

§2A4.1

- (A) the offense level from the Chapter Two offense guideline applicable to that other offense if such offense guideline includes an adjustment for kidnapping, abduction, or unlawful restraint, or otherwise takes such conduct into account; or
- (B) 4 plus the offense level from the offense guideline applicable to that other offense, but in no event greater than level 43, in any other case,

if the resulting offense level is greater than that determined above.

(c) Cross Reference

- (1) If the victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder).

Commentary

Statutory Provisions: 18 U.S.C. §§ 115(b)(2), 351(b), (d), 1201, 1203, 1751(b), 2340A. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

- 1. For purposes of this guideline—

Definitions of “*serious bodily injury*” and “*permanent or life-threatening bodily injury*” are found in the Commentary to §1B1.1 (Application Instructions). However, for purposes of this guideline, “*serious bodily injury*” means conduct other than criminal sexual abuse, which is taken into account in the specific offense characteristic under subsection (b)(5).

- 2. “*A dangerous weapon was used*” means that a firearm was discharged, or a “firearm” or “dangerous weapon” was “otherwise used” (as defined in the Commentary to §1B1.1 (Application Instructions)).
- 3. “*Sexually exploited*” includes offenses set forth in 18 U.S.C. §§ 2241–2244, 2251, and 2421–2423.
- 4. In the case of a conspiracy, attempt, or solicitation to kidnap, §2X1.1 (Attempt, Solicitation, or Conspiracy) requires that the court apply any adjustment that can be determined with reasonable certainty. Therefore, for example, if an offense involved conspiracy to kidnap for the purpose of committing murder, subsection (b)(7) would reference first degree murder (resulting in an offense level of 43, subject to a possible 3-level reduction under §2X1.1(b)).

Similarly, for example, if an offense involved a kidnapping during which a participant attempted to murder the victim under circumstances that would have constituted first degree murder had death occurred, the offense referenced under subsection (b)(7) would be the offense of first degree murder.