

VICTIMS ADVISORY GROUP

To the United States Sentencing Commission

Russell P. Butler, Chair



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February 13, 2014

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002

RE: Written Testimony in Response to the Violence Against Women Reauthorization Act of 2013 (VAWA)

Chairman Saris and Members of the Commission:

The Victims Advisory Group (VAG) appreciates the opportunity to provide oral testimony to the Commission in response to the proposed amendments to address the Violence Against Women Reauthorization Act of 2013. Preliminarily, attached and incorporated in this testimony is the statement from VAG member Jennifer Bishop Jenkins describing her personal victimization related to strangling and suffocation. By and through our Chair, Russell Butler, the VAG sets forth the following principles that we urge the Commission to adopt as tenants for the VAWA related changes:

I. THE ENHANCEMENTS SHOULD APPLY TO ALL CASES

One of the questions posed by the Commission (Page 22, Item 1) was whether the guidelines should be amended only to address crimes committed by a spouse, intimate partner, or dating partner regarding strangling, suffocation, and attempting to strangle or suffocate or whether the guidelines should be amended to any cases where strangling, suffocation, and attempting to strangle or suffocate occurs. The VAG strongly believes that any harm to a victim equally impacts a victim regardless of any relationship to the offender and therefore it should be an enhancement to any crime. Whether any victim sustained bodily injury, substantial bodily injury, strangling,

suffocation, or an attempt of strangulation or suffocation, that conduct is an enhanced impact on the victim regardless of whether the victim was a spouse, intimate partner, or dating partner.

A. The Commission Should Select Option 2 of the Amendments to 2A2.3

Reflecting the policy that the harm is the harm and it applies regardless of the any status between the offender and the victim, the VAG urges the Commission to adopt Option 2 of the proposed amendments to 2A2.3.

II. STRANGLING, SUFFOCATION, AND ATTEMPTING TO STRANGLE OR SUFFOCATE IS A SEPARATE HARM FROM BODILY INJURY, SERIOUS BODIDILY INJURY, SUBSTANTIAL BODILY INJURY, AND PERMANENT OR LIFE-THREATENING BODILY INJURY ¹

Victims may often receive multiple harms from a crime. For example, a victim may receive a broken arm and also be strangled or suffocated. Victims may also suffer the fear of the use or brandishing of a firearm. When multiple harms occur, these harms should not be aggregated but instead be individually referenced to reflect the actual harms that a victim has been subjected. The Commission should not minimize either the bodily related harm or the strangulation or suffocation harms by aggregating the separate and distinct acts into one harm.

A. The Commission Should Select Option 2 of the Amendments to 2A2.2

B. The Commission Should Select Option 1 of the Amendments to 2A6.2

C. The Commission Should Sect Option 1 of the Amendments to Appendix A to Provide Offenses under Section 113(a)(8) with a Reference to 2A6.2

Reflecting the policy that the harm from strangling, suffocation, and attempting to strangle or suffocate is separate and distinguishable from the harm from any level of bodily injury, the VAG urges the Commission to adopt the options that reflect that strangling, suffocation, and attempting to strangle or suffocate is a separate harm from the bodily injury related harms.

III. OFFENSES INVOLVING VIOLATIONS OF COURT PROTECTION ORDERS SHOULD REFLECT NOT ONLY TO STATE AND FEDERAL COURT ORDERS OF PROTECTION, BUT ALSO TO TRIBAL AND MILITARY ORDERS OF PROTECTION UNDER 2A2.2(a)(5) AND OTHER SIMILAR GUIDELINES INCLUDING 2A2.1, 2A2.3, AND 2A6.2

Under 2A2.2 (a)(5), if an offense involved the violation of a court protection order, a 2 level offense increase is warranted. The policy behind having a consequence for not following a lawful order expresses that lawful orders are to be followed and respected. When an individual

¹ 2A2.2 (b)(3)(B) uses the term “serious bodily injury” and 2A2.3(b) uses the term “substantial bodily injury.”

violates a lawful order, there should be a meaningful enhancement where the violation of a lawful order results in a federal crime.

- A. An increase for a violation of a court protection order should likewise be applicable to other assault related offenses including 2A2.1, 2A2.3, and 2A6.2 or to constitute a new 3A1.6 victim-related adjustment when an offender commits an offense when subject to a lawful prohibition not to contact the victim.
- B. A lawful prohibition from a tribal or military authority not to contact a victim shall be provided the same status of a state or federal order.

The violation of a protection order guideline should not just apply to the guideline involving aggravated assault, but to other crimes both greater and lesser than aggravated assault, especially in Indian Country. According to the Department of Justice Tribal Statistics, American Indians are 2.5 times more likely to experience sexual assault crimes compared to all other races and one in three Indian women reports having been raped during her lifetime. Disobeying a lawful command demonstrates disrespect to authority and such conduct is similar in nature to obstruction of justice and as such it should have more severe consequences than the mere committing of the offense.

State and federal courts are not the only entities with the legal authority to limit contact between individuals. Tribal and military authorities likewise have the ability to set lawful prohibitions. Just as when orders of state and federal court are violated, the guidelines should reflect an appropriate enhancement when these lawful directions are ignore and federal crimes occur. It is not a good public policy result to allow crimes that occur within our borders be blurred by bureaucracy.

IV. SUPERVISED RELEASE SHOULD BE REQUIRED TO HELP REASONABLY PROTECT VICTIMS

One of the questions posed by the Commission (Page 22, Item 2) involved supervised release in cases involving domestic violence. (including stalking, intimate partner, and dating violence cases) 18 U.S.C. 3771(a)(1) provides crime victims with “The right to be reasonably protected from the accused.”

- A. The Guidelines should be amended to reflect that courts shall require conditions of release in domestic violence, stalking, intimate partner, and dating violence cases that will reasonably protect the victim from the accused as required under 18 U.S.C. 3771(a)(1).

The guidelines under 6A1.5 already require that the “court shall ensure that the crime victim is afforded the rights described in 18 U.S.C. § 3771. However, 6A1.5 is so general in nature, that expressly amending 5D1.1 to reference the obligation of the court to set conditions of supervised release that will reasonably protect the victim will more effectively implement the Congressional intent beyond the general policy statement to ensure victims’ rights.

V. PROVIDING EXAMPLES IN THE COMMENTARY TO CLARIFY WHEN AN UPWARD DEPARTURE MAY BE WARRANTED IN DOMESTIC VIOLENCE, DATING VIOLENCE, INTIMATE PARTNER, AND STALKING RELATED OFFENSES

The VAG notes that under Chapter 4, PART A, tribal convictions, foreign convictions and consideration of the issuance and/or violation of protective orders cannot be used to calculate the criminal history category. Similarly, relevant past conduct between the offender and the victim and the offender and the victim's family may not be relevant conduct for the criminal offense.

However, 4A1.3 (a) provides:

(a) UPWARD DEPARTURES.—

(1) STANDARD FOR UPWARD DEPARTURE.—If reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, an upward departure may be warranted.

(2) TYPES OF INFORMATION FORMING THE BASIS FOR UPWARD DEPARTURE.—The information described in subsection (a) may include information concerning the following:

(A) Prior sentence(s) not used in computing the criminal history category (e.g., sentences for foreign and tribal offenses).

(B) Prior sentence(s) of substantially more than one year imposed as a result of independent crimes committed on different occasions.

(C) Prior similar misconduct established by a civil adjudication or by a failure to comply with an administrative order.

(D) Whether the defendant was pending trial or sentencing on another charge at the time of the instant offense.

(E) Prior similar adult criminal conduct not resulting in a criminal conviction.

The VAG request that 4A1.3 and its Commentary be amended to reflect appropriate examples related to domestic violence, dating violence, intimate partner violence, and stalking cases. In these cases, there may be tribal, foreign, and military criminal convictions, civil adjudication, and violations of administrative orders that could establish the basis for an upward departure. Appropriate examples would clarify when it would be appropriate for the court to consider an upward departure in domestic violence, dating violence, intimate partner violence, and stalking cases.

Conclusion

The VAG appreciates the opportunity to address the victim related issues in relation to the Violence Against Women Reauthorization Act of 2013 amendments. We hope that our collective views will assist the Commission in its deliberations on this important matters of public policy.

Should you have any further questions or require any clarification regarding the suggestions, please feel free to contact us.

Respectfully,

Victims Advisory Group
February 2013

Jennifer Bishop-Jenkins

***315 Lockwood Avenue
Northfield, Illinois 60093***

February 4, 2014

Dear Members of the US Sentencing Commission:

My name is Jennifer Bishop Jenkins and I am in my 4th year of service on the USSC Victim Advisory Group (VAG). My primary work in victim advocacy has been as a murder victim's family member, but sadly I am also a victim survivor of domestic abuse at the hands of my ex-husband during the early 1990s.

I write to provide the Commission my experience as a crime victim who experienced strangling and suffocation.

After two years of marriage filled with verbal abuse, shoving, and other physical abuse, one night my husband threw me down on the bed and began strangling me. Unlike any other way that he had attacked me in the past, this horror instantly sent me to a level of terror and trauma I had never known in my whole life. I knew I was seconds away from dying. This was a fear unlike anything I had ever known. Everything was suddenly different in my whole consciousness. I was going to die. The unthinking rage in his eyes made that clear.

He had even pulled a gun on me once, slapped me black and blue, but nothing felt as scary as this. There was that first part of the attack that so utterly terrified me as I anticipated my imminent death, panicking with what I could do. The fighting for freedom, the pain of his hands around my neck. Then as I began to suffocate, I could feel myself dying. Gasping for breath, desperate for air. Feeling myself slipping away, so fully conscious and hyper aware. And watching him - how personal the rage was. How he was using his bare hands to kill me - it was so intimate, he was so close to me. His skin on my skin. Like drowning, trapped in the water beneath the ice, the panic, the desperation to breathe, yet not being able to.

He felt me going limp and thankfully let go. I coughed myself back to life. What I learned in the days and the weeks after was the on-going and constant re-traumatization of the aftermath of the strangulation. For weeks, every time I moved my head, I was grabbed with pain. I couldn't sleep, I couldn't eat or drink well. Every move was a painful reminder. I had to take time off work without pay to cover up the worst of it, then I had to lie to deal with answering questions about the bruises, etc., at my teaching job. The aftermath was a constant reminder of what had happened. 20 years later it is as vivid to me as any moment of my life.

The neck is so easy to grab, so vulnerable, so vital to all life, connecting breathing and heart to mind. The viciousness and harm of this terroristic act is far different than mere broken bone or a physical injury. I have suffered the range of these injuries and nothing comes close to strangulation and suffocation in sheer terror.

I ask the Commission to treat strangling and suffocation as extreme acts of violence for which perpetrators are significantly punished for the resulting harm of their actions.

Sincerely,



Jennifer Bishop Jenkins
Northfield, Illinois