

III. Conditions of Supervised Release

Section 5B1.3(d)(7) is amended by striking “If the instant” and all that follows through “sex offenders.” and inserting the following:

“If the instant offense of conviction is a sex offense, as defined in § 5D1.2 (Term of Supervised Release)—

(A) A condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.

[(B) A condition limiting [or prohibiting] the use of a computer or an interactive computer service in cases in which the [defendant used][offense involved] the use of such items.]”.

Section 5D1.2 is amended in subsection (a) by striking “Subject to” and inserting “Except as provided in”; in subsection (b) by inserting “(1)” before “shall”; and by inserting before the period the following:

“; or (2) in the case of a sex offense conviction, shall be not less than the minimum term of years specified for that class of offense under subdivisions (a)(1) through (a)(3), and may be up to life”.

Section 5D1.3(d)(7) is amended by striking “If the instant” and all that follows through “sex offenders.” and inserting the following:

“If the instant offense of conviction is a sex offense, as defined in § 5D1.2 (Terms of Supervised Release)—

(A) A condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.

[(B) A condition limiting [or prohibiting] the use of a computer or an interactive computer service in cases in which the [defendant used][the offense involved] the use of such items.]”.

IV. Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse) Amendments

[Option 1:

Section 2A3.1 is amended by striking subsection (a) in its entirety and inserting the following:

“(a) Base Offense Level:

(1) [30][32][34][36], if the offense involved a minor; or

(2) [27–30], otherwise.]”.

[Option 2:

Section 2A3.1 is amended by striking subsection (a) in its entirety and inserting the following:

“(a) Base Offense Level: [27–30]”;

Section 2A3.1(b) is amended by striking subdivision (1) in its entirety and inserting the following:

“(1) If the offense involved conduct described in 18 U.S.C. 2241(a) or (b), increase by 4 levels.”.]

Section 2A3.1(b) is amended in subdivision (6) by striking “Internet-access device” and inserting “interactive computer service”.

[Option 2:

Section 2A3.1(b) is amended by adding at the end the following:

“(7) If (A) a minor was involved; and (B) the offense was committed in connection with the possession, distribution, or production of child pornography, increase by [3][5][7] levels.”.]

[Option 3:

Section 2A3.1(c) is amended by striking “Cross Reference” and inserting “Cross References”; and by adding at the end the following:

“(2) 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.”.]

Section 2A3.1(c)(1) is amended by inserting “, if the resulting offense level is greater than that determined above” after “Murder”).

The Commentary to § 2A3.1 captioned “Application Notes” is amended by striking Note 1 in its entirety and inserting the following:

“1. Definitions.—For purposes of this guideline:

‘Child pornography’ has the meaning given that term in 18 U.S.C. 2256(8).

‘Computer’ has the meaning given that term in 18 U.S.C. 1030(e)(1).

‘Distribution’ means any act, including production, transportation, and possession with intent to distribute, 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)).

‘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 the Commentary to § 3B1.1 (Aggravating Role).

‘Permanent or life-threatening bodily injury,’ ‘serious bodily injury,’ and ‘abducted’ are defined 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’ (A) means any sexual activity for which a person can be charged with a criminal offense; (B) includes the production of child pornography; and (C) does not include trafficking in, or possession of, child pornography. ‘Child pornography’ has the meaning given that term in 18 U.S.C. 2256(8).

‘Conduct described in 18 U.S.C. 2241(a) or (b)’ is: using force against the victim; threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping; rendering the victim unconscious; or administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished.

‘Victim’ includes an undercover law enforcement officer.”.

The Commentary to § 2A3.1 captioned “Application Notes” is amended by striking Notes 2 and 3 in their entirety and inserting the following:

“2. Custody, Care, or Supervisory Control Enhancement.—Subsection (b)(5) is intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

3. Inapplicability of Enhancement.—If the enhancement in subsection (b)(5) applies, do not apply § 3B1.3 (Abuse of