

to engage in, or travel for the purpose of engaging in, a commercial sex act or prohibited sexual conduct, whether or not the person consented to the commercial sex act or prohibited sexual conduct. Accordingly, 'victim' may include an undercover law enforcement officer.

2. Application of Subsection (b)(1).—Subsection (b)(1) provides an enhancement for physical force, fraud, or coercion, that occurs as part of a commercial sex act offense and anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. See Chapter Five, Part K (Departures). For purposes of subsection (b)(1)(B), 'coercion' includes any form of conduct that negates the voluntariness of the behavior of the victim. This enhancement would apply, for example, in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol. This characteristic generally will not apply if the drug or alcohol was voluntarily taken.

3. Application of Aggravating Role Enhancement.—For the purposes of § 3B1.1 (Aggravating Role), a victim, as defined in this guideline, is considered a participant only if that victim assisted in the promoting of a commercial sex act or prohibited sexual conduct in respect to another victim.

4. Special Instruction at Subsection (d)(1).—For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, a commercial sex act or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are not to be grouped together under § 3D1.2 (Groups of Closely Related Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of a commercial sex act or prohibited sexual conduct in respect to more than one victim, whether specifically cited in the count of conviction, each such victim shall be treated as if contained in a separate count of conviction.

5. Cross Reference at Subsection (c)(1).—Subsection (c)(1) provides a cross reference to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) if the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse, as defined in 18 U.S.C. 2241 or 2242. For example, the cross reference to § 2A3.1 shall apply if the offense involved criminal sexual abuse and the victim was threatened or placed in fear other than fear of death, serious bodily

injury, or kidnapping (see 18 U.S.C. 2242(1)).

6. Upward Departure Provision.—An upward departure may be warranted if the offense involved more than ten victims.

Background: This guideline covers offenses that involve promoting prostitution or prohibited sexual conduct with an adult through a variety of means. Offenses that involve promoting prostitution or prohibited sexual conduct are sentenced under this guideline, unless criminal sexual abuse occurs as part of the offense, in which case the cross reference would apply.

This guideline also covers offenses under section 1591 of title 18, United States Code, that involve recruiting or transporting a person, other than a minor, in interstate commerce knowing that force, fraud, or coercion will be used to cause the person to engage in a commercial sex act.

Offenses of promoting prostitution or prohibited sexual conduct in which a minor victim is involved are to be sentenced under § 2G1.3 (Promoting Prostitution 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)."

## II. Misleading Domain Names

Section 2G3.1 is amended in the heading by adding at the end "Misleading Domain Names" after "Minor".

Section 2G3.1(b)(1) is amended by redesignating subdivisions (D) and (E) as subdivisions (E) and (F), respectively; and by inserting after subdivision (C) the following new subdivision:

"(D) Distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, increase by 6 levels."; and in subdivision (F), as redesignated by this amendment, by striking "(D)" and inserting "(E)".

Section 2G3.1(b) is amended by redesignating subdivision (2) as subdivision (4); by inserting after subdivision (1) the following new subdivisions (2) and (3):

"(2) If the offense involved the use of a misleading domain name on the Internet with the intent to deceive a [minor][person] into viewing material on the Internet that is harmful to minors, increase by 2 levels.

(3) If [the defendant used][the offense involved the use of] a computer or an interactive computer service, increase by 2 levels.";

and by adding at the end the following new subdivision:

"(5) If the offense involved material that was advertised or described to include a minor engaged in sexually explicit conduct, increase by [2][4] levels."].

The Commentary to § 2G3.1 captioned "Statutory Provisions" is amended by inserting "2252B" after "1470".

The Commentary to § 2G3.1 captioned "Application Note" is amended by striking "Note" and inserting "Notes"; in Note 1 by striking "For purposes of this guideline.—" and inserting "Definitions.—For purposes of this guideline:"; in the paragraph that begins "'Distribution' means" by inserting "Accordingly, distribution includes posting material on a website for public viewing." after "obscene matter."; by striking the paragraph that begins "'Minor' means" and inserting the following:

"'Material that is harmful to minors' has the meaning given that term in 18 U.S.C. 2252B(d)(3).

'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.";

by adding at the end the following new paragraph:

"'Sexually explicit conduct' has the meaning given that term in 18 U.S.C. 2256(2)(A).";

and by adding after Note 1 the following new note:

"2. Use of a Computer or an Interactive Computer Service.—Subsection (b)(5) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(5) would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.".

Appendix A (Statutory Index) is amended by inserting before the line reference to "18 U.S.C. 2257" the following new line:

"18 U.S.C. 2252B 2G3.1".

Section 3D1.2(d) is amended by inserting "2G3.1" after "2G2.4".