

## **§2J1.9**

are grouped together under §3D1.2(c). (Note that 18 U.S.C. § 3146(b)(2) does not require a sentence of imprisonment on a failure to appear count, although if a sentence of imprisonment on the failure to appear count is imposed, the statute requires that the sentence be imposed to run consecutively to any other sentence of imprisonment. Therefore, unlike a count in which the statute mandates both a minimum and a consecutive sentence of imprisonment, the grouping rules of §§3D1.1–3D1.5 apply. See §3D1.1(b)(1), comment. (n.1), and §3D1.2, comment. (n.1).) The combined sentence will then be constructed to provide a “total punishment” that satisfies the requirements both of §5G1.2 (Sentencing on Multiple Counts of Conviction) and 18 U.S.C. § 3146(b)(2). For example, if the combined applicable guideline range for both counts is 30–37 months and the court determines that a “total punishment” of 36 months is appropriate, a sentence of 30 months for the underlying offense plus a consecutive six months’ sentence for the failure to appear count would satisfy these requirements. (Note that the combination of this instruction and increasing the offense level for the obstructive, failure to appear conduct has the effect of ensuring an incremental, consecutive punishment for the failure to appear count, as required by 18 U.S.C. § 3146(b)(2).)

4. In some cases, the defendant may be sentenced on the underlying offense (the offense in respect to which the defendant failed to appear) before being sentenced on the failure to appear offense. In such cases, criminal history points for the sentence imposed on the underlying offense are to be counted in determining the guideline range on the failure to appear offense only where the offense level is determined under subsection (a)(1) (*i.e.*, where the offense constituted a failure to report for service of sentence).

**Background:** This section applies to a failure to appear by a defendant who was released pending trial, sentencing, appeal, or surrender for service of sentence. Where the base offense level is determined under subsection (a)(2), the offense level increases in relation to the statutory maximum of the underlying offense.

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 329); November 1, 1991 (amendment 403); November 1, 1998 (amendment 579); November 1, 2001 (amendment 636); November 1, 2005 (amendment 680); November 1, 2011 (amendment 758); November 1, 2013 (amendment 777); November 1, 2025 (amendment 836).
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## **§§2J1.7 – 2J1.8. [Deleted]**

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<i>Historical Note</i>	Section 2J1.7 (Commission of Offense While on Release), effective November 1, 1987, and amended effective January 15, 1988 (amendment 32), November 1, 1989 (amendment 178), and November 1, 1991 (amendment 431), was deleted from Chapter Two and replaced by §3C1.3 effective November 1, 2006 (amendment 684). Section 2J1.8 (Bribery of Witness), effective November 1, 1987, and amended effective January 15, 1988 (amendment 33), November 1, 1989 (amendment 179), and November 1, 1991 (amendment 401), was deleted by consolidation with §2J1.3 effective November 1, 1993 (amendment 481).
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## **§2J1.9. Payment to Witness**

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- (a) Base Offense Level: **6**