

by striking “Internet-access device” each place it appears and inserting “interactive computer service”.

The Commentary to § 2G2.1 captioned “Application Notes” is amended in Note 5, as redesignated by this amendment, by striking “victims” and inserting “minors”.

II. Travel and Transportation Cases

Chapter Two, Part G, Subpart 1 is amended by adding at the end the following new guideline and accompanying commentary:

“§ 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; Use of Interstate Facilities To Transport Information About a Minor

(a) Base Offense Level: [22][24][25][26]

(b) Specific Offense Characteristics

(1) If the offense involved a sexual act or sexual contact, increase by 2 levels.

(2) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), increase by 4 levels.

[Option 1A: (3) If the offense involved a minor who had not attained the age of 12 years, increase by [4][6][8] levels.]

(4) If (A) the minor sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) the minor sustained serious bodily injury, increase by 2 levels; or (C) the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels.

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

(6) If the offense involved the knowing misrepresentation of a participant’s identity to persuade, induce, entice, coerce, or facilitate the travel of the minor to engage in a commercial sex act or prohibited sexual conduct, increase by 2 levels.

(7) If [the defendant used][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 a commercial sex act or prohibited sexual conduct; or (B) entice, encourage, offer, or solicit a person to engage in a commercial sex act or prohibited sexual conduct with the minor, increase by 2 levels.

[Option 2A: (8) If, for the purposes of commercial advantage or private financial gain, the defendant knowingly

arranged, induced, procured, or facilitated the travel of a participant knowing that the participant was traveling for the purpose of engaging in illicit sexual conduct, increase by [2] levels.]

[Option 2B: (8) If the offense involved conduct described in 18 U.S.C. 2423(d), increase by [2] 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, 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.

[Option 1B: (3) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, 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 criminal sexual abuse of 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 victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the travel or transportation to engage in 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 who had not attained the age of 18 years at the time of the commission of the offense); 18 U.S.C. 1591 (only if the offense involved a victim who had not attained the age of 18 years at the time of the commission of the offense), 2421 (only if the offense involved a victim who had not attained the age of 18 years at the time of the commission of the offense), 2422 (only if the offense

involved a victim who had not attained the age of 18 years at the time of the commission of the offense), 2422(b), 2423, [2425].

Application Notes:

1. Definitions.—For purposes of this guideline:

‘Commercial sex act’ has the meaning given that term in 18 U.S.C. 1591(c)(1).

‘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(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

‘Illicit sexual conduct’ has the meaning given that term in 18 U.S.C. 2423(f).

‘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; and (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 § 3B1.1 (Aggravating Role).

‘Permanent or life-threatening bodily injury,’ ‘serious bodily injury,’ and ‘abducted’ have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions). However, for purposes of this guideline, ‘serious bodily injury’ means conduct other than criminal sexual abuse, which already is taken into account in the base offense level under subsection (a).

‘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).

‘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)(2).—‘Conduct described in 18 U.S.C. 2241(a) or (b)’ is: using force against the minor; threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; rendering the minor unconscious; or 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