

VICTIMS ADVISORY GROUP

A Standing Advisory Group of the United States Sentencing Commission



T. Michael Andrews, Chair

Elizabeth Cronin
Kimberley Garth-James
Margaret A. Garvin
Francéy Hakes

Mary G. Leary
Keli B. Luther
James R. Marsh
Virginia C. Swisher

March 6th, 2018

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

RE: VAG's Response to the Proposed 2018 Amendments

Dear Acting Chairman Pryor and Members of the Commission:

The Victims Advisory Group (VAG) appreciates the opportunity to provide a written response to the Commission on the proposed amendment for first offenders. The VAG urges the Commission to consider the specific concerns addressed below regarding the impact on victims.

I. First Offenders

The VAG recommends the Commission adopt the proposed first offenders definition under 4C1.1(a). The VAG wants to maintain the status for a pattern of offenses. The VAG would like to exclude the following crimes from the operation of the proposed amendment.

Exclusion: Any offense that meets the definition of a crime of violence, as specified in §§4B1.2(a)(1) and (a)(2); §2B1.1 in which a specific victim or group of victims have been identified; §2B1.6; §2B2.1 (burglary of a residence); §2D2.3; §2G1.1; §2G1.3; §2G2.1; §2G2.2; §2G2.3; §2G2.6; §2G3.1 as it pertains to the transfer of obscene matter to a minor; §2H4.1; §2L1.1; and, §2X6.1. Any defendant with prior criminal convictions for offenses that meet the definition of a crime of violence or the same or similar to an offense which are included in this listing; but whose convictions are not used in the calculation of the criminal history category should be excluded from consideration as a first time offender.

In light of all the proposed amendments, especially the amendment to the guideline sentencing table, it is the VAG's assessment that the noted exceptions to the first time offenders amendment should be applied. First time offenders who engage in crime(s) of violence, as defined under §4B1.2(a) have engaged in offenses which are clearly different from first time offenders whose

VICTIMS ADVISORY GROUP

A Standing Advisory Group of the United States Sentencing Commission



T. Michael Andrews, Chair

Elizabeth Cronin
Kimberley Garth-James
Margaret A. Garvin
Francey Hakes

Mary G. Leary
Kelli B. Luther
James R. Marsh
Virginia C. Swisher

offense of conviction has no element of violence and no victim(s) associated with their criminal conduct. The additional listing of specific sections of Chapter 2 of the Sentencing Guidelines has been provided because not all offenses involving victims fall into the definition of a crime of violence. In addition, as is presently proposed, a first time offender can be an individual who has engaged in serious criminal conduct but has not been criminally charged or convicted as a result of that behavior (For example, college students who engage in repeated sexual assaults on campus and who are disciplined by the school but whose conduct has not been reported to law enforcement would technically be a first time offender under the proposed amendment. Likewise, individuals who purchase, view, and/or distribute child pornography may not have been previously convicted and would, again, technically qualify as a first time offender).

Defendants who have a pattern of criminal behavior which includes crimes of violence or which is similar to the conduct listed in the recommended exclusion provision have demonstrated that they are not first time offenders, as the Commission would envision. More importantly, the use of the exclusion provision provides the sentencing court with a mechanism that insures the victim's right to have all harms caused by the defendant's offense conduct taken into full consideration. The placement of a defendant in CHC I recognizes that defendant's status as a first time offender. The exclusion provision helps insure that a true distinction is drawn between first time offenders whose offense conduct did not seek to harm any individual and those offenders who specifically sought to harm others. Finally, if the Commission does not support the new commentary we would then support option 1 to decrease the offense level by 1.

Conclusion

The VAG appreciates the opportunity to address the victim related issues in relation to the impact of offenses. We hope that our collective views will assist the Commission in its deliberations on this important matter of public policy.

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

Respectfully,

A handwritten signature in black ink, appearing to read "T. Michael Andrews".

T. Michael Andrews
Chairman, Victims Advisory Group
March 2018