

THE NATIONAL CENTER FOR  
**Victims of Crime**

**BOARD OF DIRECTORS**

Philip M. Gerson  
*Chair*

G. Morris Gurley  
*Vice-Chair*

Stephen Rickman  
*Treasurer*

Leonard Klevan  
*Secretary*

Alexander Auersperg  
Denise Forte  
Kim Goldman

Michael Haggard  
Melvin Hewitt  
Ala Isham

Ralph H. Isham  
Marc Lenahan  
Mark Mandell

Frank M. Ochberg, M.D.

Kathleen Flynn Peterson  
Charles J. Sgro

Hon. Eric Smith

Francisco Acevedo Villarruel

**EXECUTIVE DIRECTOR**

Mai Fernandez

March 14, 2014

The Honorable Patti Saris, Chair  
U.S. Sentencing Commission  
One Columbus Circle, NE  
Suite 2-500  
Washington, DC 20002-8002

Re: Proposed amendments to sentencing guidelines, relating to changes in the Violence Against Women Act of 2013, on the issue of Supervised Release

Dear Judge Saris and Members of the Commission:

The National Center for Victims of Crime submits the following comment with regard to changes prompted by the Violence Against Women Reauthorization Act of 2013, on the issue of Supervised Release.

The Stalking Resource Center (SRC) of the National Center for Victims of Crime, now in its fourteenth year, has worked to develop a national understanding of stalking among criminal and civil justice practitioners, and victim service providers. The mission of the SRC is to enhance the ability of professionals, organizations, and systems to effectively respond to stalking. The SRC partnered with the American Probation and Parole Association to develop a guide for community corrections officers supervising stalkers. The guide was developed with the input of front line parole and probation officers who shared their real world experience about the threats posed by stalkers and recommendations for supervision techniques. Our comments here reflect the knowledge gained through this process as well as our trainings of community corrections officials.

Changes made in the Violence Against Women Act Reauthorization of 2013 to the federal definition of stalking are likely to result in an increased number of stalking cases being charged in federal court. As noted by the Sentencing Commission in its proposed amendment to the definition of “stalking” in the Commentary to 2A6.2, the jurisdictional element of the offense was expanded. While previously limited to stalking that involved travel—in interstate or foreign commerce or into or out of Indian Country or within the special maritime and territorial jurisdiction of the U.S.—or the use of the mail or a facility of interstate or foreign commerce, the definition now extends to conduct committed while the defendant was present in the special maritime and territorial jurisdiction of the U.S. or by using an

March 14, 2014

Page two

interactive computer service, electronic communication, service, or electronic communication system. Thus, the revised definition will encompass much of the “cyberstalking” being committed daily across the country.

With this projected increase in the volume of cases, we applaud the Sentencing Commission for requesting comment on the necessity of updating its guidance on supervised release in cases involving domestic violence and stalking.

Stalkers pose a significant danger to victims. One in six women, and one in 19 men, have experienced stalking victimization during their lifetime in which they felt very fearful or believed that they or someone close to them would be harmed or killed.<sup>1</sup> Seventy-six percent of intimate partner femicide cases and 85 percent of attempted femicide cases involved at one incident of stalking within one year of the murder/attempted murder.<sup>2</sup> Stalking has a unique ability to disrupt the lives of victims. A recent study of stalking victims revealed the following:

- 46 percent of victims were afraid of not knowing what would happen next.
- 29 percent of victims were afraid the behavior would never stop.
- 30 percent of victims feared physical harm.
- 1 in 8 employed victims lost time from work; more than half lost 5 days or more.
- 22 percent of victims changed their day-to-day activities.
- 17 percent of victims changed their telephone numbers.
- 15 percent of victims avoided family or friends.
- 11 percent of victims had been stalked for 5 years or more.<sup>3</sup>

What’s more, almost one-third of stalkers have stalked previously.<sup>4</sup> Because of the danger, disruption, and persistence of stalkers, we urge the Sentencing Commission to amend its guidance under §5D1.1 *Imposition of a Term of Supervised Release*, Application note 2, that a term of supervised release is generally appropriate in any case involving stalking.

We would also strongly recommend that Application note 3, Factors to Be Considered, be amended to director courts to pay particular attention to any history of protective orders issued or violated, any previous crimes of violence or incidents of abuse, any prior stalking convictions, and any crimes involving threats. Of particular importance is any indication that abusive tactics

---

<sup>1</sup> Black, M.C., et al, *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. (Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention) 2011..

<sup>2</sup> Judith McFarlane et al., “Stalking and Intimate Partner Femicide,” *Homicide Studies* 3, no. 4 (1999).

<sup>3</sup> Katrina Baum, Ph.D., Shannan Catalano, Ph.D., Michael Rand, and Kristina Rose, *Stalking Victimization in the United States*. Bureau of Justice Statistics, 2009.

<sup>4</sup> Kris Mohandie, et al., 2006: “The RECON Typology of Stalking: Reliability and Validity Based upon a Large Sample of North American Stalkers,” *Journal of Forensic Sciences* (2006). Recidivism occurred in 60 percent of stalking cases after criminal or civil justice intervention.

March 14, 2014  
Page three

have escalated over time, which is considered a strong indication of the danger the offender poses to the victim.

We also urge the Sentencing Commission to amend 5D1.3, Conditions of Supervised Release, in stalking cases. Because defendants convicted of stalking, of violation of a protective order, and of domestic violence commonly pose a continuing threat to their victims, we urge the sentencing commission to amend subsection (d), Policy Statement, to include a new (8) as follows:

(8) Stalking, violation of protective order, or domestic violence

Because of the likelihood of repeated harassment or threats against victims of stalking and domestic violence, if the instant offense of conviction is of stalking, violation of an interstate protective order, or domestic violence,

(A) a condition that the defendant:

(a) Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;

(b) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons by any means, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

(B) The court should also give special consideration to the applicability of (d)(1), prohibiting the defendant from possessing a firearm.

(C) If the conduct included stalking behaviors that involved the misuse of technology, courts should consider the imposition of (d)(7)(B) or (C), limiting the use of a computer or interactive computer service, or requiring the defendant to submit to searches of computers, electronic communication or data storage devices or media, upon reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the defendant.

The National Center and Stalking Resource Center appreciate this opportunity to submit these comments. Please do not hesitate to reach out to us for clarification of these remarks or for further information, by contacting Michelle Garcia, director of the Stalking Resource Center, at 202-467-8700.

Sincerely,



Mai Fernandez  
Executive Director