

March 22, 2010

United States Sentencing Commission
One Columbus Circle, NE - Suite 2-500
Washington, DC 20002-8002
Attention: Public Affairs

Re: Comments Solicited under 75 FR 3525 (January 21, 2010)

Dear Sir or Madam:

Our organizations co-chair the coalition of national civil rights, law enforcement, education, and religious organizations that support Federal and state hate crime education, awareness, and prevention initiatives in Washington, DC.

We are writing to offer our comments on the proposed revisions to the sentencing guidelines designed to implement the provisions of the recently-enacted Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA) (Division E of Public Law 111-84) and proposed changes to Sec. 3A1.1 (Hate Crime Motivation or Vulnerable Victim).

As noted in the January 21, 2010 notice of proposed amendments to the sentencing guidelines, the HCPA amended section 280003 of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322; 28 U.S.C. 994 note), which contains a congressional directive to the Commission regarding hate crimes that the Commission implemented in subsection (a) of Sec. 3A1.1 (Hate Crime Motivation or Vulnerable Victim). The Act expanded the definition of "hate crime" in section 280003(a) to include crimes motivated by actual or perceived "gender identity." As noted in the notice of proposed amendments, enactment of the HCPA has the effect of expanding the scope of the congressional directive in section 280003(b) to require the Commission to provide an enhancement for crimes motivated by actual or perceived "gender identity."

We strongly support the proposed amendment which would amend Sec. 3A1.1(a) to include crimes motivated by actual or perceived "gender identity" and make conforming changes to Sec. 2H1.1 and 3A1.1.

We also strongly support the proposed amendment proposal to strike the special instruction in Sec. 3A1.1(c), which states that the 3-level enhancement in Sec. 3A1.1(a) shall not apply if the 6-level enhancement in Sec. 2H1.1(b) applies. Currently, the 3-level enhancement in Sec. 3A1.1(a) applies if the offense was a hate crime, i.e., was motivated by the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person; the 6-level enhancement in Sec. 2H1.1(b) applies if (A) the defendant was a public official at the time of the offense, or (B) the offense was committed under color of law. By striking the special instruction in Sec. 3A1.1(c), the proposed amendment would allow both enhancements to operate, if applicable, in a particular case.

This is entirely appropriate. A police officer or public official who intentionally selects his/her victims for violence on the basis of race, religion, sexual orientation, national origin, gender, gender identity, or disability merits consideration for the full range of penalty enhancements under the law.

We urge you adopt these proposed amendments to the sentencing guidelines. Thank you very much for your consideration of our views.

Sincerely,

Anti-Defamation League
Human Rights Campaign
Leadership Conference on Civil and Human Rights
National Council of Jewish Women