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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

February 22, 2024

The Honorable Carlton W. Reeves, Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Washington, DC 20002-8002
Attention: Public Affairs

Dear Chair Reeves:

We write in response to the Sentencing Commission's request for comment on its Proposed 2024 Amendment to the *Guidelines Manual* for Youthful Individuals. Specifically, we write to express our views on Proposed Amendment #2: Youthful Individuals.

We strongly agree that the Commission should limit consideration of juvenile convictions and sentences in calculating a Sentencing Guidelines range. Given the wide array of literature demonstrating that brain development continues throughout adolescence,¹ we urge the Commission to adopt Part A Option 2—to “amend [U.S. Sentencing Guideline (U.S.S.G.)] § 4A1.2(d) to exclude all juvenile sentences from being considered in the calculation of the criminal history score” and make conforming changes to additional Guidelines provisions and Commentary. Option 2 strikes an appropriate balance between the need to incorporate modern scientific and medical understanding about youth brain development into the federal sentencing scheme, and the importance of capturing the most serious offenses in the criminal history score calculation.

Option 1, which continues to include in the criminal history score calculation certain juvenile sentences, does not account for adolescent brain changes and a corresponding “greater capacity to reform.”² Furthermore, scoring such sentences under the Sentencing Guidelines doubles down on a system that often disproportionately affects minority youth,³ not only in terms of justice system contact points, but also in the types and lengths of sentences imposed following adjudications.⁴ While Option 3 accounts for these concerns by precluding consideration of all offense conduct committed by a minor regardless of whether the defendant was subject to a juvenile or adult adjudication, Option 3 would excise from the calculus sentences for even the most serious offenses.

¹ Tsui, Anjeli, *How Brain Science Is Changing How Long Teens Spend in Prison*, PBS Frontline (May 2, 2017), <https://www.pbs.org/wgbh/frontline/article/how-brain-science-is-changing-how-long-teens-spend-in-prison/>.

² *Id.*

³ *Racial and Ethnic Disparity in Juvenile Justice Processing*, Dep't of Justice Office of Juvenile Justice and Delinquency Prevention (updated Mar. 2022), <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity#4-0>.

⁴ See, e.g., *id.*; Rovner, Josh, *Black Disparities in Youth Incarceration*, The Sentencing Project (Dec. 2023), <https://www.sentencingproject.org/app/uploads/2023/12/Black-Disparities-in-Youth-Incarceration.pdf>.

In contrast, Option 2 appropriately balances these competing concerns. By removing juvenile sentences from consideration, Option 2 incorporates the growing body of scientific literature and legal scholarship recognizing the significance of youthful functioning and malleability,⁵ while continuing to capture the most serious offenses, since individuals charged with such offenses are almost always charged in or transferred to adult court.

For substantially the same reasons, we urge the Commission to decline the bracketed proposed language of Option 2, which permits consideration of juvenile sentences under U.S.S.G. § 4A1.3's departure analysis. Such a provision would provide an alternative means for sentencing courts to consider the same problematic information that Option 2 properly excises from the sentencing calculus.

Finally, we support Part B of the proposed amendment, which aligns with the important policy goals underlying Part A Option 2 by strengthening the existing downward departure on the basis of youth at the time of the offense in U.S.S.G. § 5H1.1 and suggesting that alternatives to incarceration may be appropriate in some cases.

Brain immaturity spurs impulsive, risk-taking behavior that tends to subside as adolescents and young adults mature.⁶ Incarceration not only slows this developmental maturation, but often does not enhance public safety.⁷ Part B's proposal appropriately balances the importance of youth in sentence calculations with the sentencing court's discretion to depart. Thus, we applaud the proposed revisions to § 5H1.1 and urge the Commission to implement Part B.

Thank you for considering our views.

Sincerely,



Richard J. Durbin
United States Senator



Sheldon Whitehouse
United States Senator



Peter Welch
United States Senator



Alex Padilla
United States Senator

⁵ See, e.g., *Miller v. Alabama*, 567 U.S. 460, 471–72 (2012).

⁶ Mendel, Richard, *Why Youth Incarceration Fails: An Updated Review of the Evidence* (Mar. 1, 2023), <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/>.

⁷ *Id.*