

## §§2H1.2 – 2H1.5

underlying the count of conviction (*i.e.*, the conduct taken as a whole). Use the alternative base offense level only if it is greater than each of the Chapter Two offense levels determined above. Otherwise, use the Chapter Two offense levels for each of the underlying offenses (with each underlying offense treated as if contained in a separate count of conviction). Then apply subsection (b) to the alternative base offense level, or to the Chapter Two offense levels for each of the underlying offenses, as appropriate.

2. “**Participant**” is defined in the Commentary to §3B1.1 (Aggravating Role).
3. The burning or defacement of a religious symbol with an intent to intimidate shall be deemed to involve the threat of force against a person for the purposes of subsection (a)(3)(A).
4. 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 because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person, an additional 3-level enhancement from §3A1.1(a) will apply. An adjustment from §3A1.1(a) will not apply, however, if a 6-level adjustment from §2H1.1(b) applies. See §3A1.1(c).
5. If subsection (b)(1) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

*Historical Note*

Effective November 1, 1987. Amended effective November 1, 1989 (amendment 303); November 1, 1990 (amendments 313 and 327); November 1, 1991 (amendment 430); November 1, 1995 (amendment 521); November 1, 2000 (amendment 591); November 1, 2010 (amendment 743); November 1, 2023 (amendment 816).

## §§2H1.2 – 2H1.5. [Deleted]

*Historical Note*

Section 2H1.2 (Conspiracy to Interfere with Civil Rights), effective November 1, 1987, and amended effective November 1, 1989 (amendment 303), was deleted by consolidation with §2H1.1 effective November 1, 1990 (amendment 327).  
Section 2H1.3 (Use of Force or Threat of Force to Deny Benefits or Rights in Furtherance of Discrimination; Damage to Religious Real Property), effective November 1, 1987, and amended effective November 1, 1989 (amendment 165), was deleted by consolidation with §2H1.1 effective November 1, 1995 (amendment 521).  
Section 2H1.4 (Interference with Civil Rights Under Color of Law), effective November 1, 1987, amended effective November 1, 1989 (amendment 166), was deleted by consolidation with §2H1.1 effective November 1, 1995 (amendment 521).  
Section 2H1.5 (Other Deprivations of Rights or Benefits in Furtherance of Discrimination), effective November 1, 1987, and amended effective November 1, 1989 (amendment 167) and November 1, 1990 (amendment 328), was deleted by consolidation with §2H1.1 effective November 1, 1995 (amendment 521).

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