

Section 2L1.1(b) is amended by inserting the following additional subdivision:

“(4) If any person sustained bodily injury, increase the offense level according to the seriousness of the injury:

Degree of bodily Injury	Increase in level
(A) Bodily Injury .....	Add 2.
(B) Serious Bodily Injury .....	Add 4.
(C) Permanent or Life-Threatening Bodily Injury.	Add 6.
(D) If the degree of injury is between that specified in subdivisions (A) and (B).	Add 3.
(E) If the degree of injury is between that specified in subdivisions (B) and (C).	Add 5.”.

The Commentary to § 2L1.1 captioned “Application Notes” is amended in Note 5 by deleting “dangerous or inhumane treatment, death or bodily injury.”.

(D). *Synopsis of Proposed Amendment:* This proposed amendment, published at the request of the Department of Justice, suggests an additional ground for an upward departure for certain cases under § 2L1.2.

*Proposed Amendment:* The Commentary to § 2L1.2 captioned “Application Notes” is amended in Note 2 by deleting “a sentence at or near the maximum of the applicable guideline range” and inserting “an upward departure” in lieu thereof.

23(A). *Issue for Comment:* Section 130009 of the Violent Crime Control and Law Enforcement Act of 1994 increases the statutory maximum penalties for passport and visa offenses to ten years. Previously, these offenses had statutory maximum penalties of one year or five years. It also provides an increased statutory maximum penalty of 15 years if the offense is committed to facilitate a drug trafficking crime, and 20 years if the offense is committed to facilitate an act of international terrorism.

Considering the existing policy statements at §§ 5K2.9 and 5K2.15 suggesting an upward departure in cases where the offense was committed to facilitate another offense or in furtherance of a terroristic action, the Commission invites comment on whether, and if so, how, the guidelines should be amended with respect to passport and visa offenses.

(B). *Synopsis of Proposed Amendment:* This proposed amendment, published at the request of the Department of Justice, consolidates §§ 2L2.1 and 2L2.2 and provides additional enhancements if the offense

was committed to facilitate certain unlawful conduct.

*Proposed Amendment:* Sections 2L2.1 and 2L2.2 are deleted in their entirety and the following is inserted in lieu thereof.

“§ 2L2.1. Fraudulently Issuing, Acquiring or Improperly Using Passports or Visas; False Statements in Respect to Passports and Visas; Forging, Counterfeiting or Altering Passports or Visas; Trafficking in International Travel Documents, or Birth Certificates, Driver Licenses or Other Documents to Fraudulently Obtain Issuance of Passports or Visas; Use of Passports or Visas to Facilitate Narcotics Trafficking or International Terrorism.

- (a) Base Offense Level:
  - (1) 26, if the offense was committed to facilitate an act of international terrorism.
  - (2) 20, if the offense was committed to facilitate a drug trafficking crime;
  - (3) 13, otherwise.
- (b) Specific Offense Characteristics
  - (1) If the offense involves six or more documents or passports, increase as follows:

Number of documents	Passports increase in level
(A) 6–24 .....	Add 2.
(B) 25–99 .....	Add 4.
(C) 100 or more .....	Add 6.

(2) If the defendant is an unlawful alien who has been previously deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by 2 levels.

(3) If the offense was committed to facilitate racketeering activity, increase by 3 levels.

(4) If the offense was committed to facilitate unlawful flight from justice, increase by 3 levels.

(5) If the defendant committed the offense other than for profit (except as provided in paragraph (3) or (4)), decrease by 3 levels.

**Commentary**

Statutory Provisions: 8 U.S.C. §§ 1160(b)(7)(A), 1185(a)(3), (4), (5), 1325(b), (c); 18 U.S.C. §§ 911, 1015, 1028, 1423–1427, 1541–1544, 1546, 1547.

**Application Notes:**

1. Where it is established that multiple documents are part of a set intended for use by one person, treat the documents in the set as one document for the purposes of subsection (b).

2. If the offense involved possession of a dangerous weapon, an upward departure may be warranted.

3. ‘Racketeering activity’ is defined at 18 U.S.C. § 1961.

4. ‘Drug trafficking crime’ is defined at 18 U.S.C. § 929(a).

5. ‘International terrorism’ is defined at 18 U.S.C. § 2331.

6. If two or more factors warranting an upward departure as enumerated in subsection (b) apply, only the paragraph specifying the highest level will be used.

7. ‘For profit’ means for financial gain or commercial advantage.

8. If the offense was committed only for the purpose of concealing age, a downward departure may be warranted.

9. For the purposes of Chapter Three, Part D (Multiple Counts), a conviction for unlawfully entering or remaining in the United States (§ 2L1.2) arising from the same course of conduct is treated as a closely related count, and is therefore grouped with an offense covered by this guideline.”.

*Chapter Three (Adjustments)*

*Chapter Five, Part K (Departures)*

24. *Issue for Comment:* Section 120004 of the Violent Crime Control and Law Enforcement Act of 1994 directs the Commission to provide an appropriate enhancement for any felony that involves or is intended to promote international terrorism (unless such involvement or intent is itself an element of the crime). Considering the existing policy statement in § 5K2.15 recommending an upward departure in such cases, the Commission invites comment on whether, and if so how, the guidelines should be amended to address this directive appropriately. For example, should the Commission add an adjustment to Chapter Three that would apply to all Chapter Two offenses and that would prescribe a specific increase in offense level if the offense involved or was intended to promote terrorism? If so, what level of enhancement would be appropriate? Or, should the Commission amend § 4B1.1 (Career Offender) to enhance the sentences of such defendants under this section as if they were career offenders?

25(A). *Issue for Comment:* Section 140008 of the Violent Crime Control and Law Enforcement Act of 1994 directs the Commission to provide an enhancement applicable to a defendant 21 or older who involved a person under 18 in the offense. The directive further specifies that the Commission consider the severity of the crime, the number of minors used, the relevance of the proximity in age between the offender and the minor, and the fact that involving a minor in a crime of violence is often more serious than involving a minor in a drug offense (for which the Commission has already provided a