

“Unlawfully possessing a firearm that is of a type described in 26 U.S.C. 5845(a) (e.g., a sawed-off shotgun, silencer, or machine gun) is a ‘crime of violence’.”.

(G) Chapter Six Update

Section 6A1.1 is amended by striking “A probation officer” and all that follows through “presentence report.” and inserting the following:

“(a) The probation officer must conduct a presentence investigation and submit a report to the court before it imposes sentence unless—

(1) 18 U.S.C. 3593(c) or another statute requires otherwise; or

(2) the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. 3553, and the court explains its finding on the record.

Rule 32(c)(1)(A), Fed. R. Crim. P.

(b) The defendant may not waive preparation of the presentence report.”.

The Commentary to § 6A1.1 is amended by striking the second sentence in its entirety; in the third sentence by striking “Rule 32(b)(1)” and inserting “Rule 32(c)(1)(A)”;

and by striking “, but only after explaining, on the record, why sufficient information is already available” and inserting “in certain limited circumstances, as when a specific statute requires or when the court finds sufficient information in the record to enable it to meaningfully exercise its statutory sentencing authority and explains its finding on the record”.

Section 6A1.2 is amended by striking “Courts should adopt” and all that follows through “Fed. R. Crim. P.” and inserting the following:

“(a) The probation officer must give the presentence report to the defendant, the defendant’s attorney, and an attorney for the government at least 35 days before sentencing unless the defendant waives this minimum period. Rule 32(e)(2), Fed. R. Crim. P.

(b) Within 14 days after receiving the presentence report, the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report. An objecting party must provide a copy of its objections to the opposing party and to the probation officer. After receiving objections, the probation officer may meet with the parties to discuss the objections. The probation officer may then investigate further and revise the presentence report accordingly. Rule 32(f), Fed. R. Crim. P.

(c) At least 7 days before sentencing, the probation officer must submit to the

court and to the parties the presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the probation officer’s comments on them. Rule 32(g), Fed. R. Crim. P.”.

The Commentary to § 6A1.2 is amended by striking “Application Note:” and all that follows through “(1991).”.

The Commentary to § 6A1.2 captioned “Background” is amended by striking “32(b)(6)(B)” and inserting “32(f)”.

Section 6A1.3(b) is amended by striking “32(c)(1)” and inserting “32(i)”.

The Commentary to § 6A1.3 is amended by striking the first paragraph in its entirety; in the third paragraph by striking “117 S. Ct. 633, 635” and inserting “519 U.S. 148, 154”; and by striking “117 S. Ct. at 637” and inserting “519 U.S. at 157”.

Chapter Six, Part A, Subpart 1 is amended by adding at the end the following:

“§ 6A1.4 Notice of Possible Departure (Policy Statement)

Before the court may depart from the applicable sentencing guideline range on a ground not identified for departure either in the presentence report or in a party’s prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any ground on which the court is contemplating a departure. Rule 32(h), Fed. R. Crim. P.

Commentary

Background: The Federal Rules of Criminal Procedure were amended, effective December 1, 2002, to incorporate into Rule 32(h) the holding in *Burns v. United States*, 501 U.S. 129, 138–39 (1991). This policy statement parallels Rule 32(h), Fed. R. Crim. P.”.

Chapter Six, Part B is amended in the “Introductory Commentary” by striking “Rule 11(e)(1)” and inserting “Rule 11(c)”; by striking “These policy statements are a first step toward implementing 28 U.S.C. 994(a)(2)(E).”; by striking “shall” and inserting “will continue to”; [by striking “and ultimately develop standards” and all that follows through “the Commission’s work.”]; in the last paragraph by striking “The present policy statements move in the desired direction in two ways. First, the” and inserting “These”; [by striking “This is a reaffirmation of pre-guidelines practice.”] Second, the policy statements” and inserting “The policy statements also”; by inserting “continue to” after “Explanations will”; [and by striking “and will pave the way for more detailed policy statements presenting

substantive criteria to achieve consistency in this aspect of the sentencing process”.]

Section 6B1.1 is amended by striking subsections (a), (b), and (c) in their entirety and inserting:

“(a) The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera. Rule 11(c)(2), Fed. R. Crim. P.

(b) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request. Rule 11(c)(3)(B), Fed. R. Crim. P.

(c) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report. Rule 11(c)(3)(A).”.

The Commentary to § 6B1.1 is amended in the first paragraph in the first sentence by striking “11(e)” and striking the second paragraph and inserting the following:

“Section 6B1.1(c) deals with the timing of the court’s decision regarding whether to accept or reject the plea agreement. Rule 11(c)(3)(A) gives the court discretion to accept or reject the plea agreement immediately or defer a decision pending consideration of the presentence report. Given that a presentence report normally will be prepared, the court may defer acceptance of the plea agreement until the court has reviewed the presentence report.”.

Section 6B1.3 is amended by striking “If the plea” and all that follows through “Fed. Crim. P.” and inserting the following:

“If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(a) inform the parties that the court rejects the plea agreement;

(b) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(c) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

Rule 11(c)(5), Fed. R. Crim. P.”.