

provided to ensure proportionality with similar offenses and to respond to the increased statutory maximum penalties made by section 403 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Additionally, the enhancement in subsection (b)(2) regarding the disruption of the public water system has been expanded slightly to make it consistent with similar enhancements in other related guidelines, such as the nuclear, biological, and chemical guideline, § 2M6.1.

This amendment adds an invited upward departure provision in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), to account for aggravating conduct that may occur in connection with an animal enterprise offense under 18 U.S.C. 43. While reference only to that guideline generally continues to be appropriate for violations under 18 U.S.C. 43, that guideline fails to account for aggravated situations in which serious bodily injury or death results. Although the property damage guideline contains an enhancement for the risk of serious bodily injury or death, there is no enhancement or cross reference in that guideline that would provide a higher offense level if actual serious bodily injury or death resulted. Given the highly unusual occurrence of death or serious bodily injury in property damage cases generally and the infrequency of these specific offenses, the amendment adds an invited upward departure provision in the commentary of § 2B1.1 if death or serious bodily injury occurs in an offense under 18 U.S.C. 43, or if substantial or significant scientific information or research is lost as part of such an offense.

Third, the amendment amends Appendix A (and the Statutory Provisions of the pertinent Chapter Two guidelines) to add three new offenses created by the Terrorist Bombings Convention Implementation Act of 2002, and provides conforming amendments within a number of Chapter Two guidelines to incorporate more fully the new offenses into the offense guidelines. Section 102 of the Act created a new offense at 18 U.S.C. 2332f, which provides in subsection (a) that “whoever unlawfully delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a place of public use, a state or government facility, a public

transportation system, or an infrastructure facility (1) with the intent to cause death or serious bodily injury, or (2) with the intent to cause extensive destruction of such a place, facility, or system, where such destruction results in or is likely to result in major economic loss” and in subsection (b) that “whoever attempts or conspires to commit [such] an offense” shall be punished as provided under 18 U.S.C. 2332a(a). Section 2332a offenses currently are referenced to §§ 2K1.4 (Arson; Property Damage by Use of Explosives) and 2M6.1. The amendment refers this new offense to those guidelines as well. In addition, the amendment amends the alternative base offense levels in § 2K1.4(a)(1) so that the base offense level of level 24 applies to targets of 18 U.S.C. 2332f offenses, namely, state or government facilities, infrastructure facilities, public transportation systems and “places of public use”.

Section 202 of the Act created a new offense at 18 U.S.C. 2339C. The amendment refers the new offense at 18 U.S.C. 2339C(1)(A) to § 2X2.1 (Aiding and Abetting). The new offense involves providing or collecting funds knowing or intending that the funds would be used to carry out any of a number of specified offenses. Accordingly, the amendment treats these offenses in the same manner as 18 U.S.C. 2339A offenses, which aid and abet a predicate offense listed in the statute. An amendment is also made in § 2X2.1 to provide a definition for the “underlying offense” that is aided and abetted.

The amendment also refers the new offense at 18 U.S.C. 2339C(a)(1)(B) to § 2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorist Organizations). Reference to § 2M5.3 is appropriate because this offense involves generally providing or collecting funds knowing or intending that the funds would be used to carry out an act which by its nature is a terrorist act (because it is meant to intimidate a civilian population or to compel a government or international organization to do something or to refrain from doing something). Therefore, the essence of the offense is the provision of material support to terrorists, which appropriately is referenced to § 2M5.3. The amendment expands § 2M5.3 to include not only designated foreign terrorist organizations but other terrorists as well.

Additionally, 18 U.S.C. 2339C(c)(2) makes it unlawful in the United States, or outside the United States by a national of the United States or an entity organized under the laws of the United

States, to knowingly conceal or disguise the nature, location, source, ownership, or control of any material support, resources, or funds knowing or intending that they were (1) provided in violation of 18 U.S.C. 2339B, or (2) provided or collected in violation of 18 U.S.C. 2339C(a)(1) or (2). The maximum term of imprisonment for a violation of subsection 18 U.S.C. 2339C(c) is 10 years. The amendment references offenses under 18 U.S.C. 2339C(c)(2)(A) to § 2X3.1 (Accessory After the Fact), because the essence of such an offense is the concealment of resources that were known or intended to have been provided in violation of another substantive offense, namely, 18 U.S.C. 2339B. An amendment is made in § 2X3.1 to provide a definition of the “underlying offense” to which the defendant is an accessory.

The amendment references offenses under 18 U.S.C. 2339C(c)(2)(B) to §§ 2M5.3 and 2X3.1. To the extent the offense involved knowingly concealing or disguising the nature, location, source, ownership, or control of any funds knowing or intending that they were provided or collected in violation of 18 U.S.C. 2339C(a)(1)(A), the offense should be sentenced under § 2X3.1. This is because the concealment occurs with respect to funds the defendant knows are to be used, in full or in part, in order to carry out an act which constitutes any number of specified offenses. To the extent the offense involved knowingly concealing or disguising the nature, location, source, ownership, or control of any funds knowing or intending that they were provided or collected in violation of 18 U.S.C. 2339C(a)(1)(B), the offense should be sentenced under § 2M5.3. This is because the concealment occurs with respect to material support the defendant knows is to be used, in full or in part, in order to carry out an act which by its nature is a terrorist act (because it is meant to intimidate a civilian population or to compel a government or international organization to do something or to refrain from doing something). A conforming amendment is added to the Statutory Provisions of §§ 2M5.3 and 2X3.1.

Finally, an amendment is made to § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transaction Involving Explosive Materials) to add an additional base offense level of level 18 for certain offenses committed under 18 U.S.C. 842(p)(2) involving explosives, destructive devices, or weapons of mass destruction. The statute is referenced in Appendix A to §§ 2K1.3 and 2M6.1. The applicable offense levels at § 2M6.1 are