

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
PROBATION OFFICE**

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**Reply To: Indianapolis**

**February 25, 1992**

**U.S. Sentencing Commission**  
**1331 Pennsylvania Avenue N.W., Suite 1400**  
**Washington D.C. 20004**

**To Whom It May Concern:**

I have received and reviewed a copy of the proposed 1992 amendments to the U.S. Sentencing Guidelines and would like to offer the following comments:

**Amendment 29: Expanded Availability of Non-Prison Sentencing Options**

1. Do the proposals "compromise the structure of the guidelines as originally drafted?"

No, they don't compromise, but would allow opportunity for more offenders to be placed on probation. I like the idea of changing the "split" in option #1, but I think that is as far as it should go. There is nothing wrong with the present table in the guidelines so why mess with it.

2. Should the Commission adopt an offense by offense approach under which certain types of offenders within the alternative eligible guideline cells would be excluded from eligibility?

No this gets too involved. Keep it simple.

3. Should the available sentencing options be expanded...

No, USPO's have enough "options" to keep track of now. I'm curious, would there be "boot camps" for females or is this only a male option?

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**Amendment 33**

This amendment is ridiculous. It shows a return to pre-guideline thinking. Every defense attorney around will argue his defendant is young and naive or elderly and infirm. I'm sure defense attorneys will probably "coach" their clients to say they were misguided as a child just so they can qualify for a departure. I can see probation officers telling offenders, "It's a shame you didn't come from a broken home, etc., you could have qualified for a downward departure!" If this amendment is passed we might as well chuck the guidelines.

**Amendment 26: Departures based on inadequacy of the criminal history score.**

I prefer option 2 because many of the defendants who have criminal history categories more serious than VI are also more serious than VII. Using option 2, the court may sentence to a category VII but can also depart above this category if needed. I like parts B and C of option 2 because I think they address areas which should be given consideration in determining the criminal history category.

**Amendment 23: Acceptance of Responsibility**

I believe under option 1 the defendant should be required to accept responsibility for his offense of conviction. For example, a defendant is charged with Rape and Felon in Possession. The Rape charge is filed in state court and the Felon in Possession is charged in federal court. In applying the guidelines in the federal case a cross reference to consider the rape conduct is considered using the preponderance of evidence standard. Requiring the defendant to admit he did commit the Rape in the federal case is requiring him to compromise his defense in the case at the state level. For cases such as this I believe the defendant's acceptance of responsibility for the offense of conviction alone should be sufficient.

In my experience, most judges have equated acceptance of responsibility with entering a plea of guilty. Consequently, many times the probation officer does not give a defendant acceptance of responsibility because that acceptance did not go beyond entering a plea of guilty. Option 3 allows the courts to continue to do what they have always done in the past yet allows a person who has truly demonstrated acceptance of responsibility to receive a further reduction. However, I

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would recommend the defendant receive one point for pleading guilty and two points for further demonstration of acceptance, instead of the other way around.

**Amendment 1, Part A and Part B: Relevant Conduct**

Relevant conduct continues to be a major problem area and any commentary, illustrations or definitions to clarify are helpful to everyone trying to compute the guidelines.

**Amendments 16, 17 and 18: Role in the Offense, Especially in Offenses Involving Drugs**

I think these changes to the commentary concerning mitigating and aggravating role guidelines are very good, especially amendment 16, part A and amendment 17, part A. I have seen several defendants charged by way of information, limiting the scope of their involvement in the instant offense, receive a further reduction for playing a minor role in the offense. I think the proposed changes in the commentary will help clarify the proper application.

I believe when determining whether a mitigating role adjustment should apply in a case the comparison should be between participants in the same case. When you try to gauge culpability based on "typical participant" you have the age old problem of defining what is a typical participant.

**Amendment 19**

I believe the sentencing guidelines appropriately address minimal participants and minor participants through reductions in the offense level. Consequently, I do not believe there should be a cap based on the defendant's participation in the offense. However, perhaps a cap could be considered for a defendant who is a first time offender in conjunction with being a minimal or minor participant.

**Amendment 27: Re-Definition of Career Criminal**

**Part A.** I agree with option number 2. Offenders who fall under this section deserve to receive the maximum sentence available. Therefore, I believe the enhanced statutory maximum sentence should be the one used.

**Part D.** I do not believe crimes of violence can be quantified. Therefore the definition at 4B1.2 is sufficient.

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Part E. When two cases are not related they should be considered as two convictions for purposes of the career criminal guideline.

Part F. A requirement for a defendant to have been arrested, convicted and sentenced for one offense before he commits the second excludes those defendants who commit a second offense while they are on bond for the first offense. In my opinion, a defendant should be held accountable for all prior arrests and convictions which occurred prior to his commission of the instant offense.

**Amendment 35 Plea Bargaining Policies: Use of Acquittals**

Part B. I agree the defendant should be held accountable for conduct contained in counts dismissed as part of a plea agreement.

Part C. I believe the preponderance of the evidence standard should be sufficient in considering conduct in which the defendant was acquitted. I do not believe it should be a basis for a departure but should be used to determine the offense level and/or to select a sentence within the guideline range.

**Amendment 36, Part X**

Defendants should be sentenced based on their real offense conduct and not merely the offense of conviction. The purpose of the cross references from the guideline of conviction to the guideline for the underlying behavior allows the court to pronounce a more just sentence. However, when the defendant incriminates himself by giving the government information they would not otherwise have access to, he should not be punished for that information.

**Amendment 20**

I agree with option number 3.

**Amendment 4, Part A**

I agree with the proposed amendment.

**Amendment 9**

I agree with option number 2.

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**Amendment 2, Part A and B: Chapter 1 Guidelines and Policy Statements**

I agree with this amendment.

**Amendment 3**

I agree with this amendment.

**Chapter 2 Guidelines and Commentary**

I agree with amendments 4 through 14 as provided in chapter 2.

**Chapter 3 Guidelines and Commentary**

**Amendment 21.** I believe a floor offense with additional levels for degree of risk is a good modification to be considered for reckless endangerment enhancement.

**Amendment 22: Multiple Counts**

This is a difficult area of the guidelines. Perhaps more examples would help clarify the rules.

**Chapter 4, Guidelines and Commentary**

**Amendment 24.** I believe one additional point for sentences of imprisonment exceeding one year and one month in which the defendant actually served five or more years of imprisonment is a good idea.

**Amendment 28.** I believe the criminal history category I is sufficient to address defendants who are first time offenders.

**Part B.** I believe a category VII should be added to the sentencing table as listed in option 3. This would give the court the option of departing above a category VII and departures could be structured to establish "pseudo" categories in three point increments as is presently done in the sentencing table.

**Chapter 5, Guidelines and Commentary**

**Amendment 34.** As much as I believe the U.S. Government abuses § 5K1.1 of the guidelines, I do not believe the answer is to eliminate the requirement for a government motion. I believe there should be requirements for the government to structure

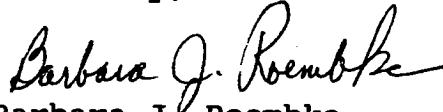
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any departure under this section and limit the departure to two levels, four levels or six levels. This would eliminate the "free fall" that we currently have with 5K1 motions.

I hope my comments will be considered. If you have any questions please feel free to call me at 317-226-6756.

Sincerely,



Barbara J. Roembke  
U. S. Probation Officer  
Sentencing Guidelines Specialist

BJR/njh

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