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Date: 2/7/2011 3:07 PM
Subject: Comments from the District of NE regarding the Fair Sentencing Act and other amendments.

Greetings sentencing Commission,.

Please see below, our comments regarding the Fair Sentencing Act and other proposed amendments, as requested by AO Director John Hughes.

If you have any questions, please do not hesitate to contact me :>>)

From the supervision supervisors:

Regarding the "deportable alien who likely will be deported"...I believe ordering a term of supervised release is not an efficient use of our resources, even though it may only involve "inactive" status and tracking the case. Another federal agency (ICE) is tasked with monitoring these cases.

As to the "retroactivity" of the Fair Sentencing Act...the term "fair" should apply to defendant's sentences regardless of when they were convicted. From a pure fiscal responsibility standpoint, it costs less to have these folks in the community, its unlikely the additional time in custody will do anything to address their "pro-social" needs. I also realize this will put our office in a position that may cause us to scramble, but that isn't anything we new for us.

From the presentence supervisors:

We agree with no SR for deportable aliens. It takes a lot of personnel and resources to track these cases and process violations with little perceived impact. 1) violations typically come to our attention as a result of a new arrest for which they are prosecuted and the basis for the SR violation then duplicates the new charges; 2) our Judges or more frequently running the revocation sentence concurrent with the new charges; and 3) it's obviously no deterrent.

We believe the new crack amendment should be retroactive in spite of the toll it will take on the districts to supervise what will likely be a significant increase in offenders due to immediate release. It's hard to see a distinction between the last crack amendment that was made retroactive and this one.

We don't believe 2L1.2 should be amended. Drug tracking, firearms, and violent offenses should be distinguished from other felony offenses. The proposed amendment potentially eliminates that distinction. For example, a prior sex offense conviction that doesn't receive criminal history points would result in the same enhancement as a prior theft conviction.

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