

COMPILATION



DEPARTURE PROVISIONS

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Disclaimer: This is a “reader-friendly” compilation of provisions in the Guidelines Manual that indicate when a departure based on a specific ground may be warranted. It is an expanded version of the “reader-friendly” list of departure provisions that is included in the 2015 Guidelines Manual. While that list simply identifies each departure provision, this compilation also specifies the ground for departure contained in the provision. That list and this compilation are unofficial and are provided only for the convenience of the user.

COMPILATION OF DEPARTURE PROVISIONS

This compilation identifies provisions in the *Guidelines Manual* that indicate when a departure based on a specific ground may be warranted.

The compilation identifies the guideline provision and specifies the ground for departure contained in that provision. The ground for departure is printed in **bold type** if it involves a downward departure and *italic type* if it involves an upward departure. (Where the ground for departure could involve either an upward departure or a downward departure, depending on the circumstances, the ground for departure is printed in normal, roman type.)

For departures generally, including provisions setting forth the standards that apply in determining whether a departure is warranted, provisions indicating certain factors that are not relevant (or not ordinarily relevant) in determining whether a departure is warranted, and provisions indicating certain circumstances that are prohibited as grounds for departure, *see* Chapter Five, Parts H (Specific Offender Characteristics) and K (Departures). For departures with regard to organizations, *see* Chapter 8, Part C, Subpart 4 (Departures from the Guideline Fine Range).

For the definition of “departure” and related terms, *see* §1B1.1 (Application Instructions), Application Note 1(E).

For the use of departures in determining the sentence, *see* §1B1.1(b). For the information to be used in determining whether a departure is warranted, *see* §§1B1.4 (Information to be Used in Imposing Sentence (Selecting a Point Within the Guideline Range or Departing from the Guideline) and 1B1.8 (Use of Certain Information). Other procedural provisions applicable to departures include §§5K2.0(e) (Requirement of Specific Written Reasons for Departure), 6A1.4 (Notice of Possible Departure), and 6B1.2 (Standards for Acceptance of Plea Agreements).

As an aid to understanding the role of departures in the guidelines, *see* Chapter One, Part A, Subpart 1(4)(b) (Departures).

The compilation of guideline provisions and departure grounds is as follows:

CHAPTER ONE

1B1.3, comment. (n.3(B)) *given that a defendant’s relevant conduct does not include the conduct of members of a conspiracy prior to the defendant joining the conspiracy, there may be some unusual set of circumstances in which the exclusion of such conduct may not adequately reflect the defendant’s culpability*

1B1.3, comment. (n.6(B)) *in a case in which creation of risk is not adequately taken into account by the applicable offense guideline*

CHAPTER TWO

- 2A1.1, comment. (n.2(B)) **in a case of felony murder, if defendant did not cause the death intentionally or knowingly**
- 2A1.2, comment. (n.1) *if the defendant's conduct was exceptionally heinous, cruel, brutal, or degrading to the victim*
- 2A2.1, comment. (n.2) *if the offense created substantial risk of death or serious bodily injury to more than one person*
- 2A2.4, comment. (n.3) *in situations involving any significant disruption of governmental functions*
- 2A3.1, comment. (n.6) *if a victim was sexually abused by more than one participant*
- 2A3.2, comment. (n.6) *in a case in which the offense level substantially understates the seriousness of the offense*
- 2A3.6, comment. (n.4) *in a case involving a sex offense against a minor or if the offense resulted in serious bodily injury to a minor*
- 2A5.3, comment. (n.2) *if the conduct intentionally or recklessly endangered the safety of the aircraft or passengers*
- 2A6.1, comment. (n.4(B)) *if the offense involved (i) substantially more than two threatening communications to the same victim, (ii) a prolonged period of making harassing communications to the same victim, (iii) substantially more than two false liens or encumbrances against the real or personal property of the same victim, (iv) multiple victims, or (v) substantial pecuniary harm to a victim*
- 2A6.2, comment. (n.5) *if the defendant received an enhancement under subsection (b)(1) but that enhancement does not adequately reflect the extent or seriousness of the conduct involved*
- 2B1.1, comment. (n.8(A)) *if more than one of the enumerated factors in subsection (b)(9) applied*
- 2B1.1, comment. (n.20(A)) *in a case in which the offense level substantially understates the seriousness of the offense (non-exhaustive list of factors)*
- 2B1.1, comment. (n.20(B)) *in a case in which subsection (b)(18)(A)(iii) applies and the disruption to the critical infrastructure(s) is so substantial as to have a debilitating impact on national security, national economic*

security, national public health or safety, or any combination of those matters

2B1.1, comment. (n.20(C)) **in a case in which the offense level substantially overstates the seriousness of the offense**

2B1.1, comment. (n.20(D)) **if (i) the minimum offense level of level 12 in subsection (b)(12) applies, (ii) the defendant sustained damage, loss, hardship, or suffering caused by a major disaster or emergency, and (iii) the benefits received illegally were only an extension or overpayment of benefits received legitimately**

2B1.5, comment. (n.9) *in a case in which the offense level substantially understates the seriousness of the offense (with examples)*

2B2.1, comment. (backg'd.) *if the case involved weapon use*

2B3.1, comment. (n.5) *if the defendant intended to murder the victim*

2B3.2, comment. (n.7) *if the offense involved the threat of death or serious bodily injury to numerous victims*

2B3.2, comment. (n.8) *if the offense involved organized criminal activity, or a threat to a family member of the victim*

2B5.3, comment. (n.5) *if the offense level substantially overstates or understates the seriousness of the offense (non-exhaustive list of factors)*

2C1.1, comment. (n.7) *in a case in which the monetary value of the unlawful payment may not be known or may not adequately reflect the seriousness of the offense, and the seriousness of the offense is not adequately reflected by the enhancements in subsections (b)(2) and (c)(1), (2), and (3)*

2C1.1, comment. (n.7) *in a case in which the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government*

2C1.8, comment. (n.4) *in a case in which the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government*

2D1.1, comment. (n.1) *where the mixture or substance counted in the Drug Quantity Table is combined with other, non-countable material in an unusually sophisticated manner in order to avoid detection*

- 2D1.1, comment. (n.10) *in a case involving liquid LSD, where using the weight of the LSD alone to calculate the offense level may not adequately reflect the seriousness of the offense*
- 2D1.1, comment. (n.18(A)) *in a case in which the enhancement under subsection (b)(13)(A) may not account adequately for the seriousness of the environmental harm or other threat to public health or safety*
- 2D1.1, comment. (n.22(B)) *if the defendant committed a sexual offense against more than one individual*
- 2D1.1, comment. (n.27(A)) **if, in a reverse sting, the government agent set a price for the controlled substances that was substantially below the market value of the controlled substance, thereby leading to the defendant's purchase of a significantly greater quantity of the controlled substance that his available resources would have allowed him to purchase except for the artificially low price set by the government agent**
- 2D1.1, comment. (n.27(B)) *in an extraordinary case, above offense level 38 on the basis of drug quantity; or, in the case of a controlled substance for which the maximum offense level is less than level 38, if the drug quantity substantially exceeds the quantity for the highest offense level established for that particular controlled substance*
- 2D1.1, comment. (n.27(C)) *if the case involved trafficking in controlled substances, compounds, or mixtures of unusually high purity, except in the case of PCP, amphetamine, methamphetamine, hydrocodone, or oxycodone for which the guideline itself provides for the consideration of purity*
- 2D1.5, comment. (n.2) *if as part of the enterprise the defendant sanctioned the use of violence, or if the number of persons managed by the defendant was extremely large*
- 2D1.7, comment. (n.1) *in a case involving a large-scale dealer, distributor, or manufacturer*
- 2D1.7, comment. (n.1) **where the offense was not committed for pecuniary gain (e.g., transportation for the defendant's personal use)**
- 2D1.11, comment. (n.1(C)) *in a case involving two or more chemicals used to manufacture different controlled substances, or to manufacture one controlled substance by different manufacturing processes, if the offense level does not adequately address the seriousness of the offense*

- 2D1.11, comment. (n.4) *in a case in which the enhancement under subsection (b)(3) may not account adequately for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel)*
- 2D1.12, comment. (n.1) *if the offense involved the large-scale manufacture, distribution, transportation, exportation, or importation of prohibited flasks, equipment, chemicals, products, or material*
- 2D1.12, comment. (n.3) *in a case in which the enhancement under subsection (b)(2) may not account adequately for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel)*
- 2D2.1, comment. (n.1) *where the circumstances establish intended consumption by a person other than the defendant*
- 2D2.3, comment. (backg'd.) **if no or only a few passengers were placed at risk**
- 2D2.3, comment. (backg'd.) *if the offense resulted in the death or serious bodily injury of a large number of persons, such that the resulting offense level under subsection (b) would not adequately reflect the seriousness of the offense*
- 2E1.1, comment. (n.4) in a case in which certain conduct is charged as part of “pattern of racketeering activity” even though the defendant has previously been sentenced for that conduct, and the treatment of such previously imposed sentence under the guidelines produces an anomalous result in a particular case
- 2E3.1, comment. (n.2) *if the offense involved extraordinary cruelty to an animal that resulted in, for example, maiming or death to an animal*
- 2G1.1, comment. (n.2) *if bodily injury results*
- 2G1.1, comment. (n.6) *if the offense involved more than ten victims*
- 2G1.3, comment. (n.7) *if the offense involved more than ten minors*
- 2G2.1, comment. (n.6) *if the offense involved more than 10 minors*
- 2G2.2, comment. (n.4(B)(i)) *if the number of images substantially underrepresents the number of minors depicted*
- 2G2.2, comment. (n.4(B)(ii)) *if the length of the visual depiction is substantially more than 5 minutes*

- 2G2.2, comment. (n.7) *if the defendant engaged in the sexual abuse or exploitation of a minor at any time and subsection (b)(5) does not apply*
- 2G2.2, comment. (n.7) *if the defendant received an enhancement under subsection (b)(5) but that enhancement does not adequately reflect the seriousness of the sexual abuse or exploitation involved*
- 2H2.1, comment. (n.1) *if the offense resulted in bodily injury or significant property damage, or involved corrupting a public official*
- 2H3.1, comment. (n.5) *in a case in which the offense level substantially understates the seriousness of the offense (with examples)*
- 2H4.1, comment. (n.3) *if the offense involved the holding of more than ten victims in a condition of peonage or involuntary servitude*
- 2H4.1, comment. (n.4) **in a case in which the defendant was convicted under 18 U.S.C. §§ 1589(b) or 1593A, and the defendant benefitted from participating in a venture described in those sections without knowing that the venture had engaged in the criminal activity described in those sections**
- 2J1.2, comment. (n.4) *if a weapon was used, or bodily injury or significant property damage resulted*
- 2J1.2, comment. (n.4) *in a case involving an act of extreme violence or a particularly serious sex offense*
- 2J1.3, comment. (n.4) *if a weapon was used, or bodily injury or significant property damage resulted*
- 2J1.6, comment. (n.4) *if a defendant is convicted of both the underlying offense and the failure to appear count, and the defendant committed additional acts of obstructive behavior (e.g., perjury) during the investigation, prosecution, or sentencing of the instant offense*
- 2K1.3, comment. (n.10) *in any of the following circumstances: (A) the quantity of explosive materials significantly exceeded 1000 pounds; (B) the explosive materials were of a nature more volatile or dangerous than dynamite or conventional powder explosives; (C) the defendant knowingly distributed explosive materials to a person under twenty-one years of age; or (D) the offense posed a substantial risk of death or bodily injury to multiple individuals*
- 2K1.3, comment. (n.11) *where the defendant used or possessed a firearm or explosive to facilitate another firearms or explosives offense*

- 2K1.4, comment. (n.3) *if bodily injury resulted*
- 2K2.1, comment. (n.7) *in a case in which the cumulative result of the increased base offense level and the enhancement under subsection (b)(3) does not adequately capture the seriousness of the offense because of the type of destructive device involved, the risk to the public welfare, or the risk of death or serious bodily injury that the destructive device created*
- 2K2.1, comment. (n.11) *in any of the following circumstances: (A) the number of firearms substantially exceeded 200; (B) the offense involved multiple National Firearms Act weapons, military type assault rifles, non-detectable (“plastic”) firearms; (C) the offense involved large quantities of armor-piercing ammunition; or (D) the offense posed a substantial risk of death or bodily injury to multiple individuals*
- 2K2.1, comment. (n.13(C)) *if the defendant trafficked substantially more than 25 firearms*
- 2K2.1, comment. (n.14(D)) *in a case in which the defendant used or possessed a firearm or explosive to facilitate another firearms or explosives offense*
- 2K2.1, comment. (n.15) **in a case in which the defendant is convicted under 18 U.S.C. §§ 922(a)(6), 922(d), or 924(a)(1)(A), if (A) none of the enhancements in subsection (b) apply, (B) the defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense, and (C) the defendant received no monetary compensation from the offense**
- 2K2.4, comment. (n.2(B)) *to reflect the seriousness of the defendant’s criminal history in a case in which the defendant is convicted of an 18 U.S.C. § 924(c) or § 929(a) offense but is not determined to be a career offender under §4B1.1*
- 2K2.4, comment. (n.4) *in a case in which the defendant is determined not to be a career offender and a mandatory consecutive sentence under 18 U.S.C. § 844(h), § 924(c), or § 929(a) applies, so that the conviction under such section does not result in a decrease in the total punishment*
- 2K2.5, comment. (n.4) *where the firearm was brandished, discharged, or otherwise used, in a federal facility, federal court facility, or school zone, and the cross reference from subsection (c)(1) does not apply*
- 2L1.1, comment. (n.3) *in any of the following cases: (A) The defendant smuggled, transported, or harbored an alien knowing that the alien intended to enter the United States to engage in subversive activity, drug*

trafficking, or other serious criminal behavior. (B) The defendant smuggled, transported, or harbored an alien the defendant knew was inadmissible for reasons of security and related grounds, as set forth under 8 U.S.C. § 1182(a)(3). (C) The offense involved substantially more than 100 aliens.

- 2L1.2, comment. (n.7) in a case in which the applicable offense level substantially understates or overstates the seriousness of a prior conviction (with examples)
- 2L1.2, comment. (n.8) **in a case in which the defendant is located by immigration authorities while serving time in state custody (whether pre- or post-conviction) for a state offense, and the time served is not covered by an adjustment under §5G1.3(b) and a departure under §5K2.23, to reflect all or part of the time served in state custody (from the time immigration authorities locate the defendant until the service of the federal sentence commences) that the court determines will not be credited to the federal sentence by the Bureau of Prisons (non-exhaustive list of factors)**
- 2L1.2, comment. (n.9) **on the basis of cultural assimilation**
- 2L2.1, comment. (n.3) *if the defendant knew, believed, or had reason to believe that the felony offense to be committed was of an especially serious type*
- 2L2.1, comment. (n.5) *if the offense involved substantially more than 100 documents*
- 2L2.2, comment. (n.6) *if the defendant fraudulently obtained or used a United States passport for the purpose of entering the United States to engage in terrorist activity*
- 2M3.1, comment. (n.2) **when revelation is likely to cause little or no harm**
- 2M3.1, comment. (n.3) upon representation by the President or his duly authorized designee that the imposition of a sanction other than authorized by the guideline is necessary to protect national security or further the objectives of the nation's foreign policy
- 2M4.1, comment. (n.1) *if the offense was committed when persons were being inducted for compulsory military service during time of war or armed conflict*
- 2M5.1, comment. (n.1) *in the case of a violation during time of war or armed conflict*
- 2M5.1, comment. (n.2) where certain factors (the degree to which the violation threatened a security interest of the United States, the volume of commerce

- involved, the extent of planning or sophistication, and whether there were multiple occurrences) are present in an extreme form
- 2M5.2, comment. (n.1) **in a case in which the offense conduct posed no potential to be harmful to a security or foreign policy interest of the United States**
- 2M5.2, comment. (n.1) *in the case of a violation during time of war or armed conflict*
- 2M5.2, comment. (n.2) where certain factors (the degree to which the violation threatened a security interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences) are present in an extreme form
- 2M5.3, comment. (n.2(A)) where certain factors (the degree to which the violation threatened a security interest of the United States, the volume of the funds or other material support or resources involved, the extent of planning or sophistication, and whether there were multiple occurrences) are present in an extreme form
- 2M5.3, comment. (n.2(B)) *in the case of a violation during time of war or armed conflict*
- 2N1.1, comment. (n.1) *where the offense posed a substantial risk of death or serious bodily injury to numerous victims, or cause extreme psychological injury or substantial property damage or monetary loss*
- 2N1.1, comment. (n.1) **in a case in which the offense did not cause a risk or death or serious bodily injury, and neither caused nor was intended to cause bodily injury**
- 2N1.2, comment. (n.1) *if death or bodily injury, extreme psychological injury, or substantial property damage or monetary loss resulted*
- 2N1.3, comment. (n.1) *if death or bodily injury, extreme psychological injury, or substantial property damage or monetary loss resulted*
- 2N2.1, comment. (n.1) **where only negligence was involved**
- 2N2.1, comment. (n.3(A)) *if the offense created a substantial risk of bodily injury or death; or bodily injury, death, extreme psychological injury, property damage, or monetary loss resulted from the offense*
- 2N2.1, comment. (n.3(B)) *if the defendant was convicted under 7 U.S.C. § 7734*
- 2P1.1, comment. (n.4) *if death or bodily injury resulted*

2P1.3, comment. (n.1)	<i>if death or bodily injury resulted</i>
2Q1.1, comment. (n.1)	<i>if death or bodily injury resulted</i>
2Q1.2, comment. (n.4)	in a case involving negligent conduct
2Q1.2, comment. (n.5)	depending upon the harm resulting from the emission, release or discharge, the quantity and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation
2Q1.2, comment. (n.6)	depending upon the nature of the risk created and the number of people placed at risk
2Q1.2, comment. (n.7)	depending on the nature of the contamination involved
2Q1.2, comment. (n.8)	depending upon the nature and quantity of the substance involved and the risk associated with the offense
2Q1.2, comment. (n.9(A))	<i>in a case in which the defendant has previously engaged in similar misconduct established by a civil adjudication or has failed to comply with an administrative order</i>
2Q1.2, comment. (n.9(B))	<i>if the offense caused extreme psychological injury</i>
2Q1.2, comment. (n.9(C))	<i>if the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct</i>
2Q1.3, comment. (n.3)	in a case involving negligent conduct
2Q1.3, comment. (n.4)	depending upon the harm resulting from the emission, release or discharge, the quantity and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation
2Q1.3, comment. (n.5)	depending upon the nature of the risk created and the number of people placed at risk
2Q1.3, comment. (n.5)	<i>if death or serious bodily injury results</i>
2Q1.3, comment. (n.6)	depending upon the nature of the contamination involved
2Q1.3, comment. (n.7)	depending upon the nature and quantity of the substance involved and the risk associated with the offense
2Q1.3, comment. (n.8)	<i>where a defendant has previously engaged in similar misconduct established by a civil adjudication or has failed to comply with an</i>

- administrative order*
- 2Q1.4, comment. (n.3(A)) **in a case in which the offense did not cause a risk of death or serious bodily injury, and neither caused nor was intended to cause bodily injury**
- 2Q1.4, comment. (n.3(B)) *if the offense caused extreme psychological injury, or caused substantial property damage or monetary loss*
- 2Q1.4, comment. (n.3(B)) *if the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct*
- 2Q2.1, comment. (n.5) *if the offense involved the destruction of a substantial quantity of fish, wildlife, or plants, and the seriousness of the offense is not adequately measured by the market value*
- 2R1.1, comment. (n.7) *in the case of a defendant with previous antitrust convictions*
- 2T1.8, comment. (n.1) *if the defendant was attempting to evade, rather than merely delay, payment of taxes*
- 2T2.1, comment. (n.2) *offense conduct directed at more than tax evasion (e.g., theft or fraud)*
- Ch. Two, Pt. T,
Subpt. 3, intro. comment. *importation of contraband or stolen goods not specifically covered by this Subpart*
- 2T3.1, comment. (n.2) *when items for which entry is prohibited, limited, or restricted are harmful or protective quotas are in effect, and the duties evaded on such items may not adequately reflect the harm to society or protected industries resulting from their importation*
- 2X5.1, comment. (n.2(B)) *for offenses under 18 U.S.C. § 1841(a)(1), if the offense level does not adequately account for the death of, or serious bodily injury to, the child in utero*
- 2X7.2, comment. (n.1(A)) *the defendant engaged in a pattern of activity involving use of a submersible vessel or semi-submersible vessel described in 18 U.S.C. § 2285 to facilitate other felonies*
- 2X7.2, comment. (n.1(B)) *the offense involved use of the vessel as part of an ongoing criminal investigation or enterprise*

CHAPTER THREE

- 3A1.1, comment. (n.4) *if an enhancement from subsection (b) applies and the defendant's criminal history includes a prior sentence for an offense that involved the selection of a vulnerable victim*
- 3A1.2, comment. (n.5) *if the official victim is an exceptionally high-level official, such as the President or the Vice President of the United States, due to the potential disruption of the governmental function*
- 3A1.3, comment. (n.3) *if the restraint was sufficiently egregious*
- 3A1.4, comment. (n.4) *in a case in which (A) the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct but the offense involved, or was intended to promote, an offense other than one of the offenses specifically enumerated in 18 U.S.C. § 2332b(g)(5)(B); or (B) the offense involved, or was intended to promote, one of the offenses specifically enumerated in 18 U.S.C. § 2332b(g)(5)(B), but the terrorist motive was to intimidate or coerce a civilian population, rather than to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct*
- 3B1.1, comment. (n.2) *in the case of a defendant who did not organize, lead, manage, or supervise another participant, but who nevertheless exercised management responsibility over the property, assets, or activities of a criminal organization*
- 3B1.4, comment. (n.3) *if the defendant used or attempted to use more than one person less than eighteen years of age*
- 3C1.2, comment. (n.2) *where a higher degree of culpability than "reckless" was involved*
- 3C1.2, comment. (n.6) *if death or bodily injury results or the conduct posed a substantial risk of death or bodily injury to more than one person*
- 3D1.3, comment. (n.4) *in a case involving an exceptionally large property loss in the course of a rape*
- 3D1.4, comment. (backg'd.) *in a case where the additional offenses resulted in a total of significantly more than 5 Units*
- 3D1.4, comment. (backg'd.) *in circumstances in which the approach adopted in this section could produce adjustments for the additional counts that are inadequate or excessive*

CHAPTER FOUR

- 4A1.2, comment. (n.3(B)) *in a case in which treating multiple prior sentences as a single sentence results in a criminal history score that underrepresents the seriousness of the defendant's criminal history and the danger that the defendant presents to the public*
- 4A1.2, comment. (n.8) *if the court finds that a sentence imposed outside the time period established by this section is evidence of similar, or serious dissimilar, criminal conduct*
- 4A1.3(a) *if reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes*
- 4A1.3(b) **if reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes**
- 4B1.4, comment. (n.2) *in a case in which subsection (b)(3)(A) and (c)(2) are not applied because a mandatory consecutive sentence under 18 U.S.C. § 844(h), § 924(c), or § 929(a) applies, so that the conviction under such section does not result in a decrease in the total punishment*

CHAPTER FIVE

- 5C1.1, comment. (n.6) **in a case in which a departure from the sentencing options authorized for Zone C to the sentencing options authorized for Zone B is appropriate to accomplish a specific treatment purpose (with examples)**
- 5D1.1, comment. (n.1) **if supervised release is not required by statute and the court determines, after considering the factors set forth in Note 3, that supervised release is not necessary**
- 5E1.2, comment. (n.4) *where two times either the amount of gain to the defendant or the amount of loss caused by the offense exceeds the maximum of the fine guideline*
- 5E1.2, comment. (n.4) *where a sentence within the applicable fine guideline range would not be sufficient to ensure both the disgorgement of any gain from*

the offense that otherwise would not be disgorged (e.g., by restitution or forfeiture) and an adequate punitive fine

- 5G1.3, comment. (n.4(E)) **in a case involving an undischarged term of imprisonment under subsection (d), to ensure that the combined punishment is not increased unduly by the fortuity and timing of separate prosecutions and sentencings**
- 5G1.3, comment. (n.5) **in the case of a discharged term of imprisonment, if the defendant (A) has completed serving a term of imprisonment; and (B) subsection (b) would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense**
- 5H1.1, p.s. if considerations based on age, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines
- 5H1.1, p.s. **in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement might be equally efficient as and less costly than incarceration**
- 5H1.3, p.s. if mental and emotional conditions, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines
- 5H1.4, p.s. physical condition or appearance, including physique, if the condition or appearance, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines
- 5H1.4, p.s. **an extraordinary physical impairment**
- 5H1.6, comment. (n.1(B)) **based on loss of caretaking or financial support of the defendant's family (non-exhaustive list of factors)**
- 5H1.11, p.s. if military service, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines
- 5K1.1, p.s. **upon motion of the government stating that the defendant has provided substantial assistance in the investigation or**

prosecution of another person who has committed an offense

- 5K2.0(a)(1) if there exists an aggravating circumstance (or, in the case of offenses other than child crimes and sexual offenses, a mitigating circumstance) of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that, in order to advance the objectives set forth in 18 U.S.C. § 3553(a)(2), should result in a sentence different from that described
- 5K2.0(a)(2)(A) if a circumstance identified in Chapter Five, Part K, Subpart 2 (Other Grounds for Departure) is present in the case and has not adequately been taken into consideration in determining the applicable guideline range
- 5K2.0(a)(2)(B) in the exceptional case in which there is present a circumstance that the Commission has not identified in the guidelines but that nevertheless is relevant to determining the appropriate sentence
- 5K2.0(a)(3) in an exceptional case, even though the circumstance that forms the basis for the departure is taken into consideration in determining the guideline range, if the court determines that such circumstance is present in the offense to a degree substantially in excess of, or substantially below, that which ordinarily is involved in that kind of offense
- 5K2.0(b) *in cases of child crimes or sexual offenses, if there exists a mitigating circumstance of a kind, or to a degree, that (1) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, United States Code, taking account of any amendments to such sentencing guidelines or policy statements by act of Congress; (2) has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and (3) should result in a sentence different from that described*
- 5K2.1, p.s. *if death resulted*
- 5K2.2, p.s. *if significant physical injury resulted*
- 5K2.3, p.s. *if a victim or victims suffered psychological injury much more serious than that normally resulting from commission of the offense*
- 5K2.4, p.s. *if a person was abducted, taken hostage, or unlawfully restrained*

	<i>to facilitate commission of the offense or to facilitate the escape from the scene of the crime</i>
5K2.5, p.s.	<i>if the offense caused property damage or loss not taken into account within the guidelines</i>
5K2.6, p.s.	<i>if a weapon or dangerous instrumentality was used or possessed in the commission of the offense</i>
5K2.7, p.s.	<i>if the defendant's conduct resulted in a significant disruption of a governmental function</i>
5K2.8, p.s.	<i>if the defendant's conduct was unusually heinous, cruel, brutal, or degrading to the victim</i>
5K2.9, p.s.	<i>if the defendant committed the offense in order to facilitate or conceal the commission of another offense</i>
5K2.10, p.s.	if the victim's wrongful conduct contributed significantly to provoking the offense behavior (non-exhaustive list of factors)
5K2.11, p.s.	if the defendant committed a crime in order to avoid a perceived greater harm
5K2.11, p.s.	if the defendant's conduct did not cause or threaten the harm or evil sought to be prevented by the law proscribing the offense at issue
5K2.12, p.s.	if the defendant committed the offense because of serious coercion, blackmail or duress, under circumstances not amounting to a complete defense
5K2.13, p.s.	if (1) the defendant committed the offense while suffering from a significantly reduced mental capacity; and (2) the significantly reduced mental capacity contributed substantially to the commission of the offense
5K2.14, p.s.	<i>if national security, public health, or safety was significantly endangered</i>
5K2.16, p.s.	if the defendant voluntarily discloses to authorities the existence of, and accepts responsibility for, the offense prior to the discovery of such offense, and if such offense was unlikely to have been discovered otherwise
5K2.17, p.s.	<i>if the defendant possessed a semiautomatic firearm capable of</i>

- accepting a large capacity magazine in connection with a crime of violence or controlled substance offense*
- 5K2.18, p.s. *if the defendant is subject to an enhanced sentence under 18 U.S.C. § 521 (pertaining to criminal street gangs)*
- 5K2.20, p.s. **on the basis of “aberrant behavior” (i.e., if the defendant committed a single criminal occurrence or single criminal transaction that (1) was committed without significant planning; (2) was of limited duration; and (3) represents a marked deviation by the defendant from an otherwise law-abiding life)**
- 5K2.21, p.s. *to reflect the actual seriousness of the offense based on conduct (1) underlying a charge dismissed as part of a plea agreement in the case, or underlying a potential charge not pursued in the case as part of a plea agreement or for any other reason; and (2) that did not enter into the determination of the applicable guideline range*
- 5K2.22, p.s. **if the defendant is convicted of a child crime or sexual offense involving a minor victim, age and an extraordinary physical impairment may be a reason to depart**
- 5K2.23, p.s. **if the defendant (1) has completed serving a term of imprisonment; and (2) subsection (b) of §5G1.3 (Imposition of a Sentence on a Defendant Subject to Undischarged Term of Imprisonment or Anticipated Term of Imprisonment) would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense**
- 5K2.24, p.s. *if, during the commission of the offense, the defendant wore or displayed an official, or counterfeit official, insignia or uniform received in violation of 18 U.S.C. § 716*
- 5K3.1, p.s. **upon motion of the Government, pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides**

CHAPTER SEVEN

- 7B1.4, comment. (n.2) when the court departed from the applicable range for reasons set forth in §4A1.3 (Departures Based on Inadequacy of Criminal History Category) in originally imposing the sentence that resulted

in supervision

7B1.4, comment. (n.2) *when a defendant, subsequent to the federal sentence resulting in supervision, has been sentenced for an offense that is not the basis of the violation proceeding*

7B1.4, comment. (n.3) *in the case of a Grade C violation that is associated with a high risk of new felonious conduct (e.g., a defendant, under supervision for conviction of criminal sexual abuse, violates the condition that the defendant not associate with children by loitering near a schoolyard)*

7B1.4, comment. (n.4) *where the original sentence was the result of a downward departure (e.g., as a reward for substantial assistance), or a charge reduction that resulted in a sentence below the guideline range applicable to the defendant's underlying conduct*

CHAPTER EIGHT

8C2.8, comment. (n.5) *in a case involving a pattern of illegality*

8C2.8, comment. (backg'd.) *in unusual cases, factors listed in this section may provide a basis for departure*

8C4.1, p.s. **upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another organization that has committed an offense, or in the investigation or prosecution of an individual not directly affiliated with the defendant who has committed an offense**

8C4.2, p.s. *if the offense resulted in death or bodily injury, or involved a foreseeable risk of death or bodily injury*

8C4.3, p.s. *if the offense constituted a threat to national security*

8C4.4, p.s. *if the offense presented a threat to the environment*

8C4.5, p.s. *if the offense presented a risk to the integrity or continued existence of a market*

8C4.6, p.s. *if the organization, in connection with the offense, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official*

8C4.7, p.s.	if the organization is a public entity
8C4.8, p.s.	if the members or beneficiaries, other than shareholders, of the organization are direct victims of the offense
8C4.9, p.s.	if the organization has paid or has agreed to pay remedial costs arising from the offense that greatly exceed the gain that the organization received from the offense
8C4.10, p.s.	<i>if the organization's culpability score is reduced under §8C2.5(f) (Effective Compliance and Ethics Program) and the organization had implemented its program in response to a court order or administrative order specifically directed at the organization</i>
8C4.10, p.s.	<i>if, at the time of the instant offense, the organization was required by law to have an effective compliance and ethics program, but the organization did not have such a program</i>
8C4.11, p.s.	<i>if the organization's culpability score is greater than 10</i>
8C4.11, p.s.	if no individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense; the organization at the time of the offense had an effective program to prevent and detect violations of law; and the base fine is determined under §8C2.4(a)(1), §8C2.4(a)(3), or a special instruction for fines in Chapter Two (Offense Conduct)