

'Minor assault' means a misdemeanor assault, or a felonious assault not covered by § 2A2.2 (Aggravated Assault).

'Substantial bodily injury' means "bodily injury which involves (A) a temporary but substantial disfigurement; or (B) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty." See 18 U.S.C. 113(b)(1)."

Section 2A2.4(a) is amended by striking "6" and inserting "[12]".

Section 2A2.4(b) is amended by striking "Characteristic" and inserting "Characteristics"; in subdivision (1) by striking "conduct" and inserting "offense"; and by adding at the end the following:

"(2) If the victim sustained bodily injury, increase by 2 levels."

The Commentary to § 2A2.4 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, 'bodily injury', 'dangerous weapon', and 'firearm' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

2. Application of Certain Chapter Three Adjustments.—The base offense level incorporates the fact that the victim was a governmental officer performing official duties. Therefore, do not apply § 3A1.2 (Official Victim) unless, pursuant to subsection (c), the offense level is determined under § 2A2.2 (Aggravated Assault) and the base offense level under § 2A2.2(a)(2) does not apply. Conversely, the base offense level does not incorporate the possibility that the defendant may create a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement official (although an offense under 18 U.S.C. 758 for fleeing or evading a law enforcement checkpoint at high speed will often, but not always, involve the creation of that risk). If the defendant creates that risk and no higher guideline adjustment is applicable for the conduct creating the risk, apply § 3C1.2 (Reckless Endangerment During Flight)."

The Commentary to 2A2.4 captioned "Application Notes" is amended in Note 3 by inserting "Upward Departure Provision.—" before "The base".

Section 3A1.2 is amended to read as follows:

"§ 3A1.2. Official Victim

Increase by [6] levels if—

(1) (A) the victim was (i) a government officer or employee; (ii) a

former government officer or employee; or (iii) a member of the immediate family of a person described in subdivision (i) or (ii); and (B) the offense of conviction was motivated by such status; or

(2) in a manner creating a substantial risk of serious bodily injury, the defendant or a person for whose conduct the defendant is otherwise accountable—

(A) knowing or having reasonable cause to believe that a person was a law enforcement officer, assaulted such officer during the course of the offense or immediate flight therefrom; or

(B) knowing or having reasonable cause to believe that a person was a prison official, assaulted such official while the defendant (or a person for whose conduct the defendant is otherwise accountable) was in the custody or control of a prison or other correctional facility."

The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 2 in the second sentence by striking "subdivision (a)" and inserting "this adjustment"; in the third sentence by striking "guideline" and inserting "guidelines"; and by striking "is" and inserting "are (A) subsection (a)(2) of § 2A2.2 (Aggravated Assault); and (B)".

The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 3 by striking "Subsection (a)" and inserting "Subdivision (1)"; and by striking "subsection (a)" and inserting "subdivision (1)".

The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 4 by striking "Subsection (b)" each place it appears and inserting "Subdivision (2)"; and by striking "subsection (b)" each place it appears and inserting "subdivision (2)".

The Commentary to § 3A1.2 captioned "Application Notes" is amended by striking Note 5 in its entirety and inserting the following:

"5. Upward Departure Provision.—If the official victim is an exceptionally high-level official, such as the President or the Vice President of the United States, an upward departure may be warranted due to the potential disruption of the governmental function."

Issues for Comment:

1. Instead of the proposed alternative base offense level in § 2A2.2 (Aggravated Assault) in the case of a conviction under 18 U.S.C. 111(b) and the proposed three-level increase in the Chapter Three adjustment for official victims in § 3A1.2 (Official Victims), should the Commission provide an enhancement in the assault guidelines for offenses involving influencing,

assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in 18 U.S.C. 111 or 115? If so, what would be an appropriate increase for such enhancement?

Are there additional, related enhancements that the Commission should provide in the assault guidelines, particularly given the directive to consider providing sentences at or near the statutory maximum for the most egregious cases? Would such an enhancement be appropriate for other Chapter Two guidelines that cover these offenses, such as the guidelines covering attempted murder (§ 2A2.1), kidnapping (§ 2A4.1), and threatening communications (§ 2A6.1)?

Should the Commission consider providing a tiered approach in the Chapter Three adjustment for official victims (§ 3A1.2) 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?

2. Do the current base offense levels in each of the assault and threatening communications guidelines provide adequate punishment for the covered conduct? If not, what would be appropriate base offense levels for §§ 2A2.2, 2A2.3, 2A2.4, and 2A6.1? For example, should the base offense level for offenses involving obstructing or impeding officers under § 2A2.4 be level 15, the same as for aggravated assault, and contain the same enhancements as the aggravated assault guideline, so that an assault of an official unaccompanied by serious bodily injury would nevertheless be severely punished?

3. Should the Commission consider more comprehensive amendments to the assault guidelines as part of, or in addition to, its response to the directives? For example, should the Commission consolidate any or all of the assault guidelines?

In addition to the two-level enhancement for bodily injury proposed in §§ 2A2.3(b)(1) and 2A2.4(b)(2), are there other aggravating or mitigating circumstances that should be incorporated into those guidelines?

Should the base offense level in the aggravated assault guideline generally be decreased by two levels? Should it be decreased by two levels in cases in which none of the specific offense characteristics apply (*i.e.*, in cases in