

VICTIMS ADVISORY GROUP

A Standing Advisory Group of the United States Sentencing Commission



Mary Graw Leary, Chair

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February 22, 2024

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

RE: Request for Comment on Proposed Amendments to the Sentencing Guidelines

Dear Members of the Commission:

Introduction

The Victims Advisory Group (“VAG”) appreciates the opportunity to provide information to the Sentencing Commission (“Commission”) regarding its proposed amendments to the Sentencing Guidelines (“Guidelines”). Our views reflect detailed consideration of the proposals by our members who represent the diverse community of victim survivor professionals from throughout the nation. These members work with a variety of victim survivors of crime in all levels of litigation and include: victim advocates, prosecutors, private attorneys, and legal scholars. During the VAG’s consideration of the proposals, two overriding themes emerged. First, the Guidelines must reflect the bedrock principle of our sentencing system of individualized sentencing which accurately captures for both offenders and victim survivors the nature of the offense, the character of the offender, and the scope of the harm caused. Second, the Commission cannot exceed its authority to disrupt settled Supreme Court precedent or Congressional enactments. When either of these maxims is violated, which is the case with many of these proposals, victim survivors’ legal rights are compromised and they suffer further harm.

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5. Miscellaneous

A. Part E - Enhanced Penalties for Drug Offenders

The VAG notes the victim implications when a defendant is being sentenced for an offense under 21 U.S.C. §§ 841 or 960 and death or serious bodily injury results from the use of the controlled substance. A “crime victim” includes a person directly and proximately harmed as a result of the commission of a federal offense.¹¹⁶ At a time when the nation is in a criminal and public health crisis due to record deaths related to narcotics distribution,¹¹⁷ the VAG recognizes victims of such crimes include, not only the injured or deceased persons, but those proximately harmed including communities plagued by such narcotics trade.

The VAG is interested in ensuring that defendants who violate 21 U.S.C. §§841 or 960 and cause the death or serious bodily injury of another are held accountable for causing such harm. Because the Guideline § 2D1.1 allows for an increased base offense level under such circumstances, the VAG supports the application of that provision when proven by a preponderance of the evidence at sentencing or established during a plea colloquy. Moreover, such an approach allows the victim or family member of a victim to fully assert the impact of the narcotics offense.

Such an approach fulfills the purposes of sentencing and is consistent with the requirements to reflect the seriousness of the offense, to promote respect for the law, to provide

¹¹⁶ 18 U.S.C. § 3771(e)(2).

¹¹⁷ Understanding the Opioid Overdose Epidemic, Centers for Disease Control, <https://www.cdc.gov/opioids/basics/epidemic.html>; John Gramlich, *Recent surge in U.S. drug overdose deaths has hit Black men the hardest*, Pew Research Center (Jan.19, 2022), <https://www.pewresearch.org/short-reads/2022/01/19/recent-surge-in-u-s-drug-overdose-deaths-has-hit-black-men-the-hardest/>

just punishment for the offense, afford adequate deterrence to criminal conduct and protect the public from further crimes of the defendant.¹¹⁸

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¹¹⁸ 18 U.S.C. § 3553(a).

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Conclusion

The VAG appreciates the opportunity to comment upon these proposals. The VAG takes seriously its commitment to advise the Commission and to share Victim perspectives on the sentencing process. It respectfully requests the Commission to stay within its authority, avoid defraying individualized sentencing, and respect the rights of victim survivors.

Respectfully yours,

A handwritten signature in cursive script, reading "Mary Graw Leary". The signature is written in black ink and is positioned to the left of the typed name below.

The Victims Advisory Group
Mary Graw Leary
Chair

cc: Advisory Group Members