

United States Sentencing Commission
TRIBAL ISSUES ADVISORY GROUP

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Dear Tribal Leader:

Last year, acting upon the recommendations in the report prepared by an ad hoc Tribal Issues Advisory Group, the United States Sentencing Commission (Commission) took several actions. First, the Commission announced the formation of a standing Tribal Issues Advisory Group (TIAG). The TIAG's charter describes the purpose of the group to include providing the Commission with its views on federal sentencing issues relating to American Indian and Alaska Native defendants and victims, and to offenses committed in Indian country; engaging in meaningful consultation and outreach with tribes, tribal governments, and tribal organizations regarding federal sentencing issues that have tribal implications; and disseminating information regarding federal sentencing issues to tribes, tribal government, and tribal organizations..

Second, the Commission has published a proposed amendment to the Sentencing Guidelines. Among other things, the proposed amendment provides guidance to federal courts on to whether to consider tribal convictions in sentencing on a federal criminal case. Currently the guidelines do not include any such guidance.

The Commission invites you to consult with the TIAG about the specifics of the proposed amendment. The attached framing paper provides additional background on the Commission, the federal sentencing guidelines, and topics relevant to the sentencing of defendants from the Native American and Alaska native tribes.

The telephonic consultation will occur on September 25, 2017 at 1 p.m. (EDT). To register and receive call-in information, please send an email with your name and Tribal affiliation to consultation @ussc.gov. In addition, the Commission will accept written comments until the close of business on October 10, 2017. Written comments can be submitted via email to pubaffairs@ussc.gov or (if necessary) via regular mail to:

U.S. Sentencing Commission
Office of Legislative and Public Affairs
One Columbus Circle, NE
Suite 2-500
Washington, DC 20002-8002

If you have any questions about the consultation, or if you have trouble with registration or submitting comments, please contact the Commission's Senior Legislative and Public Affairs Specialist, Sekemia Mwonyonyi, at 202-502-4544 or SMwonyonyi@ussc.gov.

I hope that you will be able to participate in this important government-to-government consultation, and I look forward to working with you on these important issues.

Very truly ours,

A handwritten signature in black ink, reading "Ralph R. Erickson". The signature is fluid and cursive, with the first name "Ralph" being more prominent and the last name "Erickson" following in a similar style.

Ralph R. Erickson
Judge, District of North Dakota
Chair, Tribal Issues Advisory Group

TRIBAL CONSULTATION ON THE WORK OF THE U.S. SENTENCING COMMISSION

Background on the Commission and the Sentencing Guidelines

The United States Sentencing Commission (Commission) is an independent agency in the judicial branch. Its principal purposes are: (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues, serving as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public.

The Commission was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. The sentencing guidelines established by the Commission are designed to:

- incorporate the purposes of sentencing (*i.e.*, just punishment, deterrence, incapacitation, and rehabilitation;
- provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating and mitigating factors;
- reflect to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

How the Guidelines Work

The sentencing guidelines take into account both the severity of the offense and the defendant's criminal record to assign a guideline range for a criminal sentence. The guideline range is determined by consideration of several factors unique to the crime (to determine the "offense level") and the defendant (to determine the "criminal history category"). Using the Sentencing Table, a copy of which is attached to this paper, the intersection of the defendant's offense level and criminal history category will determine the applicable guideline range in a criminal case. The Supreme Court of the United States has stated that the guidelines must serve as "the starting point and initial benchmark" for the sentencing of a federal defendant.

A judge may depart upward or downward from the guideline range if the judge determines that a range fails to adequately meet the purposes of sentencing, and after consideration of several statutory factors set forth in 18 U.S.C. §3553(a), namely : (1) the nature and circumstances of the offense, and the history and characteristics of the defendant; (2) the purposes of sentencing;(3) the kinds of sentences available; (4) the sentencing guidelines; (5) the guideline policy statements; (6) avoiding unwarranted sentencing disparities; and (7) the need to provide restitution.

The Tribal Issues Advisory Group

Under the Sentencing Reform Act, the Commission is charged with the ongoing responsibilities of evaluating the effects of the sentencing guidelines on the criminal justice system, recommending to Congress appropriate modifications of substantive criminal law and sentencing procedures, and establishing a research and development program on sentencing issues.

As part of those duties, in 2016, the Commission formed a standing Tribal Issues Advisory Group (TIAG). The TIAG is comprised of 9 members, including representation from several tribal nations. The membership includes one federal judge, one appointee each from the Department of Justice and the Department of the Interior, a Federal Defender representative, a tribal court judge, and four at-large members. The complete list of TIAG members is attached to this paper.

The TIAG must provide public comment to the Commission on the proposed guideline amendment that was published in August, 2017. The TIAG now seeks tribal input to inform its work about the criteria listed in the proposed amendment for guidance to the courts on whether to consider tribal convictions when sentencing a defendant. In particular, the TIAG seeks input on whether the criteria should include a requirement that the tribe's preference about use of its tribal convictions must be taken into consideration, and if that criteria is included in the amendment, how would tribes express such a reference to federal courts.

PROPOSED AMENDMENT: TRIBAL ISSUES

Synopsis of Proposed Amendment: This proposed amendment is the result of the Commission's 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. See Report of the Tribal Issues Advisory Group (May 16, 2016), at <http://www.ussc.gov/research/research-publications/report-tribal-issues-advisory-group>.

In 2015, the Commission established the Tribal Issues Advisory Group (TIAG) as an ad hoc advisory group to the Commission. Among other things, the Commission tasked the TIAG with studying the following issues—

- (A) the operation of the federal sentencing guidelines as they relate to American Indian defendants and victims and to offenses committed in Indian Country, and any viable methods for revising the guidelines to (i) improve their operation or (ii) address particular concerns of tribal communities and courts;
- (B) whether there are disparities in the application of the federal sentencing guidelines to American Indian defendants, and, if so, how to address them;
- (C) the impact of the federal sentencing guidelines on offenses committed in Indian Country in comparison with analogous offenses prosecuted in state courts and tribal courts;
- (D) the use of tribal court convictions in the computation of criminal history scores, risk assessment, and for other purposes;
- (E) how the federal sentencing guidelines should account for protection orders issued by tribal courts; and
- (F) any other issues relating to American Indian defendants and victims, or to offenses committed in Indian Country, that the TIAG considers appropriate. See Tribal Issues Advisory Group Charter § 1(b)(3).

The Commission also directed the TIAG to present a final report with its findings and recommendations, including any recommendations that the TIAG considered appropriate on potential amendments to the guidelines and policy statements. See *id.* § 6(a). On May 16, 2016, the TIAG presented to the Commission its final report. Among the recommendations suggested in the Report, the TIAG recommends revisions to the *Guidelines Manual* relating to the use of tribal court convictions in the computation of criminal history points and how the guidelines should account for protection orders issued by tribal courts.

The proposed amendment contains two parts. The Commission is considering whether to promulgate one or both of these parts, as they are not mutually exclusive.

(A) Tribal Court Convictions

Pursuant to Chapter Four, Part A (Criminal History), sentences resulting from tribal court convictions are not counted for purposes of calculating criminal history points, but may be considered under §4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)). *See* USSG §4A1.2(i). The policy statement at §4A1.3 allows for upward departures if reliable information indicates that the defendant's criminal history category substantially underrepresents the seriousness of the defendant's criminal history. Among the grounds for departure, the policy statement includes "[p]rior sentences not used in computing the criminal history category (e.g., sentences for foreign and tribal offenses)." USSG §4A1.3(a)(2)(A).

As noted in the TIAG's report, in recent years there have been important changes in tribal criminal jurisdiction. In 2010, Congress enacted the Tribal Law and Order Act of 2010 (TLOA), Pub. L. 111–211, 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 (VAWA Reauthorization), 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 statutes increased criminal jurisdiction for tribal courts, but also required more robust court procedures and provided more procedural protections for defendants.

The TIAG notes in its report that "[w]hile some tribes have exercised expanded jurisdiction under TLOA and the VAWA Reauthorization, most have not done so. Given the lack of tribal resources, and the absence of significant additional funding under TLOA and the VAWA Reauthorization to date, it is not certain that more tribes will be able to do so any time soon." TIAG Report, at 10–11. Members of the TIAG describe their experience with tribal courts as "widely varied," expressing among their findings certain concerns about funding, perceptions of judicial bias or political influence, due process protections, and access to tribal court records. *Id.* at 11–12.

The TIAG report highlights that "[t]ribal courts occupy a unique and valuable place in the criminal justice system," while also recognizing that "[t]ribal courts range in style". *Id.* at 13. According to the TIAG, the differences in style and the concerns expressed above "make it often difficult for a federal court to determine how to weigh tribal court convictions in rendering a sentencing decision." *Id.* at 11. It also asserts that "taking a single approach to the consideration of tribal court convictions would be very difficult and could potentially lead to a disparate result among Indian defendants in federal courts." *Id.* at 12. Thus, the TIAG concludes that tribal convictions should not be counted for purposes of determining criminal history points pursuant to Chapter Four, Part A, and that "the current use of USSG §4A1.3 to depart upward in individual cases continues to allow the best formulation of 'sufficient but not greater than necessary' sentences for defendants, while not increasing sentencing disparities or introducing due process concerns." *Id.* Nevertheless, the TIAG recommends that the Commission amend §4A1.3 to provide guidance and a more structured analytical framework for courts to consider when determining whether a departure is appropriate based on a defendant's record of tribal court convictions. The guidance

recommended by the TIAG “collectively . . . reflect[s] important considerations for courts to balance the rights of defendants, the unique and important status of tribal courts, the need to avoid disparate sentences in light of disparate tribal court practices and circumstances, and the goal of accurately assessing the severity of any individual defendant’s criminal history.” *Id.* at 13.

The proposed amendment would amend the Commentary to §4A1.3 to set forth a non-exhaustive list of factors for the court to consider in determining whether, and to what extent, an upward departure based on a tribal court conviction is appropriate.

Issues for comment are also provided.

(B) Court Protection Orders

Under the *Guidelines Manual*, the violation of a court protection order is a specific offense characteristic in three Chapter Two offense guidelines. *See* USSG §§2A2.2 (Aggravated Assault), 2A6.1 (Threatening or Harassing Communications; Hoaxes; False Liens), and 2A6.2 (Stalking or Domestic Violence). The Commission has heard concerns that the term “court protection order” has not been defined in the guidelines and should be clarified.

The TIAG notes in its report the importance of defining “court protection order” in the guidelines, because—

[a] clear definition of that term will ensure that orders used for sentencing enhancements are the result of court proceedings assuring appropriate due process protections, that there is consistent identification and treatment of such orders, and that such orders issued by tribal courts receive treatment consistent with that of other issuing jurisdictions. TIAG Report, at 14.

The TIAG recommends that the Commission adopt a definition of “court protection order” that incorporates the statutory provisions at 18 U.S.C. §§ 2265 and 2266. Section 2266(5) provides that the term “protection order” includes:

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking. 18 U.S.C. § 2266(5).

Section 2265(b) provides that

A protection order issued by a State, tribal, or territorial court is consistent with this subsection if—

(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights. 18 U.S.C. § 2265(b).

The proposed amendment would amend the Commentary to §1B1.1 (Application Instructions) to provide a definition of court protection order derived from 18 U.S.C. § 2266(5), with a provision that it must be consistent with 18 U.S.C. § 2265(b).

An issue for comment is also provided.

Proposed Amendment:

(A) Tribal Court Convictions

§4A1.3. Departures Based on Inadequacy of Criminal History Category (Policy Statement)

(a) UPWARD DEPARTURES.—

(1) STANDARD FOR UPWARD DEPARTURE.—If reliable information indicates that the defendant's criminal history category substantially underrepresents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, an upward departure may be warranted.

(2) TYPES OF INFORMATION FORMING THE BASIS FOR UPWARD DEPARTURE.—The information described in subsection (a)(1) may include information concerning the following:

(A) Prior sentence(s) not used in computing the criminal history category (*e.g.*, sentences for foreign and tribal offenses~~convictions~~).

- (B) Prior sentence(s) of substantially more than one year imposed as a result of independent crimes committed on different occasions.
 - (C) Prior similar misconduct established by a civil adjudication or by a failure to comply with an administrative order.
 - (D) Whether the defendant was pending trial or sentencing on another charge at the time of the instant offense.
 - (E) Prior similar adult criminal conduct not resulting in a criminal conviction.
- (3) PROHIBITION.—A prior arrest record itself shall not be considered for purposes of an upward departure under this policy statement.
- (4) DETERMINATION OF EXTENT OF UPWARD DEPARTURE.—
- (A) IN GENERAL.—Except as provided in subdivision (B), the court shall determine the extent of a departure under this subsection by using, as a reference, the criminal history category applicable to defendants whose criminal history or likelihood to recidivate most closely resembles that of the defendant's.
 - (B) UPWARD DEPARTURES FROM CATEGORY VI.—In a case in which the court determines that the extent and nature of the defendant's criminal history, taken together, are sufficient to warrant an upward departure from Criminal History Category VI, the court should structure the departure by moving incrementally down the sentencing table to the next higher offense level in Criminal History Category VI until it finds a guideline range appropriate to the case.
- (b) DOWNWARD DEPARTURES.—
- (1) STANDARD FOR DOWNWARD DEPARTURE.—If reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted.
 - (2) PROHIBITIONS.—
 - (A) CRIMINAL HISTORY CATEGORY I.—A departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited.

- (B) ARMED CAREER CRIMINAL AND REPEAT AND DANGEROUS SEX OFFENDER.—A downward departure under this subsection is prohibited for (i) an armed career criminal within the meaning of §4B1.4 (Armed Career Criminal); and (ii) a repeat and dangerous sex offender against minors within the meaning of §4B1.5 (Repeat and Dangerous Sex Offender Against Minors).
- (3) LIMITATIONS.—
 - (A) LIMITATION ON EXTENT OF DOWNWARD DEPARTURE FOR CAREER OFFENDER.—The extent of a downward departure under this subsection for a career offender within the meaning of §4B1.1 (Career Offender) may not exceed one criminal history category.
 - (B) LIMITATION ON APPLICABILITY OF §5C1.2 IN EVENT OF DOWNWARD DEPARTURE TO CATEGORY I.—A defendant whose criminal history category is Category I after receipt of a downward departure under this subsection does not meet the criterion of subsection (a)(1) of §5C1.2 (Limitation on Applicability of Statutory Maximum Sentences in Certain Cases) if, before receipt of the downward departure, the defendant had more than one criminal history point under §4A1.1 (Criminal History Category).
 - (c) WRITTEN SPECIFICATION OF BASIS FOR DEPARTURE.—In departing from the otherwise applicable criminal history category under this policy statement, the court shall specify in writing the following:
 - (1) In the case of an upward departure, the specific reasons why the applicable criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.
 - (2) In the case of a downward departure, the specific reasons why the applicable criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

Commentary

Application Notes:

1. **Definitions.**—For purposes of this policy statement, the terms “*depart*”, “*departure*”, “*downward departure*”, and “*upward departure*” have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).
2. **Upward Departures.**—

(A) **Examples.**—An upward departure from the defendant's criminal history category may be warranted based on any of the following circumstances:

- (i) A previous foreign sentence for a serious offense.
- (ii) Receipt of a prior consolidated sentence of ten years for a series of serious assaults.
- (iii) A similar instance of large scale fraudulent misconduct established by an adjudication in a Securities and Exchange Commission enforcement proceeding.
- (iv) Commission of the instant offense while on bail or pretrial release for another serious offense.

(B) **Upward Departures from Criminal History Category VI.**—In the case of an egregious, serious criminal record in which even the guideline range for Criminal History Category VI is not adequate to reflect the seriousness of the defendant's criminal history, a departure above the guideline range for a defendant with Criminal History Category VI may be warranted. In determining whether an upward departure from Criminal History Category VI is warranted, the court should consider that the nature of the prior offenses rather than simply their number is often more indicative of the seriousness of the defendant's criminal record. For example, a defendant with five prior sentences for very large-scale fraud offenses may have 15 criminal history points, within the range of points typical for Criminal History Category VI, yet have a substantially more serious criminal history overall because of the nature of the prior offenses.

(C) **Upward Departures Based on Tribal Court Convictions.**—In determining whether, or to what extent, an upward departure based on a tribal court conviction is appropriate, the court shall consider the factors set forth in §4A1.3(a) above and, in addition, may consider relevant factors such as the following:

- (i) The defendant was represented by a lawyer, had the right to a trial by jury, and received other due process protections consistent with those provided to criminal defendants under the United States Constitution
- (ii) The tribe was exercising expanded jurisdiction under the Tribal Law and Order Act of 2010, Pub. L. 111-211 (July 29, 2010), and the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (March 7, 2013).
- (iii) The tribal court conviction is not based on the same conduct that formed the basis for a conviction from another jurisdiction that receives criminal history points pursuant to this Chapter.
- (iv) The conviction is for an offense that otherwise would be counted under §4A1.2 (Definitions and Instructions for Computing Criminal History).
- (v) At the time the defendant was sentenced, the tribal government had formally expressed a desire that convictions from its courts should be counted for purposes of computing criminal history pursuant to the Guidelines Manual.]

3. **Downward Departures.**—A downward departure from the defendant's criminal history category may be warranted if, for example, the defendant had two minor misdemeanor convictions close to ten years prior to the instant offense and no other evidence of prior criminal behavior in the intervening period. A departure below the lower limit of the applicable guideline

range for Criminal History Category I is prohibited under subsection (b)(2)(B), due to the fact that the lower limit of the guideline range for Criminal History Category I is set for a first offender with the lowest risk of recidivism.

Background: This policy statement recognizes that the criminal history score is unlikely to take into account all the variations in the seriousness of criminal history that may occur. For example, a defendant with an extensive record of serious, assaultive conduct who had received what might now be considered extremely lenient treatment in the past might have the same criminal history category as a defendant who had a record of less serious conduct. Yet, the first defendant's criminal history clearly may be more serious. This may be particularly true in the case of younger defendants (*e.g.*, defendants in their early twenties or younger) who are more likely to have received repeated lenient treatment, yet who may actually pose a greater risk of serious recidivism than older defendants. This policy statement authorizes the consideration of a departure from the guidelines in the limited circumstances where reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's criminal history or likelihood of recidivism, and provides guidance for the consideration of such departures.

* * *

Issues for Comment:

1. Part A of the proposed amendment would provide a list of relevant factors that courts may consider, in addition to the factors set forth in §4A1.3(a), in determining whether an upward departure based on a tribal court conviction may be warranted. The Commission seeks comment on whether the factors provided in the proposed amendment are appropriate. Should any factors be deleted or changed? Should the Commission provide additional or different guidance? If so, what guidance should the Commission provide?

In particular, the Commission seeks comment on how these factors should interact with each other and with the factors already contained in §4A1.3(a). Should the Commission provide greater emphasis on one or more factors set forth in the proposed amendment? For example, how much weight should be given to factors that address due process concerns (subdivisions (i) and (ii)) in relation to the other factors provided in the proposed amendment, such as those factors relevant to preventing unwarranted double counting (subdivisions (iii) and (iv))? Should the Commission provide that in order to consider whether an upward departure based on a tribal court conviction is appropriate, and before taking into account any other factor, the court must first determine as a threshold factor that the defendant received due process protections consistent with those provided to criminal defendants under the United States Constitution?

Finally, Part A of the proposed amendment brackets the possibility of including as a factor that courts may consider in deciding whether to depart based on a tribal court conviction if, "at the time the defendant was sentenced, the tribal government had formally expressed a desire that convictions from its courts should be counted for purposes of computing criminal history pursuant to the Guidelines Manual." The Commission invites broad comment on this factor and its interaction with the other factors set forth in the proposed amendment. Is this factor relevant to the court's determination of whether to depart? What are the advantages and disadvantages of

including such a factor? How much weight should be given to this factor in relation to the other factors provided in the proposed amendment? What criteria should be used in determining when a tribal government has “formally expressed a desire” that convictions from its courts should count? How would tribal governments notify and make available such statements?

2. Pursuant to subsection (i) of §4A1.2 (Definitions and Instructions for Computing Criminal History), sentences resulting from tribal court convictions are not counted for purposes of calculating criminal history points, but may be considered under §4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)). As stated above, the policy statement at §4A1.3 allows for upward departures if reliable information indicates that the defendant’s criminal history category substantially underrepresents the seriousness of the defendant’s criminal history.

The Commission invites comment on whether the Commission should consider changing how the guidelines account for sentences resulting from tribal court convictions for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History). Should the Commission consider amending §4A1.2(i) and, if so, how? For example, should the guidelines treat sentences resulting from tribal court convictions same as other sentences imposed for federal, state, and local offenses that may be used to compute criminal history points? Should the guidelines treat sentences resulting from tribal court convictions more akin to military sentences and distinguish between certain types of tribal courts? Is there a different approach the Commission should follow in addressing the use of tribal court convictions in the computation of criminal history scores?

(B) Court Protection Orders

§1B1.1. Application Instructions

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Commentary

Application Notes:

1. The following are definitions of terms that are used frequently in the guidelines and are of general applicability (except to the extent expressly modified in respect to a particular guideline or policy statement):

* * *

(D) “*court protection order*” means “protection order” as defined by 18 U.S.C. § 2266(5) and consistent with 18 U.S.C. § 2265(b).

(DE) “*Dangerous weapon*” means

[Part B of the proposed amendment would also redesignate succeeding paragraphs accordingly]

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Issue for Comment:

1. Part B of the proposed amendment would include in the Commentary to §1B1.1 (Application Instructions) a definition of court protection order derived from 18 U.S.C. § 2266(5) and consistent with 18 U.S.C. § 2265(b). Is this definition appropriate? If not, what definition, if any, should the Commission provide?