

## 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. Notice of hearing.

**SUMMARY:** The Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. The proposed amendments and a synopsis of issues to be addressed are set forth below. The Commission may report amendments to the Congress on or before May 1, 1995. Comment is sought on all proposals, alternative proposals, and any other aspect of the sentencing guidelines, policy statements, and commentary.

**DATES:** The Commission has scheduled a public hearing on these proposed amendments for March 14, 1995, at 9:30 a.m. in the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20002-8002.

Persons interested in attending the public hearing should contact the Commission at a later date to learn the room in which the hearing will take place. Anyone wishing to testify at the public hearing should notify Michael Courlander, Public Information Specialist, at (202) 273-4590 by February 28, 1995.

Public comment, including written testimony for the hearing, should be received by the Commission no later than March 7, 1995, to be considered by the Commission in the promulgation of amendments due to the Congress by May 1, 1995.

**ADDRESSES:** Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2-500, South Lobby, Washington, DC 20002-8002, Attention: Public Information.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Information Specialist, Telephone: (202) 273-4590.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission is empowered under 28 U.S.C. § 994(a) to promulgate sentencing guidelines and policy statements for federal courts. The statute further directs the Commission to review and revise periodically

guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. § 994(o), (p).

Ordinarily, the Administrative Procedure Act rule-making requirements are inapplicable to judicial agencies; however, 28 U.S.C. § 994(x) makes the Administrative Procedure Act rule-making provisions of 5 U.S.C. § 553 applicable to the promulgation of sentencing guidelines by the Commission.

The proposed amendments are presented in one of three formats. First, a number of the amendments are proposed as specific revisions of a guideline, policy statement, or commentary. Second, for some amendments, the Commission has published alternative methods of addressing an issue, shown in brackets. Commentators are encouraged to state their preference among listed alternatives or to suggest a new alternative. Third, the Commission has highlighted certain issues for comment and invites suggestions for specific amendment language.

Section 1B1.10 of the United States Sentencing Commission Guidelines Manual sets forth the Commission's policy statement regarding retroactivity of amended guideline ranges. Comment is requested as to whether any of the proposed amendments should be made retroactive under this policy statement.

Although the amendments below are specifically proposed for public comment and possible submission to the Congress by May 1, 1995, the Commission emphasizes that it welcomes comment on any aspect of the sentencing guidelines, policy statements, and commentary, whether or not the subject of a proposed amendment.

Publication of a proposed amendment or issue for comment signifies only that at least three Commissioners consider the amendment or issue worthy of comment by interested groups and individuals. Publication should not be regarded as an indication that the Commission or any individual Commissioner has formed a view on the merits of the proposed amendment or issue.

**Authority:** 28 U.S.C. § 994(a), (o), (p), (x).  
**Phyllis J. Newton,**  
*Staff Director.*

### I. Amendments Relating to Congressional Directives to the Commission and Other Statutory Changes

#### *Chapter One, Part B (General Application Principles)*

*1. Issue for Comment:* Section 40503 of the Violent Crime Control and Law Enforcement Act of 1994 directs the Commission to conduct a study and consider appropriate guideline amendments relating to offenses in which an HIV-infected individual engages in sexual activity with knowledge of his or her HIV infection status and with the intent through such sexual activity to expose another to HIV. A report is to be submitted to Congress by March 13, 1995. The Commission invites comment on any aspect of this issue. In addition, the Commission invites comment on whether the infectious bodily fluid of a person should be defined expressly as a "dangerous weapon." The Commission further invites comment on whether the definitions relating to serious bodily injury and permanent or life-threatening bodily injury should be amended to expressly include infection by HIV-infected bodily fluid. The Commission also invites comment on whether basing enhanced penalties for willful sexual exposure to HIV will have any implications for HIV testing behavior.

#### *Chapter Two, Part A (Offenses Against the Person)*

*2. Issue for Comment:* Section 170201 of the Violent Crime Control and Law Enforcement Act of 1994 establishes a new offense with a five-year statutory maximum for an assault against a person under the age of 16 years that results in substantial bodily injury (18 U.S.C. § 113(a)(7)). Substantial bodily injury is defined as "bodily injury that involves a temporary but substantial disfigurement or a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty." The Commission invites comment as to whether § 2A2.3 provides an adequate penalty for a violation of 18 U.S.C. § 113(a)(7). If not, how and to what extent should § 2A2.3 be amended? For example, should the Commission amend § 2A2.3(a)(1) by deleting "physical contact" and inserting "bodily injury," thus providing a base offense level of six for bodily injury or weapon possession with a threat of use and a base offense level of three for other cases? Should the