

FEDERAL PUBLIC DEFENDER

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February 22, 2001

Hon. Diana E. Murphy, Chair
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Judge Murphy:

The Federal Public and Community Defenders' Guidelines Committee is preparing its comments to proposed Guidelines Amendment No. 5 which was published on January 24, 2001. This Amendment concerns proposed changes to the sexual offender Guidelines, including the development of a "sexual predator" Guideline, a "pattern of activity" enhancement, increased Guideline ranges for incest, and the Guideline for criminal sexual abuse of a minor (statutory rape).

In our collective experience, most of these Guideline cases tend to involve Native American defendants and their activities on Indian Reservations. While Congress is certainly legislating for the general case and the Commission promulgating Guidelines for that general case, the reality of federal criminal jurisdiction is that most sexual offender cases are crimes committed on Indian Reservations. We recognize that given federal law enforcement's recent emphasis on crimes involving computerized child pornography and interstate travel with the intent to have sex with a minor, there will be more and more non-Native American sexual offender cases. Nonetheless, a great number of such cases, and perhaps a majority, will continue to be Native American defendants acting on Indian Reservations.

Given that reality, we request that the Commission release any studies, data or analysis it may have concerning the impact of the proposed Amendment on the Native American caseload. We remember that prior Commission statistics have revealed that increasing sexual offender Guideline ranges had a tremendous impact on Native American defendants. We suspect that this proposed Amendment is no different.

In addition, we strongly urge the Commission not to submit to Congress any proposed Amendment concerning sexual offenders until after the Commission has had hearings where it can gather evidence of the proposed Amendment's impact on the Native American population. We suggest hearings in South Dakota and in Arizona or New Mexico so that the hearings are more accessible to Native Americans and their leadership. Having these hearings will be instructive to the Commission and will highlight both the similarities and the differences among the Indian tribes.

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If you have any questions about our comments and requests, please feel free to contact me. We look forward to receiving the information we have requested so that our comments can be more meaningful and helpful to the Commission.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jon M. Sands".

JON M. SANDS

Chair, Federal Defender Committee
on the Guidelines

JMS:mlb
murphy3ltr

cc: Tim McGrath

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