

The Commentary to § 6B1.3 is amended by striking “11(e)(4)” and inserting “11(c)(5)”.

*(H) Conforming PROTECT Act Amendments (Departures)*

The Commentary to § 1B1.3 captioned “Application Notes” is amended in the fifth sentence of Note 5 by striking “When” and inserting “In a case in which creation of risk is”; by striking “creation of a risk may provide a ground for imposing a sentence above the applicable guideline range” and inserting “an upward departure may be warranted”.

The Commentary to § 1B1.4 captioned “Background” is amended in the fifth sentence by striking “sentencing above the guideline range” and inserting “an upward departure”.

The Commentary to § 1B1.8 captioned “Application Notes” is amended in the third sentence of Note 1 by striking “increase the defendant’s sentence above the applicable guideline range by upward departure” and inserting “depart upward”; and in the last sentence by striking “below the applicable guideline range” and inserting “downward”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 7 by striking “sentence below the applicable guideline range” and inserting “downward departure”.

The Commentary to § 2R1.1 captioned “Application Notes” is amended in Note 7 by striking “, or even above,” and by inserting “, or an upward departure” after “guideline range”.

The Commentary to § 2T1.8 captioned “Application Note” is amended in Note 1 by striking “a sentence above the guidelines” and inserting “an upward departure”.

Chapter Two, Part T, Subpart 3 is amended in the “Introductory Commentary” by striking “imposing a sentence above that specified in the guideline in this Subpart” and inserting “departing upward”.

The Commentary to § 3D1.3 captioned “Application Notes” is amended in Note 4 by striking “a sentence above the guideline range” and inserting “an upward departure”.

Section 5C1.2(a) is amended by striking “verbatim”.

Section 5H1.1 is amended by striking “sentence should be outside the applicable guideline range” and inserting “departure is warranted”; by striking “impose a sentence below the applicable guideline range when” and inserting “depart downward in a case in which”; and by inserting “; Gambling Addiction” after “Abuse”.

Section 5H1.2 is amended by striking “sentence should be outside the applicable guideline range” and inserting “departure is warranted”.

Section 5H1.3 is amended by striking “sentence should be outside the applicable guideline range” and inserting “departure is warranted”.

Section 5H1.5 is amended by striking “sentence should be outside the applicable guideline range” and inserting “departure is warranted”.

Section 5H1.6 is amended by striking “Family ties” and inserting “In sentencing a defendant convicted of an offense other than an offense described in the following paragraph, family ties”; by inserting after the first paragraph the following:

“In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, family ties and responsibilities and community ties are not relevant in determining whether a sentence should be below the applicable guideline range.”;

and by striking:

“\*Note: Section 401(b)(4) of Public Law 108–21 (the “Protect Act”) directly amended § 5H1.6 to add the second paragraph, effective April 30, 2003. The Commission incorporated this direct amendment in the *Supplement to the 2002 Guidelines Manual* but inadvertently omitted the second paragraph in the **Federal Register** notice of amendments dated October 21, 2003. The policy statement should be read as containing the second paragraph, pursuant to the direct amendment made by Public Law 108–21.”.

The Commentary to § 5H1.6 is amended by adding at the end the following:

“Background: Section 401(b)(4) of Public Law 108–21 directly amended this policy statement to add the second paragraph, effective April 30, 2003.”.

Section 5H1.11 is amended by striking “sentence should be outside the applicable guideline range” and inserting “departure is warranted”.

Section 5H1.12 is amended by striking “grounds for imposing a sentence outside the applicable guideline range” and inserting “in determining whether a departure is warranted”.

Section 5K2.14 is amended by striking “increase the sentence above the guideline range” and inserting “depart upward”.

Section 5K2.16 is amended by inserting “downward” before “departure”; and by striking “below the applicable guideline range for that offense”.

Section 5K2.21 is amended by striking “increase the sentence above the guideline range” and inserting “depart upward”.

Section 5K2.22 is amended by striking “impose a sentence below the applicable guideline range” each place it appears and inserting “depart downward”; and by striking “imposing a sentence below the guidelines” and inserting “a downward departure”.

Section 5K2.23 is amended by striking “sentence below the applicable guideline range” and inserting “downward departure”.

*(I) Correction of Examples in § 5G1.2*

The Commentary to § 5G1.2 captioned “Application Notes” is amended in Note 3(B)(iii) by striking “2113(a) (20 year” and inserting “113(a)(3) (10 year”;

in the second sentence by striking “400” and inserting “460”; by striking “360–life” and inserting “460–485”; and in the third sentence by striking “40” and inserting “100”; and by striking “2113(a)” and inserting “113(a)(3)”.

*(J) Issue for Comment Regarding “Double Counting” Issue in § 4B1.4 (Armed Career Criminal)*

Issue for Comment: The Commission requests comment regarding application of the guidelines in cases in which the defendant (1) is convicted under 18 U.S.C. 922(g) (felon in possession); (2) is an armed career criminal under § 4B1.4; and (3) is convicted under 18 U.S.C. 924(c) (use of a firearm during a drug trafficking offense or crime of violence).

Section 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) provides that in cases in which a defendant is convicted of 18 U.S.C. 924(c) and of the underlying offense, the weapon enhancement in the guideline for the underlying offense is not to be applied. This rule is provided because the mandatory minimum consecutive sentence required by 18 U.S.C. 924(c) is sufficient to account for the possession or use of the weapon in the underlying offense. Section 4B1.4 (Armed Career Criminal) provides for an “enhanced” sentence (*i.e.*, an offense level of level 34 pursuant to § 4B1.4(b)(3)(A) and Criminal History Category VI pursuant to § 4B1.4(c)(2)) for cases in which an armed career criminal uses or possesses a firearm in connection with a crime of violence or controlled substance offense. Unlike § 2K2.4, however, § 4B1.4 does not currently contain a rule to provide an exception to application of the “enhanced” sentence in cases in which the defendant also is convicted under 18 U.S.C. 924(c) (or a similar offense carrying a “flat” mandatory