
***Amendments to the
Federal Sentencing Guidelines***
*(Effective November 1, 2002 unless modified or
rejected by Congress)*

Highlights of Key Points



Prepared by the Office of Education & Sentencing Practice

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SENTENCING GUIDELINES
AMENDMENT HIGHLIGHTS - 2002

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- I. **TERRORISM** - This six-part amendment responds to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act). Among its many provisions, it creates a new guideline, §2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorist Organizations), and makes a number of changes to the statutory index and to several Chapter 2 guidelines to incorporate new predicate offenses to federal crimes of terrorism and other predicate offenses that were not explicitly incorporated into the guidelines.

First, the newly created guideline at §2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorist Organizations) is for offenses under 18 U.S.C. § 2339B, which prohibits the provision of material support or resources to a foreign terrorist organization. The proposed new guideline provides two specific offense characteristics that enhance the sentence for cases in which (1) the material support involved dangerous weapons or (2) the material support involved nuclear, biological, or chemical weapons.

Second, a specific offense characteristic was added at §2A5.2 (Interference with Flight Crew Member or Flight Attendant) for use of a weapon in order to take into account aggravating conduct which may occur in such offenses. The specific offense characteristic provides a graduated enhancement with a minimum offense level of level 24 for offenses involving weapons. To cover two new offenses created by the Act, §2M6.1 (Unlawful Production, Development, Acquisition, Stockpiling, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons or Facilities, Biological Agents, Toxins, or Delivery Systems, Chemical Weapons, or Other Weapons of Mass Destruction; Attempt or Conspiracy) was expanded to include offenses involving possession of biological agents, toxins, and delivery systems.

Third, the amendment adds an encouraged, structured upward departure in §3A1.4 (Terrorism) for offenses that involve terrorism but do not otherwise qualify as offenses that involved or were intended to promote “federal crimes of terrorism” for purposes of the terrorism adjustment in §3A1.4. The amendment also adds an application note to §3A1.4 regarding harboring and concealing offenses to clarify that §3A1.4 may apply in the case of offenses that occurred after the commission of the federal crime of terrorism.

Fourth, the amendment incorporates new money laundering provisions created by the Act by amending §2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports). Specifically, it provides an alternative base offense level to recognize the heightened due diligence requirements placed on financial institutions with respect to payable-through accounts, correspondent accounts, and shell banks.

Fifth, the amendment responds to section 811 of the Act, which amended a number of offenses to ensure that attempts and conspiracies to commit any of those offenses subject the offender

to the same penalties prescribed for the object offense. The amendment adds a special instruction in §2X1.1 that the three level reduction in §2X1.1(b) does not apply when the offense has a terrorist objective.

Finally, the amendment also addresses several miscellaneous issues related to terrorism, such as providing a definition of terrorism for purposes of the prior conviction enhancement in §2L1.2 (Unlawfully Entering or Remaining in the United States).

- II. **CULTURAL HERITAGE RESOURCES** - The amendment creates a new guideline at §2B1.5 (Theft of, Damage to, Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources). Cultural heritage resources include national memorials, landmarks, parks, archaeological and other historic and cultural resources. This guideline incorporates into the definition of “cultural heritage resource” a broad range of existing federal statutory definitions for various historical, cultural, and archaeological items.

The new guideline has a base offense level of eight, which is two levels higher than the base offense level for general economic and property destruction crimes. This represents the Commission’s determination that offenses involving cultural heritage resources are more serious because they involve essentially irreplaceable resources and cause intangible harm to society. Because of this important difference, the Commission has decided not to use the concept of “loss” when determining the damage caused by the defendant. Rather, the guideline uses commercial value, archaeological value, and the cost of restoration and repair.

The guideline also has several specific offense characteristics that provide increases (1) if the offense involves a place or resource that Congress has designated for special protection; (2) if the offense involves any number of specified resources, including human remains and other resources that have been designated by Congress for special treatment and heightened protection under federal law; (3) if the offense was committed for pecuniary gain or otherwise involved a commercial purpose; (4) if the offense involves a pattern of misconduct; and (5) if a dangerous weapon, including a firearm, was brandished or its use threatened.

The Commission also added several cross references and a special rule in the Commentary to address multiple counts of convictions of cultural heritage resource offenses. The new guideline also invites an upward departure if the offense level substantially understates the seriousness of the cultural heritage resource offense.

- III. **FOREIGN CORRUPT PRACTICES ACT**- The amendment provides that violations under the Foreign Corrupt Practices Act will be sentenced under §2C1.1 (Bribery Involving a Public Official), rather than §2B1.4 (Commercial Bribery). The Commission determined that this type of violation is more akin to public corruption cases than commercial bribery cases.

Accordingly, the Statutory Index is amended to refer violations of 15 U.S.C. §78dd-1-3 to §2C1.1.

- IV. **DRUG TRAFFICKING**- The amendment modifies §2D1.1(a)(3) to provide a maximum base offense level of level 30 if the defendant receives an adjustment under §3B1.2 (Mitigating Role). This limits the sentencing impact of drug quantity for offenders who perform relatively low level trafficking functions, have little authority in the organization, and have a lower degree of individual culpability.

The amendment also modifies the maximum base offense under subsection (a)(2) of §2D1.8 (Renting or Managing a Drug Establishment; Attempt or Conspiracy) from offense level 16 to offense level 26. Although these offenders may not participate directly in the underlying controlled substance offense, they knowingly and intentionally facilitate and profit, at least indirectly, from the trafficking of illegal drugs.

Additionally, the amendment (1) revises the Typical Weight Per Unit(Dose, Pill, or Capsule) Table in §2D1.1 to reflect more accurately the type and weight of ecstasy pills typically trafficked and consumed by adding a reference for MDMA, with a typical weight of 250 milligrams; (2) revises the typical weight for MDA from 100 milligrams of the actual controlled substance to 250 milligrams of the mixture or substance containing the controlled substance; and (3) clarifies that the two level reduction under §2D1.1(b)(6) for defendants who meet the criteria set forth in §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) does not depend on whether the defendant is convicted under a statute that carries a mandatory minimum term of imprisonment.

- V. **HUMAN TRAFFICKING** - The amendment makes three substantive changes to §2G1.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material). First, it broadens the conduct covered by the guideline beyond prostitution to encompass all commercial sex acts. Second, it expands the “force or coercion” prong of §2G1.1(b)(1) to also cover offenses involving fraud. Finally, the amendment deletes the portion of the encouraged upward departure provision of §2G1.1 pertaining to the age of the victim because such conduct is already taken into account by the guideline. The amendment seeks to ensure that appropriately severe sentences for sex trafficking crimes apply to commercial sex acts such as production of child pornography, in addition to prostitution, and also targets offenders who use fraud to entrap victims.

- VI. **CAREER OFFENDERS**- The career offender guidelines, §§4B1.1 and 4B1.2 were amended to provide a guideline sentence at or near the statutory maximum of life imprisonment for certain serious firearm offenses, 18 U.S.C. § 924(c) or § 929(a). The amendment ensures that in a case in which such an instant offense establishes the defendant as a career offender, the resulting guideline sentence is determined under §4B1.1 using a count of conviction that has a statutory maximum of life imprisonment. The amendment also modifies §5G1.2 (Sentencing

on Multiple Counts of Conviction) to provide special rules for imposing a guideline sentence for certain career offenders.

- VII. **OFFICIAL VICTIMS** - The amendment expands the category of persons who may be considered official victims at §3A1.2 (Official Victim). The broader definition of “prison official” includes prison employees, as well as independent contractors and volunteers on prison premises with official authorization, but does not include inmates.
- VIII. **DNA SAMPLES** - The amendment adds a mandatory condition to §§5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release) that the defendant provide a DNA sample if required to do so by the DNA Analysis Backlog Elimination Act of 2000.
- IX. **DISCHARGED TERMS of IMPRISONMENT** - The amendment adds commentary to §5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment) to provide that courts are not prohibited from considering a downward departure in a case in which §5G1.3(b) would have applied if the term of imprisonment had not been previously served and discharged.
- X. **MISCELLANEOUS AMENDMENTS** - A thirteen-part amendment makes technical and conforming changes to various guideline provisions.