

program to prevent and detect violations of law currently is a three-point reduction. Should the extent of that reduction be increased to four points given the heightened requirements for an effective program to prevent and detect violations of law under the proposed amendment?

4. Generally, are there factors or considerations that could be incorporated into Chapter Eight (Sentencing of Organizations), particularly § 8C1.2, to encourage small and mid-size organizations to develop and maintain compliance programs?

### **Proposed Amendment 3: Body Armor**

Synopsis of Proposed Amendment: This proposed amendment implements the new offense at 18 U.S.C. 931, which was created by section 11009 of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273. Section 931 of title 18, United States Code, prohibits individuals with a prior state or federal felony conviction for a crime of violence from purchasing, owning, or possessing body armor. The statutory maximum term of imprisonment for 18 U.S.C. 931 is three years.

The proposed amendment provides a new guideline at § 2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons) because there is no other guideline that covers conduct sufficiently analogous to a violation of 18 U.S.C. 931. Although § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) covers felons in possession of a firearm, the alternative base offense levels and specific offense characteristics of that guideline address offenses involving the more serious conduct of weapon possession or trafficking. The proposed new guideline provides a base offense level of [8][10][12].

The proposed amendment also (A) provides a specific offense characteristic for cases in which the body armor was possessed in connection with [a “crime of violence” or “drug trafficking crime”][another offense]; and (B) adds an application note to § 3B1.5 (Use of Body Armor in Drug Trafficking Crimes and Crimes of Violence) that addresses the interaction between the two guidelines.

Proposed Amendment: Chapter Two, Part K, Subpart 2, is amended by adding at the end the following new guideline and accompanying commentary:

“§ 2K2.6 Possessing, Purchasing, or Owning Body Armor by Violent Felons

(a) Base Offense Level: [8][10][2].

(b) Specific Offense Characteristic

(1) If the defendant used the body armor in connection with [a crime of violence or drug trafficking crime] [another offense], increase by [4] levels.

### **Commentary**

*Statutory Provision:* 18 U.S.C. 931.

*Application Notes:*

1. Definitions.—For purposes of this guideline:

‘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).

2. Application of Subsection (b)(1).—Consistent with § 1B1.3 (Relevant Conduct), the term “defendant”, for purposes of subdivision (b)(1), 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.”.

The Commentary to § 3B1.5 captioned “Application Notes” is amended by adding at the end the following new note:

“3. If the defendant is convicted of 18 U.S.C. 931, do not apply this enhancement with respect to that offense of conviction. However, if, in addition to the count of conviction under 18 U.S.C. 931, the defendant is convicted of a crime of violence or a drug trafficking crime and the body armor was used in connection with that offense, this enhancement may be applied with respect to that crime of violence or drug trafficking crime.”.

### **Proposed Amendment 4: Public Corruption**

Synopsis of Proposed Amendment: This proposed amendment addresses offenses involving public corruption. The proposed amendment consolidates §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) and 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions). Also, the proposed amendment consolidates §§ 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) and 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or

Procuring Bank Loan, or Discount of Commercial Paper). This proposed amendment aims at moving away from a guideline structure that relies heavily on monetary harm to determine the severity of the offense. While the proposed amendment generally provides increased punishment for all bribery and gratuity offenses, it also provides enhancements in both consolidated guidelines to address some of the aggravating factors that are involved in public corruption cases.

### *Base Offense Level Increases*

The proposed amendment increases the base offense level for all bribery and gratuity cases. Currently, bribery offenses sentenced under § 2C1.1 or § 2C1.7 begin with a base offense level of level 10. The proposed consolidated guideline at § 2C1.1 would increase the base offense level for bribery cases to level [12]. With respect to gratuity offenses, § 2C1.2 and § 2C1.6 currently have a base offense level of level 7. The proposed consolidated guideline at § 2C1.2 increases the base offense level to level [9]. The proposed increases in the base offense levels for bribery and gratuity cases will ensure continued proportionality between these cases and those sentenced under §§ 2B1.1 (Theft, Fraud, and Property Destruction) and 2J1.2 (Obstruction of Justice).

### *18 U.S.C. §§ 1341–1343 Offenses*

Under a consolidated § 2C1.1, 18 U.S.C. 1341–1343 offenses, which are currently sentenced under § 2C1.7, would be referenced in Appendix A (Statutory Index) to § 2C1.1 provided that the offense was a fraud involving the deprivation of the intangible right to honest services, as set forth in the proposed parenthetical in the Commentary captioned “Statutory Provisions”. The proposed amendment also builds on Application Note 12 in § 2B1.1 (Theft, Property Destruction, and Fraud) which deals with application of the cross references in § 2B1.1(c). The note currently explains that in cases in which broad fraud statutes are used primarily for jurisdictional purposes, the offense may be covered more appropriately by another guideline. The proposed amendment adds fraud involving the deprivation of the intangible right to honest services as an example of an offense more aptly covered by § 2C1.1. The parenthetical and the expansion of Application Note 14 address concerns expressed by the Public Integrity Section of Department of Justice that 18 U.S.C. 1341–1343 offenses be sentenced under § 2C1.1 and not under the fraud guideline.