CHAPTER THREE

ADJUSTMENTS

PART A — VICTIM-RELATED ADJUSTMENTS

Introductory Commentary

The following adjustments are included in this part because they may apply to a wide variety of offenses.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 344); November 1, 2023 (amendment 824).

§3A1.1. Hate Crime Motivation or Vulnerable Victim

(a) If the finder of fact at trial or, in the case of a plea of guilty or *nolo contendere*, the court at sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense of conviction because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person, increase by **3** levels.

(b) (1) If the defendant knew or should have known that a victim of the offense was a vulnerable victim, increase by **2** levels.

(2) If (A) subdivision (1) applies; and (B) the offense involved a large number of vulnerable victims, increase the offense level determined under subdivision (1) by **2** additional levels.

(c) Special Instruction

(1) Subsection (a) shall not apply if an adjustment from §2H1.1(b)(1) applies.

Commentary

Application Notes:

1. Subsection (a) applies to offenses that are hate crimes. Note that special evidentiary requirements govern the application of this subsection.

   Do not apply subsection (a) on the basis of gender in the case of a sexual offense. In such cases, this factor is taken into account by the offense level of the Chapter Two offense guideline. Moreover, do not apply subsection (a) if an adjustment from §2H1.1(b)(1) applies.

2. For purposes of subsection (b), "***vulnerable victim***" means a person (A) who is a victim of the offense of conviction and any conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct); and (B) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct.

   Subsection (b) applies to offenses involving an unusually vulnerable victim in which the defendant knows or should have known of the victim's unusual vulnerability. The adjustment would apply, for example, in a fraud case in which the defendant marketed an ineffective cancer cure or in a robbery in which the defendant selected a handicapped victim. But it would not apply in a case in which the defendant sold fraudulent securities by mail to the general public and one of the victims happened to be senile. Similarly, for example, a bank teller is not an unusually vulnerable victim solely by virtue of the teller's position in a bank.

   Do not apply subsection (b) if the factor that makes the person a vulnerable victim is incorporated in the offense guideline. For example, if the offense guideline provides an enhancement for the age of the victim, this subsection would not be applied unless the victim was unusually vulnerable for reasons unrelated to age.

3. The adjustments from subsections (a) and (b) are to be applied cumulatively. Do not, however, apply subsection (b) in a case in which subsection (a) applies unless a victim of the offense was unusually vulnerable for reasons unrelated to race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation.

4. For purposes of this guideline, "***gender identity***" means actual or perceived gender-related characteristics. *See* 18 U.S.C. § 249(c)(4).

Background: Subsection (a) reflects the directive to the Commission, contained in section 280003 of the Violent Crime Control and Law Enforcement Act of 1994, to provide an enhancement of not less than three levels for an offense when the finder of fact at trial determines beyond a reasonable doubt that the defendant had a hate crime motivation. To avoid unwarranted sentencing disparity based on the method of conviction, the Commission has broadened the application of this enhancement to include offenses that, in the case of a plea of guilty or *nolo contendere*, the court at sentencing determines are hate crimes. In section 4703(a) of Public Law 111–84, Congress broadened the scope of that directive to include gender identity; to reflect that congressional action, the Commission has broadened the scope of this enhancement to include gender identity.

Subsection (b)(2) implements, in a broader form, the instruction to the Commission in section 6(c)(3) of Public Law 105–184.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 245); November 1, 1990 (amendment 344); November 1, 1992 (amendment 454); November 1, 1995 (amendment 521); November 1, 1997 (amendment 564); November 1, 1998 (amendment 587); November 1, 2000 (amendment 595); November 1, 2010 (amendment 743); November 1, 2023 (amendment 824); November 1, 2025 (amendment 836).

§3A1.2. Official Victim

(Apply the greatest):

(a) If (1) the victim was (A) a government officer or employee; (B) a former government officer or employee; or (C) a member of the immediate family

of a person described in subdivision (A) or (B); and (2) the offense of conviction was motivated by such status, increase by **3** levels.

(b) If subsection (a)(1) and (2) apply, and the applicable Chapter Two guideline is from Chapter Two, Part A (Offenses Against the Person), increase by **6** levels.

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

(1) 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

(2) 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,

increase by **6** levels.

Commentary

Application Notes:

1. **Applicability to Certain Victims.**—This guideline applies when specified individuals are victims of the offense. This guideline does not apply when the only victim is an organization, agency, or the government.

2. **Nonapplicability in Case of Incorporation of Factor in Chapter Two.**—Do not apply this adjustment if the offense guideline specifically incorporates this factor. The only offense guideline in Chapter Two that specifically incorporates this factor is §2A2.4 (Obstructing or Impeding Officers).

3. **Application of Subsections (a) and (b).**—"***Motivated by such status***", for purposes of subsections (a) and (b), means that the offense of conviction was motivated by the fact that the victim was a government officer or employee, a former government officer or employee, or a member of the immediate family thereof. This adjustment would not apply, for example, where both the defendant and victim were employed by the same government agency and the offense was motivated by a personal dispute. This adjustment also would not apply in the case of a robbery of a postal employee because the offense guideline for robbery contains an enhancement (§2B3.1(b)(1)) that takes such conduct into account.

4. **Application of Subsection (c).—**

(A) **In General.**—Subsection (c) applies in circumstances tantamount to aggravated assault (i) against a law enforcement officer, committed in the course of, or in immediate flight following, another offense; or (ii) against a prison 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. While subsection (c) may apply in connection with a variety of offenses that are not by nature targeted against official victims, its applicability

is limited to assaultive conduct against such official victims that is sufficiently serious to create at least a "substantial risk of serious bodily injury".

(B) **Definitions.—**For purposes of subsection (c):

"***Custody or control***" includes "non-secure custody", *i.e.*, custody with no significant physical restraint. For example, a defendant is in the custody or control of a prison or other correctional facility if the defendant (i) is on a work detail outside the security perimeter of the prison or correctional facility; (ii) is physically away from the prison or correctional facility while on a pass or furlough; or (iii) is in custody at a community corrections center, community treatment center, "halfway house", or similar facility. The defendant also shall be deemed to be in the custody or control of a prison or other correctional facility while the defendant is in the status of having escaped from that prison or correctional facility.

"***Prison official***" means any individual (including a director, officer, employee, independent contractor, or volunteer, but not including an inmate) authorized to act on behalf of a prison or correctional facility. For example, this enhancement would be applicable to any of the following: (i) an individual employed by a prison as a corrections officer; (ii) an individual employed by a prison as a work detail supervisor; and (iii) a nurse who, under contract, provides medical services to prisoners in a prison health facility.

"***Substantial risk of serious bodily injury***" includes any more serious injury that was risked, as well as actual serious bodily injury (or more serious injury) if it occurs.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 44); November 1, 1989 (amendments 246, 247, and 248); November 1, 1992 (amendment 455); November 1, 2002 (amendment 643); November 1, 2004 (amendment 663); November 1, 2010 (amendment 747); November 1, 2023 (amendment 824); November 1, 2025 (amendment 836).

§3A1.3. Restraint of Victim

If a victim was physically restrained in the course of the offense, increase by **2** levels.

Commentary

Application Notes:

1. "***Physically restrained***" is defined in the Commentary to §1B1.1 (Application Instructions).

2. Do not apply this adjustment where the offense guideline specifically incorporates this factor, or where the unlawful restraint of a victim is an element of the offense itself (*e.g.*, this adjustment does not apply to offenses covered by §2A4.1 (Kidnapping, Abduction, Unlawful Restraint)).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 249 and 250); November 1, 1991 (amendment 413); November 1, 2025 (amendment 836).

§3A1.4. Terrorism

(a) If the offense is a felony that involved, or was intended to promote, a federal crime of terrorism, increase by **12** levels; but if the resulting offense level is less than level **32**, increase to level **32**.

(b) In each such case, the defendant's criminal history category from Chapter Four (Criminal History and Criminal Livelihood) shall be Category VI.

Commentary

Application Notes:

1. **"Federal Crime of Terrorism" Defined.**—For purposes of this guideline, "***federal crime of terrorism***" has the meaning given that term in 18 U.S.C. § 2332b(g)(5).

2. **Harboring, Concealing, and Obstruction Offenses.**—For purposes of this guideline, an offense that involved (A) harboring or concealing a terrorist who committed a federal crime of terrorism (such as an offense under 18 U.S.C. § 2339 or § 2339A); or (B) obstructing an investigation of a federal crime of terrorism, shall be considered to have involved, or to have been intended to promote, that federal crime of terrorism.

3. **Computation of Criminal History Category.**—Under subsection (b), if the defendant's criminal history category as determined under Chapter Four (Criminal History and Criminal Livelihood) is less than Category VI, it shall be increased to Category VI.

Historical Note	Effective November 1, 1995 (amendment 526). Amended effective November 1, 1996 (amendment 539); November 1, 1997 (amendment 565); November 1, 2002 (amendment 637); November 1, 2025 (amendment 836).

§3A1.5. Serious Human Rights Offense

If the defendant was convicted of a serious human rights offense, increase the offense level as follows:

(a) If the defendant was convicted of an offense under 18 U.S.C. § 1091(c), increase by **2** levels.

(b) If the defendant was convicted of any other serious human rights offense, increase by **4** levels. If (1) death resulted, and (2) the resulting offense level is less than level **37**, increase to level **37**.

Commentary

Application Notes:

1. **Definition.**—For purposes of this guideline, "***serious human rights offense***" means violations of federal criminal laws relating to genocide, torture, war crimes, and the use or recruitment of child soldiers under sections 1091, 2340, 2340A, 2441, and 2442 of title 18, United States Code. *See* 28 U.S.C. § 509B(e).

2. **Application of Minimum Offense Level in Subsection (b).**—The minimum offense level in subsection (b) is cumulative with any other provision in the guidelines. For example, if death resulted and this factor was specifically incorporated into the Chapter Two offense guideline, the minimum offense level in subsection (b) may also apply.

Background: This guideline covers a range of conduct considered to be serious human rights offenses, including genocide, war crimes, torture, and the recruitment or use of child soldiers. *See* generally 28 U.S.C. § 509B(e).

Serious human rights offenses generally have a statutory maximum term of imprisonment of 20 years, but if death resulted, a higher statutory maximum term of imprisonment of any term of years or life applies. *See* 18 U.S.C. §§ 1091(b), 2340A(a), 2442(b). For the offense of war crimes, a statutory maximum term of imprisonment of any term of years or life always applies. *See* 18 U.S.C. § 2441(a). For the offense of incitement to genocide, the statutory maximum term of imprisonment is five years. *See* 18 U.S.C. § 1091(c).

Historical Note	Effective November 1, 2012 (amendment 765).

PART B — ROLE IN THE OFFENSE

Introductory Commentary

This part provides adjustments to the offense level based upon the role the defendant played in committing the offense. The determination of a defendant's role in the offense is to be made on the basis of all conduct within the scope of §1B1.3 (Relevant Conduct), *i.e.*, all conduct included under §1B1.3(a)(1)–(4), and not solely on the basis of elements and acts cited in the count of conviction.

When an offense is committed by more than one participant, §3B1.1 or §3B1.2 (or neither) may apply. Section 3B1.3 may apply to offenses committed by any number of participants.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 345); November 1, 1992 (amendment 456); November 1, 2023 (amendment 824).

§3B1.1. Aggravating Role

Based on the defendant's role in the offense, increase the offense level as follows:

(a) If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by **4** levels.

(b) If the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by **3** levels.

(c) If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in subsection (a) or (b), increase by **2** levels.

Commentary

Application Notes:

1. **Definition of "Participant".**—A "***participant***" is a person who is criminally responsible for the commission of the offense, but need not have been convicted. A person who is not criminally responsible for the commission of the offense (*e.g.*, an undercover law enforcement officer) is not a participant.

2. **Organizer, Leader, Manager, or Supervisor of One or More Participants.**—To qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants.

3. **"Otherwise Extensive".**—In assessing whether an organization is "otherwise extensive," all persons involved during the course of the entire offense are to be considered. Thus, a fraud that

involved only three participants but used the unknowing services of many outsiders could be considered extensive.

4. **Factors to Consider.**—In distinguishing a leadership and organizational role from one of mere management or supervision, titles such as "kingpin" or "boss" are not controlling. Factors the court should consider include the exercise of decision-making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others. There can, of course, be more than one person who qualifies as a leader or organizer of a criminal association or conspiracy. This adjustment does not apply to a defendant who merely suggests committing the offense.

Background: This section provides a range of adjustments to increase the offense level based upon the size of a criminal organization (*i.e.*, the number of participants in the offense) and the degree to which the defendant was responsible for committing the offense. This adjustment is included primarily because of concerns about relative responsibility. However, it is also likely that persons who exercise a supervisory or managerial role in the commission of an offense tend to profit more from it and present a greater danger to the public and/or are more likely to recidivate. The Commission's intent is that this adjustment should increase with both the size of the organization and the degree of the defendant's responsibility.

In relatively small criminal enterprises that are not otherwise to be considered as extensive in scope or in planning or preparation, the distinction between organization and leadership, and that of management or supervision, is of less significance than in larger enterprises that tend to have clearly delineated divisions of responsibility. This is reflected in the inclusiveness of §3B1.1(c).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1991 (amendment 414); November 1, 1993 (amendment 500); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836).

§3B1.2. Mitigating Role

Based on the defendant's role in the offense, decrease the offense level as follows:

(a) If the defendant was a minimal participant in any criminal activity, decrease by **4** levels.

(b) If the defendant was a minor participant in any criminal activity, decrease by **2** levels.

In cases falling between (a) and (b), decrease by **3** levels.

Commentary

Application Notes:

1. **Definition.**—For purposes of this guideline, "***participant***" has the meaning given that term in Application Note 1 of §3B1.1 (Aggravating Role).

2. **Requirement of Multiple Participants.**—This guideline is not applicable unless more than one participant was involved in the offense. *See* the Introductory Commentary to this Part (Role in the Offense). Accordingly, an adjustment under this guideline may not apply to a defendant who is the only defendant convicted of an offense unless that offense involved other participants in addition to the defendant and the defendant otherwise qualifies for such an adjustment.

3. **Applicability of Adjustment.—**

(A) **Substantially Less Culpable than Average Participant.**—This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant in the criminal activity.

A defendant who is accountable under §1B1.3 (Relevant Conduct) only for the conduct in which the defendant personally was involved and who performs a limited function in the criminal activity may receive an adjustment under this guideline. For example, a defendant who is accountable under §1B1.3 for a loss amount under §2B1.1 (Theft, Property Destruction, and Fraud) that greatly exceeds the defendant's personal gain from a fraud offense or who had limited knowledge of the scope of the scheme may receive an adjustment under this guideline. For example, a defendant in a health care fraud scheme, whose participation in the scheme was limited to serving as a nominee owner and who received little personal gain relative to the loss amount, may receive an adjustment under this guideline.

(B) **Conviction of Significantly Less Serious Offense.**—If a defendant has received a lower offense level by virtue of being convicted of an offense significantly less serious than warranted by his actual criminal conduct, a reduction for a mitigating role under this section ordinarily is not warranted because such defendant is not substantially less culpable than a defendant whose only conduct involved the less serious offense. For example, if a defendant whose actual conduct involved a minimal role in the distribution of 25 grams of cocaine (an offense having a Chapter Two offense level of level 12 under §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy)) is convicted of simple possession of cocaine (an offense having a Chapter Two offense level of level 6 under §2D2.1 (Unlawful Possession; Attempt or Conspiracy)), no reduction for a mitigating role is warranted because the defendant is not substantially less culpable than a defendant whose only conduct involved the simple possession of cocaine.

(C) **Fact-Based Determination.**—The determination whether to apply subsection (a) or subsection (b), or an intermediate adjustment, is based on the totality of the circumstances and involves a determination that is heavily dependent upon the facts of the particular case.

In determining whether to apply subsection (a) or (b), or an intermediate adjustment, the court should consider the following non-exhaustive list of factors:

(i) the degree to which the defendant understood the scope and structure of the criminal activity;

(ii) the degree to which the defendant participated in planning or organizing the criminal activity;

(iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;

(iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;

(v) the degree to which the defendant stood to benefit from the criminal activity.

For example, a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for an adjustment under this guideline.

The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Such a defendant may receive an adjustment under this guideline if he or she is substantially less culpable than the average participant in the criminal activity.

4. **Minimal Participant.**—Subsection (a) applies to a defendant described in Application Note 3(A) who plays a minimal role in the criminal activity. It is intended to cover defendants who are plainly among the least culpable of those involved in the conduct of a group. Under this provision, the defendant's lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant.

5. **Minor Participant.**—Subsection (b) applies to a defendant described in Application Note 3(A) who is less culpable than most other participants in the criminal activity, but whose role could not be described as minimal.

6. **Application of Role Adjustment in Certain Drug Cases.**—In a case in which the court applied §2D1.1 and the defendant's base offense level under that guideline was reduced by operation of the maximum base offense level in §2D1.1(a)(5), the court also shall apply the appropriate adjustment under this guideline.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1992 (amendment 456); November 1, 2001 (amendment 635); November 1, 2002 (amendment 640); November 1, 2009 (amendment 737); November 1, 2011 (amendments 749 and 755); November 1, 2014 (amendment 782); November 1, 2015 (amendment 794); November 1, 2025 (amendment 833).

§3B1.3. Abuse of Position of Trust or Use of Special Skill

If the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, increase by **2** levels. This adjustment may not be employed if an abuse of trust or skill is included in the base offense level or specific offense characteristic. If this adjustment is based upon an abuse of a position of trust, it may be employed in addition to an adjustment under §3B1.1 (Aggravating Role); if this adjustment is based solely on the use of a special skill, it may not be employed in addition to an adjustment under §3B1.1 (Aggravating Role).

Commentary

Application Notes:

1. **Definition of "Public or Private Trust".**—"***Public or private trust***" refers to a position of public or private trust characterized by professional or managerial discretion (*i.e.*, substantial discretionary judgment that is ordinarily given considerable deference). Persons holding such positions ordinarily are subject to significantly less supervision than employees whose responsibilities are primarily non-discretionary in nature. For this adjustment to apply, the position of public or private trust must have contributed in some significant way to facilitating the commission or concealment of the offense (*e.g.*, by making the detection of the offense or the defendant's responsibility for the offense more difficult). This adjustment, for example, applies in the case of an embezzlement of a client's funds by an attorney serving as a guardian, a bank executive's fraudulent loan scheme, or the criminal sexual abuse of a patient by a physician under the guise of an examination. This adjustment does not apply in the case of an embezzlement or theft by an ordinary bank teller or hotel clerk because such positions are not characterized by the above-described factors.

2. **Application of Adjustment in Certain Circumstances.**—Notwithstanding Application Note 1, or any other provision of this guideline, an adjustment under this guideline shall apply to the following:

   (A) An employee of the United States Postal Service who engages in the theft or destruction of undelivered United States mail.

   (B) A defendant who exceeds or abuses the authority of his or her position in order to obtain, transfer, or issue unlawfully, or use without authority, any means of identification. "***Means of identification***" has the meaning given that term in 18 U.S.C. § 1028(d)(7). The following are examples to which this subdivision would apply: (i) an employee of a state motor vehicle department who exceeds or abuses the authority of his or her position by knowingly issuing a driver's license based on false, incomplete, or misleading information; (ii) a hospital orderly who exceeds or abuses the authority of his or her position by obtaining or misusing patient identification information from a patient chart; and (iii) a volunteer at a charitable organization who exceeds or abuses the authority of his or her position by obtaining or misusing identification information from a donor's file.

3. This adjustment also applies in a case in which the defendant provides sufficient indicia to the victim that the defendant legitimately holds a position of private or public trust when, in fact, the defendant does not. For example, the adjustment applies in the case of a defendant who (A) perpetrates a financial fraud by leading an investor to believe the defendant is a legitimate investment broker; or (B) perpetrates a fraud by representing falsely to a patient or employer that the defendant is a licensed physician. In making the misrepresentation, the defendant assumes a position of trust, relative to the victim, that provides the defendant with the same opportunity to commit a difficult-to-detect crime that the defendant would have had if the position were held legitimately.

4. "***Special skill***" refers to a skill not possessed by members of the general public and usually requiring substantial education, training or licensing. Examples would include pilots, lawyers, doctors, accountants, chemists, and demolition experts.

5. The following additional illustrations of an abuse of a position of trust pertain to theft or embezzlement from employee pension or welfare benefit plans or labor unions:

   (A) If the offense involved theft or embezzlement from an employee pension or welfare benefit plan and the defendant was a fiduciary of the benefit plan, an adjustment under this section

for abuse of a position of trust will apply. "***Fiduciary of the benefit plan***" is defined in 29 U.S.C. § 1002(21)(A) to mean a person who exercises any discretionary authority or control in respect to the management of such plan or exercises authority or control in respect to management or disposition of its assets, or who renders investment advice for a fee or other direct or indirect compensation with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or who has any discretionary authority or responsibility in the administration of such plan.

(B) If the offense involved theft or embezzlement from a labor union and the defendant was a union officer or occupied a position of trust in the union (as set forth in 29 U.S.C. § 501(a)), an adjustment under this section for an abuse of a position of trust will apply.

Background: This adjustment applies to persons who abuse their positions of trust or their special skills to facilitate significantly the commission or concealment of a crime. The adjustment also applies to persons who provide sufficient indicia to the victim that they legitimately hold a position of public or private trust when, in fact, they do not. Such persons generally are viewed as more culpable.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 346); November 1, 1993 (amendment 492); November 1, 1998 (amendment 580); November 1, 2001 (amendment 617); November 1, 2005 (amendment 677); November 1, 2009 (amendment 726).

§3B1.4. Using a Minor To Commit a Crime

If the defendant used or attempted to use a person less than eighteen years of age to commit the offense or assist in avoiding detection of, or apprehension for, the offense, increase by **2** levels.

Commentary

Application Notes:

1. "***Used or attempted to use***" includes directing, commanding, encouraging, intimidating, counseling, training, procuring, recruiting, or soliciting.

2. Do not apply this adjustment if the Chapter Two offense guideline incorporates this factor. For example, if the defendant receives an enhancement under §2D1.1(b)(15)(B) for involving an individual less than 18 years of age in the offense, do not apply this adjustment.

Historical Note	Effective November 1, 1995 (amendment 527). Amended effective November 1, 1996 (amendment 540); November 1, 2010 (amendment 748); November 1, 2011 (amendment 750); November 1, 2014 (amendment 783); November 1, 2018 (amendment 807); November 1, 2025 (amendment 836). A former §3B1.4 (untitled), effective November 1, 1987, and amended effective November 1, 1989 (amendment 303), was deleted effective November 1, 1995 (amendment 527); November 1, 2026 (amendment 837).

§3B1.5. Use of Body Armor in Drug Trafficking Crimes and Crimes of Violence

If—

(1) the defendant was convicted of a drug trafficking crime or a crime of violence; and

(2) (apply the greater)—

(A) the offense involved the use of body armor, increase by **2** levels; or

(B) the defendant used body armor during the commission of the offense, in preparation for the offense, or in an attempt to avoid apprehension for the offense, increase by **4** levels.

Commentary

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Body armor***" means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment. *See* 18 U.S.C. § 921(a)(35).

"***Crime of violence***" has the meaning given that term in 18 U.S.C. § 16.

"***Drug trafficking crime***" has the meaning given that term in 18 U.S.C. § 924(c)(2).

"***Offense***" has the meaning given that term in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

"***Use***" means (A) active employment in a manner to protect the person from gunfire; or (B) use as a means of bartering. "Use" does not mean mere possession (*e.g.*, "use" does not mean that the body armor was found in the trunk of the car but not used actively as protection). "***Used***" means put into "use" as defined in this paragraph.

2. **Application of Subdivision (2)(B).—**Consistent with §1B1.3 (Relevant Conduct), the term "***defendant***", for purposes of subdivision (2)(B), limits the accountability of the defendant to the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

Background: This guideline implements the directive in the James Guelff and Chris McCurley Body Armor Act of 2002 (section 11009(d) of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107–273).

Historical Note	Effective November 1, 2003 (amendment 659). Amended effective November 1, 2004 (amendment 670); November 1, 2026 (amendment 837).

PART C — OBSTRUCTION AND RELATED ADJUSTMENTS

Historical Note	Effective November 1, 1987. Amended effective November 1, 2006 (amendment 684).

§3C1.1. Obstructing or Impeding the Administration of Justice

If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by **2** levels.

Commentary

Application Notes:

1. **In General.—**This adjustment applies if the defendant's obstructive conduct (A) occurred with respect to the investigation, prosecution, or sentencing of the defendant's instant offense of conviction, and (B) related to (i) the defendant's offense of conviction and any relevant conduct; or (ii) an otherwise closely related case, such as that of a co-defendant.

   Obstructive conduct that occurred prior to the start of the investigation of the instant offense of conviction may be covered by this guideline if the conduct was purposefully calculated, and likely, to thwart the investigation or prosecution of the offense of conviction.

2. **Limitations on Applicability of Adjustment.—**This provision is not intended to punish a defendant for the exercise of a constitutional right. A defendant's denial of guilt (other than a denial of guilt under oath that constitutes perjury), refusal to admit guilt or provide information to a probation officer, or refusal to enter a plea of guilty is not a basis for application of this provision. In applying this provision in respect to alleged false testimony or statements by the defendant, the court should be cognizant that inaccurate testimony or statements sometimes may result from confusion, mistake, or faulty memory and, thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice.

3. **Covered Conduct Generally.—**Obstructive conduct can vary widely in nature, degree of planning, and seriousness. Application Note 4 sets forth examples of the types of conduct to which this adjustment is intended to apply. Application Note 5 sets forth examples of less serious forms of conduct to which this enhancement is not intended to apply, but that ordinarily can appropriately be sanctioned by the determination of the particular sentence within the otherwise applicable guideline range. Although the conduct to which this adjustment applies is not subject to precise definition, comparison of the examples set forth in Application Notes 4 and 5 should assist the court in determining whether application of this adjustment is warranted in a particular case.

4. **Examples of Covered Conduct.—**The following is a non-exhaustive list of examples of the types of conduct to which this adjustment applies:

   (A) threatening, intimidating, or otherwise unlawfully influencing a co-defendant, witness, or juror, directly or indirectly, or attempting to do so;

(B) committing, suborning, or attempting to suborn perjury, including during the course of a civil proceeding if such perjury pertains to conduct that forms the basis of the offense of conviction;

(C) producing or attempting to produce a false, altered, or counterfeit document or record during an official investigation or judicial proceeding;

(D) destroying or concealing or directing or procuring another person to destroy or conceal evidence that is material to an official investigation or judicial proceeding (*e.g.*, shredding a document or destroying ledgers upon learning that an official investigation has commenced or is about to commence), or attempting to do so; however, if such conduct occurred contemporaneously with arrest (*e.g.*, attempting to swallow or throw away a controlled substance), it shall not, standing alone, be sufficient to warrant an adjustment for obstruction unless it resulted in a material hindrance to the official investigation or prosecution of the instant offense or the sentencing of the offender;

(E) escaping or attempting to escape from custody before trial or sentencing; or willfully failing to appear, as ordered, for a judicial proceeding;

(F) providing materially false information to a judge or magistrate judge;

(G) providing a materially false statement to a law enforcement officer that significantly obstructed or impeded the official investigation or prosecution of the instant offense;

(H) providing materially false information to a probation officer in respect to a presentence or other investigation for the court;

(I) other conduct prohibited by obstruction of justice provisions under title 18, United States Code (*e.g.*, 18 U.S.C. §§ 1510, 1511);

(J) failing to comply with a restraining order or injunction issued pursuant to 21 U.S.C. § 853(e) or with an order to repatriate property issued pursuant to 21 U.S.C. § 853(p);

(K) threatening the victim of the offense in an attempt to prevent the victim from reporting the conduct constituting the offense of conviction.

This adjustment also applies to any other obstructive conduct in respect to the official investigation, prosecution, or sentencing of the instant offense where there is a separate count of conviction for such conduct.

5. **Examples of Conduct Ordinarily Not Covered.**—Some types of conduct ordinarily do not warrant application of this adjustment but may warrant a greater sentence within the otherwise applicable guideline range or affect the determination of whether other guideline adjustments apply (*e.g.*, §3E1.1 (Acceptance of Responsibility)). However, if the defendant is convicted of a separate count for such conduct, this adjustment will apply and increase the offense level for the underlying offense (*i.e.*, the offense with respect to which the obstructive conduct occurred). *See* Application Note 8, below.

The following is a non-exhaustive list of examples of the types of conduct to which this application note applies:

(A) providing a false name or identification document at arrest, except where such conduct actually resulted in a significant hindrance to the investigation or prosecution of the instant offense;

(B) making false statements, not under oath, to law enforcement officers, unless Application Note 4(G) above applies;

(C) providing incomplete or misleading information, not amounting to a material falsehood, in respect to a presentence investigation;

(D) avoiding or fleeing from arrest (*see, however*, §3C1.2 (Reckless Endangerment During Flight));

(E) lying to a probation or pretrial services officer about defendant's drug use while on pre-trial release, although such conduct may be a factor in determining whether to reduce the defendant's sentence under §3E1.1 (Acceptance of Responsibility).

6. **"Material" Evidence Defined.**—"***Material***" evidence, fact, statement, or information, as used in this section, means evidence, fact, statement, or information that, if believed, would tend to influence or affect the issue under determination.

7. **Inapplicability of Adjustment in Certain Circumstances.**—If the defendant is convicted of an offense covered by §2J1.1 (Contempt), §2J1.2 (Obstruction of Justice), §2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness), §2J1.5 (Failure to Appear by Material Witness), §2J1.6 (Failure to Appear by Defendant), §2J1.9 (Payment to Witness), §2X3.1 (Accessory After the Fact), or §2X4.1 (Misprision of Felony), this adjustment is not to be applied to the offense level for that offense except if a significant further obstruction occurred during the investigation, prosecution, or sentencing of the obstruction offense itself (*e.g.*, if the defendant threatened a witness during the course of the prosecution for the obstruction offense).

   Similarly, if the defendant receives an enhancement under §2D1.1(b)(15)(D), do not apply this adjustment.

8. **Accountability for §1B1.3(a)(1)(A) Conduct.**—Under this section, the defendant is accountable for the defendant's own conduct and for conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 251 and 252); November 1, 1990 (amendment 347); November 1, 1991 (amendment 415); November 1, 1992 (amendment 457); November 1, 1993 (amendment 496); November 1, 1997 (amendment 566); November 1, 1998 (amendments 579, 581, and 582); November 1, 2002 (amendment 637); November 1, 2004 (amendment 674); November 1, 2006 (amendment 693); November 1, 2010 (amendments 746, 747, and 748); November 1, 2011 (amendments 750 and 758); November 1, 2014 (amendment 783); November 1, 2018 (amendment 807); November 1, 2023 (amendment 824); November 1, 2026 (amendments 837 and 840).

§3C1.2. Reckless Endangerment During Flight

If the defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer, increase by **2** levels.

Commentary

Application Notes:

1. Do not apply this enhancement where the offense guideline in Chapter Two, or another adjustment in Chapter Three, results in an equivalent or greater increase in offense level solely on the basis of the same conduct.

2. "***Reckless***" is defined in the Commentary to §2A1.4 (Involuntary Manslaughter). For the purposes of this guideline, "reckless" means that the conduct was at least reckless and includes any higher level of culpability.

3. "***During flight***" is to be construed broadly and includes preparation for flight. Therefore, this adjustment also is applicable where the conduct occurs in the course of resisting arrest.

4. "***Another person***" includes any person, except a participant in the offense who willingly participated in the flight.

5. Under this section, the defendant is accountable for the defendant's own conduct and for conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

Historical Note	Effective November 1, 1990 (amendment 347). Amended effective November 1, 1991 (amendment 416); November 1, 1992 (amendment 457); November 1, 2010 (amendment 747); November 1, 2025 (amendment 836).

§3C1.3. Commission of Offense While on Release

If a statutory sentencing enhancement under 18 U.S.C. § 3147 applies, increase the offense level by **3** levels.

Commentary

Application Note:

1. Under 18 U.S.C. § 3147, a sentence of imprisonment must be imposed in addition to the sentence for the underlying offense, and the sentence of imprisonment imposed under 18 U.S.C. § 3147 must run consecutively to any other sentence of imprisonment. Therefore, the court, in order to comply with the statute, should divide the sentence on the judgment form between the sentence attributable to the underlying offense and the sentence attributable to the enhancement. The court will have to ensure that the "total punishment" (*i.e.*, the sentence for the offense committed while on release plus the statutory sentencing enhancement under 18 U.S.C. § 3147) is in accord with the guideline range for the offense committed while on release, including, as in any other case in which a Chapter Three adjustment applies (*see* §1B1.1 (Application Instructions)), the adjustment provided by the enhancement in this section. For example, if the applicable adjusted guideline range is 30–37 months and the court determines a "total punishment" of 36 months is appropriate, a sentence of 30 months for the underlying offense plus 6 months under 18 U.S.C. § 3147 would satisfy this requirement. Similarly, if the applicable adjusted guideline range is 30–37 months and the court determines a "total punishment" of 30 months is appropriate, a sentence of 24 months for the underlying offense plus 6 months under 18 U.S.C. § 3147 would satisfy this requirement.

Background: An enhancement under 18 U.S.C. § 3147 applies, after appropriate sentencing notice, when a defendant is sentenced for an offense committed while released in connection with another federal offense.

This guideline enables the court to determine and implement a combined "total punishment" consistent with the overall structure of the guidelines, while at the same time complying with the statutory requirement.

Historical Note	Effective November 1, 2006 (amendment 684). Amended effective November 1, 2009 (amendment 734).

§3C1.4. False Registration of Domain Name

If a statutory enhancement under 18 U.S.C. § 3559(g)(1) applies, increase by **2** levels.

Commentary

Background: This adjustment implements the directive to the Commission in section 204(b) of Pub. L. 108–482.

Historical Note	Effective November 1, 2006 (amendment 689). Amended effective November 1, 2008 (amendment 724).

PART D — MULTIPLE COUNTS

Introductory Commentary

This part provides rules for determining a single offense level that encompasses all the counts of which the defendant is convicted. These rules apply to multiple counts of conviction (A) contained in the same indictment or information; or (B) contained in different indictments or informations for which sentences are to be imposed at the same time or in a consolidated proceeding. The single offense level that results from applying these rules is used, after adjustment pursuant to the guidelines in subsequent parts, to determine the applicable guideline range.

The Commission first designed these rules primarily based on the more commonly prosecuted offenses with the goals of providing incremental punishment for significant additional criminal conduct, preventing multiple punishments for substantially identical conduct, and limiting the significance of the formal charging decision. These goals led to the development of three principles: (1) combining the offense behavior of offenses using a Chapter Two guideline primarily based on the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm; (2) grouping related offenses together and assigning an offense level based on the most serious of the related offenses; and (3) assigning incremental offense-level increases based on any remaining unrelated offenses using a unit system. The Guidelines Manual expanded on these three principles in five guidelines, each containing several rules that courts and commenters frequently found confusing, particularly the rules for determining whether multiple offenses were related or unrelated.

In 2026, the Commission revised Chapter Three, Part D to simplify the multiple count rules while maintaining the goals and principles of the original rules. The current rules still combine offenses to which the applicable Chapter Two guideline is primarily based on the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm. However, to simplify the process for assigning incremental punishment in certain cases, the current rules set forth one rule that was developed based on the situations where incremental punishment applied most frequently under the original rules and the average increase involved in those cases. This rule provides for incremental offense-level increases to multiple counts involving different victims or the same victim on different occasions, such as multiple counts of murder, assault, robbery, and sexual abuse, based solely on the number of counts instead of a unit system.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 121); November 1, 2007 (amendment 707); November 1, 2023 (amendment 824); November 1, 2026 (amendment 840).

§3D1.1. Procedure for Determining Offense Level on Multiple Counts

(a) If there are multiple counts to which the same guideline applies and the guideline is listed below, determine the offense level applicable to these counts using the combined offense behavior taken as a whole.

The guidelines covered by subsection (a) are as follows:

§2A3.5;
§§2B1.1, 2B1.4, 2B1.5, 2B4.1, 2B5.1, 2B5.3, 2B6.1;
§§2C1.1, 2C1.2, 2C1.8;
§§2D1.1, 2D1.2, 2D1.5, 2D1.11, 2D1.13;
§§2E4.1, 2E5.1;
§§2G2.2, 2G3.1;
§2K2.1;
§§2L1.1, 2L2.1;
§2N3.1;
§2Q2.1;
§2R1.1;
§§2S1.1, 2S1.3;
§§2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1.

(b) (1) If there are multiple counts (A) to which the same guideline applies, (B) for which the applicable guideline is listed below, and (C) involving different victims or the same victim on different occasions, determine the offense level applicable to these counts by calculating the offense level for each count separately and applying the adjustment set forth in subsection (b)(2) to the count resulting in the highest offense level.

The guidelines covered by subsection (b) are as follows:

all offenses in Chapter Two, Part A (except §2A3.5);
§§2B2.1, 2B3.1, 2B3.2, 2B3.3;
§2D2.3;
§§2E1.3, 2E1.4, 2E2.1;
§§2G1.1, 2G1.3, 2G2.1;
§§2H1.1, 2H4.1;
§§2J1.2, 2J1.3;
§2K1.4;
§§2M3.9, 2M6.1;
§2N1.1;
§2Q1.4;
§2X6.1.

(2) The adjustment set forth in the table below shall be based on the number of counts covered by the guidelines listed in paragraph (1).

Number of Counts Covered by Guideline Listed in Paragraph (1)	Increase in Offense Level
(A) 2	add **2** levels
(B) 3	add **3** levels
(C) 4 or 5	add **4** levels
(D) 6 or more	add **5** levels.

(c) If there are any remaining counts not covered by subsection (a) or (b), determine the offense level for these counts by calculating the offense level for each count separately.

(d) The offense level applicable to all counts of conviction is the highest offense level applicable to: (1) any group of counts as determined under subsection (a); (2) any group of counts as determined under subsection (b); or (3) any count as determined under subsection (c).

(e) Special Instruction for Certain Multiple Counts.—If there are multiple counts of conviction, exclude from the application of subsections (a) through (d) above the following counts:

(1) Any count for which the statute (A) specifies a term of imprisonment to be imposed; and (B) requires that such term of imprisonment be imposed to run consecutively to any other term of imprisonment. Sentences for such counts are governed by subsection (a) of §5G1.2 (Sentencing on Multiple Counts of Conviction).

(2) Any count of conviction under 18 U.S.C. § 1028A. *See* Application Note 2(B) of the Commentary to §5G1.2 (Sentencing on Multiple Counts of Conviction) for guidance on how sentences for multiple counts of conviction under 18 U.S.C. § 1028A should be imposed.

Commentary

Application Notes:

1. **In General.**—For purposes of sentencing multiple counts of conviction, counts can be (A) contained in the same indictment or information; or (B) contained in different indictments or informations for which sentences are to be imposed at the same time or in a consolidated proceeding.

2. **Application of Subsection (e).**—Subsection (e)(1) applies if a statute (A) specifies a term of imprisonment to be imposed; and (B) requires that such term of imprisonment be imposed to run consecutively to any other term of imprisonment. *See, e.g.*, 18 U.S.C. § 924(c) (requiring mandatory minimum terms of imprisonment, based on the conduct involved, to run consecutively). The multiple count rules set out under this guideline do not apply to a count of conviction covered by subsection (e). However, a count covered by subsection (e)(1) may affect the offense level determination for other counts. For example, a defendant is convicted of one count of bank robbery

(18 U.S.C. § 2113), and one count of use of a firearm in the commission of a crime of violence (18 U.S.C. § 924(c)). The two counts are not grouped together pursuant to this guideline, and, to avoid unwarranted double counting, the offense level for the bank robbery count under §2B3.1 (Robbery) is computed without application of the enhancement for weapon possession or use as otherwise required by subsection (b)(2) of that guideline. Pursuant to 18 U.S.C. § 924(c), the mandatory minimum five-year sentence on the weapon-use count runs consecutively to the guideline sentence imposed on the bank robbery count. *See* §5G1.2(a).

Unless specifically instructed, subsection (e)(1) does not apply when imposing a sentence under a statute that requires the imposition of a consecutive term of imprisonment only if a term of imprisonment is imposed (*i.e.*, the statute does not otherwise require a term of imprisonment to be imposed). *See, e.g.*, 18 U.S.C. § 3146 (Penalty for failure to appear); 18 U.S.C. § 924(a)(4) (regarding penalty for 18 U.S.C. § 922(q) (possession or discharge of a firearm in a school zone)); 18 U.S.C. § 1791(c) (penalty for providing or possessing a controlled substance in prison). Accordingly, the multiple count rules set out under this part do apply to a count of conviction under this type of statute.

3. **Rules for Determining a Single Offense Level.**—Subsections (a) through (c) set forth the rules for determining a single offense level in cases involving multiple counts of conviction, and subsection (d) instructs to use the highest resulting offense level. In most cases, the single offense level applicable to all counts can be determined by applying only one subsection in this guideline. In some cases, the application of two subsections will be necessary to determine the single offense level applicable to all counts. In rare cases, the application of all three subsections will be necessary to determine the single offense level applicable to all counts. The following examples illustrate the interaction of the rules set forth in this guideline.

   (A) **Cases Involving Subsections (a), (c), and (d).**—Defendant A is convicted of two counts of wire fraud, in violation of 18 U.S.C. § 1343, and one count of tax evasion, in violation of 26 U.S.C. § 7201. The guideline that applies to the wire fraud counts is §2B1.1, while the guideline that applies to the tax evasion is §2T1.1. Although both guidelines are specifically listed in subsection (a), the rule set forth in subsection (a) is only used to determine a single offense level for the multiple counts to which the same guideline applies (*i.e.*, wire fraud counts). Therefore, the offense level for the wire fraud counts is determined by using the combined behavior. Subsection (c) would then apply to the remaining tax evasion count, and the offense level applicable to this count will be calculated separately. Subsection (d) is used to determine the single offense level for all three counts. Defendant A's offense level will be the greater of the offense levels determined above: the offense level based on the combined behavior calculated for the two counts of wire fraud or the offense level calculated for the tax evasion count.

   (B) **Cases Involving Subsections (b), (c), and (d).**—Defendant B is convicted of two counts of impeding a federal officer (each count involving a different federal officer), in violation of 18 U.S.C. § 111(a), and one count of burglary of a post office, in violation of 18 U.S.C. § 2115. The guideline that applies to the two counts of impeding a federal officer is §2A2.4, while the guideline that applies to the burglary count is §2B2.1. Although both guidelines are specifically listed in subsection (b), the rule set forth in subsection (b) is only used to determine a single offense level for the multiple counts to which the same guideline applies (*i.e.*, the counts of impeding a federal officer). Under subsection (b), each count of impeding a federal officer is calculated separately. Because subsection (b) applies to two counts, two levels are added to the count of impeding a federal officer that results in the highest offense level. Subsection (c) would apply to the remaining burglary count, and the offense level applicable for this count will be calculated separately. Subsection (d) is then used to determine the single offense level for all three counts, which will be the greater of the offense

levels determined above: the offense level based under subsection (b) for the counts of impeding a federal officer or the offense level calculated for the burglary count under subsection (c).

(C) **Cases Involving Subsections (a), (b), and (d).**—Defendant C is convicted of two counts of distribution of child pornography, in violation of 18 U.S.C. § 2252A, and three counts of sexual exploitation of a minor (each count involving a different minor), in violation of 18 U.S.C. § 2251(a). Subsection (a) is to be used to determine the single offense level for the two counts of child pornography distribution because §2G2.2, a guideline specifically listed in subsection (a), applies to both counts. The offense level for both counts is determined by using "the combined offense behavior taken as a whole." Subsection (b) is to be used to determine the single offense level for the three sexual exploitation counts because §2G2.1, a guideline specifically listed in subsection (b), applies to these counts. Each sexual exploitation count is calculated separately, and three levels are added under subsection (b)(2)(B) (because there are three counts) to the count of sexual exploitation that results in the highest offense level. Subsection (d) is then used to determine the single offense level applicable to all five counts, which will be the greater of the offense level determined under subsection (a) for the two counts of child pornography distribution or the offense level determined under subsection (b) for the three counts of sexual exploitation.

4. **Counts Involving Different Victims or the Same Victim on Different Occasions.**—To prevent double counting of offense behavior, subsection (b)(1)(C) requires that the counts involve different victims or the same victim on different occasions. For example, a defendant convicted of two counts of robbery of Victim A, where the robberies occurred several days apart, would be subject to a multiple count adjustment under subsection (b). On the other hand, a defendant convicted of two counts of robbery of Victim A, where one count charges conspiracy or solicitation to commit robbery and the other charges the substantive robbery, would not be subject to a multiple count adjustment under subsection (b) because the counts involve the same victim on the same occasion.

5. **Interaction with §1B1.5(c).**—Subsection (c) of §1B1.5 (Interpretation of References to Other Offense Guidelines) provides (with certain exceptions) that, in the case of a cross reference or other reference to use an entire Chapter Two guideline, this guideline applies based on the referenced offense guideline, not the offense guideline containing the reference. The following examples illustrate the circumstances where this instruction would apply.

(A) **Cross References.**—Defendant A is convicted of one count of distribution of child pornography, in violation of 18 U.S.C. § 2252A, and one count of sexual exploitation of a minor, in violation of 18 U.S.C. § 2251(a). Distribution of child pornography is referenced in Appendix A (Statutory Index) to §2G2.2, while sexual exploitation of a minor is referenced to §2G2.1. However, §2G2.2 contains a cross reference to §2G2.1 for certain cases. If the cross reference at §2G2.2(c) applies to the count of distribution of child pornography based on a different victim or the same victim on a different occasion, subsection (b) is to be used to determine the single offense level for both counts because the same guideline (§2G2.1), a guideline specifically listed in subsection (b), is applicable to the counts.

(B) **Other References.**—Defendant B is convicted of one count of Hobbs Act robbery, in violation of 18 U.S.C. § 1951, and one count of conspiracy to commit bank robbery, in violation of 18 U.S.C. § 371. The Hobbs Act robbery is referenced in Appendix A (Statutory Index) to §2B3.1, while conspiracy to commit bank robbery is referenced to §2X1.1. Section 2X1.1(a) requires the offense level to be determined by applying the base offense level and adjustments from the guideline for the underlying substantive offense, which is §2B3.1 in this case. If the counts involve different victims or the same victim on different occasions, subsection (b) is to be used to determine the single offense level for both counts because the

same guideline (§2B3.1), a guideline specifically listed in subsection (b), is applicable to the counts.

(C) **Exception.—**Defendant C is convicted of money laundering, in violation of 18 U.S.C. § 1956, and one count of conspiracy to commit murder, in violation of 18 U.S.C. § 1117. Defendant C laundered proceeds that were wired to him as advanced payment for murder, which never took place. Money laundering is referenced in Appendix A (Statutory Index) to §2S1.1, while conspiracy to commit murder is referenced to §2A5.1. For the money laundering count, §2S1.1(a)(1) instructs to determine the offense level for the underlying offense from which the laundered funds were derived. Therefore, the base offense level for the money laundering count is determined by applying §2A1.5, the guideline applicable to the conspiracy to commit murder. Although the offense level for both counts is calculated by applying §2A1.5 (a guideline listed in subsection (b)), subsection (b) cannot be used to determine the single offense level for the counts because of a special instruction included in the Commentary to §2S1.1. This instruction provides that "[n]otwithstanding §1B1.5(c), . . . application of any Chapter Three adjustment shall be determined based on the offense covered by this guideline (*i.e.*, the laundering of criminally derived funds) and not on the underlying offense from which the laundered funds were derived." Consequently, for purposes of subsection (b), two different guidelines (§2S1.1 and §2A1.5) apply to the counts.

Background: This section outlines the procedure to be used for determining the combined offense level. After any adjustments from Chapter Three, Parts E (Acceptance of Responsibility) and F (Early Disposition Programs), and Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders) are made, this combined offense level is used to determine the guideline sentence range. Chapter Five (Determining the Sentencing Range and Options Under the Guidelines) discusses how to determine the sentence from the (combined) offense level; §5G1.2 deals specifically with determining the sentence of imprisonment when convictions on multiple counts are involved. References in Chapter Five (Determining the Sentencing Range and Options Under the Guidelines) to the "offense level" should be treated as referring to the combined offense level after all subsequent adjustments have been made.

Historical Note	Effective November 1, 2026 (amendment 840). A former §3D1.1 (Procedure for Determining Offense Level on Multiple Counts), effective November 1, 1987, and amended effective November 1, 1990 (amendment 348), November 1, 1998 (amendment 579), November 1, 2000 (amendment 598), November 1, 2005 (amendments 677 and 680), November 1, 2007 (amendment 707), November 1, 2023 (amendment 824), November 1, 2024 (amendment 831), and November 1, 2025 (amendment 836), was deleted effective November 1, 2026 (amendment 840).

§§3D1.2 – 3D1.5. [Deleted]

Historical Note	Section 3D1.2 (Groups of Closely Related Counts), effective November 1, 1987, and amended effective June 15, 1988 (amendment 45), November 1, 1989 (amendments 121, 253, 254, 255, 256, and 303), November 1, 1990 (amendments 309, 348, and 349), November 1, 1991 (amendment 417), November 1, 1992 (amendment 458), November 1, 1993 (amendment 496), November 1, 1995 (amendment 534), November 1, 1996 (amendment 538), November 1, 1998 (amendment 579), November 1, 2001 (amendments 615, 617, and 634), November 1, 2002 (amendment 638), January 25, 2003 (amendment 648), November 1, 2003 (amendment 656), November 1, 2004 (amendments 664 and 674), November 1, 2005 (amendments 679 and 680), November 1, 2007 (amendment 701), November 1, 2023 (amendments 823 and 824), and November 1, 2025 (amendment 836), was deleted effective November 1, 2026 (amendment 840). Section 3D1.3 (Offense Level Applicable to Each Group of Closely Related Counts), effective November 1, 1987, and amended effective November 1, 1989 (amendments 257 and 303), November 1, 2001 (amendment 617), November 1, 2004 (amendment 674), November 1, 2023 (amendment 824), and November 1, 2025 (amendment 836), was deleted effective November 1, 2026 (amendment 840).

	Section 3D1.4 (Determining the Combined Offense Level), effective November 1, 1987, and amended effective November 1, 1990 (amendment 350), November 1, 2023 (amendment 824), and November 1, 2025 (amendment 836), was deleted effective November 1, 2026 (amendment 840). Section 3D1.5 (Determining the Total Punishment), effective November 1, 1987, and amended effective November 1, 2024 (amendment 831) and November 1, 2025 (amendment 836), was deleted effective November 1, 2026 (amendment 840).

Ch. 3 Pt. D Concl. Comment. [Deleted]

Historical Note	The Concluding Commentary to Part D of Chapter Three (Illustrations of the Operation of the Multiple-Count Rules), effective November 1, 1987, and amended effective November 1, 1989 (amendment 303), November 1, 1990 (amendment 350), November 1, 1991 (amendment 417), November 1, 1995 (amendment 534), November 1, 2001 (amendment 617), November 1, 2009 (amendment 737), November 1, 2011 (amendment 760), November 1, 2014 (amendment 782), November 1, 2015 (amendment 796), and November 1, 2018 (amendment 808), was deleted effective November 1, 2026 (amendment 840).

PART E — ACCEPTANCE OF RESPONSIBILITY

§3E1.1. Acceptance of Responsibility

(a) If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by **2** levels.

(b) If the defendant qualifies for a decrease under subsection (a), the offense level determined prior to the operation of subsection (a) is level **16** or greater, and upon motion of the government stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by **1** additional level. The term "***preparing for trial***" means substantive preparations taken to present the government's case against the defendant to a jury (or judge, in the case of a bench trial) at trial. "Preparing for trial" is ordinarily indicated by actions taken close to trial, such as preparing witnesses for trial, in limine motions, proposed voir dire questions and jury instructions, and witness and exhibit lists. Preparations for pretrial proceedings (such as litigation related to a charging document, discovery motions, and suppression motions) ordinarily are not considered "preparing for trial" under this subsection. Post-conviction matters (such as sentencing objections, appeal waivers, and related issues) are not considered "preparing for trial."

Commentary

Application Notes:

1. In determining whether a defendant qualifies under subsection (a), appropriate considerations include, but are not limited to, the following:

   (A) truthfully admitting the conduct comprising the offense(s) of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct). Note that a defendant is not required to volunteer, or affirmatively admit, relevant conduct beyond the offense of conviction in order to obtain a reduction under subsection (a). A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction under this subsection. A defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility, but the fact that a defendant's challenge is unsuccessful does not necessarily establish that it was either a false denial or frivolous;

   (B) voluntary termination or withdrawal from criminal conduct or associations;

   (C) voluntary payment of restitution prior to adjudication of guilt;

(D) voluntary surrender to authorities promptly after commission of the offense;

(E) voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense;

(F) voluntary resignation from the office or position held during the commission of the offense;

(G) post-offense rehabilitative efforts (*e.g.*, counseling or drug treatment); and

(H) the timeliness of the defendant's conduct in manifesting the acceptance of responsibility.

2. This adjustment is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse. Conviction by trial, however, does not automatically preclude a defendant from consideration for such a reduction. In rare situations a defendant may clearly demonstrate an acceptance of responsibility for his criminal conduct even though he exercises his constitutional right to a trial. This may occur, for example, where a defendant goes to trial to assert and preserve issues that do not relate to factual guilt (*e.g.*, to make a constitutional challenge to a statute or a challenge to the applicability of a statute to his conduct). In each such instance, however, a determination that a defendant has accepted responsibility will be based primarily upon pre-trial statements and conduct.

3. Entry of a plea of guilty prior to the commencement of trial combined with truthfully admitting the conduct comprising the offense of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which he is accountable under §1B1.3 (Relevant Conduct) (*see* Application Note 1(A)), will constitute significant evidence of acceptance of responsibility for the purposes of subsection (a). However, this evidence may be outweighed by conduct of the defendant that is inconsistent with such acceptance of responsibility. A defendant who enters a guilty plea is not entitled to an adjustment under this section as a matter of right.

4. Conduct resulting in an enhancement under §3C1.1 (Obstructing or Impeding the Administration of Justice) ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct. There may, however, be extraordinary cases in which adjustments under both §§3C1.1 and 3E1.1 may apply.

5. The sentencing judge is in a unique position to evaluate a defendant's acceptance of responsibility. For this reason, the determination of the sentencing judge is entitled to great deference on review.

6. Subsection (a) provides a 2-level decrease in offense level. Subsection (b) provides an additional 1-level decrease in offense level for a defendant at offense level 16 or greater prior to the operation of subsection (a) who both qualifies for a decrease under subsection (a) and who has assisted authorities in the investigation or prosecution of his own misconduct by taking the steps set forth in subsection (b). The timeliness of the defendant's acceptance of responsibility is a consideration under both subsections, and is context specific. In general, the conduct qualifying for a decrease in offense level under subsection (b) will occur particularly early in the case. For example, to qualify under subsection (b), the defendant must have notified authorities of his intention to enter a plea of guilty at a sufficiently early point in the process so that the government may avoid preparing for trial and the court may schedule its calendar efficiently.

Because the Government is in the best position to determine whether the defendant has assisted authorities in a manner that avoids preparing for trial, an adjustment under subsection (b) may only be granted upon a formal motion by the Government at the time of sentencing. *See* section 401(g)(2)(B) of Public Law 108–21.

If the government files such a motion, and the court in deciding whether to grant the motion also determines that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, the court should grant the motion.

Background: The reduction of offense level provided by this section recognizes legitimate societal interests. For several reasons, a defendant who clearly demonstrates acceptance of responsibility for his offense by taking, in a timely fashion, the actions listed above (or some equivalent action) is appropriately given a lower offense level than a defendant who has not demonstrated acceptance of responsibility.

Subsection (a) provides a 2-level decrease in offense level. Subsection (b) provides an additional 1-level decrease for a defendant at offense level 16 or greater prior to operation of subsection (a) who both qualifies for a decrease under subsection (a) and has assisted authorities in the investigation or prosecution of his own misconduct by taking the steps specified in subsection (b). Such a defendant has accepted responsibility in a way that ensures the certainty of his just punishment in a timely manner, thereby appropriately meriting an additional reduction. Subsection (b) does not apply, however, to a defendant whose offense level is level 15 or lower prior to application of subsection (a). At offense level 15 or lower, the reduction in the guideline range provided by a 2-level decrease in offense level under subsection (a) (which is a greater proportional reduction in the guideline range than at higher offense levels due to the structure of the Sentencing Table) is adequate for the court to take into account the factors set forth in subsection (b) within the applicable guideline range.

Section 401(g) of Public Law 108–21 directly amended subsection (b), Application Note 6 (including adding the first sentence of the second paragraph of that application note), and the Background Commentary, effective April 30, 2003.

Historical Note	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 46); November 1, 1989 (amendment 258); November 1, 1990 (amendment 351); November 1, 1992 (amendment 459); April 30, 2003 (amendment 649); November 1, 2010 (amendments 746 and 747); November 1, 2013 (amendment 775); November 1, 2018 (amendment 810); November 1, 2023 (amendment 820).

PART F — EARLY DISPOSITIONS PROGRAMS

§3F1.1. Early Disposition Programs (Policy Statement)

Upon motion of the Government, the court may decrease the defendant's offense level 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. The level of the decrease shall be consistent with the authorized program within the filing district and the government motion filed, but shall be not more than **4** levels.

Commentary

Background: This policy statement implements the directive to the Commission in section 401(m)(2)(B) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the "PROTECT Act", Public Law 108–21).

Historical Note	Effective November 1, 2025 (amendment 836). A former §5K3.1 (Early Disposition Programs (Policy Statement)), effective October 27, 2003 (amendment 651), was deleted effective November 1, 2025 (amendment 836).