

VICTIMS ADVISORY GROUP

To the United States Sentencing Commission

T. Michael Andrews, Chair



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United States Sentencing Commission
One Columbus Circle, N.E.
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Washington, D.C. 20002

RE: Victim Advisory Group (VAG) Priorities for the Amendment Cycle ending May 1, 2016.

Chairman Saris and Members of the Commission:

The Victims Advisory Group (VAG) respectfully submits the following recommendations to the Commission for amendment cycle ending May 1, 2016. As the Commission is aware, victims are an integral part of the criminal proceedings and have the right to be treated with respect and fairness. *See* 18 U.S.C. § 3771. The sentencing guidelines must reflect a strategic policy that insures the rights of victims are addressed by providing victims with participatory rights including restitution. The VAG supports the following priorities for the Commission to consider that impact victims.

I. Undertaking a multi-year study of Federal Sentencing Practices Regarding Probation and Supervised Probation.

Commission tentative priority:

(7) The VAG supports the Commission undertaking a multi-year study on improving the practice of imposition and violation of conditions of probation and supervised release. The VAG recommends that the multi-year review should include violations or failure to pay restitution as a continued detriment to victims. As part of a defendant's obligation to pay restitution, the Commission should study how restitution orders can be shared with the Department of Treasury's Bureau of Fiscal Service (BFS); (2) the development of database/technologies to share this information with BFS and to identify unfulfilled restitution orders; and (3) create a

mechanism within BFS to intercept tax refunds/overpayments to satisfy unpaid orders of restitution. The VAG believes this is a logical expansion of the use of the BFS program for crime victims. Often, after sentencing defendants obtain money from various sources that may be available for recovery by victims. Therefore, the VAG recommends that comprehensive review of violations include methods to ensure that victims receive restitution owed to them in a timely manner.

II. Child Pornography

Commission tentative priority:

(8) Continuation of its work with Congress and other interested parties on child pornography offenses to implement the recommendations set forth in the Commission's December 2012 report to Congress, titled Federal Child Pornography Offenses, and to develop appropriate guideline amendments in response to any related legislation; and (B) possible development of guideline amendments on the issue of victim restitution in light of Paroline v. United States. __ US __, 134 S.Ct. 1710 (2014).

VAG continues to support the bipartisan efforts of Congress to address the concerns the Supreme Court raised in Paroline.

III. Undertaking a multi-year study of disclosing PSR information to Victims.

Commission tentative priority (Miscellaneous):

(12) The VAG recommends that the Commission continue a multi-year study to evaluate whether certain parts of the pre-sentence report (PSR) should be disclosed to victims under §6A1.2. Since victims often participate in the development of the PSR, it is essential that any information communicated to the probation officer by the victim reflects the accuracy of the statement including any restitution sought. Disclosure of pertinent parts of the PSR to the victim or victim's advocate will allow the victim to correct the PSR for an inaccurate accounting of information. This practice is consistent with how state courts handle disclosure as well as in federal court hearings where lawyers representing a minor (child) victim in the role of guardian ad litem have access to the PSR through 18 U.S.C. § 3509(h)(2), (upon appointment, a guardian ad litem "may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child," and this would include any PSR). At the very least, the VAG recommends that the Commission consider allowing a draft proposal from the VAG for this study.

Conclusion

We respectfully request that the Commission consider these issues in the next amendment cycle. We look forward to working with the Commission to insure that the needs and concerns of crime victims are fully reflected in the sentencing guidelines.

Should you have any further questions or require any clarification regarding these proposals, please feel free to contact us.

Respectfully,

Victims Advisory Group
July 2016