

“(1) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the commission, if appropriate, to provide an appropriate sentencing enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in section 111 or 115 of title 18, United States Code.

(2) FACTORS FOR CONSIDERATION.—In carrying out this section, the United States Sentencing Commission shall consider, with respect to each offense described in paragraph (1)—

(A) any expression of congressional intent regarding the appropriate penalties for the offense;

(B) the range of conduct covered by the offense;

(C) the existing sentences for the offense;

(D) the extent to which sentencing enhancements within the Federal guidelines and the authority of the court to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense;

(E) the extent to which the Federal sentencing guideline sentences for the offense have been constrained by statutory maximum penalties;

(F) the extent to which the Federal sentencing guidelines for the offense adequately achieve the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(G) the relationship of the Federal sentencing guidelines for the offense to the Federal sentencing guidelines for other offenses of comparable seriousness; and

(H) any other factors that the Commission considers to be appropriate.”

Section 111 of title 18, United States Code, makes it unlawful to forcibly assault, resist, oppose, impede, intimidate, or interfere with (A) any person designated in section 1114 of title 18 (*i.e.*, any officer or employee of the United States, including any member of the uniformed services in the performance of that person’s official duties, or any person assisting that person in the performance of those official duties); or (B) any person who formerly served as a person designated in section 1114 on account of that

person’s performance of official duties during the term of service.

The Act increased the statutory maximum term of imprisonment for offenses under 18 U.S.C. 111 from three years to eight years; and for the use of a dangerous weapon or inflicting bodily injury in the commission of an offense under 18 U.S.C. 111, from ten to 20 years.

Section 115 of title 18, United States Code, makes it unlawful to (A) assault, kidnap, or murder, attempt or conspire to kidnap or murder, or threaten to assault, kidnap, or murder, a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114; or (B) threaten to assault, kidnap, or murder a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114; in order to impede, intimidate, or interfere with the performance of the official’s official duties.

Section 115 of title 18, United States Code, also makes it unlawful to assault, kidnap, or murder, attempt or conspire to kidnap or murder, or threaten to assault, kidnap, or murder, a former United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114, or a member of the former official’s immediate family, in retaliation for the performance of the official’s duties during the official’s term of service.

The Act increased the maximum terms of imprisonment for threatened assaults under 18 U.S.C. 115 from three to six years, and for all other threats under 18 U.S.C. 115, from five to ten years.

In addition, the Act also increased the maximum term of imprisonment under 18 U.S.C. 876 from five years to ten years for mailing a communication to a United States judge, a Federal law enforcement officer, or an official covered by 18 U.S.C. 1114 containing a threat to kidnap or injure any person (the penalty remained five years for mailing such a communication to any other person).

The Act also increased the maximum term of imprisonment under 18 U.S.C. 876 from two years to ten years for mailing, with the intent to extort anything of value, a communication to a United States judge, a Federal law enforcement officer, or an official covered by 18 U.S.C. 1114 containing a threat to injure another’s property or reputation or a threat to accuse another of a crime (the penalty remained two

years for mailing such a communication to any other person). The other statutory maximum terms of imprisonment for offenses under 18 U.S.C. 876 were not changed by the Act. Mailing threatening communications containing a ransom demand for the release of a kidnapped person or containing a threat to kidnap with the intent to extort something of value remain punishable by up to 20 years’ imprisonment.

The amendment proposes a number of changes to the assault guidelines and the Chapter Three adjustment relating to official victims to implement the directive and the changes in statutory maximum penalties. These proposed modifications to the offense levels in some of the assault guidelines complement the proposed amendments to the homicide guidelines, which are intended to address longstanding proportionality concerns. Issues for comment follow regarding whether the base offense level in the assault guideline should be reduced by [two] levels, whether the aggravated assault guideline should contain an enhancement for the involvement of a dangerous weapon, whether the assault guidelines should be consolidated, and whether the Chapter Three adjustment for official victims should provide a tiered approach, such that a [six]-level adjustment would apply if the victim was a government officer or employee (or family member thereof) and the offense was motivated by such status, and a three-level adjustment would apply if the victim was a law enforcement officer or prison employee and was assaulted in a certain manner.

Proposed Amendment:

The Commentary to § 2A1.1 captioned “Application Notes” is amended by striking Notes 1 and 2 in their entirety and inserting the following:

“1. Applicability of Guideline.—This guideline applies in cases of premeditated killing. This guideline also applies when death results from the commission of certain felonies. For example, this guideline may be applied as a result of a cross reference (*e.g.*, a kidnapping in which death occurs), or in cases in which the offense level of a guideline is calculated using the underlying crime (*e.g.*, murder in aid of racketeering).

2. Imposition of Life Sentence.—

(A) In General.—An offense level of 43 (*i.e.*, the base offense level under this guideline) results in a guideline sentence of life imprisonment in all criminal history categories. In cases in which a statutory mandatory minimum sentence is life imprisonment, the defendant shall be sentenced to life imprisonment, even if the defendant