

RELEVANT CONDUCT-SEX OFFENSES AND CRIMES AGAINST THE PERSON

1. Defendant pled guilty to two counts of Coercion and Enticement (§2G1.3). The counts involve separate victims. The first count involving victim 1 was committed on February 16, 2016. The second count involving victim 2 was committed on March 28, 2016.

Further investigation revealed that the defendant victimized seven additional minors from January 2016 through April 2016, but not on the same dates as the counts of conviction.

At §2G1.3, there is the following special instruction:

(d) Special Instruction

- (1) If the offense involved more than one minor, Chapter Three, Part D (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.

How many additional calculations of §2G1.3 should be completed?

2. Defendant is convicted of one count of sexual exploitation of a minor (§2G2.1) involving a 14-year-old girl, and one count of receipt of child pornography (§2G2.2). The defendant used social media to contact minor female victims to solicit sexually explicit images of them. The defendant received pornographic images from the 14-year-old victim of the sexual exploitation offense in addition to images from five other minor victims.

When applying §2G2.2, the cross reference to §2G2.1 applies because the defendant caused minors to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct.

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At §2G2.1, there is the following special instruction:

(d) Special Instruction

- (1) If the offense involved the exploitation of more than one minor, Chapter Three, Part D (Multiple Counts) shall be applied as if the exploitation of each minor had been contained in a separate count of conviction.

How many additional calculations of §2G2.1 should be completed?

3. The defendant and his co-conspirators robbed Chevy Chase Bank on November 18th, 2018. The defendant has pled to one count of robbery and one count of attempted robbery.

During the investigation of the Chevy Chase bank robbery, the authorities learned that the defendant and his co-conspirators were planning on robbing M&T Bank on December 15th, 2018. As a result, law enforcement officers set up a sting operation at M&T Bank the morning of December 15th, 2018.

As expected, the defendant and his co-conspirators arrived at M&T Bank just after noon on December 15th. SWAT officers quickly descended on the defendant and his co-conspirators in order to stop the bank robbery. While attempting to subdue the co-conspirators, a SWAT officer shot and killed one of the defendant's co-conspirators.

Will the cross reference at §2B3.1 apply? Why or why not?

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4. The defendant has been convicted of one count of kidnapping. The indictment alleges three victims were kidnapped as a result of the offense.

Will “pseudo counts” be calculated for this case? Why or why not?

5. The defendant has been charged with one count of interstate transportation of an individual other than a minor for the purpose of prostitution. The indictment alleges that beginning on or about January 20, 2018 and continuing through July 17, 2018, the defendant transported victim A on several occasions for the purpose of prostitution.

Further investigation reveals that the defendant also transported four additional women for the purpose of prostitution.

At §2G1.1, there is the following special instruction:

(d) Special Instruction

(1) If the offense involved more than one victim, Chapter Three, Part D (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.

How many additional calculations of §2G1.1 should be completed?

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6. The defendant was originally charged with two counts: Assault on a Federal Officer involving victim A, and Attempting to Kill a Federal Officer involving victim B.

The defendant was found guilty at trial for the Assault on a Federal Officer involving victim A. The defendant was found not guilty at trial for Attempting to Kill a Federal Officer involving victim B.

Can the more serious injuries related to victim B be used when calculating §2A2.2? Why or why not?

7. The defendant is convicted of one count of coercing a minor to engage in production of child pornography. During a three-month period, the defendant contacted hundreds of minors via a live app and enticed/coerced them to send him explicit sexual videos using the app.

The defendant received numerous videos, but law enforcement can only locate two of them as the videos disappear from the app after a short time.

At §2G2.1, there is the following special instruction:

(d) Special Instruction

- (1) If the offense involved the exploitation of more than one minor, Chapter Three, Part D (Multiple Counts) shall be applied as if the exploitation of each minor had been contained in a separate count of conviction.

How many additional calculations of §2G2.1 should be completed?

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8. The defendant has pled guilty to a single count of production of child pornography involving a 12-year-old victim.

The defendant's plea agreement contains the following statement: "the defendant agrees that the Statement of Facts constitutes a stipulation of facts for purposes of Section 1B1.2(c)."

The Statement of Facts discusses the defendant's production of child pornography (involving the 12-year-old girl) and outlines the defendant's receipt of child pornography.

Should an additional calculation of §2G2.2 be completed?

9. The defendant has pled guilty to one count of production of child pornography that occurred on August 15, 2017. The production involves a single image of his grandson.

The defendant molested both his grandson and granddaughter over a significant length of time. The state prosecuted the defendant for the molestation cases. Neither state conviction encompasses the date of the instant offense.

Defense counsel is arguing that the prior state convictions for the molestation conduct are the same course of conduct as the instant offense of conviction and as such, should not be given criminal history points.

Are the prior convictions the same course of conduct as the instant offense? Should they be given criminal history points?
