

infliction of death or serious bodily injury, or a forcible sexual offense; (B) the defendant's prior criminal history includes one or more sentences for conduct that is similar to the instant offense; and (C) the provisions of §§ 4A1.1 (Career Offender) or 4A1.4 (Armed Career Criminal) do not apply."

*Additional Issue for Comment:* The Commission invites comment on whether, as an alternative to the proposed amendment, it should amend the guidelines in Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse) to provide higher offense levels if the defendant has a prior conviction in federal or state court for aggravated sexual abuse, sexual abuse, or aggravated sexual contact, and, if so, how such a provision might best be drafted to account for the wide variations in offenses of conviction that may involve such underlying conduct. The Commission also invites comment on the appropriate amount of any such increase in offense levels. Note that in circumstances in which the defendant has two or more prior felony convictions of either a crime of violence (which includes forcible sex offenses) or a controlled substance offense, § 4B1.1 (Career Offender) will provide a sentence at or near the statutory maximum for the current offense.

*Chapter Two, Part B (Offenses Involving Property)*

*Chapter Two, Part F (Offenses Involving Fraud Or Deceit)*

8. *Synopsis of Proposed Amendment:* Section 110512 of the Violent Crime Control and Law Enforcement Act of 1994 directs the Commission to "amend its sentencing guidelines to provide an appropriate enhancement of the punishment for a defendant convicted of a felony under chapter 25 (Counterfeiting and Forgery) of title 18, United States Code (sections 471-513), if the defendant used or carried a firearm (as defined in section 921(a)(3) of title 18, United States Code) during and in relation to the felony." The vast majority of offenses in chapter 25 are covered by §§ 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) and 2F1.1 (Fraud and Deceit; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). Neither § 2B5.1 nor § 2F1.1 provides an adjustment for possession of a firearm during and in relation to a felony. Commission data suggest that the frequency of firearm possession in such cases is very low.

Two options are shown. Option 1 amends §§ 2B5.1 and 2F1.1 to provide

an adjustment for using or carrying a weapon in connection with the offense. Option 2 amends §§ 2B5.1 and 2F1.1 to recommend an upward departure in such circumstances.

*Proposed Amendment:* [Option 1: Section 2B5.1(b) is amended by inserting the following additional subdivision:

"(3) If a dangerous weapon (including a firearm) was possessed in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 13, increase to level 13."

The Commentary to § 2B5.1 captioned "Background" is amended by inserting the following additional paragraph as the second paragraph:

"Subsection (b)(3) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103-322."

Section 2F1.1(b)(4) is amended by inserting "(A)" immediately after "involved" and by inserting "or (B) possession of a dangerous weapon (including a firearm) in connection with the offense," immediately after "injury,".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting the following additional paragraph as the next to the last paragraph:

"Subsection (b)(4)(B) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103-322.".]

[Option 2: The Commentary to § 2B5.1 captioned "Application Notes" is amended by inserting the following additional Note:

"4. If a dangerous weapon (including a firearm) was possessed in connection with the offense, an upward departure may be warranted."

The Commentary to § 2F1.1 captioned "Application Notes" is amended by inserting the following additional Note:

"19. If a dangerous weapon (including a firearm) was possessed in connection with the offense, an upward departure may be warranted.".]

*Additional Issue for Comment:* The Commission, at the request of the Department of Justice, invites comment on whether the form of any enhancement for a dangerous weapon should be that used in § 2B3.1 (Robbery) or that used in Chapter Two, Part D (Offenses Involving Drugs).

*Chapter Two, Part D (Offenses Involving Drugs)*

9. *Synopsis of Proposed Amendment:* Section 60008 of the Violent Crime Control and Law Enforcement Act of 1994 creates a new offense codified at 18 U.S.C. § 36 that makes it unlawful to fire a weapon into a group of two or

more persons in furtherance of, or to escape detection of, a major drug offense with intent to intimidate, harass, injure, or maim, and in the course of such conduct cause grave risk to any human life or kill any person. A "major drug offense" is defined to mean a continuing criminal enterprise, 21 U.S.C. § 848(c), a drug distribution conspiracy under 21 U.S.C. § 846 or § 963, or an offense involving large quantities of drugs that is punishable under 21 U.S.C. § 841(b)(1)(A) or § 960(b)(1).

Two options are shown. Option 1 references this offense to § 2D1.1 in the Statutory Index. Option 2, in addition, references the applicable Chapter Two, Part A, offenses.

*Proposed Amendment:* [Option 1: Appendix A (Statutory Index) is amended by inserting the following in the appropriate place by title and section:

"18 U.S.C. § 36 2D1.1".]

[Option 2: Appendix A (Statutory Index) is amended by inserting the following in the appropriate place by title and section:

"18 U.S.C. § 36 2A1.1, 2A1.2, 2A2.1, 2A2.2, 2D1.1".]

*Additional Issue for Comment:* The Commission, at the request of the Department of Justice, invites comment as to whether there should be an enhancement under § 2D1.1 for reckless endangerment by firing a weapon into a group of two or more persons in a circumstance set forth in section 60008 when no injury occurs.

10(A). *Issue for Comment:* Section 90101 of the Violent Crime Control and Law Enforcement Act of 1994 amends 18 U.S.C. § 1791 (providing or possessing contraband in prison) to provide four different maximum penalties depending on the type of controlled substance. The Commission invites comment on the appropriate treatment of offenses under 18 U.S.C. § 1791 involving drug trafficking in correctional facilities. Specifically, should the enhanced offense level in the cross reference in § 2P1.2 (two levels plus the offense level from § 2D1.1) be expanded to apply to all drug trafficking offenses under 18 U.S.C. § 1791? Should the minimum offense level of 26 in this cross reference be applied to methamphetamine offenses to reflect that such offenses now have the same 20-year statutory maximum penalty as the other controlled substance distribution offenses to which this cross reference applies? The Commission also invites comment on the appropriate offense levels under § 2P1.2 for offenses involving the simple possession of controlled substances that occur in correctional facilities.