

APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4786

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALANDIS D. PATTERSON,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Bruce H. Hendricks, District Judge. (6:16-cr-00299-BHH-2)

Submitted: October 19, 2018

Decided: December 3, 2018

Before GREGORY, Chief Judge, DIAZ and FLOYD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Scarlet B. Moore, Greenville, South Carolina, for Appellant. Sherri A. Lydon, United States Attorney, Columbia, South Carolina, Jamie Lea Nabors Schoen, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

The district court sentenced Alandis D. Patterson to 240 months' imprisonment after Patterson pled guilty to conspiracy to commit commercial sex trafficking, in violation of 18 U.S.C. § 1591(a)(1), (2). On appeal, Patterson raises three challenges to the district court's Sentencing Guidelines calculations and further contends that his sentence is substantively unreasonable. We affirm the district court's judgment.

"We accord due deference to a district court's application of the sentencing guidelines." *United States v. Steffen*, 741 F.3d 411, 414 (4th Cir. 2013). We review the district court's factual determinations for clear error. *Id.* However, "if the issue turns primarily on the legal interpretation of a guideline term, the standard moves closer to de novo review." *Id.* (alterations and internal quotation marks omitted).

First, Patterson contends that the district court erred in awarding one criminal history point for his previous conviction for possessing marijuana. A defendant receives one criminal history point for a prior sentence of less than 60 days' imprisonment. U.S. Sentencing Guidelines Manual § 4A1.1(c). "The term 'prior sentence' means any sentence previously imposed upon adjudication of guilt . . . for conduct not part of the instant offense." USSG § 4A1.2(a). Section 4A1.1(c) is designed to include "sentences of less than sixty days, probation, fines, and residency in a halfway house." USSG § 4A1.1 cmt. background. Thus, the district court rightfully counted Patterson's conviction, even if the state court imposed no active jail sentence. *See United States v. Russell*, 564 F.3d 200, 206 (3d Cir. 2009).

Patterson next contends that the district court erred in applying a cross-reference to calculate his base offense level. Section 2G1.1 provides that a court should apply USSG § 2A3.1 if the offense involved conduct described in 18 U.S.C. § 2241(a), (b) or 18 U.S.C. § 2242. USSG § 2G1.1(c)(1). As relevant here, this cross-reference applies if the offense conduct involved “using force against the victim [or] threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping.” USSG § 2G1.1 cmt. n.4(A). The government bears the burden to prove a cross-referenced offense by a preponderance of the evidence. *See United States v. Davis*, 679 F.3d 177, 182 (4th Cir. 2012); *see also United States v. Chandia*, 675 F.3d 329, 338-39 (4th Cir. 2012) (holding that “the due process clause does not require the district court to find uncharged conduct by a heightened standard of proof before using it as a basis for determining a defendant’s sentence” (internal quotation marks omitted)).*

We conclude that the district court correctly applied the cross-reference. While Patterson argues that the victim voluntarily prostituted herself, he admitted at the Fed. R. Crim. P. 11 hearing that he used force on at least one occasion to compel the victim to engage in a commercial sex act. “A defendant’s solemn declarations in open court . . . carry a strong presumption of verity.” *United States v. Lemaster*, 403 F.3d 216, 221 (4th Cir. 2005). Patterson does not contend that his plea was unknowing, and the information alleged that Patterson used force to compel an individual to engage in a commercial sex

* Accordingly, we reject Patterson’s argument that the Government should have been required to establish the cross-referenced offense by clear and convincing evidence.

act. And Patterson's conclusory assertion that he did not routinely or severely beat the victim is insufficient to rebut the numerous facts describing his offense conduct.

Patterson also argues that the district court erred in denying him a reduction for acceptance of responsibility under § USSG 3E1.1. We review the district court's denial of the acceptance of responsibility adjustment for clear error, giving "great deference to the district court's decision because the sentencing judge is in a unique position to evaluate a defendant's acceptance of responsibility." *United States v. Dugger*, 485 F.3d 236, 239 (4th Cir. 2007) (alteration and internal quotation marks omitted). To earn a reduction, "a defendant must prove to the court by a preponderance of the evidence that he has clearly recognized and affirmatively accepted personal responsibility for his criminal conduct." *Id.* (internal quotation marks omitted). A guilty plea does not automatically entitle a defendant to a reduction for acceptance of responsibility. *Id.*

We conclude that the district court did not clearly err in denying Patterson the acceptance reduction. Patterson admitted in open court at the Rule 11 hearing that he used force to coerce an individual to engage in a commercial sex act, but then vigorously objected to the Guideline that corresponded to this offense conduct. Moreover, Patterson denied that he routinely or severely beat the victim, when the evidence in the record shows that he beat her every day and to the point that, on one occasion, she required medical attention. Additionally, during Patterson's allocution at sentencing, he attempted to minimize the severity of his conduct.

Finally, Patterson argues that his sentence is substantively unreasonable because his codefendant received a lesser sentence and his codefendant's offense involved a

minor. We review a defendant's sentence "under a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007). Having concluded that there was no procedural error, we review Patterson's sentence for substantive reasonableness, "tak[ing] into account the totality of the circumstances." *Id.* at 51. "Any sentence that is within or below a properly calculated Guidelines range is presumptively reasonable." *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014). "Such a presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors." *Id.*

Patterson's argument fails to overcome the presumption of reasonableness accorded to his within-Guidelines sentence. The district court rightfully concluded that Patterson's offense conduct was abhorrent—he found a vulnerable victim, introduced her to prostitution and drugs, and then used her dependence on cocaine and heroin, along with physical violence, to compel her to turn over all of her prostitution earnings to him. While Patterson's codefendant received a much shorter sentence than Patterson, Patterson conceded that his codefendant did not use force against his victims. Moreover, 18 U.S.C. § 3553(a)(6), which concerns unwarranted sentencing disparities, aims "to promote national uniformity in sentencing rather than uniformity among codefendants in the same case." *United States v. Parker*, 462 F.3d 273, 277 (3d Cir. 2006); accord *United States v. Withers*, 100 F.3d 1142, 1149 (4th Cir. 1996).

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: December 3, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4786
(6:16-cr-00299-BHH-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ALANDIS D. PATTERSON

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

AO 245B (SCDC Rev.11/16) Judgment in a Criminal Case Sheet 1

UNITED STATES DISTRICT COURT
District of South Carolina

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

ALANDIS D. PATTERSON

Case Number: 6:16-299 (2)

USM Number: 31288-171

Jessica Salvini, CJA
Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to count(s) 1ss.
- ☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.
- ☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:1591	Please see information	2/21/17	1ss

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____.
- ☒ Count(s) 1,1s,2,2s,3s,4s,5,5s and 6s ☐ is ☒ are dismissed on the motion of the United States.
- ☐ Forfeiture provision is hereby dismissed on motion of the United States Attorney.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

December 4, 2017
Date of Imposition of Judgment

s/Bruce H. Hendricks
Signature of Judge

Hon. Bruce H. Hendricks, United States District Judge
Name and Title of Judge

December 18, 2017
Date

DEFENDANT: ALANDIS D. PATTERSON
CASE NUMBER: 6:16-299

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 240 months. The defendant shall pay the mandatory \$100.00 special assessment fee, as well as \$5,000.00 special assessment fee for an individual convicted of a crime of sex trafficking, for a total of \$5,100.00. The defendant shall pay Restitution of \$50,000.00.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____
_____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ALANDIS D. PATTERSON

CASE NUMBER: 6:16-299

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of Life.

The defendant shall submit to random urinalysis testing as directed by the probation officer.

The defendant shall pay any unpaid balance of the \$5,000.00 special assessment fee at rate of not less than \$50.00 per month. The payments shall begin 60 days after release from incarceration. The payments shall be adjusted throughout the defendant's term of supervision, based on his ability to pay.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☒ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. §16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program of domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: ALANDIS D. PATTERSON

CASE NUMBER: 6:16-299

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: ALANDIS D. PATTERSON
CASE NUMBER: 6:16-299

CRIMINAL MONETARY PENALTIES

The defendant shall pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	<u>\$100.00</u>	<u>\$5,000.00</u>	<u>\$</u>	<u>\$50,000.00</u>

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case*(AO245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Katelynn Boyd	\$50,000.00	\$50,000.00	
TOTALS	<u>\$50,000.00</u>	<u>\$50,000.00</u>	

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ The interest requirement is waived for the ☐ fine ☒ restitution.

☐ The interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ALANDIS D. PATTERSON
CASE NUMBER: 6:16-299

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$100.00 Special Assessment due immediately and \$5,000.00 Special Assessment for Sex Trafficking, and \$50,000.00 Restitution balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☒ D, or ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., *months or years*), to commence _____ (e.g., *30 or 60 days*) after the date of this judgment; or
- D ☒ Payment of Sex Trafficking Special Assessment and Restitution in equal *monthly* installments of \$50.00, to commence *60 days* after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within (e.g., *30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
☐ The defendant shall pay the following court cost(s):
☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

As directed in the Preliminary Order of Forfeiture, filed _____ and the said order is incorporated herein as part of this judgment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

18 U.S.C. §1591. Sex trafficking of children or by force, fraud, or coercion

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is—

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Government need not prove that the defendant knew that the person had not attained the age of 18 years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 20 years, or both.

(e) In this section:

(1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert

pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term “coercion” means—

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.

(4) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

(5) The term “venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

(Added Pub. L. 106–386, div. A, §112(a)(2), Oct. 28, 2000, 114 Stat. 1487; amended Pub. L. 108–21, title I, §103(a)(3), Apr. 30, 2003, 117 Stat. 653; Pub. L. 108–193, §5(a), Dec. 19, 2003, 117 Stat. 2879; Pub. L. 109–248, title II, §208, July 27, 2006, 120 Stat. 615; Pub. L. 110–457, title II, §222(b)(5), Dec. 23, 2008, 122 Stat. 5069.)

18 U.S.C. §1594. General provisions

(a) Whoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.

(b) Whoever conspires with another to violate section 1581, 1583, 1589, 1590, or 1592 shall be punished in the same manner as a completed violation of such section.

(c) Whoever conspires with another to violate section 1591 shall be fined under this title, imprisoned for any term of years or for life, or both.

(d) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(e)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(B) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.

(f) Witness Protection.—Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection).

(Added Pub. L. 106–386, div. A, §112(a)(2), Oct. 28, 2000, 114 Stat. 1489; amended Pub. L. 110–457, title II, §222(c), Dec. 23, 2008, 122 Stat. 5070.)

18 U.S.C. §2241. Aggravated sexual abuse

(a) **By Force or Threat.**—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly causes another person to engage in a sexual act—

(1) by using force against that other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) **By Other Means.**—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly—

(1) renders another person unconscious and thereby engages in a sexual act with that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—

(A) substantially impairs the ability of that other person to appraise or control conduct; and

(B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(c) **With Children.**—Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than

the person so engaging), or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

(d) State of Mind Proof Requirement.—In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

(Added Pub. L. 99–646, §87(b), Nov. 10, 1986, 100 Stat. 3620, and Pub. L. 99–654, §2, Nov. 14, 1986, 100 Stat. 3660; amended Pub. L. 103–322, title XXXIII, §330021(1), Sept. 13, 1994, 108 Stat. 2150; Pub. L. 104–208, div. A, title I, §101(a) [title I, §121[7(b)]], Sept. 30, 1996, 110 Stat. 3009, 3009–26, 3009–31; Pub. L. 105–314, title III, §301(a), Oct. 30, 1998, 112 Stat. 2978; Pub. L. 109–162, title XI, §1177(a)(1), (2), Jan. 5, 2006, 119 Stat. 3125; Pub. L. 109–248, title II, §§206(a)(1), 207(2), July 27, 2006, 120 Stat. 613, 615; Pub. L. 110–161, div. E, title V, §554, Dec. 26, 2007, 121 Stat. 2082.)

Codification

Pub. L. 99–646 and Pub. L. 99–654 added identical sections 2241.

18 U.S.C. §2242. Sexual abuse

Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly—

(1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or

(2) engages in a sexual act with another person if that other person is—

(A) incapable of appraising the nature of the conduct; or

(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;

or attempts to do so, shall be fined under this title and imprisoned for any term of years or for life.

(Added Pub. L. 99–646, §87(b), Nov. 10, 1986, 100 Stat. 3621, and Pub. L. 99–654, §2, Nov. 14, 1986, 100 Stat. 3661; amended Pub. L. 103–322, title XXXIII, §330021(1), Sept. 13, 1994, 108 Stat. 2150; Pub. L. 109–162, title XI, §1177(a)(3), Jan. 5, 2006, 119 Stat. 3125; Pub. L. 109–248, title II, §§205, 207(2), July 27, 2006, 120 Stat. 613, 615; Pub. L. 110–161, div. E, title V, §554, Dec. 26, 2007, 121 Stat. 2082.)

Codification

Pub. L. 99–646 and Pub. L. 99–654 added identical sections 2242.

18 U.S.C. §3553. Imposition of a sentence

(a) **Factors To Be Considered in Imposing a Sentence.**—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.¹

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

* * *

¹ So in original. The period probably should be a semicolon.