

James Arbaugh

FCI Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640

3-October-2022

United States Sentencing Commission
Attention: Public Affairs / Priorities Comment
One Columbus Circle, N.E. Suite 2-500
South Lobby
Washington, DC 20002-8002

Re: Comments on Sentencing Commission Priorities

Dear Members of the United States Sentencing Commission:

I am an inmate in federal prison, and write to express my appreciation for the work you are doing and to affirm your planned priorities. As someone with inside experience of the sentencing guidelines, I can provide a unique prospective to give helpful feedback.

I feel strongly of the importance of the following identified priorities:

- (1) 1B1.13 - Reduction in Sentence.
- (7) Studies on recidivism and the treatment of defendants with zero criminal history points.
- (11) Simplify the guidelines while promoting the statutory purposes of sentencing.
- (12) Diversion and alternatives-to-incarceration programs.
- (13)(A) 3D1.2 - Grouping of Closely Related Counts.

As you consider priority eleven (11), how to simplify the guidelines and statutory purposes of sentencing, it is important to integrate the guidelines to the statutory maximum sentence allowable. Ideally, if all possible guideline enhancements for aggravating factors were applied in a given case, the guideline sentence would not exceed the statutory maximum. In some classes of crimes, particularly sex offenses, the guidelines for a typical case are at or beyond the statutory maximum.

In particular, consider cases of child exploitation, production, distribution, receipt or possession of child pornography. Most of these cases are given the following enhancements:

- § 2G2.2(b)(4) - material with sadistic or masochistic conduct
- § 2G2.2(b)(6) - use of a computer
- § 2G2.2(b)(7) - number of images involved

Because most cases receive these enhancements, they become "useless" and contribute to a guideline sentence at or above the statutory maximum. Frequently, judges do not have the backbone to give a downward variance accordingly. Those that do are scrutinized severely. Consider the confirmation hearings of Justice Ketanji Brown Jackson.

In cases of sexual abuse, there is no guideline consideration for the severity of the sexual act. 18 U.S.C. § 2246(2) describes a "sexual act" to include anything from (A) forced sodomy/intercourse to (D) simply touching the genitalia to cause sexual arousal. There is no guideline enhancement for more severe conduct.

The age of the victim becomes a primary consideration according to the guidelines sentence, particularly for a conviction under 18 U.S.C. § 2423(c). There is sentencing disparity between the guideline used, § 2G1.3(b)(5)(B) - "the offense involved a minor who had not attained the age of 12 years, increase by 8 levels", and other guidelines. The enhancement used for other sex offenses is at least half. Consider:

- § 2A3.1(b)(2) - increase by 4 levels
- § 2A3.4(b)(1) - increase by 4 levels
- § 2G2.1(b)(1)(A) - increase by 4 levels
- § 2G2.2(b)(2) - increase by 2 levels
- § 2G2.6(b)(1)(A) - increase by 4 levels

Accordingly, the § 2G1.3(b)(5)(B) enhancement should be reduced from 8 levels to 2 to 4 levels to prevent sentencing disparity.

The age issue is again double-counted under § 2G1.3(b)(2)(B) for Undue Influence because "some degree of undue influence" exists whenever an age disparity of at least ten years exists between a minor and another participant in the prohibited sexual conduct. § 2G1.3(b)(2)(B) cmt. n. 3. It would be a very rare case where there was not an age disparity, and the undue influence enhancement would not apply. The note should be modified not to apply the Undue Influence enhancement for age disparity alone.

I appreciate your work to revise and improve the sentencing guidelines which will make for more equitable sentencing.

Sincerely,



From: [~^! BRADFORD, ~^!TAMMY SHREE](#)
Subject: [External] ***Request to Staff*** BRADFORD, TAMMY, [REDACTED]
Date: Friday, October 14, 2022 7:04:17 AM

CAUTION: This email originated from outside the organization. DO NOT click links or open attachments unless you recognize the sender and know the content is safe.

To: Whom it May Concern
Inmate Work Assignment: Back Gate

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

I would like to ask that people with Substance Abuse Disorder receive treatment, not incarceration. I'm not suggesting the stereotypical 28 day rehab, but a long term, holistic and intensive program such as can be found in Residential Recovery Facilities. I spent 21 months at Starting Point Outreach for Women in Anniston, Alabama on pretrial...it changed my life. Then, I come to prison, with no credit for the 31 months I did on pretrial, and I am right back in the middle of the same crowd and drug mess that I was in before I got into recovery. I am still sober, by the Grace of God, but it is a real struggle...cruel punishment. No wonder the recidivism rate is so high...incarceration perpetuates the same lifestyle as in the street. Something has to change. Please revise the sentencing guidelines to allow non-violent drug addicts a real chance to change their lives. Thank you.

From: [~^! COCHRAN, ~^!NATALIE P](#)
Subject: [External] ***Request to Staff*** COCHRAN, NATALIE, [REDACTED]
Date: Friday, October 14, 2022 7:04:14 AM

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To: Re: Public Comment
Inmate Work Assignment: Evening Compound

ATTENTION

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Inmate Message Below

I am currently an inmate. My public defender convinced me to sign a plea. He assured me, that he and the prosecutor agreed to 37 months. The judge gave me 135 months. I have never been in trouble with the law. I have not even had a speeding ticket. I pled to one count of wire fraud and one count of money laundering. I am in poor health. Since, I have been in prison I have already had a pacemaker put in. I am only 41. Why can non-violent criminals not serve their time on house arrest? I am a pharmacist. I could be on house arrest and work release. I would pay for my own food, monitoring, and work on paying back my restitution. The taxpayers are paying enormous amounts to house inmates. Then there are lawsuits regarding, inmate / officer interactions that have to be settled. If the average inmate costs \$40,000 a year to house, then imagine the savings by putting them on ankle bracelets. There should be a second chance for them. Trust me, if you spend any time in prison you do not want to return. If they reoffend then house them. Give non-violent first time offenders a second chance to raise their children and be a productive member of society. Thank you for taking my comments into consideration.

From: [~^! GROMMET, ~^!MICHAEL JAMES](#)
Subject: [External] ***Request to Staff*** GROMMET, MICHAEL, [REDACTED], MCR-B-A
Date: Friday, October 14, 2022 9:35:10 AM

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To: U.S. Sentencing Commission
Inmate Work Assignment: Education

ATTENTION

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Inmate Message Below

I would like to see guidelines for non-violent drug offenders changed. There is no empirical data to support the drug guidelines. Further, people whom the First Step Act was created for are not eligible for First Step Act reductions. I am convicted on methamphetamine conspiracy charges. I was sentenced to 30 years for an alleged 19 DAY conspiracy and charged with 50 grams or more of ACTUAL meth. There were no controlled buys. No overt act. I was arrested with a half of a gram. I am not eligible for First Step Act reductions. What's worse is that I am being housed in a United States Penitentiary, specifically USP McCreary. The amount of violence here are astronomical. There are over 100 stabbings a year. On low average that's 1 every 4 days. Persons convicted of non-violent drug offenses with no violent criminal history should be barred from having to be in a place like this. Please consider developing guidelines that either significantly reduce drug-related sentencing guidelines and/or alternatives to incarceration programs. The U.S. code and 3553(a) factors state that incarceration is not a means of rehabilitation and honestly, this is modernized slavery and torture. Thank you for your time and consideration.

From: [Tammy Henke](#)
To: [Public Affairs](#)
Subject: [External] PreTrial Diversion for Non-Violent (Forced) Sex Offenders
Date: Wednesday, October 12, 2022 9:50:43 AM
Attachments: [Pre Trial Diversion Bill.pdf](#)

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It is my understanding that you are open to comments from the public on what issues should be addressed. I believe, just as there are pretrial diversion programs for first time drug offenders and the like, there should be pretrial diversion (therapy) for non-violent sex offenders. Those cases where there is no force ie entrapment cases, possession cases, sexting cases. I have attached a proposed bill and my research. Many sex offenders suffer from PTSD from their own trauma. As a majority are victims of CSA themselves. So if we look at their crime as a symptom of PTSD and not deviancy they would qualify for a pretrail diversion.

https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170928_alternatives.pdf

The U.S Department of Justice followed every sex offender released in almost 15 states for three years. The recidivism rate? Just 3.5 percent. These numbers have been subsequently verified in study after study.

MENTAL HEALTH CARE

–For male sex offenders, factors that significantly predicted sexual deviance included childhood sexual abuse, emotional neglect, and having unmarried parents. Factors that significantly predicted violent sexual offending included child physical abuse, substance abuse in the childhood home, mental illness in the home, and having an incarcerated family member.

–The mechanisms that lead to sexually abusive behavior vary by offender.

Treatment needs vary by offender as well, and treatment effectiveness is likely

to vary depending on various individual and contextual factors. Like therapeutic interventions for other criminal offenders, sex offender treatment at its broadest level is a tool for promoting offender accountability, reducing recidivism and enhancing public safety. Within that context, policymakers should recognize that even modest reductions in recidivism achieved through treatment can translate into fewer victims, reductions in individual and community harm and a positive return on taxpayer investment (Drake, Aos & Miller, 2009; Donato, Shanahan & Higgins, 1999).

REHABILITATION

–In a 2016 [survey of crime survivors](#), the Alliance for Safety and Justice found that, “Survivors of violent crime — including victims of the most serious crimes such as rape or murder of a family member — widely support reducing incarceration to invest in prevention and rehabilitation and strongly believe that prison does more harm than good.”

–Diversion programs seek to address the root causes of crime. Proponents say they can be a means of relieving overburdened courts and crowded jails, and can save offenders from the adverse consequences of a criminal conviction.

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Very Truly Yours,

Tammy Henke

Legal Assistant

CLEMENS & BLAIR

128 W Hefner Rd

Oklahoma City, OK 73114



From: [~^! MAPSON, ~^!CHARIS](#)
Subject: [External] ***Request to Staff*** MAPSON, CHARIS, [REDACTED], ALI-B-A
Date: Friday, October 14, 2022 10:49:59 AM

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To: U.S. Sentencing Commission
Inmate Work Assignment: LCP

ATTENTION

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Inmate Message Below

Please reinstate the federal parole system: This would allow the government to alleviate a mass amount of the over crowding in the prison system, by releasing inmates on federal parole to be monitored and would save the BOP money by utilizing this option.

Please make it so that everyone who is a minimum and able to go to camp would instead go to home confinement. I understand that there are some that are minimum but cant go to camp but for those who can be released to home confinement.

First time offenders would be released and just on probation. For first time offenders by being incarcerated statistics show that they are more likely to learn criminal behavior which just makes it worse. But by releasing them on probation instead of giving prison time that the government can still keep an eye on them but they do not learn bad habits and behavior. Statistics also show that when released a fist time offender is less likely to re-offend if released onto probation/parole. This would further help to remedy the over crowding population problem in the prisons.

There is over crowding still and there has been proof of home confinement and release on probation (could also be on parole) has been working. that the percentage of inmate coming back to jail/prison has been extremely low. These would work to help solve the over crowding issues, as well as the staffing issues, medical issues, and other issues due to there being too many inmates to take care of properly.

Thank you for your time and consideration.

TRULINCS [REDACTED] - MURRAY, AARON MICHAEL - Unit: COL-B-D

~~FROM: [REDACTED]~~
~~TO: Health Services LOW~~
~~SUBJECT: ***Request to Staff*** MURRAY, AARON, [REDACTED], COL-B-D~~
~~DATE: 10/02/2022 01:05:14 PM~~

~~To: Delete~~
~~Inmate Work Assignment: N/A~~

October 1, 2022

United States Sentencing Commission
ATTN: Public Affairs-Priorities Comment
1 Columbus Circle, NE, Suite 2500, South Lobby
Washington, DC 20002-8002

RE: Public Comment on Proposed Priorities for
Amendment Cycle Ending May 1, 2023

Dear Sentencing Commission,

My name is Aaron Murray and I am a federal prisoner at the Federal Correction Complex- Coleman Low in Coleman, Florida. During my incarceration, I received my paralegal certification and have held a position as the Legal Clerk in the prison's Law Library. Over the last several years, I have been in contact with Carrie Wilson of this Commission and I am aware that you periodically review comments and recommendations from inmates regarding potential changes to the sentencing guidelines. Therefore, I am offering several comments on possible policy priorities for the amendment cycle ending May 1, 2023.

My comments to the proposed priorities for the amendment cycle, that were enumerated by this Commission, are as follows:

(1) Consideration of possible amendments to 1B1.13 (Reduction in Term of Imprisonment under 18 U.S.C. 3582(c)(1)(A) (Policy Statement)).

-The First Step Act plainly intended that federal judges be allowed an independent and individualized consideration on whether to grant a sentence reduction or compassionate release. Despite the Eleventh Circuit's erroneous conclusion in UNITED STATES V. BRYANT, 996 F.3d 1243 (11th Cir. May 7, 2021), every other Circuit has concluded that U.S.S.G. 1B1.13 is not an applicable policy statement for defendant filed motions. While 1B1.13 needs to be updated, it is important to remember that the Guidelines are advisory and that, even absent a policy statement, federal judges have authority to adjudicate whether a defendant has offered "extraordinary and compelling reasons" warranting relief. The 3582 statute merely requires that courts' decisions on sentence reductions and compassionate releases be "consistent with" any applicable policy statement. 18 U.S.C. 3582(c)(1)(A). As the Seventh Circuit put it, "'Consistent with' differs from 'authorized by.'" UNITED STATES V. GUNN, 980 F.3d at 1180 (7th Cir. Nov. 20, 2020). Congress delegated the authority to determine the meaning of "extraordinary and compelling reasons" to this Commission. See 28 U.S.C. 944(t). While this Commission "shall DESCRIBE what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples," (944(t)), you do not have the authority to "define" what can be considered "extraordinary and compelling." Therefore, district courts, directly authorized by Congress, have the inherent equitable power to grant a reduction in sentence or compassionate release for any reason beside rehabilitation alone. See 28 U.S.C. 994(t). Thus this Commission must update the 1B1.13 Guideline to include defendant filed motions while providing guidance to district courts on what can be considered "extraordinary and compelling."

TRULINCS [REDACTED] - MURRAY, AARON MICHAEL - Unit: COL-B-D

FROM: [REDACTED]
TO: Health Services-LOW
SUBJECT: Request to Staff MURRAY, AARON, [REDACTED] COL-B-D
DATE: 10/02/2022 01:28:55 PM

~~To: Delete~~
~~Inmate Work Assignment: N/A~~

(7) Consideration of possible amendments to the Guidelines Manual relating to criminal history to address the treatment of defendants with zero criminal history points.

-This Commission has performed numerous studies on how an offender's background and age effect recidivism. However, despite having zero criminal history points, many criminal defendants receive similar or greater sentences than those who have a much worse criminal history. With statutory minimums and maximums, the way most courts calculate guideline ranges do not account for defendants with zero criminal history points and who have no or low risk of recidivism. I propose that a first-time offender "safety-valve" guideline be created and that the Probation Office's Pre-Sentencing Report include a defendant's recidivism risk level prior to sentencing.

As this commission is aware, some first-time offenders are eligible for safety-valve relief under 18 U.S.C. 3553(f). However, most defendants do not meet the criteria for this reduction. Although district courts cannot sentence a defendant under the mandatory minimum, a new Guideline should be created to standardize how courts treat defendants with zero criminal history points. Just like U.S.S.G. 5K1.1, a court should be authorized to grant a downward departure for first-time offenders with zero criminal history points. In the Federal Sentencing Guidelines Manual, this new Guideline an be added under Chapter Five, Part K-Departures.

As far as including a defendant's risk of recidivism in the Probation Officer's PSR, this information would assist district courts with imposing an appropriate sentence. A defendant's risk or recidivism is currently not being considered at sentencing, despite being related to multiple factors under 3553(a)(2). The Department of Justice has already released a risk assessment tool, known as PATTERN, as required by 18 U.S.C. 3553(a)(2). Among other things, PATTERN was designed to evaluate "the recidivism risk or each prisoner as part of the intake process, and classify each prisoner as having minimum, low, medium, or high risk for recidivism." 19 U.S.C. 3632(a)(1). Therefore, it is reasonable to conclude that the Probation Office, the Department of Justice, and the Bureau of Prisons could work together to calculate a defendant's recidivism risk level prior to the district court's sentencing.

(9) Consideration of possible amendments to the Guidelines Manual to prohibit the use of acquitted conduct in applying the guidelines.

-Using acquitted conduct at sentencing is anathema to Due Process and the fundamental fairness of justice embodied in the Constitution. District courts should not have the authority to use conduct that the jury found a defendant innocent of to increase a sentence. However, while not using acquitted conduct is important, there are several other types of conduct that deserve this Commission's scrutiny.

Uncharged conduct, especially conduct that is in-and-of-itself a separate charge, should not be considered at sentencing. This uncharged conduct never appeared before a grand jury and criminal defendants never received fair notice. Prosecutors have full discretion to present this conduct to a grand jury to receive an indictment or superseding indictment. It is unfair to add uncharged conduct into a PSR for enhancement purposes and, besides objections to the PSR at sentencing, defendants have no way to defend themselves against this conduct.

Not only does uncharged conduct fly in the face of the legal axiom that criminal defendants are innocent until proven guilty, but so does using dismissed conduct to enhance a sentence. There are many reasons prosecutors choose to dismiss charges. Whether is is the result of a plea deal or lack of evidence to bring that charge to trial, defendants should not receive enhanced sentences for charges that were dismissed.

District courts use both uncharged conduct and dismissed conduct at sentencing through the "preponderance of evidence" standard, instead of the stricter "beyond reasonable doubt" standard that is required for a jury to convict. Thus, any conduct not admitted to in a plea agreement or found by jury at trial should not be used at sentencing. Therefore, this Commission should ensure that the Constitution and Bill of Rights is upheld to guide courts in not utilizing acquitted, dismissed, and uncharged conduct at sentencing.

TRULINCS [REDACTED] - MURRAY, AARON MICHAEL - Unit: COL-B-D

~~FROM: [REDACTED]~~
~~TO: Health Services LOW~~
~~SUBJECT: ***Request to Staff*** MURRAY, AARON, [REDACTED] COL-B-D~~
~~DATE: 10/02/2022 01:56:17 PM~~

~~To: Delete~~
~~Inmate Work Assignment: N/A~~

(12) Multiyear study of court-sponsored diversion and alternatives-to-incarceration programs (e.g., Pretrial Opportunity Program, CASA Program, SOS Program), including consideration of possible amendments to the Guidelines Manual that might be appropriate.

-The federal prison system is full of first-time, nonviolent offenders who have a very low risk of recidivism. In light of the COVID-19 pandemic and the CARES Act of 2020, this fact became perfectly clear. The Attorney General was granted permission by Congress to place federal prisoners on home confinement. Thousands of prisoners were granted home confinement placement and all indicators so far show that this program has been a success. In addition, many criminal defendants are granted bond and placed on Pretrial Services monitoring pending trial, proving that they are capable of following the law while on court monitoring without incarceration. Alternatives-to-incarceration programs will not only assist with the current overpopulation problem federal prisons are currently experiencing, especially now that private prisons have been shutdown, but it will also save the taxpayers the cost of incarcerating nonviolent and low risk criminals. Therefore, the federal criminal justice system needs more rehabilitation programs in lieu of prison sentences. Anything this Commission can do to help increase alternatives-to-incarceration programs would benefit not only criminal defendants, but society as a whole.

(13) Consideration of other miscellaneous issues, including possible amendments to (A) 3D1.2 (Grouping of Closely Related Counts) to address the interactions between 2G1.3 and 3D1.2(d).

-In many cases, the U.S. Sentencing Guidelines sentencing range will roughly approximate a sentence that would achieve the objectives of 18 U.S.C. 3553(a). These ranges are typically the product of this Commission's careful study, and are based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions. But not all Guidelines possess this pedigree. And where a Guideline does not reflect the careful study of this Commission, it is likely not a reliable indicator of this Commission's perspective on a fair sentence. As numerous courts and commentators have explained, the child pornography Guidelines are by and large not the result of this Commission's expertise, nor based on careful study and empirical data. See HENDERSON, 649 F.3d at 960-63; UNITED STATES V. DORVEE, 616 F.3d 174, 184-86 (2nd Cir. 2010). Instead, 2G2.2 is the result of two decades' worth of Congressional directives-at times actively opposed by this Commission-that have continually ratcheted up penalties and piled on enhancements. HENDERSON, 649 F.3d at 960-63; DORVEE, 616 F.3d at 184-86; see also generally Troy Stabenow, Deconstructing the Myth of Careful Study: A Primer on the Flawed Progression of the Child Pornography Guidelines (2009).

Of course, Congress' active role in shaping 2G2.2 is not in and of itself reason to question the Guideline's wisdom or efficacy. The real problem, as courts across the country have recognized, is that 2G2.2 simply does not work. GROBER, 624 F.3d at 607-10; HENDERSON, 649 F.3d at 960-63; DORVEE, 616 F.3d at 184-86; UNITED STATES V. DIAZ, 720 F. Supp. 2d 1039, 1041-42 (E.D. Wis. 2010)(collecting cases). Rather than carefully differentiating between offenders based on their culpability and dangerousness, 2G2.2 consists of a hodgepodge of outdated enhancements than apply in nearly every case. DORVEE, 616 F.3d at 186. As a result, this Guideline routinely results in sentencing ranges near or exceeding the statutory maximum, even in run-of-the-mill cases involving first-time offenders. *Id.*

This broken Guideline has not escaped this Commission's attention. Following several years of research, you issued a comprehensive report on 2G2.2. United States Sentencing Commission, Report to Congress: Federal Child Pornography Offenses (Dec. 2012). However, while this Commission recommended major revisions to the Guideline, you left it to the discretion of Congress because of its extensive involvement in crafting that Guideline. However, Congress has shown, time and time again, that politics prevents it from correcting this Guideline. The Senate's Confirmation Hearing for Justice Ketanji Brown Jackson made it perfectly clear that Congress will NEVER act to correct this problem. Thus, this Commission has an independent duty to correct 2G2.2 and the child pornography Guidelines.

Respectfully Submitted,
Aaron Murray

Aaron Murray

[REDACTED]
FCC Coleman Low
P.O. Box 1031
Coleman, FL 33521-1031

From: [~^! RITO, ~^! KELLY ANN](#)
Subject: [External] ***Request to Staff*** RITO, KELLY, [REDACTED], ALD-B-B
Date: Thursday, October 13, 2022 8:06:20 PM

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To: Public Affairs
Inmate Work Assignment: Education-Teacher's Aide

ATTENTION

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Inmate Message Below

This email is in regards to the ideas Colette Peters is in favor of for all minimum security prisoners to be able to be on home confinement which will help the tax payer dollars. This would also really help me personally as I am sitting here at Alderson Prison Camp at 45 years old and this being my first and only time in prison as I have no criminal history. My pattern score is a minimum and I agree with Mrs. Peters as I could be at home and be able to work to help support my household. My 79 year old mother is having to pay my rent and bills so my son has a place to live and food on the table. I was a Controller for Mercedes Benz for many years and this ONE mistake I made is costing my family everything. When I was on Pre-Trial, I did amazing and was able to work on my sobriety more than I am able to in here. I went to NA meetings regularly and stayed clean for almost 2 years so I know that if I was at home serving my sentence I would not only be able to continue that but also get a job to contribute to my families household expenses. I would also be able to be able to start my online courses to become a Drug Treatment Specialist sooner at home than sitting in here without any access to these things that would be helping me. I am in FULL SUPPORT of Mrs. Peters ideas and truly hope that her ideas are taken into consideration and possibly even taken into affect.

Thank you for taking the time to read this email and I really hope it helps!

Kelly Rito

[REDACTED]
Alderson Prison Camp