**20.5 Aggravated Sexual Abuse of Child—Crossing State Line**

**(18 U.S.C. § 2241(c))**

 The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with aggravated sexual abuse of a child in violation of Section 2241(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 knowingly engaged in a sexual act with [*name of victim*];

 Second, at the time, [*name of victim*] was under the age of twelve years; and

 Third, the defendant crossed a state line with the intent to engage in a sexual act with [*name of victim*].

A defendant crosses a state line with the intent to engage in a sexual act if engaging in a sexual act was a dominant, significant, or motivating purpose of the defendant’s travel across a state line.

 The government need not prove that the defendant knew that [*name of victim*] was under the age of twelve years.

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

**Comment**

 *See* Comment to Instruction 20.1 (Aggravated Sexual Abuse (18 U.S.C. § 2241(a))).

 Although the Committee has not found any Ninth Circuit case explicitly holding that proof of a sexual act is an element of the offense under the first clause of § 2241(c), the court, when analyzing the mandatory life sentencing enhancement under the last sentence of the statute, stated a conviction under § 2241(c) “depend[s] on the commission of a ‘sexual act.’” *United States v. Etimani*, 328 F.3d 493, 503-04 (9th Cir. 2003) (defining sexual act as “skin-to-skin touching” and finding that sentencing enhancement did not apply where previous conviction was pursuant to statute allowing conviction for touching over clothes).

“In interpreting the elements for transportation and travel offenses, we have consistently held that a dominant, significant, or motivating purpose to engage in criminal sexual activity satisfies the intent requirement.” *United States v. Flucas*, 22 F.4th 1149, 1154 (9th Cir. 2022). In *Flucas*, the court held that the district court “correctly instructed the jury . . . with respect to the intent requirement[]” in § 2423(a) when the district court instructed that it was “sufficient if the government proves beyond a reasonable doubt that the sexual activity was a significant, dominating or motivating purpose.” *Id.* at 1154-55, 1164. *See also United States v. Pepe*, 81 F.4th 961, 977 (9th Cir. 2023) (approving same standard for § 2241(c)) (“Ninth Circuit precedent clearly establishes that a defendant can have mixed motives for traveling.”).

 *See* 18 U.S.C. § 2241(d), as to the penultimate paragraph of the instruction. *See* 18 U.S.C. § 2246(2) for the definition of sexual act referred to in the last paragraph of the instruction.

 An alleged mistake as to the victim’s age is not a defense to a charge of aggravated sexual abuse under a statute prohibiting anyone from knowingly engaging in sexual contact with another person who has not attained the age of twelve years. *United States v. Juv. Male*, 211 F.3d 1169, 1171-72 (9th Cir. 2000).

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