

underpinning the new guideline. A conforming amendment is proposed for the heading of Part A of Chapter Three to accommodate the expanding scope of that part.

An issue for comment follows the proposed amendment requesting comment regarding whether the adjustment for use of body armor should be defendant based or relevant conduct based.

Proposed Amendment

Chapter Three, Part A, is amended in the heading by striking "VICTIM-RELATED" and inserting "GENERAL".

Chapter Three, Part A, is amended by adding at the end the following new guideline:

"§ 3A1.5. Use of Body Armor in Drug Trafficking Offenses and Crimes of Violence

If the offense (1) was a drug trafficking crime or a crime of violence; and (2) involved the use of body armor, increase by [2][4][6] levels.

Commentary

Application Note:

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).

Background: This section 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, Public Law. 107–273).".

Issue for Comment

The proposed amendment provides an increase if the offense was a drug trafficking crime or a crime of violence and involved the use of body armor. The Commission requests comment regarding whether the adjustment for body armor should be based on all conduct within the scope of relevant conduct, as proposed, or based on the actions of only the defendant; *i.e.*, should the enhancement apply only if the defendant used or directed the use of body armor, rather than if the offense generally involved the use of body

armor? Alternatively, should the enhancement provide a two level increase if the offense generally involved the use of body armor and a heightened increase (*e.g.*, 4 or 6 levels) if the defendant used or directed the use of body armor? If so, what should be the extent of the increase?

4. Oxycodone

Synopsis of Proposed Amendment

This proposed amendment responds to proportionality issues in the sentencing of oxycodone trafficking. Oxycodone is an opium alkaloid found in certain prescription pain relievers such as Percocet and Oxycontin. This prescription drug is generally sold in pill form, and the sentencing guidelines currently establish penalties for oxycodone trafficking based on the entire weight of the pill. The proportionality issues arise because of the formulations of the different medicines and because different amounts of oxycodone are found in pills of identical weight.

As an example of the first issue, the drug Percocet contains the non-prescription pain reliever acetaminophen in addition to oxycodone. The weight of the oxycodone component accounts for a very small proportion of the total weight of the pill. This is in contrast to Oxycontin in which the weight of the oxycodone accounts for a substantially greater proportion of the weight of the pill. For example, a Percocet pill containing five milligrams of oxycodone weighs approximately 550 milligrams (oxycodone accounting for 0.9 percent of the total weight of the pill) while the weight of an Oxycontin pill containing 10 milligrams of oxycodone is approximately 135 milligrams (oxycodone accounting for 7.4 percent of the total weight). Consequently, at sentencing, the same five year sentence results from the trafficking of 364 Percocet pills or 1,481 Oxycontin pills. Additionally, the total amount of the narcotic oxycodone involved in this example is vastly different depending on the drug. The 364 Percocets produce 1.6 grams of actual oxycodone while the 1,481 Oxycontin pills produce 14.8 grams of oxycodone.

The second issue results from differences in the formulation of Oxycontin. Three different amounts of oxycodone (10, 20, and 40 milligrams) are contained in pills of identical weight (135 milligrams). As a result, an individual trafficking in a particular number of Oxycontin pills would receive the same sentence regardless of

the amount of oxycodone contained in the pills.

To remedy these proportionality issues it is proposed that sentences for oxycodone offenses be calculated using the weight of the actual oxycodone instead of the current mechanism of calculating the weight of the entire pill. Currently, the Drug Equivalency Tables in § 2D1.1 equate 1 gram of oxycodone mixture to 500 grams of marihuana. The proposal would equate 1 gram of actual oxycodone to 6,700 grams of marihuana. This equivalency would keep penalties for offenses involving 10 milligrams of Oxycontin identical to current levels but would increase penalties for all other doses of Oxycontin. At the same time, penalties for Percocet would be substantially reduced.

Proposed Amendment

Section 2D1.1 is amended in subdivision (B) of the "Notes to Drug Quantity Table" by adding at the end the following new paragraph:

"The term 'Oxycodone (actual)' refers to the weight of the controlled substance, itself, contained in the pill or capsule."

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 9 by striking "or methamphetamine" and inserting "methamphetamine, or oxycodone".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the Drug Equivalency Tables in the subdivision captioned "Schedule I or II Opiates" by striking "1 gm of Oxycodone = 500 gm of marihuana" and inserting "1 gm of Oxycodone (actual) = 6700 gm of marihuana".

5. The 21st Century Department of Justice Appropriations Authorization Act

Issue for Comment

In December 2002, the Commission published general issues for comment (*see* 67 FR 77532) on implementation of directives in the 21st Century Department of Justice Appropriations Authorization Act (the "Act"), Pub. L. 107–273. The Commission seeks additional public comment on the issues pertaining to section 11008(e) of the Act, as set forth herein. Section 11008(e) directs the Commission as follows:

"(1) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the commission, if appropriate, to provide an appropriate sentencing