

COMMITTEE ON CRIMINAL LAW AND PROBATION ADMINISTRATION

OF THE

JUDICIAL CONFERENCE OF THE UNITED STATES

19613 UNITED STATES COURTHOUSE

601 MARKET STREET

PHILADELPHIA, PA 19106

JUDGE EDWARD R. BECKER
CHAIRMAN

8-897-8642 (FTS)
215-897-8642 (COMM.)

VI. § 5E1.2, Fines for Individual Defendants

The statutes authorize fines as an optional penalty but the guidelines make fines presumptive in every case. However, in a large majority of cases defendants do not have the ability to pay a fine. Because fines are presumptive according to the guidelines, the judge is required to make a finding as to ability to pay in every case. In order to more accurately reflect the reality of the defendant population and to remove a time consuming proceeding, the Committee on Criminal Law and Probation Administration endorsed a resolution during the January 1990 meeting to urge the U.S. Sentencing Commission to amend the guidelines to remove the presumptive fine requirement and allow the courts to impose a fine when warranted. This resolution was transmitted to the Commission in my letter to you of February 5, 1990. While the proposed amendments to the application notes in the fine guideline provide more flexibility in the requirements to calculate fines, the Committee stands by the resolution, believing that a better amendment would be for the Commission to authorize fines rather than making them presumptive.

On several occasions in the past, the Committee has urged that the required fine calculation for the costs to the government of imprisonment or supervision (§ 5E1.2) should be amended. Few defendants are able to pay these costs. Moreover, this provision requires a second fine calculation, often to very little end. Not only is this provision unrealistic and burdensome, it is confusing to those who have the statutory authority to collect fines. The confusion results from the mistaken belief that "costs" are a separate financial penalty, distinct from a criminal fine, when in fact, "costs" are merely one of the elements that goes into the determination of the fine calculation. We recommend that this requirement be moved to § 5E1.2(d), the list of considerations in determining the amount of the fine. Since only one total fine can be imposed, this provision is actually another consideration that could be added to the seven factors already included in § 5E1.2.

STATEMENT OF

SAMUEL J. BUFFONE, CHAIRPERSON
U.S. SENTENCING COMMISSION COMMITTEE
CRIMINAL JUSTICE SECTION

Item 66. This is a desirable, simplifying amendment. Indeed, the fine guideline could be rendered even more simple and sensible if the "cost-of-imprisonment" add-on were instead incorporated as one of the factors to be considered within the applicable guideline range.