

Proposed Amendment - Veterans' Cemeteries

The Veterans' Cemetery Protection Act of 1997 directs the Commission to provide a sentence enhancement of not less than two levels for any offense against the property of a national cemetery. The following proposed amendment implements that directive.

Proposed Amendment:

§2B1.1 Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property

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(b) Specific Offense Characteristics

- (8) If the offense involved theft of property from a national cemetery, increase by [2] levels.

Commentary

Application Notes:

1.

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“Foreign instrumentality” and “foreign agent” are defined in 18 U.S.C. § 1839(1) and (2), respectively.

“National cemetery” means a cemetery (A) established under section 2400 of title 38, United States Code, or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

Background:

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Subsection (b)(6)(B) implements the instruction to the Commission in Section 2507 of Public Law 101-647.

Subsection (b)(8) implements the instruction to the Commission in Section 2 of Public Law 105-101.

§2B1.3 Property Damage or Destruction

- (a) Base Offense Level: 4

(b) Specific Offense Characteristics

- (1) If the loss exceeded \$100, increase by the corresponding number of levels from the table in §2B1.1.

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- (3) If property of a national cemetery was damaged or destroyed, increase by [2] levels.

~~(3)~~(4)

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Commentary

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Application Notes:

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“National cemetery” means a cemetery (A) established under section 2400 of title 38, United States Code, or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

Background: *Subsection (b)(3) implements the instruction to the Commission in Section 2 of Pub. L. 105-101.*

Subsection 9(d) implements the instruction to the Commission in section 805(c) of Public Law 104-132.

§2K1.4 Arson; Property Damage by Use of Explosives

- (a) Base Offense Level (Apply the Greatest):

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- (2) **20**, if the offense (A) created a substantial risk of death or serious bodily injury to any person other than a participant if the offense; (B) involved the destruction or attempted destruction of a structure other than a dwelling; or (C) endangered a dwelling, or a structure other than a dwelling;

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- (4) **2** plus the offense level from §2B1.3 (Property Damage or Destruction).

(b) Specific Offense Characteristics

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- (2) If the base offense level is not determined under (a)(4), and the offense occurred on a national cemetery, increase by [2] levels.

Commentary

Application Notes:

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4. “National cemetery” means a cemetery (A) established under section 2400 of title 38, United States Code, or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

Background: Subsection (b)(2) implements the directive to the Commission in Section 2, Pub. L. 105-101.

Additional Issue for Comment:

The Commission invites comment on whether, in addition to the increases provided in the proposed amendments to guidelines §2B1.1, 2B1.3, and 2K1.4, these guidelines also should be amended to provide a minimum or “floor” offense level for a crime that involves theft, vandalism, or destruction of property of a national cemetery?