PART E — OFFENSES INVOLVING CRIMINAL ENTERPRISES AND RACKETEERING

1. RACKETEERING

Introductory Commentary

Because of the jurisdictional nature of the offenses included, this subpart covers a wide variety of criminal conduct. The offense level usually will be determined by the offense level of the underlying conduct.

Historical Note	Effective November 1, 1987.

§2E1.1. Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations

(a) Base Offense Level (Apply the greater):

(1) **19**; or

(2) the offense level applicable to the underlying racketeering activity.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1962, 1963.

Application Notes:

1. Where there is more than one underlying offense, treat each underlying offense as if contained in a separate count of conviction for the purposes of subsection (a)(2). To determine whether subsection (a)(1) or (a)(2) results in the greater offense level, apply Chapter Three, Parts A, B, C, and D to both (a)(1) and (a)(2). Use whichever subsection results in the greater offense level.

2. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

3. If the offense level for the underlying racketeering activity is less than the alternative minimum level specified (*i.e.*, 19), the alternative minimum base offense level is to be used.

4. Certain conduct may be charged in the count of conviction as part of a "pattern of racketeering activity" even though the defendant has previously been sentenced for that conduct. Where such previously imposed sentence resulted from a conviction prior to the last overt act of the instant offense, treat as a prior sentence under §4A1.2(a)(1) and not as part of the instant offense. This treatment is designed to produce a result consistent with the distinction between the instant offense and criminal history found throughout the guidelines.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendment 26); November 1, 1989 (amendment 142); November 1, 2025 (amendment 836).

§2E1.2. Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise

(a) Base Offense Level (Apply the greater):

(1) **6**; or

(2) the offense level applicable to the underlying crime of violence or other unlawful activity in respect to which the travel or transportation was undertaken.

Commentary

Statutory Provision: 18 U.S.C. § 1952.

Application Notes:

1. Where there is more than one underlying offense, treat each underlying offense as if contained in a separate count of conviction for the purposes of subsection (a)(2). To determine whether subsection (a)(1) or (a)(2) results in the greater offense level, apply Chapter Three, Parts A, B, C, and D to both (a)(1) and (a)(2). Use whichever subsection results in the greater offense level.

2. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

3. If the offense level for the underlying conduct is less than the alternative minimum base offense level specified (*i.e.*, 6), the alternative minimum base offense level is to be used.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendment 27).

§2E1.3. Violent Crimes in Aid of Racketeering Activity

(a) Base Offense Level (Apply the greater):

(1) **12**; or

(2) the offense level applicable to the underlying crime or racketeering activity.

Commentary

Statutory Provision: 18 U.S.C. § 1959 (formerly 18 U.S.C. § 1952B).

Application Notes:

1. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

2. If the offense level for the underlying conduct is less than the alternative minimum base offense level specified (*i.e.*, 12), the alternative minimum base offense level is to be used.

Background: The conduct covered under this section ranges from threats to murder. The maximum term of imprisonment authorized by statute ranges from three years to life imprisonment.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 143).

§2E1.4. Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire

(a) Base Offense Level (Apply the greater):

(1) **32**; or

(2) the offense level applicable to the underlying unlawful conduct.

Commentary

Statutory Provision: 18 U.S.C. § 1958 (formerly 18 U.S.C. § 1952A).

Application Note:

1. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

Background: This guideline and the statute to which it applies do not require that a murder actually have been committed.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 144); November 1, 1990 (amendment 311); November 1, 1992 (amendment 449).

§2E1.5. [Deleted]

Historical Note	Section 2E1.5 (Hobbs Act Extortion or Robbery), effective November 1, 1987, and amended effective November 1, 1989 (amendment 145), was deleted by consolidation with §§2B3.1, 2B3.2, 2B3.3, and 2C1.1 effective November 1, 1993 (amendment 481).

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2. EXTORTIONATE EXTENSION OF CREDIT

§2E2.1. Making or Financing an Extortionate Extension of Credit; Collecting an Extension of Credit by Extortionate Means

(a) Base Offense Level: **20**

(b) Specific Offense Characteristics

(1) (A) If a firearm was discharged increase by **5** levels; or

(B) if a dangerous weapon (including a firearm) was used to convey a specific (not general) threat of harm (*e.g.*, pointing the weapon at a specific victim or victims; directing the movement of a specific victim or victims with the weapon) or to make physical contact with a victim (*e.g.*, pistol whip; weapon placed against victim's body), increase by **4** levels; or

(C) if a dangerous weapon (including a firearm) was brandished or possessed, increase by **3** levels.

(2) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

	DEGREE OF BODILY INJURY	INCREASE IN LEVEL
(A)	Bodily Injury	add **2**
(B)	Serious Bodily Injury	add **4**
(C)	Permanent or Life-Threatening Bodily Injury	add **6**
(D)	If the degree of injury is between that specified in subparagraphs (A) and (B),	add **3** levels; or
(E)	If the degree of injury is between that specified in subparagraphs (B) and (C),	add **5** levels.

Provided, however, that the combined increase from application of paragraphs (1) and (2) shall not exceed **9** levels.

(3) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by **4** levels; or

(B) if any person's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape, increase by **2** levels.

(c) Cross Reference

(1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder).

Commentary

Statutory Provisions: 18 U.S.C. §§ 892–894.

Application Notes:

1. **Definitions.—**Definitions of "***firearm***," "***dangerous weapon***," "***brandished***," "***bodily injury***," "***serious bodily injury***," "***permanent or life-threatening bodily injury***," and "***abducted***" are found in the Commentary to §1B1.1 (Application Instructions).

2. **Interpretation of Specific Offense Characteristics.—***See also* Commentary to §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) regarding the interpretation of the specific offense characteristics.

Background: This section refers to offenses involving the making or financing of extortionate extensions of credit, or the collection of loans by extortionate means. These "loan-sharking" offenses typically involve threats of violence and provide economic support for organized crime. The base offense level for these offenses is higher than the offense level for extortion because loan sharking is in most cases a continuing activity. In addition, the guideline does not include the amount of money involved because the amount of money in such cases is often difficult to determine. Other enhancements parallel those in §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 146, 147, and 148); November 1, 1991 (amendment 398); November 1, 1993 (amendment 479); November 1, 2000 (amendment 601); November 1, 2024 (amendment 831); November 1, 2025 (amendment 832).

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3. GAMBLING

Introductory Commentary

This subpart covers a variety of proscribed conduct. The adjustments in Chapter Three, Part B (Role in the Offense) are particularly relevant in providing a measure of the scope of the offense and the defendant's participation.

Historical Note	Effective November 1, 1987.

§2E3.1. Gambling Offenses; Animal Fighting Offenses

(a) Base Offense Level: (Apply the greatest)

(1) **16**, if the offense involved an animal fighting venture, except as provided in paragraph (3) below;

(2) **12**, if the offense was (A) engaging in a gambling business; (B) transmission of wagering information; or (C) committed as part of, or to facilitate, a commercial gambling operation;

(3) **10**, if the defendant was convicted under 7 U.S.C. § 2156(a)(2)(B); or

(4) **6**, otherwise.

Commentary

Statutory Provisions: 7 U.S.C. § 2156 (felony provisions only); 15 U.S.C. §§ 1172–1175; 18 U.S.C. §§ 1082, 1301–1304, 1306, 1511, 1953, 1955; 31 U.S.C. § 5363. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Note:

1. **Definition.**—For purposes of this guideline, "***animal fighting venture***" has the meaning given that term in 7 U.S.C. § 2156(f).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 481); November 1, 2007 (amendment 703); November 1, 2008 (amendment 721); November 1, 2016 (amendment 800); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836).

§§2E3.2 – 2E3.3. [Deleted]

Historical Note	Section 2E3.2 (Transmission of Wagering Information), effective November 1, 1987, was deleted by consolidation with §2E3.1 effective November 1, 1993 (amendment 481). Section 2E3.3 (Other Gambling Offenses), effective November 1, 1987, was deleted by consolidation with §2E3.1 effective November 1, 1993 (amendment 481).

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4. TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO

Historical Note	Effective November 1, 1987. Amended effective November 1, 2007 (amendment 700).

§2E4.1. Unlawful Conduct Relating to Contraband Cigarettes and Smokeless Tobacco

(a) Base Offense Level (Apply the greater):

(1) **9**; or

(2) the offense level from the table in §2T4.1 (Tax Table) corresponding to the amount of the tax evaded.

Commentary

Statutory Provisions: 18 U.S.C. §§ 2342(a), 2344(a).

Application Note:

1. "***Tax evaded***" refers to state and local excise taxes.

Background: The conduct covered by this section generally involves evasion of state and local excise taxes. At least 10,000 cigarettes must be involved. Because this offense is basically a tax matter, it is graded by use of the tax table in §2T4.1.

Historical Note	Effective November 1, 1987. Amended effective November 1, 2007 (amendment 700); November 1, 2008 (amendment 724).

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5. LABOR RACKETEERING

Introductory Commentary

The statutes included in this subpart protect the rights of employees under the Taft–Hartley Act, members of labor organizations under the Labor-Management Reporting and Disclosure Act of 1959, and participants of employee pension and welfare benefit plans covered under the Employee Retirement Income Security Act.

The base offense levels for many of the offenses in this subpart have been determined by reference to analogous sections of the guidelines. Thus, the base offense levels for bribery, theft, and fraud in this subpart generally correspond to similar conduct under other parts of the guidelines. The base offense levels for bribery and graft have been set higher than the level for commercial bribery due to the particular vulnerability to exploitation of the organizations covered by this subpart.

Historical Note	Effective November 1, 1987.

§2E5.1. Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations

(a) Base Offense Level:

(1) **10**, if a bribe; or

(2) **6**, if a gratuity.

(b) Specific Offense Characteristics

(1) If the defendant was a fiduciary of the benefit plan or labor organization, increase by **2** levels.

(2) If the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater (A) exceeded $3,500 but did not exceed $9,000, increase by **1** level; or (B) exceeded $9,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(c) Special Instruction for Fines — Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of §8C2.4 (Base Fine), use the greatest of: (A) the value of the unlawful payment; (B) if a bribe, the value of the benefit received or to be received in return for the unlawful payment; or (C) if a bribe, the consequential damages resulting from the unlawful payment.

Commentary

Statutory Provisions: 18 U.S.C. § 1954; 29 U.S.C. § 186.

Application Notes:

1. "***Bribe***" refers to the offer or acceptance of an unlawful payment with the specific understanding that it will corruptly affect an official action of the recipient.

2. "***Gratuity***" refers to the offer or acceptance of an unlawful payment other than a bribe.

3. "***Fiduciary of the benefit plan***" is defined in 29 U.S.C. § 1002(21)(A) to mean a person who exercises any discretionary authority or control in respect to the management of such plan or exercises authority or control in respect to management or disposition of its assets, or who renders investment advice for a fee or other direct or indirect compensation with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or who has any discretionary authority or responsibility in the administration of such plan.

4. "***Value of the improper benefit to the payer***" is explained in the Commentary to §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions).

5. If the adjustment for a fiduciary at §2E5.1(b)(1) applies, do not apply the adjustment at §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: This section covers the giving or receipt of bribes and other unlawful gratuities involving employee welfare or pension benefit plans, or labor organizations. The seriousness of the offense is determined by several factors, including the value of the bribe or gratuity and the magnitude of the loss resulting from the transaction.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 149); November 1, 1991 (amendment 422); November 1, 1993 (amendment 481); November 1, 2001 (amendment 617); November 1, 2004 (amendment 666); November 1, 2015 (amendment 791); November 1, 2026 (amendment 838).

§2E5.2. [Deleted]

Historical Note	Section 2E5.2 (Theft or Embezzlement from Employee Pension and Welfare Benefit Plans), effective November 1, 1987, and amended effective June 15, 1988 (amendment 28), November 1, 1989 (amendment 150), and November 1, 1991 (amendment 399), was deleted by consolidation with §2B1.1 effective November 1, 1993 (amendment 481).

§2E5.3. False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act; Destruction and Failure to Maintain Corporate Audit Records

(a) Base Offense Level (Apply the greater):

(1) **6**; or

(2) If the offense was committed to facilitate or conceal (A) an offense involving a theft, a fraud, or an embezzlement; (B) an offense involving a bribe or a gratuity; or (C) an obstruction of justice offense, apply §2B1.1 (Theft, Property Destruction, and Fraud), §2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of

an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations), or §2J1.2 (Obstruction of Justice), as applicable.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1027, 1520; 29 U.S.C. §§ 439, 461, 1131. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Background: This section covers the falsification of documents or records relating to a benefit plan covered by ERISA. It also covers failure to maintain proper documents required by the LMRDA or falsification of such documents. Such violations sometimes occur in connection with the criminal conversion of plan funds or schemes involving bribery or graft. Where a violation under this section occurs in connection with another offense, the offense level is determined by reference to the offense facilitated by the false statements or documents.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 151); November 1, 1993 (amendment 481); January 25, 2003 (amendment 647); November 1, 2003 (amendment 653).

§§2E5.4 – 2E5.6. [Deleted]

Historical Note	Section 2E5.4 (Embezzlement or Theft from Labor Unions in the Private Sector), effective November 1, 1987, and amended effective June 15, 1988 (amendment 29) and November 1, 1989 (amendment 152), was deleted by consolidation with §2B1.1 effective November 1, 1993 (amendment 481). Section 2E5.5 (Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act), effective November 1, 1987, and amended effective November 1, 1989 (amendment 153), was deleted by consolidation with §2E5.3 effective November 1, 1993 (amendment 481). Section 2E5.6 (Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations), effective November 1, 1987, and amended effective November 1, 1991 (amendment 422), was deleted by consolidation with §2E5.1 effective November 1, 1993 (amendment 481).

PART F — [DELETED]

Historical Note	The heading to Part F — Offenses Involving Fraud or Deceit, effective November 1, 1987, was deleted due to the deletion of §§2F1.1 and 2F1.2 effective November 1, 2001 (amendment 617).

§§2F1.1 – 2F1.2. [Deleted]

Historical Note	Section 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), effective November 1, 1987, and amended effective June 15, 1988 (amendment 30), November 1, 1989 (amendments 154, 155, 156 and 303), November 1, 1990 (amendment 317), November 1, 1991 (amendments 364 and 393), November 1, 1992 (amendment 470), November 1, 1993 (amendments 481 and 482), November 1, 1995 (amendment 513), November 1, 1997 (amendment 551), November 1, 1998 (amendments 577 and 587), and November 1, 2000 (amendments 595, 596, and 597), was deleted by consolidation with §2B1.1 effective November 1, 2001 (amendment 617). Section 2F1.2 (Insider Trading), effective November 1, 1987, was deleted by consolidation with §2B1.1 effective November 1, 2001 (amendment 617).

PART G — OFFENSES INVOLVING COMMERCIAL SEX ACTS, SEXUAL EXPLOITATION OF MINORS, AND OBSCENITY

Historical Note	Effective November 1, 1987. Amended effective November 1, 2002 (amendment 641).

1. PROMOTING A COMMERCIAL SEX ACT OR PROHIBITED SEXUAL CONDUCT

Historical Note	Effective November 1, 1987. Amended effective November 1, 2000 (amendment 592); November 1, 2002 (amendment 641).

§2G1.1. Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor

(a) Base Offense Level:

(1) **34**, if the offense of conviction is 18 U.S.C. § 1591(b)(1); or

(2) **14**, otherwise.

(b) Specific Offense Characteristic

(1) If (A) subsection (a)(2) applies; and (B)(i) the offense involved fraud or coercion; or (ii) the offense of conviction is 18 U.S.C. § 2421A(b)(2), increase by **4** levels.

(c) Cross Reference

(1) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b) or 18 U.S.C. § 2242, apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(d) Special Instruction

(1) If the offense involved more than one victim, subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) shall be applied as if the promoting of a commercial sex act or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 8 U.S.C. § 1328 (only if the offense involved a victim other than a minor); 18 U.S.C. §§ 1591 (only if the offense involved a victim other than a minor), 2421 (only if the offense

involved a victim other than a minor), 2421A (only if the offense involved a victim other than a minor), 2422(a) (only if the offense involved a victim other than a minor). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

   "***Commercial sex act***" has the meaning given that term in 18 U.S.C. § 1591(e)(3).

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

   "***Promoting a commercial sex act***" means persuading, inducing, enticing, or coercing a person to engage in a commercial sex act, or to travel to engage in, a commercial sex act.

   "***Victim***" means a person transported, persuaded, induced, enticed, or coerced to engage in, or travel for the purpose of engaging in, a commercial sex act or prohibited sexual conduct, whether or not the person consented to the commercial sex act or prohibited sexual conduct. Accordingly, "victim" may include an undercover law enforcement officer.

2. **Application of Subsection (b)(1).—**Subsection (b)(1) provides an enhancement for fraud or coercion that occurs as part of the offense and anticipates no bodily injury. For purposes of subsection (b)(1), "***coercion***" includes any form of conduct that negates the voluntariness of the victim. This enhancement would apply, for example, in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol. This characteristic generally will not apply if the drug or alcohol was voluntarily taken.

3. **Application of Chapter Three Adjustment.—**For the purposes of §3B1.1 (Aggravating Role), a victim, as defined in this guideline, is considered a participant only if that victim assisted in the promoting of a commercial sex act or prohibited sexual conduct in respect to another victim.

4. **Application of Subsection (c)(1).—**

   (A) **Conduct Described in 18 U.S.C. § 2241(a) or (b).—**For purposes of subsection (c)(1), conduct described in 18 U.S.C. § 2241(a) or (b) is engaging in, or causing another person to engage in, a sexual act with another person by: (i) using force against the victim; (ii) threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping; (iii) rendering the victim unconscious; or (iv) administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol.

   (B) **Conduct Described in 18 U.S.C. § 2242.—**For purposes of subsection (c)(1), conduct described in 18 U.S.C. § 2242 is: (i) engaging in, or causing another person to engage in, a sexual act with another person by threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping); or (ii) engaging in, or causing another person to engage in, a sexual act with a victim who is incapable of appraising the nature of the conduct or who is physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act.

5. **Special Instruction at Subsection (d)(1).**—For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, a commercial sex act or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are subject to the adjustment under subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of a commercial sex act or prohibited sexual conduct in respect to more than one victim, whether specifically cited in the count of conviction, each such victim shall be treated as if contained in a separate count of conviction.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 157 and 158); November 1, 1990 (amendment 322); November 1, 1996 (amendment 538); November 1, 2000 (amendment 592); May 1, 2001 (amendment 612); November 1, 2001 (amendment 627); November 1, 2002 (amendment 641); November 1, 2004 (amendment 664); November 1, 2007 (amendment 701); November 1, 2009 (amendment 737); November 1, 2023 (amendment 815); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

§2G1.2. [Deleted]

Historical Note	Section 2G1.2 (Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct), effective November 1, 1987, and amended effective November 1, 1989 (amendments 159 and 160), November 1, 1990 (amendment 323), November 1, 1991 (amendment 400), and November 1, 1992 (amendment 444), was deleted by consolidation with §2G1.1 effective November 1, 1996 (amendment 538).

§2G1.3. Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor

(a) Base Offense Level:

(1) **34**, if the defendant was convicted under 18 U.S.C. § 1591(b)(1);

(2) **30**, if the defendant was convicted under 18 U.S.C. § 1591(b)(2);

(3) **28**, if the defendant was convicted under 18 U.S.C. § 2422(b) or § 2423(a); or

(4) **24**, otherwise.

(b) Specific Offense Characteristics

(1) If (A) the defendant was a parent, relative, or legal guardian of the minor; or (B) the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by **2** levels.

(2) If (A) the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prohibited sexual conduct; or (B) a participant otherwise unduly influenced a minor to engage in prohibited sexual conduct, increase by **2** levels.

(3) If the offense involved the use of a computer or an interactive computer service to (A) persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct; or (B) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with the minor, increase by **2** levels. *Provided*, however, that subsection (b)(3)(B) shall not apply if the offense of conviction is 18 U.S.C. § 2421A.

(4) (Apply the greater):

(A) If (i) the offense involved the commission of a sex act or sexual contact; or (ii) subsection (a)(3) or (a)(4) applies and the offense involved a commercial sex act, increase by **2** levels.

(B) If (i) subsection (a)(4) applies; and (ii) the offense of conviction is 18 U.S.C. § 2421A(b)(2), increase by **4** levels.

(5) If (A) subsection (a)(3) or (a)(4) applies; and (B) the offense involved a minor who had not attained the age of 12 years, increase by **8** levels.

(c) Cross References

(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.

(2) If a minor was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder), if the resulting offense level is greater than that determined above.

(3) If the offense involved conduct described in 18 U.S.C. § 2241 or § 2242, apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal

Sexual Abuse), if the resulting offense level is greater than that determined above. If the offense involved interstate travel with intent to engage in a sexual act with a minor who had not attained the age of 12 years, or knowingly engaging in a sexual act with a minor who had not attained the age of 12 years, §2A3.1 shall apply, regardless of the "consent" of the minor.

(d) Special Instruction

(1) If the offense involved more than one minor, subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) shall be applied as if the persuasion, enticement, coercion, travel, or transportation to engage in a commercial sex act or prohibited sexual conduct of each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 8 U.S.C. § 1328 (only if the offense involved a minor); 18 U.S.C. §§ 1591 (only if the offense involved a minor), 2421 (only if the offense involved a minor), 2421A (only if the offense involved a minor), 2422 (only if the offense involved a minor), 2423, 2425. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Commercial sex act***" has the meaning given that term in 18 U.S.C. § 1591(e)(3).

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Illicit sexual conduct***" has the meaning given that term in 18 U.S.C. § 2423(f).

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

"***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; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

"***Participant***" has the meaning given that term in Application Note 1 of the Commentary to §3B1.1 (Aggravating Role).

"***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 act***" has the meaning given that term in 18 U.S.C. § 2246(2).

"***Sexual contact***" has the meaning given that term in 18 U.S.C. § 2246(3).

2. **Application of Subsection (b)(1).—**

(A) **Custody, Care, or Supervisory Control.—**Subsection (b)(1) is intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the minor and not simply to the legal status of the defendant-minor relationship.

(B) **Inapplicability of Chapter Three Adjustment.—**If the enhancement under subsection (b)(1) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

3. **Application of Subsection (b)(2).—**

(A) **Misrepresentation of Participant's Identity.—**The enhancement in subsection (b)(2)(A) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prohibited sexual conduct. Subsection (b)(2)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(2)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(2)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

(B) **Undue Influence.—**In determining whether subsection (b)(2)(B) applies, the court should closely consider the facts of the case to determine whether a participant's influence over the minor compromised the voluntariness of the minor's behavior. The voluntariness of the minor's behavior may be compromised without prohibited sexual conduct occurring.

However, subsection (b)(2)(B) does not apply in a case in which the only "minor" (as defined in Application Note 1) involved in the offense is an undercover law enforcement officer.

In a case in which a participant is at least 10 years older than the minor, there shall be a rebuttable presumption that subsection (b)(2)(B) applies. In such a case, some degree of undue influence can be presumed because of the substantial difference in age between the participant and the minor.

4. **Application of Subsection (b)(3)(A).—**Subsection (b)(3)(A) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(3)(A) would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.

5. **Application of Subsection (c).—**

(A) **Application of Subsection (c)(1).—**The cross reference in subsection (c)(1) is to be construed broadly and includes all instances in which the offense involved employing, using,

persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice, advertisement or other method, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct. For purposes of subsection (c)(1), "***sexually explicit conduct***" has the meaning given that term in 18 U.S.C. § 2256(2).

(B) **Application of Subsection (c)(3).**—For purposes of subsection (c)(3), conduct described in 18 U.S.C. § 2241 means conduct described in 18 U.S.C. § 2241(a), (b), or (c). Accordingly, for purposes of subsection (c)(3):

(i) Conduct described in 18 U.S.C. § 2241(a) or (b) is engaging in, or causing another person to engage in, a sexual act with another person: (I) using force against the minor; (II) threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; (III) rendering the minor unconscious; or (IV) administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to appraise or control conduct was substantially impaired by drugs or alcohol.

(ii) Conduct described in 18 U.S.C. § 2241(c) is: (I) interstate travel with intent to engage in a sexual act with a minor who has not attained the age of 12 years; (II) knowingly engaging in a sexual act with a minor who has not attained the age of 12 years; or (III) knowingly engaging in a sexual act under the circumstances described in 18 U.S.C. § 2241(a) and (b) with a minor who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging).

(iii) Conduct described in 18 U.S.C. § 2242 is: (I) engaging in, or causing another person to engage in, a sexual act with another person by threatening or placing the minor in fear (other than by threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping); or (II) engaging in, or causing another person to engage in, a sexual act with a minor who is incapable of appraising the nature of the conduct or who is physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act.

6. **Application of Subsection (d)(1).**—For the purposes of Chapter Three, Part D (Multiple Counts), each minor transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, a commercial sex act or prohibited sexual conduct is to be treated as a separate minor. Consequently, multiple counts involving more than one minor are subject to the adjustment under subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes travel or transportation to engage in a commercial sex act or prohibited sexual conduct in respect to more than one minor, whether specifically cited in the count of conviction, each such minor shall be treated as if contained in a separate count of conviction.

Historical Note	Effective November 1, 2004 (amendment 664). Amended effective November 1, 2007 (amendment 701); November 1, 2009 (amendments 732 and 737); November 1, 2018 (amendment 812); November 1, 2023 (amendment 815); November 1, 2025 (amendment 836); November 1, 2026 (amendments 840 and 843).

* * * * *

2. SEXUAL EXPLOITATION OF A MINOR

§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

(a) Base Offense Level: **32**

(b) Specific Offense Characteristics

(1) If the offense involved a minor who had (A) not attained the age of twelve years, increase by **4** levels; or (B) attained the age of twelve years but not attained the age of sixteen years, increase by **2** levels.

(2) (Apply the greater) If the offense involved—

(A) the commission of a sexual act or sexual contact, increase by **2** levels; or

(B) (i) the commission of a sexual act; and (ii) conduct described in 18 U.S.C. § 2241(a) or (b), increase by **4** levels.

(3) If the defendant knowingly engaged in distribution, increase by **2** levels.

(4) If the offense involved material that portrays (A) sadistic or masochistic conduct or other depictions of violence; or (B) an infant or toddler, increase by **4** levels.

(5) If the defendant was a parent, relative, or legal guardian of the minor involved in the offense, or if the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by **2** levels.

(6) If, for the purpose of producing sexually explicit material or for the purpose of transmitting such material live, the offense involved (A) the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct; or (B) the use of a computer or an interactive computer service to (i) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct, or to otherwise solicit participation by a minor in such conduct; or (ii) solicit participation with a minor in sexually explicit conduct, increase by **2** levels.

(c) Cross Reference

(1) If the victim was killed in circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder), if the resulting offense level is greater than that determined above.

(d) Special Instruction

(1) If the offense involved the exploitation of more than one minor, subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) shall be applied as if the exploitation of each minor had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1591, 2251(a)–(c), 2251(d)(1)(B), 2260(a). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Distribution***" means any act, including possession with intent to distribute, production, transmission, advertisement, and transportation, 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.

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

"***Material***" includes a visual depiction, as defined in 18 U.S.C. § 2256.

"***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; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

"***Sexually explicit conduct***" has the meaning given that term in 18 U.S.C. § 2256(2).

2. **Application of Subsection (b)(2).—**For purposes of subsection (b)(2):

"***Conduct described in 18 U.S.C. § 2241(a) or (b)***" is: (i) using force against the minor; (ii) threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; (iii) rendering the minor unconscious; or (iv) administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise

or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to appraise or control conduct was substantially impaired by drugs or alcohol.

"***Sexual act***" has the meaning given that term in 18 U.S.C. § 2246(2).

"***Sexual contact***" has the meaning given that term in 18 U.S.C. § 2246(3).

3. **Application of Subsection (b)(3).**—For purposes of subsection (b)(3), the defendant "knowingly engaged in distribution" if the defendant (A) knowingly committed the distribution, (B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.

4. **Interaction of Subsection (b)(4)(B) and Vulnerable Victim (§3A1.1(b)).**—If subsection (b)(4)(B) applies, do not apply §3A1.1(b).

5. **Application of Subsection (b)(5).—**

   (A) **In General.**—Subsection (b)(5) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the minor and not simply to the legal status of the defendant-minor relationship.

   (B) **Inapplicability of Chapter Three Adjustment.**—If the enhancement in subsection (b)(5) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

6. **Application of Subsection (b)(6).—**

   (A) **Misrepresentation of Participant's Identity.**—The enhancement in subsection (b)(6)(A) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material or for the purpose of transmitting such material live. Subsection (b)(6)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(6)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

   The misrepresentation to which the enhancement in subsection (b)(6)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material or for the purpose of transmitting such material live. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

   (B) **Use of a Computer or an Interactive Computer Service.**—Subsection (b)(6)(B) provides an enhancement if the offense involved the use of a computer or an interactive computer service to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material or for

the purpose of transmitting such material live or otherwise to solicit participation by a minor in such conduct for such purposes. Subsection (b)(6)(B) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.

7. **Application of Subsection (d)(1).**—For the purposes of Chapter Three, Part D (Multiple Counts), each minor exploited is to be treated as a separate minor. Consequently, multiple counts involving the exploitation of different minors are subject to the adjustment under subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts). Subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes more than one minor being exploited, whether specifically cited in the count of conviction or not, each such minor shall be treated as if contained in a separate count of conviction.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 161); November 1, 1990 (amendment 324); November 1, 1991 (amendment 400); November 1, 1996 (amendment 537); November 1, 1997 (amendment 575); November 1, 2000 (amendment 592); May 1, 2001 (amendment 612); November 1, 2001 (amendment 627); November 1, 2003 (amendment 661); November 1, 2004 (amendment 664); November 1, 2009 (amendments 733, 736, and 737); November 1, 2016 (amendment 801); November 1, 2023 (amendment 824); November 1, 2025 (amendment 836); November 1, 2026 (amendments 840 and 843).

§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 Involving the Sexual Exploitation of a Minor

(a) Base Offense Level:

(1) **18**, if the defendant is convicted of 18 U.S.C. § 1466A(b), § 2252(a)(4), § 2252A(a)(5), or § 2252A(a)(7).

(2) **22**, otherwise.

(b) Specific Offense Characteristics

(1) If (A) subsection (a)(2) applies; (B) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (C) the defendant did not intend to traffic in, or distribute, such material, decrease by **2** levels.

(2) If the material involved a prepubescent minor or a minor who had not attained the age of 12 years, increase by **2** levels.

(3) (Apply the greatest):

(A) If the offense involved 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) If the defendant distributed in exchange for any valuable consideration, but not for pecuniary gain, increase by **5** levels.

(C) If the offense involved distribution to a minor, increase by **5** levels.

(D) If the offense involved distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, other than illegal activity covered under subparagraph (E), increase by **6** levels.

(E) If the offense involved 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) If the defendant knowingly engaged in distribution, other than distribution described in subparagraphs (A) through (E), increase by **2** levels.

(4) If the offense involved material that portrays (A) sadistic or masochistic conduct or other depictions of violence; or (B) sexual abuse or exploitation of an infant or toddler, increase by **4** levels.

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

(6) If the offense involved the use of a computer or an interactive computer service for the possession, transmission, receipt, or distribution of the material, or for accessing with intent to view the material, increase by **2** levels.

(7) 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 or for the purpose of transmitting a live 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(a)–(b), 2260(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Distribution***" means any act, including possession with intent to distribute, production, transmission, advertisement, and transportation, 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.

"***The defendant distributed in exchange for any valuable consideration***" means the defendant agreed to an exchange with another person under which the defendant knowingly distributed to that other person for the specific purpose of obtaining something of valuable consideration from that other person, such as other child pornographic material, preferential access to child pornographic material, or access to a child.

"***Distribution to a minor***" means the knowing distribution to an individual who is a minor at the time of the offense.

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

"***Material***" includes a visual depiction, as defined in 18 U.S.C. § 2256.

"***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; or (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 any of the following: (A) conduct described in 18 U.S.C. § 2241, § 2242, § 2243, § 2251(a)–(c), § 2251(d)(1)(B), § 2251A, § 2260(b), § 2421, § 2422, or § 2423; (B) an offense under state law, that would have been an offense under any such section if the offense had occurred within the special maritime or territorial jurisdiction of the United States; or (C) an attempt or conspiracy to commit any of the offenses under subparagraphs (A) or (B). "Sexual abuse or exploitation" does not include possession, accessing with intent to view, receipt, or trafficking in material relating to the sexual abuse or exploitation of a minor.

2. **Application of Subsection (b)(3)(F).**—For purposes of subsection (b)(3)(F), the defendant "knowingly engaged in distribution" if the defendant (A) knowingly committed the distribution, (B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.

3. **Application of Subsection (b)(4)(A).**—Subsection (b)(4)(A) applies if the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, regardless of whether the defendant specifically intended to possess, access with intent to view, receive, or distribute such materials.

4. **Interaction of Subsection (b)(4)(B) and Vulnerable Victim (§3A1.1(b)).**—If subsection (b)(4)(B) applies, do not apply §3A1.1(b).

5. **Application of Subsection (b)(5).**—A conviction taken into account under subsection (b)(5) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

6. **Application of Subsection (b)(7).—**

   (A) **Definition of "Images".**—"***Images***" means any visual depiction, as defined in 18 U.S.C. § 2256(5), that constitutes child pornography, as defined in 18 U.S.C. § 2256(8).

   (B) **Determining the Number of Images.**—For purposes of determining the number of images under subsection (b)(7):

      (i) Each photograph, picture, computer or computer-generated image, or any similar visual depiction shall be considered to be one image.

      (ii) Each video, video-clip, movie, or similar visual depiction shall be considered to have 75 images.

7. **Application of Subsection (c)(1).—**

   (A) **In General.**—The cross reference in subsection (c)(1) is to be construed broadly and includes all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement,

a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting live any visual depiction of such conduct.

(B) **Definition.**—"***Sexually explicit conduct***" has the meaning given that term in 18 U.S.C. § 2256(2).

8. **Cases Involving Adapted or Modified Depictions.**—If the offense involved material that is an adapted or modified depiction of an identifiable minor (*e.g.*, a case in which the defendant is convicted under 18 U.S.C. § 2252A(a)(7)), the term "material involving the sexual exploitation of a minor" includes such material.

Background: Section 401(i)(1)(C) of Public Law 108–21 directly amended subsection (b) to add paragraph (7), effective April 30, 2003.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendment 31); November 1, 1990 (amendment 325); November 1, 1991 (amendment 372); November 27, 1991 (amendment 435); November 1, 1996 (amendment 537); November 1, 1997 (amendment 575); November 1, 2000 (amendment 592); November 1, 2001 (amendment 617); April 30, 2003 (amendment 649); November 1, 2003 (amendment 661); November 1, 2004 (amendment 664); November 1, 2009 (amendments 733 and 736); November 1, 2016 (amendment 801); November 1, 2025 (amendment 836); November 1, 2026 (amendment 843).

§2G2.3. Selling or Buying of Children for Use in the Production of Pornography

(a) Base Offense Level: **38**

Commentary

Statutory Provision: 18 U.S.C. § 2251A.

Background: The statutory minimum sentence for a defendant convicted under 18 U.S.C. § 2251A is thirty years imprisonment.

Historical Note	Effective November 1, 1989 (amendment 162). Amended effective November 1, 2009 (amendment 736).

§2G2.4. [Deleted]

Historical Note	Section 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), effective November 1, 1991 (amendment 372), and amended effective November 27, 1991 (amendment 436), November 1, 1996 (amendment 537), November 1, 2000 (amendment 592), and April 30, 2003 (amendment 649), was deleted by consolidation with §2G2.2 effective November 1, 2004 (amendment 664).

§2G2.5. Recordkeeping Offenses Involving the Production of Sexually Explicit Materials; Failure to Provide Required Marks in Commercial Electronic Email

(a) Base Offense Level: **6**

(b) Cross References

(1) If the offense reflected an effort to conceal a substantive offense that 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).

(2) If the offense reflected an effort to conceal a substantive offense that involved trafficking in material involving the sexual exploitation of a minor (including receiving, transporting, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic), apply §2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Advertising, or Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic).

Commentary

Statutory Provisions: 15 U.S.C. § 7704(d); 18 U.S.C. §§ 2257, 2257A.

Historical Note	Effective November 1, 1991 (amendment 372). Amended effective November 1, 2006 (amendment 689); November 1, 2007 (amendment 701).

§2G2.6. Child Exploitation Enterprises

(a) Base Offense Level: **35**

(b) Specific Offense Characteristics

(1) If a victim (A) had not attained the age of 12 years, increase by **4** levels; or (B) had attained the age of 12 years but had not attained the age of 16 years, increase by **2** levels.

(2) If (A) the defendant was a parent, relative, or legal guardian of a minor victim; or (B) a minor victim was otherwise in the custody, care, or supervisory control of the defendant, increase by **2** levels.

(3) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), increase by **2** levels.

(4) If a computer or an interactive computer service was used in furtherance of the offense, increase by **2** levels.

Commentary

Statutory Provision: 18 U.S.C. § 2252A(g).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

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

"***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; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

2. **Application of Subsection (b)(2).—**

(A) **Custody, Care, or Supervisory Control.—**Subsection (b)(2) is intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the minor and not simply to the legal status of the defendant-minor relationship.

(B) **Inapplicability of Chapter Three Adjustment.—**If the enhancement under subsection (b)(2) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

3. **Application of Subsection (b)(3).—**For purposes of subsection (b)(3), "***conduct described in 18 U.S.C. § 2241(a) or (b)***" is: (i) using force against the minor; (ii) threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; (iii) rendering the minor unconscious; or (iv) administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to appraise or control conduct was substantially impaired by drugs or alcohol.

Historical Note	Effective November 1, 2007 (amendment 701). Amended effective November 1, 2026 (amendment 843).

* * * * *

3. OBSCENITY

§2G3.1. Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor; Misleading Domain Names

(a) Base Offense Level: **10**

(b) Specific Offense Characteristics

(1) (Apply the Greatest):

(A) If the offense involved 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) If the defendant distributed in exchange for any valuable consideration, but not for pecuniary gain, increase by **5** levels.

(C) If the offense involved distribution to a minor, increase by **5** levels.

(D) If the offense involved distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, other than illegal activity covered under subparagraph (E), increase by **6** levels.

(E) If the offense involved 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) If the defendant knowingly engaged in distribution, other than distribution described in subparagraphs (A) through (E), increase by **2** levels.

(2) If, with the intent to deceive a minor into viewing material that is harmful to minors, the offense involved the use of (A) a misleading domain name on the Internet; or (B) embedded words or digital images in the source code of a website, increase by **2** levels.

(3) If the offense involved the use of a computer or an interactive computer service, increase by **2** levels.

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

(c) Cross Reference

(1) If the offense involved transporting, distributing, receiving, possessing, or advertising to receive material involving the sexual exploitation of a minor, apply §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 Involving the Sexual Exploitation of a Minor).

Commentary

Statutory Provisions: 18 U.S.C. §§ 1460–1463, 1465, 1466, 1470, 2252B, 2252C. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Distribution***" means any act, including possession with intent to distribute, production, transmission, advertisement, and transportation, related to the transfer of obscene matter. 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.

"***The defendant distributed in exchange for any valuable consideration***" means the defendant agreed to an exchange with another person under which the defendant knowingly distributed to that other person for the specific purpose of obtaining something of valuable consideration from that other person, such as other obscene material, preferential access to obscene material, or access to a child.

"***Distribution to a minor***" means the knowing distribution to an individual who is a minor at the time of the offense.

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

"***Material that is harmful to minors***" has the meaning given that term in 18 U.S.C. § 2252B(d).

"***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; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

"***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).

"***Sexually explicit conduct***" has the meaning given that term in 18 U.S.C. § 2256(2).

2. **Application of Subsection (b)(1)(F).—**For purposes of subsection (b)(1)(F), the defendant "knowingly engaged in distribution" if the defendant (A) knowingly committed the distribution, (B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.

3. **Inapplicability of Subsection (b)(3).—**If the defendant is convicted of 18 U.S.C. § 2252B or § 2252C, subsection (b)(3) shall not apply.

4. **Application of Subsection (b)(4).—**Subsection (b)(4) applies if the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, regardless of whether the defendant specifically intended to possess, receive, or distribute such materials.

Background: Most federal prosecutions for offenses covered in this guideline are directed to offenses involving distribution for pecuniary gain. Consequently, the offense level under this section generally will be at least 15.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 163); November 1, 1990 (amendment 326); November 1, 1991 (amendment 372); November 27, 1991 (amendment 437); November 1, 2000 (amendment 592); November 1, 2001 (amendment 617); November 1, 2004 (amendment 664); November 1, 2007 (amendment 701); November 1, 2009 (amendment 736); November 1, 2010 (amendment 746); November 1, 2016 (amendment 801); November 1, 2026 (amendment 843).

§2G3.2. Obscene Telephone Communications for a Commercial Purpose; Broadcasting Obscene Material

(a) Base Offense Level: **12**

Commentary

Statutory Provisions: 18 U.S.C. §§ 1464, 1468; 47 U.S.C. § 223(b)(1)(A).

Historical Note	Effective November 1, 1989 (amendment 164). Amended effective November 1, 2000 (amendment 592); November 1, 2001 (amendment 617); November 1, 2026 (amendment 837). A former §2G3.2 (Obscene or Indecent Telephone Communications), effective November 1, 1987, was deleted effective November 1, 1989 (amendment 164).

PART H — OFFENSES INVOLVING INDIVIDUAL RIGHTS

1. CIVIL RIGHTS

Historical Note	Introductory Commentary to Part H, Subpart 1, effective November 1, 1987, was deleted effective November 1, 1995 (amendment 521).

§2H1.1. Offenses Involving Individual Rights

(a) Base Offense Level (Apply the Greatest):

(1) the offense level from the offense guideline applicable to any underlying offense;

(2) **12**, if the offense involved two or more participants;

(3) **10**, if the offense involved (A) the use or threat of force against a person; or (B) property damage or the threat of property damage; or

(4) **6**, otherwise.

(b) Specific Offense Characteristic

(1) If (A) the defendant was a public official at the time of the offense; or (B) the offense was committed under color of law, increase by **6** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 241, 242, 245(b), 246–250, 1091; 42 U.S.C. § 3631.

Application Notes:

1. "***Offense guideline applicable to any underlying offense***" means the offense guideline applicable to any conduct established by the offense of conviction that constitutes an offense under federal, state, or local law (other than an offense that is itself covered under Chapter Two, Part H, Subpart 1).

In certain cases, conduct set forth in the count of conviction may constitute more than one underlying offense (*e.g.*, two instances of assault, or one instance of assault and one instance of arson). In such cases, use the following comparative procedure to determine the applicable base offense level: (i) determine the underlying offenses encompassed within the count of conviction as if the defendant had been charged with a conspiracy to commit multiple offenses. *See* Application Note 4 of §1B1.2 (Applicable Guidelines); (ii) determine the Chapter Two offense level (*i.e.*, the base offense level, specific offense characteristics, cross references, and special instructions) for each such underlying offense; and (iii) compare each of the Chapter Two offense levels determined above with the alternative base offense level under subsection (a)(2), (3), or (4). The determination of the applicable alternative base offense level is to be based on the entire conduct

underlying the count of conviction (*i.e.*, the conduct taken as a whole). Use the alternative base offense level only if it is greater than each of the Chapter Two offense levels determined above. Otherwise, use the Chapter Two offense levels for each of the underlying offenses (with each underlying offense treated as if contained in a separate count of conviction). Then apply subsection (b) to the alternative base offense level, or to the Chapter Two offense levels for each of the underlying offenses, as appropriate.

2. "***Participant***" is defined in the Commentary to §3B1.1 (Aggravating Role).

3. The burning or defacement of a religious symbol with an intent to intimidate shall be deemed to involve the threat of force against a person for the purposes of subsection (a)(3)(A).

4. If the finder of fact at trial or, in the case of a plea of guilty or *nolo contendere*, the court at sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person, an additional 3-level enhancement from §3A1.1(a) will apply. An adjustment from §3A1.1(a) will not apply, however, if a 6-level adjustment from §2H1.1(b) applies. *See* §3A1.1(c).

5. If subsection (b)(1) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 303); November 1, 1990 (amendments 313 and 327); November 1, 1991 (amendment 430); November 1, 1995 (amendment 521); November 1, 2000 (amendment 591); November 1, 2010 (amendment 743); November 1, 2023 (amendment 816).

§§2H1.2 – 2H1.5. [Deleted]

Historical Note	Section 2H1.2 (Conspiracy to Interfere with Civil Rights), effective November 1, 1987, and amended effective November 1, 1989 (amendment 303), was deleted by consolidation with §2H1.1 effective November 1, 1990 (amendment 327). Section 2H1.3 (Use of Force or Threat of Force to Deny Benefits or Rights in Furtherance of Discrimination; Damage to Religious Real Property), effective November 1, 1987, and amended effective November 1, 1989 (amendment 165), was deleted by consolidation with §2H1.1 effective November 1, 1995 (amendment 521). Section 2H1.4 (Interference with Civil Rights Under Color of Law), effective November 1, 1987, amended effective November 1, 1989 (amendment 166), was deleted by consolidation with §2H1.1 effective November 1, 1995 (amendment 521). Section 2H1.5 (Other Deprivations of Rights or Benefits in Furtherance of Discrimination), effective November 1, 1987, and amended effective November 1, 1989 (amendment 167) and November 1, 1990 (amendment 328), was deleted by consolidation with §2H1.1 effective November 1, 1995 (amendment 521).

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2. POLITICAL RIGHTS

§2H2.1. Obstructing an Election or Registration

(a) Base Offense Level (Apply the greatest):

(1) **18**, if the obstruction occurred by use of force or threat of force against person(s) or property; or

(2) **12**, if the obstruction occurred by forgery, fraud, theft, bribery, deceit, or other means, except as provided in paragraph (3) below; or

(3) **6**, if the defendant (A) solicited, demanded, accepted, or agreed to accept anything of value to vote, refrain from voting, vote for or against a particular candidate, or register to vote, (B) gave false information to establish eligibility to vote, or (C) voted more than once in a federal election.

Commentary

Statutory Provisions: 18 U.S.C. §§ 241, 242, 245(b)(1)(A), 592, 593, 594, 597, 1015(f); 52 U.S.C. §§ 10307, 10308(a), (b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Background: Alternative base offense levels cover three major ways of obstructing an election: by force, by deceptive or dishonest conduct, or by bribery. A defendant who is a public official or who directs others to engage in criminal conduct is subject to an enhancement from Chapter Three, Part B (Role in the Offense).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 168); November 1, 1995 (amendment 534); November 1, 2003 (amendment 661); November 1, 2015 (amendment 796); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836).

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3. PRIVACY AND EAVESDROPPING

§2H3.1. Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information

(a) Base Offense Level (Apply the greater):

(1) **9**; or

(2) **6**, if the offense of conviction has a statutory maximum term of imprisonment of one year or less but more than six months.

(b) Specific Offense Characteristic

(1) If (A) the defendant is convicted under 18 U.S.C. § 1039(d) or (e); or (B) the purpose of the offense was to obtain direct or indirect commercial advantage or economic gain, increase by **3** levels.

(c) Cross Reference

(1) If the purpose of the offense was to facilitate another offense, apply the guideline applicable to an attempt to commit that other offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 8 U.S.C. § 1375a(d)(5)(B)(i), (ii); 15 U.S.C. § 9901; 18 U.S.C. §§ 119, 1039, 1905, 2511; 26 U.S.C. §§ 7213(a)(1)–(3), (a)(5), (d), 7213A, 7216; 42 U.S.C. §§ 16962, 16984; 44 U.S.C. § 3572; 47 U.S.C. § 605. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Satellite Cable Transmissions.**—If the offense involved interception of satellite cable transmissions for purposes of commercial advantage or private financial gain (including avoiding payment of fees), apply §2B5.3 (Criminal Infringement of Copyright) rather than this guideline.

2. **Imposition of Sentence for 18 U.S.C. § 1039(d) and (e).**—Subsections 1039(d) and (e) of title 18, United States Code, require a term of imprisonment of not more than 5 years to be imposed in addition to any sentence imposed for a conviction under 18 U.S.C. § 1039(a), (b), or (c). In order to comply with the statute, the court should determine the appropriate "total punishment" and divide the sentence on the judgment form between the sentence attributable to the conviction under 18 U.S.C. § 1039(d) or (e) and the sentence attributable to the conviction under 18 U.S.C. § 1039(a), (b), or (c), specifying the number of months to be served for the conviction under 18 U.S.C. § 1039(d) or (e). For example, if the applicable adjusted guideline range is 15–21 months and the court determines a "total punishment" of 21 months is appropriate, a sentence of 9 months for conduct under 18 U.S.C. § 1039(a) plus 12 months for 18 U.S.C. § 1039(d) conduct would achieve the "total punishment" in a manner that satisfies the statutory requirement.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 169); November 1, 2001 (amendment 628); May 1, 2007 (amendment 697); November 1, 2007 (amendment 708); November 1, 2008 (amendment 718); November 1, 2009 (amendments 726 and 737); November 1, 2014 (amendment 781); November 1, 2023 (amendments 815 and 824); November 1, 2025 (amendment 836); November 1, 2026 (amendments 837 and 842).

§2H3.2. Manufacturing, Distributing, Advertising, or Possessing an Eavesdropping Device

(a) Base Offense Level: **6**

(b) Specific Offense Characteristic

(1) If the offense was committed for pecuniary gain, increase by **3** levels.

Commentary

Statutory Provision: 18 U.S.C. § 2512.

Historical Note	Effective November 1, 1987.

§2H3.3. Obstructing Correspondence

(a) Base Offense Level:

(1) **6**; or

(2) if the conduct was theft or destruction of mail, apply §2B1.1 (Theft, Property Destruction, and Fraud).

Commentary

Statutory Provision: 18 U.S.C. § 1702. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Background: The statutory provision covered by this guideline is sometimes used to prosecute offenses more accurately described as theft or destruction of mail. In such cases, §2B1.1 (Theft, Property Destruction, and Fraud) is to be applied.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 313); November 1, 2001 (amendment 617).

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4. PEONAGE, INVOLUNTARY SERVITUDE, SLAVE TRADE, AND CHILD SOLDIERS

Historical Note	Effective November 1, 1987. Amended effective November 1, 2009 (amendment 733).

§2H4.1. Peonage, Involuntary Servitude, Slave Trade, and Child Soldiers

(a) Base Offense Level:

(1) **22**; or

(2) **18**, if (A) the defendant was convicted of an offense under 18 U.S.C. § 1592, or (B) the defendant was convicted of an offense under 18 U.S.C. § 1593A based on an act in violation of 18 U.S.C. § 1592.

(b) Specific Offense Characteristics

(1) (A) If any victim sustained permanent or life-threatening bodily injury, increase by **4** levels; or (B) if any victim sustained serious bodily injury, increase by **2** levels.

(2) If (A) a dangerous weapon was used, increase by **4** levels; or (B) a dangerous weapon was brandished, or the use of a dangerous weapon was threatened, increase by **2** levels.

(3) If any victim was held in a condition of peonage or involuntary servitude for (A) more than one year, increase by **3** levels; (B) between 180 days and one year, increase by **2** levels; or (C) more than 30 days but less than 180 days, increase by **1** level.

(4) If any other felony offense was committed during the commission of, or in connection with, the peonage or involuntary servitude offense, increase to the greater of:

(A) **2** plus the offense level as determined above, or

(B) **2** plus the offense level from the offense guideline applicable to that other offense, but in no event greater than level **43**.

Commentary

Statutory Provisions: 18 U.S.C. §§ 241, 1581–1590, 1592, 1593A, 2442.

Application Notes:

1. For purposes of this guideline—

"***A dangerous weapon was used***" means that a firearm was discharged, or that a firearm or other dangerous weapon was otherwise used. "***The use of a dangerous weapon was threatened***" means that the use of a dangerous weapon was threatened regardless of whether a dangerous weapon was present.

Definitions of "***firearm***," "***dangerous weapon***," "***otherwise used***," "***serious bodily injury***," and "***permanent or life-threatening bodily injury***" are found in the Commentary to §1B1.1 (Application Instructions).

"***Peonage or involuntary servitude***" includes forced labor, slavery, and recruitment or use of a child soldier.

2. Under subsection (b)(4), "***any other felony offense***" means any conduct that constitutes a felony offense under federal, state, or local law (other than an offense that is itself covered by this subpart). When there is more than one such other offense, the most serious such offense (or group of offenses to which §3D1.1(a) applies) is to be used. *See* Application Note 3 of §1B1.5 (Interpretation of References to other Offense Guidelines).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1995 (amendment 521); May 1, 1997 (amendment 542); November 1, 1997 (amendment 559); May 1, 2001 (amendment 612); November 1, 2001 (amendment 627); November 1, 2009 (amendments 730 and 733); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

§2H4.2. Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act

(a) Base Offense Level: **6**

(b) Specific Offense Characteristics

(1) If the offense involved (A) serious bodily injury, increase by **4** levels; or (B) bodily injury, increase by **2** levels.

(2) If the defendant committed any part of the instant offense subsequent to sustaining a civil or administrative adjudication for similar misconduct, increase by **2** levels.

Commentary

Statutory Provision: 29 U.S.C. § 1851.

Application Notes:

1. **Definitions.**—For purposes of subsection (b)(1), "***bodily injury***" and "***serious bodily injury***" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

2. **Application of Subsection (b)(2).**—Section 1851 of title 29, United States Code, covers a wide range of conduct. Accordingly, the enhancement in subsection (b)(2) applies only if the instant offense is similar to previous misconduct that resulted in a civil or administrative adjudication under the provisions of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. § 1801 *et seq.*).

Historical Note	Effective May 1, 2001 (amendment 612). Amended effective November 1, 2001 (amendment 627); November 1, 2010 (amendment 746); November 1, 2015 (amendment 796).

PART I — [NOT USED]

PART J — OFFENSES INVOLVING THE ADMINISTRATION OF JUSTICE

§2J1.1. Contempt

Apply §2X5.1 (Other Offenses).

Commentary

Statutory Provisions: 18 U.S.C. §§ 401, 228. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **In General.**—Because misconduct constituting contempt varies significantly and the nature of the contemptuous conduct, the circumstances under which the contempt was committed, the effect the misconduct had on the administration of justice, and the need to vindicate the authority of the court are highly context-dependent, the Commission has not provided a specific guideline for this offense. In certain cases, the offense conduct will be sufficiently analogous to §2J1.2 (Obstruction of Justice) for that guideline to apply.

2. **Willful Failure to Pay Court-Ordered Child Support.**—For offenses involving the willful failure to pay court-ordered child support (violations of 18 U.S.C. § 228), the most analogous guideline is §2B1.1 (Theft, Property Destruction, and Fraud). The amount of the loss is the amount of child support that the defendant willfully failed to pay. In such a case, do not apply §2B1.1(b)(9)(C) (pertaining to a violation of a prior, specific judicial order). *Note*: This guideline applies to second and subsequent offenses under 18 U.S.C. § 228(a)(1) and to any offense under 18 U.S.C. § 228(a)(2) and (3). A first offense under 18 U.S.C. § 228(a)(1) is not covered by this guideline because it is a Class B misdemeanor.

3. **Violation of Judicial Order Enjoining Fraudulent Behavior.**—In a case involving a violation of a judicial order enjoining fraudulent behavior, the most analogous guideline is §2B1.1. In such a case, §2B1.1(b)(9)(C) (pertaining to a violation of a prior, specific judicial order) ordinarily would apply.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 170 and 171); November 1, 1993 (amendment 496); November 1, 1998 (amendment 588); November 1, 2001 (amendment 617); November 1, 2003 (amendment 653); November 1, 2009 (amendment 736); November 1, 2011 (amendments 752 and 760).

§2J1.2. Obstruction of Justice

(a) Base Offense Level: **14**

(b) Specific Offense Characteristics

(1) (Apply the greatest):

(A) If the (i) defendant was convicted under 18 U.S.C. § 1001; and (ii) statutory maximum term of eight years' imprisonment applies because the matter relates to sex offenses under 18 U.S.C. § 1591 or chapters 109A, 109B, 110, or 117 of title 18, United States Code, increase by **4** levels.

(B) If the offense involved causing or threatening to cause physical injury to a person, or property damage, in order to obstruct the administration of justice, increase by **8** levels.

(C) If the (i) defendant was convicted under 18 U.S.C. § 1001 or § 1505; and (ii) statutory maximum term of eight years' imprisonment applies because the matter relates to international terrorism or domestic terrorism, increase by **12** levels.

(2) If the offense resulted in substantial interference with the administration of justice, increase by **3** levels.

(3) If the offense (A) involved the destruction, alteration, or fabrication of a substantial number of records, documents, or tangible objects; (B) involved the selection of any essential or especially probative record, document, or tangible object, to destroy or alter; or (C) was otherwise extensive in scope, planning, or preparation, increase by **2** levels.

(c) Cross Reference

(1) If the offense involved obstructing the investigation or prosecution of a criminal offense, apply §2X3.1 (Accessory After the Fact) in respect to that criminal offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1001 (when the statutory maximum term of eight years' imprisonment applies because the matter relates to international terrorism or domestic terrorism, or to sex offenses under 18 U.S.C. § 1591 or chapters 109A, 109B, 110, or 117 of title 18, United States Code), 1503, 1505–1513, 1516, 1519. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Domestic terrorism***" has the meaning given that term in 18 U.S.C. § 2331(5).

"***International terrorism***" has the meaning given that term in 18 U.S.C. § 2331(1).

"***Records, documents, or tangible objects***" includes (A) records, documents, or tangible objects that are stored on, or that are, magnetic, optical, digital, other electronic, or other storage mediums or devices; and (B) wire or electronic communications.

"***Substantial interference with the administration of justice***" includes a premature or improper termination of a felony investigation; an indictment, verdict, or any judicial determination based upon perjury, false testimony, or other false evidence; or the unnecessary expenditure of substantial governmental or court resources.

2. **Chapter Three Adjustments.—**

   (A) **Inapplicability of §3C1.1.—**For offenses covered under this section, §3C1.1 (Obstructing or Impeding the Administration of Justice) does not apply, unless the defendant obstructed the investigation, prosecution, or sentencing of the obstruction of justice count.

   (B) **Interaction with Terrorism Adjustment.—**If §3A1.4 (Terrorism) applies, do not apply subsection (b)(1)(C).

3. **Subsection (b)(1)(B).—**The inclusion of "property damage" under subsection (b)(1)(B) is designed to address cases in which property damage is caused or threatened as a means of intimidation or retaliation (*e.g.*, to intimidate a witness from, or retaliate against a witness for, testifying). Subsection (b)(1)(B) is not intended to apply, for example, where the offense consisted of destroying a ledger containing an incriminating entry.

Background: This section addresses offenses involving the obstruction of justice generally prosecuted under the above-referenced statutory provisions. Numerous offenses of varying seriousness may constitute obstruction of justice: using threats or force to intimidate or influence a juror or federal officer; obstructing a civil or administrative proceeding; stealing or altering court records; unlawfully intercepting grand jury deliberations; obstructing a criminal investigation; obstructing a state or local investigation of illegal gambling; using intimidation or force to influence testimony, alter evidence, evade legal process, or obstruct the communication of a judge or law enforcement officer; or causing a witness bodily injury or property damage in retaliation for providing testimony, information or evidence in a federal proceeding. The conduct that gives rise to the violation may, therefore, range from a mere threat to an act of extreme violence.

The specific offense characteristics reflect the more serious forms of obstruction. Because the conduct covered by this guideline is frequently part of an effort to avoid punishment for an offense that the defendant has committed or to assist another person to escape punishment for an offense, a cross reference to §2X3.1 (Accessory After the Fact) is provided. Use of this cross reference will provide an enhanced offense level when the obstruction is in respect to a particularly serious offense, whether such offense was committed by the defendant or another person.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 172, 173, and 174); November 1, 1991 (amendment 401); January 25, 2003 (amendment 647); November 1, 2003 (amendment 653); October 24, 2005 (amendment 676); November 1, 2006 (amendment 690); November 1, 2007 (amendment 701); November 1, 2011 (amendment 758); November 1, 2013 (amendment 777); November 1, 2025 (amendment 836); November 1, 2026 (amendment 840).

§2J1.3. Perjury or Subornation of Perjury; Bribery of Witness

(a) Base Offense Level: **14**

(b) Specific Offense Characteristic

(1) If the perjury, subornation of perjury, or witness bribery resulted in substantial interference with the administration of justice, increase by **3** levels.

(c) Cross Reference

(1) If the offense involved perjury, subornation of perjury, or witness bribery in respect to a criminal offense, apply §2X3.1 (Accessory After the Fact) in respect to that criminal offense, if the resulting offense level is greater than that determined above.

(d) Special Instruction

(1) In the case of counts of perjury or subornation of perjury arising from testimony given, or to be given, in separate proceedings, apply subsection (b) of §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to the counts.

Commentary

Statutory Provisions: 18 U.S.C. §§ 201(b)(3), (4), 1621–1623. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. "***Substantial interference with the administration of justice***" includes a premature or improper termination of a felony investigation; an indictment, verdict, or any judicial determination based upon perjury, false testimony, or other false evidence; or the unnecessary expenditure of substantial governmental or court resources.

2. For offenses covered under this section, §3C1.1 (Obstructing or Impeding the Administration of Justice) does not apply, unless the defendant obstructed the investigation or trial of the perjury count.

3. "***Separate proceedings***," as used in subsection (d)(1), includes different proceedings in the same case or matter (*e.g.*, a grand jury proceeding and a trial, or a trial and retrial), and proceedings in separate cases or matters (*e.g.*, separate trials of codefendants), but does not include multiple grand jury proceedings in the same case.

Background: This section applies to perjury, subornation of perjury, and witness bribery, generally prosecuted under the referenced statutes. The guidelines provide a higher penalty for perjury than the pre-guidelines practice estimate of ten months imprisonment. The Commission believes that perjury should be treated similarly to obstruction of justice. Therefore, the same considerations for enhancing

a sentence are applied in the specific offense characteristics, and an alternative reference to the guideline for accessory after the fact is made.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 175); November 1, 1991 (amendments 401 and 402); November 1, 1993 (amendment 481); November 1, 2003 (amendment 653); November 1, 2011 (amendment 758); November 1, 2013 (amendment 777); November 1, 2025 (amendment 836); November 1, 2026 (amendments 837 and 840).

§2J1.4. Impersonation

(a) Base Offense Level: **6**

(b) Specific Offense Characteristic

(1) If the impersonation was committed for the purpose of conducting an unlawful arrest, detention, or search, increase by **6** levels.

(c) Cross Reference

(1) If the impersonation was to facilitate another offense, apply the guideline for an attempt to commit that offense, if the resulting offense level is greater than the offense level determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 912, 913.

Background: This section applies to impersonation of a federal officer, agent, or employee; and impersonation to conduct an unlawful search or arrest.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 176).

§2J1.5. Failure to Appear by Material Witness

(a) Base Offense Level:

(1) **6**, if in respect to a felony; or

(2) **4**, if in respect to a misdemeanor.

(b) Specific Offense Characteristic

(1) If the offense resulted in substantial interference with the administration of justice, increase by **3** levels.

Commentary

Statutory Provisions: 18 U.S.C. § 3146(b)(1)(B). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. "***Substantial interference with the administration of justice***" includes a premature or improper termination of a felony investigation; an indictment, verdict, or any judicial determination based upon perjury, false testimony, or other false evidence; or the unnecessary expenditure of substantial governmental or court resources.

2. By statute, a term of imprisonment imposed for an offense under 18 U.S.C. § 3146(b)(1)(B) runs consecutively to any other term of imprisonment imposed. 18 U.S.C. § 3146(b)(2).

Background: This section applies to a failure to appear by a material witness. The base offense level incorporates a distinction as to whether the failure to appear was in respect to a felony or misdemeanor prosecution. The offense under 18 U.S.C. § 3146(b)(1)(B) is a misdemeanor for which the maximum period of imprisonment authorized by statute is one year.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 177); November 1, 1991 (amendment 401); November 1, 2009 (amendment 737).

§2J1.6. Failure to Appear by Defendant

(a) Base Offense Level:

(1) **11**, if the offense constituted a failure to report for service of sentence; or

(2) **6**, otherwise.

(b) Specific Offense Characteristic

(1) If the base offense level is determined under subsection (a)(2), and the underlying offense is—

(A) punishable by death or imprisonment for a term of fifteen years or more, increase by **9** levels; or

(B) punishable by a term of imprisonment of five years or more, but less than fifteen years, increase by **6** levels; or

(C) a felony punishable by a term of imprisonment of less than five years, increase by **3** levels.

Commentary

Statutory Provision: 18 U.S.C. § 3146(b)(1).

Application Notes:

1. "***Underlying offense***" means the offense in respect to which the defendant failed to appear.

2. For offenses covered under this section, §3C1.1 (Obstructing or Impeding the Administration of Justice) does not apply, unless the defendant obstructed the investigation or trial of the failure to appear count.

3. In the case of a failure to appear for service of sentence, any term of imprisonment imposed on the failure to appear count is to be imposed consecutively to any term of imprisonment imposed for the underlying offense. *See* §5G1.3(a). The guideline range for the failure to appear count is to be determined independently and §3D1.1 (Procedure for Determining Offense Level on Multiple Counts) does not apply.

   However, in the case of a conviction on both the underlying offense and the failure to appear, other than a case of failure to appear for service of sentence, the failure to appear is treated under §3C1.1 (Obstructing or Impeding the Administration of Justice) as an obstruction of the underlying offense, and the combined offense level for the failure to appear count and the count or counts for the underlying offense is determined under §3D1.1. (Note that 18 U.S.C. § 3146(b)(2) does not require a sentence of imprisonment on a failure to appear count, although if a sentence of imprisonment on the failure to appear count is imposed, the statute requires that the sentence be imposed to run consecutively to any other sentence of imprisonment. Therefore, unlike a count in which the statute mandates both a minimum and a consecutive sentence of imprisonment, §3D1.1 applies. *See* §3D1.1(e)(1), comment. (n.1).) The combined sentence will then be constructed to provide a "total punishment" that satisfies the requirements both of §5G1.2 (Sentencing on Multiple Counts of Conviction) and 18 U.S.C. § 3146(b)(2). For example, if the combined applicable guideline range for both counts is 30–37 months and the court determines that a "total punishment" of 36 months is appropriate, a sentence of 30 months for the underlying offense plus a consecutive six months' sentence for the failure to appear count would satisfy these requirements. (Note that the combination of this instruction and increasing the offense level for the obstructive, failure to appear conduct has the effect of ensuring an incremental, consecutive punishment for the failure to appear count, as required by 18 U.S.C. § 3146(b)(2).)

4. In some cases, the defendant may be sentenced on the underlying offense (the offense in respect to which the defendant failed to appear) before being sentenced on the failure to appear offense. In such cases, criminal history points for the sentence imposed on the underlying offense are to be counted in determining the guideline range on the failure to appear offense only where the offense level is determined under subsection (a)(1) (*i.e.*, where the offense constituted a failure to report for service of sentence).

Background: This section applies to a failure to appear by a defendant who was released pending trial, sentencing, appeal, or surrender for service of sentence. Where the base offense level is determined under subsection (a)(2), the offense level increases in relation to the statutory maximum of the underlying offense.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 329); November 1, 1991 (amendment 403); November 1, 1998 (amendment 579); November 1, 2001 (amendment 636); November 1, 2005 (amendment 680); November 1, 2011 (amendment 758); November 1, 2013 (amendment 777); November 1, 2025 (amendment 836); November 1, 2026 (amendments 837 and 840).

§§2J1.7 – 2J1.8. [Deleted]

Historical Note	Section 2J1.7 (Commission of Offense While on Release), effective November 1, 1987, and amended effective January 15, 1988 (amendment 32), November 1, 1989 (amendment 178), and November 1, 1991 (amendment 431), was deleted from Chapter Two and replaced by §3C1.3 effective November 1, 2006 (amendment 684). Section 2J1.8 (Bribery of Witness), effective November 1, 1987, and amended effective January 15, 1988 (amendment 33), November 1, 1989 (amendment 179), and November 1, 1991 (amendment 401), was deleted by consolidation with §2J1.3 effective November 1, 1993 (amendment 481).

§2J1.9. Payment to Witness

(a) Base Offense Level: **6**

Commentary

Statutory Provisions: 18 U.S.C. § 201(c)(2), (3).

Application Note:

1. For offenses covered under this section, §3C1.1 (Obstructing or Impeding the Administration of Justice) does not apply unless the defendant obstructed the investigation or trial of the payment to witness count.

Background: This section applies to witness gratuities in federal proceedings.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 180 and 181); November 1, 2011 (amendment 758); November 1, 2013 (amendment 777); November 1, 2026 (amendments 837 and 840).

PART K — OFFENSES INVOLVING PUBLIC SAFETY

1. EXPLOSIVES AND ARSON

§2K1.1. Failure to Report Theft of Explosive Materials; Improper Storage of Explosive Materials

(a) Base Offense Level: **6**

Commentary

Statutory Provisions: 18 U.S.C. §§ 842(j), (k), 844(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Background: The above-referenced provisions are misdemeanors. The maximum term of imprisonment authorized by statute is one year.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1991 (amendment 404); November 1, 1993 (amendment 481).

§2K1.2. [Deleted]

Historical Note	Section 2K1.2 (Improper Storage of Explosive Materials), effective November 1, 1987, and amended effective November 1, 1991 (amendment 404), was deleted by consolidation with §2K1.1 effective November 1, 1993 (amendment 481).

§2K1.3. Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials

(a) Base Offense Level (Apply the Greatest):

(1) **24**, if the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

(2) **20**, if the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense;

(3) **18**, if the defendant was convicted under 18 U.S.C. § 842(p)(2);

(4) **16**, if the defendant (A) was a prohibited person at the time the defendant committed the instant offense; or (B) knowingly distributed explosive materials to a prohibited person; or

(5) **12**, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved twenty-five pounds or more of explosive materials, increase as follows:

	Weight of Explosive Material	Increase in Level
(A)	At least 25 but less than 100 lbs.	add **1**
(B)	At least 100 but less than 250 lbs.	add **2**
(C)	At least 250 but less than 500 lbs.	add **3**
(D)	At least 500 but less than 1000 lbs.	add **4**
(E)	1000 lbs. or more	add **5**.

(2) If the offense involved any explosive material that the defendant knew or had reason to believe was stolen, increase by **2** levels.

Provided, that the cumulative offense level determined above shall not exceed level **29**.

(3) If the defendant (A) was convicted under 18 U.S.C. § 842(p)(2); or (B) used or possessed any explosive material in connection with another felony offense; or possessed or transferred any explosive material with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, increase by **4** levels. If the resulting offense level is less than level **18**, increase to level **18**.

(c) Cross Reference

(1) If the defendant (A) was convicted under 18 U.S.C. § 842(p)(2); or (B) used or possessed any explosive material in connection with the commission or attempted commission of another offense, or possessed or transferred any explosive material with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 842(a)–(e), (h), (i), (l)–(o), (p)(2), 844(d), (g), 1716, 2283; 26 U.S.C. § 5685.

Application Notes:

1. "***Explosive material(s)***" include explosives, blasting agents, and detonators. *See* 18 U.S.C. § 841(c). "Explosives" is defined at 18 U.S.C. § 844(j). A destructive device, defined in the Commentary to §1B1.1 (Application Instructions), may contain explosive materials. Where the conduct charged in the count of which the defendant was convicted establishes that the offense involved a destructive device, apply §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) if the resulting offense level is greater.

2. For purposes of this guideline:

   "***Controlled substance offense***" has the meaning given that term in §4B1.2(b) and Application Note 1 of the Commentary to §4B1.2 (Definitions of Terms Used in Section 4B1.1).

   "***Crime of violence***" has the meaning given that term in §4B1.2(a) and Application Note 1 of the Commentary to §4B1.2.

   "***Felony conviction***" means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen years or older is an adult conviction. A conviction for an offense committed prior to age eighteen years is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.*, a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).

3. For purposes of subsection (a)(4), "***prohibited person***" means any person described in 18 U.S.C. § 842(i).

4. "***Felony offense***," as used in subsection (b)(3), means any offense (federal, state, or local) punishable by imprisonment for a term exceeding one year, whether or not a criminal charge was brought, or conviction obtained.

5. For purposes of calculating the weight of explosive materials under subsection (b)(1), include only the weight of the actual explosive material and the weight of packaging material that is necessary for the use or detonation of the explosives. Exclude the weight of any other shipping or packaging materials. For example, the paper and fuse on a stick of dynamite would be included; the box that the dynamite was shipped in would not be included.

6. For purposes of calculating the weight of explosive materials under subsection (b)(1), count only those explosive materials that were unlawfully sought to be obtained, unlawfully possessed, or unlawfully distributed, including any explosive material that a defendant attempted to obtain by making a false statement.

7. If the defendant is convicted under 18 U.S.C. § 842(h) (offense involving stolen explosive materials), and is convicted of no other offenses subject to this guideline, do not apply the adjustment in subsection (b)(2) because the base offense level itself takes such conduct into account.

8. Under subsection (c)(1), the offense level for the underlying offense (which may be a federal, state, or local offense) is to be determined under §2X1.1 (Attempt, Solicitation, or Conspiracy) or, if death results, under the most analogous guideline from Chapter Two, Part A, Subpart 1 (Homicide).

9. For purposes of applying subsection (a)(1) or (2), use only those felony convictions that receive criminal history points under §4A1.1(a), (b), or (c). In addition, for purposes of applying subsection (a)(1), use only those felony convictions that are counted separately under §4A1.1(a), (b), or (c). *See* §4A1.2(a)(2).

   Prior felony conviction(s) resulting in an increased base offense level under subsection (a)(1), (a)(2), or (a)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

10. As used in subsections (b)(3) and (c)(1), "***another felony offense***" and "***another offense***" refer to offenses other than explosives or firearms possession or trafficking offenses.

    In addition, for purposes of subsection (c)(1)(A), "***that other offense***" means, with respect to an offense under 18 U.S.C. § 842(p)(2), the underlying Federal crime of violence.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 183); November 1, 1991 (amendment 373); November 1, 1992 (amendment 471); November 1, 1993 (amendment 478); November 1, 1995 (amendment 534); November 1, 1997 (amendment 568); November 1, 1998 (amendment 586); November 1, 2001 (amendments 629 and 630); November 1, 2002 (amendment 646); November 1, 2003 (amendment 655); November 1, 2007 (amendment 700); November 1, 2010 (amendments 746 and 747); November 1, 2025 (amendment 836).

§2K1.4. Arson; Property Damage by Use of Explosives

(a) Base Offense Level (Apply the Greatest):

(1) **24**, if the offense (A) created a substantial risk of death or serious bodily injury to any person other than a participant in the offense, and that risk was created knowingly; or (B) involved the destruction or attempted destruction of a dwelling, an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, a maritime facility, a vessel, or a vessel's cargo, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use;

(2) **20**, if the offense (A) created a substantial risk of death or serious bodily injury to any person other than a participant in the offense; (B) involved the destruction or attempted destruction of a structure other

than (i) a dwelling, or (ii) an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, a maritime facility, a vessel, or a vessel's cargo, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use; or (C) endangered (i) a dwelling, (ii) a structure other than a dwelling, or (iii) an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, a maritime facility, a vessel, or a vessel's cargo, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use;

(3) **16**, if the offense involved the destruction of or tampering with aids to maritime navigation; or

(4) **2** plus the offense level from §2B1.1 (Theft, Property Destruction, and Fraud).

(b) Specific Offense Characteristics

(1) If the offense was committed to conceal another offense, increase by **2** levels.

(2) If the base offense level is not determined under subsection (a)(4), and the offense occurred on a national cemetery, increase by **2** levels.

(c) Cross Reference

(1) If death resulted, or the offense was intended to cause death or serious bodily injury, apply the most analogous guideline from Chapter Two, Part A (Offenses Against the Person) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 32(a), (b), 33, 81, 844(f), (h) (only in the case of an offense committed prior to November 18, 1988), (i), 1855, 1992(a)(1), (a)(2), (a)(4), 2275, 2282A, 2282B, 2291, 2332a, 2332f; 49 U.S.C. § 60123(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Aids to maritime navigation***" means any device external to a vessel intended to assist the navigator to determine position or save course, or to warn of dangers or obstructions to navigation.

"***Explosives***" includes any explosive, explosive material, or destructive device.

"***Maritime facility***" means any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States and used, operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or operation.

"***National cemetery***" means a cemetery (A) established under section 2400 of title 38, United States Code; or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

"***Mass transportation***" has the meaning given that term in 18 U.S.C. § 1992(d)(7).

"***State or government facility***", "***infrastructure facility***", "***place of public use***", and "***public transportation system***" have the meaning given those terms in 18 U.S.C. § 2332f(e)(3), (5), (6), and (7), respectively.

"***Vessel***" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

2. **Risk of Death or Serious Bodily Injury.**—Creating a substantial risk of death or serious bodily injury includes creating that risk to fire fighters and other emergency and law enforcement personnel who respond to or investigate an offense.

Background: Subsection (b)(2) implements the directive to the Commission in section 2 of Public Law 105–101.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 182, 184, and 185); November 1, 1990 (amendment 330); November 1, 1991 (amendment 404); November 1, 1998 (amendment 576); November 1, 2001 (amendment 617); November 1, 2002 (amendment 637); November 1, 2003 (amendment 655); November 1, 2007 (amendments 699 and 700); November 1, 2014 (amendment 781); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836).

§2K1.5. Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft

(a) Base Offense Level: **9**

(b) Specific Offense Characteristics

(1) (Apply the greater) If—

(A) the offense was committed willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, increase by **15** levels; or

(B) the defendant was prohibited by another federal law from possessing the weapon or material, increase by **2** levels.

(c) Cross Reference

(1) If the defendant used or possessed the weapon or material in committing or attempting another offense, apply the guideline for such other offense, or §2X1.1 (Attempt, Solicitation, or Conspiracy), as appropriate, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provision: 49 U.S.C. § 46505 (formerly 49 U.S.C. § 1472(l)).

Background: This guideline provides an enhancement where the defendant was a person prohibited by federal law from possession of the weapon or material.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 182, 186, 187, and 303); November 1, 1991 (amendment 404); November 1, 1992 (amendment 443); November 1, 1995 (amendment 534); November 1, 1997 (amendment 560); November 1, 2026 (amendment 837).

§2K1.6. Licensee Recordkeeping Violations Involving Explosive Materials

(a) Base Offense Level: **6**

(b) Cross Reference

(1) If a recordkeeping offense reflected an effort to conceal a substantive explosive materials offense, apply §2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosives Materials; Prohibited Transactions Involving Explosive Materials).

Commentary

Statutory Provisions: 18 U.S.C. § 842(f), (g).

Background: The above-referenced provisions are recordkeeping offenses applicable only to "***licensees***," who are defined at 18 U.S.C. § 841(m).

Historical Note	Effective November 1, 1991 (amendment 373). A former §2K1.6 (Shipping, Transporting, or Receiving Explosives with Felonious Intent or Knowledge; Using or Carrying Explosives in Certain Crimes), effective November 1, 1987, and amended effective November 1, 1989 (amendment 303) and November 1, 1990 (amendment 331), was deleted by consolidation with §2K1.3 effective November 1, 1991 (amendment 373).

§2K1.7. [Deleted]

Historical Note	Section 2K1.7 (Use of Fire or Explosives to Commit a Federal Felony), effective November 1, 1989 (amendment 188), and amended effective November 1, 1990 (amendment 332), was deleted by consolidation with §2K2.4 effective November 1, 1993 (amendment 481).

* * * * *

2. FIREARMS

§2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition

(a) Base Offense Level (Apply the Greatest):

(1) **26**, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

(2) **24**, if the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

(3) **22**, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense;

(4) **20**, if—

(A) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense; or

(B) the (i) offense involved a (I) semiautomatic firearm that is capable of accepting a large capacity magazine; or (II) firearm that is described in 26 U.S.C. § 5845(a); and (ii) defendant (I) was a prohibited person at the time the defendant committed the instant offense; (II) is convicted under 18 U.S.C. § 922(d), § 932, or § 933; or (III) is convicted under 18 U.S.C. § 922(a)(6) or § 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

(5) **18**, if the offense involved a firearm described in 26 U.S.C. § 5845(a);

(6) **14**, if the defendant (A) was a prohibited person at the time the defendant committed the instant offense; (B) is convicted under 18 U.S.C. § 922(d), § 932, or § 933; or (C) is convicted under 18 U.S.C. § 922(a)(6) or § 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

(7) **12**, except as provided below; or

(8) **6**, if the defendant is convicted under 18 U.S.C. § 922(c), (e), (f), (m), (s), (t), or (x)(1), or 18 U.S.C. § 1715.

(b) Specific Offense Characteristics

(1) If the offense involved three or more firearms, increase as follows:

	Number of Firearms	Increase in Level
(A)	3–7	add **2**
(B)	8–24	add **4**
(C)	25–99	add **6**
(D)	100–199	add **8**
(E)	200 or more	add **10**.

(2) If the defendant, other than a defendant subject to subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), possessed all ammunition and firearms solely for lawful sporting purposes or collection, and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition, decrease the offense level determined above to level **6**.

(3) If the offense involved—

(A) a destructive device that is a portable rocket, a missile, or a device for use in launching a portable rocket or a missile, increase by **15** levels; or

(B) a destructive device other than a destructive device referred to in paragraph (A), increase by **2** levels.

(4) If (A) any firearm was stolen, increase by **2** levels; or (B)(i) any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye; or (ii) the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, increase by **4** levels.

(5) (Apply the Greatest) If the defendant—

(A) (i) possessed four or more machinegun conversion devices; or (ii) transferred or sold any machinegun conversion device to another person, or attempted or conspired to commit such a transfer or sale, increase by **2** levels; or

(B) possessed 30 or more machinegun conversion devices, increase by **4** levels.

For purposes of subsection (b)(5), "***machinegun conversion device***" means any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun (*i.e.,* any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger).

The cumulative offense level determined from the application of subsections (b)(1) through (b)(5) may not exceed level **29**, except if subsection (b)(3)(A) applies.

(6) (Apply the Greatest) If the defendant—

(A) was convicted under 18 U.S.C. § 933(a)(2) or (a)(3), increase by **2** levels;

(B) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, a firearm or any ammunition knowing or having reason to believe that such conduct would result in the receipt of the firearm or ammunition by an individual who (I) was a prohibited person; or (II) intended to use or dispose of the firearm or ammunition unlawfully; (ii) attempted or conspired to commit the conduct described in clause (i); or (iii) received a firearm or any ammunition as a result of inducing the conduct described in clause (i), increase by **2** levels; or

(C) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, two or more firearms knowing or having reason to believe that such conduct would result in the receipt of the firearms by an individual who (I) had a prior conviction for a crime of violence, controlled substance offense, or misdemeanor crime of domestic violence; (II) was under a criminal justice sentence at the time of the offense; or (III) intended to use or dispose

of the firearms unlawfully; (ii) attempted or conspired to commit the conduct described in clause (i); or (iii) received two or more firearms as a result of inducing the conduct described in clause (i), increase by **5** levels.

Provided, however, that subsection (b)(6)(C)(i)(I) shall not apply based upon the receipt or intended receipt of the firearms by an individual with a prior conviction for a misdemeanor crime of domestic violence against a person in a dating relationship if, at the time of the instant offense, such individual met the criteria set forth in the proviso of 18 U.S.C. § 921(a)(33)(C).

(7) If the defendant—

(A) possessed any firearm or ammunition while leaving or attempting to leave the United States, or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be transported out of the United States; or

(B) used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense,

increase by **4** levels. If the resulting offense level is less than level **18**, increase to level **18**.

(8) If a recordkeeping offense reflected an effort to conceal a substantive offense involving firearms or ammunition, increase to the offense level for the substantive offense.

(9) If the defendant—

(A) receives an enhancement under subsection (b)(6); and

(B) committed the offense in connection with the defendant's participation in a group, club, organization, or association of five or more persons, knowing or acting with willful blindness or conscious avoidance of knowledge that the group, club, organization, or association had as one of its primary purposes the commission of criminal offenses;

increase by **2** levels.

(10) If the defendant—

(A) receives an enhancement under subsection (b)(6);

(B) does not have more than 1 criminal history point, as determined under §4A1.1 (Criminal History Category) and §4A1.2 (Definitions and Instructions for Computing Criminal History), read together; and

(C) (i) was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense; or (ii) was unusually vulnerable to being persuaded or induced to commit the offense due to a physical or mental condition;

decrease by **2** levels.

(c) Cross Reference

(1) If the defendant used or possessed any firearm or ammunition cited in the offense of conviction in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm or ammunition cited in the offense of conviction with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense, if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 922(a)–(p), (r)–(w), (x)(1), 924(a), (b), (e)–(i), (k)–(o), 932, 933, 1715, 2332g; 26 U.S.C. § 5861(a)–(l). For additional statutory provisions, *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.—**For purposes of this guideline:

"***Ammunition***" has the meaning given that term in 18 U.S.C. § 921(a)(17)(A).

"***Controlled substance offense***" has the meaning given that term in §4B1.2(b) and Application Note 1 of the Commentary to §4B1.2 (Definitions of Terms Used in Section 4B1.1).

"***Crime of violence***" has the meaning given that term in §4B1.2(a) and Application Note 1 of the Commentary to §4B1.2.

"***Destructive device***" has the meaning given that term in 26 U.S.C. § 5845(f).

"***Felony conviction***" means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen years or older is an adult conviction. A conviction for an offense committed prior to age eighteen years is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.*, a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).

"***Firearm***" has the meaning given that term in 18 U.S.C. § 921(a)(3), unless otherwise specified.

2. **Semiautomatic Firearm That Is Capable of Accepting a Large Capacity Magazine.—** For purposes of subsections (a)(1), (a)(3), and (a)(4), a "***semiautomatic firearm that is capable of accepting a large capacity magazine***" means a semiautomatic firearm that has the ability to fire many rounds without reloading because at the time of the offense (A) the firearm had attached to it a magazine or similar device that could accept more than 15 rounds of ammunition; or (B) a magazine or similar device that could accept more than 15 rounds of ammunition was in close proximity to the firearm. This definition does not include a semiautomatic firearm with an attached tubular device capable of operating only with .22 caliber rim fire ammunition.

3. **Definition of "Prohibited Person".—**For purposes of subsections (a)(4)(B), (a)(6), and (b)(6), "***prohibited person***" means any person described in 18 U.S.C. § 922(g) or § 922(n).

4. **Application of Subsection (a)(7).—**Subsection (a)(7) includes the interstate transportation or interstate distribution of firearms, which is frequently committed in violation of state, local, or other federal law restricting the possession of firearms, or for some other underlying unlawful purpose. In the unusual case in which it is established that neither avoidance of state, local, or other federal firearms law, nor any other underlying unlawful purpose was involved, a reduction in the base offense level to no lower than level 6 may be warranted to reflect the less serious nature of the violation.

5. **Application of Subsection (b)(1).—**For purposes of calculating the number of firearms under subsection (b)(1), count only those firearms that were unlawfully sought to be obtained, unlawfully possessed, or unlawfully distributed, including any firearm that a defendant obtained or attempted to obtain by making a false statement to a licensed dealer.

6. **Application of Subsection (b)(2).—**Under subsection (b)(2), "lawful sporting purposes or collection" as determined by the surrounding circumstances, provides for a reduction to an offense level of 6. Relevant surrounding circumstances include the number and type of firearms, the amount and type of ammunition, the location and circumstances of possession and actual use, the nature of the defendant's criminal history (*e.g.*, prior convictions for offenses involving firearms), and the extent to which possession was restricted by local law. Note that where the base offense level is determined under subsections (a)(1)–(a)(5), subsection (b)(2) is not applicable.

7. **Destructive Devices.—**A defendant whose offense involves a destructive device receives both the base offense level from the subsection applicable to a firearm listed in 26 U.S.C. § 5845(a) (*e.g.*, subsection (a)(1), (a)(3), (a)(4)(B), or (a)(5)), and the applicable enhancement under subsection (b)(3). Such devices pose a considerably greater risk to the public welfare than other National Firearms Act weapons.

8. **Application of Subsection (b)(4).—**

(A) **Interaction with Subsection (a)(7).—**If the only offense to which §2K2.1 applies is 18 U.S.C. § 922(i), (j), or (u), or 18 U.S.C. § 924(l) or (m) (offenses involving a stolen firearm or stolen ammunition) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(A). This is because the base offense level takes into account that the firearm or ammunition was stolen. However, if the offense involved a firearm with a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye, or if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, apply subsection (b)(4)(B)(i) or (ii).

Similarly, if the offense to which §2K2.1 applies is 18 U.S.C. § 922(k) or 26 U.S.C. § 5861(g) or (h) (offenses involving an altered or obliterated serial number) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(B)(i). However, if the offense involved a stolen firearm or stolen ammunition, or if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, apply subsection (b)(4)(A) or (B)(ii).

(B) **Defendant's State of Mind.—**Subsection (b)(4)(A) or (B)(i) applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye. However, subsection (b)(4)(B)(ii) only applies if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact.

9. **Application of Subsection (b)(8).—**Under subsection (b)(8), if a recordkeeping offense was committed to conceal a substantive firearms or ammunition offense, the offense level is increased to the offense level for the substantive firearms or ammunition offense (*e.g.*, if the defendant falsifies a record to conceal the sale of a firearm to a prohibited person, the offense level is increased to the offense level applicable to the sale of a firearm to a prohibited person).

10. **Prior Felony Convictions.—**For purposes of applying subsection (a)(1), (2), (3), or (4)(A), use only those felony convictions that receive criminal history points under §4A1.1(a), (b), or (c). In addition, for purposes of applying subsections (a)(1) and (a)(2), use only those felony convictions that are counted separately under §4A1.1(a), (b), or (c). *See* §4A1.2(a)(2).

Prior felony conviction(s) resulting in an increased base offense level under subsection (a)(1), (a)(2), (a)(3), (a)(4)(A), (a)(4)(B), or (a)(6) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

11. **Armed Career Criminal.—**A defendant who is subject to an enhanced sentence under the provisions of 18 U.S.C. § 924(e) is an Armed Career Criminal. *See* §4B1.4.

12. **Application of Subsection (b)(6).—**

(A) **Definitions.—**For purposes of this subsection:

"***Crime of violence***" and "***controlled substance offense***" have the meaning given those terms in §4B1.2 (Definitions of Terms Used in Section 4B1.1).

"***Misdemeanor crime of domestic violence***" has the meaning given that term in 18 U.S.C. § 921(a)(33)(A).

The term "***criminal justice sentence***" includes probation, parole, supervised release, imprisonment, work release, or escape status.

The term "***defendant***," consistent with §1B1.3 (Relevant Conduct), limits the accountability of the defendant to the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

(B) **Interaction with Other Subsections.—**In a case in which three or more firearms were both possessed and trafficked, apply both subsections (b)(1) and (b)(6). If the defendant used or transferred one of such firearms in connection with another felony offense (*i.e.*, an offense other than a firearms possession or trafficking offense) an enhancement under subsection (b)(7)(B) also would apply.

13. **Application of Subsections (b)(7)(B) and (c)(1).—**

(A) **In General.—**Subsections (b)(7)(B) and (c)(1) apply if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense or another offense, respectively. However, subsection (c)(1) contains the additional requirement that the firearm or ammunition be cited in the offense of conviction.

(B) **Application When Other Offense is Burglary or Drug Offense.—**Subsections (b)(7)(B) and (c)(1) apply (i) in a case in which a defendant who, during the course of a burglary, finds and takes a firearm, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary; and (ii) in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug paraphernalia. In these cases, application of subsections (b)(7)(B) and, if the firearm was cited in the offense of conviction, (c)(1) is warranted because the presence of the firearm has the potential of facilitating another felony offense or another offense, respectively.

(C) **Definitions.—**

"***Another felony offense***", for purposes of subsection (b)(7)(B), means any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained.

"***Another offense***", for purposes of subsection (c)(1), means any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, regardless of whether a criminal charge was brought, or a conviction obtained.

(D) **Relationship Between the Instant Offense and the Other Offense.**—In determining whether subsections (b)(7)(B) and (c)(1) apply, the court must consider the relationship between the instant offense and the other offense, consistent with relevant conduct principles. *See* §1B1.3(a)(1)–(4) and accompanying commentary.

In determining whether subsection (c)(1) applies, the court must also consider whether the firearm used in the other offense was a firearm cited in the offense of conviction.

For example:

(i) **Firearm Cited in the Offense of Conviction.** Defendant A's offense of conviction is for unlawfully possessing a shotgun on October 15. The court determines that, on the preceding February 10, Defendant A used the shotgun in connection with a robbery. Ordinarily, under these circumstances, subsection (b)(7)(B) applies, and the cross reference in subsection (c)(1) also applies if it results in a greater offense level.

Ordinarily, the unlawful possession of the shotgun on February 10 will be "part of the same course of conduct or common scheme or plan" as the unlawful possession of the same shotgun on October 15. *See* §1B1.3(a)(2) and accompanying commentary (including, in particular, the factors discussed in Application Note 5(B) to §1B1.3). The use of the shotgun "in connection with" the robbery is relevant conduct because it is a factor specified in subsections (b)(7)(B) and (c)(1). *See* §1B1.3(a)(4) ("any other information specified in the applicable guideline").

(ii) **Firearm Not Cited in the Offense of Conviction.** Defendant B's offense of conviction is for unlawfully possessing a shotgun on October 15. The court determines that, on the preceding February 10, Defendant B unlawfully possessed a handgun (not cited in the offense of conviction) and used the handgun in connection with a robbery.

Subsection (b)(7)(B). In determining whether subsection (b)(7)(B) applies, the threshold question for the court is whether the two unlawful possession offenses (the shotgun on October 15 and the handgun on February 10) were "part of the same course of conduct or common scheme or plan". *See* §1B1.3(a)(2) and accompanying commentary (including, in particular, the factors discussed in Application Note 5(B) to §1B1.3).

If they were, then the handgun possession offense is relevant conduct to the shotgun possession offense, and the use of the handgun "in connection with" the robbery is relevant conduct because it is a factor specified in subsection (b)(7)(B). *See* §1B1.3(a)(4) ("any other information specified in the applicable guideline"). Accordingly, subsection (b)(7)(B) applies.

On the other hand, if the court determines that the two unlawful possession offenses were not "part of the same course of conduct or common scheme or plan," then the handgun possession offense is not relevant conduct to the shotgun possession offense and subsection (b)(7)(B) does not apply.

Subsection (c)(1). Under these circumstances, the cross reference in subsection (c)(1) does not apply, because the handgun was not cited in the offense of conviction.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 189); November 1, 1990 (amendment 333); November 1, 1991 (amendment 374); November 1, 1992 (amendment 471); November 1, 1993 (amendment 478); November 1, 1995 (amendment 522); November 1, 1997 (amendments 568 and 575); November 1, 1998 (amendments 578 and 586); November 1, 2000 (amendment 605); November 1, 2001 (amendments 629, 630, and 631); November 1, 2004 (amendment 669); November 1, 2005 (amendments 679

	and 680); November 1, 2006 (amendments 686, 691, and 696); November 1, 2007 (amendment 707); November 1, 2010 (amendment 746); November 1, 2011 (amendment 753); November 1, 2014 (amendment 784); November 1, 2015 (amendments 790 and 797); November 1, 2016 (amendment 804); November 1, 2023 (amendment 819); November 1, 2024 (amendment 828); November 1, 2025 (amendments 834 and 836).

§§2K2.2 – 2K2.3. [Deleted]

Historical Note	Section 2K2.2 (Unlawful Trafficking and Other Prohibited Transactions Involving Firearms), effective November 1, 1987, and amended effective January 15, 1988 (amendment 34), November 1, 1989 (amendment 189), and November 1, 1990 (amendment 333), was deleted by consolidation with §2K2.1 effective November 1, 1991 (amendment 374). Section 2K2.3 (Receiving, Transporting, Shipping or Transferring a Firearm or Ammunition With Intent to Commit Another Offense, or With Knowledge that It Will Be Used in Committing Another Offense), effective November 1, 1989 (amendment 189), was deleted by consolidation with §2K2.1 effective November 1, 1991 (amendment 374). A former §2K2.3 (Prohibited Transactions in or Shipment of Firearms and Other Weapons), effective November 1, 1987, was deleted by consolidation with §2K2.2 effective November 1, 1989 (amendment 189).

§2K2.4. Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes

(a) If the defendant, whether or not convicted of another crime, was convicted of violating section 844(h) of title 18, United States Code, the guideline sentence is the term of imprisonment required by statute. Chapters Three (Adjustments), Parts A through E, and Four (Criminal History and Criminal Livelihood) shall not apply to that count of conviction.

(b) Except as provided in subsection (c), if the defendant, whether or not convicted of another crime, was convicted of violating section 924(c) or section 929(a) of title 18, United States Code, the guideline sentence is the minimum term of imprisonment required by statute. Chapters Three, Parts A through E, and Four shall not apply to that count of conviction.

(c) If the defendant (1) was convicted of violating section 924(c) or section 929(a) of title 18, United States Code; and (2) as a result of that conviction (alone or in addition to another offense of conviction), is determined to be a career offender under §4B1.1 (Career Offender), the guideline sentence shall be determined under §4B1.1(c). Except for §§3E1.1 (Acceptance of Responsibility), 4B1.1, and 4B1.2 (Definitions of Terms Used in Section 4B1.1), Chapters Three, Parts A through E, and Four shall not apply to that count of conviction.

(d) Special Instructions for Fines

(1) Where there is a federal conviction for the underlying offense, the fine guideline shall be the fine guideline that would have been applicable

had there only been a conviction for the underlying offense. This guideline shall be used as a consolidated fine guideline for both the underlying offense and the conviction underlying this section.

Commentary

Statutory Provisions: 18 U.S.C. §§ 844(h), (o), 924(c), 929(a).

Application Notes:

1. **Application of Subsection (a).**—Section 844(h) of title 18, United States Code, provides a mandatory term of imprisonment of 10 years (or 20 years for the second or subsequent offense). Accordingly, the guideline sentence for a defendant convicted under 18 U.S.C. § 844(h) is the term required by that statute. Section 844(h) of title 18, United States Code, also requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.

2. **Application of Subsection (b).**—Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment (*e.g.*, not less than five years). Except as provided in subsection (c), in a case in which the defendant is convicted under 18 U.S.C. § 924(c) or § 929(a), the guideline sentence is the minimum term required by the relevant statute. Each of 18 U.S.C. §§ 924(c) and 929(a) also requires that a term of imprisonment imposed under that section shall run consecutively to any other term of imprisonment.

3. **Application of Subsection (c).**—In a case in which the defendant (A) was convicted of violating 18 U.S.C. § 924(c) or 18 U.S.C. § 929(a); and (B) as a result of that conviction (alone or in addition to another offense of conviction), is determined to be a career offender under §4B1.1 (Career Offender), the guideline sentence shall be determined under §4B1.1(c). In a case involving multiple counts, the sentence shall be imposed according to the rules in subsection (e) of §5G1.2 (Sentencing on Multiple Counts of Conviction)

4. **Non-Applicability of Certain Enhancements.**—If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense. A sentence under this guideline accounts for any explosive or weapon enhancement for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct). Do not apply any weapon enhancement in the guideline for the underlying offense, for example, if (A) a co-defendant, as part of the jointly undertaken criminal activity, possessed a firearm different from the one for which the defendant was convicted under 18 U.S.C. § 924(c); or (B) in an ongoing drug trafficking offense, the defendant possessed a firearm other than the one for which the defendant was convicted under 18 U.S.C. § 924(c). However, if a defendant is convicted of two armed bank robberies, but is convicted under 18 U.S.C. § 924(c) in connection with only one of the robberies, a weapon enhancement would apply to the bank robbery which was not the basis for the 18 U.S.C. § 924(c) conviction.

   A sentence under this guideline also accounts for conduct that would subject the defendant to an enhancement under §2D1.1(b)(2) (pertaining to use of violence, credible threat to use violence, or directing the use of violence). Do not apply that enhancement when determining the sentence for the underlying offense.

If the explosive or weapon that was possessed, brandished, used, or discharged in the course of the underlying offense also results in a conviction that would subject the defendant to an enhancement under §2K1.3(b)(3) (pertaining to possession of explosive material in connection with another felony offense) or §2K2.1(b)(7)(B) (pertaining to possession of any firearm or ammunition in connection with another felony offense), do not apply that enhancement. A sentence under this guideline accounts for the conduct covered by these enhancements because of the relatedness of that conduct to the conduct that forms the basis for the conviction under 18 U.S.C. § 844(h), § 924(c) or § 929(a). For example, if in addition to a conviction for an underlying offense of armed bank robbery, the defendant was convicted of being a felon in possession under 18 U.S.C. § 922(g), the enhancement under §2K2.1(b)(7)(B) would not apply.

5. **Chapters Three and Four.**—Except for those cases covered by subsection (c), do not apply Chapter Three (Adjustment), Parts A through E, and Chapter Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of those chapters because the guideline sentence for each offense is determined only by the relevant statute. *See* §§3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2. In determining the guideline sentence for those cases covered by subsection (c): (A) the adjustment in §3E1.1 (Acceptance of Responsibility) may apply, as provided in §4B1.1(c); and (B) no other adjustments in Chapter Three, Parts A through D, and no provisions of Chapter Four, other than §§4B1.1 and 4B1.2, shall apply.

6. **Terms of Supervised Release.**—Imposition of a term of supervised release is governed by the provisions of §5D1.1 (Imposition of a Term of Supervised Release).

7. **Fines.**—Subsection (d) sets forth special provisions concerning the imposition of fines. Where there is also a conviction for the underlying offense, a consolidated fine guideline is determined by the offense level that would have applied to the underlying offense absent a conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a). This is required because the offense level for the underlying offense may be reduced when there is also a conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a) in that any specific offense characteristic for possession, brandishing, use, or discharge of a firearm is not applied (*see* Application Note 4). The Commission has not established a fine guideline range for the unusual case in which there is no conviction for the underlying offense, although a fine is authorized under 18 U.S.C. § 3571.

Background: Section 844(h) of title 18, United States Code, provides a mandatory term of imprisonment. Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment. A sentence imposed pursuant to any of these statutes must be imposed to run consecutively to any other term of imprisonment. To avoid double counting, when a sentence under this section is imposed in conjunction with a sentence for an underlying offense, any specific offense characteristic for explosive or firearm discharge, use, brandishing, or possession is not applied in respect to such underlying offense.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 190); November 1, 1990 (amendment 332); November 1, 1991 (amendment 405); November 1, 1993 (amendments 481 and 489); November 1, 2000 (amendments 598, 599, and 600); November 1, 2002 (amendment 642); November 1, 2006 (amendment 696); November 1, 2010 (amendment 748); November 1, 2011 (amendments 750 and 760); November 1, 2023 (amendment 824); November 1, 2024 (amendments 828 and 831); November 1, 2025 (amendments 834 and 836); November 1, 2026 (amendment 840).

§2K2.5. Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone

(a) Base Offense Level: **6**

(b) Specific Offense Characteristic

(1) If—

(A) the defendant unlawfully possessed or caused any firearm or dangerous weapon to be present in a federal court facility; or

(B) the defendant unlawfully possessed or caused any firearm to be present in a school zone,

increase by **2** levels.

(c) Cross Reference

(1) If the defendant used or possessed any firearm or dangerous weapon in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm or dangerous weapon with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 922(q), 930; 40 U.S.C. § 5104(e)(1).

Application Notes:

1. "***Dangerous weapon***" and "***firearm***" are defined in the Commentary to §1B1.1 (Application Instructions).

2. "***Federal court facility***" includes the courtroom; judges' chambers; witness rooms; jury deliberation rooms; attorney conference rooms; prisoner holding cells; offices and parking facilities of the court clerks, the United States attorney, and the United States marshal; probation and parole offices; and adjoining corridors and parking facilities of any court of the United States. *See* 18 U.S.C. § 930(g)(3).

3. "***School zone***" is defined at 18 U.S.C. § 922(q). A sentence of imprisonment under 18 U.S.C. § 922(q) must run consecutively to any sentence of imprisonment imposed for any other offense. *See* 18 U.S.C. § 924(a)(4). In order to comply with the statute, when the guideline range is based on the underlying offense, and the defendant is convicted both of the underlying offense and 18 U.S.C. § 922(q), the court should apportion the sentence between the count for the underlying offense and the count under 18 U.S.C. § 922(q). For example, if the guideline range is 30–37 months and the court determines "total punishment" of 36 months is appropriate, a sentence of 30 months for the underlying offense, plus 6 months under 18 U.S.C. § 922(q) would satisfy this requirement.

Historical Note	Effective November 1, 1989 (amendment 191). Amended effective November 1, 1991 (amendment 374); November 1, 2003 (amendment 661); November 1, 2010 (amendment 746); November 1, 2025 (amendment 836).

§2K2.6. Possessing, Purchasing, or Owning Body Armor by Violent Felons

(a) Base Offense Level: **10**

Commentary

Statutory Provision: 18 U.S.C. § 931.

Historical Note	Effective November 1, 2004 (amendment 670). Amended effective November 1, 2026 (amendment 837).

* * * * *

3. MAILING INJURIOUS ARTICLES

Historical Note	Effective November 1, 1987. Amended effective November 1, 1993 (amendment 481).

§2K3.1. [Deleted]

Historical Note	Section 2K3.1 (Unlawfully Transporting Hazardous Materials in Commerce), effective November 1, 1987, was deleted by consolidation with §2Q1.2 effective November 1, 1993 (amendment 481).

§2K3.2. Feloniously Mailing Injurious Articles

(a) Base Offense Level (Apply the greater):

(1) If the offense was committed with intent (A) to kill or injure any person, or (B) to injure the mails or other property, apply §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to the intended offense; or

(2) If death resulted, apply the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide).

Commentary

Statutory Provision: 18 U.S.C. § 1716 (felony provisions only).

Background: This guideline applies only to the felony provisions of 18 U.S.C. § 1716. The Commission has not promulgated a guideline for the misdemeanor provisions of this statute.

Historical Note	Effective November 1, 1990 (amendment 334).