

and by striking the following:

“18 U.S.C. 2260 2G2.1, 2G2.2”,  
and inserting the following:

“18 U.S.C. 2260(a) 2G2.1  
18 U.S.C. 2260(b) 2G2.2”.

*C. Consolidation of §§ 2G2.2 and 2G2.4*

Chapter Two, Part G, Subpart 2, is amended by striking §§ 2G2.2 and 2G2.4 in their entirety and inserting the following new guideline and replacement commentary:

“§ 2G2.2. Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor With Intent To Traffic; Possessing Material Depicting a Minor Engaged in Sexually Explicit Conduct

(a) Base Offense Level

[Option 1: (1) [15][18][20], if (A) the defendant's conduct was limited to the possession, 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.]

[Option 2:(a) (1) [15][18][20], if the defendant's conduct was limited to the possession of material involving the sexual exploitation of a minor without an intent to traffic in, or distribute, such material;

(2) [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

(3) [22][24][25][26], otherwise.]

(b) Specific Offense Characteristics

(1) If the material involved a prepubescent minor or a minor under the age of 12 years, increase by 2 levels.

(2) (Apply the Greatest) If the [defendant's conduct] [offense] involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the retail value of the material, but by not less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by 5 levels.

(C) Distribution to a minor, increase by 5 levels.

(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.

(E) Distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by 7 levels.

(F) Distribution other than distribution described in subdivisions (A) through (E), increase by 2 levels.

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

(4) If the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor, increase by 5 levels.

(5) If a computer or an interactive computer service was used for the possession, transmission, receipt, or distribution of the material or a notice or advertisement of the material, increase by 2 levels.

(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;

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

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

(c) Cross Reference

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.

**Commentary**

*Statutory Provisions:* 18 U.S.C. 1466A, 2252, 2252A, 2260(b).

*Application Notes:*

1. 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 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.

‘Distribution for pecuniary gain’ means distribution for profit.

‘Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain’ means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. ‘Thing of value’ means anything of valuable consideration. For example, in a case involving the bartering of child pornographic material, the ‘thing of value’ is the child pornographic material received in exchange for other child pornographic material bartered in consideration for the material received.

‘Distribution to a minor’ means the knowing distribution to an individual who is a minor at the time of the offense, knowing or believing the individual is a minor at that time.

‘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.

‘Pattern of activity involving the sexual abuse or exploitation of a minor’ means any combination of two or more separate instances of the sexual abuse or sexual exploitation of a minor by the defendant, whether or not the abuse or exploitation (A) occurred during the course of the offense; (B) involved the same minor; or (C) resulted in a conviction for such conduct.

‘Prohibited sexual conduct’ has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

‘Sexual abuse or exploitation’ means conduct constituting criminal sexual abuse of a minor, sexual exploitation of a minor, abusive sexual contact of a minor, any similar offense under state law, or an attempt or conspiracy to commit any of the above offenses.

‘Sexual abuse or exploitation’ does not include trafficking in material relating to the sexual abuse or exploitation of a minor.

‘Sexually explicit conduct’ has the meaning given that term in 18 U.S.C. 2256.