

(C) At least 300 images, but fewer than 600, increase by 4 levels; and
(D) 600 or more images, increase by 5 levels.”.

The Commentary to § 2G2.2 is amended by adding at the end the following:

“Background: Section 401(i)(1)(C) of Public Law 108–21 directly amended subsection (b) to add subdivision (6), effective April 30, 2003.”.

Section 2G2.4(b) is amended by adding at the end the following:

“(4) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

(5) 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;

(C) At least 300 images, but fewer than 600, increase by 4 levels; and

(D) 600 or more images, increase by 5 levels.”.

The Commentary to § 2G2.4 is amended by adding at the end the following:

“Background: Section 401(i)(B) of Public Law 108–21 directly amended subsection (b) to add subdivisions (4) and (5), effective April 30, 2003.”.

Section 3E1.1(b) is amended by inserting “upon motion of the government stating that” before “the defendant has assisted authorities”; and by striking “taking one or more” and all that follows through “1 additional level” and inserting “timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level”.

The Commentary to § 3E1.1 captioned “Application Notes” is amended in Note 6 by striking “one or both of”; by striking “(1) or (2)”; by striking “(b)(2)” and inserting “(b)”; and by adding at the end the following new paragraph:

“Because the Government is in the best position to determine whether the defendant has assisted authorities in a manner that avoids preparing for trial, an adjustment under subsection (b) may be granted upon a formal motion by the Government at the time of sentencing. See section 401(g)(2)(B) of Pub. L. 108–21.”.

The Commentary to § 3E1.1 captioned “Background” is amended by striking “one or more of” both places it appears; and by adding at the end the following:

“Section 401(g) of Public Law 108–21 directly amended subsection (b), Application Note 6 (including adding

the last paragraph of that application note), and the Background Commentary, effective April 30, 2003.”.

The Commentary to § 4B1.5 captioned “Application Notes” is amended in Note 4(B) by striking subdivision (i) as follows:

“(i) In General—For purposes of subsection (b), the defendant engaged in a pattern of activity involving prohibited sexual conduct if—

(I) On at least two separate occasions, the defendant engaged in prohibited sexual conduct with a minor; and

(II) There were at least two minor victims of the prohibited sexual conduct.

For example, the defendant engaged in a pattern of activity involving prohibited sexual conduct if there were two separate occasions of prohibited sexual conduct and each such occasion involved a different minor, or if there were two separate occasions of prohibited sexual conduct involving the same two minors.”.

and inserting:

“(i) In General—For purposes of subsection (b), the defendant engaged in a pattern of activity involving prohibited sexual conduct if on at least two separate occasions, the defendant engaged in prohibited sexual conduct with a minor.”.

The Commentary to § 4B1.5 captioned “Background” is amended by striking “section 632 of Pub. L. 102–141 and section 505 of Pub. L. 105–314” and inserting “section 632 of Public Law 102–141 and section 505 of Public Law 105–314”; and by adding at the end the following:

“Section 401(i)(1)(A) of Public Law 108–21 directly amended Application Note 4(b)(i), effective April 30, 2003.”.

Section 5H1.6 is amended by striking “Family ties” and inserting “In sentencing a defendant convicted of an offense other than an offense described in the following paragraph, family ties”; and by inserting after the first sentence the following new paragraph:

“In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, family ties and responsibilities and community ties are not relevant in determining whether a sentence should be below the applicable guideline range.”.

Section 5H1.6 is amended by adding at the end the following:

“Commentary

Background: Section 401(b)(4) of Public Law 108–21 directly amended

this policy statement to add the second paragraph, effective April 30, 2003.”.

Section 5K2.0 is amended by striking “Under” and inserting the following:

“(a) DOWNWARD DEPARTURES IN CRIMINAL CASES OTHER THAN CHILD CRIMES AND SEXUAL OFFENSES.—Under”;

and by adding at the end the following:

(b) DOWNWARD DEPARTURES IN CHILD CRIMES AND SEXUAL OFFENSES.—Under 18 U.S.C. § 3553(b)(2), the sentencing court may impose a sentence below the range established by the applicable guidelines only if the court finds that there exists a mitigating circumstance of a kind, or to a degree, that—

(1) Has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, United States Code, taking account of any amendments to such sentencing guidelines or policy statements by act of Congress;

(2) Has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(3) should result in a sentence different from that described.

The grounds enumerated in this Part K of chapter 5 are the sole grounds that have been affirmatively and specifically identified as a permissible ground of downward departure in these sentencing guidelines and policy statements. Thus, notwithstanding any other reference to authority to depart downward elsewhere in this Sentencing Manual, a ground of downward departure has not been affirmatively and specifically identified as a permissible ground of downward departure within the meaning of section 3553(b)(2) unless it is expressly enumerated in this Part K as a ground upon which a downward departure may be granted.”.

The Commentary to § 5K2.0 is amended by inserting an asterisk after “Commentary” and by inserting the following new paragraph before “The United”:

“[*Section 401(m)(2)(C) of Public Law 108–21 directs the Commission to revise § 5K2.0, within 180 days after the date of the enactment of that Public Law, or October 27, 2003, to conform § 5K2.0 to changes made by that Public Law, including changes to the appellate standard of review for decisions to depart from the guidelines. That directive has not been implemented yet in the following commentary.]”.

The Commentary to § 5K2.0 is amended by striking “of this policy