

§2G2.1

(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, 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.

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(e)(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