

2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2," immediately before "2L1.1";

In the line referenced to 18 U.S.C. § 1503 by inserting "2A1.1, 2A1.2, 2A1.3, 2A2.1," immediately before "2J1.2";

In the line referenced to 18 U.S.C. § 1513 by inserting "(b)" immediately following "1513";

By inserting the following at the appropriate place by title and section: "18 U.S.C. § 1513(a) 2A1.1, 2A1.2, 2A1.3, 2A2.1 (2J1.2 for offenses committed prior to September 13, 1994)";

In the line referenced to 18 U.S.C. § 2243(a) by inserting "2A1.1, 2A1.2, 2A1.3, 2A1.4," immediately before "2A3.2";

In the line referenced to 18 U.S.C. § 2243(b) by inserting "2A1.1, 2A1.2, 2A1.3, 2A1.4," immediately before "2A3.3";

In the line referenced to 18 U.S.C. § 2244 by inserting "2A1.1, 2A1.2, 2A1.3, 2A1.4," immediately before "2A3.4"; and

In the lines referenced to 18 U.S.C. § 2251(a), (b) and to 18 U.S.C. § 2251(c)(1)(B) by inserting "2A1.1, 2A1.2, 2A1.3, 2A1.4," immediately before "2G2.1".]

[Option 2: Section 2A3.2(c) is amended by inserting the following additional subdivision:

"(2) If death resulted, apply the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above."

Section 2A3.3 is amended by inserting the following additional subsection:

"(b) Cross Reference

(1) If death resulted, apply the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above."

Section 2A3.4(c) is amended by inserting the following additional subdivision:

"(3) If death resulted, apply the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above."

Section 2G2.1 is amended by redesignating subsection (c) as (d); and by inserting the following as subsection (c):

"(c) Cross Reference

(1) If death resulted, apply the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above."

Section 2J1.2(c) is amended by deleting "Reference" and inserting in

lieu thereof "References"; and by inserting the following additional subdivision:

"(2) If death resulted, apply the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above."

Section 2L1.1 is amended by inserting the following additional subsection:

"(c) Cross Reference

(1) If death resulted, apply the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above."

*Chapter Two, Part A (Offenses Against the Person)*

*Chapter Four, Part A (Criminal History)*

*7. Synopsis of Proposed Amendment:*

Section 40111 of the Violent Crime Control and Law Enforcement Act of 1994 adds a new section 2247 to title 18 that doubles the statutory maximum term of imprisonment for defendants convicted of offenses under chapter 109A (Sexual Abuse) of title 18 who have been convicted previously in federal or state court of aggravated sexual abuse, sexual abuse, or aggravated sexual contact. The section also directs the Sentencing Commission to implement this provision "by promulgating amendments, if appropriate, in the sentencing guidelines applicable to chapter 109A offenses."

None of the Chapter Two sexual abuse guidelines currently provides for enhancement for repeat sex offenses. However, Chapter Four (Criminal History and Criminal Livelihood) does include a determination of the seriousness of the defendant's criminal record based upon prior convictions (§ 4A1.1). Guideline 4B1.1 (Career Offender) also provides enhanced penalties for offenders who engage in a crime of violence or controlled substance offense, having been sentenced previously for two or more crimes of either type. Crimes of violence include sexual abuse offenses committed with violence or force or threat of force (§ 4B1.2(1)). For cases in which a defendant is sentenced for a current sexual offense, has only one prior sexual offense, and no other prior crimes of violence or controlled substance offenses, the prior sexual offense is accounted for within the calculation of Criminal History Score. The Criminal History Score classifies prior convictions based upon type and length of prior sentence. Consequently, the sexual nature of the prior offense is not considered specifically although it

may be related to the type and length of prior sentence.

Although, as noted above, the guidelines currently do not enhance specifically for one prior repeat sex crime, § 4A1.3 (Adequacy of Criminal History Category) generally provides that an upward departure may be considered "[i]f reliable information indicates that the criminal history category does not reflect the seriousness of the defendant's past criminal conduct or the likelihood that the defendant will commit other crimes." The proposed amendment builds on § 4A1.3 by specifically listing as a basis for upward departure the fact that the defendant has a prior sentence for conduct similar to the instant sexual offense. This approach implements the directive to the Commission in a broader but more flexible form.

*Proposed Amendment:* The Commentary to § 2A3.1 captioned "Application Notes" is amended by inserting the following additional note: "6. If the defendant's criminal history includes a prior sentence for conduct that is similar to the instant offense, an upward departure may be warranted under § 4A1.3 (Adequacy of Criminal History Category)."

The Commentary to § 2A3.2 captioned "Application Notes" is amended by inserting the following additional note: "4. If the defendant's criminal history includes a prior sentence for conduct that is similar to the instant offense, an upward departure may be warranted under § 4A1.3 (Adequacy of Criminal History Category)."

The Commentary to § 2A3.3 captioned "Application Notes" is amended by inserting the following additional note: "2. If the defendant's criminal history includes a prior sentence for conduct that is similar to the instant offense, an upward departure may be warranted under § 4A1.3 (Adequacy of Criminal History Category)."

The Commentary to § 2A3.4 captioned "Application Notes" is amended by inserting the following additional note: "5. If the defendant's criminal history includes a prior sentence for conduct that is similar to the instant offense, an upward departure may be warranted under § 4A1.3 (Adequacy of Criminal History Category)."

Section 4A1.3 is amended by inserting the following new paragraph as the third paragraph:

"An upward departure under this provision, to reflect a defendant's demonstrated pattern of particularly egregious criminal conduct, also may be warranted if all of the following apply: (A) the instant offense involves death, serious bodily injury, the attempted