission more generally intends to study possible approaches to simplify the determination of the most closely related substance under Application Note 6 of the Commentary to Section 2D1.1.

(3) Continuation of its work with Congress and other interested parties to implement the recommendations set forth in the Commission's 2016 report to Congress, titled *Career Offender Sentencing Enhancements*, including its recommendations to revise the career offender directive at 28 U.S.C. 994(h) to focus on offenders who have committed at least one "crime of violence" and to adopt a uniform definition of "crime of violence" applicable to the guidelines and other recidivist statutory provisions.

(4) 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). The Commission also intends to release a series of publications updating the data in the 2011 report.

(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, including possibly amending Chapter Four and Chapter Five to provide lower guideline ranges for "first offenders" generally and to increase the availability of alternatives to incarceration for such offenders at the lower levels of the Sentencing Table.

(6) Implementation of the Bipartisan Budget Act of 2015, Public Law 114-74, and any other crime legislation enacted during the 114th or 115th Congress warranting a Commission response.

(7) Continuation of its 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, including (A) revising how tribal court convictions are addressed in Chapter Four, and (B) providing a definition of "court protection order" that would apply throughout the guidelines.

(8) Examination of Chapter Four, Part A (Criminal History) to study (A) how the guidelines account for prior federal and state convictions resulting from the same criminal conduct under Section 4A1.2(a)(2); (B) the treatment of convictions for offenses committed prior to age eighteen; (C) the treatment of revocation sentences under Section 4A1.2(k); and (D) a possible amendment of Section 4A1.3 to account for instances in which the time actually served was substantially less than the length of the sentence imposed for a conviction counted in the criminal history score.

(9) Continuation of its study of alternatives to incarceration, including (A) issuing a publication regarding the development of alternative to incarceration programs in federal district courts, and (B) possibly amending the Sentencing Table in Chapter 5, Part A to consolidate Zones B and C, and other relevant provisions in the *Guidelines Manual*.

(10) 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.

(11) Consideration of any miscellaneous guideline application issues coming to the Commission's attention from case law and other sources, including consideration of whether a defendant's denial of relevant conduct should be considered in determining whether a defendant has accepted responsibility for purposes of Section 3E1.1.

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2018. To the extent practicable, public comment should include the following: (1) A statement of the issue, including, where appropriate, the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

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

William H. Pryor, Jr.,
Acting Chair.

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Request for public comment.

SUMMARY: In August 2016, the Commission indicated that one of its policy priorities would be the “[s]tudy 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.” See 81 FR 58004 (Aug. 24, 2016). As part of its continuing work on this priority, the Commission is

publishing this request for public comment on issues related to MDMA/Ecstasy and methylone, one of the synthetic cathinones included in the Commission's study. The issues for comment are set forth in the **SUPPLEMENTARY INFORMATION** portion of this notice.

DATES: Public comment regarding the issues for comment set forth in this notice should be received by the Commission not later than August 7, 2017.

ADDRESSES: All written comment should be sent to the Commission by electronic mail or regular mail. The email address for public comment is *PublicComment@ussc.gov*. The regular mail address for public comment is United States Sentencing Commission, One Columbus Circle NE., Suite 2-500, Washington, DC 20002-8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502-4500, *pubaffairs@ussc.gov*.

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In August 2016, the Commission indicated that one of its priorities would be the “[s]tudy 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.” See U.S. Sentencing Comm'n, “Notice of Final Priorities,” 81 FR 58004 (Aug. 24, 2016). The Commission expects that this study will be conducted over a multi-year period, and may solicit comment several times during this period from experts and other members of the public.

On December 19, 2016, the Commission published a request for comment inviting general comment on synthetic cathinones (MDPV, methylone, and mephedrone) and synthetic cannabinoids (JWH-018 and AM-2201), as well as about the application of the factors the

Commission traditionally considers when determining the marijuana equivalencies for specific controlled substances to the substances under study. See U.S. Sentencing Comm'n, “Request for Public Comment,” 81 FR 92021 (Dec. 19, 2016). On April 18, 2017, the Commission held a public hearing relating to this priority. The Commission received testimony from experts on the synthetic drugs related to the study, including testimony about their chemical structure, pharmacological effects, trafficking patterns, and community impact.

As part of its continuing work on this priority, the Commission is publishing this second request for comment specifically focused on issues related to MDMA/Ecstasy and methylone, one of the synthetic cathinones included in the Commission's study. In addition to the substance-specific topics discussed below, the Commission anticipates that its work will continue to be guided by the factors the Commission traditionally considers when determining marijuana equivalencies for specific controlled substances, including their chemical structure, pharmacological effects, legislative and scheduling history, potential for addiction and abuse, the pattern of abuse and harms associated with their abuse, and the patterns of trafficking and harms associated with their trafficking.

MDMA.—MDMA (3,4-Methylenedioxy-methamphetamine) is a Schedule I controlled substance with a chemical structure similar to methamphetamine and the hallucinogen mescaline. See U.S. Sentencing Comm'n, Report to the Congress: MDMA Drug Offenses: Explanation of Recent Guideline Amendments 6-7 (May 2001) (“MDMA Report”), available at http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200105_RtC_MDMA_Drug_Offenses.pdf. MDMA, also known as “ecstasy” or “molly,” was originally developed for therapeutic use, but became a drug of abuse by the late 1970s. *Id.* at 7. Its use results in enhanced feelings of pleasure, relaxation, and self-confidence, while accompanying physical symptoms may include increased heart rate and blood pressure and difficulty regulating body temperature. MDMA is typically marketed and consumed in pill form. *Id.*

MDMA is not specifically listed in the Drug Quantity Table at § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), but it is referenced in the Drug Equivalency Tables. See USSC Section 2D1.1,