

SEX OFFENSES SCENARIOS

Scenario 1

Defendant is convicted of one count of possession of child pornography on June 1, 2016. The indictment stated that the defendant possessed 100 images of child pornography on his computer. The government submitted documents showing that on multiple occasions from Aug. 1, 2015 until June 1, 2016, the defendant used a file sharing program to download images of child pornography. The defendant was aware that other people could access his files from the file sharing program. The defendant had over 20,000 images of child pornography on his computer when he was arrested, but the indictment only listed 100 images.

How many images under §2G2.2(b)(7) is the defendant accountable for?

Scenario 2

Same facts as above.

The probation officer applied a 5-level increase for distribution of pornography under §2G2.2(b)(3) based on the defendant's knowledge that other individuals in the file sharing program could access his files. The defendant objected to this increase.

Should the defendant receive an enhancement under §2G2.2(b)(3) (distribution SOC)?

Scenario 3

The defendant is convicted of possession of child pornography under 18 U.S.C. § 2252. The defendant's step-daughter testified at the sentencing hearing that the defendant sexually abused her on numerous occasions 30 years' ago when she was 14. The government argues that the 5-level pattern of activity enhancement at §2G2.2(b)(5) should apply, but the defendant objects because while he admits the conduct took place, it occurred 30 years ago and there was no conviction for the conduct.

Should the enhancement for pattern of activity apply?

SEX OFFENSES SCENARIOS

Scenario 4

Defendant is convicted of Failure to Register as a Sex Offender. The PSR states that because the defendant was convicted of a sex offense, §5D1.2(b)(2) provides, the statutory maximum term of supervised release is recommended.

Does §5D1.2(b)(2) policy statement regarding maximum terms of supervised release apply to this case?

Scenario 5

The defendant is convicted of production of child pornography for producing a video of himself engaging in sexual activity with one of his 13-year old students on July 5, 2016. The defendant admitted that he had sex with another student one time in 2013. The probation officer has applied §4B1.5(b). The defendant objected, arguing that he only has one prior prohibited sexual conduct and that the enhancement should not apply because the enhancement requires two prior instances of sexual abuse.

Should the enhancement at §4B1.5(b) apply?

Scenario 6

The defendant is convicted of sexual abuse of a minor under 18 U.S.C. § 2241 for engaging in sexual conduct with an 11-year old. In 2009, the defendant was convicted of sexual assault of an adult under 18 U.S.C. § 2241. The probation officer applies §4B1.5(a) based on the prior conviction of the assault of the adult.

Should the enhancement apply?

SEX OFFENSES SCENARIOS

Scenario 7

The defendant is convicted of one count of production of child pornography, citing one minor, age 14, exploited during the production on July 15, 2016. On July 2, 2016, the defendant also produced child pornography exploiting a different child, age 9.

The probation officer applied a two-level increase for the offense involving a minor under 12 under §2G2.1(b)(1). The government has objected, arguing that the court should impose a four-level increase for a minor under 10.

Should the enhancement at §2G2.1(b)(1) apply?

Scenario 8

The defendant is convicted of one count of transportation of a minor, age 15, for purposes of prostitution from June 1, 2016 to June 8, 2016. On another occasion that week the defendant transported the minor to a different location for purposes of prostitution and filmed the sexual activity.

Will the cross-reference at §2G2.1(c)(1) apply?

Scenario 9

The defendant is convicted of one count of production of child pornography, citing one minor, age 10, exploited during the production on a May 10, 2016; applicable guideline §2G2.1. The government also found a video the defendant produced involving a 6-year old. In that same video, a second minor, age 9, was also exploited in the same manner.

Will the special instruction be applied?

Will there be a single application looking at the conduct related to both minors, or will there be a separate application for each?

SEX OFFENSES SCENARIOS

Scenario 10

Count 1 – Trafficking child pornography on April 15, 2016; Applicable guideline §2G2.2; Offense Level 40

Count 2 – Production of child pornography, citing one minor exploited during the production on April 15, 2016; Applicable guideline §2G2.1; Offense Level 38

The probation officer applied §2G2.1(b)(3) for the offense involving distribution of child pornography.

The distribution cited in the trafficking count is the same child pornography cited in the production count.

Will the counts group?

If so, under which grouping rule?

Scenario 11

Defendant was convicted of Failing to Register as a Sex Offender under the Sex Offender Registration Act (SORNA) found at 18 U.S.C. § 2250(a). The defendant was required to register as a sex offender based on his 2004 conviction for Texas sexual assault. In that case, defendant pleaded guilty to sexually assaulting his 9-year old niece when she was left in his care. He received a 12-year sentence for that offense. The defendant has two other prior drug trafficking offenses, but no other prior sex offense convictions.

At sentencing, the probation officer has listed in the sentencing recommendation the following special condition during Lopez’s supervised release term:

Defendant must submit to computer filtering software to block sexually oriented websites for any computer the defendant uses or possesses.

Is this an appropriate condition?
