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March 12, 2001

Ms. Pamela Montgomery, Director
Office of Education and Sentencing Practice
U. S. Sentencing Commission
One Columbus Circle, NE
Suite 2-500
Washington, D.C. 20002

Re: Proposed amendment to the Immigration guideline

Dear Ms. Montgomery:

I write in response to your question concerning the difficulty probation officers would have obtaining reliable information about the amount of time a defendant had served in prison/jail on a prior conviction. Given the short turnaround we did not conduct a formal survey, and instead called a few members of the Chiefs Advisory Group and several chiefs in border courts to get their opinions.

As we understand the proposal, it is intended to reflect sentencing enhancements based on the period of time the defendant actually served in prison for a prior aggravated felony conviction. Several chiefs on the border reported that obtaining reliable information pertaining to the time a defendant actually served is impractical and very time consuming. For example:

Chief Probation Officer Martha Crockett (California, Southern) stated that reliable "time served" information is not readily available. She notes that if officers are required to obtain such information it would cause significant sentencing delays. Further, she adds that it would lead to unfair applications where such information is available for one defendant and not another. She added that she checked with two deputy chiefs and both say that using time served would be a "bad idea."

Chief Probation Officer Jerry Denzlinger (Texas, Southern), notes that his officers can get booking records from Harris County and the Texas Department of Criminal Justice (TDCJ), but are not usually able to get that information from other county facilities.

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Further, he points out that the booking information from the Harris County Jail comes from a computerized database system which is not certified for accuracy and that if such information is to be used for sentencing it may require staff at county institutions to pull jail cards to verify the computerized dates when the database information is contested. Jerry doubts that county staff will cooperate and further cautions that his own office would likely be inundated with collateral requests to track down jail cards. Finally, he notes that "good time" credit varies greatly across jurisdictions, raising issues of fairness if time actually served is to be used for sentencing.

Chief Maggie Jensen (Arizona) echoes these concerns. She states it would be potentially very difficult to obtain accurate information for actual time served on sentences. Given there is no time restriction on aggravated felonies for unlawful entry cases under 8 U.S.C. § 1326, obtaining sentencing information for old convictions/sentences could be problematic, if not impossible in some cases. Ms. Jensen suggests the use of time served as a measure to either increase or decrease the sentencing range is filled with numerous pitfalls. Instead she and her staff suggest that the length of sentences imposed would be an easier measure to obtain, and similar to current guideline application rules for criminal history and career offender.

However, there is not agreement among those polled about the difficulty of obtaining this information.

Chiefs Gilbert Montoya (New Mexico) and Dave Saunders (Nevada) reported that they do not believe that it would be appreciably more difficult to obtain the actual time served, and in many instances, this information is currently being provided to the court.

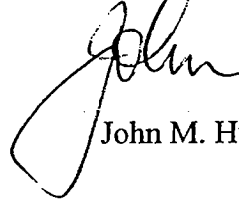
Chief Kenneth Laborde (Texas, Eastern) reports that it would not be too difficult to collect time served data for Texas cases, except in the smaller, rural counties. He notes that this information would be subject to objections by the parties and, therefore, needs to be documented and this will require additional effort. Chiefs Jensen and Laborde expressed concern about the difficulty of determining the time served per count where there are multiple counts of conviction. Both Chiefs Jensen and Laborde wondered why the commission proposes treating this offense differently from the typical application rule of basing the guideline calculation on the actual sentence imposed, not time served. Chief Laborde goes on to suggest if time served is used, the commission could ease the application problem by basing any adjustment on the number of months spent in incarceration and not asking for the exact number of days. Anything more than 15 days would be counted as a full month and anything less would not count.

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Finally, as Chief Ruby Lehrmann of Texas, Western notes, securing this additional information can be done but will in many instances place an additional work burden on an already overburdened staff and may lead to disparity in application depending on the availability of the data.

I hope that this information is helpful to you and the Commission as you formulate sentencing policy. We appreciate the invitation to comment on this proposal. Let me know if I or my staff can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "John M. Hughes".

John M. Hughes

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