

- (2) 14, if the defendant was required to register as a Tier II offender; or
 - (3) 12, if the defendant was required to register as a Tier I offender.
- (b) Specific Offense Characteristics
- (1) (Apply the greatest):
 - If, while in a failure to register status, the defendant committed—
 - (A) a sex offense against someone other than a minor, increase by 6 levels;
 - (B) a felony offense against a minor not otherwise covered by subdivision (C), increase by 6 levels; or
 - (C) a sex offense against a minor, increase by 8 levels.
 - (2) If the defendant voluntarily (A) corrected the failure to register; or (B) attempted to register but was prevented from registering by uncontrollable circumstances and the defendant did not contribute to the creation of those circumstances, decrease by 3 levels.

Commentary

Statutory Provision: 18 U.S.C. § 2250(a), (b).

Application Notes:

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

“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; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

“Sex offense” has the meaning given that term in 34 U.S.C. § 20911(5).

“Tier I offender”, **“Tier II offender”**, and **“Tier III offender”** have the meaning given the terms “tier I sex offender”, “tier II sex offender”, and “tier III sex offender”, respectively, in 34 U.S.C. § 20911.

2. **Application of Subsection (b)(1).**—For purposes of subsection (b)(1), a defendant shall be deemed to be in a “failure to register status” during the period in which the defendant engaged in conduct described in 18 U.S.C. § 2250(a) or (b).