

statement” and inserting “of subsection (a)”.

The Commentary to § 5K2.0 is amended by adding at the end the following:

“Section 401(b)(1) of Public Law 108–21 directly amended this policy statement to add subsection (b), effective April 30, 2003.”.

Section 5K2.13 is amended by striking “or” before “(3)”; and by striking “public.” and inserting “public; or (4) the defendant has been convicted of an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code.”.

The Commentary to § 5K2.13 is amended by adding at the end the following:

“Background: Section 401(b)(5) of Public Law 108–21 directly amended this policy statement to add subdivision (4), effective April 30, 2003.”.

Section 5K2.20 is amended by striking “A sentence” and inserting “Except where a defendant is convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, a sentence”.

The Commentary to § 5K2.20 is amended by adding at the end the following:

“Background: Section 401(b)(3) of Public Law 108–21 directly amended this policy statement, effective April 30, 2003.”.

Chapter Five, Part K, is amended by adding at the end the following:

“§ 5K2.22. Specific Offender Characteristics as Grounds for Downward Departure in Child Crimes and Sexual Offenses (Policy Statement)

In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code:

(1) Age may be a reason to impose a sentence below the applicable guideline range only if and to the extent permitted by § 5H1.1.

(2) An extraordinary physical impairment may be a reason to impose a sentence below the applicable guideline range only if and to the extent permitted by § 5H1.4.

(3) Drug, alcohol, or gambling dependence or abuse is not a reason for imposing a sentence below the guidelines.

Commentary

Background: Section 401(b)(2) of Public Law 108–21 directly amended Chapter Five, Part K, to add this policy statement, effective April 30, 2003.”.

Reason for Amendment: This amendment implements amendments to

the guidelines made directly by the PROTECT Act, Pub. L. 108–21. In addition to amendments made directly by the PROTECT Act, this amendment makes technical and conforming amendments to those direct congressional amendments, pursuant to the Commission’s authority to promulgate such technical and conforming amendments under section 401(m) of the PROTECT Act and 28 U.S.C. 994.

2. Amendment: Section 2A4.1 is amended in subsection (a) by striking “24” and inserting the following:

“(1) 24 (effective before, but not on or after, May 30, 2003).

(1) 32 (effective on and after May 30, 2003).”;;

in subsection (b)(4)(C), by inserting “(effective before, but not on or after, May 30, 2003)” after “level”;

and by striking subsection (b)(5) as follows:

“(5) If the victim was sexually exploited, increase by 3 levels.”

and inserting the following:

“(5) If the victim was sexually exploited:

(A) Increase by 3 levels (effective before, but not on or after, May 30, 2003).

(A) Increase by 6 levels (effective on and after May 30, 2003).”.

The Commentary to § 2A4.1 captioned “Application Notes” is amended in Note 3 by inserting “(effective before, but not on or after, May 30, 2003)” after “resistance”.

The Commentary to § 2A4.1 captioned “Background” is amended by adding at the end the following:

“Subsections (a) and (b)(5), and the deletion of subsection (b)(4)(C), effective May 30, 2003, implement the directive to the Commission in section 104 of Public Law 108–21.”.

Reason for Amendment: This amendment implements the directive to the Commission in section 104 of the PROTECT Act, Pub. L. 108–21.

Part Two: Section 994(p) Amendments

1. Amendment: Section 2A1.4(a)(1) is amended by striking “10” and inserting “12”.

Section 2A1.4(a)(2) is amended by striking “14” and inserting “18”.

Reason for Amendment: This amendment responds to a concern that the federal sentencing guidelines do not adequately reflect the seriousness of involuntary manslaughter offenses. Specifically, the Department of Justice, some members of Congress, and an ad hoc advisory group formed by the Commission to address Native American sentencing guideline issues

expressed concern that most federal involuntary manslaughter cases involve vehicular homicides, which analysis of Commission data confirmed. These commentators also indicated that these offenses appear to be underpunished, particularly when compared to comparable cases arising under state law. This disparity with state punishments has been confirmed by studies undertaken by the Commission. In addition, Congress increased the maximum statutory penalty for involuntary manslaughter from three to six years’ imprisonment in 1994.

In response to these concerns and the Commission’s analysis, this amendment increases the base offense level in § 2A1.4(a)(2) for reckless involuntary manslaughter offenses from level 14 to level 18. This four level increase corresponds to an approximate 50 percent increase in sentence length for these offenses. This amendment also increases the base offense level in § 2A4.1(a)(1) for criminally negligent involuntary manslaughter offenses from level 10 to level 12. The two level increase represents an approximate 25 percent increase in the sentence length for these offenses.

2. Amendment: Sections 2B1.1, 2E5.3, 2J1.2, and 2T4.1, effective January 25, 2003 (see USSC Guidelines Manual Supplement to the 2002 Supplement to Appendix C, Amendment 647), are repromulgated with the following changes:

Section 2B1.1(a) is amended to read as follows:

“(a) Base Offense Level:

(1) 7, if (A) the defendant was convicted of an offense referenced to this guideline; and (B) that offense of conviction has a statutory maximum term of imprisonment of 20 years or more; or

(2) 6, otherwise.”.

Section 2B1.1(b)(12) is amended by striking “If the resulting” and all that follows through “to level 24.”; and by inserting after subdivision (B) the following:

“(C) The cumulative adjustments from application of both subsections (b)(2) and (b)(12)(B) shall not exceed 8 levels, except as provided in subdivision (D).

(D) If the resulting offense level determined under subdivision (A) or (B) is less than level 24, increase to level 24.”.

Section 2B1.1(b) is amended by striking the following:

“(13) If the offense involved a violation of securities law and, at the time of the offense, the defendant was an officer or a director of a publicly traded company, increase by 4 levels.”; and inserting the following: