

TO: UNITED STATES SENTENCING COMMISSION
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ATTENTION: PUBLIC INFORMATION

FROM: C.U.R.E. (CITIZENS FOR THE REHABILITATION OF ERRANTS) because there are now over 95,000 federal prisoners

SUBJECT: REQUEST FOR PUBLIC COMMENT (published in Volume 60, No. 5 of the Federal Register dated 1/09/95 at pages 2430-2469)

C.U.R.E. would like to offer the following comments and proposals relevant to the published request of the Commission. These comments are in the numbered order chosen by the Commission:

1. HIV should not be treated in a class by itself. Other infectious diseases should be treated in a similar fashion (i.e. if sexual activity with intent to expose another to HIV carries a criminal penalty, the same should hold true for hepatitis, tuberculosis, etc.). Furthermore, anyone purposely exposing another to infectious disease should be held criminally responsible (including prison and jail personnel).
2. The words "physical contact" should be replaced with "bodily injury" in §2A2.3(a)(1). Minor physical contact (like a push) should not carry the same penalty as physical contact that results in bodily injury. There should be no cross-reference to §2A2.3 because an offense that is not "aggravated," so as to carry a felony conviction, should not be treated as such. The criteria for "aggravated assault" carries with it penalties that are self-supporting.
3. The base offense levels for involuntary manslaughter are adequate as is. Adequate punishment for a crime involving no criminal intent is already applied. For those egregious situations that arise, a judge can now depart upwards twice the number of months as previously was the case.
4. C.U.R.E. feels that courts should not be involved in family custody disputes, particularly when there are conflicts in court orders from foreign jurisdictions. There should be no further enhancements for parents abducting their own children on top of the existing penalties.
5. C.U.R.E. feels that there should be no additional enhancements in §2A3.1 Extraordinary situations can be dealt with by sentence departures. There are already enough enhancements to deal effectively with violent sexual abuse.
6. C.U.R.E. favors Option #1 to reflect that death to a victim must be found to have resulted from the offense beyond a reasonable doubt. A defendant should never face the death penalty using a preponderance of the evidence standard which can be skewed by prosecutorial misconduct or wilful withholding of exculpatory evidence.
7. C.U.R.E. feels the proposed amendments are more than adequate to support use of upward departures for those who have committed more than one of the same type crime. Higher offense levels because of the similarity of prior conduct (which might be quite minor compared to the instant offense) is not warranted.
8. C.U.R.E. favors Option #2 leaving discretion for but another enhancement to the judge in the case, rather than making an enhancement mandatory.

9. C.U.R.E. strenuously objects to the definition of a "major drug offense" to include Title 21 U.S.C. §846 indiscriminately, since that section can include drug conspiracies involving tiny amounts (parts of grams). Since Title 21 U.S.C. §841(b)(1)(A) or §960(b)(1) also involve amounts that are mixtures (involving tiny amounts of drugs), offenses under these subsections cannot remotely be called "major drug offenses" and should not be used as the basis for any additional enhancements in any situations. Present penalties are adequate for reckless endangerment.
- 10[A]. Why should a violation of 18 U.S.C. §1791 carry greater punishment than the mandatory minimum level of 26 (see cross-reference of §2D1.2 to §2D1.1), when the amount involved is the simple possession of very small amounts of drugs for personal use by mainly narcotic addicts? There is no reason to enhance this punishment any more than the 63 to 150 months already available under Level 26.
- 10[B]. The appropriate offense levels for simple possession of controlled substances in correctional facilities should be the levels set out in §2D1.1, plus the enhancement stated in §2D1.2(a)(2).
11. The enhancements set out in §2D1.2 are more than adequate for drug trafficking in protected locations, simply because criminal intent is not a stated requirement for violation of Title 21 U.S.C. §860. It is not fair to further penalize those who are ignorant of an obscure statute and who had no intention to violate that statute. There should be absolutely no enhancement when the Government chooses the location for the crime.
12. C.U.R.E. takes no position on Proposed Amendment #12.
13. C.U.R.E. objects to the wording of subsection (2) of Proposed Amendment #13 because the phrase "had reasonable cause to believe" severely inhibits a finding of guilt beyond a reasonable doubt, which is a cornerstone of criminal behavior in this country. Nobody should be found guilty of a crime only because the Government, acting through an AUSA, finds that a Defendant should have "had reasonable cause to believe" that perfectly legal behavior was a prelude to illegal behavior. The new statute [21 U.S.C. §843(a)] should itself be declared unconstitutional.
14. C.U.R.E. urges adoption of Option #1 as simpler and more appropriate for hate crime offenses, including implementation of new guidelines for penalty provisions of the Freedom of Access to Clinic Entrances Act of 1994.
15. C.U.R.E. has no comment on this Proposed Amendment.
16. C.U.R.E. favors Option #1, which results in a base offense level of 6 for transfer of a firearm to a juvenile. Such transfers are often by other youngsters, who should not be treated as adults.
17. The enhancement directive from Congress for semi-automatic firearm involvement in crimes of violence or drug trafficking should be implemented only against firearms more dangerous than other firearms, and only where the firearm is actually "involved" in the crime (i.e. not locked in somebody's car trunk). Congress' directive was specific and the Commission should not expand the directive to other crimes.
18. C.U.R.E. favors Option #2, where an application under §2K2.4 would include a recommended departure when the sentence (combined with the sentence of the underlying crime) does not provide adequate punishment. Discretion should be vested in the judge to determine an appropriate enhancement in lieu of a specific enhancement table.
19. The definitions for crime of violence and drug trafficking offense should be con-

sistently the same as those used in §4B1.1, which would eliminate liability for burglary of abandoned buildings and using a telephone to facilitate a drug distribution - crimes which may actually have nothing to do with violence or drugs. The current offense levels in the guidelines should not be increased.

20. C.U.R.E. favors Option #1 and believes that the existing penalties are adequate for these offenses and that no further upward enhancements serve any public purpose.

21. C.U.R.E. believes that the penalty for a conspiracy to violate Title 21 U.S.C. §924(c) should be referenced only to that section and should not be referenced to a guideline for an underlying offense for which there is no relevant conduct attributed to the Defendant.

22[A]. C.U.R.E. opposes any increase in the guidelines for §2L1.1.

22[B]. C.U.R.E. opposes penalties for reentry of aliens after conviction of a felony being extended to misdemeanors.

22[C]. C.U.R.E. opposes the suggested increases in base offense levels for these immigration offenses as suggested by the DOJ.

22[D]. C.U.R.E. opposes this DOJ suggestion for upward departures.

23[A]. C.U.R.E. opposes any change in §§5K2.9 & 5K2.15 guidelines for passport offenses because the existing guidelines adequately cover the offenses.

23[B]. C.U.R.E. opposes this DOJ Proposed Amendment because it skews the penalties for non-violent passport crimes to unwarranted terms of incarceration.

24. C.U.R.E. favors the addition of a non-binding recommendation of a pre-set upward enhancement for a felony that is intended to promote international terrorism.

25[A]. C.U.R.E. favors a two level adjustment commensurate with the adjustment for abuse of trust for involving a person under the age of 18 in other than a drug crime.

25[B]. C.U.R.E. agrees with this DOJ Proposed Amendment for using a minor to commit a crime.

26[A]. C.U.R.E. suggests any enhancement be left to a judge's discretion.

26[B]. C.U.R.E. has no comment regarding this Proposed Amendment.

27[A]. The present guidelines provide sufficiently stringent punishment for crimes against the elderly. There should be no enhancement unless a crime against an older person was committed knowingly and intentionally.

27[B]. C.U.R.E. agrees with this Proposed Amendment.

27[C]. Current victim-related adjustments are adequate for frauds against the elderly; a counterpart presumption for vulnerability of younger victims (under 16) should be established; and, a telemarketing fraud should be treated the same as any other fraud.

28. No action need be taken because the issue is already covered by §5G1.1.

29. C.U.R.E. takes no position on this Proposed Amendment, which is likely to be affected by currently proposed Congressional legislation.

30. C.U.R.E. takes no position on this Proposed Amendment.
- 31[A]. C.U.R.E. has no comment on this Proposed Amendment.
- 31[B]. This proposed amendment of §7B1.4 should specifically recite the old wording of Note 5 that the Court has discretion not to impose reimprisonment for failure of a drug test. There are many reasons why false positives come up on drug tests (i.e. a releasee should not be subject to incarceration merely because he ate a poppy seed roll, etc.). This Proposed Amendment does not adequately deal with the problem.
32. C.U.R.E. makes no comment to this Proposed Amendment.
33. C.U.R.E. urges adoption of Option C. The drug offense levels are too high because use of prosecutorial discretion for enhanced sentences makes them that way. Neither society's interests nor the drug dealer need the enormous amount of time in prison that is presented by the current guidelines and/or Options A or B.
34. C.U.R.E. urges adoption of a maximum level of 28 for those qualifying for a Mitigating Role in a drug offense. C.U.R.E. further urges a maximum level for mitigating roles in drug offenses where ingestion of the drug cannot be done intravenously up to a level of 20 (i.e. marijuana, LSD and other pill offenses would fit this category).
- 35[A]. C.U.R.E. opposes adoption of this amendment. Persons who are not criminally responsible should not be subject to enhancements.
- 35[B]. C.U.R.E. makes no comment on this Proposed Amendment.
36. C.U.R.E. opposes adoption of this Proposed Amendment. First, the words "leader" and "organizer" have never been sufficiently defined and are always manipulated by the prosecution. Second, the Amendment affords far too much discretion to AUSAs to utilize the enhancement. Third, so-called "leaders" and "organizers" are already sufficiently punished. Fourth, a very small amount of drugs would now result in a very large sentence just because of this enhancement. C.U.R.E. further opposes the alternative proposal by the Practitioner's Advisory Group because all firearm offenses in conjunction with drug offenses are already adequately enhanced under Title 18 U.S.C. §924(c).
37. C.U.R.E. strongly urges adoption of this Proposed Amendment to equate all marijuana plant cases to 100 grams per plant.
38. C.U.R.E. strongly urges adoption of a 1:1 ratio between cocaine and crack offenses because there is no scientific evidence of any difference between the two.
39. C.U.R.E. favors a twelve month continuous window on drug crimes for Option #1 because large drug importation schemes may be only one-time affairs. C.U.R.E. also supports the adoption of Option #2.
40. C.U.R.E. strongly urges adoption of this Amendment, so that Defendants are no longer punished for sale or possession of "filler." C.U.R.E. has no position on FAMM's proposal to reduce the methamphetamine ratio relative to other substances (penalties for all drug offenses are still far too high).
41. C.U.R.E. supports adoption of this Amendment so that Defendants are not penalized for "filler."
42. C.U.R.E. takes no position on the hashish/oil amendment; supports adoption of a dry marijuana weight distinction; takes no position on the Commission's definition of marijuana; takes no position on the addition of two obscure drugs for equivalency pur-

poses; opposes the loss of distinction between l-meth (weak) and d-meth (stronger); opposes a rebuttable presumption that if a weapon is present, it is connected with the offense (since most are not)); opposes the new wording of Note 12 to §2D1.1 because it still allows the Government to control offense severity in reverse-sting buys; supports adoption of Note 21 allowing a Defendant to rebut what was reasonably foreseeable in an unusual case; supports adoption of theoretical presumptions for uncompleted drug manufacture cases, but with different percentages for different drugs which more closely mirror reality; opposes Option #3 for drug offenses involving part of the amount for personal use because the Ninth Circuit approach is more realistic (placing a burden on the Defendant to rebut such a presumption may be an impossibility); supports the adoption of Additional Note 2 to §2D1.2, so that the Government cannot determine the location of a drug transaction to enhance the Defendant's sentence; supports the miscellaneous amendments to Application Note 1 of §2D1.8.

43. C.U.R.E. supports adoption of Option #1 of this Proposed Amendment, so that degree of bodily injury and number of participants in the offense carry more weight than the amount of drugs in the crime to determine the degree of punishment.

44. C.U.R.E. favors the use of Level 12 in subsection (a)(2) and Level 6 in subsection (a)(3) of §2S1.1 for setting Offense Levels for money laundering offenses. C.U.R.E. objects to the absence of a specific definition of the word "sophisticated" when adding two levels for such activity. Proposed Table §2S1.1 should not replace the Table in 2F1.1 because the inflated increase in levels is far too high. A downward departure for the Government influencing the amount of money in the crime should be recommended by an Application Note.

45. C.U.R.E. strongly urges changes in the structure of Supervised Release. §5D1.1 should be amended to eliminate required supervision in every case. §5D1.2 should be amended to reduce terms of Supervised Release. Judges should be given complete discretion to set and amend Supervised Release terms.

46. C.U.R.E. supports adoption of Option #2 for §5G1.3(c), so that judges have as much discretion as possible to adjust punishment to individual Defendant characteristics in the case of over-lapping offenses and sentences.

C.U.R.E. thanks the Commission for the opportunity to provide input to the rule-making process that affects all those soon-to-be incarcerated and those already in federal facilities.

C.U.R.E. hopes that the Commission will consider the plight of those very sick and terminally ill elderly federal prisoners and come up with a plan for a dignified release. C.U.R.E. also urges that any measures that shorten the terms of incarceration that take effect as new amendments will also be made a part of §1B1.10 for those already incarcerated.

DATED, this 24th day of February, 1995.

PUBLIC COMMENT FROM MARIJUANA POLICY PROJECT (MPP) (DOCUMENT 014-95,
PAGES 49-54) TRANSFERRED TO WRITTEN TESTIMONY BINDER