

FEDERAL PUBLIC DEFENDER
Western District of Washington

Thomas W. Hillier, II
Federal Public Defender

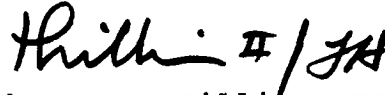
April 9, 1996

Honorable Richard P. Conaboy, Chair
United States Sentencing Commission
One Columbus Circle N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Judge Conaboy:

I am pleased to submit, on behalf of the Federal Public and Community Defenders, our views on the proposed amendments to the Guidelines Manual. We appreciate the opportunity to respond to the amendments published for comment this cycle.

Very truly yours,

Handwritten signature of Thomas W. Hillier, II, consisting of a stylized 'H' followed by 'illier, II' and a large 'JH' monogram.

Thomas W. Hillier, II
Federal Public Defender
Western District of Washington

Statement of

Federal Public and Community Defenders

on

Proposed Amendments to Sentencing Guidelines

April 9, 1996

Amendment Relating to Crack Cocaine

This amendment, in response to Public Law No. 104-38, seeks comment on the appropriate penalties for crack and powder cocaine offenses. In the legislation rejecting the amendment proposed last year to revise the penalties for crack cocaine offenses, Congress directed the Commission to revisit the issue and consider a number of factors, including a presumption that "the sentence imposed for trafficking in a quantity of crack cocaine should generally exceed the sentence imposed for trafficking in a like quantity of powder cocaine." The directive contains no deadline by which the Commission must respond, and in its request for comment, the Commission states that it may or may not act upon any proposed amendments this amendment cycle.

We commend the Commission for its efforts last year to bring about greater fairness in sentencing defendants convicted of crack offenses. It is unfortunate that Congress rejected the Commission's amendment. We hope that the Commission will continue to work toward achieving a fair sentencing system, despite any pressures to substitute political expediency for objectivity.

Amendment Relating to Money Laundering

This amendment seeks comment on revisions to the money laundering guidelines. The Commission has republished the amendment it promulgated last year, as well as a proposal drafted by the Department of Justice. After receiving public comment on the proposals, the Commission proposed an alternative amendment that "reflects the most recent discussions between Commission staff

and the staff of the Department of Justice on appropriate revisions of the 1995 amendment."

Last year, we supported the amendment promulgated by the Commission, and we continue to do so. That amendment, the result of three years of work by the Commission staff, would have tied the offense level of a money laundering conviction more closely to the underlying offense that was the source of the illegal proceeds. The Commission's working group on money laundering offenses found that prosecutions under 18 U.S.C. §§ 1956 and 1957 were being pursued increasingly to address offenses that traditionally would not be considered "money laundering." This practice results in prosecutions of offenses under the money laundering statute, even when the underlying offense is indistinguishable from the conduct alleged to constitute the money laundering offense. The Commission's amendment would better reflect the relative seriousness of the offense conduct. The Department of Justice proposal and the latest compromise proposal would do nothing to address the inequities and abuses that prompted the Commission's attempt to improve the current guideline.

We recommend that the Commission delay acting on any money laundering amendments until the Commission has had an opportunity to assess and receive public comment on the Justice Department report.

Amendment 1
Sexual Offenses Against Children

In response to the Sexual Crimes Against Children Prevention

Act of 1995, the Commission proposed amendments to the guidelines in Chapter 2, Part G. After receiving comment on these amendments, the Commission proposed substitute amendments. Section 2 of the Act directs the Commission to increase by at least two levels the base offense level for a violation of either 18 U.S.C. § 2251 or 18 U.S.C. § 2252. Section 3 of the Act directs the Commission to provide at least a two-level increase for an offense under 18 U.S.C. § 2251(c)(1)(A) or 2252(a) by at least three levels "if a computer was used to transmit the notice or advertisement to the intended recipient or to transport or ship the visual depiction." Section 4 directs the Commission to increase by at least three levels the base offense level for an offense under 18 U.S.C. § 2423(a).

In addition to specific guideline changes, the legislation directs the Commission to submit to Congress, by June 1996, a report "concerning child pornography and other sex offenses against children." Section 6 of the Act requires the report to include an analysis of sentences and recommendations for appropriate amendments to the guidelines applicable to offenses under 18 U.S.C. § 2251, 2252, and 2243 and offenses involving juvenile victims under 18 U.S.C. § 2241, 2242, 2243, and 2244. The legislation also directs the Commission to provide an analysis of substantial assistance departures for offenses under 18 U.S.C. §§ 2251 or 2252 and an analysis of recidivism by offenders convicted of sex crimes.

We recommend that, until the report is completed, the Commission refrain from making any more changes than necessary to

comply with the specific directives in the Act. Once the report is completed, the Commission will be in a better position to determine whether any further amendments are necessary. In addition, before we urge the Commission, before it makes any significant changes to the guidelines in Chapter 2, Part G, to clarify the heartland of offenses covered by those guidelines.

Amendment 2 Prostitution Offenses

In response to section 4 of the Sex Crimes Against Children Prevention Act of 1995 and the Telecommunications Act of 1996, the Commission published for comment amendments to § 2G1.1 and § 2G1.2. After receiving comment, the Commission has proposed substitute amendments to these guidelines.

Section 4 directs the Commission to provide at least a three-level enhancement for offenses involving the transportation of minors with intent to engage in prostitution or other prohibited sexual conduct under 18 U.S.C. § 2423(a). The Telecommunications Act of 1996 created a new offense prohibiting use of interstate or foreign commerce to persuade, induce, entice, or coerce an individual under age 18 to engage in prostitution or any other criminal sexual act.

We agree with the Department of Justice that until the report is completed, the Commission should "just follow [the] legislation directive." We suggest that any additional changes, such as consolidation of guidelines, can best be addressed after review of the report and as part of the guideline simplification project.