Subject: Proposed Amendments to Sentencing Guidelines

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

Randall Wilson

Good Morning,

In light of the proposed amendments to the criminal history guidelines, given the fact that we are the United States, not the United State, our laws should be the same in all fifty states. The "geographical location" of an offender should bear no difference as to how such a sentence applies to any particular offender. However, municipal court sentences depend on the individual discretion of the court and the district attorney.

Nevertheless, the charging discretion of the courts vary to a distinguishing degree. (i.e., an offender who commits a felony offense but pursuant to a plea "deal", pleads to a lesser offense such as a misdemeanor, as opposed to pleading to a felony, thus receiving a reduced sentence). This particular charging discretion varies from court to court, creating different degrees of disparity among non-similarly situated defendants. Although the policy statement of the criminal history guidelines "recognizes that the criminal history score is unlikely to take into account all the variations in the seriousness of the criminal history that may occur", and "authorizes the consideration of a departure". see 4A1.3 . The "recognition of this imperfection of this measure 4A1.3 authorizes the court court to depart from the otherwise applicable category" which only applies "in certain circumstances". Additionally, this is only an "authorization", not an "obligation" for the court to utilize its discretion in limited circumstances.

The guidelines proscribe that criminal history points are to be added "for each prior sentence not counted in (a) or (b), up to a total of 4 points for this subsection", see 4A1.1(c), of "which the imposition...of the sentence...totally suspended or stayed shall be counted as a prior sentence", see 4A1.2(a)(3), and was "imposed within ten years of the defendants commencement of the instant offense is counted", see 4A1.2(e)(2)

Thus an offender who, for example, has a prior offense such as a misdemeanor for petit theft, that was committed 9 1/2 years prior but not past 10 years, where the sentence imposed was less than 30 days imprisonment or less than 1 year of probation. Such an offense would trigger one criminal history point to be added. see 4A1.1(c), 4A1.2(c) and (e)(2). Likewise, where a different offender committed a felony drug trafficking offense 6 months prior, which involved a gun; or a offender who committed an aggravated felony assault 1 year prior, resulting in bodily injury, of which either sentence imposed was less than 30 days imprisonment or less than 1 year of probation. Each of these prior offenses would, equally, result in the application of one criminal history point, regardless of the conduct involved or the duration between the offenses.

An offender who, then, received a municipal courts considerable discretion, leads to further disparities among non-similarly situated offenders, again, due to the Federal courts discretion under 4A1.3. This is to consider a departure, to reflect the seriousness of an offenders "criminal background or likelihood of recidivism". However, without an obligation to address the issue some offenders are treated with leniency twice while others are penalized twice, all due to their geographical location and a particular Judge's discretion.

Moreover, certain minor offenses and misdemeanor offenses should not affect the criminal history points after a substantial period has elapsed, such as 5 years. As even most businesses do not discriminate against felonies that occur over 5 years in the past, while conducting background checks. Offenses that contain more egregious behavior or sentences that were reduced pursuant to a plea agreement, should be the only prior offenses that are counted, beyond 5 years, up to the ten year limits the guideline proscribe.

Additionally, the guidelines governing application of the criminal history points were designed to increase a sentence based on crimes of violence and to inform the sentencing Judge of which conduct constitutes a pattern of criminal behavior. This is to increase a sentence, to reflect an offenders risk of recidivism. The way the guidelines apply, currently, criminal history points are applied to low risk offenders, found of minimal past criminal conduct. However, these lower risk offenders are held to the same accountability and duration as higher risk and more culpable offenders, thus creating great disparities when coupled with the discretion of both prior and current sentencing courts. This fails to adequately reflect the conduct of an offenders criminal background or likelihood of recidivism.

The disparity or the failure to reflect the criminal history of an offender goes against the mandated obligation to fulfill section 3553 factors. The Sentencing Commission should design some type of "Table" to better determine and accurately calculate an offenders criminal history and background, similar to that of the "Sentencing Table", see Chapter 5, Part A. This is especially important, in light of how heavily the Federal system relies on the criminal history of an offender. Simply put, misdemeanor crimes sentenced to a term, less than 30 days imprisonment or less than one year of probation or supervised release, should not be counted back 10 years in the past, the same as felonies that are counted under 4a1.2(b).

Best Regards,

Shelly R Whiting

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