Subject: Proposed Amendments to Sentencing Guidelines

I am writing to support the proposed amendments to the Federal Sentencing Guidelines.

Randall Wilson

1. Proposed Amendment: First Offenders/Alternatives to Incarceration, Section (A) -2 Under the Guidelines Manual, offenders with a minimal or no criminal history are classified into Criminal History Category I. "First Offenders." Offenders with no criminal history, are addressed in the guidelines only by reference to Criminal History Category I. Criminal History Category I. However Criminal History I includes not only "first" offenders but also offenders with varying criminal histories, such as offenders with no criminal history points and those with one criminal history point. Accordingly,. The following offenders are classified in the same category: [1] first time offenders with no prior convictions that are not used in computing the criminal history category for reasons other than their "staleness" (i.e.) sentences resulting form foreign or tribal court convictions, minor misdemeanors convictions or infractions)" and (4) offenders with a prior conviction that received only one criminal history point. **COMMENT:** Pertaining to the proposed amendment, I am in agreement with the aforementioned changes in verbiage, procedure, and encourage the use of alternatives to incarceration whenever and wherever possible. **CRIMINAL HISTORY ISSUES, pg.55**
2. The proposed amendment would amend 4A1.2 to provide the revocations of probation, paroles, supervised release, special parole or mandatory release are not to be counted for purposes of calculating criminal history points, but may be considered under 4A1.3 (Departures based on Inadequacy of Criminal History Category (Policy Statement). The policy statement at 4A1.3 provides upward departures for cases in which reliable information indicates that the defendant's criminal/category substantially underrepresents the seriousness of the defendant's criminal history. As the proposed amendment is currently put forth, the semantics in question may be the term "reliable information" is used. The phraseology should be further explained as to what exactly is acceptable, as "reliable information is" as it could lead to an "upward departure", due to the criminal history of the defendant being higher than normally would be interpreted, were the information provided "unreliable". Guidelines must be established to ensure that information provided upon as reliable, must meet certain criteria, in order to be admissible in a court of law. Please insure that adequate explanation of exactly what "reliable information" is, per the sentencing guidelines, to preclude errors in sentencing and possible over or under sentencing by the presiding judge. This issue is being commented on, in reference to 4A1.3 (a) Standards for upward departure. Subsection (2) Types if Information Forming the basis for upward departure. There should be some type of clarification as to what exactly constitutes the "reliable information", resulting in an upward departure. The only items deemed as "reliable information", items 4A1.3 (a) (2) If this is the case, then the amendment should be prefaced with this clarification prior to annotating the proposed changes to the amendment.
3. **PROPOSED AMENDMENT:** Miscellaneous, 2A3.5. (b) (2) Commentary concerning application of subsection (b) (2) (A) in general. In order for subsection (b) (2) to apply, the defendants voluntary attempt to register or to correct the failure to register, must have occurred prior to the time the defendant knew or reasonably should have known a jurisdiction had detected the failure register. **COMMENTS:** Under subsection (b) (2) If the defendant voluntarily (A) corrected the failure to register; or (B) attempted to register but was prevented from registering by uncontrollable circumstances and the defendant did not contribute to the creation of those circumstances, decrease by e levels. It should be considered unjust to hold a defendant accountable for circumstances beyond their control, and still require points to be assigned

against them for charges of “Failure to Register” and decrease the points by -3, when, if in fact the defendant can prove that the defendant does in fact meet the requirements stated in Subsection (b) (2) (B) (A), then the defendant should be exonerated of the “Failure to Register” charge, and associated point assignments. This exoneration should apply if there are no Specific Offense Characteristics as listed in Subsections (b) (1) (A-C).

PROPOSED AMENDMENT: Technical, - All current proposed technical modifications and corrections should be submitted as documented for approval and subsequent inclusion.

PROPOSED ADMENDMENTS: TRIBAL ISSUES, YOUTHFUL OFFENDERS, BIPARTISAN BUDGET ACT, MIRIHUANA EQUIVALENCY, All current proposed modifications and corrections, should be submitted as documented for approval and subsequent inclusion.

These comments are directed to proposed changes to Sections 4A1.2(k) and 4A1.3 and Section 3E1.1.

Although the sentencing guidelines are advisory, courts and lawyers rely on them heavily. The guidelines are already overly complicated and, in my opinion, they place too much emphasis on the length of a prior sentence rather than the conduct for which a defendant was convicted. Sentencing across the fifty states is highly variable. Someone like Brock Turner (Stanford swimmer who sexually assaulted a woman behind a dumpster) serves a 3 month sentence in California while someone in Florida could easily have received 15 years for the same conduct. Some states have "truth in sentencing" and require inmates to serve eighty-five percent of their sentences while other states still have parole and require much less time be served. Why turn sentencings into long drawn out mini-trials focused on why someone was released early for a crime committed all the way across the country? This would exponentially increase the burdens on prosecutors to seek out the most minute bits of information from a prior conviction to present to the court. Does it really matter whether a shortened sentence was the result of a state budget crunch versus a clerical error or a lenient judge who grants a sentence reduction? Alternately, if a "hanging" judge gives someone a harsh sentence for a fairly minor offense, why should they be punished more harshly? What should really matter are the facts of the case which are much more easily discernible and provable.

Changing the way sentences are counted when there is a revocation is the best way to underrepresent an offender's criminal history category. It is more likely that such a sentence, which then extends into the fifteen year window, was the result of a fairly serious offense, a crime of violence or a crime spree. This proposed change will further narrow the definition of a career offender to only people who commit qualifying offenses and serve short sentences. A person who committed a robbery and a rape or an aggravated battery, then violated their probation, parole or other form of release, should be a career offender when they are charged with a qualifying federal crime within fifteen years of their release from any previous sentence, not just the original sentence of incarceration. The guidelines presently account for these situations. The proposed changes would make harsh sentences for repeat violent offenders an exception (necessitating a motion for upward departure) rather than the rule.

Concerning the proposed change to Section 3E1.1, are a great number of defendants really being denied the two-point reduction after making a non-frivolous objection to relevant conduct? If a defendant makes demonstrably false denials and wastes the time of the Court and other participants they should not be eligible to claim the benefits of accepting responsibility. Hearings on some of these issues can take up almost as much time and resources as a short trial. It is one thing for a defendant to argue a fairly debatable issue. It is quite another to clog up the system with dozens of objections that have no chance of being sustained, simply because a lawyer can't stand up to a difficult client. Should defendants who enter into factual stipulations be able to challenge those stipulations at sentencing with no consequence? That is the ultimate question. If the answer is no, I don't believe the language should be changed.

As a citizen and a 15 year practitioner of criminal law I do not support the proposed changes.

Thank You,

Anita White