

**TESTIMONY OF THE VICTIMS ADVISORY GROUP  
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**BEFORE THE UNITED STATES SENTENCING COMMISSION  
PANEL IV. ILLEGAL REENTRY, SUPERVISED RELEASE, AND OTHER  
PROPOSED AMENDMENTS  
FEBRUARY 16, 2011**

The Victims Advisory Group (VAG) wishes to submit its views on the proposed amendments regarding supervised release and plea agreements. The VAG was established by the U.S. Sentencing Commission to assist the Commission in carrying out its statutory duties, to provide the Commission its views on the Commission's activities as they relate to victims of crime, to disseminate information to crime victims and victim advocacy organizations, and to perform other functions as the Commission requests. We are pleased to provide these comments.

**Supervised release.**

The Commission is considering whether revisions to the supervised release guidelines would help courts and probation officers focus limited supervision resources on offenders who need supervision. The VAG agrees that refinements to supervision should be considered, and that supervision should be targeted to those cases where it is needed. However, we remind the Commission of the importance of supervision to enforce restitution orders and to provide protection to victims.

The Commission has proposed two options for amending §5D1.1, Imposition of a Term of Supervised Release. Option 1A would require a term of supervised release in any case that involved a sentence of imprisonment for 15 months or more; option 1B would require a term of supervised release only when required by a specific statute. (The current guideline mandates supervised release in any case involving a sentence of 12 months or more.)

Thus, the current proposal runs the risk of creating a larger window within which a particular defendant, though ordered to pay restitution or ordered not to have contact, would be under no supervision to facilitate enforcement of such orders.

Both proposed options would retain the court's discretion to order supervised release in any case, and would add significant commentary to provide direction to the court in determining whether to impose a term of supervised release. The factors to be considered include restitution ordered to the victim, as well as the nature of the offense and need to protect the public. The VAG applauds the addition of this guidance.

However, the VAG urges the Commission to strengthen its commentary under this guideline to clearly state that the court should ordinarily impose a period of supervised

release in any case where the defendant is ordered to pay restitution to any victims of the offense, or in any case where the court has issued a no contact or protective order against the defendant.

An additional point under consideration for §5D1.1 relates to deportable defendants. Option 1A provides that the court should not impose a term of supervised release where such release is not statutorily required and the defendant is a deportable alien who is likely to be deported following imprisonment. While it is logical to eliminate supervised release if a defendant is deported, those with pending deportation proceedings do not always leave the country, and those deported may return illegally. Therefore, supervised release should continue until a person is actually deported. Moreover, the VAG would suggest that such defendants stay on some type of supervised release even after deportation so that if they return to the country illegally during the period of supervision, they can be subject to immediate detention and violation of release proceedings.

The Commission is also considering proposals relating to the length of the term of supervision under §5D1.2. Rather than limiting the possible length of the term, the VAG urges the Commission to permit the extension of any term of supervised release for the purpose of enforcing a restitution order. Too often, defendants are released from confinement and supervision while continuing to owe restitution to their victims. Once supervision has ended, it becomes even more difficult to collect any restitution. The court should be permitted to extend the term of supervision for the purpose of enforcing its restitution order.

### **Plea agreement**

The Commission has also proposed an amendment to §6B1.2 to provide for standards for acceptance of a plea agreement when the sentence is outside the applicable guideline range. We urge the Commission to take this opportunity to clearly incorporate into this policy statement a provision recognizing the rights of victims at the plea stage. Specifically, we urge the Commission to add a provision (D), to the effect that “before accepting any plea, the court shall ascertain whether the prosecution has conferred with the victim(s) and whether the victim(s) has any views on the proposed plea.”

The Commission should also add commentary referencing the strong language of the Crime Victims’ Rights Act (CVRA), 18 U.S.C. 3771. The CVRA gives crime victims both “the right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding” and “the reasonable right to confer with the attorney for the Government in the case.” The *Attorney General Guidelines for Victim and Witness Assistance* already direct prosecutors to “make reasonable efforts to notify identified victims of, and consider victims views about, any proposed or contemplated plea negotiations.”<sup>1</sup> This tracks the approach in at least twenty-nine states, which require prosecutors to “consult with” or “obtain the views of” victims at the plea agreement stage.<sup>2</sup>

Because most criminal proceedings are resolved through a plea agreement, the plea stage represents the best opportunity for the victim to be heard in the process. In addition, the CVRA states that under limited circumstances a victim “may make a motion to re-open a plea or sentence” where the right to be heard was denied. §3771(d)(5). Thus, it is in the interest of the court and the working of the criminal justice system to ensure that the victim’s right to be heard is afforded at the first instance.

### **Broader Incorporation of the Crime Victims’ Rights Act**

The VAG continues to recommend that the Guidelines be completely reviewed and amended where appropriate to incorporate fully the provisions of the Crime Victims’ Rights Act, 18 U.S.C. 3771. §6B1.2 is only one such appropriate place.

While the Commission has adopted §6A1.5, providing a policy statement reiterating the courts’ statutory requirements to ensure that the rights of crime victims under §3771 and other provisions of Federal law are followed, no commentary expands or interprets that guideline. The VAG urges the Commission to broadly review the guidelines and commentaries and to fully implement the provisions of the CVRA. Such an undertaking would promote consistency in the fair treatment of victims throughout the federal courts. We would be happy to provide suggested revisions to the Guidelines to accomplish this goal.

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<sup>1</sup> U.S. Dept. of Justice, Office of the Attorney General, *Attorney General Guidelines for Victim and Witness Assistance*, 30 (2005).

<sup>2</sup> U.S. Dept. of Justice, Office for Victims of Crime, *New Directions from the Field: Victims’ Rights and Services for the 21st Century*, 75 (1997).