

§2G1.3

to engage in a sexual act with a minor who had not attained the age of 12 years, or knowingly engaging in a sexual act with a minor who had not attained the age of 12 years, §2A3.1 shall apply, regardless of the “consent” of the minor.

(d) Special Instruction

- (1) If the offense involved more than one minor, Chapter Three, Part D (Multiple Counts) shall be applied as if the persuasion, enticement, coercion, travel, or transportation to engage in a commercial sex act or prohibited sexual conduct of each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 8 U.S.C. § 1328 (only if the offense involved a minor); 18 U.S.C. §§ 1591 (only if the offense involved a minor), 2421 (only if the offense involved a minor), 2421A (only if the offense involved a minor), 2422 (only if the offense involved a minor), 2423, 2425. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

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

“**Commercial sex act**” has the meaning given that term in 18 U.S.C. § 1591(e)(3).

“**Computer**” has the meaning given that term in 18 U.S.C. § 1030(e)(1).

“**Illicit sexual conduct**” has the meaning given that term in 18 U.S.C. § 2423(f).

“**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; or (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).

“**Prohibited sexual conduct**” has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

“**Sexual act**” has the meaning given that term in 18 U.S.C. § 2246(2).

“**Sexual contact**” has the meaning given that term in 18 U.S.C. § 2246(3).