



Oregon Crime Victims Law Center

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Honorable Carlton W. Reeves
Chair, United States Sentencing Commission
One Columbus Circle, N.E. Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Judge Reeves:

Thank you for the opportunity to provide comments on the Sentencing Commission's proposed amendments for 2024. Specifically, I would like to address the proposed amendments to USSG §4A1.2 regarding youthful offenders.

I am the Executive Director of the Oregon Crime Victims Law Center, a nonprofit organization that provides free legal representation to crime victims throughout the state of Oregon. Our attorneys represent victims to assist them in asserting and seeking enforcement of their rights in the criminal justice system, including post-conviction. We represent victims of all crimes, in both juvenile and adult courts. A number of our clients are victims of juvenile offenders, and we have seen first-hand how traumatic and difficult the juvenile justice system is for victims. While we recognize the need for criminal justice reform and creating a more equitable system, it's critical to acknowledge that the system exists for victims as well, and a balance must be struck between the recognition of victims' rights and the goals of the juvenile justice system. As such, we oppose the proposed amendments regarding youthful offenders and urge the Commission to reject them.

All states, the District of Columbia, and most U.S. territories have statutory or constitutional provisions that enumerate rights and protections for victims of crime. These rights reflect the ideal that victims have a right to seek justice, to be treated with respect, and to have a meaningful role in the criminal justice system. In 2006, the Ninth Circuit Court of Appeals announced the end of the federal criminal justice system's assumption "that crime victims should behave like good Victorian children – seen but not heard." *Kenna v. United States Dist. Court*, 435 F.3d 1011 (2006). As such, victims' interests must be considered when considering amendments that will profoundly affect their experience in the criminal justice system.

For victims, the juvenile justice system is complicated, confusing, and lacks transparency. As in other states, the juvenile system in Oregon has undergone significant change in the last few years in recognition of, among other things, current research regarding brain development in youth. Since 2020 juveniles who are charged with the most serious crimes, including murder and rape, are charged in the juvenile system, and the district attorney must request a hearing to waive the case into adult court. Under this new system, very, very few juvenile cases are moved to adult court. The vast majority of them stay in juvenile court, the result being that Oregon's juvenile courts are now seeing far more serious crimes

than prior to 2020. Some of the most violent crimes we see are committed by juvenile offenders, forcing traumatized victims to navigate a system that is fully focused on the offender with often little thought for the victim. The victim, who may be recovering from the murder of a family member, a violent assault, or the sexual abuse of a child, is further harmed by the system that is supposed to provide them with “justice.”

In determining an appropriate sentence, the court must consider the purpose of sentencing, which includes a recognition of the seriousness of the crime. Victims deserve to have the harm done to them taken seriously. This includes a thorough review of the youthful offender’s criminal history, without which the court is seeing an incomplete picture of the youth. The court must consider the youth’s history within the criminal justice system to appropriately fashion a sentence that meets this goal. To ignore this history diminishes the victim’s experience.

When considering a sentence the court must also take into account the risk of future harm and the protection of the public. The victim also has a right to protection. 18 U.S.C. § 3771. It is understood that the best predictor of future behavior is past action, and in order to fully protect the victim it is necessary that the court take into account to criminal history of the youth. It is not uncommon for the victim of a youthful offender to be a family member. Failing to consider prior crimes puts this victim at greater risk of future harm, as patterns of escalation often emerge. The justice system has a responsibility to protect victims and to mitigate future harm.

Failing to take into account prior criminal behavior minimizes responsibility for the youthful offender, which is contrary to one of the goals of sentencing. By failing to consider past conduct, the court is allowing youthful offenders to separate themselves from the harm they’ve caused, and in doing so, erasing any prior victim’s experience. It’s important to note that the harm caused by juveniles is no less for the victim because of their age – a victim does not recover from trauma faster because a juvenile is the one who harmed them rather than an adult.

The disposition phase of a juvenile adjudication in Oregon is very challenging for victims, particularly for victims of violent crimes. The focus of these proceedings is entirely on the juvenile offender, which is as it should be, but there is often a lack of recognition of the trauma that the victim is experiencing. The court hears mitigating evidence on behalf of the juvenile, and there is typically a team supporting the juvenile in an effort to rehabilitate them and return them to the community. The victim may support these efforts, despite what is often a failure to acknowledge what the victim has suffered. This may re-traumatize the victim as they feel very little of the support that is extended to the person who harmed them. Supporting victims includes a fair balance at sentencing: allowing victims to be heard, allowing mitigating evidence, and including a complete picture of the offender’s criminal history in order to fashion an appropriate sentence that meets the goals of sentencing.

We are also very concerned about Part B of the proposal regarding sentencing of youthful individuals. The new provision would allow for a downward departure based on being a “youthful individual.” This term is not defined, leaving open the question of who qualifies as “youthful.” This could lead to enormous disparities in sentencing, something that the system has been working diligently to avoid. This type of arbitrariness in sentencing would cause further harm to an already traumatized victim, who is relying on the court to mete out justice their interests as well.

Thank you again for the opportunity to provide comments on these proposals, and for your interest in hearing the perspective of crime victims.

Respectfully,

Rosemary W. Brewer

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Executive Director