

PROPOSED AMENDMENT: STIPULATIONS

Synopsis of Proposed Amendment.—*This proposed amendment addresses the circuit conflict regarding whether admissions made by the defendant during his guilty plea hearing, without more, can be considered "stipulations" for purposes of §1B1.2(a). At the July 7, 2000, meeting, the Commission directed the staff to draft the majority view that the statement, if not a part of the written plea agreement, must be a knowing admission by the defendant to be considered a stipulation. Two options to implement that view are presented.*

Option One represents a narrow approach to the majority view that a factual statement made by the defendant during the plea colloquy must be made as part of the plea agreement in order to be considered a stipulation for purposes of §1B1.2(a). This approach prevents the plea agreement from "evolving" during the course of the plea proceeding and provides the parties, especially the defendant, with notice of the defendant's potential sentencing range.

Option Two presents a broader approach to the majority view. This option adds language to clarify that a factual statement made by the defendant at a plea colloquy is a stipulation for purposes of §1B1.2(a) only if the defendant and the government acknowledge, on the record, that the statement is a stipulation to a more serious offense that will require the court to apply the guideline most applicable to the stipulated offense, which may result in a higher Chapter Two offense level. Although this approach also provides notice to the parties of the potential sentencing range, there is less certainty than there is with Option One because of the possibility that a statement made after the plea agreement has been made may nonetheless be considered to be a stipulation if it meets the requirements set forth in the application note.

Proposed Amendment:

§1B1.2. Applicable Guidelines

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Commentary

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Application Notes:

1. *This section provides the basic rules for determining the guidelines applicable to the offense conduct under Chapter Two (Offense Conduct). The court is to use the Chapter Two guideline section referenced in the Statutory Index (Appendix A) for the offense of conviction. However, (A) in the case of a plea agreement (written or made orally on the record) containing a stipulation that specifically establishes a more serious offense than the offense of conviction, the Chapter Two offense guideline section applicable to the stipulated offense is to be used; and (B) for statutory provisions not listed in the Statutory Index, the most analogous guideline, determined pursuant to §2X5.1 (Other Offenses), is to be used.*

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However, there is a limited exception to this general rule. Where a stipulation that is set forth in a written plea agreement or made between the parties on the record during a plea proceeding specifically establishes facts that prove a more serious offense or offenses than the offense or offenses of conviction, the court is to apply the guideline most applicable to the more serious offense or offenses established. As set forth in the first paragraph of this note, an exception to this general rule is that if a plea agreement (written or made orally on the record) contains a stipulation that establishes a more serious offense than the offense of conviction, the guideline section applicable to the stipulated offense is to be used. [OPTION 1: A factual statement made by the defendant during the plea proceeding is not a stipulation for purposes of subsection (a) unless such statement was agreed to as part of the plea agreement.][OPTION 2: A factual statement made orally by the defendant during the plea proceeding will be considered a stipulation, for purposes of subsection (a), only if both the defendant and the government explicitly agree that (A) the statement is being included on the record as a stipulation that specifically establishes a more serious offense than the offense of conviction; (B) based on the stipulation, the court is required to apply the guideline most applicable to the more serious offense; and (C) application of the guideline most applicable to the stipulated more serious offense may result in a Chapter Two offense level that is higher than the offense level that would result if the defendant were sentenced under the guideline most applicable to the offense of conviction.] The sentence that may shall be imposed is limited, however, to the maximum authorized by the statute under which the defendant is convicted. See Chapter Five, Part G (Implementing the Total Sentence of Imprisonment). For example, if the defendant pleads guilty to theft, but admits the elements of robbery as part of the plea agreement, the robbery guideline is to be applied. The sentence, however, may not exceed the maximum sentence for theft. See H. Rep. 98-1017, 98th Cong., 2d Sess. 99 (1984).

The exception to the general rule has a practical basis. In a case in which cases where the elements of an offense more serious than the offense of conviction are established by a plea agreement, it may unduly complicate the sentencing process if the applicable guideline does not reflect the seriousness of the defendant's actual conduct. Without this exception, the court would be forced to use an artificial guideline and then depart from it to the degree the court found necessary based upon the more serious conduct established by the plea agreement. The probation officer would first be required to calculate the guideline for the offense of conviction. However, this guideline might even contain characteristics that are difficult to establish or not very important in the context of the actual offense conduct. As a simple example, §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) contains monetary distinctions which are more significant and more detailed than the monetary distinctions in §2B3.1 (Robbery). Then, the probation officer might need to calculate the robbery guideline to assist the court in determining the appropriate degree of departure in a case in which the defendant pled guilty to theft but admitted committing robbery. This cumbersome, artificial procedure is avoided by using the exception rule in guilty or nolo contendere plea cases where it is applicable.

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