

REVISION OF DIMINISHED CAPACITY AMENDMENT

In response to concerns expressed at the April 7, 1998 meeting by Commissioner Goldsmith and members of the audience regarding the similarity between the language of the new diminished capacity provision and the insanity defense, staff have further refined the language of the passed amendment. The amendment as passed is set out below; the redlined portion is a proposed revision to the amendment.

§5K2.13. Diminished Capacity (Policy Statement)

A sentence below the applicable guideline range may be warranted if the defendant committed the offense while suffering from a significantly reduced mental capacity. However, the court may not depart below the applicable guideline range if (1) the significantly reduced mental capacity was caused by the voluntary use of drugs or other intoxicants; (2) the facts and circumstances of the defendant's offense indicate a need to protect the public because the offense involved actual violence or a serious threat of violence; or (3) the defendant's criminal history indicates a need to incarcerate the defendant to protect the public. If a departure is warranted, the extent of the departure should reflect the extent to which the reduced mental capacity contributed to the commission of the offense.

Commentary

Application Note:

1. *For purposes of this policy statement—*

“Significantly reduced mental capacity” means the defendant is ~~unable~~, although convicted, has a significantly impaired ability to (A) understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason; or (B) control behavior that the defendant knows is wrongful.