

PROPOSED AMENDMENT #2: MISCELLANEOUS COMMENTARY AND STATUTORY INDEX AMENDMENTS

(A) Proposed Amendment to Commentary in Contempt Guideline: This amendment amends the commentary in the contempt guideline, §2J1.1, pertaining to offenses under 18 U.S.C. § 228 involving the willful failure to pay court-ordered child support. The commentary currently notes that the contempt guideline applies to second and subsequent offenses under 18 U.S.C. § 228 because a first offense is a Class B misdemeanor not covered by the guidelines.

However, in the Deadbeat Parents Punishment Act of 1998, Pub. L. 105–187, Congress amended 18 U.S.C. § 228 to add two new violations of that section (found at 18 U.S.C. § 228(a)(2) and (3)) and to make even the first offense under those new violations a felony that would be subject to the guidelines.¹ Accordingly, the commentary in the contempt guideline should be amended to reflect that it is only the first offense under a violation of 18 U.S.C. § 228(a)(1) that is not covered by the guideline.

Proposed Amendment:

§2J1.1. Contempt

Apply §2X5.1 (Other Offenses).

Commentary

* * *

Application Notes:

* * *

2. *For offenses involving the willful failure to pay court-ordered child support (violations of 18 U.S.C. § 228), the most analogous guideline is §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft). The amount of the loss is the amount of child support that the defendant willfully failed to pay. Note: This guideline applies to second and subsequent offenses under 18*

¹Under 18 U.S.C. § 228, as amended, the offense and penalty structure is as follows. It is a Class B misdemeanor (with a maximum penalty of six months imprisonment) only in the case of a first offense under subsection (a)(1) of willfully failing to pay a child support obligation for a child who resides in another State if the child support obligation has remained unpaid for more than 1 year or is greater than \$5,000. It is a felony punishable by up to 2 years' imprisonment to commit the following: (1) second and subsequent offenses of such an offense under subsection (a)(1); (2) traveling in interstate commerce to evade such a child support obligation, in violation of subsection (a)(2); or (3) willfully failing to pay a child support obligation for a child who resides in another State if the child support obligation has remained unpaid for more than 2 years or is greater than \$10,000, in violation of subsection (a)(3).

U.S.C. § 228(a)(1) and to any offense under 18 U.S.C. § 228(a)(2) and (3). A first offense under 18 U.S.C. § 228(a)(1) is not covered by this guideline because it is a Class B misdemeanor.

(B) Proposed Amendment to the Guideline for Payment of Unauthorized Compensation:

This amendment updates and corrects the background commentary of §2C1.4, the guideline that covers offenses involving unlawful compensation for federal employees and bank officials. Currently the background commentary states that 18 U.S.C. § 209 (involving the unlawful supplementation of the salary of various federal employees) and 18 U.S.C. §1909 (prohibiting bank examiners from performing any service for compensation for banks or bank officials) both are misdemeanors for which the maximum term of imprisonment is one year. In fact, however, as a result of enacted legislation, the maximum term of imprisonment for violations of 18 U.S.C. § 209 is now five years if the conduct is willful. The amendment proposes to delete the sentence of the commentary that describes the maximum term of imprisonment for these offenses. An issue for comment is also proposed regarding whether the guideline offense levels should be increased in view of the increase in the maximum term of imprisonment for violations of 18 U.S.C. § 209.

Proposed Amendment:

§2C1.4. Payment or Receipt of Unauthorized Compensation

* * *

Commentary

* * *

Background: Violations of 18 U.S.C. § 209 involve the unlawful supplementation of salary of various federal employees. 18 U.S.C. § 1909 prohibits bank examiners from performing any service for compensation for banks or bank officials. ~~Both offenses are misdemeanors for which the maximum term of imprisonment authorized by statute is one year.~~

Proposed Issue for Comment: As a result of enacted legislation, the maximum term of imprisonment for violations of 18 U.S.C. § 209 is now five years if the conduct is willful. Before that change, the maximum term of imprisonment for any violation of 18 U.S.C. § 209 was one year. The Commission invites comment on whether, in view of the increased maximum term of imprisonment for violations of 18 U.S.C. § 209, the guideline offense levels in §2C1.4 (Payment or Receipt of Unauthorized Compensation) should be increased, and, if so, by what amount.

(C) Proposed Amendments to the Statutory Index: This amendment updates the Statutory Index by adding a reference to a recently created offense (pertaining to the use of a computer to commit certain child pornography offenses) and by correcting the references to a number of firearms offenses in response to congressional redesignations of those offenses.

Specifically, two years ago, Congress enacted 18 U.S.C. § 2252A, which makes it unlawful to traffic in, receive, or possess child pornography, including by computer. (This offense

is very similar to 18 U.S.C. § 2252, except that the new offense focuses on the use of a computer in the offense.) Through oversight, this offense was omitted from the Statutory Index. The amendment proposes to reference this offense to §2G2.2 (trafficking in child pornography) and §2G2.4 (possession of child pornography).

In addition, in the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, and the Economic Espionage Act of 1996, Pub. L. 104-294, Congress redesignated a number of firearms provisions in 18 U.S.C. § 924. The amendment proposes to change the references in the Statutory Index to a number of these offenses in response to the congressional redesignations.

Proposed Amendment:

APPENDIX A - STATUTORY INDEX

| | |
|-----------------------------------|-------------------------|
| * * * | |
| 18 U.S.C. § 924(i) | 2A1.1, 2A1.2 |
| 18 U.S.C. § 924(j)-(n) | 2K2.1 |
| 18 U.S.C. § 924(i) | 2K2.1 |
| 18 U.S.C. § 924(j) | 2A1.1, 2A1.2 |
| 18 U.S.C. § 924(k)-(o) | 2K2.1 |
| * * * | |
| 18 U.S.C. § 2252 | 2G2.2, 2G2.4 |
| 18 U.S.C. § 2252A | 2G2.2, 2G2.4 |
| 18 U.S.C. § 2257 | 2G2.5 |
| * * * | |

[Note that a vote on each of these amendments is a vote to actually incorporate the amendment into the Guidelines Manual, without submission to Congress. A vote on the issue for comment is a vote on whether to publish that issue in the Federal Register.]