

(2) (apply the greater)—

- (A) the offense involved the use of body armor, increase by **2** levels; or
- (B) the defendant used body armor during the commission of the offense, in preparation for the offense, or in an attempt to avoid apprehension for the offense, increase by **4** levels.

### Commentary

#### Application Notes:

1. **Definitions.**—For purposes of this guideline:

**“Body armor”** means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment. *See* 18 U.S.C. § 921(a)(35).

**“Crime of violence”** has the meaning given that term in 18 U.S.C. § 16.

**“Drug trafficking crime”** has the meaning given that term in 18 U.S.C. § 924(c)(2).

**“Offense”** has the meaning given that term in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

**“Use”** means (A) active employment in a manner to protect the person from gunfire; or (B) use as a means of bartering. “Use” does not mean mere possession (*e.g.*, “use” does not mean that the body armor was found in the trunk of the car but not used actively as protection). **“Used”** means put into “use” as defined in this paragraph.

2. **Application of Subdivision (2)(B).**—Consistent with §1B1.3 (Relevant Conduct), the term **“defendant”**, for purposes of subdivision (2)(B), limits the accountability of the defendant to the defendant’s own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.
3. **Interaction with §2K2.6 and Other Counts of Conviction.**—If the defendant is convicted only of 18 U.S.C. § 931 and receives an enhancement under subsection (b)(1) of §2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons), do not apply an adjustment under this guideline. However, if, in addition to the count of conviction under 18 U.S.C. § 931, the defendant (A) is convicted of an offense that is a drug trafficking crime or a crime of violence; and (B) used the body armor with respect to that offense, an adjustment under this guideline shall apply with respect to that offense.

**Background:** This guideline implements the directive in the James Guelff and Chris McCurley Body Armor Act of 2002 (section 11009(d) of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107–273).

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| <i>Historical Note</i> | Effective November 1, 2003 (amendment 659). Amended effective November 1, 2004 (amendment 670). |
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