

**REVISED PROPOSED AMENDMENT: EXPANSION OF OFFICIAL VICTIMS
ENHANCEMENT**

Synopsis of Proposed Amendment: *This amendment proposes to expand the persons who may qualify as an official victim for purposes of the enhancement in §3A1.2 (Official Victim). Specifically, this proposed amendment responds to United States v. Walker, 202 F.3d 181 (3d Cir. 1999), which held that the enhancement under §3A1.2(b) was not applicable in the case of a defendant prison inmate who attacked his supervisor, a food service department employee, at the prison. Walker held that the work supervisor was not a corrections officer within the meaning of §3A1.2. The proposed amendment amends §3A1.2(b) to apply to an assault of any prison official (but not to an assault of an inmate) authorized to act on behalf of the prison. The amendment also limits application of the enhancement, in the case of assaults on prison officials, to offenses that occurred while the defendant was in the custody or control of the correctional facility or prison.*

Proposed Amendment:

§3A1.2. Official Victim

If --

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(b) ~~during the course of the offense or immediate flight therefrom~~, the defendant or a person for whose conduct the defendant is otherwise accountable, knowing or having reasonable cause to believe that a person was—

(1) a law enforcement officer, assaulted such officer during the course of the offense or immediate flight therefrom; or

(2) a ~~corrections officer~~, prison official, assaulted such official while the defendant (or a person for whose conduct the defendant is otherwise accountable) was in the custody or control of a prison or other correctional facility,

~~assaulted such officer~~ in a manner creating a substantial risk of serious bodily injury,

increase by 3 levels.

Commentary

Application Notes:

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1. *Applicability to Certain Victims.*—This guideline applies when specified individuals are victims of the offense. This guideline does not apply when the only victim is an organization, agency, or the government.
- ~~2. *Certain high-level officials, e.g., the President and Vice President, although covered by this section, do not represent the heartland of the conduct covered. An upward departure to reflect the potential disruption of the governmental function in such cases typically would be warranted.*~~
32. *Nonapplicability in Case of Incorporation of Factor in Chapter Two.*—Do not apply this adjustment if the offense guideline specifically incorporates this factor. In most cases, the offenses to which subdivision (a) will apply will be from Chapter Two, Part A (Offenses Against the Person). The only offense guideline in Chapter Two, Part A, that specifically incorporates this factor is §2A2.4 (Obstructing or Impeding Officers).
43. *Application of Subsection (a).*—"Motivated by such status" in ~~subdivision~~subsection (a) means that the offense of conviction was motivated by the fact that the victim was a government officer or employee, or a member of the immediate family thereof. This adjustment would not apply, for example, where both the defendant and victim were employed by the same government agency and the offense was motivated by a personal dispute. This adjustment also would not apply in the case of a robbery of a postal employee because the offense guideline for robbery contains an enhancement (§2B3.1(a)) that takes such conduct into account.
54. *Application of Subsection (b).*—
 - (A) *In General.*—~~Subdivision~~Subsection (b) applies in circumstances tantamount to aggravated assault (i) against a law enforcement officer, or corrections officer committed in the course of, or in immediate flight following, another offense, ~~such as bank robbery;~~ or (ii) against a prison official, while the defendant (or a person for whose conduct the defendant is otherwise accountable) was in the custody or control of a prison or other correctional facility. While ~~this subdivision~~subsection (b) may apply in connection with a variety of offenses that are not by nature targeted against official victims, its applicability is limited to assaultive conduct against ~~law enforcement or corrections officers~~ such official victims that is sufficiently serious to create at least a "substantial risk of serious bodily injury" ~~and that is proximate in time to the commission of the offense.~~
 - (B) *Definitions.*—For purposes of subsection (b):

"Custody and control" includes "non-secure custody", i.e., custody with no significant physical restraint. For example, a defendant is in the custody and control of a prison or other correctional facility if the defendant (i) is on a work detail outside the security perimeter of the prison or correctional facility; (ii) is physically away from the prison or correctional facility while on a pass or furlough; or (iii) is in custody at a community corrections center, community treatment center, "halfway house", or similar facility. The defendant also shall be deemed to be in the custody and control of a prison or other correctional facility while the defendant is in the status of having escaped from that prison or correctional facility.

"Prison official" means (A) any individual, including a director, an officer, an employee, an independent contractor, or a volunteer, authorized to act on behalf of a prison or correctional facility; and (B) does not include an inmate. For example, this enhancement would be applicable to any of the following: (A) an individual employed by a prison as a corrections officer, (B) an individual employed by a prison as a work detail supervisor, and (C) a nurse who, under contract, provides medical services to prisoners in a prison health facility.

"Substantial risk of serious bodily injury" includes any more serious injury that was risked, as well as actual serious bodily injury (or more serious injury) if it occurs.

~~6. The phrase "substantial risk of serious bodily injury" in subdivision (b) is a threshold level of harm that includes any more serious injury that was risked, as well as actual serious bodily injury (or more serious harm) if it occurs.~~

6. *Upward Departure Provision.—Certain high-level officials, e.g., the President and Vice President, although covered by this section, do not represent the heartland of the conduct covered. An upward departure to reflect the potential disruption of the governmental function in such cases typically would be warranted.*