

Protection of Children from Sexual Predators Act of 1998

Directives to United States Sentencing Commission

I. Sentencing Enhancements For Chapter 117 Offenses

The Sentencing Commission is directed to review and amend the Guidelines to provide a sentencing enhancement for offenses under Title 18, Chapter 117 relating to the transportation for illegal sexual activity. The Commission shall **ensure that the sentences, guidelines and policy statements are appropriately severe and reasonably consistent with other guidelines and directives.**

II. Increased Penalties For Use of a Computer in The Sexual Abuse or Exploitation of a Child

The Sentencing Commission is directed to review the Sentencing Guidelines for aggravated sexual abuse (§2241) **(2A3.1)**, sexual abuse (§2242) **(2A3.1)**, sexual abuse of a minor or ward (§2243) **(2A3.2 & 2A3.3)**, coercion and enticement of a minor (§2422(b)) **(2G1.1)**, contacting a minor (§2422(c)) **(2G1.1)**, and transportation of minors and travel (§2423) **(2A3.1-3 & 2G1.1)**. Upon completion of the review, the Sentencing Commission shall promulgate amendments **to provide an appropriate enhancement if the defendant used a computer with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child to engage in any prohibited sexual activity.**

III. Increased Penalties For Knowing Misrepresentation in The Sexual Abuse or Exploitation of a Child

The Sentencing Commission is directed to review the Guidelines as indicated above and upon completion of the review, promulgate amendments to the Guidelines **to provide appropriate enhancement if the defendant knowingly misrepresented the actual identity of the defendant with the intent to persuade, induce, entice, coerce, or facilitate the transportation of a child to engage in a prohibited sexual activity.**

IV. Increased Penalties For Pattern of Activity of Sexual Exploitation of

Children

The Sentencing Commission is directed to review the Guidelines as directed above and upon completion of the review, promulgate amendments to the Guidelines to **increase penalties applicable to the offenses in any case in which the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor.**¹

V. Clarification of Definition of Distribution of Pornography

The Sentencing Commission is directed to review the Guidelines relating to the distribution of pornography covered under chapter 110 relating to the sexual exploitation and other abuses of children and upon completion of the review, promulgate such amendments to the Guidelines as are necessary to **clarify that the term “distribution of pornography” applies to the distribution of pornography for monetary remuneration or for a non-pecuniary interest.**²

VI. General Directive

In carrying out the directives of this title, the Sentencing Commission is to **“ensure reasonable consistency with other guidelines” and “avoid duplicative punishment” under the guidelines for “substantially the same offense.”**

¹ In the 1996 Report to Congress entitled Sex Offenses Against Children, the Sentencing Commission indicated that it had under consideration an amendment to make applicable to §§2G2.1 (production) and 2G2.4 (possession) the five level enhancement currently contained in the trafficking/receipt guideline 2G2.2(b)(4) “if the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor.” In addition, the Commission discussed an option of expanding the “pattern of activity” adjustment to sexual abuse guidelines, by providing for a five-level adjustment to §2A3.2.

² In the 1996 report to Congress, the Commission advised that an amendment under consideration was to clarify the definition of “distribution” of pornography. A question was raised as to whether Application Note 1 to §2G2.2 was intended to limit the five level enhancement if the offense involved distribution, in circumstances where the distribution was only for pecuniary gain. The amendment would clarify that both distribution for money and other non pecuniary distribution would receive the five level enhancement.