

Supreme Court of the United States
Washington, D. C. 20543

MEMBERS OF
THE CHIEF JUSTICE

Honorable Patrick Leahy
United States Senator
SR-433 Russell Senate Office Building
Washington, DC 20510-4502

Dear Senator Leahy:

I am responding to your letter of March 31, 2003, that requested the views of the Judicial Conference of the United States on a number of specific provisions of a sentencing-related amendment to H.R. 1104. By now you will have received Ralph Mecham's letter, dated April 3, which was sent to other Judiciary Committee members as well, expressing the concerns of the judiciary about the amendment. More specifically, the Judicial Conference:

1. Opposes legislation that would eliminate the courts' authority to depart downward in appropriate situations unless the grounds relied upon are specifically identified by the Sentencing Commission as permissible for the departure.
2. Consistent with the prior Judicial Conference position on congressionally mandated guideline amendments, opposes legislation that directly amends the sentencing guidelines, and suggests that, in lieu of mandated amendments, Congress should instruct the Sentencing Commission to study suggested changes to particular guidelines and to report to Congress if it determines not to make the recommended changes.
3. Opposes legislation that would alter the standard of review in 18 U.S.C. § 3742(e) from "due deference" regarding a sentencing judge's application of the guidelines to the facts of a case to a "de novo" standard of review.
4. Opposes any amendment to 28 U.S.C. § 994(w) that would impose specific record keeping and reporting requirements on federal courts in all criminal cases or that would require the Sentencing Commission to disclose confidential court records to the Judiciary Committees upon request.

Honorable Patrick Leahy
Page 2

5. Urges Congress that, if it determines to pursue legislation in this area notwithstanding the Judicial Conference's opposition, it do so only after the Judicial Conference, the Sentencing Commission, and the Senate have had an opportunity to consider more carefully the facts about downward departures and the implications of making such a significant change to the sentencing guideline system.

I believe these Conference positions respond to most of the questions posed in your letter. Please note, however, that the Conference did not specifically oppose the provisions mentioned in your third and fourth questions. These provisions would amend U.S.S.G. § 3E1.1 and promulgate new policy statement U.S.S.G. § 2K2.23. The Conference considered these provisions in adopting its opposition to direct congressional amendments of the sentencing guidelines. The Conference did not take positions on the provisions noted in your seventh and eighth questions. These would primarily affect the Department of Justice.

As stated in the April 3 letter, the Judicial Conference believes that this legislation, if enacted, would do serious harm to the basic structure of the sentencing guideline system and would seriously impair the ability of courts to impose just and responsible sentences. Before such legislation is enacted there should, at least, be a thorough and dispassionate inquiry into the consequences of such action.

Sincerely,

