

STATEMENT
of
VINCENT L. BRODERICK, Chair,
Committee on Criminal Law
Of the Judicial Conference of the United States
and
MARK L. WOLF, Chair,
Subcommittee on Sentencing Guidelines and Procedures
before the
UNITED STATES SENTENCING COMMISSION
February 25, 1992

Introduction

We speak on behalf of the Judicial Conference of the United States. The Judicial Conference, through its Committee on Criminal Law and its predecessors, has been involved with the Guidelines since the beginning, and has been mandated by Congress to comment on the operation of the Guidelines and to assess the work of the Commission.

In partial discharge of that mandate the Judicial Conference in September, 1990 submitted eight recommendations to the Commission, expecting that they would be considered in connection with the 1991 amendment cycle. They were not. We have already -- and on several occasions -- expressed to the Commission our concern that the considered

recommendations of the Judicial Conference were being slighted. We were given to understand, however, that those recommendations were being carefully analyzed by the staff of the Commission, and welcomed Chairman Wilkins' assurance to the Judicial Conference at its September, 1991 meeting that in its 1992 amendment cycle the recommendations of the Judicial Conference (along with those of the Corrothers Committee, on which the Chief of the Administrative Office's Probation Division and the chair of the Criminal Law Committee served) would receive primary focus. We are gratified that they have.

The Judicial Conference recognizes that the Sentencing Commission has been deprived of a level playing field by statutorily required mandatory minimum sentences, and thus has welcomed the splendid report of the Commission to Congress on mandatory minimums and the havoc they have created in the sentencing area. The Judicial Conference and the judges of all the circuits involved with criminal sentences have adopted resolutions in opposition to mandatory minimums. We all recognize that until the preemptive effect of mandatory minimums is eliminated, the work of the Sentencing Commission will necessarily – despite the best intentions of the members of the Commission – be skewed and flawed. We enthusiastically support, therefore, the implicit recommendation contained in the Commission's report on mandatory minimums that they be repealed. Recognizing that an "effective, humane and rational sentencing policy" cannot be developed within a mandatory minimum regimen we suggest that next year, in connection with or, indeed, in lieu of an amendment cycle, the Commission make

recommendations to Congress, pursuant to 28 U.S.C. § 995(a)(20), to modify those statutes which presently mandate minimum sentences.

It has been -- and is -- the position of the Judicial Conference that it will work to improve the Sentencing Guidelines, and not to abolish them. Thus it rejected, more than a year ago, a recommendation tentatively proposed by the Federal Courts Study Committee that the Guidelines be made optional. It recognized, as indeed did Congress (see 28 U.S.C. § 994(m)), that in the first instance the starting point for certain Guidelines would be the average of sentences historically imposed, and that only in time would Guidelines be developed which would conform in all particulars to the statutory purposes of sentencing.

A primary tool in the development of "an effective, humane and rational sentencing policy" is the statutory authority which a judge has to depart when, in determining the sentence to be imposed, he finds "an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration" by the Commission in formulating the Guidelines. We have discussed the importance of this power to depart many times with the Commission, and it has certainly been our impression that the members of the Commission agree that departure by judges in appropriate cases, and the careful consideration of the rationales for those departures by the Commission, will be essential elements in the meaningful development of the Guidelines.

But year after year the Guidelines Manual has contained language which suggests to judges that departures are inappropriate. I refer to Chapter One, Part A, §4(b) of the current Manual. It sets forth, in a self-fulfilling prophecy, that the Commission believes "that despite the courts' legal freedom to depart from the guidelines, they will not do so very often;" and that while it believes there may be cases in which a departure outside suggested levels is warranted, in its view "such cases will be highly infrequent." This language has undoubtedly discouraged departures by judges where departure was compellingly indicated: it has strongly suggested to some appellate judges -- particularly those who have not had sentencing experience -- that departures constitute rejection of the Guidelines, and are a form of what the Commission formerly (and happily no longer) characterized as "non-compliance."

The text of the Introduction to the Guidelines Manual is not part of the Guidelines. It can be changed by the Commission itself. It should be changed -- for two very good reasons.

The first reason is that the Guidelines at the present time are still largely a "heartland." The Commission has not yet had the experience -- or the input from the field -- that justifies any given Guideline on more than a tentative basis. That input will come from sentencing judges if they understand that their explained departures -- up or down -- and the Commission's consideration of the basis for those departures, are the best hope for the ultimate achievement of fairness in the sentencing process.

The second reason is that we must not let ourselves drown in large numbers. The Commission provides Guidelines for a statistical universe: each time a judge sentences there is not only a factual pattern before him but there is an individual, different from every other individual in the world. Circumstances which differentiate that fact pattern and that individual from all others are circumstances which judges should be encouraged to consider in determining whether the statutory standard for departure -- up or down -- has been met. If it has been met the judge has a duty -- not a right but a duty -- to depart, and the discharge of that duty should be encouraged by the Commission. We respectfully recommend, therefore, that just as "non-compliance" language has been eliminated from the Commission's lexicon, the Introduction to the Manual which presently discourages departures should be revised.

The Judicial Conference has exhibited considerable restraint, to this point, in suggesting amendments to the Guidelines. Those proposed amendments it did suggest 17 months ago, and which are reflected in the array which the Commission now has under consideration, were carefully drafted and subjected to intensive scrutiny by sentencing judges and by the Committee on Criminal Law before they were finally approved by the Judicial Conference. Other recommendations were considered and rejected. Many of the same problems which these recommendations address were identified by the Federal Courts Study Committee. Appendix B of the Report and Recommendations of the Judicial Conference of the United States for Amendments to the Sentencing Guidelines (hereafter "Report and Recommendations"), which is attached

and which was delivered to the Commission this past August, explains how the recommendations were developed, and references additional possible recommendations which were considered and rejected.¹

The pendency of these recommendations -- and the confident expectation that they will be adopted by the Commission, together with the knowledge that the Commission through the Corrothers Committee was sensitive to and was forthrightly addressing many of the same problems which prompted the Judicial Conference recommendations -- have acted as a brake on a strong movement within the judiciary more aggressively to confront manifest inequities which are occasioned by application of certain of the Guidelines in their present form. Many federal judges are unhappy with the Sentencing Guidelines -- these judges believe that to a great extent the Guidelines have sacrificed fairness on the altar of uniformity; that they have introduced disparities of their own; that their application often results in sentences which are disproportionate to the offense of conviction; and on the other side of the coin that some of the Guideline offense levels are unduly lenient. Several requests by individual judges and by local associations of judges have been made to the Judicial Conference and to its Criminal Law Committee to initiate independent studies of the Sentencing Guidelines; some have asked for a drastic overhaul of the Sentencing Guidelines system. We have opted, to this point, to refrain from confrontational activity and on a cooperative basis to seek necessary changes in the system.

¹ There is attached to this statement a copy of the Report and Recommendations of the Judicial Conference of the United States for Amendments to the Sentencing Guidelines.

We stress this to underline the importance which the Judicial Conference, representing the federal judiciary, places upon the adoption of its recommendations at this time.

We comment on those proposed amendments which encompass, in whole or in part, the recommendations of the Judicial Conference. In making those comments please understand that we speak on behalf of, and with the full authority of, the Judicial Conference of the United States. We are not in a position, representing the Judicial Conference, to make substantive comments on behalf of the Judicial Conference with respect to other 1992 proposed amendments which have been published for comment. The Judicial Conference is, in perhaps the best sense of the term, a deliberative body, and it takes time for it to decide matters which are presented to it. It has simply not been possible, through the relatively short window the Commission has provided between publication and time for comments, to give the Commission's 1992 cycle the comprehensive consideration it warrants. We discussed this matter with the Commission last year. We understand that there are statutory time restraints, but we suggest that some system be devised which will provide more time for consideration and evaluation of proposals published for comment.

We also suggest that there must be a reduction in the volume of annual amendments. The probation officers in federal service are a superb and highly intelligent group of public servants, and they have received excellent training by the Sentencing Commission in Sentencing Guidelines

matters. The yearly spate of amendments is, however, taking its toll. The publication of Appendix C may turn out to be of some help, but questions of retroactivity, or of substance versus clarification, are matters which non-lawyers should not be required, as a matter of routine, to deal with. Defense counsel and prosecutors are lawyers, but most defense lawyers (with the notable exception of federal defenders) have great difficulty in coping with a single volume of the Guidelines and do not understand that in many cases resort is necessary to more than one volume. It is hoped that, after the Commission adopts the amendments proposed by the Judicial Conference, a moratorium will be called on piece-meal amendments on a grand scale.

The practice of publishing numerous disparate possible amendments in the Federal Register, without meaningful explanation, makes it extremely difficult for us -- and almost impossible for others not so familiar with the Guidelines -- to understand the purposes of proposed amendments and to comment helpfully concerning them. Rather, we would urge that in the future the Commission build each generation of proposed amendments around a unifying theme, such as relevant conduct or acceptance of responsibility. We would further urge that the proposed amendments be accompanied by a Commission report setting forth the policy issues involved, indicating what approaches to those issues have been considered by the Commission, and describing the rationale for the amendments proposed. Such an approach, if coupled with early notice, would permit judges and others interested in federal sentencing matters to

participate with you in an informed and effective dialogue concerning the amendments proposed.

Comments on Proposed Amendments Which Reflect the Judicial Conference's Recommendations

First a general word about the Judicial Conference recommendations. The recommendations are aimed primarily at giving judges greater flexibility to tailor sentences to the individual within the Guideline structure. They are largely aimed at situations which affect the first offender at the lower end of the sentencing scale, where the possibilities are prison or no prison. They also address the situation of offenders for whom the offense level is affected by a determination of relevant conduct, with respect to which confusion has led to disparate and poorly-individualized sentences. The recommendations also seek to insure that explicit incentives for pleading guilty will be found within the Guidelines so that manipulation of the Guidelines can be reduced.

The comments which follow pertain to those published proposed amendments which reflect the Judicial Conference's September, 1990 recommendations.

1. Flexibility at the Low End of the Guidelines

A principal problem which the Judicial Conference recommendations addressed is the lack of flexibility at the low end of the Guidelines, with particular reference to first offenders. Before the Guidelines took effect, 40% of federal offenders were sentenced to terms of probation instead of imprisonment. For cases sentenced under the Guidelines, this number has dropped to 23%.² This is the area where acceptance of the Guidelines by judges has proven most difficult, and where judges see the greatest need for change.

In developing its recommendations, the Judicial Conference gave careful consideration to the structure of the current Guidelines and to the Commission's statutory mandate. The recommendations proposed modest changes to the Guidelines that would further the Congressional purpose of providing adequate flexibility to individualize sentences when warranted. 28 U.S.C. § 991(b)(1)(B). Most judges agree with Congress that the Guidelines should "reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense." 28 U.S.C. § 994(j).

²The preGuideline probation rate comes from the D5 tables published by the Administrative Office of the U.S. Courts. In 1987 (excluding cases with fines only) probation was imposed in 40% of the cases (pp. 282-283, Reports of the Proceedings of the Judicial Conference of the United States and Annual Report of the Director of the Administrative Office of the United States Courts (1987)). The guideline case figure comes from the 1990 Annual Report of the U.S. Sentencing Commission, Appendix B.

This is especially true given the demand on prison resources. The federal prison population has grown over 10% a year since 1989, and the federal prison system was crowded to 151% of rated capacity by the end of 1990. (Bureau of Justice Statistics, "Prisoners in 1990," May 1991). The proposed amendments that expand the availability of alternatives to imprisonment can help the Commission meet its statutory obligation to formulate Guidelines that "minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission." 28 U.S.C. § 994(g).

Proposed amendment 29 includes six options which would increase the within-Guidelines sentencing options at the lower offense levels. We urge the Commission to adopt Options 1 through 3, which would implement three of the Judicial Conference proposals. Attachment A shows how the zones on the Guideline table where alternatives are permitted would be changed by these proposals.

Option 1: Option 1 would eliminate the requirement that offenders sentenced under the Commission's "split sentence" provision must serve at least one-half of the minimum Guideline range in prison. This would let the court determine the appropriate mix of imprisonment and confinement conditions when imposing a "split sentence." The proposed change would maintain the current structure of mandating some period of imprisonment, but would recognize that a briefer period of prison would serve the purpose of "shock incarceration."

Option 2: Option 2 would extend the alternative of probation with a condition of intermittent confinement, community confinement, or home detention to offense levels with minimum terms of imprisonment of up to and including 10 months. It thus extends this alternative to offenders who are currently eligible for only the "split sentence" option. The proposal continues to provide for, but does not mandate, a "split sentence" where it is now permitted. It also incorporates the redefinition of the split sentence as proposed in Option 1.

Allowing judges to set the mix of prison and alternative confinement in split sentences, or to require substitute punishments such as home confinement, will ameliorate the "cliff" between the lower Guideline ranges and those just above them, where imprisonment for at least the minimum term of the Guideline range would still be required. Offenders sentenced to a split sentence, or to probation with alternative confinement, will lose much of their liberty and will be punished; the court would have discretion only to choose the place of confinement in view of the other purposes of sentencing. We believe such changes would also better enable the court to implement other statutory directives, such as consideration of the need to provide correctional treatment in the most effective manner and the need to provide restitution to victims, while still providing just punishment for the offense.

Options 3 and 4: Option 3 would expand the availability of straight probation to two additional offense levels within Criminal History

Category I. The Guideline range in these cells would be changed to 0-6 months from their current ranges of 1-7 and 2-8 months.³

Option 4 would expand straight probation to three additional Guideline cells, one each at Criminal History Categories I to III.

We recommend Option 3 rather than Option 4. Straight probation is more appropriate for first offenders, who present less risk to the public, than for repeat offenders.

Option 5: While the rationale of the Judicial Conference's recommendations would suggest the desirability of expanding the availability of alternative approaches to sentences to the extent consistent with the purposes of sentencing under 18 U.S.C. § 3553(b), the Judicial Conference has not specifically considered or passed upon Option 5.

The Commission has requested comment on whether it should adopt an "offense-by-offense" approach, under which certain types of offenders, such as white collar offenders, would be excluded from eligibility for alternatives (Amendment 29, question 2). We oppose this approach as it would reduce the flexibility of the sentencing court. The Commission has already addressed what it considered the inadequacy of historical sentences for white-collar offenders in establishing starting offense levels in Chapter 2. Our Report and Recommendation (page 16) contained data

³ The "Reason for Amendment" section in the Federal Register at p. 110 misstates the guideline ranges for which the 0-6 would be substituted.

showing that the Judicial Conference proposals would not create leniency for white-collar defendants, and we have seen no new data suggesting that they would. Any effort further to constrain judges' sentencing options should be based only on clear evidence that they are somehow being misused.

The Commission has also requested comment on whether the Amendment 29 proposals "compromise the structure of the guidelines as originally drafted" (Amendment 29, question 1). They do not. The Judicial Conference in deciding upon its recommendations gave careful consideration to the structure of the current Guidelines. None of our proposals would compromise the structure of the Guidelines as originally drafted. The newly expanded zones and ranges under our proposals would comport with the Commission's table construction principle of overlapping ranges across two offense levels and one offender category.

Finally, we respond to a question raised by Commissioner Nagel at the last meeting of the Criminal Law Committee, and repeated by other Commissioners and staff. Since data show that alternative punishments are imposed on only a proportion of offenders currently eligible for them, why are new options needed? National figures for October 1989 through September 1990 show that only 70% of persons eligible for straight probation, only 32% of those eligible for alternative confinement, and only 16% of those eligible for split sentences actually received those options. Since judges are not using the options that are available now, is there a need to expand the availability of alternatives?

There is. These data should in fact reassure the Commission that if it expands the availability of sentencing options, they will not be used in inappropriate cases. If judges always used options when they are available, they would be subject to the criticism of failing to take account of circumstances in individual cases that call for imprisonment instead of one or more of the available alternatives. But, as the data cited shows, judges do exercise discretion.

In any event, the number of offenders who are presently eligible for, but do not receive, a sentencing alternative does not speak to the need for expanded options. What matters is the number of presently-ineligible offenders who do deserve consideration for an option not now available for them. With respect to many offenders now falling in ranges where only limited options are available, it would be appropriate to consider straight probation or another alternative to imprisonment. Even if less than half of all the defendants eligible for alternatives under our proposals actually receive them, thousands of people will in the long run be diverted from prison to alternatives that are better-suited to the purposes of sentencing.

Some alternatives, such as half-way houses, are not available everywhere. Nation-wide implementation of home confinement has been complete only for a few months. By far the largest number (46%) of defendants placed under home confinement in the fourteen districts to which it was expanded last year were placed there as a condition of probation. Of the 597 persons who had been terminated from the home

confinement program through October 1991, 81% completed it successfully. Of the failures who were sent to prison after an unsuccessful period in home confinement, most were for technical violations (e.g. failure to return home promptly after work, or a positive drug test). Seven absconded, and 10 committed new offenses while under supervision. (Report of the Probation Division of the Administrative Office to the Committee on Criminal Law, December 1991.)

These alternative programs deserve further encouragement. We will continue our work with the Probation Division of the Administrative Office and with the Federal Judicial Center to educate judges and probation officers in the use of alternatives and to monitor the track record of these programs.

2. Relevant Conduct and Role in the Offense

Judges have been troubled that under the Guidelines they have imposed draconian sentences on drug "couriers," "cooks," "mules" or other persons who were essentially minor cogs in drug distribution machines controlled by others. These people often knew little about the overall scheme, received little benefit, and were dramatically less culpable than the "kingpins" whom they served.

The Judicial Conference recommendations in this area were predicated upon a general sense that egregious sentences for such defendants often resulted from the inclusion of large amounts of drugs in

the base offense level, through application of the relevant conduct Guideline. A close reading of the Guideline and its accompanying commentary suggests that this broad interpretation is not the only possible reading of the Guideline, and may not have been the intended reading. But the complicated structure of the Guideline and related commentary has led many probation officers and judges to neglect limiting language about foreseeability or scope of the defendant's agreement, and to emphasize broad language about common schemes and plans.

Proposed Guideline Amendment 1 (A) contains much that can help courts tailor relevant conduct to each defendant. We applaud the consolidation of definitions from the commentary into the Guideline itself. It will help to ensure that defendants are sentenced only on reasonably foreseeable acts of others that are in furtherance of the jointly-undertaken activity.

Proposed revisions to the commentary and accompanying illustrations also contain some helpful definitions and examples. We are still troubled, however, that taken as a whole, it remains difficult to discern the precise contours of relevant conduct from the proposed amended Guideline and commentary. The illustrations do not all seem consistent with the Guideline, with each other, or with how relevant conduct has been understood in the courts. Reading the illustrations, it is not immediately obvious how one arrives at the "right" answer. This portends continuing trouble, and suggests that the proposed amendment

may not be enough to end disparate application or appropriately to limit the sentences for low-level participants.

A few examples may illustrate the continued complexity of the Guideline under the proposed amendment. To make sense of the illustrations (e.g. drug dealer's girl friend accountable only for the one drug transaction she participated in, even though she knew of boy friend's other activity; street-level dealer accountable only for amount he sells, even though he knew of others selling for same supplier, unless they pool resources and profits) one must understand that determining whether an activity was "jointly undertaken" is a crucial step in applying the Guideline. The proposed new commentary asserts that determining "the scope of the criminal activity the particular defendant agreed to jointly-undertake is required." And, indeed, the illustrations can be harmonized if we understand that the scope of a defendant's agreement limits his liability.

But this is not exactly what the proposed amended Guideline says. It says that "all reasonably foreseeable [conduct] of others in furtherance of the jointly-undertaken criminal activity" may be attributed to a defendant. The commentary and the illustrations appear to be narrower than the Guideline language. If the Commission intends to limit the scope of relevant conduct further it needs to say so clearly and explicitly.

The commentary to the proposed Guideline may complicate application. The first illustration indicates that if a defendant aids and

abets a criminal activity (e.g. helps off-load a ton of marijuana from a ship), it makes no difference what the scope of his agreement was, nor whether he could foresee the amount of drugs involved -- he is liable for the whole thing. Aiding and abetting "trumps" other limitations. But the distinction between an aider-and-abettor and a co-conspirator is a slippery slope at best. It seems arbitrary and unrealistic to suggest that if a defendant is a co-conspirator, his liability is limited to what he understood to be the scope of his involvement in the conspiracy; but if one is labeled an aider-and-abettor, he is liable for the entire operation no matter how limited his knowledge.

The Guideline and commentary contain so many confusing phrases that both limit and expand the scope of relevant conduct -- e.g. "common scheme or plan," "foreseeable," "in furtherance of," "jointly- undertaken," "scope of the agreement" -- that we think consolidation and simplification are needed more than new definitions and new phrases. While the definitions offered in Part (B) of the amendment may be addressed to some of this confusion, we question how useful they will be. The proposed 120-day limitation seems especially troublesome.

The relevant conduct Guideline is not working fairly in its present form; change is needed. The problem of disproportionate sentences for low-level participants could be solved if a way could be found to allow courts to fix the defendant's offense level based on the reasonable scope of the particular defendant's involvement. Some of the language contained in the commentary -- limiting relevant conduct to the scope of the

defendant's agreement, based in part on his knowledge and the benefit he derived from the joint activity – moves us in this direction. But we are concerned that the presently proposed amendment and comment may not be clear enough, and we hope that you will improve it before submitting it to Congress this year. The scope of relevant conduct for defendants should be limited, and this amendment will constitute a welcome change from current practice in some circuits. But there should be some commentary that makes it clear – directly and explicitly – that such limitation is the purpose of the amendment.

3. Capping the offense level for minimal participants

Evidence suggests that, historically, "role in the offense" has been a more important sentencing factor than drug amount in the sentencing of lower-level drug offenders. (Memo on file at the Federal Judicial Center.)

Amendment 19 would set caps on the offense level of minor or minimal participants. Proposals by the Commission to cap the offense levels of minimal participants provide a useful supplementary approach to the proposals which the Judicial Conference made with respect to relevant conduct and role in the offense. While this "cap" approach has not specifically been reviewed by the Judicial Conference we have no hesitancy in supporting it as a supplement to the Conference's recommendations.

Of the three Options proposed in this amendment, we prefer Option 3. First, we believe that these caps should apply only to minimal

participants, not minor participants as in Options 1 and 2. Judges can then use their discretion to cap the offense level for truly low-level participants, such as those who are paid a one-time fee for acting as a "mule." Second, the type of drug involved, taken into account in Option 2, is not as relevant in these cases as is the fact of the defendant's minimal role. Finally, we believe that the cap should be low. We endorse offense level 16 as suggested in the proposed amendments, because it is the lowest point proposed. We would prefer, however, to have the cap set at 14, so that with the acceptance of responsibility adjustment, first offenders would be eligible for "shock incarceration" or other sentencing alternatives.

4. Departures

The proposed amendments include several which reflect the recommendations of the Judicial Conference concerning departures. Amendment 26, part (B) addresses the Judicial Conference's concern with departures based on the adequacy of the criminal history score, and we urge its adoption. It would clarify that departures due to the inadequacy of the criminal history score may be based on either degree of risk or type of risk. This clarification was proposed in response to concern that the Guidelines do not give enough flexibility to depart upwards based on offender dangerousness.

Amendment 26, part (A) addresses the problem of offenders with extensive criminal histories for whom Criminal History Category VI is inadequate. We favor the departure approach in Option 2, which gives

judges advice about which factors to consider and how to structure the departure. This approach is preferred to adding a new Criminal History Category VII to the Guideline table, as described in Amendment 28, part (B).

5. Offender characteristics

The area of offender characteristics has been of deep concern to judges, and we recommend that the Commission adopt Proposed Amendment 33, part (A). This simple change would send a clear signal that judges are encouraged to look for offender characteristics that are present to an unusual degree or in unusual combinations, and that they should depart if the purposes of sentencing would be served. Part (B) also puts symmetry into the policy statement on age, so that offenders who are young and less culpable may benefit from departures when appropriate.

Parts (C) and (D) do not seem advisable to us at this time. Ambiguous standards such as "lack of youthful guidance" in Part (C) are likely to make the sentencing hearing a battleground over discrete factors that are poorly defined. A departure for advanced age as in Part (D) is addressed to a real concern -- our aging prison population. But this important problem needs additional study.

6. Acceptance of responsibility

We applaud the serious study the Commission has given the "acceptance of responsibility" Guideline, as reflected in Proposed Amendment 23. The Judicial Conference recommended that the Commission reconsider the "acceptance of responsibility" Guideline to address our concern that the incentives to plead guilty are sometimes not adequate, especially at the upper end of the sentencing table. Absent adequate incentives within the Guidelines, manipulation and use of surrogate incentives may result, which would undermine the Guidelines System and lead to disparity.

As to Option 1 the Commission seeks comment on ways to clarify the scope of conduct for which a defendant must accept responsibility. The central question is whether a defendant must accept responsibility for both the offense of conviction and any additional relevant conduct. There is a split in the circuits as to the constitutionality of requiring a defendant to accept responsibility for more than the offense of conviction. The constitutional issue would be eliminated if the Guidelines were amended to require acceptance only for the offense of conviction. This would also permit elimination of the somewhat murky language in the present Guideline requiring that the defendant accept responsibility for "his criminal conduct."

The reduction for pleading guilty should be increased above the current two levels, especially for crimes at higher basic offense levels. At

least a three-level reduction should be allowed, but not required, for a guilty plea. The addition of a separate one-level reduction for other convincing demonstrations of acceptance of responsibility, such as assistance in the recovery of fruits of the offense, etc. would be useful.

Conclusion

We appreciate the consideration given the Judicial Conference recommendations this amendment cycle, as well as your attention to the other suggestions made by judges and probation officers for improvements to the Guidelines. We note with approval, for example, Amendment 31 that addresses a request from probation officers to simplify the application of Guideline § 5E1.2(b) concerning the setting of fines.

With continued communication and cooperation between the courts and the Commission, we believe the Guidelines System can be improved so that the experiment in sentencing reform begun in 1984 will bear fruit.

SENTENCING TABLE

(in months of imprisonment)

		Criminal History Category (Criminal History Points)					
Offense Level		I	II	III	IV	V	VI
		(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
B	7	1-7	2-8	4-10	8-14	12-18	15-21
	8	2-8	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
C	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24	21-27			
	15	18-24	21-27	24-30			
	16	21-27	24-30	27-33			
	17	24-30	27-33	30-37			
	18	27-33	30-37	33-41			
	19	30-37	33-41	37-46			
	20	33-41	37-46	41-51			
	21	37-46	41-51	46-57			
	22	41-51	46-57	51-63			
	23	46-57	51-63	57-71			
	24	51-63	57-71	63-78			
	25	57-71	63-78	70-87			
	26	63-78	70-87	87-108	100-125	120-150	130-162
	27	70-87	78-97	97-121	110-137	130-162	140-175
	28	78-97	87-108	108-135	121-151	140-175	151-188
	29	87-108	97-121	121-151	135-168	151-188	168-210
	30	97-121	108-135	135-168	168-210	188-235	210-262
	31	108-135	121-151	151-188	188-235	210-262	235-293
	32	121-151	135-168	168-210	210-262	235-293	262-327
	33	135-168	151-188	188-235	235-293	262-327	292-365
	34	151-188	168-210	210-262	262-327	292-365	324-405
	35	168-210	188-235	235-293	292-365	324-405	360-life
	36	188-235	210-262	262-327	324-405	360-life	360-life
	37	210-262	235-293	292-365	360-life	360-life	360-life
	38	235-293	262-327	324-405	360-life	360-life	360-life
	39	262-327	292-365	360-life	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

OPTION 1 RE-DEFINES THE SPLIT SENTENCE

OPTION 2 ELIMINATES DOTTED LINE
SEPARATING ZONES B&COPTION 3 LOWERS PROBATION LINE FOR
CATEGORY I OFFENDERS**KEY****A**—Probation available (*see* §5B1.1(a)(1))**B**—Probation with conditions of confinement available (*see* §5B1.1(a)(2))**C**—New “split sentence” available (*see* §§5C1.1(c)(3), (d)(2))

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A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	1-7	2-8	4-10	8-14	12-18	15-21
	8	2-8	4-10	6-12	10-16	15-21	18-24
B	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24				
	15	18-24	21-27				
	16	21-27	24-30				
C	17	24-30	27-33				
	18	27-33	30-37				
	19	30-37	33-41				
	20	33-41	37-46				
	21	37-46	41-51				
	22	41-51	46-57				
	23	46-57	51-63				
	24	51-63	57-71				
D	25	57-71	63-78				
	26	63-78	70-87				
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
E	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
F	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

OPTION 1 RE-DEFINES THE SPLIT SENTENCE

OPTION 2 ELIMINATES DOTTED LINE
SEPARATING ZONES B&COPTION 3 LOWERS PROBATION LINE FOR
CATEGORY I OFFENDERS**KEY****A**—Probation available (see §5B1.1(a)(1))**B**—Probation with conditions of confinement available (see §5B1.1(a)(2))**C**—New “split sentence” available (see §§5C1.1(c)(3), (d)(2))

SENTENCING TABLE

(in months of imprisonment)

		Criminal History Category (Criminal History Points)					
Offense Level		I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	1-7	2-8	4-10	8-14	12-18	15-21
	8	2-8	4-10	6-12	10-16	15-21	18-24
B	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24				
	15	18-24	21-27				
	16	21-27	24-30				
C	17	24-30	27-33				
	18	27-33	30-37				
	19	30-37	33-41				
	20	33-41	37-46				
	21	37-46	41-51				
	22	41-51	46-57				
	23	46-57	51-63				
	24	51-63	57-71				
	25	57-71	63-78				
	26	63-78	70-87				
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

OPTION 1 RE-DEFINES THE SPLIT SENTENCE

OPTION 2 ELIMINATES DOTTED LINE
SEPARATING ZONES B&C

OPTION 3 LOWERS PROBATION LINE FOR
CATEGORY I OFFENDERS

KEY

A—Probation available (see §5B1.1(a)(1))

B—Probation with conditions of confinement available (see §5B1.1(a)(2))

C—New “split sentence” available (see §§5C1.1(c)(3), (d)(2))

SENTENCING TABLE

(in months of imprisonment)

		Criminal History Category (Criminal History Points)					
Offense Level		I	II	III	IV	V	VI
		(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
B	7	1-7	2-8	4-10	8-14	12-18	15-21
	8	2-8	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
C	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24				
	15	18-24	21-27				
	16	21-27	24-30				
	17	24-30	27-33				
	18	27-33	30-37				
	19	30-37	33-41				
	20	33-41	37-46				
	21	37-46	41-51				
	22	41-51	46-57				
	23	46-57	51-63				
	24	51-63	57-71				
	25	57-71	63-78				
	26	63-78	70-87				
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

OPTION 1 RE-DEFINES THE SPLIT SENTENCE

OPTION 2 ELIMINATES DOTTED LINE
SEPARATING ZONES B&COPTION 3 LOWERS PROBATION LINE FOR
CATEGORY I OFFENDERS**KEY****A**—Probation available (*see* §5B1.1(a)(1))**B**—Probation with conditions of confinement available (*see* §5B1.1(a)(2))**C**—New “split sentence” available (*see* §§5C1.1(c)(3), (d)(2))

SENTENCING TABLE

(in months of imprisonment)

		Criminal History Category (Criminal History Points)					
Offense Level		I	II	III	IV	V	VI
		(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	1-7	2-8	4-10	8-14	12-18	15-21
	8	2-8	4-10	6-12	10-16	15-21	18-24
B & C	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24				
	15	18-24	21-27				
	16	21-27	24-30				
	17	24-30	27-33				
	18	27-33	30-37				
	19	30-37	33-41				
	20	33-41	37-46				
	21	37-46	41-51				
	22	41-51	46-57				
	23	46-57	51-63				
	24	51-63	57-71				
	25	57-71	63-78				
	26	63-78	70-87				
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

OPTION 1 RE-DEFINES THE SPLIT SENTENCE

OPTION 2 ELIMINATES DOTTED LINE SEPARATING ZONES B&C

OPTION 3 LOWERS PROBATION LINE FOR CATEGORY I OFFENDERS

KEY**A**—Probation available (*see* §5B1.1(a)(1))**B**—Probation with conditions of confinement available (*see* §5B1.1(a)(2))**C**—New “split sentence” available (*see* §§5C1.1(c)(3), (d)(2))

SENTENCING TABLE

(in months of imprisonment)

		Criminal History Category (Criminal History Points)					
Offense Level		I	II	III	IV	V	VI
		(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	1-7	2-8	4-10	8-14	12-18	15-21
	8	2-8	4-10	6-12	10-16	15-21	18-24
B	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24				
	15	18-24	21-27				
	16	21-27	24-30				
C	17	24-30	27-33				
	18	27-33	30-37				
	19	30-37	33-41				
	20	33-41	37-46				
	21	37-46	41-51				
	22	41-51	46-57				
	23	46-57	51-63				
	24	51-63	57-71				
	25	57-71	63-78				
	26	63-78	70-87				
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

OPTION 1 RE-DEFINES THE SPLIT SENTENCE

OPTION 2 ELIMINATES DOTTED LINE
SEPARATING ZONES B&COPTION 3 LOWERS PROBATION LINE FOR
CATEGORY I OFFENDERS**KEY****A**—Probation available (see §5B1.1(a)(1))**B**—Probation with conditions of confinement available (see §5B1.1(a)(2))**C**—New “split sentence” available (see §§5C1.1(c)(3), (d)(2))

SENTENCING TABLE

(in months of imprisonment)

		Criminal History Category (Criminal History Points)					
Offense Level		I	II	III	IV	V	VI
		(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
B & C	7	1-7	2-8	4-10	8-14	12-18	15-21
	8	2-8	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24				
	15	18-24	21-27				
	16	21-27	24-30				
	17	24-30	27-33				
	18	27-33	30-37				
	19	30-37	33-41				
	20	33-41	37-46				
	21	37-46	41-51				
	22	41-51	46-57				
	23	46-57	51-63				
	24	51-63	57-71				
	25	57-71	63-78				
	26	63-78	70-87				
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

OPTION 1 RE-DEFINES THE SPLIT SENTENCE

OPTION 2 ELIMINATES DOTTED LINE
SEPARATING ZONES B&COPTION 3 LOWERS PROBATION LINE FOR
CATEGORY I OFFENDERS**KEY****A**—Probation available (see §5B1.1(a)(1))**B**—Probation with conditions of confinement available (see §5B1.1(a)(2))**C**—New “split sentence” available (see §5C1.1(c)(3), (d)(2))

SENTENCING TABLE

(in months of imprisonment)

		Criminal History Category (Criminal History Points)					
Offense Level		I	II	III	IV	V	VI
		(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	1-7	2-8	4-10	8-14	12-18	15-21
	8	2-8	4-10	6-12	10-16	15-21	18-24
B	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24				
	15	18-24	21-27				
	16	21-27	24-30				
C	17	24-30	27-33				
	18	27-33	30-37				
	19	30-37	33-41				
	20	33-41	37-46				
	21	37-46	41-51				
	22	41-51	46-57				
	23	46-57	51-63				
	24	51-63	57-71				
	25	57-71	63-78				
	26	63-78	70-87				
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

OPTION 1 RE-DEFINES THE SPLIT SENTENCE

OPTION 2 ELIMINATES DOTTED LINE
SEPARATING ZONES B&COPTION 3 LOWERS PROBATION LINE FOR
CATEGORY I OFFENDERS**KEY****A**—Probation available (see §5B1.1(a)(1))**B**—Probation with conditions of confinement available (see §5B1.1(a)(2))**C**—New “split sentence” available (see §5C1.1(c)(3), (d)(2))

SENTENCING TABLE

(in months of imprisonment)

		Criminal History Category (Criminal History Points)					
Offense Level		I	II	III	IV	V	VI
		(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	1-7	2-8	4-10	8-14	12-18	15-21
	8	2-8	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
B	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24				
	15	18-24	21-27				
	16	21-27	24-30				
	17	24-30	27-33				
	18	27-33	30-37				
	19	30-37	33-41				
	20	33-41	37-46				
	21	37-46	41-51				
	22	41-51	46-57				
	23	46-57	51-63				
	24	51-63	57-71				
C	25	57-71	63-78				
	26	63-78	70-87				
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

OPTION 1 RE-DEFINES THE SPLIT SENTENCE

OPTION 2 ELIMINATES DOTTED LINE
SEPARATING ZONES B&COPTION 3 LOWERS PROBATION LINE FOR
CATEGORY I OFFENDERS**KEY****A**—Probation available (*see* §5B1.1(a)(1))**B**—Probation with conditions of confinement available (*see* §5B1.1(a)(2))**C**—New “split sentence” available (*see* §§5C1.1(c)(3), (d)(2))

SENTENCING TABLE

(in months of imprisonment)

		Criminal History Category (Criminal History Points)					
Offense Level		I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	1-7	2-8	4-10	8-14	12-18	15-21
	8	2-8	4-10	6-12	10-16	15-21	18-24
B & C	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24				
	15	18-24	21-27				
	16	21-27	24-30				
	17	24-30	27-33				
	18	27-33	30-37				
	19	30-37	33-41				
	20	33-41	37-46				
	21	37-46	41-51				
	22	41-51	46-57				
	23	46-57	51-63				
	24	51-63	57-71				
	25	57-71	63-78				
	26	63-78	70-87				
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

OPTION 1 RE-DEFINES THE SPLIT SENTENCE

OPTION 2 ELIMINATES DOTTED LINE
SEPARATING ZONES B&COPTION 3 LOWERS PROBATION LINE FOR
CATEGORY I OFFENDERS**KEY****A**—Probation available (see §5B1.1(a)(1))**B**—Probation with conditions of confinement available (see §5B1.1(a)(2))**C**—New “split sentence” available (see §5C1.1(c)(3), (d)(2))

SENTENCING TABLE

(in months of imprisonment)

		Criminal History Category (Criminal History Points)					
Offense Level		I	II	III	IV	V	VI
		(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
B & C	7	1-7	2-8	4-10	8-14	12-18	15-21
	8	2-8	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24				
	15	18-24	21-27				
	16	21-27	24-30				
	17	24-30	27-33				
	18	27-33	30-37				
	19	30-37	33-41				
	20	33-41	37-46				
	21	37-46	41-51				
	22	41-51	46-57				
	23	46-57	51-63				
	24	51-63	57-71				
	25	57-71	63-78				
	26	63-78	70-87				
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

OPTION 1 RE-DEFINES THE SPLIT SENTENCE

OPTION 2 ELIMINATES DOTTED LINE SEPARATING ZONES B&C

OPTION 3 LOWERS PROBATION LINE FOR CATEGORY I OFFENDERS

KEY**A**—Probation available (see §5B1.1(a)(1))**B**—Probation with conditions of confinement available (see §5B1.1(a)(2))**C**—New “split sentence” available (see §§5C1.1(c)(3), (d)(2))