

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of (1)(A)(i) congressional amendments to the sentencing guidelines made directly by the PROTECT Act, Pub. L. 108–21, and effective April 30, 2003; and (ii) conforming amendments to the amendments described in subdivision (i), promulgated pursuant to 401(m)(2)(C) of the PROTECT Act and 28 U.S.C. 994, and effective April 30, 2003; and (B) amendment to § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint) promulgated pursuant to section 104 of the PROTECT Act, and effective May 30, 2003; and (2) submission to Congress of amendments to the sentencing guidelines effective November 1, 2003.

SUMMARY: (1) PROTECT Act Amendments.—In the PROTECT Act, Congress directly amended §§ 2G2.2 (Trafficking in Materials Involving Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic), 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), 3E1.1 (Acceptance of Responsibility), 4B1.5 (Repeat and Dangerous Sex Offender Against Minors), 5H1.6 (Family Ties and Responsibilities, and Community Ties), 5K2.0 (Grounds for Departure), 5K2.13 (Diminished Capacity), and 5K2.20 (Aberrant Behavior), and enacted a new policy statement at § 5K2.22 (Specific Offender Characteristics as Grounds for Downward Departure in Child Crimes and Sexual Offenses). These amendments became effective on April 30, 2003. The PROTECT Act requires the Commission to distribute these amendments forthwith to federal courts and probation offices.

Pursuant to 401(m)(2)(C) of the PROTECT Act and section 994 of title 28, United States Code, the Commission promulgated conforming amendments to the congressional amendments to the guidelines made directly by the PROTECT Act. Section 994(x) of title 28, United States Code, requires the Commission to comply with the notice and comment procedures set forth in 5 U.S.C. 553. Section 553 provides, however, a “good cause” exception to

the general notice and comment requirements if the “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b); *see also* 5 U.S.C. 553(d)(3) (providing an exception to the otherwise applicable 30 day notice period “as otherwise provided by the agency for good cause found and published with the rule”). The effective date of the congressional amendments noted in the previous paragraph and the Act’s directive to distribute such amendments forthwith made it impracticable to publish the conforming amendments in the **Federal Register** to provide an opportunity for public comment before the congressional amendments became effective. The Commission therefore had good cause not to publish those amendments before they became effective.

This notice also sets forth an amendment to § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint), which Congress in the Act specifically directed the Commission to make “[n]otwithstanding any other provision of law regarding the amendment of Sentencing Guidelines”. Pub. L. 108–21, section 104(a). The Act provides that this amendment shall “take effect on the date that is 30 days after the date of the enactment of this Act.” *Id.*

(2) Section 994(p) Amendments.—Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index.

This notice sets forth the amendments and the reason for each amendment.

DATES: (1) PROTECT Act Amendments.—The effective date for the amendments to §§ 2G2.2, 2G2.4, 3E1.1, 4B1.5, 5H1.6, 5K2.0, 5K2.13, and 5K2.20, and the enactment of § 5K2.22, is April 30, 2003. The effective date for the amendment to § 2A4.1 is May 30, 2003.

(2) Section 994(p) Amendments.—The Commission has specified an effective date of November 1, 2003, for the amendments made pursuant to 28 U.S.C. 994(p) set forth in Part Two of this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, 202–502–4590. The amendments set forth in this notice also may be accessed through the Commission’s website at <http://www.ussc.gov>. The April 30, 2003

Supplement to the 2002 *Guidelines Manual* sets forth the PROTECT Act amendments and the emergency amendments promulgated by the Commission effective January 25, 2003. This Supplement, when used in conjunction with the 2002 *Guidelines Manual*, constitutes the operative *Guidelines Manual* effective April 30, 2003. It may be accessed through the Commission’s Web site as well.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

(1) PROTECT Act Amendments.—The congressional amendments made by and pursuant to the PROTECT Act are set forth in Part One of this notice.

(2) Section 994(p) Amendments.—Notice of proposed amendments made pursuant to 28 U.S.C. 994(p) was published in the **Federal Register** on December 18, 2002 (*see* 67 FR 77532–77547), and January 17, 2003 (*see* 68 FR 2615–2628). The Commission held a public hearing on the proposed amendments in Washington, D.C., on March 25, 2003. After a review of hearing testimony and additional public comment, the Commission promulgated the amendments set forth in Part Two of this notice. On May 1, 2003, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2003.

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

Diana E. Murphy,
Chair.

Part One: PROTECT Act Amendments

1. Amendment: Section 2G2.2(b) is amended by adding at the end the following:

“(6) If the offense involved—

(A) At least 10 images, but fewer than 150, increase by 2 levels;

(B) At least 150 images, but fewer than 300, increase by 3 levels;