

Tab 83

18 § 2244

CRIMES AND CRIMINAL PROCEDURE

Note 7

to review district court's refusal to depart downward. *U.S. v. Fulton*, C.A.9 (Wash.) 1993, 987 F.2d 631.

8. Indictment

There was fatal variance between indictment and proof at trial regarding date of commission of offense of abusive sexual contact on child

within Indian country, where defendant's lawyers developed and presented documentary evidence that defendant, victim, and her mother lived off reservation until after date charged in indictment, contrary to requirements for federal jurisdiction, and only evidence of date when charged conduct occurred was two years after that charged in indictment. *U.S. v. Tshinhabijimle*, C.A.9 (Ariz.) 1997, 112 F.3d 988.

§ 2245. Sexual abuse resulting in death

A person who, in the course of an offense under this chapter, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.

(Added Pub.L. 103-322, Title VI, § 60010(a)(2), Sept. 13, 1994, 108 Stat. 1972.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 2245 was renumbered section 2246 by Pub.L. 103-322, Title VI, § 60010(a)(1), Sept. 13, 1994, 108 Stat. 1972.

Legislative History

For legislative history and purpose of Pub.L. 103-322, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

LAW REVIEW AND JOURNAL COMMENTARIES

Damage control for victims of physical assault—testing the innocent for AIDS. Michael P. Bruyere, 21 Fla.St.U.L.Rev. 945 (1994).

§ 2246. Definitions for chapter

As used in this chapter—

- (1) the term "prison" means a correctional, detention, or penal facility;
- (2) the term "sexual act" means—

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(3) the term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(4) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(5) the term "official detention" means—

(A) detention by a Federal officer or employee, or under the direction of a Federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or

(B) custody by a Federal officer or employee, or under the direction of a Federal officer or employee, for purposes incident to any detention described in

sal to depart down- (Wash.) 1983, 987
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HISTORICAL AND STATUTORY NOTES

Legislative History

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 e VI, § 60010(a)(1). For legislative history and purpose of Pub.L.
 103-322, see 1994 U.S. Code Cong. and Adm.
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REVIEW AND JOURNAL COMMENTARIES

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 erial witness; following civil commitment in lieu of criminal
 pending resumption of criminal proceedings that are being held
 pending extradition, deportation, or exclusion; or

by a Federal officer or employee, or under the direction of a
 or employee, for purposes incident to any detention described in

subparagraph (A) of this paragraph, including transportation, medical diagnosis
 or treatment, court appearance, work, and recreation;
 but does not include supervision or other control (other than custody during
 specified hours or days) after release on bail, probation, or parole, or after release
 following a finding of juvenile delinquency.

(Added Pub.L. 99-646, § 87(b), Nov. 10, 1986, 100 Stat. 3622, § 2245, renumbered § 2246 and
 amended Pub.L. 103-322, Title IV, § 40502, Title VI, § 60010(a)(1), Sept. 13, 1994, 108 Stat. 1945,
 1972.)

HISTORICAL AND STATUTORY NOTES

Codification

Identical provision was enacted by Pub.L.
 90-654, § 2, Nov. 14, 1968, 100 Stat. 3652.

1984 Amendments

Par. (2)(D). Pub.L. 103-322, § 40502, added
 subpar. (D).

Effective Date

Section effective 30 days after Nov. 10, 1986,
 see section 87(e) of Pub.L. 99-646, set out as a
 note under section 2241 of this title.

Legislative History

For legislative history and purpose of Pub.L.
 99-646, see 1986 U.S. Code Cong. and Adm.
 News, p. 6139. See also, Pub.L. 103-322, 1994
 U.S. Code Cong. and Adm. News, p. 1801.

LIBRARY REFERENCES

Rape § 1, 2.
 C.J.S. Rape § 1 et seq.

NOTES OF DECISIONS

Weight and sufficiency of evidence. 1

1. Weight and sufficiency of evidence

Victim's testimony: that defendant grabbed
 and held her arms and placed his upper body on
 top of her, that she was unable to push him off

ber, and that she was doing everything possible
 to resist under the circumstances provided suffi-
 cient evidence of force to sustain defendant's
 conviction of aggravated sexual abuse involving
 use of force. U.S. v. Jones, C.A.8 (S.D.) 1997,
 104 F.3d 193, rehearing and suggestion for re-
 hearing en banc denied, certiorari denied 117
 S.Ct. 2470, 188 L.Ed.2d 228.

§ 2247. Repeat offenders

Any person who violates a provision of this chapter, after one or more prior
 convictions for an offense punishable under this chapter, or after one or more prior
 convictions under the laws of any State relating to aggravated sexual abuse, sexual
 abuse, or abusive sexual contact have become final, is punishable by a term of
 imprisonment up to twice that otherwise authorized.

(Added Pub.L. 103-322, Title IV, § 40111(a), Sept. 13, 1994, 108 Stat. 1908.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L.
 103-322, see 1994 U.S. Code Cong. and Adm.
 News, p. 1801.

§ 2248. Mandatory restitution

(a) In general.—Notwithstanding section 3663 or 3663A, and in addition to any other
 civil or criminal penalty authorized by law, the court shall order restitution for any
 offense under this chapter.

(b) Scope and nature of restitution.

(1) Directions.—The order of restitution under this section shall direct the
 defendant to pay to the victim (through the appropriate court mechanism) the full
 amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) Enforcement.—An order of restitution under this section shall be issued and
 enforced in accordance with section 3664 in the same manner as an order under
 section 3663A.

(3) Definition.—For purposes of this subsection, the term "full amount of the
 victim's losses" includes any costs incurred by the victim for—