**20.17 Abusive Sexual Contact—Without Permission**

**(18 U.S.C. § 2244(b))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with abusive sexual contact in violation of Section 2244(b) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly had sexual contact with [*name of victim*];

Second, the sexual contact was without [*name of victim*]’s permission; and

Third, the offense was committed at [*specify place of federal jurisdiction*].

In this case, “sexual contact” means [*specify statutory definition*].

**Comment**

*See United States v. Price*, 980 F.3d 1211, 1217-24 (9th Cir. 2019) (approving Instruction 8.180 (now Instruction 20.17)). In this case, the Ninth Circuit held that the government must prove beyond a reasonable doubt that the defendant knowingly had sexual contact with the victim and that the sexual contact was without the victim’s permission. “Permission” includes both explicit and implicit permission and may be proven by either direct or circumstantial evidence. The government is not required to prove that the defendant subjectively knew that the sexual contact was without the victim’s permission. *Id.*

Acts that fall within the meaning of “sexual contact” are listed in 18 U.S.C. § 2246(3).

Whether the crime alleged occurred at a particular location is a question of fact. Whether the location is within the special maritime and territorial jurisdiction of the United States, or a federal prison is a question of law. *See United States v. Gipe,* 672 F.2d 777, 779 (9th Cir. 1982).

“[S]pecial maritime and territorial jurisdiction of the United States” includes, to the extent permitted by international law, a crime occurring on a foreign vessel during a voyage having a scheduled departure from or arrival in the United States, where the offense was committed by or against a United States national. *United States v. Neil*, 312 F.3d 419, 422 (9th Cir. 2002) (crime of sexual contact with minor in violation of 18 U.S.C. § 2244(a) by noncitizen defendant on cruise ship in Mexican territorial waters was within special maritime and territorial jurisdiction where ship departed from and arrived in the United States and victim was a United States citizen).

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