Congressional Research Service
Informing the legislative debate since 1914

False Statements and Perjury: A Sketch of Federal Criminal Law

Updated May 11, 2018

Congressional Research Service
https://crsreports.congress.gov
98-807

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

Federal courts, Congress, and federal agencies rely upon truthful information in order to make informed decisions. Federal law therefore proscribes providing the federal courts, Congress, or federal agencies with false information. The prohibition takes four forms: false statements; perjury in judicial proceedings; perjury in other contexts; and subornation of perjury.

Section 1001 of Title 18 of the United States Code, the general false statement statute, outlaws material false statements in matters within the jurisdiction of a federal agency or department. It reaches false statements in federal court and grand jury sessions as well as congressional hearings and administrative matters but not the statements of advocates or parties in court proceedings. Under Section 1001, a statement is a crime if it is false regardless of whether it is made under oath.

In contrast, an oath is the hallmark of the three perjury statutes in Title 18. The oldest, Section 1621, condemns presenting material false statements under oath in federal official proceedings. Section 1623 of the same title prohibits presenting material false statements under oath in federal court proceedings, although it lacks some of Section 1621's traditional procedural features, such as a two-witness requirement. Subornation of perjury, barred in Section 1622, consists of inducing another to commit perjury. All four sections carry a penalty of imprisonment for not more than five years, although Section 1001 is punishable by imprisonment for not more than eight years when the offense involves terrorism or one of the various federal sex offenses. The same five-year maximum penalty attends the separate crime of conspiracy to commit any of the four substantive offenses.

A defendant's false statements in the course of a federal criminal investigation or prosecution may also result in an enhanced sentence under the U.S. Sentencing Guidelines for the offense that was the subject of the investigation or prosecution.

This report is available in an unabridged form—with footnotes, quotations, and citations to authority—as CRS Report 98-808, *False Statements and Perjury: An Overview of Federal Criminal Law*.

Contents

Introduction 1
False Statements (18 U.S.C. § 1001) 1
Perjury Generally (18 U.S.C. § 1621) 3
Subornation of Perjury (18 U.S.C. § 1622) 7
Conspiracy (18 U.S.C. § 371) 8
Perjury as a Sentencing Factor (U.S.S.G. § 3C1.1) 8

Contacts

Author Information 9

Introduction

Lying, or making a false statement, is a federal crime under a number of circumstances. It is a federal crime to make a material false statement in a matter within the jurisdiction of a federal agency or department. Perjury is also a federal crime. Perjury is a false statement made under oath before a federal tribunal or official. Moreover, some false certifications are punishable as perjury by operation of a federal statute. Subornation of perjury is inducing someone else to commit perjury. It too is a federal crime if the perjury induced is a federal crime. Finally, conspiracy to commit any of these underlying crimes is also a separate federal crime. Moreover, a defendant under investigation or on trial for some other federal offense may find upon conviction his sentence for the underlying offense enhanced as a consequence of a false statement he made during the course of the investigation or trial. This is an overview of federal law relating to the principal false statement and to the three primary perjury statutes.

False Statements (18 U.S.C. § 1001)

The principal federal false statement statute, 18 U.S.C. § 1001, proscribes false statements, concealment, or false documentation in any matter within the jurisdiction of any of the three branches of the federal government. It applies generally within the executive branch. Within the judicial branch, it applies to all but presentations to the court by parties or their attorneys in judicial proceedings. Within the legislative branch, it applies to administrative matters such as procurement, as well as to "any investigations and reviews, conducted pursuant to the authority of any committee, subcommittee, commission, or office of the Congress consistent with applicable rules of the House or Senate."

In outline form, Section 1001(a) states the following:

> *I*. Except as otherwise provided in this section; *II*. whoever; *III*. in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States; *IV*. knowingly and willfully; *V*. *a*. falsifies, conceals, or covers up by any trick, scheme, or device a material fact; *b*. makes any materially false, fictitious, or fraudulent statement or representation; or *c*. makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A [sexual abuse], 109B [sex offender registration], 110 [sexual exploitation], or 117 [transportation for illicit sexual purposes], or section 1591 [sex trafficking], then the term of imprisonment imposed under this section shall be not more than 8 years.

Elements

Whoever: The Dictionary Act provides that "in determining the meaning of any Act of Congress, unless the context indicates otherwise … the word[] … 'whoever' *include[s]* corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals … ." "Includes" is usually a "but-not-limited-to" word. As a general rule, use of the word "includes" means that the list that it introduces is illustrative rather than exclusive. The government has convicted corporations under Section 1001 which confirms that the section's prohibitions are not confined to individuals, that is, the section is not one where "the context indicates otherwise."

Within the Jurisdiction: A matter is within the jurisdiction of a federal entity when it involves a matter "confided to the authority of a federal agency or department ... A department or agency has jurisdiction, in this sense, when it has power to exercise authority in a particular situation. Understood in this way, the phrase 'within the jurisdiction' merely differentiates the official, authorized functions of an agency or department from matters peripheral to the business of that body." Several courts have held that the phrase contemplates coverage of false statements made to state, local, or private entities relating to matters that involve federal funds or regulations.

Section 1001(b) creates an exception, a safe harbor, for statements, omissions, or documentation presented to the court by a party in judicial proceedings. The exception covers false statements made to the court even if they result in the expenditure of executive branch efforts. The exception also includes false statements of indigency filed by a defendant seeking the appointment of counsel, and perhaps a defendant's false statement in a probation officer's presentence report, but not false statements made by one on supervised release to a probation officer.

Section 1001's application to matters within the jurisdiction of the legislative branch is confined to two categories of false statements. One proscribes false statements in matters of legislative branch administration and reaches false statements made in financial disclosure statements. The other proscribes false statements in the course of congressional investigations and reviews, but does not reach false statements made concurrent to such investigations or reviews.

Knowingly and Willfully: Section 1001 requires the government to prove that the defendant acted "knowingly and willfully." It requires the government to show the defendant knew or elected not to know that the statement, omission, or documentation was false and that the defendant presented it with the intent to deceive. The phrase "knowingly and willfully" refers to the circumstances under which the defendant made his statement, omitted a fact he was obliged to disclose, or included within his documentation, that is, "that the defendant knew that his statement was false when he made it or – which amounts in law to the same thing – consciously disregarded or averted his eyes from the likely falsity." Although the offense can only be committed "knowingly and willfully," that is, with the knowledge that it was unlawful, the prosecution need not prove that the defendant knew that his conduct involved a "matter within the jurisdiction" of a federal entity, nor that he intended to defraud a federal entity.

Materiality: Prosecution for a violation of Section 1001 requires proof of materiality, as does conviction for perjury, and the standard is the same: the statement must have a "natural tendency to influence, or be capable of influencing the decisionmaking body to which it is addressed." There is no need to show that the decisionmaker was in fact diverted or influenced.

Concealment, False Statements, and False Writings: Section 1001's false statement element is in fact three alternative elements that encompass concealment, false statements, and false writings.

Subsection 1001(a)(1)(concealment) applies to anyone who "falsifies, conceals, or covers up by any trick, scheme, or device a material fact." Although the requirement does not appear on the face of the statute, prosecutions under Subsection 1001(a)(1) for concealment must also prove the existence of a duty or legal obligation not to conceal. A federal employee's general ethical obligation to "disclose waste, fraud, abuse, and corruption to appropriate authorities," however, will "not support a conviction under § 1001(a)(1)."

Subsection 1001(a)(2)(false statements) applies to anyone who "makes any material false, fictitious, or fraudulent statement or representation." Conviction requires that the defendant knew that his statement or documentation was false, that is, it was not true. It follows that a defendant's response to a question that is so fundamentally ambiguous cannot provide the basis for a conviction under Subsection 1001(a)(2).

Section 1001(a)(2) recognizes few defenses other than the government's failure to prove one or more of its elements. For instance, "there is no safe harbor for recantation or correction of a prior false statement that violates [Section] 1001." Under an earlier version of Section 1001, several lower federal courts recognized an "exculpatory no" doctrine under which Section 1001 did not reach a defendant's simple false denial to a law enforcement officer's incriminating question. The Supreme Court repudiated the doctrine "[b]ecause the plain language of [then] § 1001 admits of no exception for an 'exculpatory no' … ." Defendants have been largely unable to bring about recognition of an exculpatory no doctrine under Section 1001's current language, although the section's breadth occasionally seems to cause judicial discomfort.

Section 1001(a)(3)(written false statements) covers written false statements and applies to anyone who "makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry." In order to establish a violation of Subsection 1001(a)(3), the government must prove the defendant "rendered a statement that: (1) is false, (2) is material, (3) is knowingly and willfully made, and (4) concerns a matter within the jurisdiction of a federal" entity.

Perjury Generally (18 U.S.C. § 1621)

Testimonial Perjury Generally (18 U.S.C. § 1621(1))

As noted earlier, there are three primary perjury statutes. Each involves a statement or writing offered under oath or its equivalent. One proscribes two forms of perjury generally. A second proscribes perjury before a court or grand jury. A third proscribes subornation of perjury that consists of arranging for someone else to commit perjury.

Section 1621 consists of two offenses, one for testimony and the other written statements. The testimonial proscription provides:

> *I*. Whoever having taken an oath; *II*. before a competent tribunal, officer, or person; *III*. in any case in which a law of the United States authorizes an oath to be administered; *IV*. *a*. that he will *i*. testify, *ii*. declare, *iii*. depose, or *iv*, certify truly; or *b*. that any written i. testimony, *ii*. declaration, iii. deposition, or *iv*. certificate by him subscribed, is true; *V*. willfully and contrary to such oath; *VI*. *a*. states or *b*. subscribes any material matter which he does not believe to be true . . . is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

The courts generally favor an abbreviated encapsulation such as the one the Supreme Court provided in *United States v. Dunnigan*: "A witness testifying under oath or affirmation violates this section if she gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory."

Whoever: As mentioned earlier, the term "whoever" ordinarily encompasses individuals as well as entities, such as corporations, unless the context of the statute in which the term is used suggests a contrary congressional intent. As a general rule, a corporation is liable for the crimes of its employees, officers, or agents committed within the scope of their authority and at least in part for the benefit of the corporation. Corporations have been convicted for false statements under Section 1001, but rarely if ever under Section 1621(1).

Willfully: Conviction under Section 1621(1) requires not only that the defendant knew his statement was false ("which he does not believe to be true"), but that his false statement is

"willfully" presented. There is but scant authority on precisely what "willful" means in this context. The Supreme Court in dicta has indicated that willful perjury consists of "*deliberate* material falsification under oath." Other courts have referred to willful perjury as acting with an "intent to deceive" or as acting "intentionally." In the case of a violation of Section 1001, one court has pointed to the general statement from the Supreme Court that "willfully" means the defendant acted with the knowledge his conduct was unlawful. Be that as it may, the prosecution must show that the defendant believed that his statement was not true in order to convict him of Section 1621(1) perjury.

Having Taken an Oath: Section 1621(1), in so many words ("whoever having taken an oath"), reaches sworn written or oral testimony presented to a federal tribunal, officer, or person.

False—Truth and Ambiguity: Perjury under Section 1621(1) condemns testimony that is false. The Supreme Court in *Bronston v. United States* explained that testimony that is literally true, even if deceptively so, cannot be considered perjury for purposes of a prosecution under Section 1621(1). Bronston testified at a bankruptcy hearing at which he was asked if he had a Swiss bank account. He truthfully answered that he did not. Then, he was asked if he had ever had a Swiss bank account, which he had. He answered, however, that his company had had such an account at one time, which was true but not responsive to the question of had he ever had an account. Yet, he was convicted for violating Section 1621(1) on the basis of that answer. The Supreme Court's final comment in the decision that threw out the conviction observed, "It may well be that [Bronston's] answers were not guileless but were shrewdly calculated to evade. Nevertheless, … any special problems arising from the literally true but unresponsive answer are to be remedied through the 'questioner's acuity' and not by a federal perjury prosecution."

The Court's comment suggests that Section 1621(1) perjury may not be grounded on an ambiguous question. The lower federal appellate courts have not always been willing to go that far. True, "when a line of questioning 'is so vague as to be fundamentally ambiguous, the answers associated with the questions posed may be insufficient as a matter of law to support a perjury conviction.'" Yet, as one court stated, "our Court has 'eschewed a broad reading of *Bronston,*' noting instead that, 'as a general rule, the fact that there is some ambiguity in a falsely answered question will not shield the respondent from a perjury … prosecution." Moreover, the line between permissible ambiguity and impermissible fundamental ambiguity is not easily drawn. In fact, some courts have concluded that "to precisely define the point at which a question becomes fundamentally ambiguous … is impossible."

False—The Two-Witness Rule: Section 1621(1) requires compliance with the common law "two-witness rule" to establish that a statement is false. Under the rule, "the uncorroborated oath of one witness is not sufficient to establish the falsity of the testimony of the accused as set forth in the indictment as perjury." Thus, conviction under Section 1621(1) compels the government to "establish the falsity of the statement alleged to have been made by the defendant under oath, by the testimony of two independent witnesses or one witness and corroborating circumstances." If the rule is to be satisfied with corroborative evidence, the evidence must be trustworthy and support the account of the single witness upon which the perjury prosecution is based.

Materiality: "To be guilty of perjury under 18 U.S.C. § 1621(1), a defendant's false statement must be material." A false statement is "material in a criminal prosecution for perjury under § 1621(a) if it is material to any proper matter of the decisionmaker's inquiry," that is, "if it is capable of influencing the tribunal on the issue before it." A false statement is no less material because the decisionmaker was not taken in by the statement.

Defenses: Although a contemporaneous correction of a false statement may demonstrate the absence of the necessary willful intent to commit perjury, the crime is completed when the false

statement is presented to the tribunal. Without a statute such as that found in Section 1623, recantation is no defense nor does it bar prosecution under Section 1621(1).

False Writings as Perjury Generally (18 U.S.C. § 1621(2))

Congress added Section 1621(2) to the general perjury statute in 1976 in order to dispense with the necessity of an oath for various certifications and declarations.

Section 1621(2) states the following:

> *I.* Whoever; … *II.* in any a. declaration, b. certificate, c. verification, or d. statement; *III.* under penalty of perjury as permitted under [Section] 1746 of title 28, United States ode; *IV.* willfully subscribes as true; *V.* any material matter; *VI.* which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

As in the case of violations under Section 1621(1), Section 1621(2) proscriptions apply in theory with equal force to corporations and other entities as well as to individuals, but in practice prosecutions appear to be confined to individuals.

Section 1621(2) operates as an enforcement mechanism for Section 1746, which affords an under-penalty-of-perjury option wherever a federal statute or regulation requires a written statement under oath. Section 1746 is available regardless of whether the triggering statute or regulation seeks to ensure the validity of a written statement or the identity of its author.

Section 1621(2) only proscribes *material* false statements in unsworn writings, i.e., a statement "capable of influencing or misleading a tribunal on any proper matter of inquiry."

Perjury in a Judicial Context (18 U.S.C. § 1623)

Congress enacted Section 1623 to avoid some of the common law technicalities embodied in the more comprehensive perjury provisions found in Section 1621 and thus "to facilitate perjury prosecutions and thereby enhance the reliability of testimony before federal courts and grand juries." Unlike Section 1621, Section 1623 permits a conviction in the case of two mutually inconsistent declarations without requiring proof that one of them is false. It recognizes a limited recantation defense. It dispenses with the so-called two-witness rule. And, it employs a "knowing" mens rea standard rather than the more demanding "willfully" standard used in Section 1621.

Parsed into elements, Section 1623 declares that

> *I.* Whoever; *II. a.* under oath or, *b.* in any *i.* declaration, *ii.* certificate, *iii.* verification, or *iv.* statement, under penalty of perjury as permitted under [Section] 1746 of title 28, United States Code; *III.* in any proceeding before or ancillary to *a.* any court, or *b.* grand jury of the United States; *IV.* knowingly; *V. a.* makes any false material declaration, or *b.* makes or uses any other information, including any *i.* book, *ii.* paper, *iii.* document, *iv.* record, *v.* recording, or *vi.* other material; *VI.* knowing the same to contain any false material declaration; shall be fined under this title or imprisoned not more than five years, or both.

In most cases, the courts abbreviate their description of the elements and state in one form or another that to prove perjury the government must establish that "the defendant (1) knowingly made a (2) false (3) material declaration (4) under oath (5) in a proceeding before or ancillary to any court or grand jury of the United States."

Whoever

Again, the Dictionary Act defines the term "whoever" to encompass individuals as well as entities, such as corporations, unless the context of the statute in which the term is used suggests a contrary congressional intent. A corporation, as a general matter, is liable for the crimes of its employees, officers, or agents committed within the scope of their authority and at least in part for the benefit of the corporation. Corporations have been convicted for false statements under Section 1001, as mentioned earlier, but rarely if ever under Section 1623.

Under Oath or Its Equivalent: Court or Grand Jury

Section 1623 reaches both false statements under oath and those offered "under penalty of perjury" by operation of 28 U.S.C. § 1746. The allegedly perjurious statement must be presented in a "proceeding before or ancillary to any court or grand jury of the United States." An interview in an attorney's office in preparation for a judicial hearing cannot be considered such an ancillary proceeding, but the phrase "proceedings ancillary to" court or grand jury proceedings does cover proceedings to take depositions in connection with civil litigation, as well as a variety of proceedings in criminal cases, including habeas proceedings, bail hearings, venue hearings, supervised release revocation hearings, and suppression hearings.

False or Inconsistent

The Supreme Court's observation that a statement that is misleading but literally true cannot support a conviction under Section 1621 because it is not false applies with equal force to perjury under Section 1623. Similarly, perjury cannot be the product of confusion, mistake, or faulty memory, but must be a statement that the defendant knows is false, although this requirement may be satisfied with evidence that the defendant was deliberately ignorant or willfully blind to the fact that the statement was false. On the other hand, "[a] question that is truly ambiguous or which affirmatively misleads the testifier can never provide a basis for a finding of perjury, as it could never be said that one intended to answer such a question untruthfully." Yet ambiguity will be of no avail if the defendant understands the question and answers falsely nevertheless.

Subsection 1623(c) permits a perjury conviction simply on the basis of two necessarily inconsistent material declarations rather than a showing that one of the two statements is false. Conviction does require a showing, however, that the two statements were made under oath; it is not enough to show that one was made under oath and the other was made in the form of an affidavit signed under penalty of perjury. Moreover, the statements must be so inherently contradictory that one of them of necessity must be false.

Some years ago, the Supreme Court declined to reverse an earlier ruling that "[t]he general rule in prosecutions for perjury is that the uncorroborated oath of one witness is not enough to establish the falsity of the testimony of the accused set forth in the indictment." Because the two-witness rule rests on the common law rather than on a constitutional foundation, it may be abrogated by statute without offending constitutional principles. Subsection 1623(e) permits a perjury conviction without compliance with this traditional two-witness rule.

Materiality

Materiality is perhaps the most nettlesome of perjury's elements. It is usually said that a statement is material "if it has a natural tendency to influence, or is capable of influencing, the decision of the decisionmaking body to whom it is addressed." This definition is not easily applied when the precise nature of the underlying inquiry remains somewhat undefined such as in grand jury

proceedings or in depositions at the discovery stage of a civil suit. On the civil side, the lower federal courts appear divided between the view (1) that a statement in a deposition is material if a "truthful answer might reasonably be calculated to lead to the discovery of evidence admissible at the trial of the underlying suit" and (2) that a statement is material "if the topic of the statement is discoverable and the false statement itself had a tendency to affect the outcome of the underlying civil suit for which the deposition was taken."

In the case of perjury before the grand jury, rather than articulate a single standard, the courts have described several circumstances under which false testimony may be considered material. In any event, a statement is no less material because it did not or could not divert the decisionmaker.

The courts seem to have had less difficulty dealing with a materiality issue characterized as the "perjury trap" doctrine. The doctrine arises where a witness is called for the sole purpose of eliciting perjurious testimony from him. Under such circumstances it is said the tribunal has no valid purpose to which a perjurious statement could be considered material. The doctrine poses no bar to prosecution in most cases, however, because the government is usually able to identify some valid reason for the grand jury's inquiries.

Defenses

Most of the other subsections of Section 1623 are designed to overcome obstacles that the common law placed in the path of a successful perjury prosecution. Subsection 1623(d), in contrast, offers a defense unrecognized at common law. The defense is stated in fairly straightforward terms, "[w]here in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed." Although phrased in different terms, the courts seem to agree that repudiation of the false testimony must be specific and thorough. There is some disagreement whether a recanting defendant must be denied the defense if both the substantial impact and imminent exposure conditions have been met or if the defense must be denied if either condition exists. Most courts have concluded that the presence of either condition dooms the defense.

Early construction required that a defendant establish both that his false statement had not substantially affected the proceeding before his recantation *and* that it had not become manifest that his false statement would be exposed. One more recent appellate decision, however, concluded that the defense should be available to a witness who could show a want of *either* an intervening adverse impact *or* of likely exposure of his false statement. Even without the operation of subsection 1623(d), relatively contemporaneous corrections of earlier statements may negate any inference that the witness is knowingly presenting false testimony and thus preclude conviction for perjury.

Subornation of Perjury (18 U.S.C. § 1622)

Section 1622 outlaws procuring or inducing another to commit perjury: "Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned for not more than five years, or both." The crime consists of two elements—(1) an act of perjury committed by another (2) induced or procured by the defendant. Perjury under either Section 1621 or Section 1623 will support a conviction for subornation under Section 1622, but proof of the commission of an act of perjury is a necessary element of subornation. Although the authorities are exceptionally sparse, it appears that to suborn one must know that the induced statement is false and that at least to suborn under Section 1621 one must also knowingly

and willfully induce. Subornation is only infrequently prosecuted as such perhaps because of the ease with which it can now be prosecuted as an obstruction of justice under either 18 U.S.C. §§ 1503 or 1512 which, unlike Section 1622, do not insist upon suborner success as a prerequisite to prosecution.

Conspiracy (18 U.S.C. § 371)

Section 371 outlaws conspiring to commit another federal offense, including making a false statement in violation of Section 1001, perjury under Sections 1621 and 1623, and subornation of perjury under Section 1622. As a general matter, conspiracy requires the agreement of two or more people to commit a federal crime and for one of the parties to commit some affirmative act in furtherance of the scheme. Conspiracy under Section 371 is punishable by imprisonment for not more than five years. Conspiracy is a separate crime, and offenders may be punished for conspiracy, as well as for the commission of the crime that is the object of the offense, and for any crime committed in the foreseeable furtherance of the crime.

Perjury as a Sentencing Factor (U.S.S.G. § 3C1.1)

Perjury, subornation of perjury, and false statements are each punishable by imprisonment for not more than five years. They are also punishable by a fine of not more than $250,000 (not more than $500,000 if the defendant is an organization). When the defendant is convicted of a crime other than perjury or false statements, however, perjury or false statements during the investigation, prosecution, or sentencing of the defendant for the underlying offense will often be treated as the basis for enhancing his sentence by operation of the obstruction of justice guideline of the U.S. Sentencing Guidelines (U.S.S.G. § 3C1.1).

Federal sentencing begins with, and is greatly influenced by, the calculation of the applicable sentencing range under the Sentencing Guidelines. The Guidelines assign federal felony offenses a base offense level to which they add levels for various aggravating factors. Obstruction of justice is one of those factors. Each of the final 43 offense levels is assigned to one of six sentencing ranges, depending on the extent of the defendant's past crime history.

Section 3C1.1 provides that "If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by 2 levels."

The accompanying commentary explains that the section "is not intended to punish a defendant for the exercise of a constitutional right." More specifically, a "defendant's denial of guilt (other than a denial of guilt under oath that constitutes perjury), refusal to admit guilt or provide information to a probation officer, or refusal to enter a plea of guilty is not a basis for application of this provision." Early on, the Supreme Court made it clear that an individual's sentence might be enhanced under Section 3C1.1, if he committed perjury during the course of his trial. Moreover, the examples provided elsewhere in the section's commentary and the cases applying the section confirm that it reaches perjurious statements in a number of judicial contexts and to false statements in a number of others.

When perjury provides the basis for a sentencing enhancement under the section, the court must find that the defendant willfully testified falsely with respect to a material matter. Thus, the court must find that "the defendant consciously act[ed] with the purpose of obstructing justice." When

based upon a false statement not under oath, the statement must still be material, that is, it must "tend to influence or affect the issue under determination." Even then, false identification at the time of arrest only warrants a sentencing enhancement under the section when the deception significantly hinders the investigation or prosecution.

Author Information

Charles Doyle
Senior Specialist in American Public Law

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.