

PROBATION OFFICERS ADVISORY GROUP

An Advisory Group of the United States Sentencing Commission

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February 19, 2019

The Honorable Charles R. Breyer
The Honorable Danny C. Reeves
United States Sentencing Commission
Thurgood Marshall Building
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Commissioners Breyer and Reeves,

The Probation Officers Advisory Group (POAG) submits the following commentary to the United States Sentencing Commission (USSC) regarding the Proposed Amendments to the Sentencing Guidelines issued on December 20, 2018.

Proposed Amendment #1: USSG §1B1.10 (Part A)

POAG is in favor of Option 2, which provides that the amended guideline range is determined after operation of USSG §§5G1.1 and 5G1.2. As noted in *Koons v. United States*, applying USSG §§5G1.1 and 5G1.2 in this manner treats defendants whose sentences are being amended due to a retroactive amendment in the same manner as similarly situated defendants who are being sentenced for the first time. Option 2 provides for a consistent process and avoids unwarranted disparity that would otherwise result solely based upon the date judgment was entered.

In contrast, Options 1 and 3 provide that straddle and/or above defendants to be sentenced without regard to operation of USSG §§5G1.1 and 5G1.2. POAG believes the provisions of Options 1 and 3 are inconsistent with USSG §1B1.10(b), which directs that, in determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced. The guidelines that would have

been in effect at the time the defendant was sentenced would have included operation of USSG §§5G1.1 and 5G1.2. Further, USSG §1B1.10(c) directs that, in making such determination, the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected. POAG believes an amendment directing that USSG §§5G1.1 and 5G1.2 do not apply conflicts with the provision that all other guideline applications are unaffected when determining the term of imprisonment due to a retroactive amendment.

Proposed Amendment: USSG §1B1.10 (Part B)

POAG is in favor of Option 2, which provides that if the term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of the initial sentencing, the reduction under subsection USSG §1B1.10(b)(2)(B) may take into account any departures, including substantial assistance, or a variance that was imposed at the time of the initial sentencing. This is consistent with USSG §1B1.1(a), which provides that the first step in determining the appropriate sentence is to determine the defendant's offense level computations under Chapters Two, Three, and Four; consider any applicable departures under Chapter Five; and then consider "the applicable factors in 18 U.S.C. § 3553(a) taken as a whole." Departures and variances are part of the process of sentencing, and POAG disfavors any amendments that would place arbitrary limits on judicial discretion to reimpose any departure or variance deemed appropriate at the initial sentencing. However, with that recommendation, POAG believes limitations comparable to the guidance currently set forth in USSG §1B1.10(b)(2)(B) should be included in order to preclude additional litigation. Specifically, POAG believes USSG §1B1.10 should be amended to include that any departure or variance from the amended guideline imprisonment range be based solely upon factors originally considered and shall not exceed the reduction imposed at the time of the initial sentencing. POAG believes that consideration of new grounds for departure or variance in resentencing would produce sentencing disparity for defendants who are ineligible for resentencing. Such a provision would give deference to original judicial intent, which is particularly relevant when the original sentencing judge does not preside over the resentencing. Further, POAG believes the aforementioned establishes a procedurally consistent process that aligns sentencing with the determination of an amended sentence after application of a retroactive guideline amendment.

Proposed Amendment #2: Career Offender / Categorical Approach (Part A)

Probation officers across the country have long observed that the categorical approach and modified categorical approach have gradually become increasingly difficult to apply, while simultaneously producing results less reflective of the types of conduct this guideline was intended to capture. POAG received significant feedback concerning application of USSG §4B1.2 and engaged in extensive discussion about the need to improve the guideline over the last several years. POAG believes USSG §4B1.2, as currently written, is broken and needs amendment. However, there is some concern that amending this guideline will result in uncertainty pending additional litigation, the results of which cannot be foreseen and may present additional application issues.

POAG discussed how the operation of the suggested amendments may look. In our view, courts would continue to apply the categorical or modified categorical approach to determine if a predicate offense was a “crime of violence” or a “controlled substance offense.” However, courts would have the option of using the modified categorical approach to determine what portion of a statute the defendant was convicted, whether or not the statute is divisible in construction. Such an amendment would allow practitioners to resume the practice of referring to records to determine whether the means the defendant engaged in to satisfy an element would meet the definition of either a “crime of violence” or a “controlled substance offense.” This amendment significantly simplifies the application of this guideline. As the dissent acknowledged in *Descamps v. United States*, “Determining whether a statute is divisible will often be harder than the Court acknowledges.” The dissent’s concern has proven prescient, as distinguishing means from the elements of an offense often involves complex legal analysis and requires extensive research of state law in determining whether the modified categorical approach applies. This amendment resolves that concern and eliminates complicated analysis of statutory construction before applying the modified categorical approach.

Further, this amendment resolves one of the main reasons POAG believes this guideline is broken. As our current process has evolved, serious criminal offenses no longer qualify as predicate convictions simply because the statutory language is overly broad. With this amendment, certain state statutes, such as aggravated assault, robbery, and various controlled substance offenses, would no longer be categorically precluded from qualifying as a predicate offense. Courts will be able to review the record and rule out any concern that qualifying convictions encompass any portion of a statute considered overly broad. In essence, this amendment corrects the primary flaw of our current practice and will resolve the concern of serious criminal offenses being categorically excluded from consideration solely due to statutory construction.

While the group was unanimous in our interpretation of the aforementioned procedure, POAG could not develop a unanimous position on what documents may be relied upon for determining the means for meeting an element.

The majority of POAG representatives were in favor of the proposed amendments to USSG §4B1.2, comment. (n.2(B)(i)-(iv)), which identified the following as sources the court may consider when determining the conduct that formed the conducted-based inquiry pursuant to USSG §4B1.2, comment. (n.2(A)):

- (i) The charging document.
- (ii) The jury instructions, in a case tried to a jury; the judge’s formal rulings of law or findings of fact, in a case tried to a judge alone; or, in a case resolved by a guilty plea, the plea agreement or transcript of colloquy between judge and defendant in which the factual basis of the guilty plea was confirmed by the defendant.
- (iii) Any explicit factual finding by the trial judge to which the defendant assented.
- (iv) Any comparable judicial record of the information described in subparagraphs (i) through (iii).

Before discussing the sources the court may consider when determining the basis for the defendant's conviction, it is important to understand the availability of these collateral documents. The records noted in (ii) and (iii), including the plea agreement, the jury instructions, the transcript of colloquy between the judge and the defendant discussing the factual basis for the guilty plea, and the explicit factual findings by the trial judge, are either very rarely received or not easily obtained. Many members of POAG expressed concerns regarding the availability of the identified documents, noting that the amendment may not have much impact on the analysis given these challenges – particularly when these records exist outside one's jurisdiction of practice. In reality, the records that are commonly available include docket sheets; the charging document, which often simply recites the statutory language; the order accepting the guilty plea or verdict; and the sentencing order. Within the bounds of a conduct-based approach, these documents often fall short in providing a qualitative description of an offense. While transcripts of proceedings can be quite helpful in analysis, they are the most difficult records to obtain.

The most commonly available *Shepard* documents often do not include details establishing the basis of the conviction, which is exacerbated by the fact that court records are becoming more automated and streamlined with less narrative. Therefore, POAG discussed (iv) in terms of what types of documents would be considered “comparable judicial records of information.” POAG suggests that (iv) provide more specific examples of what may and may not meet that standard. The majority of POAG members believe that probable cause affidavits and sworn complaints were comparable in nature to the documents identified in (i)-(iii). The consensus was that documents sworn under penalty of perjury by a law enforcement officer had similar indicia of reliability to the other listed documents. Most POAG members believe that expanding the current *Shepard* documents to include probable cause affidavits and sworn complaints is a necessary amendment if the goal is to rely on a conduct-based approach in determining if an offense qualifies as a predicate offense.

POAG also discussed whether the types of documents to be considered should be expanded beyond this, to include presentence reports (federal and state) and/or police reports. In the federal system, it is a common practice for judges to accept presentence reports within their formal findings of fact. However, there was concern regarding the quality of state presentence reports, as well as the reliability and accuracy of police reports for purposes of determining the offense of which the defendant was convicted. The majority was hesitant to extend the class of documents to those not vetted through the court and sworn under penalty of perjury.

With regard to the issue for comment on the Commission's treatment of enumerated offenses, POAG's feedback and discussion on this issue evolved into consideration of three primary options:

- (1) The Commission should provide a definition for all of the enumerated offenses, rather than relying on the “contemporary, generic definition.”
- (2) The Commission should parse down the list of enumerated offenses and all statutes with those named offenses would qualify as a predicate (for example, any conviction for kidnapping would count, regardless of how the state defines kidnapping).

- (3) The Commission should not alter the list of enumerated offenses or the approach of using the “contemporary, generic definition” of those offenses, as we have an existing body of caselaw to rely on in this area.

Option 1 (define all enumerated offenses) generated the plurality of the vote. POAG members discussed difficulties in finding consistent definitions of the “generic” offense, and circuit conflicts reaching opposing conclusions as to what conduct falls within “generic” offense definitions. Another problem with relying on caselaw for a generic definition is that cases tend to focus on the generic definition with respect to one specific provision (*e.g.*, whether generic robbery includes threats against property), rather than providing a start-to-finish definition of the enumerated offense. Option 1 resolves these difficulties by providing a uniform definition to be applied in all courts across the country. However, Option 1 would require that a generic definition for each enumerated offense be crafted in such a manner that encompasses the elements of a variety of state statutes as they are currently written and does not unknowingly exclude an entire class of state offenses on the basis of a minor discrepancy. With this process, courts would then compare the elements of the state offense with the elements of the generic definition in determining if an offense qualifies as an enumerated offense.

The remaining votes were evenly split between Option 2 and Option 3. Option 2 generally provides uniformity among circuits and streamlines the process for determining predicates, resulting in greater judicial efficiency. POAG envisions that the list of enumerated offenses would be limited to the offenses the Commission believes should qualify as crimes of violence in every circumstance, such as murder and kidnapping, regardless of how they are defined, with the understanding that all other offenses would qualify as a crime of violence under the elements clause.

With regard to Option 3, POAG members noted that they are familiar with applicable caselaw on enumerated offenses in their respective circuits and have become accustomed to the current system that has evolved. Although the outcomes are not always desirable or nationally uniform, they rely on variances to appropriately account for predicate offenses that involve aggravating or mitigating conduct.

POAG’s diverse viewpoints on this amendment is a testament to the complexity of the issues involved in remedying this guideline.

Proposed Amendment #2: Career Offender / Meaning of Robbery (Part B)

With respect to robbery, POAG favors Option 1 with some modification. Specifically, POAG recommends that the Commentary to USSG §4B1.2 be amended to specifically note that Hobbs Act robbery qualifies as a crime of violence. POAG believes that *inclusion* of Hobbs Act robbery in the Commentary, rather than *listing or defining* robbery as Hobbs Act robbery within USSG §4B1.2(a)(2), will help clarify that Hobbs Act robbery is essentially an enumerated offense and that it is not intended to serve as a baseline definition for robbery. POAG believes this

recommended format will prevent further confusion and litigation over whether a state robbery statute tracks closely enough to the Hobbs Act statute to count as a predicate offense.

As discussed in response to earlier issues for comment, most POAG members support inclusion of specific definitions for all enumerated offenses. Shortly before POAG met to discuss the proposed amendments, the Supreme Court issued a decision in *Stokeling v. United States*, 139 S.Ct. 544 (2019). As of this writing, *Stokeling* establishes the level of force needed for a robbery conviction to qualify as an enumerated offense. It appears that, under *Stokeling*, the majority of robbery statutes should qualify as predicates (at least as to the force issue), as *Stokeling* set the bar as force sufficient to overcome the will of the victim. However, it is not all encompassing as there are some robbery statutes where a force requirement is not specified. Further, there is concern over circuit-specific caselaw chipping away at *Stokeling's* seemingly clear definition. See, e.g., *United States v. Bong*, --- F.3d ---, 2019 WL 336512 (10th Cir. 2019), holding that Kansas Robbery and Aggravated Robbery (robbery committed while armed) do not require the requisite level of force. POAG believes the issues that emerge as a result of caselaw are relevant factors to consider, should the Commission choose to provide a generic definition for robbery.

Proposed Amendment: Career Offender / Inchoate Offenses (Part C)

POAG is in favor of the proposed amendments to USSG §4B1.2 relating to inchoate offenses and offenses arising from accomplice liability. Of the three options presented, POAG unanimously agreed that Option 1 is more favorable.

Option 1 provides a simpler approach, which eliminates (1) any question as to whether inchoate offenses qualify as a “crime of violence” or a “controlled substance offense,” and (2) the need for the two-step analysis which courts have employed to determine whether inchoate offenses qualify under the career offender guideline as a “crime of violence” or a “controlled substance offense.” POAG believes that a two-step analysis is time-consuming, complicated, and unnecessary. When applying Option 1, courts will only need to look to the underlying substantive offense to determine whether that offense qualifies as a “crime of violence” or a “controlled substance offense.” POAG believes that any inchoate crime should receive consideration regardless of whether or what overt act is required by the state law or statute in question.

POAG believes that Option 1 promotes consistency in application of the guideline, addresses the Commission’s original intent (as currently noted in §4B1.2, comment. (n.1)) that “crime of violence” and “controlled substance offense” should include inchoate offenses and will resolve circuit splits and state-to-state disparities, as noted in the introduction to the Commission’s proposed amendment.

The complications presently involved in analyzing inchoate offenses are illustrated well in the Fourth Circuit, where, in *United States v. McCollum*, 885 F.3d 300 (4th Cir. 2018), the Court determined that generic conspiracy for purposes of the §4B1.2 analysis requires an overt act. As a result of *McCollum*, probation officers must conduct a strict analysis to first, conduct research of the state conspiracy offense to determine if an overt act is necessary to complete the conspiracy

offense under state law, and then determine whether the substantive offense underlying the particular conspiracy meets the definition of a “crime of violence.” This same two-step analysis is required in attempt cases as well. *See United States v. Dozier*, 848 F.3d 180 (4th Cir. 2017).

Furthermore, some states require an overt act for inchoate offenses while others do not. For example, states such as Virginia and North Carolina that follow common law do not require an overt act. *See e.g., State v. Gibbs*, 436 S.E.2d 321 (N.C. 1993). However, states such as Tennessee and Nebraska require an overt act as an element of the conspiracy offense. *See United States v. Pascacio-Rodriguez*, 749 F.3d 353 (5th Cir. 2014). A conspiracy offense from a state requiring an overt act would qualify as a predicate crime of violence or a controlled substance offense while a conspiracy offense from a state not requiring an overt act would not qualify as a predicate crime of violence or a controlled substance offense.

Notably, in an unpublished opinion, *United States v. Whitley*, 737 F. App’x 147 (4th Cir. 2018), the Fourth Circuit extended the *McCollum* generic conspiracy/overt act holding to a *federal drug conspiracy pursuant to 21 U.S.C. § 846*. While some lower courts in the Fourth Circuit have chosen to follow *Whitley*, others have not because they view the unpublished opinion as “not binding.” Additionally, some districts in other circuits are applying *Whitley* while others are not. The Tenth Circuit Court of Appeals has also formally held federal drug conspiracies do not qualify as a controlled substance offense for lack of requiring an overt act. *United States v. Martinez-Cruz*, 836 F.3d 1305 (10th Cir. 2016). It was noted that at least one district in the Tenth Circuit does not follow this precedent, as district courts technically take guilty pleas to both 21 U.S.C. §§ 841 and 846. The product of this line of cases has resulted in confusion, disparate application and sentencing disparity, which this amendment would ameliorate.

Proposed Amendment: Career Offender / Definition of Controlled Substance Offense (Part D)

POAG supports adding “offer to sell” to the definition of controlled substance offenses at USSG §4B1.2(b) to eliminate indivisible state drug statutes from disqualifying as controlled substance offenses. The current definition precludes state statutes containing the broader language from meeting career offender predicate offense eligibility. For example, a Texas statute for Possession with Intent to Deliver a Controlled Substance includes alternate means of committing the offense, to include an offer to sell. The current definition fails to capture a vast number of defendants who have similar conduct as those convicted of state statutes that mirrors the narrow language of the guideline. POAG believes adding this language would correct the current disparities among repeat drug traffickers. Further, the expanded definition would mimic the logic in proposed amendment (Part C) involving inchoate offenses. Since offenses including an offer to sell do not require the actor to possess a controlled substance, it is analogous to aiding and abetting, conspiring to commit, and attempting to commit a controlled substance offense.

POAG unanimously agreed to recommend the commission include “purchase” within the definition as outlined under USSG §4B1.2(b)(1). The inclusion of “purchase” rectifies an odd result produced in states such as Florida, where the more criminally culpable offense involving

Trafficking, such as Trafficking Cocaine or Trafficking Methamphetamine, is not deemed a “controlled substance offense” because it includes the word “purchase” as an indivisible alternate means of committing the offense. *See, United States v. Shannon*, 631 F.3d 1187 (11th Cir. 2011). This peculiar result is only further increased when viewing that the same defendant charged under Florida’s Trafficking in Cocaine, could plead guilty to the lesser included offense of Possession with Intent to Distribute Cocaine, and their conviction would then qualify as a “controlled substance offense,” not having “purchase” outlined as a means of committing the elements of that offense. The Commission’s inclusion of “purchase” would serve to cure a similar ill as that caused by the “offer to sell” language.

POAG encourages the Commission to mirror the definition found in USSG §2L1.2 for drug trafficking offenses, which includes offers to sell. POAG supports the Commission revising the definition of controlled substance offense at USSG §2L1.2 to conform to the revised definition suggested in USSG §4B1.2(b) to provide consistency within the guidelines.

Proposed Amendment: Miscellaneous (Parts A, B, and E)

POAG offers no comment regarding these proposed amendments at this time.

Proposed Amendment: Miscellaneous USSG §2G1.1 (Part C)

The Allow States and Victims to Fight Online Sex Trafficking Act of 2017 created two new criminal offenses codified at 18 U.S.C. § 2421A(a), and an aggravated form of the first at 18 U.S.C. § 2421A(b). Violations of these offenses will be referenced in Appendix A to USSG §§2G1.1 or 2G1.3, depending on whether they involve adult or minor victims. POAG agrees that these are the appropriate guidelines to be utilized for violations of these statutes.

POAG discussed the merits of addressing the aggravated offense at 18 U.S.C. § 2421A(b) by providing a higher base offense level versus including a specific offense characteristic containing an increase, and unanimously concluded that a tiered base offense level would provide ease of guideline application. Further, this structure will align with the tiered base offense level already provided for in both USSG §§2G1.1 and 2G1.3. POAG recommends that the valuation of the base offense levels be commensurate with the respective statutory maximum terms of imprisonment for each offense. Under USSG §2G1.1, POAG suggests a base offense level of 14 for violations of 18 U.S.C. § 2421A(a), and a base offense level of 18 for violations of 18 U.S.C. § 2421A(b). Under USSG §2G1.3, POAG suggests a base offense level of 24 for violations of 18 U.S.C. § 2421A(a), and a base offense level of 28 for violations of 18 U.S.C. § 2421A(b). This incorporates the proposed four-level increase for the aggravated violation and eliminates the need for a specific offense characteristic.

Should the Commission prefer to address the aggravated violation through inclusion of a specific offense characteristic, POAG unanimously recommends the use of the terminology “the offense of conviction” rather than “the offense involved conduct described in 18 U.S.C. § 2421A(b)(2).”

Additionally, POAG agrees with the proposed amendment to the Commentary to §2G1.3 to add a new application note instructing that, if 18 U.S.C. § 2421A is the offense of conviction, the specific offense characteristic at §2G1.3(b)(3)(B) pertaining to use of a computer or interactive device does not apply.

POAG also discussed whether 18 U.S.C. § 2421A offenses should be accounted for under USSG §4B1.5 (Repeat and Dangerous Sex Offender Against Minors) and USSG §5D1.2 (Term of Supervised Release). POAG believes that these offenses should be identified as a “covered sex crime” for purposes of USSG §4B1.5. It was discussed that offenses identified as a “covered sex crime” are universally “hands-on” offenses, while a violation of 18 U.S.C. § 2421A is not. Regardless, classifying convictions under 18 U.S.C. § 2421A as a “covered sex crime” would distinguish defendants who commit these types of offenses for general criminal purposes, such as financial gain, from those who present a different type of risk because they committed the offense due to their proclivity for sexual offending.

Regarding the Policy Statement at USSG §5D1.2 recommending that the court impose the statutory maximum term of supervised release of life if the instant offense of conviction is a “sex offense,” POAG recommends that violations of 18 U.S.C. § 2421A should be excluded. POAG continues to believe that the length of a term of supervised release should be imposed based upon the facts and circumstances of each offense and defendant and their risks to victims and the community.

In addition to addressing the above “Issues for Comment,” POAG discussed the implications of the Special Instruction at both USSG §§2G1.1(d) and 2G1.3(d) which provides that, if the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the conduct in respect to each victim had been contained in a separate count of conviction.

Offenses charged under 18 U.S.C. § 2421A(b)(1) may involve conduct that promotes or facilitates the prostitution of five or more persons. With the tiered base offense level already potentially taking this factor into account, the Commission needs to clarify how the Special Instruction would interact with an aggravated violation to address potential double counting issues. POAG also suggests including a specific offense characteristic, utilizing a tiered approach, to account for what could be a significant number of victims involved in a case. POAG discussed taking an approach similar to USSG §2G2.2(b)(7), pertaining to the number of images of child pornography, to account for a graduated increase when the offense involved more than five victims. POAG also suggests an application note reflecting that an upward departure may be warranted when the number of victims substantially exceeds the highest number identified in the specific offense characteristic.

The Special Instruction, in combination with the of enactment 18 U.S.C. § 2421A, presents other potential complications separate and apart from the above noted double counting issue. An offense involving an online platform or marketplace could potentially involve many sex trafficking victims. In the context of the Special Instruction, probation officers could be required to investigate the factual underpinnings of every victim to apply separate groups for every victim

in §§ 2G1.1 and 2G1.3. This could be a burdensome process that becomes a resource issue in a large-scale case.

POAG also discussed this Special Instruction generally, which appears in several sexual exploitation guidelines. As noted above, these Special Instructions provide that, if the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the conduct in respect to each victim had been contained in a separate count of conviction. The application notes pertaining to these Special Instructions provide further instruction. For example, USSG §2G1.1, Application Note 5 states, “For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, a commercial sex act or prohibited sexual contact is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are not to be grouped together under §3D1.2 (Groups of Closely Related Counts). In addition, subsection (d)(1) directs that, if the relevant conduct of an offense of conviction includes the promoting of a commercial sex act or prohibited sexual conduct in respect to more than one victim, whether specifically cited in the count of conviction, each such victim shall be treated as if contained in a separate count of conviction.”

POAG believes that these instructions are unclear as a result of the use of the terms “the offense,” “count of conviction,” and “relevant conduct,” resulting in misapplication. As offenses covered by USSG §2G1.1 are specifically excluded from grouping under USSG §3D1.2(d), they are not subject to expanded relevant conduct analysis. Therefore, application of USSG §2G1.1 is restricted to the offense of conviction (i.e., the victim or victims cited in the count of conviction). It is POAG’s recommendation that both the Special Instruction set forth at USSG §2G1.1(d)(1), as well as Application Note 5, be revised to delete any references to “the offense” and “relevant conduct,” and clarify the Special Instruction to refer to victims of the count of conviction. It is further recommended that examples be provided at USSG §2G1.1 and USSG §1B1.2 (Applicable Guidelines) to assist with guideline application. These revisions are needed to all guidelines which contain such a Special Instruction.

Investigation of these offenses often reveals additional victims who are not cited in the count of conviction. Although this conduct cannot be accounted for under USSG §2G1.1 (or other sexual exploitation guidelines), it can be considered under USSG §5K2.0 (Grounds for Departure) and/or USSG §4B1.5 (Repeat and Dangerous Sex Offender Against Minors).

Proposed Amendment: Miscellaneous USSG §3D1.2 (Part D)

POAG unanimously supports the inclusion of USSG §2G1.3 in the list of offenses which are not grouped under USSG §3D1.2(d). This miscellaneous amendment would provide alignment and consistency with §2G1.1 and would seem to correct an oversight in operational intent.

In conclusion, POAG would like to sincerely thank the United States Sentencing Commission for the opportunity to provide feedback on the proposed amendments.

Respectfully,

Probation Officers Advisory Group
February 2019