

# VICTIMS ADVISORY GROUP

To the United States Sentencing Commission

**Russell P. Butler, Chair**



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

Response to Request for Comments on 2013 Priorities

Chairman Saris and Members of the Commission:

The Commission has requested public comment for the next amendment cycle. The Victims Advisory Group (VAG) is pleased to offer our recommendations. If these subjects are included for the next cycle, we offer our collective expertise in working with staff and the Commission to develop appropriate policy to address the issues important to having justice for all.

## 1. Provide Further Guidance on the Treatment of Crime Victims in the Sentencing Process.

The VAG believes that the Commission should consider providing additional clarification about the treatment of crime victims in the sentencing process. The Commission's current policy statement on the issue (§ 6A1.5) does nothing more than instruct the Court to follow the applicable laws protecting crime victims' rights. But the Commission could do more by explaining how victims' rights are to be protected during the sentencing process. Consistency in treating victims in accordance with law would provide a more uniform access to justice.

## 2. Clarify the Application Provisions Relating to Hate Crime and Vulnerable Victims

U.S.S.G. §3A1.1 is the enhancement guideline for hate crimes and vulnerable victims. The current guideline provides for two enhancements for victims who are targeted for hate crime offenses and who are targeted because of perceived or real vulnerability. An application under this guideline is not applied in the event that an increase under U.S.S.G §2H1.1(b)(1) applies.

The application notes which accompany the current guideline do not fully emphasize the use of the enhancement for victims identified under the newly reauthorized VAWA legislation. The guidelines also provide little guidance for using the enhancement with targeted populations such as Native

Americans. For example, domestic violence cases involving Native American women are reported to be more than double the national average. Low prosecution rates of certain cases and sentencing disparities have been reported. A major obstacle involving the prosecution of domestic violence cases in tribal courts has been that tribal courts lack the jurisdiction to prosecute non-Native Americans charged with domestic violence offenses against Native American victims. Federal prosecutors have lacked the resources needed to prosecute such cases in isolated tribal areas. With the reauthorization of the Violence Against Women Act (“VAWA”) in March 2013, tribal courts will have the necessary jurisdiction to prosecute non-Native Americans charged with violations of the VAWA. The application notes need to be amended to provide clear guidance on applying the enhancement for women victims in domestic violence cases as well as in cases where Native Americans are targeted as victims of offenses.

### 3. Develop Appropriate Guidance Regarding Ordering and Collection of Restitution

Pursuant to Section 5E1.1, the court shall enter a restitution order, and impose probation with a condition of restitution. Restitution is one way the criminal shows restoration of damage, injury or loss to the victim. Whether as a form of punishment or route to rehabilitation, the offender should restore the victim to a place of wholeness. The principle of restitution in law is to compensate the victim for loss suffered during the crime. As such, a contract, or court restitution order, obligates the defendant to pay fines or any fees imposed by the court and while under correctional supervision. Evidence based practices and research that can be considered include:

- Recognition that victims’ restitution is a central component of community corrections and necessary to any attempt at reintegration of the offender back into the community.
- Satisfaction for citizens in strong support of offenders’ payment of restitution orders as one way to restore victims rather than suffering the economic consequences caused by the offender.
- Nationwide discussions that far too many defendants in prison, jail, or under correctional supervision in the community fail to pay the restitution ordered by the court despite having the ability to pay.
- Consistent in law as most states have constitutional amendments and statutes giving victims a right to restitution, and courts are required to order it unless there are compelling circumstances.
- Evidence from states such as Hawaii includes recently developed policy to improve the collection of restitution that potentially may be emulated.

If possible, restitution should be ordered in appropriate cases. Full payment of restitution should occur before the termination of supervised release. The Commission should review the appropriate guidelines to have a coherent and effective restitution policy.

### Conclusion

We ask the Commission to 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 the suggestions, please feel free to contact us.

Respectfully,

Victims Advisory Group  
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