

#23

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
PROBATION OFFICE

ST. LOUIS, MISSOURI

February 28, 1992

JEROME F. LAWRENZ
CHIEF PROBATION OFFICER
111 U.S. COURT & CUSTOM HOUSE
1114 MARKET STREET
ST. LOUIS 63101-2071
314-599-2291

SOUTHEASTERN DIVISION:
262 FEDERAL BLDG. 339 BROADWAY
CAPE GIRARDEAU 63701-7378
314-334-0681

Ms. Phyllis J. Newton, Staff Director
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

RE: PROPOSED AMENDMENTS TO THE
SENTENCING GUIDELINES

Dear Ms. Newton:

The following comments are offered by the U.S. Probation Office, Eastern District of Missouri, in response to the Proposed Amendments to the Sentencing Guidelines.

SECTION I: AMENDMENTS RESPONSIVE TO JUDICIAL CONFERENCE
RECOMMENDATIONS

Comments to questions by the Commission (Page 4):

1. It does not appear that the proposals "compromise the structure of the guidelines as originally drafted.
2. It is felt that the Commission should not adopt an "offense-by-offense" approach under which certain types of offenders within the alternative-eligible guideline cells would be excluded from eligibility.
3. There is no need to expand the available sentencing options to include additional alternative programs, such as intensive supervision, public service, shock incarceration, day reporting centers, or other programs, since this would unduly complicate the sentencing process, and most of said programs are already available options to the Bureau of Prisons.

Departures Based On Offender Characteristics (Page 4):

This is an important area warranting careful consideration by the Sentencing Commission.

PROPOSED 1992 AMENDMENTS TO THE
FEDERAL SENTENCING GUIDELINES
February 28, 1992
PAGE Two

Departures Based On Inadequacy Of Criminal History Score
(Page 5):

Increased guidance to Courts as to how to depart based on inadequacy of criminal history is desirable; however, expansion of the criminal history categories to VII and beyond would lessen the need for further guidance.

Acceptance of Responsibility (Page 5):

Of the four proposed options, Option No. 4 appears most preferable since it would reward those defendant's who do more than merely plead guilty.

Relevant Conduct (Page 6):

Any amendments which clarify or help define relevant conduct are duly welcomed.

SECTION II: ADDITIONAL AMENDMENTS OF SPECIAL INTEREST

Comments to questions by the Commission (Page 9):

1. It is felt that the mitigating role adjustment should apply in cases in which the defendant is less culpable than other participants in the same case.
2. Defendants performing certain functions in a drug activity should be eligible for a mitigating role adjustment by virtue of the function performed.
3. Factors including function and activity when compared to others involved should be considered by a mitigating role reduction.
4. The mitigating role reduction should not apply to defendants who have already benefitted from not being held for the full amount of controlled substances.
5. Defendants should not be considered for a mitigating role even if they are held responsible for a greater amount of controlled substance than actually trafficked. In general, role descriptions are too subjective and frequently result in objections from the defendant and/or government.

PROPOSED 1992 AMENDMENTS TO THE
FEDERAL SENTENCING GUIDELINES
February 28, 1992
PAGE Three

REDEFINITION OF CAREER CRIMINAL, GUIDELINE SECTION 4B1.1
(Page 10):

Part (D) It is recommended that the Commission should not identify certain categories of crimes of violence that would be considered "lesser" crimes of violence and therefore not counted.

Parts

(E and F) Unrelated cases that are counted as two convictions should be counted as separate convictions for the purposes of the career criminal guideline. It is felt that a modification is not needed to insure that the two prior convictions in the instant offense shall have been committed in a strictly consecutive sequence. A "short-lived crime spree" involving unrelated offenses required serious consequences.

PLEA BARGAINING POLICY; USE OF ACQUITTALS (Page 11):

Parts

(B and C) A departure based on conduct dismissed pursuant to a plea agreement is unnecessary in the Eighth Circuit because of case law associated with the relevant conduct guidelines. However, it is felt that conduct of which a defendant is acquitted should be ignore and not considered under the standards of relevant conduct.

SECTION IV: LIST OF ADDITIONAL PROPOSED AMENDMENTS

Chapter 2 Guidelines and Commentary (Page 14):

Amendment No. 5 - It is recommended that the Commission retain the "more than minimal planning" adjustment.

Amendment No. 7 - An increase of offense levels on the drug tables for distribution of large amounts of Schedule III, IV, and V controlled substances, anabolic steroids, and Schedule I and II depressants is recommended.

Amendment No. 8 - It is felt that an additional enhancement for death or bodily injury as well as possession of a firearm during the unlawful smuggling of aliens should be implemented. The defendant's state of mind does not appear relevant.

PROPOSED 1992 AMENDMENTS TO THE
FEDERAL SENTENCING GUIDELINES
February 28, 1992
PAGE Four

Amendments Nos. 10 and 11 regarding toxic substances, pesticides, and protected fish and wildlife appear appropriate.

Chapter 3 Guidelines and Commentary (Page 15):

Amendment No. 21 - It is felt that the present guideline 3C1.2 adequately covers the range of behavior which is applicable when reckless endangerment during flight occurs.

Amendment No. 22 - It is felt that the present guideline 3D1.4, multiple count rules, is already clear and effective, but further guidance and clarification are duly welcomed.

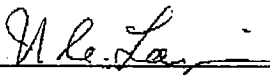
Chapter 4 Guidelines and Commentary (Page 16):

Amendment No. 28 - It is recommended that the Commission establish a new Category zero (0) criminal history to distinguish between a first offender and a category I offender. It is further recommended that a new category VII be established as well as additional criminal history categories to address the more serious offenders. Option three, which establishes a category of VII (16 to 18 points), appears preferable.

Sincerely,



William R. Thorne
Senior U.S. Probation Officer

Approved by: 

Wellington A. Lazier
Deputy Chief U.S. Probation Officer

cc: The Honorable Vincent L. Broderick
% Research Division
Federal Judicial Center
1520 H Street, N.W.
Washington, D.C. 20005

WRT:tlm
[LT-Sente]



U.S. District Court
Eastern District of Missouri

FAX MACHINE TRANSMITTAL

PROBATION OFFICE

1114 Market Street, Rm# 111

St. Louis, MO 63101

Phone: FTS 262-2291 Commercial: 314/539-2291

Fax: FTS 262-2388 Commercial: 314/539-2388

DATE:

2/28/92

TIME:

4:45 P.M.

TO:

U.S. SENTENCING COMMISSION

FROM:

WM. THORNE

U.S. Probation Officer

FAX:

RE:

PROPOSED GUIDELINES AMENDMENTS

Pages Sent (including cover sheet):

5

SPECIAL INSTRUCTIONS

Letter to follow!