

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 Response to Compassionate Release and Conditions of Supervision: Advisory and Advocacy Groups Panel

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 to address compassionate release policy priorities under §1B1.13 and supervisory release under §§5B1.3 and 5D1.3 in the Federal Sentencing Guidelines. The VAG urges the Commission to adopt changes made to these proposed amendments with regard to the impact on victims as we describe in greater detail below.

I. Compassionate Release Needs to Address the Notice Concerns to Crime Victims

The VAG recommends in the draft policy statement under §1B1.13 that a reference to 18 U.S.C. §3771 be included with regard to the potential release of any prisoner under the compassionate release criteria. The Commission offers guidance to the trial court as to what it should consider in determining whether to grant the Bureau of Prisons motion. However, absent from the text in §1B1.13 or the Application Notes was any reference to 18 U.S.C. §3771, affording victims

numerous rights when a district court contemplates such a motion - most specifically the right to notice and the right to be heard at a proceeding addressing release.

In addition, the VAG recommends that the Commission adopt a definition of progressive illness. The VAG assumes that this provision is intended to address the inmate who is suffering from an illness or injury that, although not terminal, truly diminishes his ability to function in prison. Without a definition of “progressive illness,” however, this could be applied to a defendant with any illness that is progressive, although does not rise to the degree of seriousness the amendment intends (such as psoriasis or manageable arthritis). To avoid such a misapplication, the VAG recommends keeping the original version in the Application Note 1(A)(ii) which requires that the “defendant is suffering from a permanent physical or medical condition or is experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care with the environment of a correctional facility and for which conventional treatment promises not substantial improvement.”

Finally, the VAG recommends adding additional language to the §1B1.13(2) Policy Statement to include:

(2) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. §3142(g), and notice is required to any victim under §18 U.S.C. §3771.

II. Conditions of Probation and Supervised Released

The VAG recommends to the Commission the following changes under §5B1.3 and 5D1.3 Conditions of Probation and Supervised Release. First, under §5B1.3(c)(3), the proposed amendment includes the *mens rea* of “knowingly.” While the boundaries of districts which mirror state boundaries may be unproblematic for a defendant to know, many other federal district boundaries are not clear and some are even expansive. As such, a defendant will always be able to claim he did not know he was outside the district. Therefore, it should be incumbent upon the defendant not to leave his jurisdiction knowingly, and not the probation officer’s responsibility to later prove the defendant knew he was outside the district. As a result, the VAG supports the existing language under §5B1.3(c)(1). This language incentivizes a defendant to be clear about his or her travel limitations, consistent with the purpose of these amendments. It also restores the protection the existing language provides. The existing language includes a prohibition on travelling to “other specified geographical areas” such as victim locations of work or residences. This should be a standard condition of probation and is essential for victim safety.

Second, under §5B1.3(c)(12), the VAG recommends using the existing language instead of the proposed amendment. The proposed amendments allow a probation officer who determines a defendant is a risk to third parties to require the defendant to inform the third party and to verify with the third party that the defendant informed them of the risk. However, the proposed amendment eliminates this requirement from “shall” to “may” as well as eliminates the requirement that the probation officer “make such notification” independently. The VAG believes that victims’ interests are more protected in having probation officers retain the authority to not only check with third parties but also notify third parties of the risk the defendant poses.

Finally, the Commission seeks comment on whether §5D1.3(c)(15), which states that the defendant “shall notify the probation officer of any material change in the defendant’s economic circumstances that might affect the defendant’s ability to pay any unpaid amount of restitution, fines or special assessments.” The proposed amendment would remain a standard condition under §5D1.3(c)(14). The VAG recommends this section should remain a standard condition. This clearly would benefit victims under the standard language scenario than as a specific condition.

Conclusion

The VAG appreciates the opportunity to address the victim related issues in relation to the impact of Compassionate Release and Conditions of Probation and Supervision. 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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