

Section 2G2.2 is amended by striking subsection (a) in its entirety and inserting the following:

“(a) Base Offense Level:

(1) [20][22][24], if (A) the defendant’s conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (B) the defendant did not intend to traffic in, or distribute, such material; or

(2) [22][24][25][26], otherwise.”.]

[Section 2G2.2(b)(2) is amended by striking “If the offense involved” and inserting “If the defendant’s conduct involved”];

by redesignating subdivisions (D) and (E) as subdivisions (E) and (F), respectively; and by inserting after subdivision (C) the following new subdivision (D):

“(D) Distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, increase by 6 levels.”; in subdivision (F), as redesignated by this amendment, by striking “(D)” and inserting “(E)”.

Section 2G2.2(b)(5) is amended by inserting “or an interactive computer service” before “was used”; and by inserting [“possession,”] before “transmission.”.

The Commentary to § 2G2.2 captioned “Statutory Provisions” is amended by striking “2251(c)(1)(A), 2252(a)(1)–(3), 2260” and inserting “[1466A(a),] 2252(a)(1)–(3), 2252A(a)(1)(4), (6), 2260(b)”.

The Commentary to § 2G2.2 captioned “Application Notes” is amended in Note 1 by striking:

“For purposes of this guideline—

‘Distribution’ means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor.”

and inserting:

“Definitions.—For purposes of this guideline:

‘Computer’—has the meaning given that term in 18 U.S.C. 1030(e)(1).

‘Image’ means any visual depiction described in 18 U.S.C. 2256(5) and (8).

‘Interactive computer service’ has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

‘Distribution’ means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing, but does not include the mere solicitation of such material by a defendant.”;

by striking “‘Minor’ means an individual who had not attained the age of 18 years.” and inserting the following:

“‘Minor’ means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.”;

and in the paragraph that begins “‘Pattern of activity’” by striking “‘victims’” and inserting “‘minors’”.

The Commentary to § 2G2.2 captioned “Application Notes” is amended by redesignating Notes 2 and 3 as Notes 3 and 4, respectively; and by inserting after Note 1 the following new Note 2:

“2. Application of Subsection (b)(4).—Prior convictions taken into account under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).”.

The Commentary to § 2G2.2 captioned “Application Notes” is amended in the first paragraph of Note 3, as redesignated by this amendment, by inserting “Upward Departure Provision.—” before “If the defendant”; and by striking “Prior convictions” and all that follows through “(Criminal History).”.

The Commentary to § 2G2.2 captioned “Application Notes” is amended in Note 4, as redesignated by this amendment, by inserting “Cross Reference at Subsection (c)(1).—” before “The cross reference”.

#### *B. Simple Possession Offenses Under § 2G2.4*

Section 2G2.4(a) is amended by striking “15” and inserting “[18][20]”.

Section 2G2.4(b) is amended [by striking subdivision (2) in its entirety;] by striking subdivision (3) in its entirety; by redesignating subdivisions (4) and (5) as subdivisions (3) and (4), respectively; and by inserting after subdivision (1) the following new subdivision (2):

“(2) If the [defendant’s possession of the material resulted from the defendant’s][offense involved the] use of a computer or an interactive computer service, increase by 2 levels.”.

Section 2G2.4(c)(2) is amended by striking “(including receiving, transporting, shipping, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic)” and inserting “including (A)

receiving material involving the sexual exploitation of a minor [with intent to traffic]; (B) transporting, shipping, or advertising material involving the sexual exploitation of a minor; or (C) possessing with intent to traffic material involving the sexual exploitation of a minor”.

The Commentary to § 2G2.4 captioned “Statutory Provision” is amended by striking “Provision: 18 U.S.C. 2252(a)(4)” and inserting “Provisions: 18 U.S.C. 1466A(b), 2252(a)(4), 2252A(a)(5)”.

The Commentary to § 2G2.4 captioned “Application Notes” is amended in Note 1 by striking:

“For purposes of this guideline—”

and inserting:

“Definitions.—For purposes of this guideline:

‘Computer’ has the meaning given that term in 18 U.S.C. 1030(e)(1).

‘Image’ means any visual depiction described in 18 U.S.C. 2256(5) and (8).

‘Interactive computer service’ has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).”.

[The Commentary to § 2G2.4 captioned “Application Notes” is amended by striking Note 2 in its entirety.]

The Commentary to § 2G2.4 captioned “Application Notes” is amended by adding at the end the following:

“2. Cross Reference at Subsection (c)(1).—For purposes of subsection (c)(1), “minor” includes (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

3. Upward Departure Provision.—If the offense involved substantially more than 600 images, an upward departure may be warranted, regardless of whether subsection (b)(5) applies.”.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1466 the following new lines:

“18 U.S.C. 1466A(a) 2G2.2  
18 U.S.C. 1466A(b) 2G2.4”;

by striking the following:

18 U.S.C. 2252 2G2.2, 2G2.4  
18 U.S.C. 2252A 2G2.2, 2G2.4”;

and inserting the following:

“18 U.S.C. 2252 (a)(1)–(3) 2G2.2  
18 U.S.C. 2252(a)(4) 2G2.4  
18 U.S.C. 2252A(a)(1)–(4), (6) 2G2.2  
18 U.S.C. 2252A(a)(5) 2G2.4”;