

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
PROBATION & PRETRIAL SERVICES OFFICE**

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Reply To: Sioux Falls

February 21, 1992

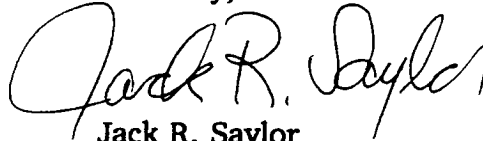
**United States Sentencing Commission
1331 Pennsylvania Avenue, NW, Suite 1400
Washington, D.C. 20005**

RE: Proposed Amendments

Dear Sir/Madam:

**Attached are our comments on selected proposed amendments to the sentencing guidelines.
Please call if you have any questions or comments.**

Sincerely,



**Jack R. Saylor
Chief Probation/Pretrial Officer**

/jrs

Enclosure

cc: Honorable Vincent L. Broderick, c/o Research Division, Federal Judicial Center.

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RESPONSES TO PROPOSED AMENDMENTS TO FEDERAL SENTENCING GUIDELINES

I: Amendments Responsive to Judicial Conference Recommendations

Introduction: Option preferences, comments, and other requested responses are offered in the order presented in the "Synopsis of Proposed 1992 Amendments to the Federal Sentencing Guidelines," prepared by the Federal Judicial Center.

Amendment 29

Options 1,2, and 3 preferred.

Comments:

1. Options 4-6 might, but 1-3 do not.
2. Consistent w/Congressional intent, certain "white-collar" offenders who have historically received "lenient" sentences in the past, should not be eligible for straight probation or even probation with a fine and/or restitution. Some other, more punitive, sanction(s) should be required. The challenge, of course, is arriving at an acceptable definition for the term "white-collar".
3. Yes. Sentencing alternatives similar to those suggested should be available. This could be accomplished by creating zones on the Sentencing Table where these options would be available as conditions of probation.

Amendment 33

Part (A): Agree.

Part (B): "

Part (C): Perhaps in the case of a youthful defendant and/or in other extreme cases where there is convincing evidence that the defendant's early experiences were so devastating that a mental state approaching "diminished capacity" exists, a downward departure may be appropriate. Consistent with a fundamental principle of the **Guidelines**, the Commission should promulgate a departure policy statement in this area and then let the Courts "carve out a heartland".

Part (D): In these days of severe prison overcrowding, fiscal restraint, and community confinement options, downward departure should definitely be permitted for the profile described.

Amendment 26

Part (A): Option 2 preferred; however, illuminating the "nature of prior offenses" will increase the investigative burden of the Probation Officer and could delay sentencing in some cases.

Part (B): This appears to be a good amendment, but once again, it will increase the Probation Officers' investigative burden; determining "degree" and "type" of risk is time consuming.

Part (C): Agree.

Amendment 23

Option 3 preferred. Enactment of Option 3 could also resolve the problem of the split among the Circuits relative to the scope of acceptance of responsibility, i.e., a defendant would be able to choose if he/she wants to accept responsibility for the relevant conduct, and thereby, receive the additional one-level reduction. They would receive benefit of pleading without being "forced" to accept responsibility for all the relevant conduct.

Amendment 1, Part (A)

Agree with amendment.

Amendment 1, Part (B)

Agree with amendment.

II: Additional Amendments of Special Interest (Comments offered relative to selected amendments only)

Amendment 16, Part (A) & (B)

Agree with amendments.

Amendment 17, Part (A)

Agree with amendment; however, including law enforcement officers as "participants in the offense" must be monitored closely.

Amendment 17, Part (B)

Agree with amendment.

Amendment 18, Part (A)

Comments:

1. Agree with amendment if the conduct characterized as "individuals who typically participate" can be adequately defined.

Amendment 18, Part (B)

Disagree. The current guideline appears adequate.

Amendment 19, Part (A)

Disagree. This issue is better addressed through the proposed amendment to the 1B1.3, Relevant Conduct, and is already addressed to some extent in the Drug Table.

Amendment 20

Agree with amendment. Option 3 with a minimum offense level of 16, and a cross reference to §2D1.1, appears most appropriate.

Amendment 4, Part (A)

Agree with amendment. The circumstances addressed in this amendment have been at issue in cases sentenced in this district.