

established that an entity the defendant controlled was a party to the prior proceeding that resulted in the official judicial or administrative action, and the defendant had knowledge of that prior decree or order, this enhancement applies even if the defendant was not a specifically named party in that prior case. For example, a defendant whose business previously was enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, is subject to this enhancement. This enhancement does not apply if the same conduct resulted in an enhancement pursuant to a provision found elsewhere in the guidelines (e.g., a violation of a condition of release addressed in § 2J1.7 (Commission of Offense While on Release) or a violation of probation addressed in § 4A1.1 (Criminal History Category)).

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 6 in subdivision (E)(i) by inserting "(i)" after "(b)(7)(A)" each place it appears; and in subdivision (E)(ii) by striking "(b)(7)(B) and (C)" and inserting "(b)(7)(A)(ii) and (B)"; and by striking "(b)(7)(B) or (C)" and inserting "(b)(7)(A)(ii) or (B)".

(B) Expanding Special Rule for Theft of Mail To Include Privately Owned Boxes

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 4 by striking subdivision (B)(ii) in its entirety and inserting:

"(ii) Special Rule.—A case described in subdivision (B)(i) of this note that involved a relay box, a collection box, a delivery vehicle, a satchel, a cart, a housing unit cluster box, an apartment box, or any other thing used or designed for use in the conveyance of [Option 1: a large volume of] United States mail [Option 2: to multiple addresses], whether such thing is privately owned or owned by the United States Postal Service, shall be considered to have involved 50 or more victims."

(C) SAFE ID Act

Section 2B1.1(b)(9) is amended by inserting "(i)" before "device-making"; by inserting "; or (ii) authentication feature" after "equipment"; by inserting "(i)" before "unauthorized access"; and by inserting "; (ii) or authentication feature" after "access device".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 8(A) by inserting before the paragraph that begins "Counterfeit access device" the following paragraph: " 'Authentication feature' has the meaning given that term in 18 U.S.C. § 1028(d)(1). "

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 8(A) in the paragraph that begins " 'Means of identification' " by striking "(4)" and inserting "(7)".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 8(B) by inserting "Authentication Features and" before "Identification Documents"; and by inserting "authentication features" after "involving".

The Commentary to § 2B1.1 captioned "Background" is amended in the eleventh paragraph by inserting "(i)" after "(A)"; and by inserting "(i)" after "(B)".

(D) Use of Minor To Commit Crimes of Violence (PROTECT Act)

Chapter Two, Part X is amended by adding at the end the following new subpart:

"6. OFFENSES INVOLVING USE OF A MINOR IN A CRIME OF VIOLENCE"

§ 2X6.1 Use of a Minor in a Crime of Violence

(a) Base Offense Level: [2][4][6] plus the offense level from the guideline applicable to the underlying offense.

Commentary

Statutory Provision: 18 U.S.C. 25.

Application Notes:

1. Definitions.—For purposes of this guideline, 'underlying offense' means the offense of which the defendant is convicted of using a minor. Apply the base offense level plus any applicable specific offense characteristic that were known, or reasonably should have been known, by the defendant. See Application Note 10 of the Commentary to § 1B1.3 (Relevant Conduct).

2. Non-applicability of § 3B1.4.—The base offense level in subsection (a) incorporates the use of a minor in the offense; accordingly, do not apply the adjustment in § 3B1.4 (Using a Minor to Commit a Crime).

3. Grouping of Multiple Counts.—In a case in which the defendant is convicted under 18 U.S.C. 25 and the underlying crime of violence, the counts shall be grouped pursuant to subsection (c) of § 3D1.2 (Groups of Closely Related Counts)."

Appendix A is amended by inserting after the line referenced to 18 U.S.C. 4 the following new line:

"18 U.S.C. 25 2X6.1".

Issue for Comment: The proposed new guideline for 18 U.S.C. 25 offenses directs the court to increase by [two][four][six] levels the offense level from the guideline applicable to the offense of which the defendant is convicted of using a minor. The statutory penalties for the new offense

are as follows: For the first conviction, the defendant is "subject to twice the maximum term of imprisonment * * * that would otherwise be authorized for the offense", and for each subsequent conviction, the defendant is "subject to 3 times the maximum term of imprisonment * * * that would otherwise be authorized for the offense". A base offense level of [2] (plus the offense level from the guideline applicable to the underlying offense), however, would be consistent with the offense level increase currently provided by § 3B1.4 (Using a Minor to Commit a Crime). Notwithstanding the current increase in § 3B1.4, should the Commission provide a base offense level increase of [four] or [six] levels for proposed § 2X6.1? If so, should the Commission also amend § 3B1.4 to provide a greater offense level adjustment in order to maintain consistent penalties between § 3B1.4 and the proposed new guideline? Should the Commission amend § 3B1.4 to conform the definition of "used or attempt to use" ("includes directing, commanding, encouraging, intimidating, counseling, training, procuring, recruiting, or soliciting") to the definition of "uses" in 18 U.S.C. 25(a)(3) (defined as "employs, hires, persuades, induces, entices, or coerces")? Finally, are there any specific offense characteristics that the Commission should consider providing in the new guideline?

(E) Correcting Typographical Error in § 3C1.1

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 5(b) by striking "3(g)" and inserting "4(g)".

(F) "Crime of Violence" Definition in § 4B1.2

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 1 in the paragraph that begins " 'Crime of violence' includes" by inserting "statutory rape, sexual abuse of a minor," after "forcible sex offenses,".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 1 in the paragraph that begins " 'Crime of violence' does not" by striking ". Where" and inserting " , unless the possession was of a firearm of a type described in 26 U.S.C. 5845(a). If ".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 1 by inserting before the paragraph that begins "Unlawfully possessing a prohibited flask" the following paragraph: