

# **Criminal Sexual Abuse & Abusive Sexual Contact Scenarios Federal Sentencing Guidelines Application**

**United States Sentencing Commission  
Office of Education & Sentencing Practice**

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## **Sexual Abuse & Sexual Contact Scenarios**

The starting point for the application of the federal sentencing guidelines is based on the elements of the offense of conviction, and involves the use of a Statutory Index in the *Guidelines Manual* which directs the applicable offense guideline for the statute of conviction.

For Aggravated Sexual Abuse (18 U.S.C § 2241) and Sexual Abuse (18 U.S.C § 2242), the applicable offense guideline is Criminal Sexual Abuse §2A3.1. While there are some distinctions between the United States Code and the Uniform Code of Military Justice for these offenses, for purposes of illustration, the §2A3.1 guideline will be used for application of scenarios involving convictions for those offenses under the UCMJ.

For Abusive Sexual Contact (18 U.S.C § 2244), the applicable offense guideline is Abusive Sexual Contact §2A3.4.

Guideline application involves the determination of a guideline range on a sentencing table that has an offense seriousness axis (Offense Level) and a defendant criminal history axis (Criminal History Category).

The Offense Level is established by application of the offense guideline (in the scenarios, the Criminal Sexual Abuse guideline or the Abusive Sexual Contact guideline), and various generic guidelines (which for the military offenses would typically be limited to Abuse of Position of Trust, Obstruction, Acceptance of Responsibility, and Multiple Counts in the case of multiple counts of conviction).

As it is anticipated that military personnel will typically have little or no criminal history, the least serious Criminal History Category, CHC I, is used in the scenarios.

In the following scenarios assume the defendant stands convicted and the facts have been established.

Note: The statutory penalties for Aggravated Sexual Abuse (18 U.S.C § 2241) and Sexual Abuse (18 U.S.C § 2242) (in the absence of death or the defendant being a repeat offender) are up to life imprisonment with no mandatory minimum, except in the case of a minor victim for which the mandatory minimum is 30 years.

The statutory penalties for Abusive Sexual Contact (18 U.S.C § 2244) (in the absence of certain factors such as a prison setting or involving children) are up to ten years (§ 2244(a)(1)) when done under certain circumstances including force, certain threats, rendering the victim unconscious, or administering substances to substantially impair the victim; up to three years (§ 2244(a)(2)) by use of certain threats or when the victim is incapable of appraising the nature of or declining participation in the act; and up to two years (§ 2244(b)) for sexual contact without permission.

**SENTENCING TABLE**  
(in months of imprisonment)

| Offense Level | Criminal History Category (Criminal History Points) |                |                  |                 |                   |                    |
|---------------|---|----------------|------------------|-----------------|-------------------|--------------------|
|               | I<br>(0 or 1)                                       | II<br>(2 or 3) | III<br>(4, 5, 6) | IV<br>(7, 8, 9) | V<br>(10, 11, 12) | VI<br>(13 or more) |
| 1             | 0-6   | 0-6            | 0-6              | 0-6             | 0-6               | 0-6                |
| 2             | 0-6   | 0-6            | 0-6              | 0-6             | 0-6               | 1-7                |
| 3             | 0-6   | 0-6            | 0-6              | 0-6             | 2-8               | 3-9                |
| 4             | 0-6   | 0-6            | 0-6              | 2-8             | 4-10              | 6-12               |
| 5             | 0-6   | 0-6            | 1-7              | 4-10            | 6-12              | 9-15               |
| 6             | 0-6   | 1-7            | 2-8              | 6-12            | 9-15              | 12-18              |
| 7             | 0-6   | 2-8            | 4-10             | 8-14            | 12-18             | 15-21              |
| 8             | 0-6   | 4-10           | 6-12             | 10-16           | 15-21             | 18-24              |
| 9             | 4-10  | 6-12           | 8-14             | 12-18           | 18-24             | 21-27              |
| 10            | 6-12  | 8-14           | 10-16            | 15-21           | 21-27             | 24-30              |
| 11            | 8-14  | 10-16          | 12-18            | 18-24           | 24-30             | 27-33              |
| 12            | 10-16   | 12-18          | 15-21            | 21-27           | 27-33             | 30-37              |
| 13            | 12-18   | 15-21          | 18-24            | 24-30           | 30-37             | 33-41              |
| 14            | 15-21   | 18-24          | 21-27            | 27-33           | 33-41             | 37-46              |
| 15            | 18-24   | 21-27          | 24-30            | 30-37           | 37-46             | 41-51              |
| 16            | 21-27   | 24-30          | 27-33            | 33-41           | 41-51             | 46-57              |
| 17            | 24-30   | 27-33          | 30-37            | 37-46           | 46-57             | 51-63              |
| 18            | 27-33   | 30-37          | 33-41            | 41-51           | 51-63             | 57-71              |
| 19            | 30-37   | 33-41          | 37-46            | 46-57           | 57-71             | 63-78              |
| 20            | 33-41   | 37-46          | 41-51            | 51-63           | 63-78             | 70-87              |
| 21            | 37-46   | 41-51          | 46-57            | 57-71           | 70-87             | 77-96              |
| 22            | 41-51   | 46-57          | 51-63            | 63-78           | 77-96             | 84-105             |
| 23            | 46-57   | 51-63          | 57-71            | 70-87           | 84-105            | 92-115             |
| 24            | 51-63   | 57-71          | 63-78            | 77-96           | 92-115            | 100-125            |
| 25            | 57-71   | 63-78          | 70-87            | 84-105          | 100-125           | 110-137            |
| 26            | 63-78   | 70-87          | 78-97            | 92-115          | 110-137           | 120-150            |
| 27            | 70-87   | 78-97          | 87-108           | 100-125         | 120-150           | 130-162            |
| 28            | 78-97   | 87-108         | 97-121           | 110-137         | 130-162           | 140-175            |
| 29            | 87-108  | 97-121         | 108-135          | 121-151         | 140-175           | 151-188            |
| 30            | 97-121  | 108-135        | 121-151          | 135-168         | 151-188           | 168-210            |
| 31            | 108-135   | 121-151        | 135-168          | 151-188         | 168-210           | 188-235            |
| 32            | 121-151   | 135-168        | 151-188          | 168-210         | 188-235           | 210-262            |
| 33            | 135-168   | 151-188        | 168-210          | 188-235         | 210-262           | 235-293            |
| 34            | 151-188   | 168-210        | 188-235          | 210-262         | 235-293           | 262-327            |
| 35            | 168-210   | 188-235        | 210-262          | 235-293         | 262-327           | 292-365            |
| 36            | 188-235   | 210-262        | 235-293          | 262-327         | 292-365           | 324-405            |
| 37            | 210-262   | 235-293        | 262-327          | 292-365         | 324-405           | 360-life           |
| 38            | 235-293   | 262-327        | 292-365          | 324-405         | 360-life          | 360-life           |
| 39            | 262-327   | 292-365        | 324-405          | 360-life        | 360-life          | 360-life           |
| 40            | 292-365   | 324-405        | 360-life         | 360-life        | 360-life          | 360-life           |
| 41            | 324-405   | 360-life       | 360-life         | 360-life        | 360-life          | 360-life           |
| 42            | 360-life  | 360-life       | 360-life         | 360-life        | 360-life          | 360-life           |
| 43            | life  | life           | life             | life            | life              | life               |

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## §2A3.1 Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse

### (a) Base Offense Level:

(1) 38, if the defendant was convicted under 18 U.S.C. § 2241(c) [involves sex acts under certain circumstances with children under age 12 or 16] with ; or

(2) **30, otherwise**

### (b) Specific Offense Characteristics

(1) **If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b) [use of force, or threatening or putting in fear of death, serious bodily injury or kidnapping; knowingly rendering person unconscious, or giving drug/intoxicant by force or threat of force, or without person's knowledge or permission and substantially impairing the person] increase by 4 levels**

(2) If subsection (a)(2) applies and (A) the victim had not attained the age of twelve years, increase by 4 levels; or (B) the victim had attained the age of twelve years but had not attained the age of sixteen years, increase by 2 levels

(3) If the victim was (A) in the custody, care, or supervisory control of the defendant; or (B) a person held in the custody of a correctional facility, increase by 2 levels

(4) **(A) If the victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if the victim sustained serious bodily injury, increase by 2 levels; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels**

(5) If the victim was abducted, increase by 4 levels

(6) If, to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, or if, to facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, the offense involved (A) the knowing misrepresentation of a participant's identity; or (B) the use of a computer or an interactive computer service, increase by 2 levels

### (c) Cross References

(1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder), if the resulting offense level is greater than that determined above

- (2) *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), if the resulting offense level is greater than that determined above
- (d) Special Instruction
- (1) If the offense occurred in the custody or control of a prison or other correctional facility and the victim was a prison official, the offense shall be deemed to have an official victim for purposes of subsection (c)(2) of §3A1.2 (Official Victim)

### **Chapter Three Adjustments**

#### Victim-Related Adjustments

##### **§3A1.3 Restraint of Victim: 2 Levels**

#### Role in the Offense

##### **§3B1.3 Abuse of Position of Trust: 2 Levels**

#### Obstruction

##### **§3C1.1 Obstructing or Impeding the Administration of Justice: 2 Levels**

#### Multiple Counts

##### **§§3D1.1-3D1.5: Zero to 5 Levels**

#### Acceptance of Responsibility

##### **§3E1.1(a) Acceptance: 2-Level Reduction**

##### **§3E1.1(b) Timely Notification of Guilty Plea & Govt. Motion: 1-Level ADDITIONAL Reduction**

## Scenario 1

### Facts

- Defendant is a 21-year-old male enlisted service member who committed criminal sexual abuse by engaging in non-consensual sexual intercourse with a 19-year-old female enlisted service member of the same rank
- Defendant and the female service member had been drinking and socializing for the evening, and when the female was intoxicated to the point so as to be incapable of declining participation, Defendant engaged in sexual intercourse with the victim in a barracks room on the military installation
- No bodily injury, threat, or use of force was involved
- Defendant fully admitted to the conduct and pleaded guilty in a timely manner that spared the resources of a trial

### Guideline Application

#### **Offense Level Calculations**

Chapter Two Offense Guideline §2A3.1 (Criminal Sexual Abuse)

- |   |    |
|---|----|
| • Base Offense Level §2A3.1(a)(2)                       | 30 |
| • No applicable Specific Offense Characteristics (SOCs) | 0  |

[Chapter Two Offense Level 30]

Chapter Three Adjustments

- |   |    |
|---|----|
| • Acceptance of Responsibility (§3E1.1) | -3 |
|---|----|

**Total Offense Level 27**

**Criminal History Category I**

**Applicable Guideline Range 70-87 months**  
(5 yrs, 10 mos - 7 yrs, 3 mos)

### Scenario 1 Variation A

The facts and guideline application in Scenario 1 are changed as follows:

- Defendant maintained that the sexual intercourse was consensual, went to trial, and was convicted
- Guideline application would NOT include the 3-level reduction for Acceptance of Responsibility, resulting in a **Total Offense Level 30 and Criminal History Category I**

**Applicable Guideline Range**

**97-121 months**

(8 yrs, 1 mo - 10 yrs, 1 mo)

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### Scenario 1 Variation B

The facts and guideline application in Scenario 1 are changed as follows:

- Defendant maintained that the sexual intercourse was consensual, went to trial, and was convicted
- Defendant testified at trial in a manner that the court finds to be perjurious in nature
- Guideline application includes a 2-level increase for the Chapter Three Adjustment for Obstruction (§3C1.1), and would NOT include the 3-level reduction for Acceptance of Responsibility, resulting in a **Total Offense Level 32 and Criminal History Category I**

**Applicable Guideline Range**

**121-151 months**

(10 yrs, 1 mo – 12 yrs, 7 mos)

## Scenario 2

### Facts

- Defendant is a male senior-ranking enlisted training instructor who committed criminal sexual abuse with a female trainee by engaging in non-consensual sexual intercourse at a location near the military installation
- No bodily injury, threat, use of force, or alcohol was involved
- Defendant fully admitted to the conduct and pleaded guilty in a timely manner that spared the resources of a trial

### Guideline Application

#### **Offense Level Calculations**

Chapter Two Offense Guideline §2A3.1 (Criminal Sexual Abuse)

- |   |    |
|---|----|
| • Base Offense Level §2A3.1(a)(2)                       | 30 |
| • No applicable Specific Offense Characteristics (SOCs) | 0  |

[Chapter Two Offense Level 30]

Chapter Three Adjustments

- |   |    |
|---|----|
| • Abuse of Position of Trust (§3B1.3)   | +2 |
| • Acceptance of Responsibility (§3E1.1) | -3 |

**Total Offense Level 29**

**Criminal History Category I**

**Applicable Guideline Range 87-108 months**  
(7 yrs, 3 mos – 9 yrs)

## Scenario 2 Variation A

The facts and guideline application in Scenario 2 are changed as follows:

- Defendant used force to push the victim onto a bed, to keep her from moving, and to forcibly hold her legs apart so he could engage in sexual intercourse
- As a result of the force, the victim had bodily injuries, including bruises, welts, scratches, and muscle strains, but did not require hospitalization or rehabilitation for these injuries
- Guideline application includes a **4-level increase for Specific Offense Characteristic §2A3.1(b)(1) due to the offense involving use of force**
- Specific Offense Characteristic §2A3.1(b)(4) for bodily injury would NOT apply as it requires that the victim sustained “serious bodily injury” or greater, as based on conduct other than the criminal sexual abuse itself
- There is a resulting **Total Offense Level 33 and Criminal History Category I**

**Applicable Guideline Range**

**135-168 months**

(11 yrs, 3 mo - 14 yrs)

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## Scenario 2 Variation B

The facts and guideline application in Scenario 2 Variation A are exactly the same, *except*:

- Defendant has THREE counts of conviction involving identical conduct on three separate occasions
- Guideline application includes a Chapter Three **Adjustment for Multiple Counts: a 3-level increase at §3D1.4**, resulting in a **Total Offense Level of 36 and Criminal History Category I**

**Applicable Guideline Range**

**188-235 months**

(15 yrs, 8 mos – 19 yrs, 7 mos)

## §2A3.4 Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact

### (a) Base Offense Level:

- (1) **20**, if the offense involved conduct described in 18 U.S.C. § 2241(a) or (b) [use of force, or threatening or putting in fear of death, serious bodily injury or kidnapping; knowingly rendering person unconscious, or giving drug/intoxicant by force or threat of force, or without person's knowledge or permission and substantially impairing the person]
- (2) **16**, if the offense involved conduct described in 18 U.S.C. § 2242 [threatening or putting in fear (other than fear of death, serious bodily injury or kidnapping); sex act with person incapable of appraising or physically incapable of declining participation]; or
- (3) **12, otherwise**

### (b) Specific Offense Characteristics

- (1) If the victim had not attained the age of twelve years, increase by 4 levels; but if the resulting offense level is less than 22, increase to level 22
- (2) If the base offense level is determined under subsection (a)(1) or (2), and the victim had attained the age of twelve years but had not attained the age of sixteen years, increase by 2 levels
- (3) If the victim was in the custody, care, or supervisory control of the defendant, increase by 2 levels
- (4) If the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by 2 levels
- (5) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by 2 levels

### (c) Cross References

- (1) **If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse** (as defined in 18 U.S.C. § 2241 or § 2242), **apply §2A3.1** (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse)
- (2) If the offense involved criminal sexual abuse of a minor or attempt to commit criminal sexual abuse of a minor (as defined in 18 U.S.C. § 2243(a)), apply

§2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts), if the resulting offense level is greater than that determined above

## **Chapter Three Adjustments**

Victim-Related Adjustments

**§3A1.3 Restraint of Victim: 2 Levels**

Role in the Offense

**§3B1.3 Abuse of Position of Trust: 2 Levels**

Obstruction

**§3C1.1 Obstructing or Impeding the Administration of Justice: 2 Levels**

Multiple Counts

**§§3D1.1-3D1.5: Zero to 5 Levels**

Acceptance of Responsibility

**§3E1.1(a) Acceptance: 2-Level Reduction**

**§3E1.1(b) Timely Notification of Guilty Plea & Govt. Motion: 1-Level ADDITIONAL Reduction**

### Scenario 3

#### Facts

- Defendant is a male senior-ranking enlisted training instructor who committed abusive sexual contact with a female trainee by groping her groin and breasts through her uniform with intent to abuse, humiliate and degrade her when he encountered her in an unoccupied hallway in a training building on the military installation and instructed her to stop as he needed to tell her something
- No bodily injury, threat, use of force, or alcohol was involved
- Defendant fully admitted to the conduct and his pleaded guilty in a timely manner that spared the resources of a trial

#### Guideline Application

##### **Offense Level Calculations**

Chapter Two Offense Guideline §2A3.4 (Abusive Sexual Contact)

- Base Offense Level §2A3.4(a)(3) 12
- No applicable Specific Offense Characteristics (SOCs) 0

[Chapter Two Offense Level 12]

Chapter Three Adjustments

- Abuse of Position of Trust (§3B1.3) +2
- Acceptance of Responsibility (§3E1.1) -2  
(at this low offense level, Acceptance is limited to a 2-level reduction)

**Total Offense Level 12**

**Criminal History Category I**

**Applicable Guideline Range 10-16 months**  
(10 mos – 1 yr, 4 mos)

As this guideline range falls in Zone C of the Sentencing Table, a within guideline sentence includes one that is imprisonment of only half of the minimum of the guideline range (in this case 5 months of the minimum 10 months), with supervised release to follow, with conditions of the supervised release involving loss of liberty (e.g., home detention) for the remaining balance of the minimum (in this case 5 months)