

Based on the foregoing, the Commission deems it appropriate to approve the proposed rule change on an accelerated basis, pursuant to Section 15B of the Act and the rules and regulations thereunder.¹⁰

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change SR-MSRB-96-01 be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-4123 Filed 2-22-96; 8:45 am]

BILLING CODE 8010-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines and commentary. Request for public comment. Notice of hearing.

SUMMARY: The Commission is considering promulgating certain amendments to the sentencing guidelines and commentary. This notice sets forth the proposed amendments and a synopsis of the issues addressed by the amendments as well as additional issues for comment. The Commission seeks comment on the proposed amendments, alternative proposed amendments, and any other aspect of the sentencing guidelines, policy statements, and commentary. The Commission may submit amendments to the Congress not later than May 1, 1996.

DATES: The Commission has scheduled a public hearing on the proposed amendments set forth in this notice and on the money laundering proposals set forth in the notice dated January 2, 1996, (see 61 F.R. 79-83). Testimony at the public hearing shall be limited to only those amendments. The public hearing is scheduled for March 11, 1996, at 1:00 p.m. at the Education Center (concourse level), South Lobby, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20002-8002.

A person who desires to testify at the public hearing should notify Michael Courlander, Public Information

Specialist, at (202) 273-4590 not later than February 27, 1996.

Written testimony for the hearing should be received by the Commission not later than March 6, 1996. Comment on the amendments and issues set forth in this notice (relating to penalties for child pornography and sex crime offenses) also may be submitted after the public hearing, but not later than March 29, 1996, in order to be considered by the Commission in the promulgation of amendments and in the possible submission of those amendments to the Congress by May 1, 1996.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2-500, Washington, DC 20002-8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273-4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. § 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. § 994(o). If guideline amendments are promulgated, those amendments are submitted to Congress not later than the first day of May pursuant to 28 U.S.C. § 994(p).

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates alternative proposals; for example, a proposed enhancement of [3][4][5] levels means a proposed enhancement of either three, four, or five levels. The Commission invites comment and suggestions for appropriate policy choices where bracketed text is indicated. Second, the Commission has highlighted certain issues for comment and invites suggestions for specific amendment language.

As set forth more fully in its notice dated September 22, 1995, (see 60 FR 49316-17), the Commission currently is engaged in a comprehensive guideline assessment and simplification effort. This project is expected to be a two-year initiative that may produce amendments in the 1996-97 amendment cycle for submission to Congress not later than May 1, 1997. During this initial year of the project, the Commission generally plans to promulgate no guideline

amendments, except as may be necessary to implement legislation enacted by Congress. The amendments presented in this notice are proposed in order to implement congressional directives in the Sex Crimes Against Children Prevention Act of 1995. (For additional amendments proposed in response to enacted legislation, see the notice dated January 2, 1996, 61 FR 79-83).

Authority. 28 U.S.C. § 994(a), (o), (p), (x).
Richard P. Conaboy,
Chairman.

Child Sex Offenses

Chapter Two, Part G (Offenses Involving Prostitution, Sexual Exploitation of Minors, and Obscenity)

1. Synopsis of Proposed Amendments: The Sex Crimes Against Children Prevention Act of 1995 contains several directives to the Commission to amend the current guidelines relating to the sexual exploitation of minors. The amendment set forth below implements sections 2 and 3 of the Act. Those sections direct the Commission to increase by at least two levels the base offense level in the current guidelines for offenses involving the sexual exploitation of minors under sections 2251 and 2252 of title 18, United States Code, and for offenses under sections 2251(c)(1)(A) and 2252(a) of such title if a computer was used to transmit certain notices or advertisements of visual depictions involving minors engaged in sexually explicit conduct or to transport or ship those visual depictions.

In addition to implementing the congressional directives, the amendment set forth below includes a proposal to clarify that if an adjustment under § 2G2.1(b)(2) applies because of the nature of the defendant's relationship with the minor involved in the offense, § 3B1.3 does not apply based on an abuse of a position of trust; § 3B1.3 may nevertheless apply based on the use of a special skill.

(A) Proposed Amendment: Section 2G2.1(a) is amended by striking "25" and inserting "[27][28][29]".

The Commentary to § 2G2.1 captioned "Statutory Provisions" is amended by striking "§ 2251(a), (b), (c)(1)(B)" and inserting "§§ 2251(a), (b), (c)(1)(B), 2258(a), (b)".

The Commentary to § 2G2.1 captioned "Application Notes" is amended in Note 3 by inserting "based on an abuse of a position of trust" after "Use of Special Skill".

Section 2G2.2(a) is amended by striking "15" and inserting "[17][18][19]".

¹⁰ *Id.*

¹¹ 15 U.S.C. 78s(b)(2).

Section 2G2.2(b) is amended by adding at the end the following new subdivision:

“(5) If a computer was used to transmit the notice or advertisement of the material or to transport or ship the material, increase by [2][3][4] levels.”.

The Commentary to § 2G2.2 captioned “Statutory Provisions” is amended by inserting “, 2258(a), (b)” after “2252(a)(1)–(3)”.

Section 2G2.4(a) is amended by striking “13” and inserting “[15][16][17]”.

Section 2G2.4(b) is amended by adding at the end the following new subdivision:

“(3) If the defendant’s possession of the material resulted from the defendant’s use of a computer, increase by [2][3][4] levels.”.

(B) Additional Issues for Comment: The Commission invites comment on whether § 2G2.1 should be amended to add an enhancement to the offense level for the use of a computer comparable to the enhancement for the use of a computer directed to be added to §§ 2G2.2 and 2G2.4 by the Sex Crimes Against Children Prevention Act of 1995. Such an amendment to § 2G2.1 would, for example, apply to the use of a computer to solicit the participation of minors in sexually explicit conduct.

In addition, the Commission invites comment on whether the guidelines in Chapter Two, Part G, Subpart Two should be amended to add an application note for each such guideline comparable to the application note included in each of the guidelines of Chapter Two, Part A, Subpart Three (Criminal Sexual Abuse) which indicates that an upward departure may be warranted if the defendant’s criminal history includes a prior sentence for conduct that is similar to the instant offense.

2. Synopsis of Proposed Amendments: The proposed amendments set forth below as Option 1 and Option 2 implement the directive contained in section 4 of the Sex Crimes Against Children Prevention Act of 1995. That section directs the Commission to increase by at least three levels the base offense level for offenses involving the transportation of minors with intent to engage in criminal sexual activity under section 2423(a) of title 18, United States Code.

In an effort to further the Commission’s goal of simplifying the operation of the guidelines, Option 2 also consolidates §§ 2G1.1 (Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct) and 2G1.2 (Transportation of a Minor for the Purpose of Prostitution or

Prohibited Sexual Conduct). As proposed under Option 2, the base offense level for offenses covered by § 2G1.2 is decreased from the current level of 16 to a proposed level of 14 in order to effectuate the consolidation of §§ 2G1.2 and 2G1.1 (which currently has a base offense level of 14). However, Option 2 does not reduce the overall offense level for offenses covered by § 2G1.2 because the specific offense characteristic related to the age of the victim is proposed to be increased by two levels to compensate for the reduction in the base offense level. That specific offense characteristic would then be increased by another three, four, or five levels to implement the directive contained in section 4 of the Sex Crimes Against Children Prevention Act of 1995. Additionally under Option 2, the specific offense characteristics and cross references that now apply only to § 2G1.2 are added to § 2G1.1.

In addition, Option 1 and Option 2 both clarify that if an adjustment under § 2G1.2(b)(4) applies because of the nature of the defendant’s relationship with the minor involved in the offense, § 3B1.3 does not apply based on an abuse of a position of trust; § 3B1.3 may nevertheless apply based on the use of a special skill.

(A) Proposed Amendment—Option 1: Section 2G1.2(a) is amended by striking “16” and inserting “[19][20][21]”.

The Commentary to section 2G1.2 captioned “Statutory Provisions” is amended by striking “2423” and inserting “2423(a)”.

The Commentary to section 2G1.2 captioned “Application Notes” is amended in Note 6 by inserting “based on an abuse of a position of trust” after “Use of Special Skill”.

(B) Proposed Amendment—Option 2 (Consolidation of §§ 2G1.1 and 2G1.2): Subpart One of Part G of Chapter Two is amended by striking §§ 2G1.1 and 2G1.2 and inserting the following:

“§ 2G1.1. Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct.

“(a) Base Offense Level: 14.

“(b) Specific Offense Characteristics.

“(1) If the offense involved the use of physical force, or coercion by threats or drugs or in any manner, increase by 4 levels.

“(2) If the offense involved the transportation of a person who (A) has not attained the age of twelve years, increase by [9][10][11] levels; (B) has attained the age of twelve years but has not attained the age of sixteen years, increase by [7][8][9] levels; or (C) has attained the age of sixteen years but has not attained the age of eighteen years, increase by [5][6][7] levels.

“(3) If subsection (b)(2) applies, and the defendant was a parent, relative, or legal guardian of the minor, or if the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.

“(c) Cross References.

“(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).

“(2) 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 or Assault with the Intent to Commit Criminal Sexual Abuse).

“(3) If the offense did not involve transportation for the purpose of prostitution, and neither subsection (c)(1) nor (c)(2) is applicable, use the offense guideline applicable to the underlying prohibited sexual conduct. If no offense guideline is applicable to the prohibited sexual conduct, apply § 2X5.1 (Other Offenses).

“(d) Special Instructions.

“(1) If the offense involved the transportation of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the transportation of each person had been contained in a separate count of conviction.

“(2) For the purposes of this guideline, ‘transportation’ includes (A) transporting a person for the purpose of prostitution or prohibited sexual conduct, and (B) persuading, inducing, enticing, or coercing a person to travel for the purpose of prostitution or prohibited sexual conduct.

“Commentary

“Statutory Provisions: 8 U.S.C. § 1328; 18 U.S.C. §§ 2421, 2422, 2423(a).

“Application Notes:

“1. ‘Sexually explicit conduct’, as used in this guideline, has the meaning set forth in 18 U.S.C. § 2256.

“2. The enhancement for physical force, or coercion, anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. See Chapter Five, Part K (Departures).

“3. ‘Coercion’, as used in this guideline, includes any form of conduct that negates the voluntariness of the behavior of the person transported. This factor would apply, for example, where the ability of the person being

transported to appraise or control conduct was substantially impaired by drugs or alcohol. In the case of transportation involving an adult, rather than a minor, this characteristic generally will not apply where the alcohol or drug was voluntarily taken.

"4. For the purposes of § 3B1.1 (Aggravating Role), the persons transported are considered participants only if they assisted in the unlawful transportation of others.

"5. For the purposes of Chapter Three, Part D (Multiple Counts), each person transported is to be treated as a separate victim. Consequently, multiple counts involving the transportation of different persons are not to be grouped together under § 3D1.2 (Groups of Closely-Related Counts). Special instruction (c)(1) directs that if the relevant conduct of an offense of conviction includes more than one person being transported, whether specifically cited in the count of conviction or not, each such person shall be treated as if contained in a separate count of conviction.

"6. Subsection (b)(3) is intended to have broad application and includes offenses involving a minor 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 adjustment, the court should look to the actual relationship that existed between the defendant and the child and not simply to the legal status of the defendant-child relationship.

"7. If the adjustment in subsection (b)(3) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) based on an abuse of a position of trust.

"8. The cross reference in subsection (c)(1) is to be construed broadly to include all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

"9. The cross reference at subsection (c)(3) addresses the unusual case in which the offense did not involve transportation for the purpose of prostitution and neither subsection (c)(1) nor (c)(2) is applicable. In such case, the guideline for the underlying prohibited sexual conduct is to be used, e.g., § 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit

Abusive Sexual Contact). If there is no offense guideline for the underlying prohibited sexual conduct, § 2X5.1 (Other Offenses) is to be used."

(C) Additional Issue for Comment: The Commission invites comment on whether, as an alternative to the proposed amendments set forth above as Option 1 and Option 2, the Commission should apply the enhanced offense level required by the congressional directive only if the defendant is convicted of 18 U.S.C. 2243(a). Note that section 4 of the Sex Crimes Against Children Prevention Act of 1995 directs the Commission to increase by at least three levels the base offense level for an offense under 18 U.S.C. 2243(a). As proposed for comment under Option 1, the enhanced base offense level (increasing the current level of 16 to a proposed level of 19, 20, or 21) would apply to all offenses to which § 2G1.2 currently applies, not just offenses under 18 U.S.C. 2243(a). Similarly, as proposed for comment under Option 2, the enhanced specific offense characteristic related to the age of the victim (increasing the current levels by three, four, or five levels, in addition to the two-level increase for that specific offense characteristic proposed to be made under Option 2 as a result of the consolidation of §§ 2G1.2 and 2G1.1) would apply to all offenses to which § 2G1.2 currently applies.

[FR Doc. 96-4050 Filed 2-22-96; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice No. 2338]

Shipping Coordinating Committee, Marine Environment Protection Committee and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Wednesday, March 27, 1996, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593. The purpose of the meeting is to prepare for discussions regarding the new Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) addressing the control of air pollution from ships. These discussions will take place during the Thirty-eighth session of the Marine Environment Protection Committee of the International Maritime Organization (IMO) scheduled for July 01-10, 1996, at IMO Headquarters in London, England.

Among other things, items of particular interest are: application of the new Annex; criteria and procedures for the establishment of special areas to reduce sulphur oxide emissions; survey and certification issues; reduction of nitrogen oxide emissions from marine engines; shipboard incinerators; ozone depleting substances; fuel oil quality; and volatile organic compound emissions during loading operations. The U.S. Safety of Life at Sea (SOLAS) Working Group supports the U.S. Representative to the IMO Committee in developing the U.S. position on those issues raised at the IMO Committee meetings. Because of the impact on domestic regulations through development of these international agreements, the U.S. SOLAS Working Group serves as an excellent forum for the public to express their ideas. All members of the maritime community are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing with the IMO.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Wayne Lundy, U.S. Coast Guard Headquarters, Commandant (G-MMS), 2100 Second Street, S.W., Washington, DC 20593-0001 or by calling: (202) 267-2206.

Dated: February 14, 1996.

Charles A Mast,

Chairman, Shipping Coordinating Committee.

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[Public Notice No. 2335]

U.S. International Telecommunication Advisory Committee (ITAC); Renewal

The Department of State has renewed the Charter of the United States International Telecommunication Advisory Committee (ITAC). This advisory committee will continue to obtain the views and advice of American experts and interested parties with respect to a broad range of technical, operational and administrative questions in the telecommunications and information sector. ITAC's focus is on U.S. participation in the work of international treaty organizations, primarily the International Telecommunication Union (ITU) and the OAS Inter-American Telecommunication Commission (CITEL).