

August 2, 2005

United States Sentencing Commission
One Columbus Circle, Northeast Suite 2-500
South Lobby
Washington D.C. 20002-8002
Attention: Public Affairs-Priorities Comment

Re: Public Comment on the continuation of work on cocaine sentencing.

Honorable Chairman Hinojosa and Distinguished Members of the Commission:

My name is Stephanie Thomas. I serve the public as a Municipal Clerk in South Florida. The purpose of this correspondence is to provide public comment under the Public Hearing for the continuation of work on cocaine sentencing policy as it pertains to Drug Sentencing for first time offenders.

In addressing my opinion of sentencing guidelines, I hope Judges countrywide have all imposed adequate sentences that fall within the guidelines set forth by The Honorable United States Sentencing Commission. It is my strong opinion that Judges are the voice of the people; therefore should be the epitome of justice. Judges should take into consideration the recommendation of the people by way of the United States Sentencing Commission.

In the 2004 Federal Sentencing Guidelines Manual, under Chapter Five, Determining the Sentence; the introductory commentary states the following *"for certain categories of offenses and offenders, the guidelines permit the court to impose either imprisonment or some other sanction or combination of sanctions. In determining the type of sentence to impose, the sentencing judge should consider the nature and seriousness of the conduct, the statutory purposes of sentencing, and the pertinent offender characteristics. A sentence is within the guidelines if it complies with each applicable section of this chapter. The court should impose a sentence sufficient, but not greater than necessary, to comply with the statutory purposes of sentencing. 18 U.S.C. § 3553(a)"* When we talk about all of the *statutory purposes of sentencing*, how much is really considered during sentencing? How can the Senate as well as the Sentencing Commission assure the public that although the social debt to society is being repaid, the defendant will receive all of the above, which is his/her own justice. All too often defendants are "railroaded" for life because all of the above components do not weigh out. It is possible to say that the Judge may concentrate on one of the statutory purposed, more than any other. That then defeats the purpose of the sentencing guidelines. If concentrating on *"just punishment"* a person can receive unfair sentencing. My point is, all purposes listed above should balance out, therefore justice will be served to both sides of the law.

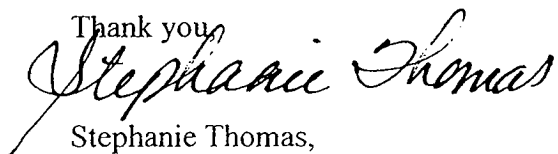
Although the aforementioned manual mentions first time offenders, it is closely similar to the repeat offenders referred to in Zone A. (See attachment one (1))How do we sentence these individuals? What is fair and reasonable for first time offender(s) when it is stated that the courts are to impose a sentence sufficient, but not greater than necessary, (the Commission should determine what constitutes a "greater than necessary" sentence) to comply with the purpose set forth in the Sentencing Reform Act which are to reflect the seriousness of the offense, to promote respect for the law, and to provide punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. All of the above are listed and are expected to be considered upon sentencing. I believe in the guidelines set forth; however, I also believe and recommend that the sentencing for first time cocaine offenders be less stringent and should concentrate more on rehabilitation. Perhaps a first time offender is sentenced to ten (10) consecutive or concurrent life sentences, when will they be allowed to exemplify their rehabilitation?

Frankel (1972) argued proportionality (severity of sentence and the seriousness of the crime should be linked), equity (ensures that we live in a country committed to equal justice under the law- with sentencing statute that mandates similar outcomes for similar crimes committed by similar offenders), and social debt (the principle that the greater the offenders prior criminal history, the more stringent the sentencing should be). Where does the first time offender fit in? Are they to be categorized with similar offenders when they do not share similar backgrounds or criminal history and yet today, they are facing the same terms as a repeated offender? Why?

When Judges impose harsh sentences on first time offenders, I feel they should explain at the time of sentencing, the purpose of the stringent sentence and if it is within the sentencing guidelines, and if not, why they are sentencing outside of the guidelines. Like I stated in the opening of my Public Comment, Judges serve as the voice of the people. Constituencies did not support the guidelines for distribution of crack as opposed to powder so why do the guidelines continue to support the differential treatment? Instead of accepting the recommendation of the people; the courts appeared to have displaced the discretion with prosecutors which often results in longer sentences.

Although I am but one person writing to address this issue; I am wholly the voice of many who may not be aware of this public hearing. I am speaking for the rehabilitated, first time offenders who feel victimized by unfair sentencing, their families, and also free people who believe in what I have stated. I hope you will consider my statements and request to lessen first time offender sentencing as you finalize your work on the cocaine sentencing policy.

Thank you,


Stephanie Thomas,
Municipal Clerk; Concerned Citizen

Attachments(2)

CHAPTER FIVE - DETERMINING THE SENTENCE

Introductory Commentary

For certain categories of offenses and offenders, the guidelines permit the court to impose either imprisonment or some other sanction or combination of sanctions. In determining the type of sentence to impose, the sentencing judge should consider the nature and seriousness of the conduct, the statutory purposes of sentencing, and the pertinent offender characteristics. A sentence is within the guidelines if it complies with each applicable section of this chapter. The court should impose a sentence sufficient, but not greater than necessary, to comply with the statutory purposes of sentencing. 18 U.S.C. § 3553(a).

Historical Note: Effective November 1, 1987.

PART A - SENTENCING TABLE

The Sentencing Table used to determine the guideline range follows:

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175

29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

Commentary to Sentencing Table

Application Notes:

1. The Offense Level (1-43) forms the vertical axis of the Sentencing Table. The Criminal History Category (I-VI) forms the horizontal axis of the Table. The intersection of the Offense Level and Criminal History Category displays the Guideline Range in months of imprisonment. "Life" means life imprisonment. For example, the guideline range applicable to a defendant with an Offense Level of 15 and a Criminal History Category of III is 24-30 months of imprisonment.

2. In rare cases, a total offense level of less than 1 or more than 43 may result from application of the guidelines. A total offense level of less than 1 is to be treated as an offense level of 1. An offense level of more than 43 is to be treated as an offense level of 43.

3. The Criminal History Category is determined by the total criminal history points from Chapter Four, Part A, except as provided in §§4B1.1 (Career Offender) and 4B1.4 (Armed Career Criminal). The total criminal history points associated with each Criminal History Category are shown under each Criminal History Category in the Sentencing Table.

Historical Note: Effective November 1, 1987. Amended effective November 1, 1989 (see Appendix C, amendment 270); November 1, 1991 (see Appendix C, amendment 418); November 1, 1992 (see Appendix C, amendment 462).

PART B - PROBATION

Introductory Commentary

The Comprehensive Crime Control Act of 1984 makes probation a sentence in and of itself. 18 U.S.C. § 3561. Probation may be used as an alternative to incarceration, provided that the terms and conditions of probation can be fashioned so as to meet fully the statutory purposes of sentencing, including promoting respect for law, providing just punishment for the offense, achieving general deterrence, and protecting the public from further crimes by the defendant.

Historical Note: Effective November 1, 1987.

§5B1.1. Imposition of a Term of Probation

(ii) *The involvement in the offense, if any, of members of the defendant's family.*

(iii) *The danger, if any, to members of the defendant's family as a result of the offense.*

(B) Departures Based on Loss of Caretaking or Financial Support.—A departure under this policy statement based on the loss of caretaking or financial support of the defendant's family requires, in addition to the court's consideration of the non-exhaustive list of circumstances in subdivision (A), the presence of the following circumstances:

(i) *The defendant's service of a sentence within the applicable guideline range will cause a substantial, direct, and specific loss of essential caretaking, or essential financial support, to the defendant's family.*

(ii) *The loss of caretaking or financial support substantially exceeds the harm ordinarily incident to incarceration for a similarly situated defendant. For example, the fact that the defendant's family might incur some degree of financial hardship or suffer to some extent from the absence of a parent through incarceration is not in itself sufficient as a basis for departure because such hardship or suffering is of a sort ordinarily incident to incarceration.*

(iii) *The loss of caretaking or financial support is one for which no effective remedial or ameliorative programs reasonably are available, making the defendant's caretaking or financial support irreplaceable to the defendant's family.*

(iv) *The departure effectively will address the loss of caretaking or financial support.*

Historical Note: Effective November 1, 1987. Amended effective November 1, 1991 (see Appendix C, amendment 386); April 30, 2003 (see Appendix C, amendment 649); October 27, 2003 (see Appendix C, amendment 651).

§5H1.7. Role in the Offense (Policy Statement)

A defendant's role in the offense is relevant in determining the applicable guideline range (see Chapter Three, Part B (Role in the Offense)). It is not a basis for departing from that range (see subsection (d) of §5K2.0 (Grounds for Departures)).

Historical Note: Effective November 1, 1987. Amended effective October 27, 2003 (see Appendix C, amendment 651).

§5H1.8. Criminal History (Policy Statement)

A defendant's criminal history is relevant in determining the applicable criminal history category. See Chapter Four (Criminal History and Criminal Livelihood). For grounds of departure based on the defendant's criminal history, see §4A1.3 (Departures Based on Inadequacy of Criminal History Category).

Historical Note: Effective November 1, 1987. Amended effective October 27, 2003 (see Appendix C, amendment 651).

§5H1.9. Dependence upon Criminal Activity for a Livelihood (Policy Statement)

The degree to which a defendant depends upon criminal activity for a livelihood is relevant in determining the appropriate sentence. See Chapter Four, Part B (Career Offenders and Criminal Livelihood).

Historical Note: Effective November 1, 1987.