

Position of Trust or Use of Special Skill).”.

The Commentary to § 2A3.1 captioned “Application Notes” is amended in Note 4 by inserting before “The enhancement” the following:

“Application of Subsection (b)(6).—

(A) Misrepresentation of Participant’s Identity.—”;

and by striking the last paragraph in its entirety and inserting the following new paragraph:

“(B) Use of a Computer or Interactive Computer Service.—Subsection (b)(6)(B) provides an enhancement if a computer or an interactive computer service was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(6)(B) 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 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.”.

The Commentary to § 2A3.1 captioned “Application Notes” is amended in Note 5 by inserting “Upward Departure Provision.—” before “If a victim”.

[Option 2: The Commentary to § 2A3.1 captioned “Application Notes” is amended by adding at the end the following:

“6. Application of Subsection (b)(7).—Subsection (b)(7) is intended to apply in cases in which the offense involved the production of child pornography. For purposes of this subsection, ‘child pornography’ has the meaning given that term in 18 U.S.C. 2256.”.]

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

“(a) Base Offense Level: 18”.

Section 2A3.2(b) is amended by striking subsections (2) through (4) in its entirety and inserting the following:

“(2) If (A) subsection (b)(1) does not apply; and (B)(i) the offense involved the knowing misrepresentation of a participant’s identity to persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct or a participant otherwise unduly influenced the victim to engage in prohibited sexual conduct; or (ii) a participant otherwise unduly influenced the victim to engage in prohibited sexual conduct, increase by 2 levels.

(3) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct, increase by 2 levels.”.

The Commentary to § 2A3.2 captioned “Application Notes” is amended in Note 1 by inserting after “Definitions.—For purposes of this guideline:” the following:

“‘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)).”;

by striking “‘Sexual act’” and all that follows through “16 years.” and inserting the following:

“‘Victim’ means (A) an individual who had not attained the age of 16 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 16 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 16 years.”.

The Commentary to § 2A3.2 captioned “Application Notes” is amended in Note 2 by striking “and” after “Care,” in the heading and inserting “or”; by inserting “(A) In General.—” before “Subsection (b)(1)”; and by adding at the end the following new paragraph:

“(B) Inapplicability of Enhancement.—If the enhancement in subsection (b)(1) applies, do not apply subsection (b)(2) or § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).”.

The Commentary to § 2A3.2 captioned “Application Notes” is amended by striking Note 3 in its entirety; and by redesignating Notes 4 through 7 as Notes 3 through 6, respectively.

The Commentary to § 2A3.2 captioned “Application Notes” is amended in Note 3, as redesignated by this amendment, by striking “(b)(2)(A)” each place it appears and inserting “(b)(2)(B); by striking “(A) persuade” and inserting “persuade”; by striking “; or (B) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct” each place it appears; by striking “(b)(2)(B)” and inserting “(b)(2)(B)(ii)”; and by striking “If the victim” and all that follows through “(c)(1) will apply.”.

The Commentary to § 2A3.2 captioned “Application Notes” is amended by striking Note 4, as redesignated by this amendment, in its entirety and inserting the following:

“4. Use of Computer or an Interactive Computer Service.—Subsection (b)(3) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct. Subsection (b)(3) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with the victim or with a person who exercises custody, care, or supervisory control of the victim. Accordingly, the enhancement would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the victim from an airline’s Internet site.”.

The Commentary to § 2A3.2 captioned “Background” is amended by striking “or chapter 117 of title 18, United States Code”.

Section 2A3.3(a) is amended by striking “9” and inserting “[10][12]”.

Section 2A3.3(b) is amended by striking “(A)” each place it appears; and by striking “; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct” each place it appears; and in subdivision (2) by striking “Internet-access device” and inserting “interactive computer service”.

The Commentary to § 2A3.3 captioned “Application Notes” is amended in Note 1 by striking “For purposes of this guideline—” and inserting the following: “Definitions.—For purposes of this guideline:

‘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)).”.

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

“2. Misrepresentation of a Participant’s Identity.—The enhancement in subsection (b)(1) applies in cases involving the misrepresentation of a participant’s identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(1) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor.

The misrepresentation to which the enhancement in subsection (b)(1) may apply includes misrepresentation of a participant’s name, age, occupation, gender, or status, as long as the misrepresentation was made with the