**20.31 Engaging in Illicit Sexual Conduct Abroad**

**(18 U.S.C. § 2423(c))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with engaging in illicit

sexual conduct while traveling in foreign commerce or residing in a foreign country in violation of Section 2423(c) 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 is a[n] [United States citizen] [alien admitted for permanent residence];

 Second, the defendant [traveled in foreign commerce] [resided, either temporarily or

permanently, in a foreign country]; and

 Third, while [traveling in foreign commerce] [residing in a foreign country] the defendant engaged in illicit sexual conduct.

 [Illicit sexual conduct is a sexual act with a person under 18 years of age that would be

illegal if it occurred in the United States, any commercial sex act with a person under 18 years of

age, or the production of child pornography.]

**Comment**

 Further definitions for “sexual act,” “commercial sex act,” and “child pornography” are

referenced in the statute. *See* 18 U.S.C. § 2423(f).

 The government is not required to prove that the defendant intended to engage in illicit

sexual conduct while traveling. *See United States v. Pepe*, 895 F.3d 679, 689 n.4 (9th Cir. 2018) (“While § 2423(c) doesn’t itself require a mens rea, ‘illicit sexual conduct’ can be established through offenses that do.”).

 When a conviction under this section is based on travel in foreign commerce, the government must prove that “the illicit sexual conduct occurred while the defendant was

traveling.” *Pepe*, 895 F.3d at 691. Prior to Congress’ amendment of the statute to include persons who reside in a foreign country, the “and engages” language of this subsection was interpreted to include instances in which a defendant traveled to a foreign country and thereafter engaged in illicit sexual conduct. *See id.* at 685-88 (explaining that Ninth Circuit’s interpretation of § 2324(c) in *United States v. Clark*, 435 F.3d 1100 (9th Cir. 2006), is not controlling in light of congressional amendment).

*Revised Sept. 2018*