

Section 40112 of the Violent Crime Control and Law Enforcement Act of 1994 directs the Commission to conduct a study and consider the adequacy of the guidelines for sexual offenses with respect to a number of factors. The provision also requires the preparation of a report to Congress analyzing federal rape sentences and obtaining comment from independent experts. See Report to Congress: Analysis of Penalties for Federal Rape Cases (March 13, 1995). The Commission found that, in general, the current guidelines provide appropriate penalties for these offenses. This amendment strengthens § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) in one respect by expressly listing as a basis for an upward departure the fact that a victim was sexually abused by more than one participant.

3. Amendment: Section 2B1.1(b) is amended by deleting subdivision (2); and by renumbering the remaining subdivisions, and any references thereto, accordingly.

Section 2B1.1 is amended by inserting the following additional subsection:

“(c) Cross Reference

(1) If (A) a firearm, destructive device, explosive material, or controlled substance was taken, or the taking of such item was an object of the offense, or (B) the stolen property received, transported, transferred, transmitted, or possessed was a firearm, destructive device, explosive material, or controlled substance, apply § 2D1.1, § 2D2.1, § 2K1.3, or § 2K2.1, as appropriate, if the resulting offense level is greater than that determined above.”

The Commentary to § 2B1.1 captioned “Background” is amended by deleting the fourth paragraph.

Reason for Amendment: This amendment addresses an inconsistency in guideline penalties between theft offenses involving the taking of firearms or controlled substances that are sentenced under § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property) and similar offenses sentenced under § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy), § 2D2.1 (Unlawful Possession; Attempt or Conspiracy), § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), or § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition). It accomplishes this by providing a cross

reference in § 2B1.1 directing the application of § 2D1.1, § 2D2.1, § 2K1.3, or § 2K2.1, as appropriate, if the resulting offense level is greater.

4. Amendment: 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 “Application Notes” is amended in Note 2 by deleting “2B5.2” and inserting in lieu thereof “2F1.1”.

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 sixth paragraph:

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

Reason for 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 for a defendant convicted of a felony under Chapter 25 (Counterfeiting and Forgery) of title 18, United States Code, if the defendant used or carried a firearm during and in relation to the offense. This amendment implements this directive in a somewhat broader form. In addition, it corrects an outdated reference in the Commentary to § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States).

5. Amendment: Section 2D1.1(b) is amended by deleting subdivision (1); by renumbering subdivision (2) as (3); and by inserting:

“(1) (Apply the greatest):

(A) If the defendant discharged a firearm, increase by 6 levels, but if the resulting offense level is less than level 24, increase to level 24.

(B) If the defendant brandished or otherwise used a dangerous weapon (including a firearm), increase by 4

levels, but if the resulting offense level is less than level 19, increase to level 19.

(C) If a dangerous weapon (including a firearm) was possessed, increase by 3 levels, but if the dangerous weapon was a firearm and the resulting offense level is less than level 18, increase to level 18.

(2) If the defendant possessed a firearm described in 26 U.S.C. 5845(a) or 18 U.S.C. 921(a)(30), increase by 2 levels.”

Section 2D1.1(c)(1) is amended by deleting “1.5 KG or more of Cocaine Base;”.

Section 2D1.1(c)(2) is amended by deleting “At least 500 G but less than 1.5 KG of Cocaine Base;”.

Section 2D1.1(c)(3) is amended by deleting “At least 150 G but less than 500 G of Cocaine Base;”.

Section 2D1.1(c)(4) is amended by deleting “At least 50 G but less than 150 G of Cocaine Base;”.

Section 2D1.1(c)(5) is amended by deleting “At least 35 G but less than 50 G of Cocaine Base;”.

Section 2D1.1(c)(6) is amended by deleting “At least 20 G but less than 35 G of Cocaine Base;”.

Section 2D1.1(c)(7) is amended by deleting “At least 5 G but less than 20 G of Cocaine Base;”.

Section 2D1.1(c)(8) is amended by deleting “At least 4 G but less than 5 G of Cocaine Base;”.

Section 2D1.1(c)(9) is amended by deleting “At least 3 G but less than 4 G of Cocaine Base;”.

Section 2D1.1(c)(10) is amended by deleting “At least 2 G but less than 3 G of Cocaine Base;”.

Section 2D1.1(c)(11) is amended by deleting “At least 1 G but less than 2 G of Cocaine Base;”.

Section 2D1.1(c)(12) is amended by deleting “At least 500 MG but less than 1 G of Cocaine Base;”.

Section 2D1.1(c)(13) is amended by deleting “At least 250 MG but less than 500 MG of Cocaine Base;”.

Section 2D1.1(c)(14) is amended by deleting “Less than 250 MG of Cocaine Base;”.

Section 2D1.1(c) is amended by deleting:

“‘Cocaine base,’ for the purposes of this guideline, means ‘crack.’ ‘Crack’ is the street name for a form of cocaine base, usually prepared by processing cocaine hydrochloride and sodium bicarbonate, and usually appearing in a lumpy, rocklike form.”,

and inserting in lieu thereof:

“‘Cocaine,’ for the purposes of this guideline, includes cocaine hydrochloride, cocaine base, and crack cocaine.”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in