

received a reduction for acceptance of responsibility under § 3E1.1 (Acceptance of Responsibility).

(B) Offenses Involving Premeditated Killing.—In the absence of capital punishment, life imprisonment is the appropriate sentence in the case of premeditated killing. A downward departure would not be appropriate in such a case.

(C) Unintentional or Unknowing Killing.—If the defendant did not cause the death intentionally or knowingly, a downward departure may be warranted. For example, a downward departure may be warranted if in robbing a bank, the defendant merely passed a note to the teller, as a result of which the teller had a heart attack and died. The extent of the departure should be based upon the defendant's state of mind (e.g., recklessness or negligence), the degree of risk inherent in the conduct, and the nature of the underlying offense conduct. However, departure below the offense level specified in § 2A1.2 (Second Degree Murder) is not likely to be appropriate. Also, because death obviously is an aggravating factor, it necessarily would be inappropriate to impose a sentence at a level below that which the guideline for the underlying offense requires in the absence of death. A downward departure from a mandatory statutory term of life imprisonment is permissible only in cases in which the government files a motion for a downward departure for the defendant's substantial assistance, as provided in 18 U.S.C. 3553(e).

3. Applicability of Guideline When Death Sentence Not Imposed.—If the defendant is sentenced pursuant to 18 U.S.C. 3591 *et seq.* or 21 U.S.C. 848(e), a sentence of death may be imposed under the specific provisions contained in that statute. This guideline applies when a sentence of death is not imposed under those specific provisions.”.

Section 2A1.2(a) is amended by striking “33” and inserting “[37][38]”.

The Commentary to § 2A1.2 is amended by striking the Background commentary in its entirety and inserting the following:

“Application Note:

1. Upward Departure Provision.—If the defendant's conduct was exceptionally heinous, cruel, brutal, or degrading to the victim, an upward departure may be warranted. See § 5K2.8 (Extreme Conduct).”.

Section 2A1.3(a) is amended by striking “25” and inserting “[26]–[30]”.

The Commentary to § 2A1.3 is amended by striking the Background commentary in its entirety.

Section 2A1.4(a) is amended in subdivision (1) by striking “conduct was

criminally negligent” and inserting “offense involved negligent conduct”; and by striking subdivision (2) in its entirety and inserting the following:

“(2) Apply the greater:

(A) 18, if the offense involved reckless conduct; or

(B) [20]–[26], if the offense involved the reckless operation of a means of transportation.”.

Section 2A1.4 is amended by adding at the end the following:

“(b) Special Instruction

(1) If the offense involved the involuntary manslaughter of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the involuntary manslaughter of each person had been contained in a separate count of conviction.”.

The Commentary to § 2A1.4 captioned “Application Notes” is amended in the heading by striking “Notes” and inserting “Note”; by striking Notes 1 and 2 in their entirety and inserting the following:

“1. Definitions.—For purposes of this guideline:

‘Criminally negligent’ means conduct that involves a gross deviation from the standard of care that a reasonable person would exercise under the circumstances, but which is not reckless. Offenses with this characteristic usually will be encountered as assimilative crimes.

‘Means of transportation’ includes a motor vehicle (including an automobile or a boat) and a mass transportation vehicle. ‘Mass transportation’ has the meaning given that term in 18 U.S.C. 1993(c)(5).

‘Reckless’ means a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation. ‘Reckless’ includes all, or nearly all, convictions for involuntary manslaughter under 18 U.S.C. 1112. A homicide resulting from driving, or similarly dangerous actions, while under the influence of alcohol or drugs ordinarily should be treated as reckless.”.

Section 2A1.5(a) is amended by striking “28” and inserting “[32]–[37]”.

Section 2A2.1(a) is amended in subdivision (1) by striking “28” and inserting “[32]–[37]”; and in subdivision (2) by striking “22” and inserting “[26][28][30]”.

The Commentary to § 2A2.1 captioned “Application Notes” is amended by striking Notes 1 and 2 in their entirety and inserting the following:

“1. Definitions.—For purposes of this guideline:

‘First degree murder,’ means conduct that, if committed within the special maritime and territorial jurisdiction of the United States, would constitute first degree murder under 18 U.S.C. 1111.

‘Serious bodily injury’ and ‘permanent or life-threatening bodily injury’ have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).”;

by redesignating Note 3 as Note 2; and in Note 2, as redesignated by this amendment, by inserting “Upward Departure Provision.—” before “If the offense”.

Section 2A2.2 is amended by striking subdivision (a) in its entirety and inserting the following:

“(a) Base Offense Level (Apply the greater):

(1) 15; or

(2) [27], if the defendant is convicted under 18 U.S.C. 111(b).”.

The Commentary to § 2A2.2 captioned “Application Notes” is amended by striking Note 2 in its entirety; by redesignating Note 3 as Note 2; and by adding at the end the following:

“3. Application of Subsection (b)(2).—In a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and subsection (b)(2).

4. Application of Official Victim Adjustment.—The base offense level in subsection (a)(2) incorporates the fact (A) that the victim was a government official performing official duties; or (B) that the victim formerly was a government official and the assault occurred on account of the victim's performance of official duties during the time of the victim's official service. Accordingly, if subsection (a)(2) applies, do not apply § 3A1.2 (Official Victim).”.

Section 2A2.3 is amended in subdivision (a)(1) by striking “6” and inserting “[9]”; and by striking “conduct” and inserting “offense”; and in subdivision (a)(2) by striking “3” and inserting “[6]”.

Section 2A2.3(b)(1) is amended by striking “If” and inserting “(Apply the greater) If (A) the victim sustained bodily injury, increase by 2 levels; or (B)”.

The Commentary to § 2A2.3 captioned “Application Notes” is amended by striking “Notes” and inserting “Note”; and by striking Notes 1, 2, and 3 in their entirety and inserting the following:

“1. Definitions.—For purposes of this guideline:

‘Bodily injury’, ‘dangerous weapon’, and ‘firearm’ have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).