

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

230 N. First Avenue

Room 6077

Phoenix, Arizona 85025

Stephen M. McNamee
Chief United States District Judge

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April 3, 2001

Mr. Timothy B. McGrath
Staff Director
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, DC 20002-8002

Dear Mr. McGrath:

I am responding to your invitation to review the proposed changes to USSG § 2L1.2 and comment on the proposed amendment to illegal entry cases. Currently, USSG § 2L1.2 provides for a base level of 8 (2L1.2(a)) for entering or remaining in the United States and an increase of 16 levels (2L1.2(b)(1)(A)) if the individual has a prior conviction for an aggregated felony for a total offense level of 24. The proposed amendment would keep the base offense level at 8 (2L1.2(a)) and the enhancement for a prior aggravated felony conviction would be a graduated scale delineated by definition.

While I endorse the reduction of the current blanket 16 level enhancement, I do not support the graduated scale that is defined by the length of the prior sentence.

Initially, I believe this places an undue burden on the Probation Office, and the Courts to resolve factual objections. The Courts are already overwhelmed by these cases, and the time for resolving objections is at a premium. Despite everyone's best efforts to resolve objections prior to sentencing, too often objections are addressed regarding the nature of a prior record or conviction at sentencing.

Secondly, pre-sentence reports are replete with numerous convictions from a multitude of jurisdictions that have an infinite array of variations. Again, the undue burden of resolution of conflicts that results from inadequate information.

I would favor a system that would either have a single 7 or 8 level increase for a prior aggravated conviction, or a graduated system based on the number of prior aggravated felony convictions. A system based on these factors would be more user friendly for all involved and achieve the same goal.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen M. McNamee".

Stephen M. McNamee
Chief United States District Court

SMM/mp