



U.S. Department of Justice

Criminal Division

Office of Policy and Legislation

Washington, D.C. 20530

February 22, 2024

The Honorable Carlton W. Reeves, Chair
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Dear Judge Reeves:

This letter responds to the United States Sentencing Commission's request for comment on its proposed amendments to the Federal Sentencing Guidelines and issues for comment published in the Federal Register on December 26, 2023.¹ We thank you, the other Commissioners, and the Commission staff for being responsive to the Justice Department's sentencing priorities and to the needs and responsibilities, more generally, of the Executive Branch.

While the published amendments address important issues of federal sentencing policy, we note two critical issues of national importance they do not address: the epidemics of fentanyl poisoning and firearms violence. We continue to believe the Commission has a role to play in dealing with these pressing public safety matters, and we think they demand the Commission's attention. And we echo the sentiments expressed in the Deputy Attorney General's letter, submitted separately in response to the Commission's request for comment.

We look forward to working with you during the remainder of the amendment year on all the published amendment proposals and to continued collaboration in the years to come to improve public safety and further the cause of justice for all.

I. Calculating Criminal Histories for Crimes Before the Age of Eighteen

The Department is focused on working to reduce violent crime and is concerned about any amendment to the Guidelines that would prevent sentencing courts from holding accountable violent offenders who have recidivated within a short period of time. Each of the three options in Part A of the proposed amendment would do just that by categorically excluding juvenile

¹ U.S. SENT'G COMM'N, *Proposed Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary*, 88 Fed. Reg. 89142, 89143 (Dec. 26, 2023), available at [Federal Register : Sentencing Guidelines for United States Courts](#).

sentences, even for violent crimes, from consideration in the Guidelines' criminal history calculus without respect to the nature of those sentences.

In part for this reason, we are concerned that the proposed amendment offers too simple an answer to a complex question. As the Commission notes, research generally shows that brain development continues well into one's twenties, affecting reasoning and decision making. Behaviors generally change as young people mature. No one approach fits all experiences.

The Department believes that we must be able to identify adults who are most at risk of continuing to commit violent offenses – e.g., homicides, non-fatal shootings, and carjackings.² The research on youthful offending recognizes the substantial heterogeneity in youth who commit crime,³ in part as a result of the heterogeneity of cognitive development among youth generally.⁴ Most young people do not commit crime at all. Some young people commit minor offenses; some commit serious and violent offenses;⁵ and some are chronic offenders⁶ who commit serious and violent crimes over and over again.⁷ Rather than supporting a bright-line provision like the Commission's current proposals, the research supports a more nuanced approach – as a result, the Department opposes Part A of the proposed amendment.⁸

* * *

² Given the recent spike in incidents of carjacking, including by juvenile offenders, the Department looks forward to working with the Commission in the next amendment cycle to evaluate current sentencing policy for such offenses, with consideration given to increasing penalties on those who recruit juveniles to engage in carjacking. Such penalty increases would complement law enforcement and community engagement steps the Department is taking to reduce such crime.

³ National Research Council, *Reforming Juvenile Justice: A Developmental Approach* (2013), ch. 1, 23, available at <https://nap.nationalacademies.org/catalog/14685/reforming-juvenile-justice-a-developmental-approach>.

⁴ See e.g. Rachel M Brouwer, et al., The Speed of Development of Adolescent Brain Age Depends on Sex and Is Genetically Determined, 31 *Cerebral Cortex* 2, (2021), available at: <https://academic.oup.com/cercor/article/31/2/1296/5929823>; Stephanie K. Scott & Kelli A. Saginak, *Adolescence: Emotional and Social Development*, in D. Capuzzi & M. Stauffer (eds), *Human Growth and Development Across the Lifespan: Applications for Counselors*, ch. 12 (2016); Albert Dustin et al., *The Teenage Brain: Peer Influences on Adolescent Decision Making*, 22 *Current Directions in Psychological Science* 2, 114-20 (Apr. 2013).

⁵ *Reforming Juvenile Justice: A Developmental Approach*, supra note 3.

⁶ We use the term "offender" as the Commission did in the amendment and the issue for comment.

⁷ *Reforming Juvenile Justice: A Developmental Approach*, supra note 3, citing to Kimberly Kempf-Leondard et al., *Serious, Violent, and Chronic Juvenile Offenders: The Relationship of Delinquency Career Types to Adult Criminality*, 18 *Justice Quarterly* 3, 449-78 (2001); Rolf Loeber & David P. Farrington, *Serious and Violent Juvenile Offenders. Risk Factors and Successful Interventions* (1999).

⁸ Because we do not view the proposal contained in Part B as altering a sentencing court's discretion to depart, either downward or upward, based on a defendant's individual circumstances, we take no position on Part B of the proposed amendment.

We appreciate the opportunity to provide the Commission with our views, comments, and suggestions. We look forward to discussing all of this further with you.

Sincerely,

/s/ JW

Jonathan J. Wroblewski
Director, Office of Policy and Legislation
Criminal Division
U.S. Department of Justice
ex-officio Member, U.S. Sentencing Commission

cc: Commissioners
Kenneth Cohen, Staff Director
Kathleen Grilli, General Counsel