

VICTIMS ADVISORY GROUP

To the United States Sentencing Commission

T. Michael Andrews, Chair



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

RE: Written Testimony for the Proposed Amendments relating to the Definitions of Crime of Violence, Murder and Aggravated Assault.

Dear 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 that address the many different definitions of “crime of violence” and the impact the definitions have on crime victims. The VAG urges the Commission to simplify and standardize the definition so it can eliminate the potential for disparate treatment of defendants.

VAG Recommendation:

The VAG recommends that the Commission simplify and standardize the definition of the term “crime of violence.” Currently there are three different definitions when applying the sentencing guidelines. First, there is a statutory definition at 18 U.S.C § 16; second, there is a definition in the Guidelines specific to immigration offenses in U.S.S.G § 2L1.2 and third, there is another Guidelines definition relating to firearms offenses and criminal history calculation in U.S.S.G §4B1.2. Moreover, the term “crime of violence” is also included in the definition of an aggravated felony under the Immigration Code at 8 U.S.C § 1101 (a) (43). The multiplicity of definitions serves only to cloud legal analysis and creates an avenue for inconsistent decisions by the court.

The VAG suggests expanding the definition under U.S.S.G Section 4B1.1(a)(1) and include the following:

The term ‘crime of violence’ means any offense under federal or state law, punishable by imprisonment for a term exceeding one year that,

- 1) Has as an element the use, attempted use, or threatened use of physical force against the person of another.” or
- 2) Enumerated offenses that include: Rape, Murder, Terrorism, Arson, Weapons of Mass Destruction, Robbery, Extortion, Voluntary Manslaughter, Aggravated Assault, Kidnapping, Burglary, Forcible Sex Act or
- 3) Relevant facts the court could consider in determining a crime of violence occurred.

This amendment would eliminate the problematic clause that was highlighted in the *Johnson v U.S.*, 676 U.S. ___ (2015). Finally, by adopting a uniform approach for the definition of “crime of violence,” as well as providing an expansive list of enumerated crimes it will reduce the potential for sentencing disparity between similarly situated defendants. In addition, by allowing the court discretion to include relevant facts and circumstances to determine whether the crime is a “crime of violence” will allow for further protection and consistency of application.

Victim Protection

If the USSC is inclined to adopt a new definition of “crime of violence” the VAG urges the commission not to consider any retroactive application of the law. Since “crime of violence” involves victims of crime, re-litigating the application of a new definition for convicted individuals would be devastating to victims and would cause further trauma.

Murder Definition

The VAG further comments on the proposed definition of Murder; the USSC proposed definition of Murder would include offenses in which the defendant causes the death of another in the course of committing a felony. The VAG recommends the proposed definition which provides clarity and avoids the complexity of the many various statutes that enumerate each type of felony crime and thus present differing definitions and applications. By adopting a single application, it will provide for a consistent interpretation.

Aggravated Assault Definition

Finally the VAG further comments on the proposal to expand the definition of “aggravated assault.” The USSC proposed definition of “aggravated assault” currently does not include an aggravating factor that victims have a special status or classification. The VAG supports the expanded definition of aggravated assault based on the classification of a protected class of individuals. The VAG recommends expanding aggravated assault classification to include victims who are first responders, minors, elderly, teachers, pregnant women, athletic officials, military, clergy and public officials. Often these are the type of vulnerable victims that interface with the public frequently and should be protected against any attempt to cause physical injury based on their occupation or status.

Conclusion

The VAG appreciates the opportunity to address these important issues. We hope that our collective views will assist the Commission in its deliberations on these 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
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