



JOINT STATE GOVERNMENT COMMISSION

General Assembly of the Commonwealth of Pennsylvania

&

**PENNSYLVANIA COMMISSION ON
CRIME AND DELINQUENCY**

**Report of the Task Force
on Child Pornography
under 23 PA.C.S. § 6388(h)**

September 28, 2022

REPORT

Report of the Task Force on Child Pornography

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The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.¹

A fourteen-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission. The seven Executive Committee members from the House of Representatives are the Speaker, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. The seven Executive Committee members from the Senate are the President Pro Tempore, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. By statute, the Executive Committee selects a chairman of the Commission from among the members of the General Assembly. Historically, the Executive Committee has also selected a Vice-Chair or Treasurer, or both, for the Commission.

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A Commission study may involve the appointment of a legislative task force, composed of a specified number of legislators from the House of Representatives or the Senate, or both, as set forth in the enabling statute or resolution. In addition to following the progress of a particular study, the principal role of a task force is to determine whether to authorize the publication of any report resulting from the study and the introduction of any proposed legislation contained in the report. However, task force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in a report.

Some studies involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. When a study involves an advisory committee, the Commission seeks consensus among the members.² Although an advisory committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations contained in a study report.

¹ Act of July 1, 1937 (P.L.2460, No.459); 46 P.S. §§ 65–69.

² Consensus does not necessarily reflect unanimity among the advisory committee members on each individual policy or legislative recommendation. At a minimum, it reflects the views of a substantial majority of the advisory committee, gained after lengthy review and discussion.

Over the years, nearly one thousand individuals from across the Commonwealth have served as members of the Commission's numerous advisory committees or have assisted the Commission with its studies. Members of advisory committees bring a wide range of knowledge and experience to deliberations involving a particular study. Individuals from countless backgrounds have contributed to the work of the Commission, such as attorneys, judges, professors and other educators, state and local officials, physicians and other health care professionals, business and community leaders, service providers, administrators and other professionals, law enforcement personnel, and concerned citizens. In addition, members of advisory committees donate their time to serve the public good; they are not compensated for their service as members. Consequently, the Commonwealth receives the financial benefit of such volunteerism, along with their shared expertise in developing statutory language and public policy recommendations to improve the law in Pennsylvania.

The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly. Certain studies have specific timelines for the publication of a report, as in the case of a discrete or timely topic; other studies, given their complex or considerable nature, are ongoing and involve the publication of periodic reports. Completion of a study, or a particular aspect of an ongoing study, generally results in the publication of a report setting forth background material, policy recommendations, and proposed legislation. However, the release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair or Vice-Chair of the Commission, of all the findings, recommendations, or conclusions contained in the report. A report containing proposed legislation may also contain official comments, which may be used to construe or apply its provisions.³

Since its inception, the Commission has published almost 450 reports on a sweeping range of topics, including administrative law and procedure; agriculture; athletics and sports; banks and banking; commerce and trade; the commercial code; crimes and offenses; decedents, estates, and fiduciaries; detectives and private police; domestic relations; education; elections; eminent domain; environmental resources; escheats; fish; forests, waters, and state parks; game; health and safety; historical sites and museums; insolvency and assignments; insurance; the judiciary and judicial procedure; labor; law and justice; the legislature; liquor; mechanics' liens; mental health; military affairs; mines and mining; municipalities; prisons and parole; procurement; state-licensed professions and occupations; public utilities; public welfare; real and personal property; state government; taxation and fiscal affairs; transportation; vehicles; and workers' compensation.

Following the completion of a report, subsequent action on the part of the Commission may be required, and, as necessary, the Commission will draft legislation and statutory amendments, update research, track legislation through the legislative process, attend hearings, and answer questions from legislators, legislative staff, interest groups, and constituents.

³ 1 Pa.C.S. § 1939.

PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY

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Established by Act of November 22, 1978 (P.L.1166, No.274), the Pennsylvania Commission on Crime and Delinquency (PCCD) serves as the justice planning and policymaking agency for the Commonwealth.

PCCD's mission is to enhance the quality, coordination, and planning within the criminal and juvenile justice systems, to facilitate the delivery of services to victims of crime, and to increase the safety of our communities. By bringing together a wide range of experts in these fields, PCCD coordinates the collective examination of problems, proposes solutions, and evaluates the impact of those solutions.

PCCD facilitates partnerships among federal, state, and local policymakers; fosters interagency coordination and cooperation; develops and coordinates policy issues; provides statewide criminal statistical and analytical services; fosters community-based initiatives in the areas of delinquency prevention and offender reintegration; promotes the use of information technology and information sharing to enhance operational effectiveness in criminal justice agencies; and grants federal and state funds to provide monies to support best practices and innovation. The agency is also specifically tasked with providing services to the victims of crime (*e.g.*, administration of the state's Crime Victims' Compensation Fund; Children's Advocacy Centers; *etc.*), implementing the County Intermediate Punishment Act (42 Pa.C.S. Chapter 98), and coordinating training for sheriffs, deputy sheriffs and constables *per* their respective statutes.

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September 2022

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Dear Members of the General Assembly:

We are pleased to release the Report of the Task Force on Child Pornography as directed by Act 53 of 2021. The Task Force, composed of legislators, law enforcement officers, prosecutors, and victim advocates and psychologists held a series of public meetings that addressed the investigation, prosecution, adjudication, and sentencing of crimes related to the offense of child pornography in 18 Pa.C.S. § 6312. The Task Force conducted a statutory review, reviewed survey and data analyses, and gathered information from presentations made by investigators, prosecutors, child advocates, and academic researchers.

Five recommendations arose from the Task Force's work. Recommendations include revisions to statutory terminology; increased funding for resources for investigators and law enforcement; improved training and resources for county probation departments; improved training for judges and prosecutors regarding the Sexual Offender Assessment Board; and improved training for judges and prosecutors regarding the use of sentencing enhancements.

We are grateful to have had the opportunity to work with the Pennsylvania Commission on Crime and Delinquency and appreciate the inter-agency collaboration that resulted. We further thank the members of the Task Force for their dedication to the prosecution of these crimes and to the healing they provide its victims.

Respectfully submitted,

Glenn J. Pasewicz
Executive Director



CHARLES H. RAMSEY
PCCD Chairman

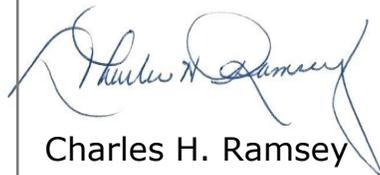
On behalf of PCCD,

We were honored to work in partnership with the Joint State Government Commission and the Task Force on Child Pornography to conduct this in-depth, year-long assessment and review of the offense of child pornography and make recommendations for the improvement of its identification, investigation, penalties and treatment.

As an agency, our mission is to enhance the quality, coordination, and planning within the criminal and juvenile justice systems, to facilitate the delivery of services to victims of crime, and to increase the safety of our communities. This report is thus a natural extension of our mission as it addresses each portion of the process. We are hopeful that the suggestions herein result in meaningful change to the criminal justice system and ultimately help the true victims of this terrible crime: children.

If you have any questions regarding the content of this report, please contact Mike Pennington, PCCD's Executive Director, at (717) 705-0888.

Sincerely,



Charles H. Ramsey
PCCD Chairman

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INTRODUCTION, BACKGROUND AND PURPOSE

The Task Force on Child Pornography (TFCP or “task force”) was established by Act 53 of 2021, which became law on June 30, 2021 and took effect on August 30, 2021.¹ In addition to establishing the TFCP, the Act also made substantive changes to the grading and possible penalties associated with the crime of Sexual Abuse of Children, 18 Pa.C.S. § 6312.²

The TFCP is a 20-member body consisting of members appointed by the General Assembly and the Governor, as well as several members appointed by virtue of their position.³ Michael Pennington, Executive Director of the Pennsylvania Commission on Crime and Delinquency (PCCD), was selected by Governor Wolf to serve as the chairman and members were selected to reflect “the geographic diversity of this Commonwealth.”

Per the statute, the TFCP was required to meet at least four times to “conduct a review to ascertain any inadequacies relating to the offense of child pornography in 18 Pa.C.S. § 6312.” The experience and background of the TFCP’s membership varied such that meetings were used to provide experienced and relevant input to the task force to enable it to fulfill its purpose and make recommendations accordingly. The TFCP was given one year from its first meeting to submit this report and include recommendations for any improvements relating to the investigation and prosecution of child pornography and recommendations for any necessary changes in state statutes, policies and procedures relating to the recognition or prosecution of child pornography.⁴ The task force expires upon completion and submission of this report.

PCCD hosted eight public TFCP meetings, the content of which consisted of planning efforts, presentations on relevant material and report drafting.⁵ The meetings were structured in such a way that the content presented generally followed the timeline associated with a criminal investigation. The material presented at the meetings was designed to allow the TFCP to adequately complete its statutory review by providing practical information about how 18 Pa.C.S.

¹ See Appendix A.

² Act 53 of 2021 amended 18 Pa.C.S. (relating to crimes and offenses), 23 Pa.C.S. (relating to domestic relations) and 42 Pa.C.S. (relating to judiciary and judicial procedure). The amendment to 18 Pa.C.S. § 6312(d.1)(3) (relating to sexual abuse of children) increased the grading for offenses under paragraphs (1) and (2)(i) “if . . . the child depicted is under 10 years of age or prepubescent.” The amendment to 23 Pa.C.S. added a section relating to Task Force on Child Pornography. The amendment to 42 Pa.C.S. § 9720.5 (relating to sentencing for offenses involving sexual abuse of children) added a sentence enhancement within Pennsylvania Commission on Sentencing “guidelines for an offense under 18 Pa.C.S. § 6312 . . . if the child depicted is known to the defendant”, making that the general rule. Additionally, 42 Pa.C.S. § 9720.5 was amended by adding a subsection relating to other circumstances so that a sentence enhancement within Pennsylvania Commission on Sentencing guidelines would also be provided for “the grading provisions under 18 Pa.C.S. § 6312(d.1)(3).”

³ One task force position remained vacant during the entirety of the task force.

⁴ See Appendix A for the language of the Act.

⁵ See Appendix B for a complete copy of the minutes from each meeting.

§ 6312 is identified, investigated and prosecuted in the Commonwealth, along with relevant data and information about child pornography offenders. At the conclusion of each task force meeting, members of the TFCP were asked to provide their initial reactions to the material and to brainstorm possible recommendations based on the information that they had received.

The first meeting was held on October 12, 2021 *via* Microsoft Teams. At this preliminary planning meeting, PCCD staff reviewed the responsibilities of the TFCP and discussed the options for data collection and analysis of Pennsylvania data. TFCP members were asked to develop a wish list of information to review in order to complete their statutory charge.

As a result of this planning session, PCCD requested, received and analyzed data from the Administrative Office of Pennsylvania Courts (AOPC), the Juvenile Court Judges' Commission (JCJC), the Sexual Offender Assessment Board (SOAB), the Pennsylvania Commission on Sentencing (PCS) and the Pennsylvania Coalition Against Rape (PCAR). In addition, PCCD issued a survey to law enforcement officers and prosecutors and recruited experts (sometimes members of the task force) to present relevant information relating to the identification, investigation and prosecution of § 6312.

On November 17, 2021, the TFCP held its second meeting and presentations focused on the investigation of § 6312 cases. TFCP members heard from District Attorney Jack Stollsteimer and Detective Sergeant Ken Bellis of Delaware County, who is the commander of the Pennsylvania Internet Crimes Against Children Task Force. In addition to Det. Sgt. Bellis' presentation, Corporal Christopher Hill and Lieutenant Colonel Jeremy M. Richard, who staff the computer crimes unit within Pennsylvania State Police's (PSP's) Bureau of Criminal Investigation, provided their expertise relating to the investigation of § 6312 cases.

On January 12, 2022, continuing to move through the processes of investigating and prosecuting § 6312 cases, the TFCP heard from Abbie Newman, a task force member and Chief Executive Officer of Mission Kids Child Advocacy Center,⁶ who presented "The Role of Child Advocacy Centers and Forensic Interviewers in Response to Child Sexual Exploitation." Following this presentation, Michele K. Walsh,⁷ Chief Deputy Attorney General, and Christopher Jones, Senior Deputy Attorney General, both prosecutors in the child predator section of the Office of Attorney General (OAG), provided the task force with their perspectives on prosecuting child pornography cases.

At its meeting on February 16, 2022, the focus of the presentations shifted from investigation and prosecution to the criminal justice processes that occur after an offender is convicted. TFCP members heard from Dr. Robert Stein, a member of the task force and Sexual Offender Assessment Board, who focused on Sexually Violent Predator assessments for child pornography offenders. Following Dr. Stein's presentation, Mark H. Bergstrom, Executive

⁶ This children's advocacy center is located in Montgomery County and has existed since 2009. Mission Kids has worked with over 6,000 children involving child abuse, child sexual abuse, and witnesses to violence. "Mission Kids is a non-profit, 501(c)(3) organization providing multidisciplinary care to alleged victims of sexual and physical abuse." Mission Kids Child Advocacy Cen., Who We Are, <https://missionkidscac.org/who-we-are> (2022).

⁷ Mrs. Walsh served as a task force member and is the Chief of the Child Predator Section at the Office of Attorney General.

Director of the Pennsylvania Commission on Sentencing and a task force member, presented the Commonwealth's sentencing scheme and gave the TFCP a crash course on the current sentencing guidelines, sentencing enhancements and other sentencing considerations relating to § 6312.

On April 20, 2022, Rick Parsons, of RAN Customized Training and Consulting,⁸ presented to the TFCP some of the challenges associated with supervising individuals convicted of violating § 6312 while they are in the community. In addition, PCCD presented significant data analysis which focused on relevant information relating to offenders who were charged with § 6312 between 2014 and 2021. The data presentation put numbers and context to some of the information that had been discussed by previous presenters.

At its last substantive meeting on May 25, 2022, the TFCP heard from David L. Delmonico, Ph.D. Dr. Delmonico conducts research, consultation, and training on topics such as Internet psychology, cyber-behavior, and Internet safety and is the Director of the Online Behavior Research and Education Center (OBREC) at Duquesne University. Dr. Delmonico gave a robust presentation to the Task Force on some of the research trends surrounding child pornography offenders. Following Dr. Delmonico's presentation, Dr. Robert Orth, Ph.D., presented PCCD's analysis of recidivism for § 6312 offenders in Pennsylvania.

The last two meetings of the TFCP on July 13, 2022 and September 28, 2022 focused on drafting this report, and, on September 28, 2022, the report was unanimously adopted by task force members. The content of the expert presentations is summarized below and serves as the basis for both the report and the recommendations that follow.

⁸ At the time, Mr. Parsons was also the Chief Probation and Parole Officer in Carbon County. This presentation was presented as a consultant rather than in his position for the county.

SEXUAL ABUSE OF CHILDREN 18 PA.C.S. § 6312

The specific statute under review by the TFCP is the section relating to “Sexual Abuse of Children” and is codified at 18 Pa.C.S. § 6312.⁹ There are three subsections within that offense and each address a different type of behavior perpetrated by the offender:

Subsection (b) of § 6312 relates to “Photographing, videotaping, depicting on computer or filming sexual act” and may be described as manufacturing or creating child pornography. This subsection criminalizes individuals who cause or knowingly permit a child under 18 to engage in a prohibited sexual act¹⁰ or simulation of said act, knowing or intending the act to be photographed or filmed. Manufacturing child pornography under subsection (b) is generally a felony of the second degree¹¹ but is graded as a felony of the first degree¹² if indecent contact¹³ with a child is depicted or the child is under the age of 10 or prepubescent.

Subsection (c) of § 6312 relates to “Dissemination of photographs, videotapes, computer depictions and films” and may be described as distributing or selling child pornography. This subsection criminalizes individuals who knowingly sell, distribute, deliver, disseminate, transfer, display or exhibit to others images depicting a child under 18 engaged in or simulating a prohibited sexual act. Distributing child pornography under subsection (c) is generally a felony of the third degree;¹⁴ however, it is graded a felony of the second degree if it is a second or subsequent offense, or if the images depict indecent contact with a child or the child is under the age of 10 or prepubescent.

Subsection (d) of § 6312 relates to “Child Pornography” and may also be described as possession of child pornography. Subsection (d) criminalizes individuals who intentionally view, knowingly possess or control images depicting a child under 18 engaged in a prohibited sexual act or simulation of such act. Possessing child pornography is generally a felony of the third degree however, it is graded a felony of the second degree if it is a second or subsequent offense, or if the images depict indecent contact with a child or the child is under the age of 10 or prepubescent.

⁹ See Appendix C for statutory language.

¹⁰ “Prohibited Sexual Act” is defined as sexual intercourse as defined in 18 Pa.C.S. § 3101 (relating to definitions), masturbation, sadism, masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction. *Id.* § 6312(g).

¹¹ Punishable by up to 10 years. *Id.* § 1103(2).

¹² Punishable by up to 20 years. *Id.* § 1103(1).

¹³ “Indecent Contact” is defined as any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in any person. *Id.* § 3101.

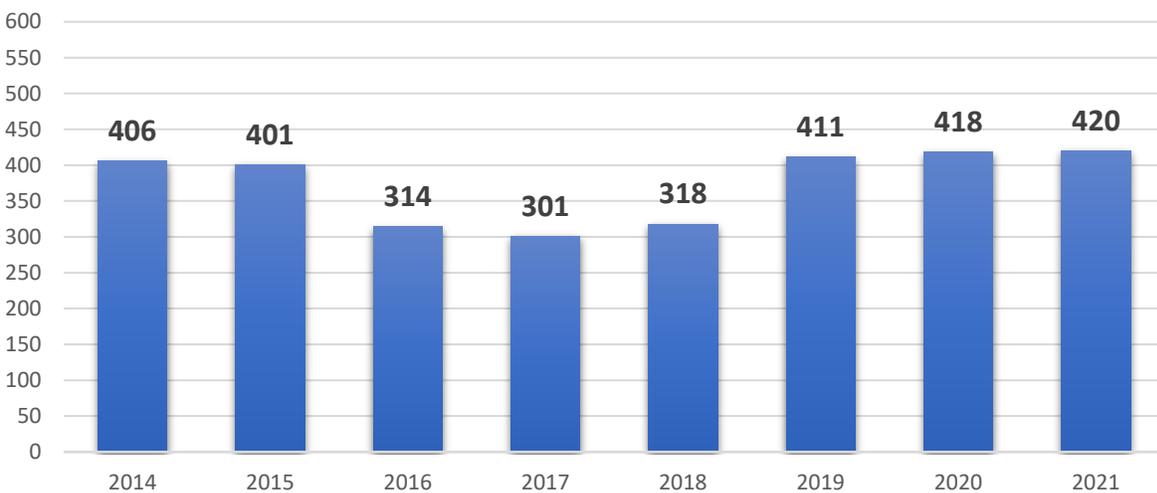
¹⁴ Punishable by up to 7 years. *Id.* § 1103(3).

Adult Offender Child Pornography Cases in Pennsylvania

In Pennsylvania, between January of 2014 and October of 2021, there were a total of 2,989 criminal cases filed charging one or more counts of § 6312, averaging approximately 385 cases filed *per year* (See Figure 1).¹⁵

Figure 1.

Child Pornography Cases Charged Against Adult Offenders by Year*



* Note that data for 2021 as discussed in this section is from January 1, 2021-October 1, 2021.

The highest number of cases charged during this timeframe were in the Counties of Allegheny and Montgomery.¹⁶ Statewide, cases were filed by 339 arresting agencies in the Commonwealth, with Pennsylvania State Police¹⁷ and Office of Attorney General¹⁸ filing the highest number of cases. Fifty-one percent of the cases charged possession of child pornography only while 49% charged production or distribution or both (See Figure 2).¹⁹

¹⁵ Data provided by the Administrative Office of Pennsylvania Courts and analyzed by PCCD research staff.

¹⁶ Allegheny County had 227 cases filed between 2014 and 2021 and Montgomery County had 203 cases filed.

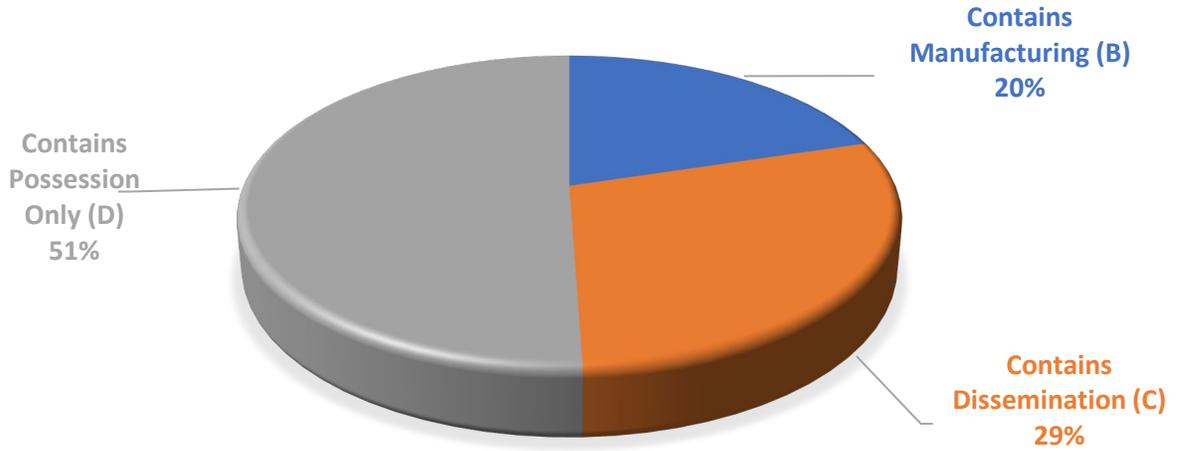
¹⁷ 24% of the cases, about half of which were likely from Cybertips.

¹⁸ 19% of the cases.

¹⁹ There may have been other, non-child pornography charges included in these cases.

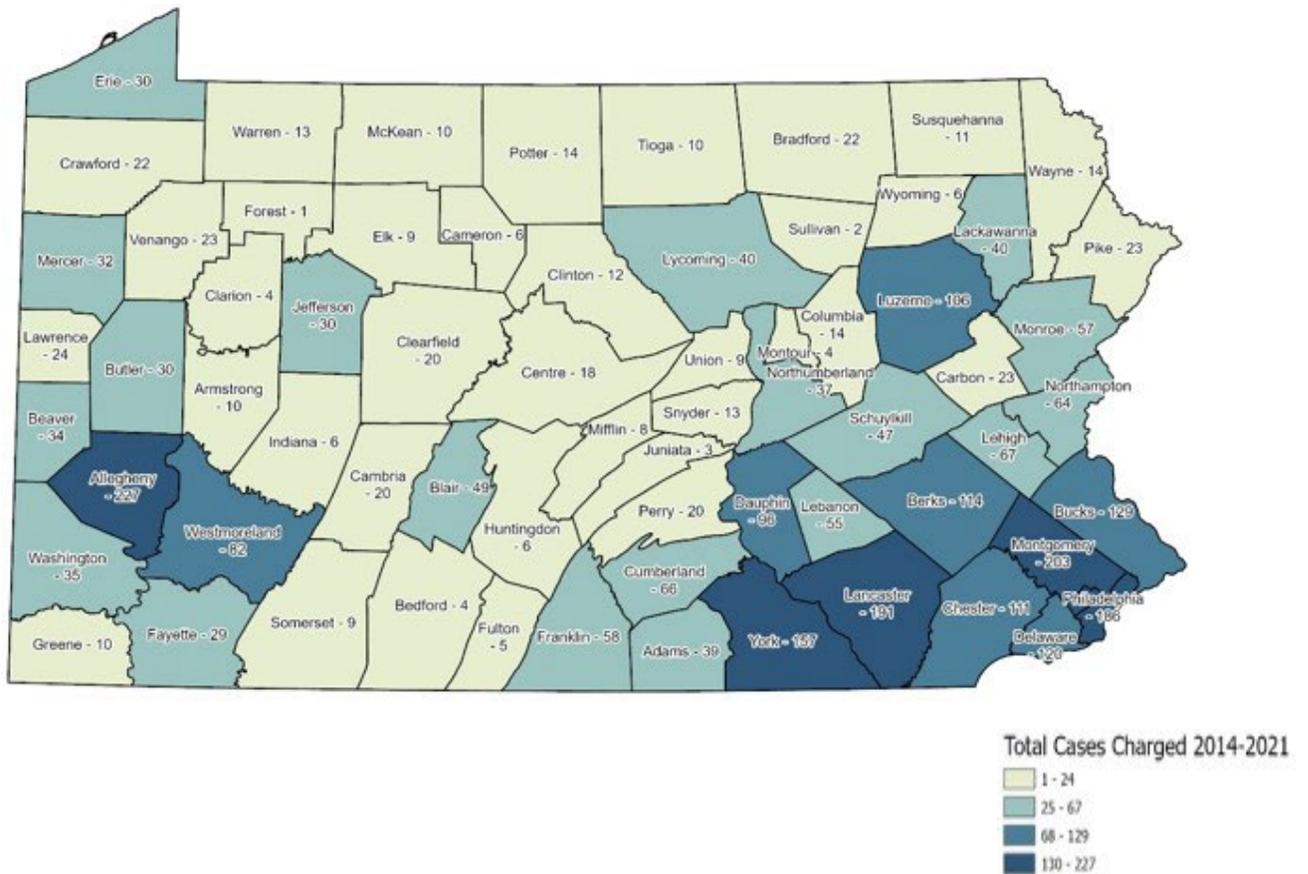
Figure 2.

**PERCENTAGE OF TOTAL CASES
BY SUBSECTION CHARGED**



Geographically, all counties in Pennsylvania charged at least one child pornography case between 2014 and October of 2021 with most cases being filed in the southeast corner of the Commonwealth (See Figure 3).

Figure 3.



In terms of the demographics of charged offenders, when we look at the 2,989 cases that charged one or more subsections of § 6312, the vast majority of all charged offenders were white males,²⁰ with 51% of those charged ranging in age from 25-44.²¹ As is detailed in Appendix D, when you begin to look at the demographic breakdown of offenders by the subsection(s) of § 6312 charged, there are some slight variances. For example, of the 101 cases that charged both manufacturing and dissemination of child pornography, a higher percentage of cases were linked to female offenders.²² Similarly, if we look exclusively at the 626 cases that charged manufacturing, about 17% of the charged offenders were black.

Juvenile Offender Child Pornography Cases in Pennsylvania

Juvenile offenders can be charged by petition under § 6312²³ or 18 Pa.C.S. § 6321 (relating to transmission of sexually explicit images by minor).²⁴ Section 6321 applies only to juveniles and was enacted in 2012 specifically to offer an alternative to § 6312 for juveniles who were “sexting” images of themselves or others utilizing electronic devices. The grading of the offenses in § 6321²⁵ is much lower than the grading of offenses under § 6312.

Between 2010 and 2020, there were a total of 513 juvenile cases charged that contained one or more counts of § 6312. Upon the effective introduction of 18 Pa.C.S. § 6321 in 2013, the number of juveniles being charged under § 6312 decreased significantly and remains below the annual number of cases charged prior to the impact of § 6321 (*See* Figure 4). Juvenile offenders were 84% male and 77% white.

²⁰ 97% of all offenders were male and 88% of all offenders were white.

²¹ *See* Appendix D for a detailed chart showing offender demographics by type of behavior charged.

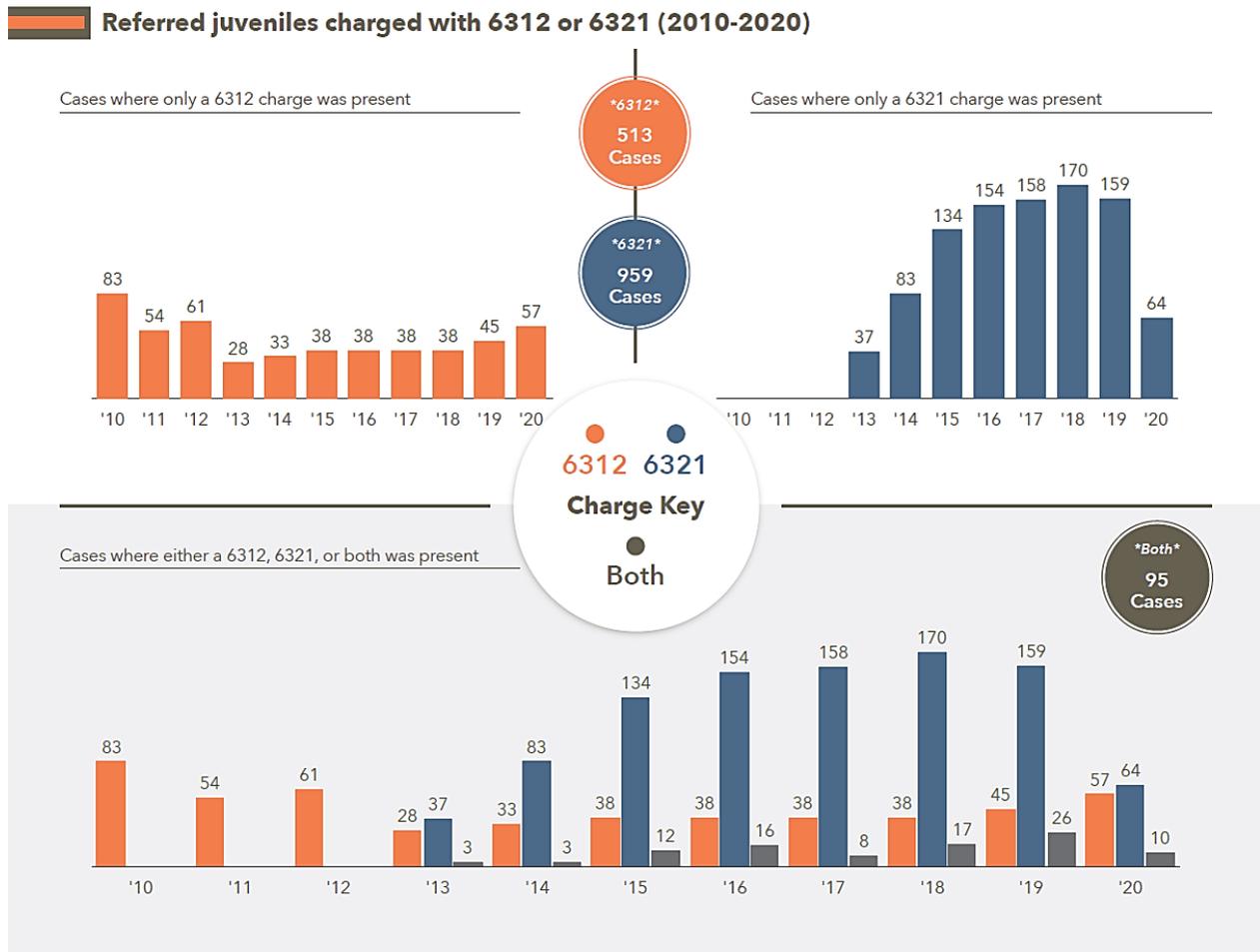
²² 17%.

²³ 18 Pa.C.S. § 6312 “does not apply to . . . [a]n individual under 18 years of age who . . . intentionally views a visual depiction . . . of himself alone in a state of nudity as defined in section 6321.” 18 Pa.C.S. § 6312(f)(3).

²⁴ Appendix E. This statutory section was enacted in Oct. 2012 but became effective in late Dec., just before the new year of 2013.

²⁵ Summary and misdemeanor offenses.

Figure 4.



Of the unique juvenile cases that had a § 6312 charge (regardless of other charges in the petition) only 35% were adjudicated delinquent of the § 6312 charge. Thirty-three percent of juveniles who were charged were diverted *via* Informal Adjustment, Consent Decree or Youth Aid Panel.

The Task Force recognized that many of the juveniles who are charged under § 6312 and § 6321 are diverted from formal adjudication. However, during their discussions, the Task Force emphasized the need to educate youth and teachers regarding the criminal nature of images that some may consider “just” sexting. There are training resources available to schools through the Commonwealth’s Office of Attorney General, the PA Internet Crimes Against Children Task Force (PA ICAC) as well as through the National Center for Missing and Exploited Children (NCMEC).

Research Trends and Recidivism – Child Pornography Offenders

While the law in Pennsylvania and other states utilizes the term “child pornography offender” when describing these offenders, the trend in the last few years has been to use more descriptive names to describe offenders who possess, disseminate and manufacture images of children being sexually abused: *e.g.*, child sexual exploitation material offender, child victim image offender, child sexual abuse image offender,²⁶ and child sexual abuse material offender.²⁷ Part of the impetus for the changing terminology is to emphasize that the offense is not limited to imagery but harms real victims.

Once an offender is convicted of possessing, manufacturing or disseminating child pornography, one policy concern is the offender’s risk for recidivism.²⁸ Recidivism (or re-offense by a previously convicted offender), by its nature, follows a prior legal intervention.²⁹ In other words, an offender must be charged with and convicted of an offense and then receive some mandated intervention before assessing whether or not they are a recidivating offender.

According to the current research, offenders of child sexual abuse material specifically can be very responsive to the legal system, thus reducing their risk for re-offense. Conducting risk assessments and understanding the risk principle for these offenders is critical because well-intentioned, but reactive, criminal justice response can increase the likelihood of re-offense if the individual’s exposure to risk factors is increased and protective factors are decreased. In other words, low-risk offenders should receive low-intensity consequences and treatment instead of high-intensity consequences and treatment because the wrong matching can increase the risk of recidivism. Two factors consistent with the risk of recidivism for both offline and online behavior are a sexual arousal to prepubescent children³⁰ and antisocial orientation.³¹ The combination of these two factors is greater than either one separately.³²

To distinguish between offenders who possess child sexual abuse material and contact offense offenders, the former are more likely to be first-time offenders and have pro-social lives and therefore, when under supervision, are significantly less likely to miss treatment appointments, drop out of treatment and fail with community supervision. Based on a meta-analysis of relevant studies, the percentage of offenders who possess child sexual abuse material with a contact offense history averages close to 40%.³³ According to a 2021 U.S. Sentencing Commission Report,³⁴ almost 21% of those with non-production child sexual abuse material offenses had a prior

²⁶ The federal government tends to use this one.

²⁷ Because these are all more polysyllabic than child pornography, many use acronyms corresponding to the newer terminology, but acronyms are hardly more descriptive than the *status quo ante*: CSEM offender, CVI offender, CSAI offender, CSAM.

²⁸ Perhaps more specifically, the risk to the community.

²⁹ *E.g.*, consequences, supervision and treatment.

³⁰ Pedophilia.

³¹ *E.g.*, criminal history, antisocial personality, juvenile issues, *etc.*

³² This is referred to as the Motivation-Facilitation Model. The presence of a contact offense further increases the risk of recidivism.

³³ This could be summarized as a probability that 40-50% of those possessing child abuse sexual material have a contact offense, which could conversely be summarized that the probability is that the remaining 50-60% don’t have a contact offense.

³⁴ See Appendix F.

conviction for a sex offense.³⁵ However, offenders who possess child pornography nonetheless pose a lower risk for sexual recidivism when compared to contact offense offenders.³⁶

The same 2021 federal sentencing report showed a recidivism rate of almost 28% for those convicted of non-production child pornography offenses³⁷ and documented a median number of 4,265 images for non-production child pornography offenses in federal fiscal year 2019.³⁸ The 2021 report noted that nearly every non-production child pornography offense included prepubescent victims and over half included images of toddlers.³⁹ The 2021 report could not conclude whether the offender's degree of online involvement with the child pornography community is associated with an increased risk of committing other sex offenses, the offender's history of sexually abusive, exploitative or predatory conduct (in addition to child pornography) however, continued to be a key factor increasing the risk of recidivism.

Across any type of crime, increase in age reduces the risk of recidivism. Treatment and community supervision also reduce the risk of recidivism as do the presence of protective factors.⁴⁰

For the purposes of its local study, PCCD analyzed re-arrest outcomes for 885 offenders charged with violations of § 6312 in Pennsylvania between 2014 and 2020.⁴¹ This data allowed for analysis of a 1-year re-arrest rate for all 885 offenders and a 3-year re-arrest rate for 578 of these 885 offenders.⁴²

From 2014-2020, of the 885 individuals in the study who were charged with violations of § 6312, less than 4% were rearrested within a year. From the subset of 578 offenders charged with violations of § 6312 from 2014-2018, less than 10% were rearrested within three years.⁴³ Stated conversely, there was no recidivism at one year for 96.2% of these offenders and no recidivism at three years for 90.5% of these offenders.

³⁵ 57% of these prior sex offenses were convictions of a prior non-production child pornography; 48% of these prior sex offenses were convictions for a prior contact offense. U.S. Sentencing Comm'n, Fed. Sentencing of Child Pornography Non-production Offenses 6 (2021).

³⁶ The range given for the risk of recidivism was 2-6% for child pornography only offenders. The rates increase for those with a prior contact offense or a prior or concurrent violent offense.

³⁷ For this recidivism, 58% of it was general criminal (not sexual offenses) recidivism; 26% of it was for failing to register as a sex offender.

³⁸ U.S. Sentencing Comm'n, *supra* note 35, at 4. This numerosity might diminish the relevance of the number of images from earlier periods (as a risk factor).

³⁹ *Id.*

⁴⁰ Protective factors are prosocial, *e.g.*, employment, housing, constructive social and professional support, good problem solving, *etc.* Protective factors tend to be reduced the longer a person remains imprisoned.

⁴¹ 99% of the offenders were also convicted of § 6312 offenses while the remaining 1% were convicted of other associated crimes.

⁴² The task force did not have adequate data to determine the percentage of offenders who were convicted of § 6312 offenses and later faced violations of probation or parole while they were actively under supervision for the instant offense.

⁴³ Those charged with violations of § 6312 in 2019 and 2020 are omitted from the 3-year arrest rate data because at the time of the study three years had not transpired since the violations were charged.

Between those charged with both a “touch offense” and § 6312 violations and those charged with only § 6312 violations, re-arrest rates at both one year and three years were more than double for those charged with both a § 6312 violation and a touch offense.

More than half of those rearrested within three years, were rearrested for either drugs (or DUI)⁴⁴ or a sex offender registration crime.⁴⁵ Rearrests within three years for child pornography amounted to 11% of the offenders rearrested. For a more detailed analysis of recidivism for Pennsylvania offenders, *see* Appendix G.

⁴⁴ 29%.

⁴⁵ 29%.

VICTIMS OF CHILD PORNOGRAPHY

While discussions of child pornography often describe the crime in the context of still images and videos, the material depicts “actual crimes being committed against children.”⁴⁶ For this reason, while the term “child pornography” is currently used in the Pennsylvania statute to describe the possession of images containing the sexual abuse of children, the term “Child Sexual Abuse Material” is becoming more widely used by professionals to describe these images of child abuse. The National Center for Missing and Exploited Children (NCMEC) reports that the impact of trauma on victims of child pornography differs from that of other child sexual abuse because the offending material can persist online.⁴⁷

“In 2021, the CyberTipline (managed by NCMEC) received 29,397,681 reports, up from 21.7 million reports in 2020.”⁴⁸ Almost all of these reports were from electronic service providers.⁴⁹ In 2021, “[r]eports of videos increased more than 40% from 2020.”⁵⁰ Of the identified children in NCMEC’s Victim Identification Program, “2,260 children are depicted in imagery considered ‘actively traded’” with 64% of them being female and 59% being prepubescent.⁵¹ Among the count of actively traded images (and videos) for which the relationship between the offender and the child was known, nearly 44% involved a parent, guardian, neighbor or family friend.⁵²

In Pennsylvania alone, the number of victims seeking services because of child pornography victimization increased by more than 300% between 2017 and 2021 (*See* Figure 5). Child victims receiving services related to child pornography represent about 3% of the total child victims seeking services in Pennsylvania annually.

⁴⁶ Nat’l Cen. for Missing & Exploited Children, Child Sexual Abuse Material, <https://www.missingkids.org/theissues/csam> (2022).

⁴⁷ “Due to the permanency of the imagery,” child sexual abuse material “can cause continual victimization to survivors, even decades after the sexual abuse ends.” *Id.*, Our 2021 Impact, <https://www.missingkids.org/ourwork/impact> (2022).

⁴⁸ *Id.* “NCMEC operates the CyberTipline[®], a national mechanism for the public and electronic service providers to report instances of suspected child sexual exploitation. Since its inception in 1998, the CyberTipline has received more than 116 million reports.” *Id.*

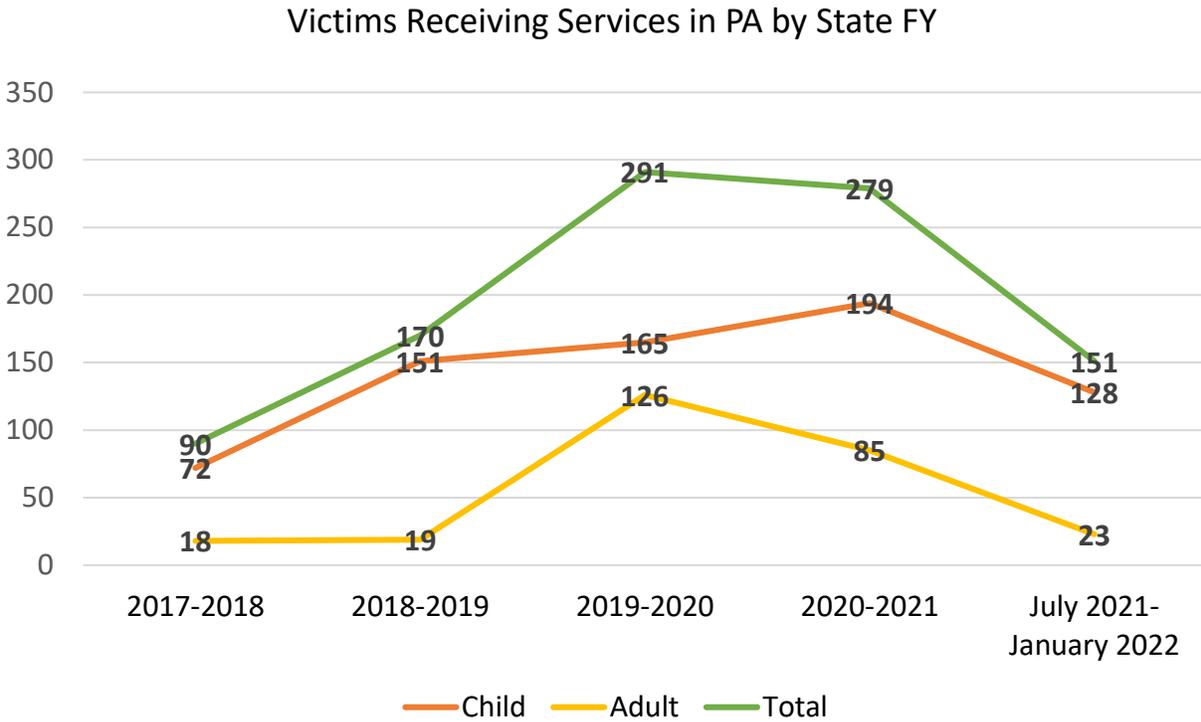
⁴⁹ *Id.* Of those, the highest number of reports came from Facebook, Instagram & WhatsApp. *Id.*, 2021 CyberTipline Reps. by Elec. Serv. Providers, <https://www.missingkids.org/content/dam/missingkids/pdfs/2021-reports-by-esp.pdf> (2022).

⁵⁰ *Id.*, *supra* note 47.

⁵¹ *Id.*

⁵² *Id.* It is more likely to be a person with intimate access to the victim for the younger children, with adolescent victims becoming more susceptible to online enticement.

Figure 5.

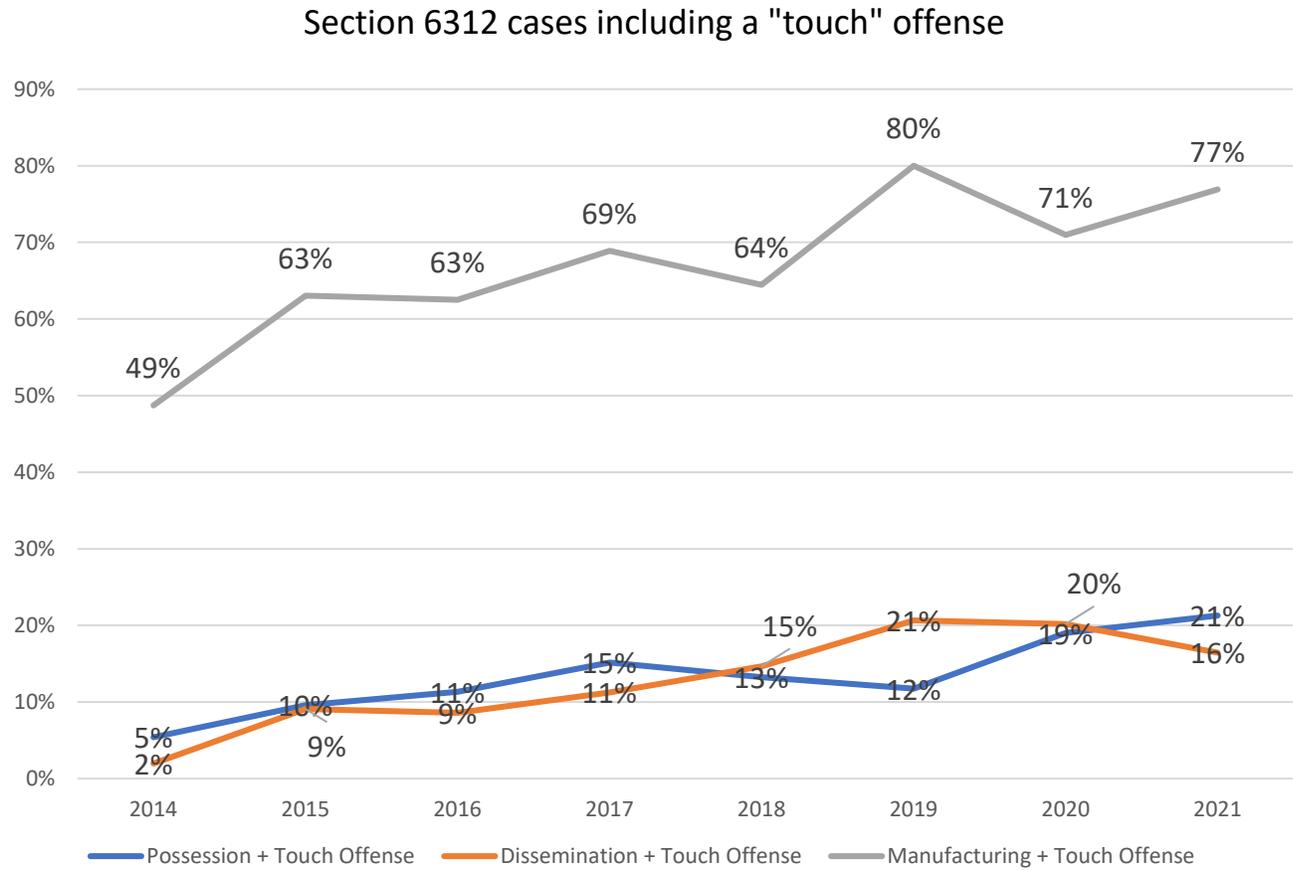


In addition to the general increase in the number of victims of § 6312 who are seeking services in Pennsylvania, the Commonwealth has also seen steady increases in the number of cases charging § 6312 that include a charge for a “touch offense” on a child under 18.⁵³

⁵³ “Touch Offense” includes: Rape - 18 Pa.C.S. § 3121; Statutory Sexual Assault – *Id.* § 3122.1; Involuntary Deviate Sexual Intercourse – *Id.* § 3123; Sexual Assault – *Id.* § 3124.1; Institutional Sexual Assault – *Id.* § 3124.2; Aggravated Indecent Assault – *Id.* § 3125; Indecent Assault – *Id.* § 3126; Incest – *Id.* § 4302; and Unlawful Contact w. Minor – *Id.* § 6318(a)(1).

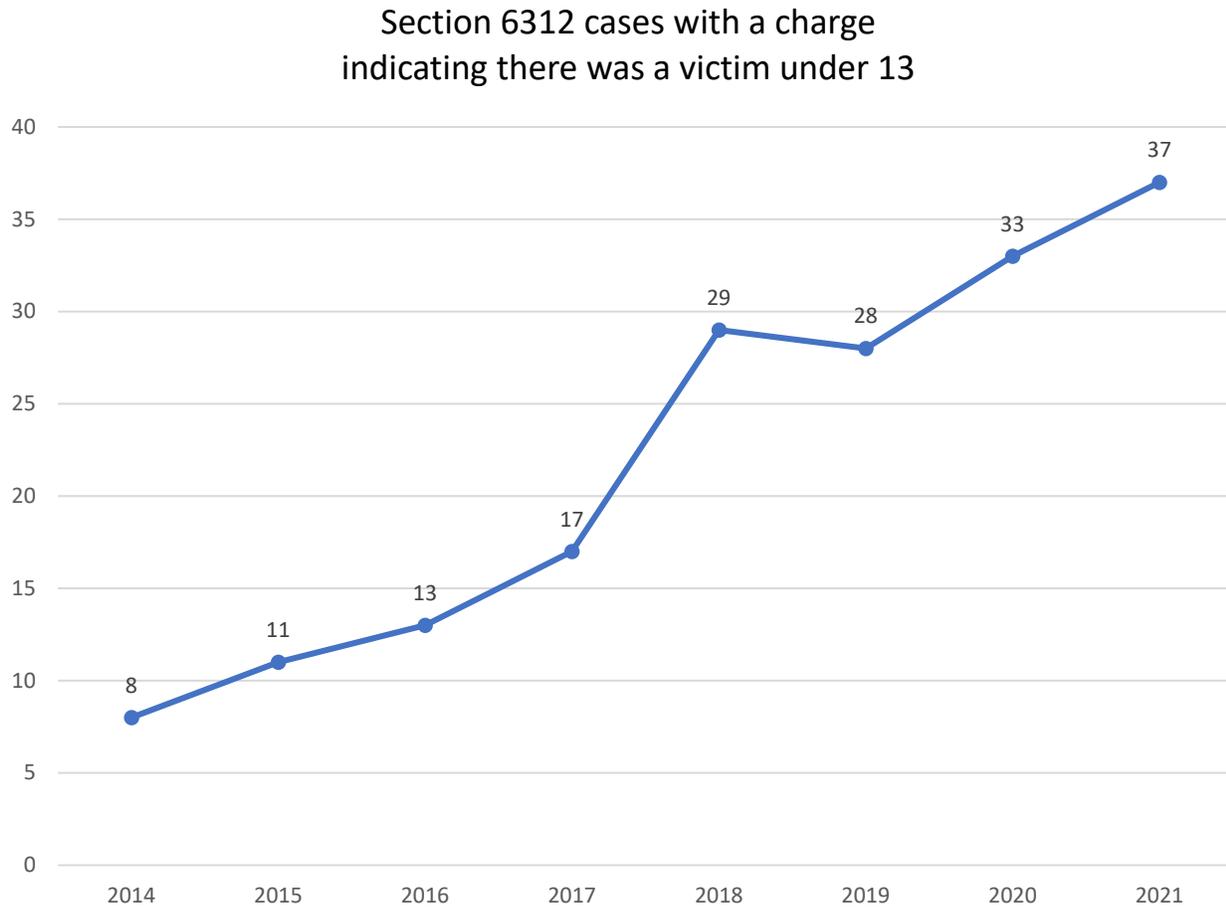
From 2014-2021, the percentage of cases charging a touch offense in addition to viewing or possession of child pornography has quadrupled, increasing from 5% in 2014 to 21% in 2020. For cases that charged distribution of child pornography, a more staggering 1000% increase can be seen from 2% in 2014 to 21% in 2021. Finally, the percentage of cases charging a touch offense when manufacturing was charged, has increased from 49% in 2014 to as high as 80% in 2019 (See Figure 6).

Figure 6.



Between 2014 and 2021, there was also more than a 400% increase in the number § 6312 cases that included a “touch offense” indicating that the victim was under the age of 13 at the time of the abuse (See Figure 7).⁵⁴

Figure 7.



This data indicates that children in the Commonwealth are being victimized by offenders who view, possess, distribute and manufacture child pornography at an increasing rate. Law enforcement agencies should be equipped with adequate resources to increase their capacity to thoroughly investigate and prosecute these cases and continue to protect children.

⁵⁴ Rape – *Id.* § 3121(d); Involuntary Deviate Sexual Intercourse – *Id.* § 3123(b), (c); Aggravated Indecent Assault – *Id.* § 3125(b); Indecent Assault – *Id.* § 3126(a)(7).

INVESTIGATING AND PROSECUTING CHILD PORNOGRAPHY CASES IN PA

Investigation

The Pennsylvania Internet Crimes Against Children Task Force (PA ICAC) is administered through the Delaware County District Attorney's Office through its Criminal Investigation Division.⁵⁵ Created in 2000, the PA ICAC is responsible for investigating crimes that would be charged under § 6312 and also investigates crimes such as online enticement of children, cyberbullying, extortion and child prostitution or trafficking.⁵⁶ It is funded by a grant from the U.S. Department of Justice - Office of Juvenile Justice and Delinquency Prevention.⁵⁷ All areas of the Commonwealth are covered by at least one of approximately 150 law enforcement personnel who participate in the PA ICAC,⁵⁸ including the Office of Attorney General (OAG) and Pennsylvania State Police (PSP), who are the largest partners. District Attorneys' offices and local police departments throughout the Commonwealth also contribute to the PA ICAC.

Tips on images of child pornography are reported to the PA ICAC through the National Center for Missing and Exploited Children (NCMEC) CyberTipline.⁵⁹ Internet service providers are statutorily required to report sexual exploitation on their networks to NCMEC. Citizens are also able to submit tips. Once the tip is received, NCMEC determines the appropriate jurisdiction and provides the PA ICAC with CyberTip leads that are deemed to be associated with Pennsylvania locations, offenders and/or victims.

Based on the reported content, analysts in Delaware County's Office of District Attorney assign the CyberTips to the investigating agency with jurisdiction to pursue the investigation. CyberTips are prioritized based on the time-sensitivity of the risk to the child⁶⁰ and they include relevant information, such as details about the incident and the suspect, the reporting electronic service provider, and Internet Protocol (IP) addresses. The number of CyberTips sent to the Commonwealth by NCMEC nearly quadrupled between 2014 and 2021 (*See* Figure 8).

⁵⁵ Pa. ICAC Task Force, About Us, <https://onlinesafety.com/#> (last visited May 26, 2022).

⁵⁶ *Id.* This is one of 61 that exist nationally. iCAC Task Force Program, Collaboration in Nos., <https://www.icactaskforce.org/> (last visited May 26, 2022).

⁵⁷ Pa. ICAC Task Force, *supra* note 55.

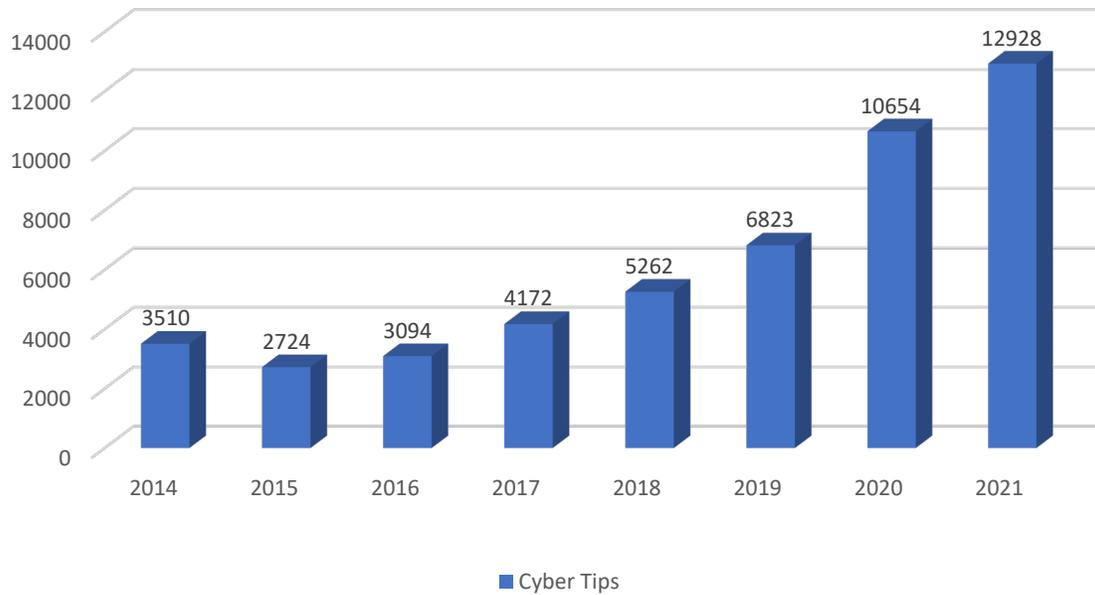
⁵⁸ The PA ICAC currently has 22 counties and 83 law enforcement agencies actively engaged with the Task Force.

⁵⁹ 18 U.S.C.A. § 2258A; appendix H. This statutory section does not require an electronic communication service provider to monitor a user, a user's content or search for anything, but if it knows of an apparent violation of a specified crime involving child pornography—it is required to report particular information to the Cyber Tipline of NCMEC. NCMEC then makes these reports available to one or more law enforcement agencies. The failure of a provider to report as required subjects it to a fine up to \$150,000 (or up to \$300,000 for a 2d or subsequent failure).

⁶⁰ Priority 1 is a current or imminent risk; priority 2 is a possible risk in the near future or is otherwise time sensitive.

Figure 8.

PA ICAC CyberTips Received Annually



PSP’s Bureau of Criminal Investigation, Computer Crimes Unit receives CyberTips from the PA ICAC and regionally coordinates the investigations stemming from the tips through its five offices throughout the Commonwealth.⁶¹ Statewide, PSP filed more § 6312 cases than any other investigating agency between 2014 and 2021,⁶² and in 2021, the PSP Bureau of Criminal Investigation received about 130 CyberTips *per* month from the PA ICAC. The unit’s coordinators assign these tips to unit members and troop crime commanders and the unit also proactively investigates other internet crimes against children.

In addition to CyberTips received by the PA ICAC from NCMEC, law enforcement officers also conduct other types of proactive investigations that often include the use of file sharing programs and undercover chats.⁶³ Some of the investigative tools available to law enforcement to investigate these cases include administrative subpoenas,⁶⁴ court orders and search warrants. The use of these tools allows law enforcement to identify and locate suspected perpetrators and confiscate devices that are capable of housing and sharing images of child pornography. Device-seeking dogs and PSP polygraph units are also integral to some investigations of § 6312 cases but are not widely used throughout the Commonwealth.

⁶¹ The five regions of the state are central, northeast, northwest, southeast and southwest, with the busiest office being the southeast.

⁶² 740 cases in total.

⁶³ For undercover chats, the investigator could pose as a parent or a child.

⁶⁴ 18 Pa.C.S. § 5743.1(a)(1), (7). During an ongoing investigation of an offense under § 6312, this statutory section authorizes prosecutors to issue *subpoenas* for relevant information to the provider of an electronic communication service and remain confidential for up to 90 days.

Once confiscated, law enforcement agencies such as the PSP and OAG have specialized equipment to analyze electronic devices and determine if they contain evidence of child abuse, such as pornographic images.⁶⁵ Neither analytical equipment, nor the expertise to utilize it is widely available statewide and according to both investigators and prosecutors, analysts at PSP and OAG have been inundated with requests to analyze electronic devices. During particularly busy times, this can result in long turnaround times for confiscated devices. During their testimony before the Task Force, law enforcement officials noted that additional resources are needed to expand law enforcement’s ability to timely and effectively analyze electronic devices that have been seized by investigators.

As part of any criminal investigation into alleged behavior under § 6312, investigators seek to ensure that any children who may be victims of a child pornography offender are also identified and interviewed. The identification of children in these images may be difficult for local law enforcement because there is no evidence to suggest where the images were created; the images may or may not have been created overseas; or the images have been circulating on the Internet for years.

NCMEC reports that in 2021, 93.5% of the child sexual abuse material reports that they received resolved to locations outside of the U.S.⁶⁶ In 2002, NCMEC began tracking which victims had been previously identified by law enforcement and developed a Child Victim Identification Program (CVIP), which serves as the central repository for information related to previously identified victims.⁶⁷ According to NCMEC, “[f]iles containing unidentified children are reviewed and analyzed for any information as to their potential location or who is responsible for their abuse. When this information can be determined, CVIP provides the analysis to appropriate law enforcement”⁶⁸

In Pennsylvania, the law requires a multidisciplinary team (MDIT) response when investigating certain child abuse cases, including violations of § 6312.⁶⁹ MDIT members typically include law enforcement, children and youth services, medical providers, victim service agencies and district attorneys’ offices and may include others. Child advocacy centers (CACs) play an integral role in bringing these team members together to ensure that children who are identified as victims of child pornography are interviewed in a trauma-focused, child-centered way. CACs are typically county-based and serve as a hub for MDIT members to serve children.⁷⁰

⁶⁵ Several counties also have equipment necessary to forensically analyze electronic devices, however, law enforcement partners suggested that there is a need for increased training and analytical equipment Commonwealth-wide to address the exponential increase in CyberTips and investigations.

⁶⁶ Nat’l Cen. for Missing & Exploited Children, *supra* note 47.

⁶⁷ *Id.*

⁶⁸ *Id.*

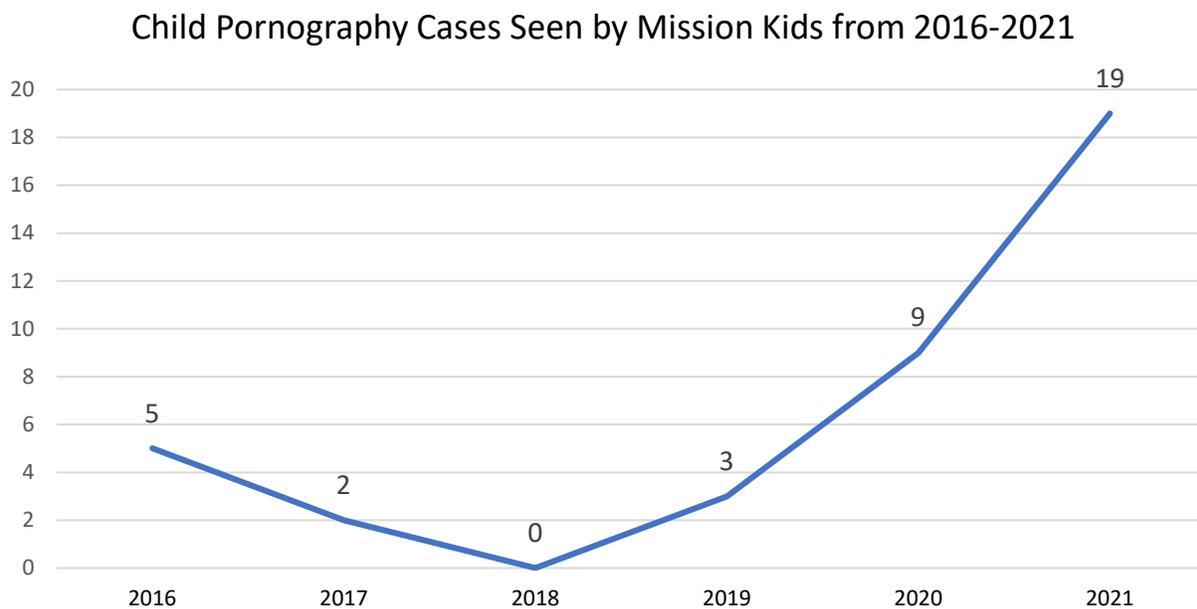
⁶⁹ 23 Pa.C.S. § 6365(b).

⁷⁰ “Mission Kids offers a comprehensive, centrally located, multidisciplinary team response to allegations of child abuse in a dedicated, child-friendly setting to achieve justice for child victims and promote their physical and emotional well-being. Mission Kids provides neutral, fact-finding forensic interviews which are coordinated to avoid duplicative interviewing and support Montgomery County’s multidisciplinary team approach to child abuse investigation and intervention.” Mission Kids Child Advocacy Cen., *supra* note 6. There are 41 child advocacy centers across Pennsylvania. Children’s Advocacy Cens. of Pa., Find a Cen., <https://penncac.org/find-a-center/> (2021).

There are 41 CACs in the Commonwealth providing a child-focused environment for a child to tell his or her story, ideally once, to a trained, forensic interviewer. The MDIT assists to provide therapy, medical exams, courtroom preparation, victim advocacy and other services. As is noted above, many professionals working at or with CACs refer to child pornography as “child sexual abuse material,” which may better describe the crimes that are depicted in the images. These images are evidence of child sexual abuse, and whenever possible, children who are victims of child sexual abuse (including child pornography) should receive services from a CAC.

The TFCP learned that in Montgomery County alone there was nearly a 400% increase in the number of children who were seen at Mission Kids as victims of child pornography from 2016-2021 (See Figure 9).

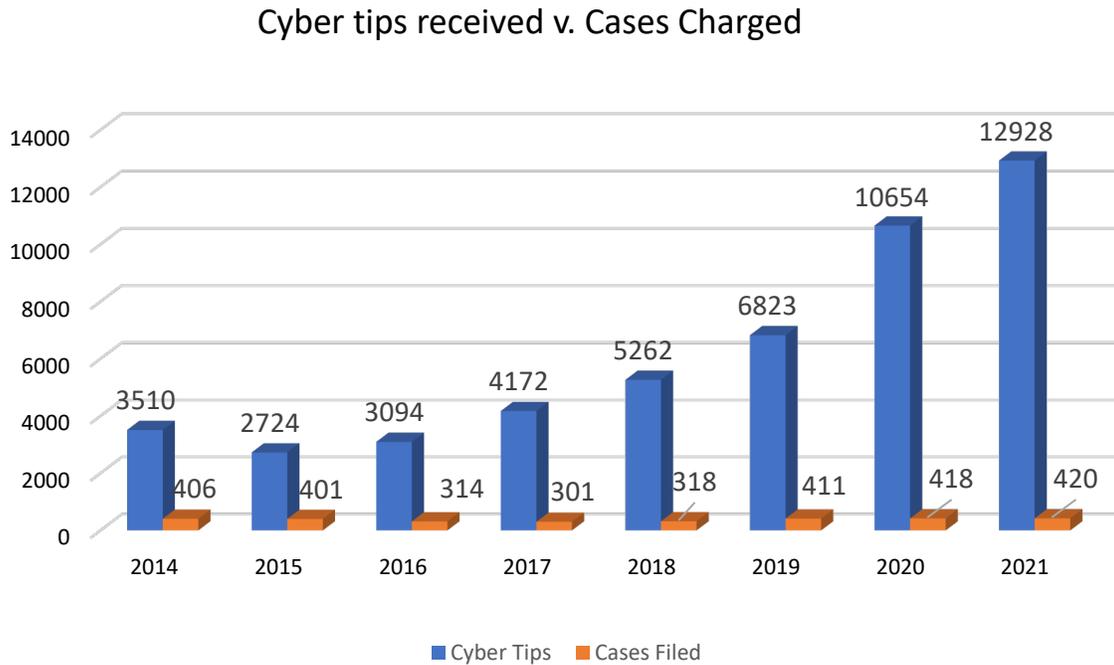
Figure 9.



Despite the increasing number of victims seeking services and the dramatically increasing number of CyberTips⁷¹ described by investigators, the number of § 6312 cases charged by law enforcement annually has remained fairly steady (See Figure 10). The absence of an increase in the number of charges filed annually that correlates with or at least reflects the huge increase in the number of tips received, suggests that currently, specially trained law enforcement officers are at capacity to investigate these cases.

⁷¹ Investigators have noted an increase in the number of tips that are “self-generated” videos and images of children that are not criminal in nature, but that require investigative resources to contact the families whose children have produced the material for education about the dangers of this type of activity.

Figure 10.



To further flesh out these numbers and gain perspective from stakeholders, both the Pennsylvania Chiefs of Police Association and Pennsylvania District Attorneys’ Association distributed surveys at the request of the Task Force. Seventy-one law enforcement officers and prosecutors participated in the survey, representing 28 counties throughout the state.⁷² Among other things, respondents were asked to identify barriers that are encountered when identifying, investigating and prosecuting child pornography cases.

With respect to the identification of these cases, both law enforcement and prosecutorial responses focused on the lack of training available to improve investigative and prosecutorial skills in this area. Citing the ever-increasing number of child pornography tips, both law enforcement and prosecutorial responses focused on a lack of capacity to handle investigations.⁷³

Respondents indicated that additional training and equipment for law enforcement departments Commonwealth-wide is essential to increasing the number of cases that can be investigated and charged each year.

Prosecution

As previously described, prosecutors work closely with law enforcement and CACs during the investigation of child pornography cases. Once enough evidence is gathered to substantiate

⁷² Of these, law enforcement officers returned 61 responses; prosecutors returned 10 responses.

⁷³ For a summary of the survey responses, see Appendix I.

the elements of a § 6312 offense, law enforcement -- often in consultation with a prosecutor -- files a criminal complaint against the offender officially charging them with crimes under § 6312.

When determining charges and the sentencing exposure for the offender at sentencing, prosecutors take into consideration three key factors: the number of images possessed by the offender; the age of the victims depicted; and the nature of the imagery. Each of these elements is important because they influence the number of counts of § 6312 that may be charged, available sentencing enhancements and the possible penalties associated with the offense.

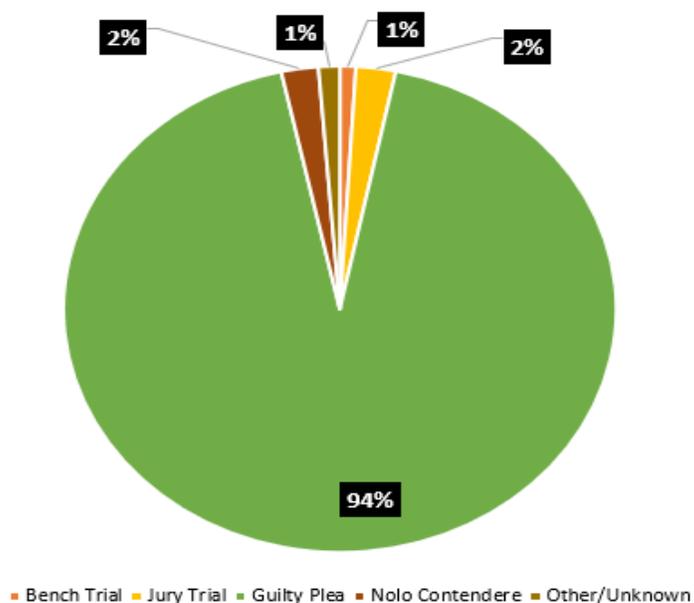
It should be noted that charging practices vary throughout the Commonwealth. Some prosecutors may choose to charge one count of § 6312 for every image that is in the possession of the offender. Other prosecutors may only charge one count of § 6312 despite the possession of hundreds or thousands of images. Prosecutors that practice the latter methodology may utilize a sentencing enhancement for that one count after the offender is convicted.⁷⁴

Prosecutors are responsible for communicating with known victims and preparing them for testimony, presenting evidence at trial, and negotiating guilty pleas. Prosecutors must prove each element of the offense beyond a reasonable doubt -- whether the case results in a trial or a guilty plea -- and may require the use of an expert witness to establish the age of a child whose abuse is being depicted in pornographic images.

Between 2018 and 2020 there were 646 unique cases that received sentences for one or more convictions on § 6312 and 94% of cases were resolved by guilty plea (*See* Figure 11).

Figure 11.

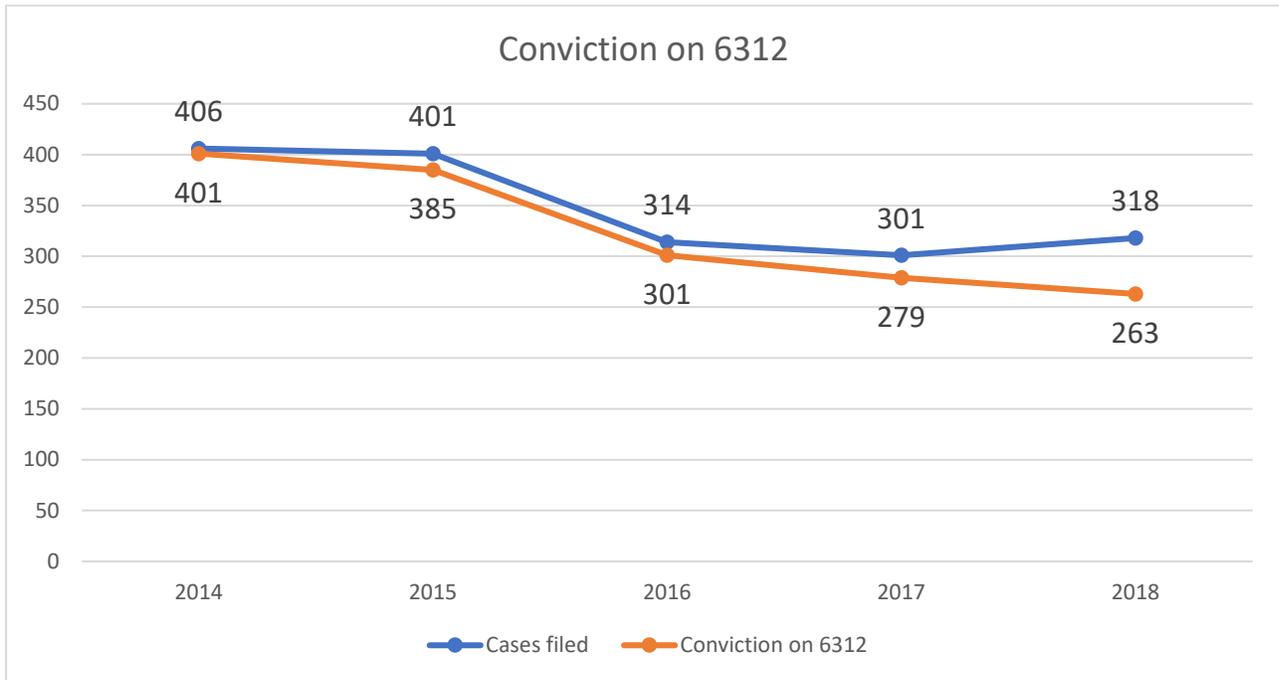
Disposition of cases with Conviction on 6312



⁷⁴ Sentencing enhancements are discussed in greater detail below in the “Post-Conviction Considerations” section.

For cases charged between 2014-2018, the percentage of cases that resulted in convictions on at least one § 6312 count ranged from 87-96% (See Figure 12).⁷⁵

Figure 12.



Once convicted, prosecutors play an important role in both the judicial hearing to determine if the convicted offender is a sexually violent predator and the sentencing hearing.

⁷⁵ Figure 12 indicates the conviction rate for cases based on *charging year* and not the year of conviction.

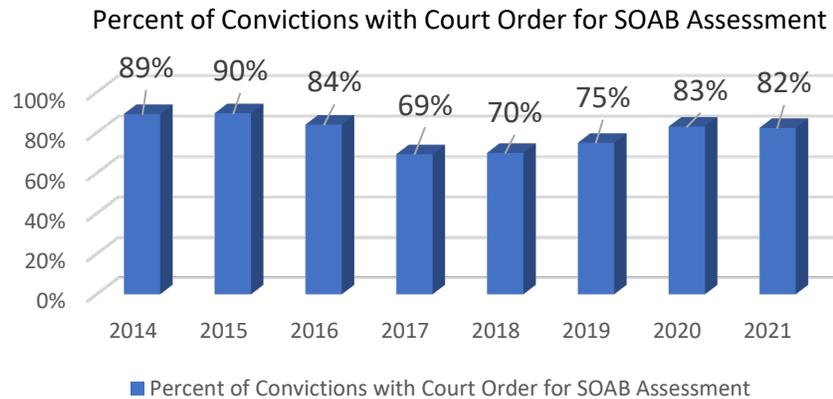
POST-CONVICTION CONSIDERATIONS IN CHILD PORNOGRAPHY CASES

Sexual Offenders Assessment Board

After conviction, and before sentencing, offenders convicted of one or more offenses under § 6312 are required by law to undergo an assessment by the Sexual Offenders Assessment Board (SOAB or “board”).⁷⁶ Comprised of mostly psychologists, licensed clinical social workers, licensed counselors and psychiatrists,⁷⁷ the SOAB conducts assessments to assist the judiciary in determining if a convicted offender should be classified as a sexually violent predator (SVP), which is a person who has been convicted of a sexually violent offense and due to a mental abnormality or personality disorder is likely to engage in future predatory sexually violent offenses.⁷⁸

From 2014-2021, the percentage of those convicted of violations of § 6312 that were judicially ordered to have an SVP assessment by the board ranged annually from 69-90% (See Figure 13).⁷⁹ A breakdown of SVP assessments ordered by county for § 6312 convictions can be found in Appendix J.

Figure 13.



⁷⁶ 42 Pa.C.S. §§ 9799.24, 9799.58.

⁷⁷ Appointments are made by the Governor for terms of 4 years.

⁷⁸ 42 Pa.C.S. §§ 9799.12, 9799.53.

⁷⁹ From 2017-2019 there were two Pennsylvania court cases that negatively impacted referrals to the SOAB. The first, *Commw. v. Muniz*, 164 A.3d 1189, 1193 (Pa. 2017), held that the application of Sex Offender Registration & Notification Act (SORNA) to certain offenders was unconstitutional. In the second, *Commw. v. Butler I*, 173 A.3d 1212, 1218 (Pa. Super. Ct. 2017), the Pa. Superior Court applied *Muniz* to hold that the sexually violent predator designation was punitive and therefore unconstitutional. These two cases resulted in a decreased number of convicted sex offenders being evaluated by the SOAB until the General Assembly corrected the deficiencies identified in *Muniz* in 2018 and *Butler II*, 226 A.3d 972, 976 (Pa. 2020), was decided by the Pa. Supreme Court in 2020, holding that the statutory lifetime registration, notification, and counseling requirements all applicable to SVPs did not constitute criminal punishment and therefore the statutory procedure for designating SVPs was constitutionally permissible.

Since 2005, the SOAB has experienced a 50% increase in child pornography cases,⁸⁰ and currently, 26% of the board's SVP assessments are for child pornography offenders. The most common diagnosis addressed in an SVP assessment involving child pornography is pedophilic disorder.⁸¹ Pedophiles can be attracted to both adults and children of any gender, or exclusively children. Not everyone who views child pornography is a pedophile.

When conducting the assessment, statutory factors such as the facts of the current offense,⁸² the prior offense history of the offender,⁸³ and the characteristics of the offender⁸⁴ are all taken into consideration.⁸⁵ Sources of information reviewed by the SOAB may include reports from Children and Youth Services, protection from abuse orders, criminal history record information and employment inquiries. Each offender is offered the opportunity for an interview with the SOAB. The offender may decline to participate, but the absence of an interview does not preclude the SOAB's ability to conduct an assessment.

If the SOAB determines that the convicted offender has a mental abnormality or personality disorder, they next consider whether the offender has engaged in predatory behavior.⁸⁶ Although each SVP determination is very case specific, generally speaking in cases where the offender has contact with a child that also involve a charge under § 6312, the SOAB may find that the offender meets the predatory behavior pattern. Predatory behavior in possession of child pornography cases may be present when the child pornography is actively rather than passively shared.⁸⁷ In addition, adults "sexting" with children and soliciting children for sexual activity online move further into predatory behavior, and solicitation with threats *and* the manufacture of child pornography more likely will be indicative of predatory behavior.

If recommended by the SOAB as an SVP, the offender is entitled to a judicial hearing to determine if the court agrees with the SOAB's recommendation. Prosecutors present the evidence reviewed by the SOAB at the hearing and offer expert testimony to establish the SVP designation. The convicted offender is entitled to cross-examine the witnesses offered by the Commonwealth and also offer his or her own expert witnesses. If the convicted offender is determined to be an SVP by the court after a hearing, the convicted offender must receive monthly counseling from an

⁸⁰ This corresponds to the time period during which high speed internet has become accessible. The material is mostly free, and anonymity is perceived. Enhanced law enforcement practices have also increased the rise in these cases, *e.g.*, CyberTipline.

⁸¹ Diagnostic & Statistical Manual of Mental Disorders (version 5). Over a period of at least 6 mos., some type of sexual urges with a child recur in an individual at least age 16 (and at least five years older than a child) and has acted on sexual urges or the urges cause marked distress.

⁸² Including whether the offense involved multiple victims, whether the offender exceeded the means necessary to achieve the offense, the nature of the sexual contact with the victim, the relationship of the offender to the victim, the age of the victim, mental capacity of the victim and whether the offense included a display of unusual cruelty by the offender during the commission of the crime.

⁸³ Including the offender's prior criminal record, sexual offenses and other offenses, whether the offender completed any prior sentences and whether the offender participated in available programs for sexual offenders.

⁸⁴ Including the age of the offender, use of illegal drugs by the offender, any mental illness, mental disability, or mental abnormality, and behavioral characteristics that contribute to the offender's conduct.

⁸⁵ 42 Pa.C.S. §§ 9799.24(b), 9799.58(b).

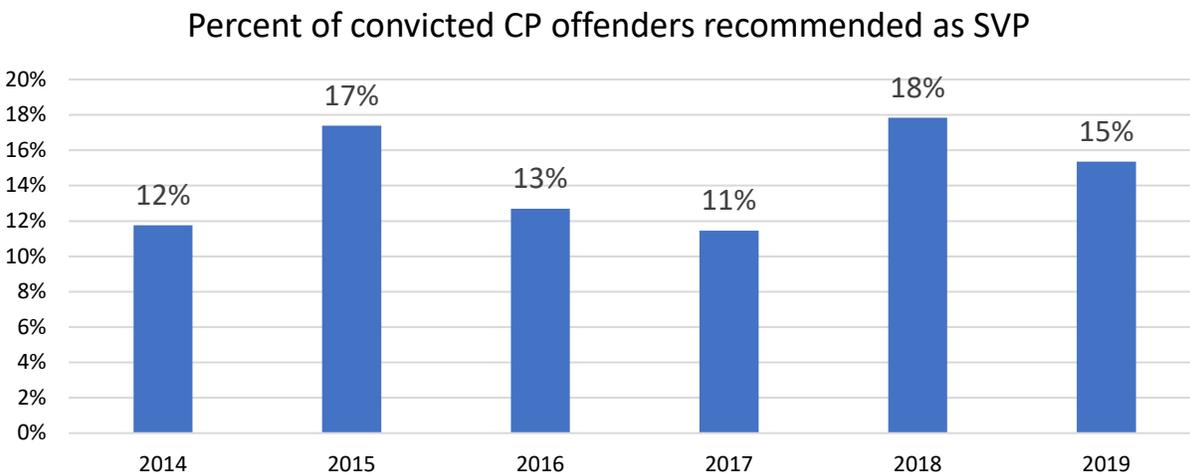
⁸⁶ An act directed at a stranger or a person with whom a relationship has been initiated, established, maintained or promoted, in whole or in part, in order to facilitate or support victimization. 42 Pa.C.S. §§ 9799.12, 9799.53.

⁸⁷ Passive sharing is automatic when downloaded. Active traders may be more invested in child pornography.

approved treatment provider for their lifetime and register with PSP quarterly for the duration of their life.⁸⁸

Of those § 6312 offenders who were convicted and ordered to be assessed, the SOAB recommended SVP classification for between 11-18% of offenders whose cases were filed between 2014 and 2019 (See Figure 14).

Figure 14.



As noted above, the law requires that any offender convicted of § 6312 “shall” be referred to the SOAB for assessment.⁸⁹ While there is a legal explanation for a decrease in referrals between 2017 and 2020,⁹⁰ the task force finds concerning that during the years that were not impacted by limiting judicial opinions, between 10% and 18% of offenders who should have been assessed by the SOAB when convicted were not ordered to do so.

Sentencing

After the SOAB assessment and the required SVP hearing, a convicted offender proceeds to a sentencing hearing. As is the case for approximately half of U.S. jurisdictions, the Commonwealth operates under an indeterminate sentencing scheme, which means that confinement is sentenced by a minimum and a maximum term. The minimum term must be served before parole eligibility, and if not paroled, the convicted offender remains confined until reaching the maximum term. If paroled after the expiration of the minimum sentence but prior to their maximum, the convict remains supervised, often in the community, until reaching the maximum

⁸⁸ If a sex offender is classified by the court as an SVP, he or she is subject to lifetime registration with the Pennsylvania State Police (with verification on a quarterly basis), lifetime sex offender counseling (with a provider approved by the SOAB), and community notification. 42 Pa.C.S. §§ 9799.15(a)(6), (f), 9799.25(a)(4), 9799.27, 9799.36, 9799.55(b)(3), 9799.60(a), 9799.62, 9799.70(a).

⁸⁹ 42 Pa.C.S. §§ 9799.24, 9799.58.

⁹⁰ *Supra* note 79.

term. For all convictions, the maximum penalty is limited by the statutory grading of the offense⁹¹ unless the offender is subject to the mandatory three-year probationary tail pursuant to 42 Pa. C.S. § 9718.5.⁹²

An Offense Gravity Score is assigned to each offense based on the elements of the offense, other sentencing factors, and the classification of the crime. The Offense Gravity Scores for § 6312 can be found at 204 Pa. Code § 303.15 and appears in Appendix K. Convicted offenders are assigned a prior record score that is based on certain previous juvenile adjudications and adult convictions. The offense gravity score and prior record score of the offender both factor into the calculation of advisory sentencing guidelines for each conviction for which an offender is being sentenced.⁹³ These guidelines allow the judiciary to consider factors, aside from the crime's elements, for sentencing.⁹⁴ Sentencing guideline recommendations are for both disposition⁹⁵ and duration⁹⁶ and the guidelines must be considered for every conviction offense⁹⁷ by courts of common pleas.

The advisory sentencing guidelines are intended to promote uniformity and proportionality,⁹⁸ making the guidelines a benchmark or starting point for sentencing. The guidelines provide a standard range for a “typical”⁹⁹ offense and offender and because sentences remain individualized, the guidelines include variations for both aggravating and mitigating factors.¹⁰⁰ Unless there is a statutorily mandated sentence, the judiciary retains the discretion to sentence outside of the guideline ranges.¹⁰¹ The guidelines promote both the retributive and utilitarian purposes of sentencing.¹⁰²

⁹¹ *E.g.* A felony of the third degree has a seven-year statutory maximum so that an offender sentenced on a felony of the third degree cannot receive any maximum sentence above and beyond 7 years. A MAXIMUM sentence for a felony of the third degree would be 3.5 to 7 years served in a state correctional facility.

⁹² This section requires a mandatory period of probation of three years consecutive to and in addition to any other lawful sentence, including the maximum sentence for offenders who are convicted of a Tier III sex offense.

⁹³ 42 Pa.C.S. § 2154(b).

⁹⁴ *Id.*

⁹⁵ *E.g.*, state prison, county jail, probation, *etc.*

⁹⁶ Probation would be a maximum term, because it is a flat term; the guidelines for confinement is a minimum term, because that is the eligibility for parole.

⁹⁷ Misdemeanors and felonies.

⁹⁸ This is helpful given the splintered nature of the Commonwealth's criminal justice system with county-based courts of common pleas and municipal police.

⁹⁹ This would be the median.

¹⁰⁰ 42 Pa.C.S. § 2154(b)(4).

¹⁰¹ Subject to appellate review for manifest abuse of discretion.

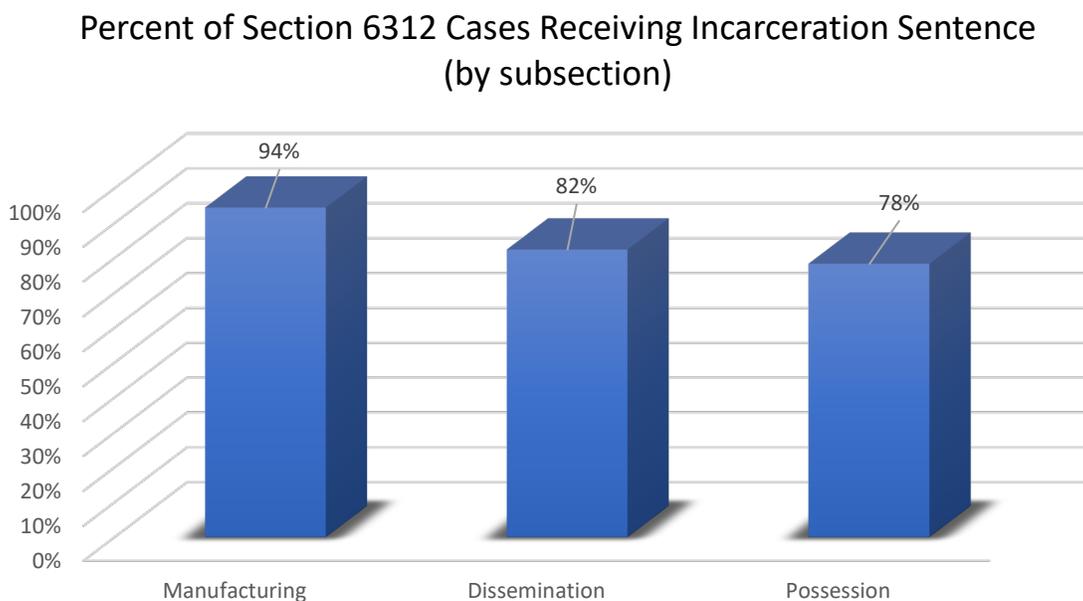
¹⁰² Incapacitation, deterrence, rehabilitation and restoration. 42 Pa.C.S. § 2154(a), (c).

Sentences for violations of § 6312 and all crimes in the Commonwealth can be reviewed and evaluated using four possible units of analysis.¹⁰³ Each of these units of analysis allows for a different perspective when analyzing sentencing data surrounding the conviction of § 6312. For purposes of the analysis below, the data was analyzed when § 6312 was the most serious conviction in a judicial proceeding.

Between 2018 and 2020, there were 646 unique cases that received a sentence for one or more convictions of § 6312, and when any subsection of § 6312 was the most serious in a judicial proceeding, 81% received a sentence of incarceration.¹⁰⁴

Broken down by the behavior exhibited, 94% of manufacturing convictions, 83% of dissemination convictions and 78% of possession convictions resulted in a sentence of incarceration (See Figure 15).

Figure 15.



¹⁰³ One unit of analysis focuses on sentencing for all charges of § 6312 regardless of other charges that may have been contained on the same criminal information or other charges that an offender may have been sentenced for on the same day. A second unit of analysis, “**Most Serious in a Criminal Incident,**” focuses on the analysis of the sentence for the § 6312 offense only when it was the most serious in the criminal incident. A third unit of analysis, “**Most Serious in Judicial Proceeding,**” focuses on the analysis of sentence when the § 6312 was the most serious charge for which an offender received a sentence on the same day from the same Judge. Finally, the fourth unit of analysis focuses on the offender, and looks at the sentences for the crime of § 6312 by the individual sentenced.

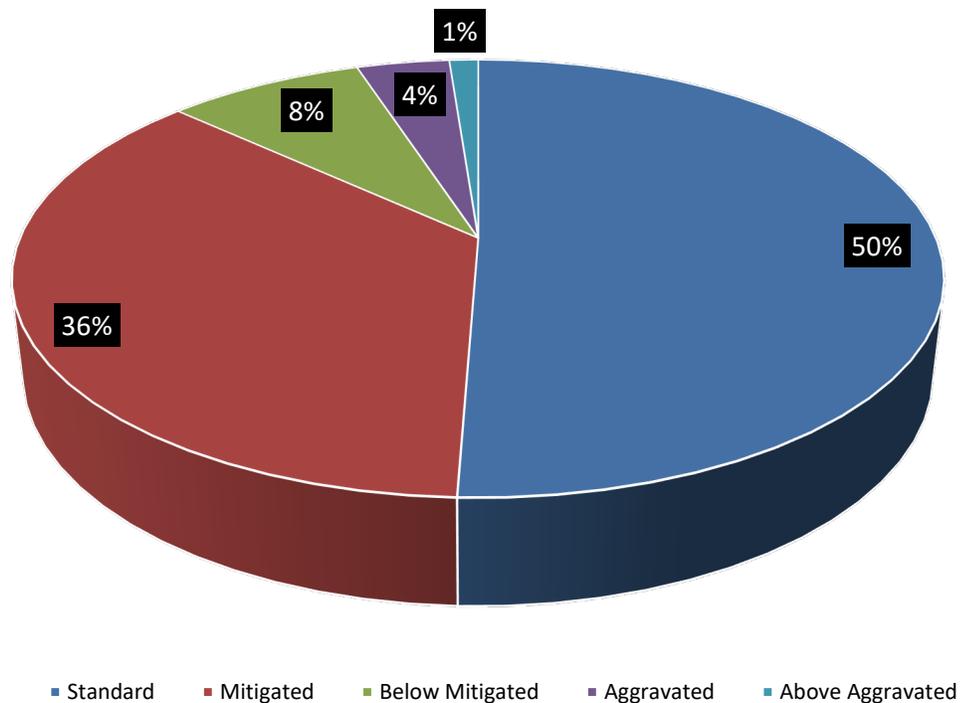
¹⁰⁴ 55% of those sentenced to incarceration were sentenced to a State Correctional Institution and 44% were sentenced to county jail.

Conformity with the sentencing guidelines for § 6312 convictions varied based on the statutory subsection (*e.g.*, subsection (b) of § 6312 involves the manufacture of child pornography, subsection (c) involves the distribution, sale or dissemination of these images and subsection (d) involves possession or viewing of pornographic images of children being abused).

When subsection (d) (relating to possession or viewing) was the most serious conviction in the judicial incident, offenders were sentenced in the standard range of the guidelines 50% of the time, and in the mitigated range 36% of the time (*See Figure 16*).

Figure 16.

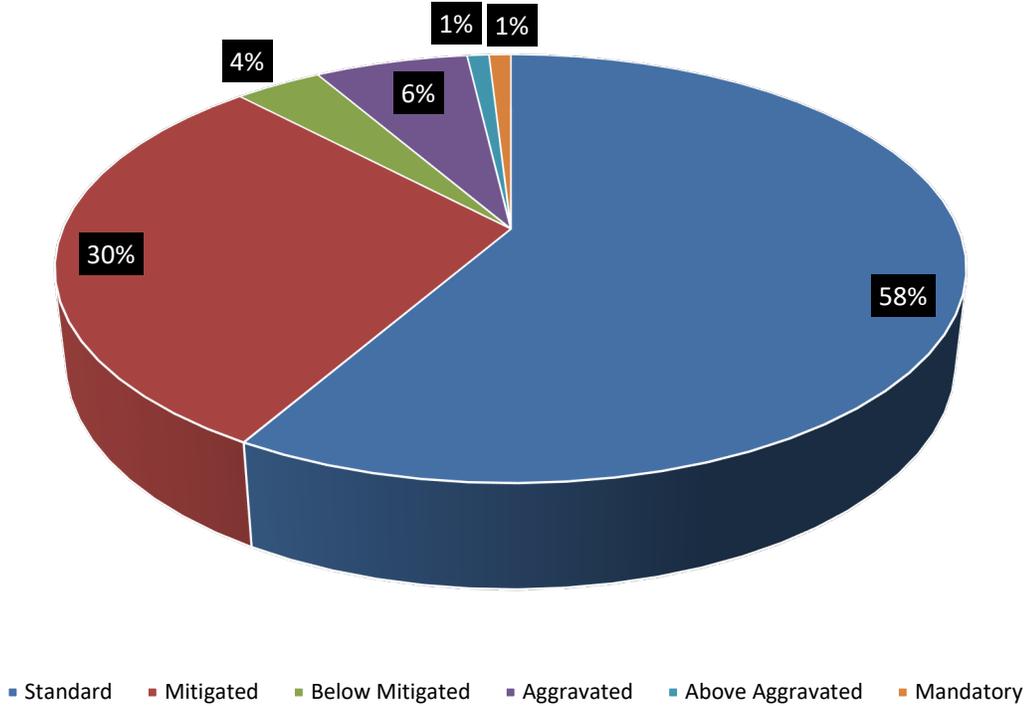
Possession of Child Pornography - Sentence Guideline Conformity



Offenders were sentenced in the standard range of the guidelines 58% of the time, and in the mitigated range 30% of the time when subsection (c) (relating to dissemination, distribution or sale) was the most serious conviction in the judicial incident. (*See Figure 17*).

Figure 17.

Dissemination of Child Pornography - Sentencing Guideline Conformity



Finally, when subsection (b) (relating to manufacturing child pornography) was the most serious conviction offense in the judicial incident, offenders were sentenced in the standard range 67% of the time and in the mitigated range 19% of the time (*See* Figure 18). For a comparison of sentencing guideline conformity across all subsections, *see* Figure 19.

Figure 18.

Manufacturing Child Pornography - Sentencing Guideline Conformity

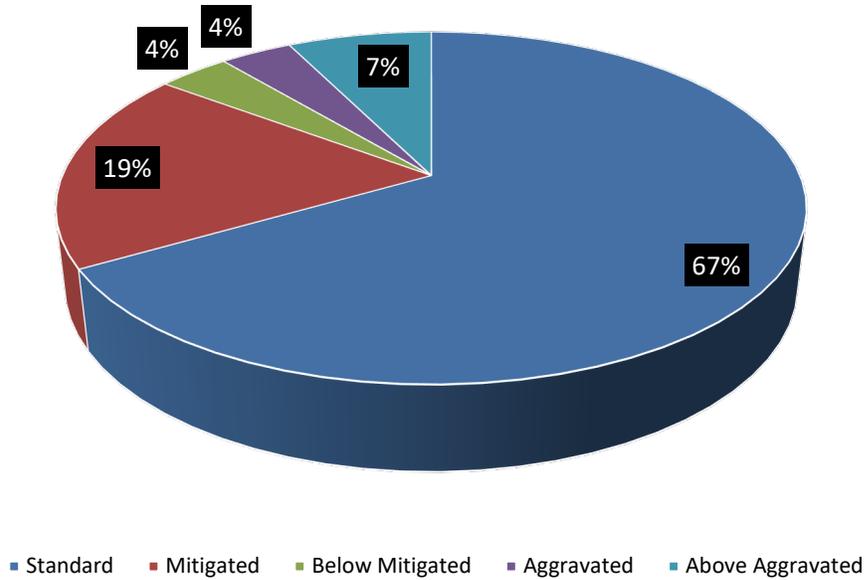
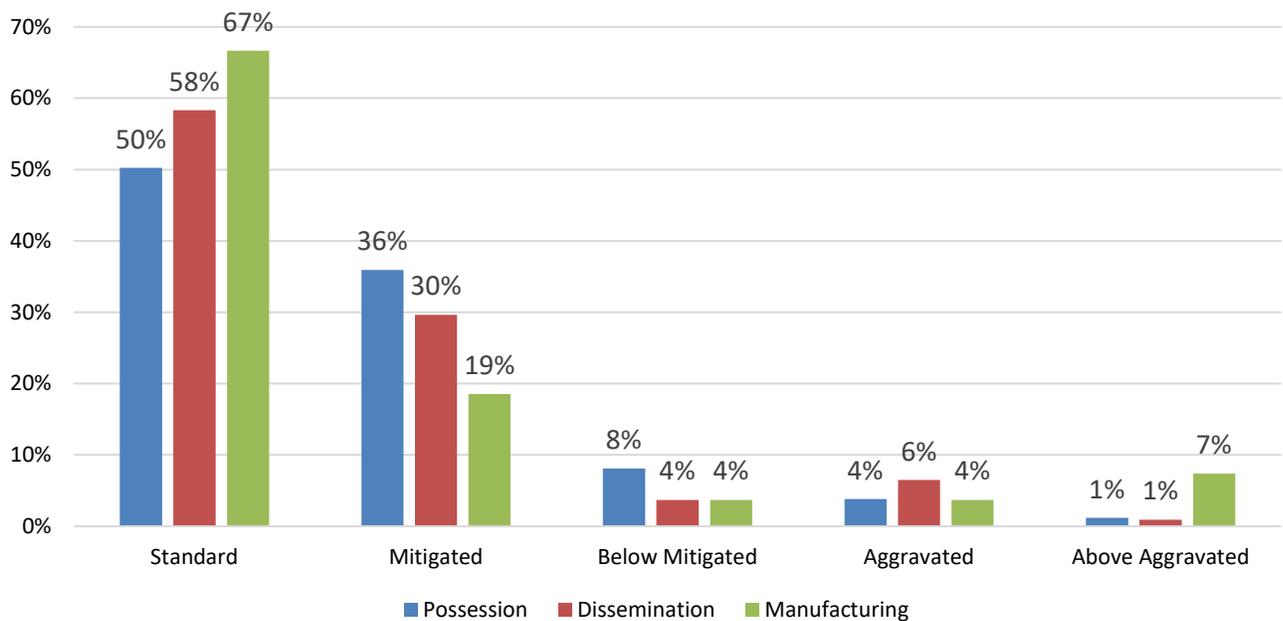


Figure 19.

Sentencing Guideline Conformity - All subsections of 6312



Sentencing enhancements are used either to increase the offense gravity score originally assigned to the crime (*i.e.*, increasing the sentencing recommendation) or to “boost” the recommended sentencing range when certain sentencing factors are present. The factors to be considered in applying the sentence enhancement for § 6312 include the number of images, the nature and character of the abuse depicted, and the age of the child depicted.¹⁰⁵ Note that prior to Act 53, the age of the victim increased the Offense Gravity Score of a particular § 6312 offense by one point if the victim was determined to be under 13 or prepubescent. Act 53 created additional nuance and currently the offense gravity scores of § 6312 crimes are increased if the image depicts a prepubescent child or child under 10 and the offense gravity score is one point lower if the victim is between 10 and 13.¹⁰⁶

From 2018-2020, 12% of the 646 cases sentenced for violations of § 6312 utilized enhanced guidelines based on the nature of the images depicted and 13% utilized enhanced guidelines due to number of images possessed. During this period, 41% of judicial districts did not utilize any enhanced guidelines when structuring sentence. Appendix M contains a detailed breakdown of the usage of sentencing enhancements by judicial district/county showing that there are large disparities in the use of enhancements Commonwealth-wide.

When the court determines that enhancement factors such as those identified for § 6312 are present, the court is required to consider the enhanced guidelines prior to sentencing. The court retains the discretion to impose a mitigated, aggravated, or departure sentence, but the starting point should be the enhanced guidelines. As noted above, the data analyzed by the TFCP found many instances in which the § 6312 enhancement factors and enhanced guidelines were not considered by the court at all. Unfortunately, the TFCP did not have access to Pennsylvania data to determine whether the cases analyzed included one or more of the enhancement factors,¹⁰⁷ however, these wide and significant variations when using enhancements suggest that more education is necessary to address the use of the § 6312 enhancements as part of the overall sentencing analysis when reviewing these cases.

Community Supervision of Child Pornography Offenders

Community Supervision is commonly described as the supervision of criminal offenders who are not incarcerated. Typically, these offenders are in the community either because they have been sentenced to probation or have been paroled from a sentence of incarceration. As noted above, when § 6312 was the most serious offense in a judicial proceeding, about 81% of § 6312 counts received a sentence of incarceration between 2018 and 2020; conversely, 18% received a sentence of probation.¹⁰⁸

¹⁰⁵ 204 Pa. Code § 303.10(e).

¹⁰⁶ See Appendix L – “Legislation Enacted Since Adoption of 7th Edition Amendment 6 Sentencing Guidelines” 8/31/2021.

¹⁰⁷ Data from the 2021 U.S. Sentencing report (Appendix F, p. 10) suggests that in federally prosecuted cases a large percentage of cases would include enhancement factors that make them eligible for Pa. enhancements, however the TFCP did not have access to similar data on the cases filed in the Commonwealth.

¹⁰⁸ 2% of § 6312(b) (manufacturing) counts, 16% of § 6312(c) (dissemination) counts and 21% of § 6312(d) (possession) counts received probation sentences between 2018 and 2020.

Generally, in the field of community supervision and in Pennsylvania, a focus has been on the practice of supervising criminal offenders using foundational evidence-based principles referred to as risk, need and responsivity, or RNR.¹⁰⁹ Decades of research demonstrate that the best outcomes are achieved when the intensity of criminal justice supervision is matched to the participants' risk for criminal recidivism and interventions focus on the specific disorders or conditions that are responsible for the participant's crimes.¹¹⁰ This principle is critical to effective supervision of § 6312 offenders.

Both external¹¹¹ and internal¹¹² controls are used to supervise offenders and the risk presented by offenders is intended to be controlled and reduced, not entirely eliminated. Effective supervision relies upon several elements, including treatment, linking offenders to resources, and ongoing risk assessments with targeted interventions. While the idea of restricting the use of electronic equipment for these offenders entirely may sound beneficial, it is not an effective strategy for supervision of these types of offenders, in large part because use of the Internet is required for pro-social activities such as applying for employment, staying connected with friends and family members, and locating available resources.

Supervision of this particular population can be hindered by the time and effort required to adequately monitor these individuals, the proliferation of technology and devices, as well as the lack of psycho-sexual evaluations and lack of treatment options available in some rural Pennsylvania counties. However, there are some fundamental, evidence-based principles that aid in effective supervision of child pornography offenders. These include victim centeredness; specialized training about the nature of offenders and the best tools to utilize in supervision; regular monitoring and evaluation; and collaboration amongst stakeholders such as treatment providers, law enforcement and probation and parole officers. High quality psycho-sexual evaluations are important for understanding the best level of supervision for a particular offender -- which may change during the course of their supervision -- but such evaluations are not available in every jurisdiction in Pennsylvania.

There is a great need for both training and investigative resources for probation and parole officers to effectively supervise these offenders. In Pennsylvania, larger, better-resourced counties are often able to benefit from multi-disciplinary cooperation and the shared use of available analytical equipment. There is a large disparity, however, in the use of these best practices Commonwealth-wide.

In order to successfully supervise § 6312 offenders, probation and parole officers in Pennsylvania need increased access to training and to equipment designed to analyze offenders' electronic devices.

¹⁰⁹ Andrews, D.A., & Bonta, J. (2010). *The psychology of criminal conduct* (5th ed.). New Providence, NJ: Anderson.

¹¹⁰ See e.g., Andrews, D.A., Zinger, I., Hoge, R.D., Bonta, J., Gendreau, P., & Cullen, F.T. (1990). *Does correctional treatment work? A clinically relevant and psychologically informed meta-analysis*. *Criminology*, 28(3), 369–404; Gendreau, P., Smith, P., & French, S. A. (2006). *The theory of effective correctional intervention: Empirical status and future directions*; Lipsey, M. W., & Cullen, F. T. (2007). *The effectiveness of correctional rehabilitation: A review of systematic reviews*. *Annual Review of Law & Social Science*, 3, 279–320.

¹¹¹ E.g., computer monitoring, parole, incarceration, etc.

¹¹² E.g., offender accountability, cognitive behavioral interventions, prosocial behaviors, etc.

OTHER RELEVANT CONSIDERATIONS BY THE TFCP

During the Task Force’s deliberations, the “Eliminating Abusive and Rampant Neglect of Interactive Technologies) (EARN IT) Act of 2022 was introduced at the federal level. First introduced in 2020 and recently reintroduced by Senator Lindsey Graham and Representative Sylvia Garcia,¹¹³ the EARN IT legislation (S.3538 and companion H.R.6544) was considered by the U.S. Senate Judiciary Committee on February 10, 2022 and was ordered to be reported without amendment favorably. The Task Force reviewed the legislation to consider if similar legislation or parts of the legislation would be appropriate in Pennsylvania.

The EARN IT Act would amend § 230 of the Communications Act of 1934,¹¹⁴ which allows operators of websites to remove user-posted content that they deem inappropriate and provides them with immunity from civil lawsuits related to such posting. At its core, § 230(c)(1) provides immunity from liability for providers and users of an “interactive computer service” who publish information provided by third party users. Section 230(c)(1) indicates that “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” In addition, sub§ (c)(2) provides civil immunity to users and providers of interactive computer services for voluntary action taken in good faith to remove or restrict access to obscene material.

The EARN IT Act would also amend § 230 to limit civil immunity in instances of child sexual exploitation, where claims are brought against the provider under 18 U.S.C. § 2255,¹¹⁵ which allows for civil remedies for any person who was a victim of sexual exploitation and suffered damages. The proposed amendments also would limit immunity by allowing states to criminally charge an interactive computer service under state law regarding advertisement, promotion, presentation, distribution or solicitation of child sexual abuse material.

In addition, the EARN IT Act would establish the National Commission on Online Sexual Exploitation Prevention (COSE) to develop and recommend best practices that providers of ICS may voluntarily choose to implement to prevent, reduce and respond to online sexual exploitation of children. The matters addressed by the COSE include coordinating with various interactive computer service providers, non-profit organizations, and content moderators to target, reduce, and eliminate online child sexual exploitation material accessible to the public.

¹¹³ See Appendix N.

¹¹⁴ See Appendix O.

¹¹⁵ See Appendix P.

The EARN IT Act would also amend multiple sections of U.S. Code to change the term “child pornography” to “child sexual abuse material.”

The introduction of the EARN IT Act sparked multiple conversations amongst Task Force members, notably leading the Task Force to preliminarily consider drafting legislation that holds Internet Service Providers (or “interactive computer service[s]” *per* the federal law) liable either criminally or civilly. After undertaking significant legal research, the Task Force concluded that given the *current state* of federal law, it would not be viable to recommend legislation of this nature at this time.¹¹⁶ However, the Task Force encourages the legislature to follow the progress of the federal EARN IT Act moving forward. If the EARN-IT legislation is enacted, it may open an avenue for Pennsylvania lawmakers to pursue the introduction of laws that allow for more accountability for internet service providers who allow child sexual abuse material to persist on their platforms.

¹¹⁶ Attorneys researching the issue discovered that a recommendation of this sort would face multiple constitutional obstacles including federal preemption principles, fourth amendment privacy protections, first amendment free speech protections and due process rights.

RECOMMENDED IMPROVEMENTS AND CHANGES

Having undertaken a substantial review of information related to the identification, investigation and prosecution of the crime of 18 Pa. C.S. § 6312, the TFCP offers the following recommendations to address the inadequacies that were identified:

Recommendation One:

Current Pennsylvania laws and regulations that use the term “Child Pornography” should be amended to replace that term with “Child Sexual Abuse Material.” Examples include: 18 Pa.C.S. § 6312(d) and the act of November 24, 2004 (P.L.1556, No.197).

The term “child pornography” is outdated, and according to experts, may minimize the behavior exhibited by offenders who create or possess illegal images of children. Outside of the legal system, most experts refer to these images as “Child Sexual Abuse Material,” arguing that this term more accurately reflects what is depicted in these illegal images. Nearly every presenter to the Task Force indicated that the term “child pornography” is outdated and should be replaced with “child sexual abuse material.” *See* Appendix Q for suggested legislative language.

Recommendation Two:

Improve access to training for law enforcement officers through the Municipal Police Officers’ Education and Training Commission (MPOETC) and the Pennsylvania Chiefs of Police Association on how to investigate and prosecute these crimes. Provide targeted funding¹¹⁷ to build capacity within local police departments, the Pennsylvania Office of Attorney General, the Pennsylvania State Police and District Attorneys’ Offices that includes the establishment of specialized units, technology, training, and increased complement that would result in greater investigative capacity.

Investigators and prosecutors that presented to the Task Force or responded to the TFCP’s survey noted the exponential increase in CyberTips and other tips related to child abuse that are required to be investigated. Despite these increases, the number of § 6312 cases filed in Pennsylvania has remained fairly steady for the past seven years, which suggests that additional trained law enforcement and specialized equipment is necessary to increase investigative capacity.

¹¹⁷ While this report was being drafted, on July 11, 2022, The Fiscal Code was amended by Act 54 of 2022 to implement the FY2022-23 state budget and allocated \$500,000 for training and equipment needs to support improvements in the identification, investigation and prosecution of 18 Pa.C.S. § 6312.

Recommendation Three:

Improve access to training and equipment for county probation departments to utilize in the supervision of convicted § 6312 offenders. Provide targeted funding to improve supervision within county probation departments and the Pa. Parole Board that would enable them to provide training, purchase necessary analytical equipment and/or build and develop multi-disciplinary teams which encourage the use of shared resources and equipment.

Specialized training relating to the community supervision of § 6312 offenders is not widely available. While some counties have specially trained probation and parole officers and utilize multi-disciplinary teams to share resources between investigators and probation officers, other counties do not have access to the same resources.

Recommendation Four:

Relevant stakeholders such as the Administrative Office of Pennsylvania Courts and the Sexual Offender Assessment Board should encourage both general and targeted education and training opportunities for judges and prosecutors regarding the legal requirement for and benefits of the SOAB Assessment.

Pursuant to law, 100% of offenders who are convicted of 18 Pa. C.S. § 6312 should receive an evaluation by the Sexual Offender Assessment Board to determine whether the offender should be designated as a Sexually Violent Predator (SVP). Between 2014 and 2021, 81% of cases with a conviction had a court order requiring assessment. Targeted training for counties that send assessments at a lower rate may be necessary to improve compliance with the law.

Recommendation Five:

Relevant stakeholders such as the Sentencing Commission, the Administrative Office of Pennsylvania Courts and the Pennsylvania District Attorneys Association should encourage education and training opportunities for prosecutors and judges regarding the availability and opportunities for use of sentencing enhancements and other tools when evaluating § 6312 cases.

The use of available sentencing enhancements varies widely from county to county. While some counties use enhancements in nearly every case, 41% of counties did not use any enhancements in a three-year time frame. While ultimately the use of enhancements at sentencing is at the discretion of the prosecution and the sentencing judge, providing regular educational updates and/or training opportunities will make the field more aware of these and other sentencing tools when evaluating § 6312 cases.

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Act 53 of 2021

CRIMES CODE (18 PA.C.S.), DOMESTIC RELATIONS (23 PA.C.S.) AND
JUDICIAL CODE (42 PA.C.S.) - SEXUAL ABUSE OF CHILDREN, TASK FORCE
ON CHILD PORNOGRAPHY AND SENTENCING FOR OFFENSES INVOLVING SEXUAL
ABUSE OF CHILDREN

Act of Jun. 30, 2021, P.L. 249, No. 53

Cl. 18

Session of 2021
No. 2021-53

SB 87

AN ACT

Amending Titles 18 (Crimes and Offenses), 23 (Domestic Relations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in minors, further providing for the offense of sexual abuse of children; in child protective services, providing for task force on child pornography; and, in sentencing, further providing for sentencing for offenses involving sexual abuse of children.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 6312(d.1) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:
§ 6312. Sexual abuse of children.

* * *

(d.1) Grading.--The offenses shall be graded as follows:

(1) Except as provided in paragraph (3), an offense under subsection (b) is a felony of the second degree.

(2) (i) Except as provided in paragraph (3), a first offense under subsection (c) or (d) is a felony of the third degree.

(ii) A second or subsequent offense under subsection (c) or (d) is a felony of the second degree.

(3) When a person commits an offense graded under paragraph (1) or (2)(i) [and indecent contact with the child as defined in section 3101 (relating to definitions) is depicted], the grading of the offense shall be one grade higher than the grade specified in paragraph (1) or (2)(i) [.] **if:**

(i) **indecent contact with the child as defined in section 3101 (relating to definitions) is depicted; or**

(ii) **the child depicted is under 10 years of age or prepubescent.**

* * *

Section 2. Title 23 is amended by adding a section to read:
§ 6388. **Task Force on Child Pornography.**

(a) **Establishment.--The Task Force on Child Pornography is established.**

(b) **Purpose.--The purpose of the task force is to conduct a review to ascertain any inadequacies relating to the offense of child pornography in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).**

(c) **Composition.--The task force shall consist of the following members, who shall be appointed within 25 days after the effective date of this section:**

(1) **The secretary or a designee.**

(2) **The Attorney General or a designee.**

(3) **The Commissioner of Pennsylvania State Police or a designee.**

(4) **The Chairman of the Pennsylvania Commission on Crime and Delinquency or a designee.**

(5) The Executive Director of the Pennsylvania Commission on Sentencing or a designee.

(6) Two members of the Senate, one appointed by the President pro tempore of the Senate and one appointed by the Minority Leader of the Senate.

(7) Two members of the House of Representatives, one appointed by the Speaker of the House of Representatives and one appointed by the Minority Leader of the House of Representatives.

(8) The Victim Advocate from the Office of Victim Advocate or a designee from that office.

(9) The President of the Pennsylvania District Attorneys Association or a designee.

(10) The Director of the Pennsylvania Coalition Against Rape or a designee.

(11) One member of the Pennsylvania Sexual Offenders Assessment Board. If possible, the member shall be a member of the Association for the Treatment of Sexual Abusers.

(12) One member of the Pennsylvania Internet Crimes Against Children (ICAC) Task Force.

(13) The director of a rape crisis center located in this Commonwealth or a designee, appointed by the Governor.

(14) One representative of a children's advocacy center that assists in the investigation, prosecution and treatment of child sexual and physical abuse cases, appointed by the Governor.

(15) Two medical professionals that specialize in the field of child sexual abuse, one of whom shall be appointed by the President pro tempore of the Senate and one of whom shall be appointed by the Speaker of the House of Representatives.

(16) One member of the public, appointed by the President pro tempore of the Senate.

(17) One member of the public, appointed by the Speaker of the House of Representatives.

(d) Chairperson.--The Governor shall select the chairperson of the task force.

(e) Member requirements.--

(1) The appointed members of the task force under subsection (c) (16) and (17) must be individuals who have experience in investigations or prosecutions of child pornography or sexual abuse of children, have experience in the treatment of victims of child pornography or sexual abuse of children, have experience in the prevention of child pornography or sexual abuse of children or are victims of child pornography or sexual abuse of children.

(2) The appointment of members must reflect the geographic diversity of this Commonwealth.

(f) Meetings and expenses.--The task force shall conduct its business as follows:

(1) The task force shall meet at least four times but may hold additional meetings as determined by the chairperson of the task force.

(2) The chairperson of the task force shall schedule a meeting upon written request of eight members of the task force.

(3) The first meeting of the task force shall be convened within 45 days of the effective date of this section.

(4) The task force shall hold public hearings as necessary to obtain the information required to conduct its review.

(5) Action of the task force shall be authorized or ratified by majority vote of the members of the task force.

(6) The Pennsylvania Commission on Crime and Delinquency and the Joint State Government Commission shall cooperate to provide administrative or other assistance to the task force.

(7) The members of the task force shall not receive compensation but shall be reimbursed for reasonable and necessary expenses incurred in the service of the task force.

(g) Powers.--The task force shall have the following powers:

(1) To recommend any improvements relating to the investigation and prosecution of child pornography as defined in 18 Pa.C.S. § 6312.

(2) To recommend any necessary changes in State statutes and practices, policies and procedures relating to the recognition or prosecution of child pornography as defined in 18 Pa.C.S. § 6312.

(h) Report.--

(1) Within one year of the first meeting of the task force, the task force shall submit a report with its recommendations to the following:

(i) The Governor.

(ii) The President pro tempore of the Senate.

(iii) The Speaker of the House of Representatives.

(iv) The chairperson and minority chairperson of the Judiciary Committee of the Senate.

(v) The chairperson and minority chairperson of the Judiciary Committee of the House of Representatives.

(2) The report under this subsection must be adopted at a public meeting of the task force.

(3) The report under this subsection shall be a public record under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(i) Expiration.--The task force shall expire upon the submission of the report under subsection (h).

(j) Definition.--As used in this section, the term "task force" means the Task Force on Child Pornography established in this section.

Section 3. Section 9720.5 of Title 42 is amended to read:
§ 9720.5. Sentencing for offenses involving sexual abuse of children.

(a) **General rule.**--The Pennsylvania Commission on Sentencing, in accordance with section 2154 (relating to adoption of guidelines for sentencing), shall provide for a sentence enhancement within its guidelines for an offense under 18 Pa.C.S. § 6312 (relating to sexual abuse of children), specifying variations from the range of sentences applicable based on such aggravating circumstances as the age of the child or a determination of prepubescence, the number of images possessed by the defendant, **if the child depicted is known to the defendant** and the nature and character of the abuse depicted in the images.

(b) **Other circumstances.**--When a person commits an offense to which the grading provisions under 18 Pa.C.S. § 6312(d.1)(3) apply, the Pennsylvania Commission on Sentencing shall, in accordance with section 2154, provide for a sentence enhancement within its guidelines if indecent contact with the child as defined in 18 Pa.C.S. § 3101 (relating to definitions) is depicted and the child depicted is under 10 years of age or prepubescent.

Section 4. This act shall take effect in 60 days.

APPROVED--The 30th day of June, A.D. 2021.

TOM WOLF

Task Force on Child Pornography
Meeting Minutes

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY
3101 N. Front Street, Harrisburg, PA

Task Force on Child Pornography

October 12, 2021

MINUTES

- Members/Designees:** Mr. Michael Pennington, Executive Director, PCCD
Mr. Andrew Barnes, Designee for Honorable Meg Snead
Mr. Mark Bergstrom, Executive Director, Sentencing Commission
Senator Maria Collett, 12th Senatorial District
Detective Sergeant John DUBY, Investigation Division, District Attorney of Lancaster County
Ms. Suzanne Estrella, Esq., Victim Advocate
Representative Kate Klunk, 196th Legislative District
Ms. Joyce Lukima, Chief Operating Officer, PCAR
Mr. Sean McCormack, Chief Deputy District Attorney, Cumberland County
Mr. Michael McMorrow, Wayne County Detective
Ms. Abbie Newman, Chief Executive Officer, Mission Kids Child Advocacy Center
Ms. Alissa Perrotto, President/CEO, SARCC of Lebanon and Schuylkill Counties
Major Jeremy Richard, Designee for Colonel Robert Evanchick
Mr. Robert Stein, Member SOAB, Co-founder, Center for Neurobehavioral Health, Ltd.
Mr. Jack Stollsteimer, District Attorney, Delaware County
Senator Judy Ward, Senate District 30
Ms. Michelle Kelly Walsh, Deputy Attorney General, Chief of Child Predator Unit
- Staff in Attendance:** Lindsay Busko
Charles Gartside
Heather Hewitt
Kirsten Kenyon
Robert Orth
Lindsay Vaughan
- Joint State Government:** Ronald Grenoble
Yelena Khanzhina
Stephen Kramer
Glenn Pasewicz
- Additional Guests:** Greg Beckenbaugh
David Brogan (Hanbidge)
Meghan Dade (Stein)
Dr. Stacey Ginesin (Stein)
Tom Holroyd, Legislative Director (Collett)
Correne Kristiansen, Chief of Staff (Collett)
Cheryl Schriener (Ward)
Aaron Weltner
Vicki Wilken

I. Welcome and Introductions – *Michael Pennington, Chairman*

Chairman Pennington welcomed everyone to the inaugural meeting of the Task Force on Child Pornography, which was established by the passage of Senate Bill 87.

The original champion for the creation of this Task Force was State Senator Dave Arnold, who was the former District Attorney from Lebanon County. Unfortunately, he passed away in

January 2021. State Senator Lisa Baker, the Chair of the Senate Judiciary Committee, reintroduced his bill in his memory with the intention of it being part of his legislative legacy.

II. **Presentation: Statutory Obligations and Deadlines – Lindsay Vaughan, PCCD**

Ms. Vaughan presented on the “Powers, Duties, and Timelines” of the Task Force. This included an overview of Act 53, the duties, responsibilities, and timelines associated with the Task Force, a brief overview of current data available, and followed with discussion on collecting the information and data needed to complete all duties and responsibilities within the required timeline.

The purpose of the Task Force is to conduct a review to ascertain any inadequacies relating to the offense of child pornography in 18 Pa. C.S. § 6312. Within one year of today’s meeting (October 12, 2022), the Task Force is to submit a written report to include any improvements relating to the investigation and prosecution of child pornography and defined in 18 Pa. C.S. § 6312. The Task Force will also recommend any necessary changes in the State statute and practices, policies, and procedures relating to the recognition or prosecution of child pornography as defined.

III. **Data Presentation – Lindsay Vaughan**

Data collected so far, from all charges under 6312 and accompanying charges, include county/judicial district, docket number, name of defendant, offense tracking number, charges, and dispositions. An example of the specific type of data that we are able to collect was provided.

With the limited data pull, we are able to break numbers of charges down by subsection, by “other” offense charges, isolate on other singular offense, break down by county/region/class size, by sentence type, by date, and can graphically illustrate or utilize mapping as visual aids. Limitations include being unable to aggregate the sentence and to say for certain if two dockets with the same defendant name are the same person.

IV. **Brainstorming Data and Process Needs of the Task Force – Lindsay Vaughan**

Ms. Vaughan asked members to focus on the data described and what they would like PCCD to tell with the data we already have.

What else do we want to know?

- Geographic information
- Detail on dissemination methods
- Criminal histories of offenders
- Demographic information of offenders
- Number of charges
- Identifiable victims
- Sentences above/below sentencing guidelines
- Recidivism rates
- Number of 6312 convictions with SVP designation
- Investigation/prosecution timelines
- Number of tips received by law enforcement

What other data do we need to gather?

- Sentencing commission data
- National Center for Missing and Exploited Children – tips
- PSP – criminal histories
- AOPC – data from the past 10-15 years

- ICAC

What else do we need to know?

- Process for investigations
- Differences in charging practices between counties
- Capacity for investigations
- Investigations triggered by tips vs. proactive investigations

V. Planning for the Year Ahead – Chairman Pennington

Chairman Pennington noted that the Task Force has some great ideas about what information we would like to gather, and used the final minutes of the meeting to preliminarily discuss the approach the Task Force would like to take to meet the end goal, which is to develop a report within a year of this meeting.

He reiterated that the law notes that the Task Force needs to hold at least four meetings. We are able to hold public hearings as necessary; however, there were no resources given to support the Task Force's efforts. In the past, PCCD's Advisory Committees have undertaken large projects by forming smaller workgroups or subcommittees to delve into specific topic areas as needed. It was also suggested bringing in speakers with expertise to provide us with the data and information needed to accomplish the specific mandate. The Task Force can solicit experts from all regions of the Commonwealth and use virtual technology to bring the experts in efficiently and at minimal cost.

Ms. Lukima noted that this was a good idea, and that we could hear from both state and national efforts in order to learn more about the issue. Mr. Stollsteimer suggested the Internet Crimes Against Children (ICAC) Director give a briefing on what they've seen, how many tips they've received, how they handle tips, and how many investigations have come through, as a good way to start understanding the level of the problem.

Chairman Pennington plans to work with PCCD and the Joint State Government Commission (JSGC) staff to take the data needs and ideas provided today to form a plan for the rest of the year, which will be brought up at the next meeting. He asked that members make recommendations on subject matter experts.

VI. Wrap up and Action Items for Next Meeting – Lindsay Vaughan

PCCD will take the recommendations and ideas and work with JSGC on where and how we can collect those additional data points. We may have needs that we don't have access to or know where to look. The goal will be to meet in November with a plan to get us to the end of the report.

VII. Public Voice – Chairman Pennington

There was no public voice.

VIII. Next Meeting – Chairman Pennington

The next meeting of the Task Force will be Wednesday, November 17, 2021 from 1:00 PM to 3:00 PM. Additional details will follow.

IX. Adjournment – Chairman Pennington

Chairman Pennington thanked everyone for their service on the Task Force. He called for a motion to adjourn the meeting. Mr. Stollsteimer made the motion, which was seconded by Mr. Stein. The meeting adjourned at 3:58 PM.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY
3101 N. Front Street, Harrisburg, PA

Task Force on Child Pornography

November 17, 2021

MINUTES

- Members/Designees:** Mr. Michael Pennington, Executive Director, PCCD
Mr. Andrew Barnes, Designee for Honorable Meg Snead
Mr. Mark Bergstrom, Executive Director, Sentencing Commission
Senator Maria Collett, 12th Senatorial District
Detective Sergeant John DUBY, Investigation Division, District Attorney of Lancaster County
Ms. Suzanne Estrella, Esq., Victim Advocate, Office of Victim Advocate
Colonel Robert Evanchick, Commissioner, Pennsylvania State Police
Representative Kate Klunk, 196th Legislative District
Ms. Joyce Lukima, Chief Operating Officer, PCAR
Ms. Dianne Mathias, Child, Family Therapist and Trainer, It's a Playful Journey
Detective Michael McMorrow, Wayne County Detective
Ms. Abbie Newman, Chief Executive Officer, Mission Kids Child Advocacy Center
Ms. Alissa Perrotto, President/CEO, SARCC of Lebanon and Schuylkill Counties
Mr. Robert Stein, Member SOAB, Co-founder, Center for Neurobehavioral Health, Ltd.
Mr. Jack Stollsteimer, District Attorney, Delaware County
Ms. Michelle Kelly Walsh, Chief Deputy Attorney General, Chief of Child Predator Unit
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- Staff in Attendance:** Kathy Buckley
Lindsay Busko
Charles Gartside
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Kirsten Kenyon
Robert Orth
Debra Sandifer
Lindsay Vaughan
- Joint State Government:** Ronald Grenoble
Yelena Khanzhina
Stephen Kramer
Glenn Pasewicz
- Additional Guests:** Greg Beckenbaugh
Detective Sergeant Ken Bellis, Delaware County DA's Office, *presenting*
Meghan Dade (*Stein*)
Dr. Stacey Ginesin (*Stein*)
Corporal Christopher Hill, Pennsylvania State Police, *presenting*
Tom Holroyd
Major Sean Jennings (*Evanchick*)
Correne Kristiansen, Chief of Staff (*Collett*)
Margie McAboy (*Stollsteimer*)
Lieutenant Colonel Scott Price (*Evanchick*)
Major Jeremy Richard (*Evanchick*), *presenting*
Cheryl Schriener (*Ward*)
Allie Vaccaro (*Klunk*)
Jennifer Ward-Trupp, Pennsylvania State Police

I. Call to Order

Michael Pennington, Chairman

Chairman Pennington welcomed everyone to the second meeting of the Task Force on Child Pornography.

- Action Item: Approval of Minutes from the October 12, 2021 meeting

District Attorney Jack Stollsteimer made a motion to approve the October 12, 2021 minutes, which was seconded by Senator Judy Ward. The motion carried unanimously.

Chairman Pennington noted that today's meeting consists of two presentations from our law enforcement partners.

II. Update on Data Collection and Data Analysis

Lindsay Vaughan, Charles Gartside, PCCD

Ms. Vaughan recalled that at the last meeting, the Task Force spent time brainstorming through what information would be helpful to the task force's statutory charge. At that time, PCCD had a small data set that included all cases with a charge of 6312 over a 3-year period from 2018-2020. Due to the brainstorming session, PCCD realized that additional data would be needed in order to meet the task force members' requests. As a result, PCCD met with partners at the Sentencing Commission, the Sexual Offender Assessment Board (SOAB), and the Administrative Office of the Pennsylvania Courts (AOPC) and requested and received AOPC data from 2014; Sentencing Commission data that includes cases with a charge of 6312; and SOAB data.

Ms. Vaughan shared a graph of the cases charged over the 3-year time frame, which was broken down by quarter. As requested, a map of where cases are charged geographically was provided and a breakdown of charges by subsection was also provided. A final slide illustrated how we could look at cases with a 6312 charge in comparison to other charges on the same criminal information.

Ms. Vaughan indicated that with the additional data received by PCCD, the information contained in these preliminary illustrations will become much more robust and more valuable.

III. Law Enforcement Presentations

- Pennsylvania Internet Crimes Against Children Task Force
Detective Sergeant Ken Bellis, Delaware County
Jack Stollsteimer, District Attorney, Delaware County

District Attorney Jack Stollsteimer introduced Detective Sergeant Ken Bellis, who presented on the Pennsylvania Internet Crimes Against Children (ICAC) Task Force. 18 U.S. Code § 2258A requires internet service providers to report any kind of child sexual exploitation to the National Center for Missing and Exploited Children. Cyber tips are forwarded to the Delaware County District Attorney's Office, who analyze the reported content and assign the tips to the appropriate investigating agency.

In 2018, a total of 5,262 cyber tips were received in Pennsylvania. In 2020, numbers jumped to over 1,000 tips per month. Law Enforcement is seeing a trend in self-production since the beginning of the pandemic, due to children being at home and more children using devices. Many self-production tips come from YouTube and TikTok, as well as Facebook, Instagram, and Snapchat. In addition to self-production, child enticement and child extortion are trending up.

Tips are classified as Priority 1, which indicates current or imminent risk to a child, and Priority 2, which indicates a possible risk in the near future or is otherwise time sensitive. Tips include a report number, associated cyber tips, personal information (i.e. username, date of birth), the company submitting the report, suspect information (if possible), and IP addresses.

Priority E tips are from electronic service providers, most of which contain images of child exploitation or child pornography. Priority 3 tips are usually calls received from members of the public. Tips can be escalated depending on the situation.

Detective Bellis described a case that took place on Twitch, a platform that offenders have used to exploit children as an illustration of how internet predators utilize gaming and other platforms to target vulnerable children.

Detective Bellis went on to describe the investigative techniques used by law enforcement to investigate child pornography cases.

Detective Bellis also described barriers that law enforcement faces when investigating these cases including dependency on internet service provider procedures and new caselaw that could restrict timely law enforcement intervention when investigating these cases. Detective Bellis specifically discussed, *United State vs. Wilson*, which is a 9th Circuit decision that suppressed evidence from a cyber tip reported that Google reported based on a hash value. The 9th circuit has indicated that law enforcement should obtain a search warrant prior to viewing an image based on hash value alone, which would create a huge burden for state law enforcement.

National Centers are open seven days a week, 24 hours a day. People can report tips by going online or calling 1-800-THE-LOST. You can also visit www.onlinesafety.com.

Representative Kate Klunk asked about the case study that Detective Bellis discussed during his presentation and how the offender was held accountable if he was just live streaming. Detective Bellis indicated that the offender was recording his interactions with children and transferring them to an external storage device.

- PSP Computer Crimes Task Force Perspective
Corporal Christopher Hill
Major Jeremy Richard

Corporal Chris Hill and Major Jeremy Richard presented on the Pennsylvania State Police (PSP) Computer Crime Unit (CCU), Internet Crimes Against Children (ICAC), the National Center for Missing and Exploited Children (NCMEC), cyber tips and how PSP handles them, as well as recidivism, and sentencing.

Of five Computer Crimes Unit office locations, their busiest office is the southeast, covering Fogelsville and the Philadelphia branch. There are 230 computer crime personnel within Pennsylvania, encompassing 4,000 law enforcement agencies and 61 task forces throughout the United States.

Corporal Hill reported that as of November 2021, PSP had received over 1,200 cyber tips. Coordinators receive these tips and provide the information to troopers. Due to the volume, they provide tips to local law enforcement and within the troops. If a child is in danger, it is typically kept within ICAC; however, if it involves a child uploading an image, it may be assigned to one of the troopers where the victim is located. There are also task force members within the PSP, who are ICAC investigators that work with them regarding cyber tips.

Corporal Hill went on to describe the investigative units and techniques utilized by PSP in their pursuit of child pornography offenders.

Dianne Mathias asked if, from a therapeutic standpoint, is there an educational platform they can access to learn this information of the sites that are questionable? Corporal Hill recommended that parents review the privacy settings and disable the chat function as much as possible on their children's devices, depending on the age of the child. Detective Bellis indicated that the NCMEC also has guidance and safety tips on their [website](#). There are also parental guides at [connectsafely.org](#). Ms. Mathias also asked whether shared nude photos on Snapchat have been picked up due to users being underage and the investigators indicated that there are programs that detect if a person has an underage account and nude images come across, they can be flagged.

Representative Klunk asked about the electronics K9s and how they are utilized. Corporal Hill explained that there is a chemical in electronics that dogs are trained to detect. They have had great success in dogs finding SDs cards, flash drives, and phones.

Representative Klunk also asked if once they are doing these previews and determine the person on the scene is involved, how long does it take to upload this information into the national system against other images or any other data that is out there? The investigators indicated that providing information to the national system is a long process – the computer must first be imaged and analyzed forensically, and then the images and videos that are found will be uploaded and categorized (i.e. Category 2 is illegal content, Category 3 may be age difficult content). Once all images are categorized, they are sent to the NCMEC. Using CVIP, the Child Victim Identification Program, they run every image against their database and issue a report to tell how many images have been previously identified, the series name (i.e. Vicky's series), etc.

IV. Brainstorming

Chairman Pennington noted that the Task Force has the opportunity to have up to two additional meetings where we could solicit presenters to provide more background information to answer other questions members may have.

Lindsay Vaughan facilitated a brainstorming session on this issue and around potential recommendations. The task force indicated a desire to learn more about/from the following:

- Psychology experts in this field – sentencing, recidivism, re-offending (are first time penalties deterrent, etc.). – working in our system or outside.
 - Huge issue right now for prosecutors when presenting at SVP hearings.
- Investigators and prosecutors on what their recommendations would be to help them do their jobs. Are there barriers that they come up against that could be removed.
- Issues with the dark web-crime script analysis – how individuals use the dark web – growing phenomenon – how investigators can get more involved.
- The Sentencing Commission is taking a comprehensive look at guidelines – substantial changes are coming. There is an opportunity for this information to inform the guideline changes – we should look at what we have right now – understanding if there are things to make the guidelines better.
- Confusion/inadequacies for minors who produce (purposefully creating videos and sending them)
 - How do we treat minors who are producing?
 - Are there ways to prevent images from going to the dark web?
 - Per Michele Walsh, it is not unusual to have this happen – the juvenile system is equipped – it is definitely a problem.
- Sentencing
 - There is room to come down hard – seems to be a lack of education/knowledge about how to get the best sentences.
 - Education to prosecutors and judges

- Businesses that host these platforms – to understand their internal processes and regulations that help their organization and law enforcement.
- Someone from CACs to discuss forensic interview process and what they hear from victims.
- Psychological impact on law enforcement and investigators – how/if we are helping them cope with this type of material.
 - There is an annual screening for FBI folks
- Child Sexual Exploitation and the overlap with Human Trafficking laws in PA – 6312 and HT laws – are they compatible?
- Has any profiling been done with internet offenders v. stacking up against pedophiles. Is there any tracking of vulnerable children/on the internet v. others.
- Experts/investigations who teach peer to peer investigations – file share programs used to share child pornography files.
- Was this law really meant to catch young people who are engaging in this behavior.
 - Do we want to be criminalizing minors under what could be an innocent circumstance?
- Difficulties in prosecuting child abuse cases – see that reflected in negotiations.
 - In the cases under 6312, are there similar issues that come up surrounding prosecution. Using and viewing v. touch offenses.

The task force members also provided brainstorming recommendations for future consideration. The group was asked “If you had to make a recommendation TODAY, what would it be? The following list was generated:

- Hoping to include a recommendation re: education at schools.
 - Specifically, around the fact that this type of material is criminal.
 - Lots of complexity here about coercion and peer pressure, etc.
 - Prosecuting victims who share – prevents these individuals from getting help.
 - How to get help
- Educating teachers, parents, etc. about the criminality/dangers of this behavior.
- To the legislature – stricter laws around internet privacy – laws about what ISPs are allowed to do with information that they collect.
- Educational programming – mandatory reporting of this type of behavior as child abuse.
- Funding opportunities for law enforcement to be better equipped to conduct these investigations.

These brainstorming exercises will be used to help shape how we move forward over the next several months, as well as provide content for upcoming meetings and determine how we utilize the data that we already have from AOPC, the Sentencing Commission, and the Sexual Offender Assessment Board.

V. Looking Forward: Proposed Plan to Complete Statutory Obligations and Report *Chairman Pennington*

Chairman Pennington thanked everyone for their ideas and insights. Save the Date invites will go out for the following meetings.

- **January 12, 2022, 1:00-3:00**
 - Topical meeting with presentation – Topic(s) TBD today
- **April 20, 2022, 1:00-3:00**
 - Final Data Presentation by PCCD
 - Other topical presentations as identified
- **July 13, 2022, 1:00-3:00**
 - Meeting to finalize recommendations of the committee

- **September 28, 2022, 1:00-3:00**
 - Meeting to present and adopt the draft report
 - In the event the report needs revision prior to adoption this leaves us 2 weeks to revise, schedule a final meeting and adopt.

VI. Public Voice

There was no public voice.

VII. Adjournment

Chairman Pennington

Chairman Pennington thanked everyone for their service on the Task Force. He called for a motion to adjourn the meeting. Ms. Lukima made the motion, which was seconded by Ms. Perrotto. The meeting adjourned at 2:52 PM.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY
3101 N. Front Street, Harrisburg, PA

Task Force on Child Pornography

January 12, 2022

MINUTES

Members/Designees: Mr. Michael Pennington, Executive Director, PCCD
Mr. Mark Bergstrom, Executive Director, Sentencing Commission
Detective Sergeant John Duby, Investigation Division, District Attorney of Lancaster County
Ms. Suzanne Estrella, Esq., Victim Advocate, Office of Victim Advocate
Colonel Robert Evanchick, Commissioner, Pennsylvania State Police
Representative Kate Klunk, 196th Legislative District
Ms. Joyce Lukima, Chief Operating Officer, PCAR
Ms. Dianne Mathias, Child, Family Therapist and Trainer, It's a Playful Journey
Mr. Sean McCormack, Esq., Chief Deputy District Attorney, Cumberland County
Detective Michael McMorrow, Wayne County Detective
Ms. Abbie Newman, Chief Executive Officer, Mission Kids Child Advocacy Center
Ms. Alissa Perrotto, President/CEO, SARCC of Lebanon and Schuylkill Counties
Mr. Robert Stein, Member SOAB, Co-founder, Center for Neurobehavioral Health, Ltd.
Mr. Jack Stollsteimer, District Attorney, Delaware County
Ms. Michelle Kelly Walsh, Deputy Attorney General, Chief of Child Predator Unit
Senator Judy Ward, Senate District 30

Staff in Attendance: Lindsay Busko
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Kirsten Kenyon
Robert Orth
Lindsay Vaughan

Joint State Government: Ronald Grenoble
Yelena Khanzhina
Glenn Pasewicz

Additional Guests: Nathan Akers
Greg Beckenbaugh
Hannah Cornell
Meghan Dade
Dr. Stacey Ginesin
Representative James Gregory
Tom Holroyd
Christopher Jones, *presenting*
Major Jeremy Richard
Allie Vaccaro
Aaron Weltner

I. Call to Order
Michael Pennington, Chairman

Chairman Pennington welcomed everyone to the third meeting of the Task Force on Child Pornography. Roll call of members was taken. Attendees were reminded that the meeting was being recorded, to which there were no objections.

- Action Item: Approval of Minutes from the November 17, 2021 meeting

District Attorney Jack Stollsteimer made a motion to approve the November 17, 2021 minutes as presented, which was seconded by Senator Judy Ward. The motion carried unanimously.

II. **Update on Survey to Prosecutors and Law Enforcement**

Michael Pennington, Chairman

In response to the request during the last meeting to hear from prosecutors and law enforcement regarding their experiences with these cases, including barriers and roadblocks, PCCD developed and issued a short survey to law enforcement and prosecutors in December. Unfortunately, the response rate is currently lower than anticipated. We are going to re-send the survey to allow additional time for responses. The survey responses will be included with the materials for the next meeting.

In addition to issuing the survey, PCCD took suggestions from the last meeting and over the next several months have lined up experts to present to the task force on some of those topics.

The first presentations were from District Attorney Stollsteimer and Detective Ken Bellis from Delaware County, and from the Pennsylvania State Police on investigating these cases. They focused largely on the way the Internet Crimes Against Children Taskforce works, the number of cyber tips that we see in Pennsylvania, and the tools available to law enforcement to investigate these types of crimes. Continuing with the theme of investigating and prosecuting these cases, two additional presenters were introduced.

III. **Presentation: The Role of the CAC and Forensic Interviewer in Response to Child Sexual Exploitation**

Abbie Newman – CEO, Mission Kids, Montgomery County, PA

Hannah Cornell – External Affairs Manager, Mission Kids, Montgomery County, PA

Abbie Newman presented on the role of Children's Advocacy Centers (CACs) and the forensic interviewer in the response to child sexual exploitation. CACs are set up by county and partner with law enforcement, child and youth services, and the district attorney's office. Currently, 41 of the 67 counties in Pennsylvania have a CAC. Ms. Newman detailed the services offered by CAC's and how forensic interviews are conducted for child victims.

Discussion

Ms. Newman opened the floor to questions and Joyce Lukima asked if children who are not interacting with the criminal justice system still receive services from the CAC? Ms. Newman responded that in these time intensive cases, the victim advocate is a strong member of the team. Although charges may not be filed, it does not mean that they do not need services. The victim advocate makes sure they are set up for the services they need.

Bob Stein asked if, when looking at the reasons why charges are not filed, is it more in the children's' difficulty in reporting, lack of evidence, or something else? Ms. Newman responded that in these cases, it is not that victims are not cooperating, but these are difficult cases, evidence can be difficult to process, etc.

Mark Bergstrom asked if the sentencing commission should be considering assessment and treatment of children as part of the sentencing approach? Ms. Newman responded that Mission Kids does a lot of work with youth with problematic sexualized behaviors. When material is youth produced, age appropriate "experimentation" can be difficult to identify.

Ms. Hannah Cornell noted that of the 53 cases identified this year, only one victim recognized themselves a victim of this crime.

Ms. Suzanne Estrella asked if Ms. Newman had suggestions for what additional research needs to be done in this area. Ms. Newman responded that Mission Kids partnered with University of Pennsylvania's Field Center for Children's Policy, Practice and Research to try to conduct research on who the perpetrators of this offense are; however, they could not find funding. There are many research studies we could do that could help us find the answers to pressing questions.

Finally, Ms. Diane Mathias asked if significant others or the attachment figure – parents, caregivers – are provided advocacy through the CAC. Ms. Newman responded that Mission Kids' family advocates work with nonoffending caregivers to provide support. In cases of domestic violence, they work closely with Laurel House, as well as the District Attorney's office and law enforcement, to provide services to non-offending caregivers.

IV. Presentation: Prosecuting Child Pornography Cases and the Differences between Adult and Juvenile Prosecutions

*Chief Deputy Attorney General, Child Predator Section – Michele Kelly Walsh
Senior Deputy Attorney General, Child Predator Section – Christopher Jones*

Michele Kelly Walsh and Christopher Jones presented on, 18 Pa. C.S. § 6312, Sexual Abuse of Children, including grading, sentencing guidelines, and Offense Gravity Scores (OGS). The presentation was to inform the Task Force on how prosecutors approach charges under 6312 and what tools are available to prosecutors when seeking appropriate sentences for offenders.

Discussion

Abbie Newman asked if they see that the majority of cases are of images of prepubescent children? Both Michele Walsh and Chris Jones agreed that they typically see images that *clearly* depict children. In fact, Mr. Jones pointed out that in trials that he has prosecuted, he has never had to bring in a pediatrician or expert to determine that the victim depicted is a minor.

V. Representative Kate Klunk and Representative James Gregory

On January 6, 2022, Representative James Gregory circulated a co-sponsorship memo that proposes legislation to require that smart phones and tablets be enabled with a filter that would "protect children from finding harmful material online." Representative Klunk brought this memo to the Task Force's attention, which was included in the materials that were provided for today's meeting.

Rep. Gregory spoke about his proposed legislation and the effort to make phone manufacturers aware of the issue, including the development of HB72 in Utah. Representative Gregory thanked the task force for its work and time to discuss the potential legislation.

Discussion

Dr. Robert Stein noted that the importance of prevention has not been prioritized and that early exposure to deviant pornography can affect the sexual preferences that children develop through adolescence. Prevention approaches applied to legislation is the wisest approach.

Alissa Perrotto asked how the technology works? Representative Gregory responded that filters would be installed on phones and parents would be given codes to remove them, addressing the concern of freedom of speech.

**VI. Recommendation Exercise:
If you had to make a recommendation today what would it be?**

Lindsay Vaughan – PCCD

In lieu of discussion, Chairman Pennington asked members to send any ideas or recommendations, based on what we've heard today, to Lindsay Vaughan.

VII. Meeting Schedule

Chairman Pennington

Chairman Pennington thanked everyone for their ideas and insights. Save the Date invites have been sent out for our remaining meetings, but the subjects provided are flexible and may change dependent upon the needs of the committee.

VIII. Public Voice

There was no public voice.

IX. Adjournment

Chairman Pennington

Chairman Pennington thanked everyone for their time and service on the Task Force. He called for a motion to adjourn the meeting. Rep. Klunk made the motion, which was seconded by DA Stollsteimer. The meeting adjourned at 2:32 PM.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY
3101 N. Front Street, Harrisburg, PA

Task Force on Child Pornography

February 16, 2022

MINUTES

Members/Designees: Mr. Michael Pennington, Executive Director, PCCD
Mr. Mark Bergstrom, Executive Director, Sentencing Commission
Senator Maria Collett, 12th Senatorial District
Detective Sergeant John Duby, Investigation Division, District Attorney of Lancaster County
Ms. Suzanne Estrella, Esq., Victim Advocate, Office of Victim Advocate
Colonel Robert Evanchick, Commissioner, Pennsylvania State Police
Representative Kate Klunk, 196th Legislative District
Ms. Dianne Mathias, Child, Family Therapist and Trainer, It's a Playful Journey
Detective Michael McMorrow, Wayne County Detective
Ms. Abbie Newman, Chief Executive Officer, Mission Kids Child Advocacy Center
Ms. Alissa Perrotto, President/CEO, SARCC of Lebanon and Schuylkill Counties
Mr. Robert Stein, Member SOAB, Co-founder, Center for Neurobehavioral Health, Ltd.
Mr. Jack Stollsteimer, District Attorney, Delaware County
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Diane Morgan
Robert Orth
Debra Sandifer
Foday Turay
Lindsay Vaughan

Joint State Government: Ronald Grenoble
Yelena Khanzhina
Stephen Kramer
Glenn Pasewicz

Additional Guests: Nathan Akers
David Brogan
Meghan Dade
Dr. Stacey Ginesin
Tom Holroyd
Rick Parsons
Major Jeremy Richard
Allie Vaccaro

I. Call to Order
Michael Pennington, Chairman

Chairman Pennington welcomed everyone to the fourth meeting of the Task Force on Child Pornography. Roll call of members was taken. Attendees were reminded that the meeting was being recorded, to which there were no objections.

- Action Item: Approval of Minutes from the January 12, 2022 meeting

Senator Maria Collett made a motion to approve the January 12, 2022 minutes as presented, which was seconded by Abbie Newman. The motion carried unanimously.

II. Law Enforcement and Prosecutor Survey

Lindsay Vaughan, PCCD

Included in the meeting materials was a summary of the Law Enforcement and Prosecutors survey responses. The survey was sent to the PA Chiefs of Police Association and the Pennsylvania District Attorneys Association to solicit information regarding barriers faced when investigating and prosecuting Child Pornography cases. PCCD received 71 responses from 28 counties. A map was provided to show where individuals responded from and the number of responses received. Some of the responses align with potential recommendations that have already been identified by the Taskforce.

III. Presentation: Sexually Violent Offender Assessments with Child Pornography Offenders

Dr. Robert Stein, Sexual Offender Assessment Board

Accompanied by Stacey Ginesin and Meghan Dade

Dr. Stein presented on the Sexual Offender Assessment Board (SOAB) process and how it works with 6312 offenders.

Discussion

Dr. Stein opened the floor to questions. Alissa Perrotto asked about the idea of containing rather than curing in the field of sex offender treatment and how it fits with other addictive treatment? Dr. Stein responded that it fits quite well and there is a general feeling within the addiction treatment field, such as alcoholism; you are not cured, you are in recovery – and for these offenders you have to remain vigilant. Once a pedophile completes active treatment, you are not treating them the rest of their lives, you are helping them contain for the rest of their lives.

IV. Presentation: Sentencing Guidelines

Mark Bergstrom, Executive Director of the PA Commission on Sentencing

Mr. Bergstrom presented on sentencing guidelines, including the indeterminate sentencing structure in Pennsylvania, the use of Prior Record Scores and Offense Gravity Scores to determine a recommendation for sentencing, and discussed data specific to 6312 offenders in Pennsylvania.

Discussion

Michele Walsh inquired regarding intermediate punishment sentences for these offenders. Ms. Walsh noted that she has taken the position as a prosecutor that 6312 is not applicable for this offense (6312). Mr. Bergstrom agreed, however with recent amendments to the law, intermediate punishment is now Probation with Restrictive Conditions and generally the takeaway is that SORNA offenses run into eligibility problems for DOC programming and should be carefully viewed by the court. It may not be technically ineligible due to the recent restructuring of the statute. However, Mr. Bergstrom also noted that ineligibility factors can be waived by the DA or the court.

V. Federal EARN IT Act

Abbie Newman, CEO, Mission Kids

Ms. Newman provided two proposed bills and a summary of changes proposed at the federal level as it relates to child sexual abuse material. We will touch on this at the next meeting.

**VI. Brainstorming Exercise:
If you had to make a recommendation today, what would it be?**

Lindsay Vaughan – PCCD

Chairman Pennington asked members to send any ideas or recommendations, based on what was heard today, to Lindsay Vaughan.

VII. Meeting Schedule

Chairman Pennington

Chairman Pennington thanked everyone for their ideas and insights. Save the Date invites have been sent out for our remaining meetings.

VIII. Public Voice

There was no public voice.

IX. Adjournment

Chairman Pennington

Chairman Pennington thanked everyone for their time and service on the Task Force. He called for a motion to adjourn the meeting. Ms. Perrotto made the motion, which was seconded by Ms. Newman. The meeting adjourned at 2:34 PM.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY
3101 N. Front Street, Harrisburg, PA

Task Force on Child Pornography

April 20, 2022

MINUTES

- Members/Designees:** Mr. Michael Pennington, Executive Director, PCCD
Mr. Andrew Barnes, Designee for Honorable Meg Snead
Mr. Mark Bergstrom, Executive Director, Sentencing Commission
Senator Maria Collett, 12th Senatorial District
Ms. Suzanne Estrella, Esq., Victim Advocate, Office of Victim Advocate
Colonel Robert Evanchick, Commissioner, Pennsylvania State Police
Representative Kate Klunk, 196th Legislative District
Ms. Joyce Lukima, Chief Operating Officer, PCAR
Mr. Sean McCormack, District Attorney, Cumberland County
Detective Michael McMorrow, Wayne County Detective
Ms. Abbie Newman, Chief Executive Officer, Mission Kids Child Advocacy Center
Ms. Alissa Perrotto, President/CEO, SARCC of Lebanon and Schuylkill Counties
Mr. Robert Stein, Member SOAB, Co-founder, Center for Neurobehavioral Health, Ltd.
Mr. Jack Stollsteimer, District Attorney, Delaware County
Ms. Michele Kelly Walsh, Chief Deputy Attorney General, Chief of Child Predator Unit
Senator Judy Ward, Senate District 30
- Staff in Attendance:** Kathleen Buckley
Lindsay Busko
Charles Gartside
Heather Hewitt
Kirsten Kenyon
Diane Morgan
Robert Orth
Debra Sandifer
Lindsay Vaughan
- Joint State Government:** Ronald Grenoble
Yelena Khanzhina
Stephen Kramer
Glenn Pasewicz
- Additional Guests:** Nathan Akers
Greg Beckenbaugh
David Brogan
Meghan Dade
Dr. Stacey Ginesin
Tom Holroyd
Rick Parsons
Major Jeremy Richard
Major Ulrich Serell
Allie Vaccaro
Aaron Weltner

I. Call to Order

Michael Pennington, Chairman

Chairman Pennington welcomed everyone to the fifth meeting of the Task Force on Child Pornography. Roll call of members was taken. Attendees were reminded that the meeting was being recorded, to which there were no objections.

- Action Item: Approval of Minutes from the February 16, 2022 meeting

Mr. Andrew Barnes made a motion to approve the February 16, 2022 minutes as presented, which was seconded by Senator Maria Collett. The motion carried unanimously.

II. Presentation: 6312 in Pennsylvania – Data Analysis

Lindsay Vaughan, Charles Gartside, Dr. Robert Orth, PCCD Research Team

Lindsay Vaughan presented on data and trends surrounding the crime of 18 Pa. C.S. § 6312, including the prevalence of the crime in Pennsylvania, the demographics of offenders, the use of Sexual Offender Assessments, and the sentences offenders receive.

Chairman Pennington noted that the meeting materials included additional summary information on the EARN-IT legislation that is currently pending at the federal level.

III. Presentation: Community Supervision of 6312 Offenders

Rick Parsons, Consultant, RAN Customized Training and Consulting

Mr. Rick Parsons presented on the supervision of individuals convicted of possession, dissemination, and manufacturing child sexual abuse material. This included what they are doing in probation regarding supervision of the population, specifically those charged under 6312, and current challenges they face. He also touched on what they know about treatment and whether it is working with this population. Finally, he discussed how to access a deeper dive into ways the offender population is accessing the material.

Discussion

Ms. Vaughan asked if they know, Commonwealth-wide, whether psycho-sexual evaluations are routinely used for those on supervision? Mr. Parsons responded that after offenders have been sentenced, the treatment agency will likely do a quality intake on the individual, but not necessarily a full psycho-sexual evaluation.

IV. Preliminary Recommendations Discussion

Chairman Pennington

Chairman Pennington reminded the Task Force that its charge is to submit a final written report to the Governor and legislative leadership on improvements related to the investigation and prosecution of child pornography as defined in 6312, and recommend necessary changes in state statutes and practices, policies, and procedures related to the recognition or prosecution of child pornography.

Ms. Vaughan led a discussion on the preliminary recommendations to include in the final report. If members had to make a recommendation right now, what would it be? Below are some suggestions made by members of the taskforce:

- Addressing discrepancy between number of cyber tips received by the ICAC task force vs. number of cases that are charged.

- Keep in mind – some cases are self-produced by a juvenile – and may not be chargeable.
- Investigate risk assessment tools for law enforcement to utilize to determine what cases/offenders might be higher risk.
- Training for law enforcement on necessary equipment and technology relating to the investigation of these cases. Additional resources for analysis of electronic devices. PSP and OAG may be overwhelmed with devices coming to them. Also competing with other types of cases.
- Increase training for how to investigate CSAM cases.
- Increase access to/funding for investigative devices – perhaps a regional approach would allow greater access.
- Education to address the widely varying use of sentencing enhancements statewide – In some counties sentencing enhancements seem to be used with regularity while, in other counties they are not used much, or at all. Finding opportunities to do training on those enhancements. Working with PDAI to educate on the use of enhancements and how they can be utilized.
 - Focused training on 6312 specifically and talking about how the parts all fit together.
- How can we help folks that are victimized? Need to include ways to explore the best supports for folks who are victimized in this way – both children and adults.
 - Take into account the uniqueness of CP and the impact of images that may stay alive for a long time.
 - Best way to support our victims.
- Looking at enhanced penalties for operators of websites, places that allow these images to remain on their sites. The folks who provide the infrastructure need to be held accountable.
- Researching and drafting a law that would hold Internet Service Providers accountable and that could be implemented in a constitutional way.
- Statute of limitations – currently 12 years (for 6312(b) if victim was under 18, SOL extended until minor reaches the age of 55) – possibly recommend a longer or unlimited SOL.

V. Meeting Schedule

Chairman Pennington

At the next meeting, we will have two final presentations. One presentation will be provided by the PCCD research team and will focus on the recidivism rates of the offenders who were charged with section 6312 between 2014 and 2021. The other will be from Dr. David Delmonico from Duquesne University who will discuss research and trends related to Child Sexual Abuse Material and offenders who commit this crime. We will also discuss report writing and next steps for recommendations.

He noted that the May 25 meeting will be extended to 3:00 p.m.

VI. Public Voice

There was no public voice.

VII. Adjournment

Chairman Pennington

Chairman Pennington thanked everyone for their time and service on the Task Force. He called for a motion to adjourn the meeting. Ms. Lukima made the motion, which was seconded by Mr. McCormack. The meeting adjourned at 3:01 PM.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY
3101 N. Front Street, Harrisburg, PA

Task Force on Child Pornography

May 25, 2022

MINUTES

Members/Designees: Mr. Michael Pennington, Executive Director, PCCD
Mr. Andrew Barnes, Designee for Honorable Meg Snead
Mr. Mark Bergstrom, Executive Director, Sentencing Commission
Detective Sergeant John Duby, Investigation Division, District Attorney of Lancaster County
Ms. Suzanne Estrella, Esq., Victim Advocate, Office of Victim Advocate
Colonel Robert Evanchick, Commissioner, Pennsylvania State Police
Representative Kate Klunk, 196th Legislative District
Ms. Joyce Lukima, Chief Operating Officer, PCAR
Ms. Dianne Mathias, Child, Family Therapist and Trainer, It's a Playful Journey
Mr. Sean McCormack, District Attorney, Cumberland County
Detective Michael McMorrow, Wayne County Detective
Ms. Alissa Perrotto, President/CEO, SARCC of Lebanon and Schuylkill Counties
Mr. Robert Stein, Member SOAB, Co-founder, Center for Neurobehavioral Health, Ltd.
Mr. Jack Stollsteimer, District Attorney, Delaware County
Ms. Michele Kelly Walsh, Chief Deputy Attorney General, Chief of Child Predator Unit
Senator Judy Ward, Senate District 30

Staff in Attendance: Kathleen Buckley
Lindsay Busko
Charles Gartside
Heather Hewitt
Kirsten Kenyon
Robert Orth
Debra Sandifer
Lindsay Vaughan

Joint State Government: Ronald Grenoble
Yelena Khanzhina
Stephen Kramer
Glenn Pasewicz

Additional Guests: Greg Beckenbaugh
Meghan Dade
Dr. David Delmonico
Dr. Stacey Ginesin
Jane Kim
Allie Vaccaro

I. Call to Order

Michael Pennington, Chairman

Chairman Pennington welcomed everyone to the sixth meeting of the Task Force on Child Pornography. A moment of silence was observed in memory of the children and teachers killed in Uvalde, Texas. Roll call of members was taken. Attendees were reminded that the meeting was being recorded, to which there were no objections.

- Action Item: Approval of Minutes from the April 20, 2022 meeting

Mr. Sean McCormack noted that he is now District Attorney of Cumberland County. This will be reflected in the minutes.

Mr. McCormack made a motion to approve the April 20, 2022 minutes as presented, which was seconded by Mr. Jack Stollsteimer. The motion carried unanimously.

II. Presentation: Research Trends: CSAM Offenders

Dr. David Delmonico, Professor and Director of the Online Behavior Research and Education Center at Duquesne University

Dr. Delmonico presented on online non-production child pornography offenders. His presentation focused on risk for recidivism and included information on CSAM offenders compared to contact offenders.

Ms. Michele Walsh asked Mr. Delmonico to clarify his opinion regarding whether sexual interest in pubescent or peri pubescent constitutes a disorder or mental abnormality. Dr. Delmonico responded that, sexual attraction to post-pubescent children *who look more like adults*, is considered a non-deviant interest from a psychological perspective, even if the children are under the age of consent. The only disorder that's diagnosable as a psychological disorder is pedophilia. When they do sexual interest testing with offenders and non-offenders, around 90% have interest in post-pubescent males/females and adult males/females. From a psychological standpoint, interest alone in post-pubescent children is not considered to be deviant or diagnosable.

III. Recidivism Discussion

Dr. Robert Orth, Mr. Charles Gartside, PCCD Research Team

Dr. Orth presented his recidivism study on 885 § 6312 offenders in Pennsylvania. The recidivism study showed that offenders charged with § 6312 had relatively low rates of recidivism both one, and three years after they were released from incarceration or placed on probation.

Ms. Walsh asked Dr. Orth to clarify what was meant by "6312 - Only Charge", in the handout provided. Dr. Orth responded that "§ 6312 only" means that the offender was charged exclusively with § 6312 charges and no other charges on the criminal information. Dr. Orth noted that 55% of the people in the sample were charged only with § 6312; 45% had additional charges.

IV. Recommendations and Report Drafting

Chairman Mike Pennington and Lindsay Vaughan

Chairman Pennington reiterated that the Task Force's purpose is to conduct a review to ascertain any inadequacies related to the offense of child pornography in section 6312 of Title 18. From this review, we are to include recommendations for improvements to the investigation and prosecution of child pornography, as well as recommendations for any necessary changes in state statutes and practices, policies, and procedures relating to the recognition or prosecution of child pornography.

Chairman Pennington has asked the team at PCCD to review the brainstorming ideas developed by task force members and identify recurring themes that may lead us to some preliminary recommendations. The goal is to achieve consensus on the themes we've identified so that we can turn them over to our partners with the Joint State Government Commission to begin drafting a report.

Refining Recommendations

Where are the gaps in our current system and what recommendations can we make to fix them?

- Investigation
 - Improve access to training for law enforcement
 - Targeted funding to build capacity within police departments, including specialized units, technology, training, and increased complement.
- Prosecution
 - Asking relevant stakeholders (Sentencing Commission, AOPC, PDAA) to encourage training opportunities for prosecutors and judges regarding the availability and use of sentencing enhancements and other tools when evaluating these cases.
- Post-Conviction – SOAB Assessments
 - Relevant stakeholders (AOPC, SOAB) should encourage both general and targeted education and training opportunities to judges and prosecutors regarding the legal requirement for and benefits of the SOAB Assessment.
- Post-Conviction – Community Supervision
 - Targeted funding to improve supervision to include training and analytical equipment, and developing multi-disciplinary teams.
- Law, Policy, and Procedure – Terminology
 - Replace “Child Pornography” with “Child Sexual Abuse Material”.
- Law, Policy, and Procedure – Legislation
 - Draft and introduce legislation creating new crimes or enhanced civil penalties for operators of websites, internet providers, corporations, etc. but only if it can be done within the bounds of the U.S. Constitution.

Ms. Estrella asked if there is any information on what currently happens during the course of investigation to identify a child that is the subject of CSAM? Ms. Estrella said it is difficult to determine what could be enhanced or improved if we aren't sure what services are being provided or what the methods are to determine where the child is or if they are safe.

Mr. McCormack said that the materials and abuse we are discussing is often not taking place locally and that the creation and dissemination of CSAM is a global issue. Many of the images are created outside of the United States. In investigations, when they have materials with unidentified children, they try to find ways to identify them. He has found that, in most cases, they are unable to identify unknown victims.

Ms. Walsh reiterated that oftentimes, in possession and distribution cases, these are not victims they have the ability to identify or contact, whereas it is different in manufacturing cases. Ms. Walsh indicated that in manufacturing cases, when victims are identifiable, these victims are then provided the services they need.

Chairman Pennington noted that this proposed list of recommendations is not necessarily the “end all, be all” of the recommendations in the final report. These inadequacies were based on brainstorming ideas and the sum of information presented to us.

Chairman Pennington requested suggestions for additional inadequacies or gaps identified through this process?

Ms. Estrella would like the group to consider whether it would be beneficial to have a checklist or best practices of steps with direction to possibly identify an unidentified child.

Mr. McCormack noted that, with recidivism rates showing to be fairly low, one concern is focusing only on the offenders. When we do this, we forget the abuse and the children who are being abused for amusement, entertainment, and sexual gratification. Sentencing offenders serves not only to reduce recidivism but also serve the purpose of punishment for a crime committed against children.

Mr. Bergstrom noted that he supports the education and efforts to collaborate. Although the focus of the task force is on this specific statute, issues surrounding the use of enhancements and other sentencing issues are broader than just CSAM. We can put guidelines in place, but half the time they are considered, half the time they are not. How do we get everyone involved? Enhancements aren't always used due to facts of the case, or where there is a vulnerable victim. We have to have a better way to accurately capture what's happening in the field and get good quality data to understand the landscape in PA. We need to try to improve all practices, including fingerprinting.

Ms. Walsh noted that changing the language/terminology used in the PA code is something we could come to a quick consensus on. Changing the language may serve as an educational tool to ensure that these are not viewed as victimless crimes. It is not something to be dismissed as "just pictures". Education would be a great tool to give a broader perspective on how to handle and evaluate these cases and changing the language might help get this attention.

Everyone agreed to begin drafting the report with the proposed recommendations, understanding that we will have an opportunity to review the draft, make suggestions to the language or content, and have time to gather information and make those adjustments before the final report is agreed upon.

V. Meeting Schedule

Chairman Pennington

Chairman Pennington thanked everyone for their ideas and insights. Save the Date invites have been sent out for our remaining meetings.

VI. Public Voice

There was no public voice.

VII. Adjournment

Chairman Pennington

Chairman Pennington thanked everyone for their time and service on the Task Force. He called for a motion to adjourn the meeting. Ms. Walsh made the motion, which was seconded by Ms. Perrotto. The meeting adjourned at 2:51 PM.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY
3101 N. Front Street, Harrisburg, PA

Task Force on Child Pornography

July 13, 2022

MINUTES

Members/Designees: Mr. Michael Pennington, Executive Director, PCCD
Mr. Mark Bergstrom, Executive Director, Sentencing Commission
Senator Maria Collett, 12th Senatorial District
Detective Sergeant John Duby, Investigation Division, District Attorney of Lancaster County
Ms. Suzanne Estrella, Esq., Victim Advocate, Office of Victim Advocate
Colonel Robert Evanchick, Commissioner, Pennsylvania State Police
Representative Kate Klunk, 196th Legislative District
Ms. Joyce Lukima, Chief Operating Officer, PCAR
Ms. Dianne Mathias, Child, Family Therapist and Trainer, It's a Playful Journey
Ms. Abbie Newman, Chief Executive Officer, Mission Kids Child Advocacy Center
Ms. Alissa Perrotto, President/CEO, SARCC of Lebanon and Schuylkill Counties
Mr. Robert Stein, Member SOAB, Co-founder, Center for Neurobehavioral Health, Ltd.
Ms. Michele Kelly Walsh, Chief Deputy Attorney General, Child Predator Section
(previously misidentified as Child Predator Unit)
Senator Judy Ward, Senate District 30

Staff in Attendance: Kathleen Buckley
Charles Gartside
Heather Hewitt
Kirsten Kenyon
Robert Orth
Debra Sandifer
Lindsay Vaughan

Joint State Government: Ronald Grenoble
Yelena Khanzhina
Stephen Kramer
Glenn Pasewicz

Additional Guests: Nathan Akers
Greg Beckenbaugh
Meghan Dade
Dr. Stacey Ginesin
Tom Holroyd
Catherine Stetler
Major Serell Ulrich

I. Call to Order

Michael Pennington, Chairman

Chairman Pennington welcomed everyone to the seventh meeting of the Task Force on Child Pornography. Roll call of members was taken. Attendees were reminded that the meeting was being recorded, to which there were no objections.

- Action Item: Approval of Minutes from the May 25, 2022 meeting

Senator Maria Collett made a motion to approve the May 25, 2022 minutes as presented, which was seconded by Ms. Alissa Perrotto. The motion carried unanimously.

II. Discussion: Proposed recommendation to draft legislation holding ISPs accountable
Stephen Kramer, Esq., Joint State Government Commission

Based on discussions throughout various meetings of the task force, one of the proposed draft recommendations was to “draft and introduce legislation creating new crimes or enhanced civil penalties for operators of websites, internet providers, corporations, etc., that allow child pornography to reside on their platforms or be transmitted through their platforms/infrastructure”.

When discussed at the last meeting, the PCCD staff noted the need for additional research on this topic in order to ensure that the Task Force could make this suggestion in a constitutionally sound way. The Joint State Government Commission undertook this research. Stephen Kramer, a staff attorney for the Commission, discussed some concerns raised by their research.

Legal concerns that were addressed:

- Federal Preemption – Federal law already allows civil and criminal liability for Internet Service Providers (ISPs) that knowingly allow access to child pornography but provides civil and criminal immunity to ISPs who, in good faith, voluntarily block access to it. No legal action may be brought, and no liability may be imposed, under any State or local law that is inconsistent with the immunity. The Task Force recommendation would likely be inconsistent with both the current obligations and immunities (18 U.S.C. § 2258(A) and 47 U.S.C. § 230 respectively) for ISPs under Federal law and thus would be preempted and unenforceable. A state law inconsistent with these provisions could also burden interstate commerce, an area of regulation preempted by the Federal government under the dormant commerce clause.
- Fourth Amendment/Privacy Protections – Requiring ISPs to affirmatively search for and report child pornography may violate the Fourth Amendment of the U.S. Constitution’s protection against unreasonable searches and seizures. A mandate that ISPs conduct searches could transform ISPs into government agents, whose warrantless search would be a violation of the Fourth Amendment. If the ISP as a government agent would be required to obtain a warrant for a search, an ISP would no longer be considered private, and law enforcement would lose the advantage of identifying child pornography images through the antecedent private search exceptions to the Fourth Amendment.
- First Amendment/Free Speech Protections – A child pornography ban is perfectly legal; child pornography is not protected speech under our laws. However, innocent speech is protected and any prior and general restraints by the government would require due process of law, which is notice and a right to be heard. A Federal Court held that the over-blocking inherent in technology has led to the blockage of constitutionally protected communications, which offends the First Amendment. Consequently, any recommendation mandating ISPs search for and block child pornography images may run afoul of this holding and the First Amendment.

Given the nature of these areas of concern, staff from JSGC and PCCD suggested that the recommendation originally proposed be abandoned. The task force discussed other options for a recommendation surrounding the accountability of ISPs in light of the legal issues surrounding this particular proposed recommendation.

Mr. Bergstrom wondered if the Task Force could make a recommendation to the Congressional Delegation or on the Federal side. Ms. Newman suggested making a recommendation that would take effect if the EARN-IT Act, or something similar, passed, so that Pennsylvania would mirror Federal law. She noted that the EARN-IT Act did not include ISPs affirmatively looking for child pornography; rather, if it were flagged, they had the responsibility to remove it. Ms. Newman also noted that the legal memo provided implies that the volume of tips regarding child pornography is too high to allow for a system of due process and that the fact of so many tips alone is very concerning. Ms. Newman suggested that perhaps the Task Force should recommend a system for due process, as opposed to ignoring the monumental number of tips.

Mr. Stein asked if language requiring ISPs to tag pictures known as child pornography would help prevent that material from making its way around the internet? Ms. Vaughan noted that while many ISPs do this voluntarily, mandating the tagging of images could raise the same fourth amendment concerns as mandating ISPs to search for and remove images. In addition, one recent court decision from California suppressed evidence of child pornography that was sent to law enforcement based on a “tagged” image where the analyst failed to physically review the image before sending it to law enforcement.

Ms. Walsh indicated that the proposals discussed may be beyond the scope of the Task Force’s mandate to assess the inadequacies of 6312, and suggested that the report recommend that the PA legislature follow the progress of the federal EARN-IT Act and take action if the EARN-IT Act were to pass. Ms. Newman asked if legislators could work with ISPs to incentivize them to assist in eliminating images of child pornography and Ms. Perrotto agreed. Senator Ward offered to look into this as an option while the report was still in the drafting phase.

Members of the task force ultimately agreed that the originally proposed recommendation should not be included in the report, but at the very least, language suggesting that the PA legislature follow the EARN-IT Act should be included in the report.

PCCD agreed to work with members to craft language to include in the report.

III. Report Drafting Discussion

Chairman Mike Pennington

Chairman Pennington first addressed a concern raised by Ms. Estrella at a previous meeting regarding the development of a checklist to assist law enforcement in identifying victims in these photos when they are non-production cases.

While conducting research about this topic, PCCD staff noted that much of the technology that is used to assist in identifying victims is incredibly advanced, and that both the National Center for Missing and Exploited Children (NCMEC) and the FBI make themselves available to assist local law enforcement with these efforts. Because NCMEC is in the business of doing this work and their law enforcement materials did not contain a checklist, but rather referred law enforcement directly to their child victim identification program, it is likely that the best plan of action is to direct law enforcement to these national resources for help. Task force members agreed that instead of creating a checklist for investigators, when it comes to identifying victims in these photos, outreach to NCMEC and their “child victim identification program” may be the best course of action.

Chairman Pennington opened the discussion for content-related concerns and the task force agreed upon several small changes to the draft and suggested that PCCD follow-up with task force members on outstanding issues including some of the language in the sentencing section of the report.

Chairman Pennington described the next steps of report drafting which include two separate review periods to allow the task force members a total of five weeks to review the draft for content and also spelling or grammatical errors. The Task Force will reconvene on September 28, 2022 and will plan to discuss and adopt the final report to be submitted to the legislature.

IV. Meeting Schedule

- **September 28, 2022, 1:00-2:30:** Report Adoption

V. Public Voice

There was no public voice.

VI. Adjournment

Chairman Pennington called for a motion to adjourn the meeting. Senator Maria Collett made the motion, which was seconded by Ms. Michele Kelly Walsh. The meeting adjourned at 2:00 PM.

18 Pa.C.S. § 6312

§ 6312. **Sexual abuse of children.**

(a) **Definition.**--(Deleted by amendment).

(b) **Photographing, videotaping, depicting on computer or filming sexual acts.**--

(1) Any person who causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act commits an offense if such person knows, has reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed.

(2) Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act commits an offense.

(c) **Dissemination of photographs, videotapes, computer depictions and films.**--Any person who knowingly sells, distributes, delivers, disseminates, transfers, displays or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(d) **Child pornography.**--Any person who intentionally views or knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(d.1) **Grading.**--The offenses shall be graded as follows:

(1) Except as provided in paragraph (3), an offense under subsection (b) is a felony of the second degree.

(2) (i) Except as provided in paragraph (3), a first offense under subsection (c) or (d) is a felony of the third degree.

(ii) A second or subsequent offense under subsection (c) or (d) is a felony of the second degree.

(3) When a person commits an offense graded under paragraph (1) or (2) (i), the grading of the offense shall be one grade higher than the grade specified in paragraph (1) or (2) (i) if:

(i) indecent contact with the child as defined in section 3101 (relating to definitions) is depicted; or

(ii) the child depicted is under 10 years of age or prepubescent.

(e) **Evidence of age.**--In the event a person involved in a prohibited sexual act is alleged to be a child under the age of 18 years, competent expert testimony shall be sufficient to establish the age of said person.

(e.1) Mistake as to age.--Under subsection (b) only, it is no defense that the defendant did not know the age of the child. Neither a misrepresentation of age by the child nor a bona fide belief that the person is over the specified age shall be a defense.

(f) Exceptions.--This section does not apply to any of the following:

(1) Any material that is viewed, possessed, controlled, brought or caused to be brought into this Commonwealth, or presented, for a bona fide educational, scientific, governmental or judicial purpose.

(2) Conduct prohibited under section 6321 (relating to transmission of sexually explicit images by minor), unless the conduct is specifically excluded by section 6321(d).

(3) An individual under 18 years of age who knowingly views, photographs, videotapes, depicts on a computer or films or possesses or intentionally views a visual depiction as defined in section 6321 of himself alone in a state of nudity as defined in section 6321.

(f.1) Criminal action.--

(1) A district attorney shall have the authority to investigate and to institute criminal proceedings for any violation of this section.

(2) In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of violations of this section involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Intentionally views." The deliberate, purposeful, voluntary viewing of material depicting a child under 18 years of age engaging in a prohibited sexual act or in the simulation of such act. The term shall not include the accidental or inadvertent viewing of such material.

"Prohibited sexual act." Sexual intercourse as defined in section 3101 (relating to definitions), masturbation, sadism,

masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.

(Oct. 26, 1977, P.L.212, No.62, eff. 60 days; Dec. 19, 1988, P.L.1275, No.158, eff. 60 days; Mar. 31, 1995, 1st Sp.Sess., P.L.985, No.10, eff. 60 days; Nov. 20, 2002, P.L.1104, No.134, eff. 60 days; July 14, 2009, P.L.63, No.15, eff. 60 days; Oct. 7, 2010, P.L.482, No.69, eff. 60 days; Oct. 25, 2012, P.L.1623, No.198, eff. 60 days; Dec. 18, 2013, P.L.1163, No.105, eff. Jan. 1, 2014; June 30, 2021, P.L.249, No.53, eff. 60 days)

2021 Amendment. Act 53 amended subsec. (d.1)

2013 Amendment. Act 105 amended subsecs. (b), (c) and (d) and added subsec. (d.1).

2012 Amendment. Act 198 amended subsec. (f).

2010 Amendment. Act 69 added subsec. (f.1).

2009 Amendment. Act 15 amended subsecs. (d) hdg. and (1) and (f), added subsec. (g) and deleted subsec. (a).

Cross References. Section 6312 is referred to in sections 3051, 3104, 3131, 5743.1, 6318, 6321, 7621, 7626, 7627 of this title; section 3304 of Title 5 (Athletics and Sports); section 2106 of Title 20 (Decedents, Estates and Fiduciaries); sections 5329, 6303, 6344, 6388, 6702 of Title 23 (Domestic Relations); sections 5552, 5920, 5985.1, 5993, 62A03, 6302, 9718.1, 9720.5, 9730.3, 9799.14, 9799.55 of Title 42 (Judiciary and Judicial Procedure); section 3113 of Title 63 (Professions and Occupations (State Licensed)).

Offender Demographics Chart
18 Pa.C.S. § 6312 Offenders

	Child Pornography Behavior								Total Offenders	
	Manufacturing/Creating (B)		Disseminating (C)		Viewing/Possession Only (D)		Both (B) and (C)		Entire Population	
	626		902		1,382		101		2,989	
Offender Demographics	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
<i>Gender</i>										
Female	39	6%	22	2%	11	1%	17	17%	59	2%
Male	584	93%	872	97%	1,363	99%	83	82%	2,911	97%
Unreported	3	0%	8	1%	8	1%	1	1%	19	1%
<i>Age</i>										
Unknown	1	0%	7	1%	4	0%	0	0%	12	0%
18-24	132	21%	162	18%	242	18%	32	32%	564	19%
25-34	180	29%	285	32%	389	28%	30	30%	878	29%
35-44	157	25%	201	22%	285	21%	22	22%	655	22%
45-54	86	14%	132	15%	213	15%	9	9%	437	15%
55-64	56	9%	80	9%	156	11%	8	8%	291	10%
65+	14	2%	35	4%	93	7%	0	0%	152	5%
<i>Race</i>										
Asian	3	0%	8	1%	6	0%	0	0%	19	1%
Asian/Pacific	4	1%	3	0%	2	0%	1	1%	9	0%
Bi-Racial	1	0%	0	0%	2	0%	0	0%	3	0%
Black	109	17%	64	7%	91	7%	15	15%	268	9%
Native American	0	0%	0	0%	1	0%	0	0%	1	0%
Unknown	7	1%	30	3%	33	2%	3	3%	69	2%
White	502	80%	797	88%	1,247	90%	82	81%	2,620	88%

18 Pa.C.S. § 6321

§ 6321. Transmission of sexually explicit images by minor.

(a) Summary offense.--Except as provided in section 6312 (relating to sexual abuse of children), a minor commits a summary offense when the minor:

(1) Knowingly transmits, distributes, publishes or disseminates an electronic communication containing a sexually explicit image of himself.

(2) Knowingly possesses or knowingly views a sexually explicit image of a minor who is 12 years of age or older.

(b) Misdemeanor of the third degree.--Except as provided in section 6312, a minor commits a misdemeanor of the third degree when the minor knowingly transmits, distributes, publishes or disseminates an electronic communication containing a sexually explicit image of another minor who is 12 years of age or older.

(c) Misdemeanor of the second degree.--Except as provided in section 6312, a minor commits a misdemeanor of the second degree when, with the intent to coerce, intimidate, torment, harass or otherwise cause emotional distress to another minor, the minor:

(1) makes a visual depiction of any minor in a state of nudity without the knowledge and consent of the depicted minor; or

(2) transmits, distributes, publishes or disseminates a visual depiction of any minor in a state of nudity without the knowledge and consent of the depicted minor.

(d) Application of section.--This section shall not apply to the following:

(1) Conduct that involves images that depict sexual intercourse, deviate sexual intercourse or penetration, however slight, of the genitals or anus of a minor, masturbation, sadism, masochism or bestiality.

(2) Conduct that involves a sexually explicit image of a minor if the image was taken, made, used or intended to be used for or in furtherance of a commercial purpose.

(e) Forfeiture.--Any electronic communication device used in violation of this section shall be subject to forfeiture to the Commonwealth, and no property right shall exist in it.

(f) Diversionary program.--The magisterial district judge or any judicial authority with jurisdiction over the violation shall give first consideration to referring a person charged with a violation of subsection (a) to a diversionary program under 42 Pa.C.S. § 1520 (relating to adjudication alternative program) and the Pennsylvania Rules of Criminal Procedure. As part of the diversionary program, the magisterial district judge or any judicial authority with jurisdiction over the violation may order the person to participate in an educational program which includes the legal and nonlegal consequences of sharing sexually explicit images. If the person successfully completes

the diversionary program, the person's records of the charge of violating subsection (a) shall be expunged as provided for under Pa.R.C.P. No.320 (relating to expungement upon successful completion of ARD program).

(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Disseminate." To cause or make an electronic or actual communication from one person, place or electronic communication device to two or more other persons, places or electronic communication devices.

"Distribute." To deliver or pass out.

"Electronic communication." As defined in section 5702 (relating to definitions).

"Knowingly possesses." The deliberate, purposeful, voluntary possession of a sexually explicit image of another minor who is 12 years of age or older. The term shall not include the accidental or inadvertent possession of such an image.

"Knowingly views." The deliberate, purposeful, voluntary viewing of a sexually explicit image of another minor who is 12 years of age or older. The term shall not include the accidental or inadvertent viewing of such an image.

"Minor." An individual under 18 years of age.

"Nudity." The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

"Publish." To issue for distribution.

"Sexually explicit image." A lewd or lascivious visual depiction of a minor's genitals, pubic area, breast or buttocks or nudity, if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such nudity.

"Transmit." To cause or make an electronic communication from one person, place or electronic communication device to only one other person, place or electronic communication device.

"Visual depiction." A representation by picture, including, but not limited to, a photograph, videotape, film or computer image.

(Oct. 25, 2012, P.L.1623, No.198, eff. 60 days)

2012 Amendment. Act 198 added section 6321.

Cross References. Section 6321 is referred to in sections 3131, 6312 of this title.

US Sentencing
2021 Report



United States Sentencing Commission
June 2021

FEDERAL SENTENCING OF **CHILD PORNOGRAPHY** NON-PRODUCTION OFFENSES





FEDERAL SENTENCING OF CHILD PORNOGRAPHY: NON-PRODUCTION OFFENSES

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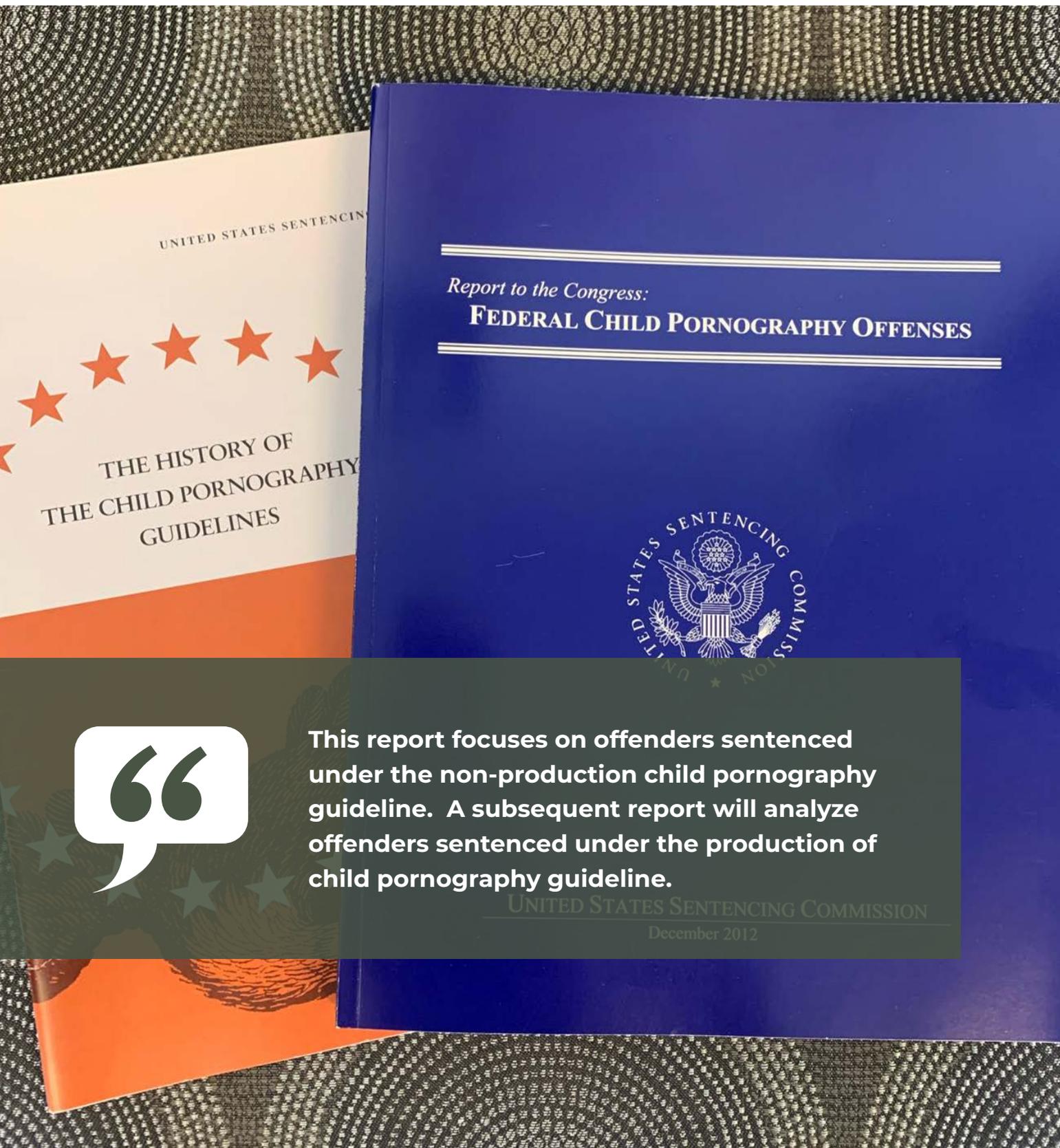
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JUNE 2021



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UNITED STATES SENTENCING

THE HISTORY OF
THE CHILD PORNOGRAPHY
GUIDELINES

Report to the Congress:

FEDERAL CHILD PORNOGRAPHY OFFENSES



This report focuses on offenders sentenced under the non-production child pornography guideline. A subsequent report will analyze offenders sentenced under the production of child pornography guideline.

UNITED STATES SENTENCING COMMISSION
December 2012

Introduction

This publication updates and expands upon the United States Sentencing Commission’s 2012 *Child Pornography Report to the Congress: Federal Child Pornography Offenses (the “2012 Child Pornography Report”)*.¹

In the 2012 *Child Pornography Report*, the Commission analyzed offenders sentenced under the federal child pornography sentencing guidelines and their corresponding statutes to assess how these offenders were prosecuted, sentenced, and supervised following their reentry into the community. This report focuses on offenders sentenced under the guideline for non-production offenses such as the possession, receipt, and distribution of child pornography (USSG §2G2.2).² A subsequent report will analyze offenders sentenced under the guideline for child pornography production offenses (USSG §2G2.1).³

Several factors prompted the Commission to examine child pornography offenses in 2012. First, while only a small percentage of the overall federal criminal caseload, child pornography offenses had grown substantially both in total numbers and as a percentage of the total caseload.⁴ Second, there had been a steady increase in the percentage of sentences imposed below the applicable guideline range in non-production child pornography cases, which indicated that courts increasingly believed the sentencing scheme for such offenders was overly severe.⁵ Third, the volume and accessibility of child pornography images had increased dramatically due to the rising use of computers, digital cameras, and internet-based technology like peer-to-peer (“P2P”) file sharing programs.⁶ The changes in computer and internet technology typically used by non-production child pornography offenders rendered the sentencing scheme insufficient to distinguish between offenders with different degrees of culpability.⁷

The 2012 *Child Pornography Report* sought to contribute to the ongoing assessment by Congress and other stakeholders in the federal criminal justice system regarding the efficacy of sentences for federal child pornography offenses, particularly for non-production cases. Specifically, the 2012 *Child Pornography Report* evaluated the severity of offender behavior to provide a more complete understanding of non-production child pornography offenses and offenders. The Commission emphasized the seriousness of non-production offenses, noting that child pornography offenses normalize the sexual abuse of children and may promote existing tendencies towards sex offending and the production of new images.⁸ Indeed, the 2012 *Child Pornography Report* showed that approximately one in three non-production child pornography offenders had engaged in one or more types of criminal sexually dangerous behavior in addition to the instant child pornography offense.⁹ The Commission also found that the rise of the internet facilitated the growth of online child pornography “communities” in chat rooms and other online platforms.

The 2012 *Child Pornography Report* also examined sentencing outcomes and resulting disparities. The Commission explained that guideline ranges and average sentences had increased substantially since Congress passed the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (“PROTECT”) Act of 2003.¹⁰ Through the PROTECT Act, not only did Congress directly amend the guidelines to add new sentencing enhancements and create new

statutory mandatory minimum penalties, but the underlying conduct triggering such enhancements and penalties increasingly applied to more offenders.¹¹ Due to advancements in technology, enhancements that were only intended to apply to the most serious child pornography offenses were routinely applied to most non-production child pornography offenders. At the same time, within range sentences were imposed in less than one-third of non-production child pornography cases.¹² Differences in charging practices also contributed to sentencing disparities—particularly the decision to charge a defendant with possession (requiring no mandatory minimum sentence) versus receipt or distribution (requiring a five-year mandatory minimum sentence), as well as plea agreements with stipulations limiting a defendant’s exposure to sentencing enhancements.¹³

Based on those findings, the Commission concluded that the non-production child pornography sentencing scheme should be revised to account for technological changes in offense conduct, emerging social science research about offender behavior, and variations in offender culpability and sexual dangerousness.¹⁴ The Commission recommended that three primary factors be considered when imposing sentences in non-production child pornography cases: (1) the **content** of the offender’s child pornography collection and nature of the offender’s collecting behavior; (2) the offender’s degree of involvement with other offenders, particularly in an internet **community** devoted to child pornography and child sexual exploitation; and (3) the offender’s engagement in sexually abusive or exploitative **conduct** in addition to the child pornography offense.¹⁵

In order to revise §2G2.2 to more adequately account for these three factors and to eliminate the disproportionate emphasis on outdated measures of culpability, the Commission recommended that Congress enact legislation providing the Commission express authority to amend the guideline provisions that were promulgated pursuant to specific congressional directives.¹⁶ The Commission explained that such authority would enable it to consider amendments to account for changes in typical offense behavior (e.g., revising enhancements involving the type and number of images to reflect the current spectrum of offender culpability), technological advancements (e.g., revising enhancements involving distribution and use of a computer to reflect the widespread modern use of computers and internet technologies such as P2P file sharing programs), and emerging social science knowledge (e.g., revising the “pattern of activity” enhancement and creating a new enhancement for offender involvement in child pornography communities).¹⁷

The Commission also recommended that Congress align the statutory penalty schemes for receipt offenses (requiring a five-year mandatory minimum sentence) and possession offenses (requiring no mandatory minimum sentence).¹⁸ The Commission noted that Congress’s prior rationale for punishing receipt more severely than possession had been largely eliminated.¹⁹ Specifically, the underlying offense conduct in the typical receipt case was indistinguishable from the typical possession case, yet widespread sentencing disparities existed among similarly situated offenders sentenced under the non-production child pornography guideline based largely on whether they were charged with receipt or possession.²⁰ The Commission also noted that Congress may wish to revise the penalty structure governing distribution offenses to reflect the evolution of technologies used to distribute child pornography and to differentiate between different types of distribution.²¹



PROTECT Act of 2003

Congress directly amended the guidelines to add new sentencing enhancements and created new statutory mandatory minimum penalties. As a result, the underlying conduct triggering such enhancements and penalties increasingly applied to more offenders.



2012 *Child Pornography Report*

The Commission concluded that the non-production child pornography sentencing scheme should be revised to account for technological changes, emerging social science research, and variations in offender culpability and sexual dangerousness.

Recommendations:

- Focus sentencing of these offenders on three primary factors: content, community, and conduct.
- Enact legislation providing the Commission with express authority to amend the guidelines promulgated pursuant to congressional directives.
- Align the statutory penalty schemes for receipt offenses and possession offenses.



This Report

This report provides updated data from fiscal year 2019 regarding content, community, and conduct. It also examines the evolution of technology since the 2012 *Child Pornography Report* and its continued impact on offender conduct and the widespread applicability of sentencing enhancements. Lastly, it provides a recidivism analysis of non-production offenders.

To date, Congress has not implemented the Commission's statutory or guideline recommendations. Therefore, §2G2.2 remains largely unchanged, with the guideline enhancements for non-production child pornography offenders at issue in the 2012 *Child Pornography Report* still in effect. As a result, judges have continued to sentence most non-production child pornography offenders below their guideline ranges, most often by imposing variances pursuant to 18 U.S.C. § 3553(a).

This report focuses on non-production child pornography offenses and provides updated data from fiscal year 2019 regarding the three factors the Commission previously identified as the recommended focus in sentencing child pornography offenders: content, community, and conduct. Specifically, this report analyzes the content of the offender's collection, the offender's level of involvement with other individuals in child pornography communities, and any engagement by the offender in sexually abusive conduct in addition to the child pornography offense. In doing so, this report examines the evolution of technology since the 2012 *Child Pornography Report* and its continued impact on offender conduct and the widespread applicability of sentencing enhancements in the non-production child pornography guideline. This report also examines the growing sentencing disparities identified in the 2012 *Child Pornography Report* by analyzing the impact of charging decisions and plea agreements on the final sentence, as well as the exercise of judicial discretion in sentencing offenders outside their guideline ranges. Finally, this report provides a recidivism analysis of non-production child pornography offenders released from incarceration or placed on probation in 2015.

Key Findings



1 Facilitated by advancements in digital and mobile technology, non-production child pornography offenses increasingly involve voluminous quantities of videos and images that are graphic in nature, often involving the youngest victims.

- *In fiscal year 2019, non-production child pornography offenses involved a median number of 4,265 images, with some offenders possessing and distributing millions of images and videos.*
- *Over half (52.2%) of non-production child pornography offenses in fiscal year 2019 included images or videos of infants or toddlers, and nearly every offense (99.4%) included prepubescent victims.*



2 Constrained by statutory mandatory minimum penalties, congressional directives, and direct guideline amendments by Congress in the PROTECT Act of 2003, §2G2.2 contains a series of enhancements that have not kept pace with technological advancements. Four of the six enhancements—accounting for a combined 13 offense levels—cover conduct that has become so ubiquitous that they now apply in the vast majority of cases sentenced under §2G2.2.

- *For example, in fiscal year 2019, over 95 percent of non-production child pornography offenders received enhancements for use of a computer and for the age of the victim (images depicting victims under the age of 12).*
- *The enhancements for images depicting sadistic or masochistic conduct or abuse of an infant or toddler (84.0% of cases) or having 600 or more images (77.2% of cases) were also applied in most cases.*



3 Because enhancements that initially were intended to target more serious and more culpable offenders apply in most cases, the average guideline minimum and average sentence imposed for non-production child pornography offenses have increased since 2005.

- *The average guideline minimum for non-production child pornography offenders increased from 98 months in fiscal year 2005 to 136 months in fiscal year 2019.*
- *The average sentence increased more gradually, from 91 months in fiscal year 2005 to 103 months in fiscal year 2019.*



4 Although sentences imposed remain lengthy, courts increasingly apply downward variances in response to the high guideline ranges that apply to the typical non-production child pornography offender.

- *In fiscal year 2019, less than one-third (30.0%) of non-production child pornography offenders received a sentence within the guideline range.*
- *The majority (59.0%) of non-production child pornography offenders received a variance below the guideline range.*
- *Non-government sponsored below range variances accounted for 42.2 percent of sentences imposed, and government sponsored below range variances accounted for 16.8 percent.*



5 Section 2G2.2 does not adequately account for relevant aggravating factors identified in the Commission's 2012 *Child Pornography Report* that have become more prevalent.

- More than forty percent (43.7%) of non-production child pornography offenders participated in an online child pornography community in fiscal year 2019.
- Nearly half (48.0%) of non-production child pornography offenders engaged in aggravating sexual conduct prior to, or concurrently with, the instant non-production child pornography offense in fiscal year 2019. This represents a 12.9 percentage point increase since fiscal year 2010, when 35.1 percent of offenders engaged in such conduct.



6 Consistent with the key aggravating factors identified in the Commission's 2012 *Child Pornography Report*, courts appeared to consider participation in an online child pornography community and engaging in aggravating sexual conduct when imposing sentences, both in terms of the length of sentence imposed and the sentence relative to the guideline range.

- In fiscal year 2019, the average sentence imposed increased from 71 months for offenders who engaged in neither an online child pornography community nor aggravating sexual conduct, to 79 months for offenders who participated in an online child pornography community, to 134 months for offenders who engaged in aggravating sexual conduct.
- In fiscal year 2019, offenders who engaged in aggravating sexual conduct were sentenced within their guideline ranges at a rate nearly three times higher than offenders who did not participate in online child pornography communities or engage in aggravating sexual conduct (44.3% compared to 15.6%).

7 As courts and the government contend with the outdated statutory and guideline structure, sentencing disparities among similarly situated non-production child pornography offenders have become increasingly pervasive. Charging practices, the resulting guideline ranges, and the sentencing practices of judges have all contributed to some degree to these disparities.

- For example, the sentences for 119 similarly situated possession offenders ranged from probation to 228 months though these 119 possession offenders had the same guideline calculation through the application of the same specific offense characteristics and criminal history category.
- The sentences for 52 similarly situated receipt offenders ranged from 37 months to 180 months though these 52 receipt offenders had the same guideline calculation through the application of the same specific offense characteristics and criminal history category.
- The sentences for 190 similarly situated distribution offenders ranged from less than one month to 240 months though these 190 distribution offenders had the same guideline calculation through the application of the same specific offense characteristics and criminal history category.

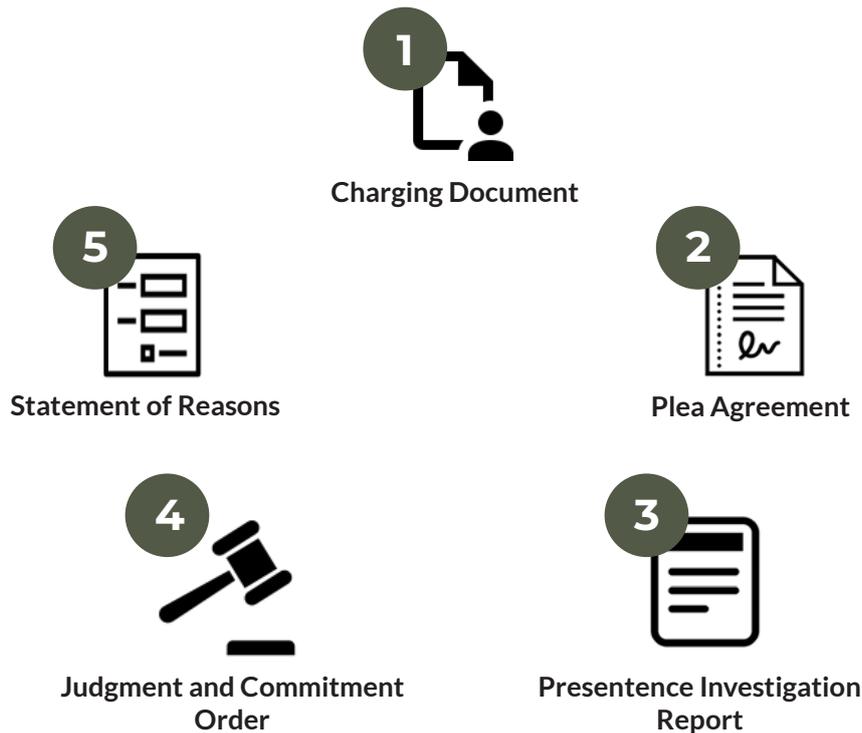


8 When tracking 1,093 non-production child pornography offenders released from incarceration or placed on probation in 2015, 27.6 percent were rearrested within three years.

- Of the 1,093 offenders, 4.3 percent (47 offenders) were rearrested for a sex offense within three years.
- Eighty-eight offenders (8.1% of the 1,093) failed to register as a sex offender during the three-year period.

Methodology

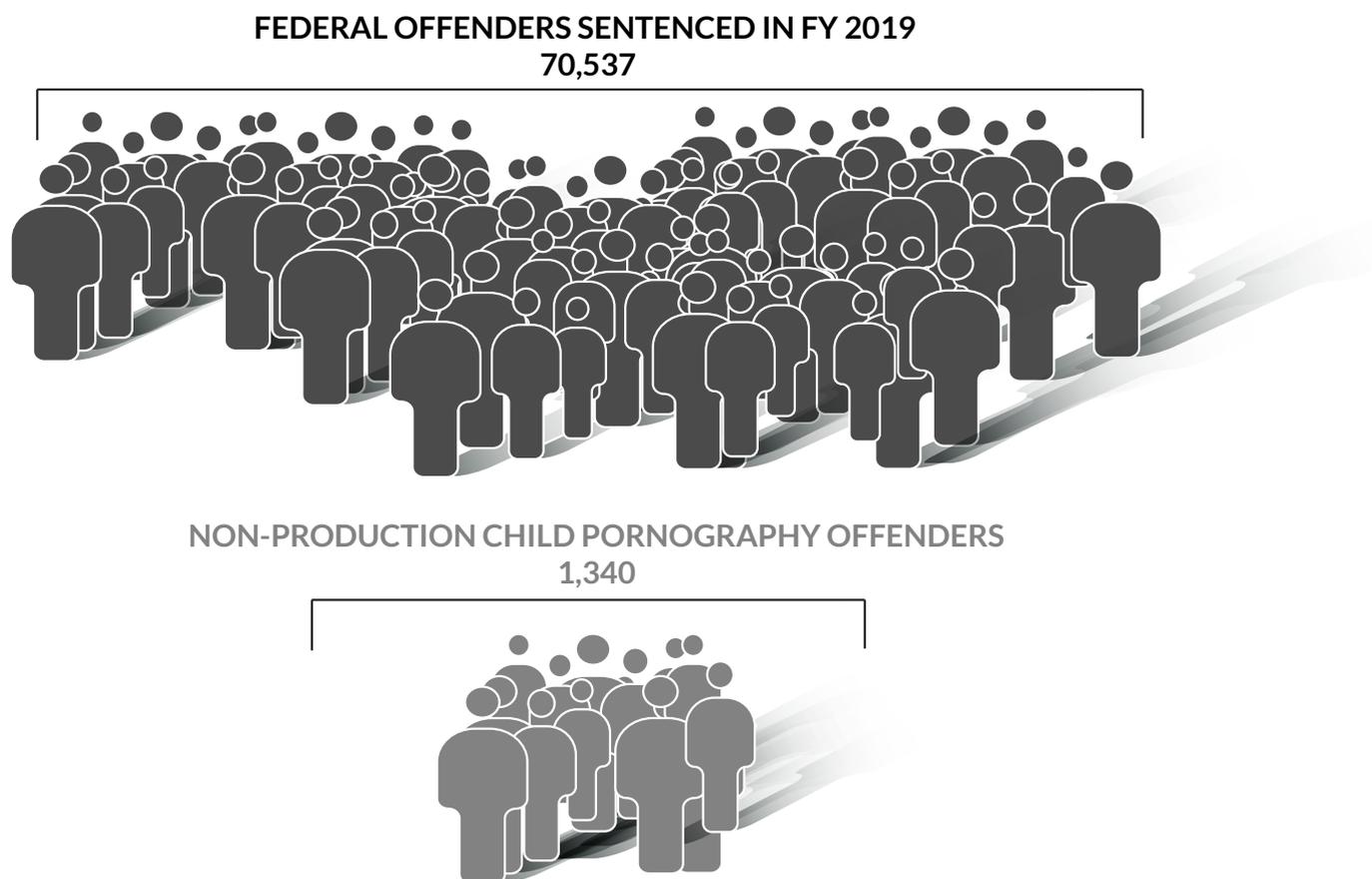
Figure 1.
District Court Documents Received by the Commission



To fulfill its statutory responsibilities, the Commission collects and analyzes data on federal sentences for every federal felony and Class A misdemeanor offender sentenced each year.²² Courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: (1) the charging document; (2) the plea agreement; (3) the Presentence Report (“PSR”);

(4) the Judgment and Commitment order; and (5) the Statement of Reasons form. The Commission extracts and codes data from these documents, including sentencing data, demographic variables, statutory information, guideline application decisions, and departure and variance information. This report uses data from the Commission’s fiscal years 2005–2019 Offender Datafiles.

Figure 2.
Federal Offenders Sentenced in Fiscal Year 2019



The Commission also undertook an extensive special coding project to collect and analyze data on non-production child pornography offenses and offender characteristics beyond the information regularly collected in the Offender Datafiles and reported in the Commission's annual *Sourcebook of Federal Sentencing Statistics*. The Commission analyzed 1,340 cases in which offenders were sentenced under §2G2.2 in fiscal year 2019 for which courts submitted sufficient sentencing documentation.²³ The resulting data provides a more complete picture of the offenders' conduct.

The special coding project examined the content of the offenders' collection and their collecting behavior, involvement in child pornography communities, and engagement in aggravating conduct (including contact and non-contact sex offenses), as well as the impact of prosecutorial charging decisions and plea agreements on sentencing outcomes. These topics and additional information regarding the methodology are discussed in Chapters 2, 3, and 4. The Commission also studied the recidivism of non-production child pornography offenders released from incarceration or placed on probation in 2015 to determine the extent to which this group was arrested for new criminal offenses following reentry into the community. The recidivism methodology and findings are discussed in Chapter 5.

Overview of Sentencing Framework

Chapter

1

Statutory Scheme

Possession		Receipt/Distribution	
Prior Sex Conviction?		Prior Sex Conviction?	
No	Yes	No	Yes
0 to 10 years or 0 to 20 years (depending on age of victim)	10 to 20 years	5 to 20 years	15 to 40 years

Congress has long expressed its concern for child pornography offenses and the severity of penalties for child pornography offenders. Congressional work in this area most recently culminated in the PROTECT Act of 2003, establishing the current statutory penalties and sentencing guidelines for non-production child pornography offenses.²⁴ In the PROTECT Act, Congress created new mandatory minimum penalties for receipt and distribution offenses and increased the statutory maximum penalties for all non-production child pornography offenses. Congress also directly amended the child pornography sentencing guidelines by increasing the number of enhancements and limiting judges' ability to depart below the then-mandatory guideline ranges in child pornography cases.

The federal child pornography statutory scheme prohibits acts related to the production, advertisement, distribution, transportation, importation, receipt, solicitation, and possession of child pornography in chapter 110 of title 18 of the United States Code.²⁵

The primary types of non-production offenses are distribution,²⁶ receipt, and possession of child pornography. Distribution and receipt offenses each carry a mandatory minimum term of five years of imprisonment and a maximum term of 20 years.²⁷ If a defendant has a prior federal or state conviction for one or more qualifying sex offenses, the penalty range for distribution and receipt offenses increases to a mandatory minimum term of 15 years of imprisonment and a maximum term of 40 years.²⁸ Possession, by contrast, has no mandatory minimum, carrying a statutory range of zero to

ten years of imprisonment (or zero to 20 years of imprisonment if the offender possessed child pornography depicting a prepubescent minor or a minor under the age of 12).²⁹ Offenders convicted of possession of child pornography with a prior federal or state conviction for a qualifying sex offense face a statutory imprisonment range of ten to 20 years.³⁰

Significantly, the conduct underlying a receipt conviction is usually indistinguishable from a possession conviction, which does not carry a mandatory minimum sentence. Receipt offenders, however, are subject to the same statutory penalties as distribution offenders, including a mandatory minimum sentence of at least five years of imprisonment. The offense of receipt requires a defendant's knowledge that he or she is coming into possession of child pornography at the time the image or video is received, so a defendant's knowing possession of child pornography does not by itself establish that the defendant also knowingly received it.³¹ However, it is exceedingly rare that a possession offender would unwittingly receive child pornography and later decide to possess it.³² Thus, as a practical matter, the conduct underlying a receipt or possession charge is materially identical. Nevertheless, the statutory penalty range is determined by whether the defendant is convicted of possession or receipt.

The PROTECT Act also created a mandatory minimum term of supervised release of five years for all child pornography offenders and raised the maximum statutory term of supervised release from three years for most child pornography offenders to a lifetime term for all child pornography offenders.³³

Sentencing Guidelines

The sentencing guideline for non-production child pornography offenses is found in Chapter Two, Part G, Subpart 2 (Sexual Exploitation of a Minor) of the *Guidelines Manual*. Section 2G2.2 has a two-tiered system for assigning a base offense level based on the defendant's most serious conviction.³⁴ If a defendant is convicted of possession of child pornography, the base offense level is 18.³⁵ If a defendant is convicted of receipt or distribution, the base offense level is 22.³⁶ However, if a defendant's actual conduct was limited to receipt or solicitation of child pornography, and the defendant did not intend to traffic in or distribute child pornography, that offense level is reduced by two levels to 20.³⁷

Section 2G2.2 contains six enhancements based on aggravating circumstances: (1) victims under the age of 12 or prepubescent minors;³⁸ (2) the defendant distributed child pornography;³⁹ (3) the images included sadistic or masochistic acts or violence or the exploitation of an infant or toddler;⁴⁰ (4) the defendant engaged in a "pattern of activity" involving the "sexual abuse or exploitation of a minor;"⁴¹ (5) the defendant used a computer to commit the offense;⁴² and (6) the offense involved a certain number of images.⁴³

Consistent with changes made by the PROTECT Act, the supervised release guidelines recommend a lifetime term of supervised release for all child pornography offenders.⁴⁴



Chapter Two, Part G, Subpart 2
of the *Guidelines Manual*
(Sexual Exploitation of a Minor)

Specific Offense Characteristics

§2G2.2(b)(2)

Victim prepubescent or under 12

2-level increase

§2G2.2(b)(3)

Distribution of child pornography

2- to 7-level increase

§2G2.2(b)(4)

*Sadistic or masochistic conduct
or abuse of an infant or toddler*

4-level increase

§2G2.2(b)(5)

*Pattern of activity involving
sexual abuse or exploitation*

5-level increase

§2G2.2(b)(6)

Use of a computer

2-level increase

§2G2.2(b)(7)

Number of images

2-to 5-level increase

Data Overview

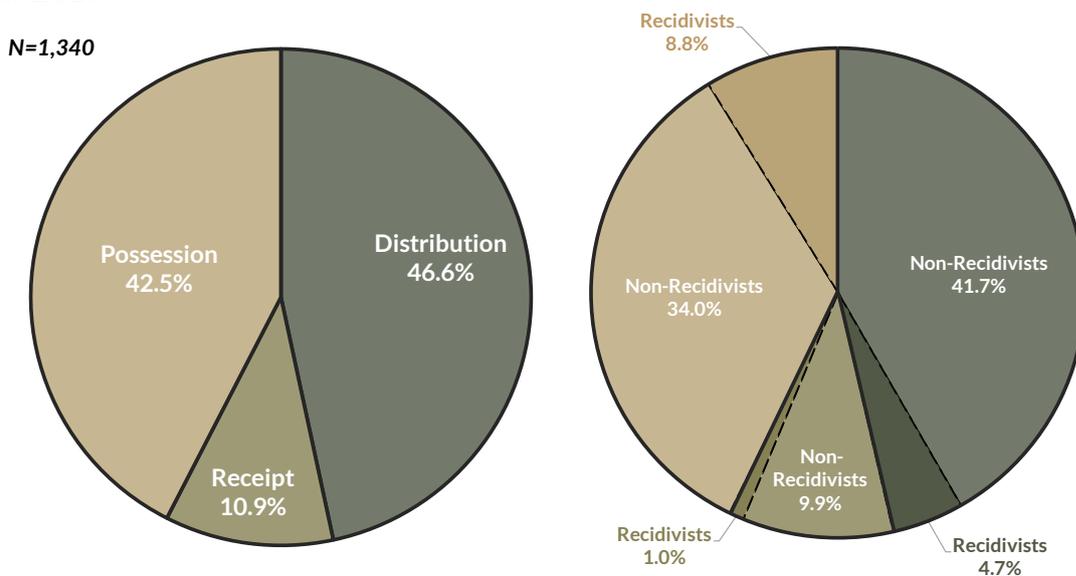
Chapter 2

Introduction

This chapter provides data analyses of offenders sentenced under the non-production child pornography guideline, focusing on offender and offense characteristics.

The analyses in this section include data on offenders sentenced between fiscal years 2005 to 2019 under a Guidelines Manual effective November 1, 2004 or later. The Commission used fiscal year 2005 as the earliest point of analysis to evaluate a 15-year period after the PROTECT Act and its impact on statutory penalties and the guidelines. The analyses provide a snapshot of fiscal year 2019 data and highlight trends over the 15-year period.

Figure 3.
§2G2.2 Offenders by Type of Child Pornography Offense
Fiscal Year 2019

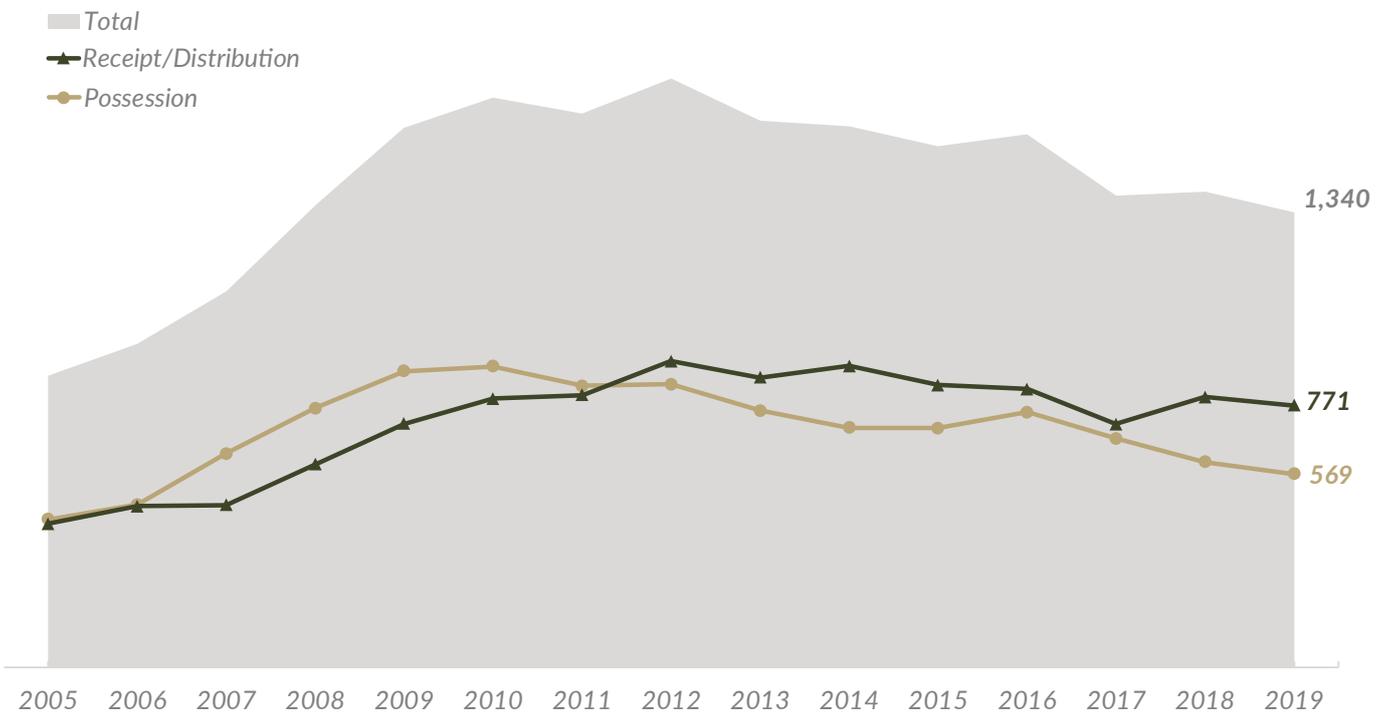


Fiscal Year 2019 Snapshot

Non-production child pornography offenders represented a small percentage of the overall federal offender population in fiscal year 2019. Of the 70,537 federal offenders sentenced in fiscal year 2019 with complete case documentation sent to the Commission, 1.9 percent (1,340 offenders) were sentenced under §2G2.2 as their primary guideline. Section 2G2.2 divides offenders into three groups: (1) those convicted of possession (base offense level 18) (hereinafter “possession offenders”); (2) those convicted of receipt who did not intend to distribute (base offense

level 22 with a 2-level reduction to offense level 20) (hereinafter “receipt offenders”); and (3) those convicted of receipt with intent to distribute as well as those convicted of distribution (base offense level 22) (hereinafter “distribution offenders”). Of the 1,340 non-production offenders sentenced in fiscal year 2019, 42.5 percent were possession offenders, 10.9 percent were receipt offenders, and 46.6 percent were distribution offenders. Offenders convicted of receipt or distribution of child pornography and assigned base offense level 20 or 22 are subject to the five-year mandatory minimum penalty.

Figure 4.
Trend in Number of §2G2.2 Offenders by Type of Child Pornography Offense



As discussed in Chapter One, the statutory penalties for non-production child pornography offenses increase if the offender has a qualifying prior conviction for a sex offense. Among non-production child pornography offenders, possession offenders received a mandatory minimum sentence due to a qualifying sex offense conviction at the highest rate. Of the 1,340 offenders, 8.8 percent were possession offenders and faced a ten-year mandatory minimum penalty because they were convicted of possession and had a qualifying prior sex offense. Comparatively, 4.7 percent were distribution offenders and 1.0 percent were receipt offenders who had a qualifying predicate conviction and faced a 15-year mandatory minimum penalty as a result.⁴⁵

Trends from Fiscal Years 2005 to 2019

The increase in federal child pornography offenses over time can largely be attributed to technological changes that increased the accessibility of child

pornography and decreased the cost of its production and duplication.⁴⁶ The number of non-production child pornography cases generally increased between fiscal years 2005 and 2012. After peaking in 2012 with 1,735 cases, the number of non-production child pornography cases steadily decreased, reaching its lowest point since 2012 in fiscal year 2019, with 1,340 offenders sentenced under §2G2.2.

Over time, the combined receipt and distribution cases (carrying a five-year mandatory minimum) overtook possession cases as the most common type of non-production child pornography offense. Possession cases were predominant from fiscal years 2007 to 2011, but after 2011, the number of receipt and distribution cases surpassed possession cases. The gap widened between fiscal years 2017 and 2019. The largest difference occurred in fiscal year 2019, with 202 more receipt and distribution offenders sentenced than possession offenders.

Characteristics of Non-Production Child Pornography Offenders Fiscal Year 2019

80.3%

White

Most non-production child pornography offenders were White (80.3%). This contrasts with all other federal offenders, who were 19.1 percent White.

99.4%

Male

Nearly all were male (99.4%). This contrasts with all other federal offenders, who were 87.6 percent male.

41 yrs

Average Age

The average age was 41 years old, while the average age of all other federal offenders in fiscal year 2019 was 36 years old.

55.7%

College Educated

Over half attended college compared to one-fifth (20.6%) of all other offenders.

Less Extensive Criminal History

CHC I

75.9%

43.8%

Three-quarters (75.9%) were assigned to CHC I, the lowest category.

By contrast, fewer than half (43.8%) of all other federal offenders were assigned to CHC I.



Offender and Offense Characteristics

Non-production child pornography offenders sentenced under §2G2.2 differ from the general federal offender population with respect to demographic factors and criminal history. Non-production child pornography offenders tend to be racially homogenous, older, have higher levels of education, and have limited or no prior criminal histories. Most non-production child pornography offenders were White (80.3%) and U.S. citizens (96.3%). Nearly all were male (99.4%). This contrasts with all other federal offenders, who were 19.1 percent White, 55.9 percent U.S. citizens, and 87.6 percent male.

The average age of non-production child pornography offenders was 41 years old, while the average age of all other federal offenders in fiscal year 2019 was 36 years old. Non-production child pornography offenders generally attained a higher degree of education than all other offenders, with over half (55.7%) of non-production child pornography offenders attending college compared to one-fifth (20.6%) of all other offenders.

Non-production child pornography offenders have less extensive criminal histories compared to other federal offenders. In fiscal year 2019, 75.9 percent of non-production child pornography offenders were assigned to Criminal History Category I (the lowest category, requiring no more than one criminal history point). By contrast, 43.8 percent of all other federal offenders were assigned to Criminal History Category I. To add further context, more than two-thirds (69.1%) of non-production child pornography offenders had zero criminal history points compared to roughly a third (32.9%) of all other offenders sentenced in fiscal year 2019.

Finally, non-production child pornography offenses are unique because of the number of specific offense characteristics that apply to the vast majority of offenders sentenced under §2G2.2. The incidence of the underlying conduct and circumstances triggering sentencing enhancements has grown, particularly due to the evolution and prevalence of technology used to commit child pornography offenses. The

Offense Characteristics Fiscal Year 2019

■ Distribution ■ Receipt ■ Possession

2012 *Child Pornography Report* explained that by fiscal year 2010, four of the six enhancements in §2G2.2(b)—together accounting for 13 offense levels—applied to the typical non-production child pornography offender and thus failed to meaningfully distinguish between more culpable and less culpable offenders.⁴⁷

In fiscal year 2019, these enhancements each continued to apply in the vast majority of non-production child pornography cases. Notably, over 95 percent of non-production child pornography offenders received enhancements for use of a computer and for the age of the victim (images depicting victims under the age of 12). The enhancements for images depicting sadistic or masochistic conduct or abuse of an infant or toddler (84.0% of cases) or having 600 or more images (77.2% of cases) were also applied in most cases.

The frequency with which these enhancements apply is fairly consistent between the non-production child pornography offense types. The enhancements are intended to increase the offense level based on the presence of an aggravating factor, but they routinely apply to the typical distribution, receipt, and possession offender, with minimal variation in application rate. For example, distribution and possession offenders received the 2-level enhancement for the age of the victim at nearly identical rates (96.8% and 96.3%, respectively). All three groups of non-production child pornography offenders received the 2-level enhancement for use of a computer over 93 percent of the time. And although distribution offenders received the sadistic or masochistic conduct or abuse of an infant or toddler enhancement at a slightly higher rate (89.6%), there is little variation in the rate between receipt and possession offenders (80.8% and 78.6%, respectively). Likewise, although receipt offenders received an increase for the number of images at a slightly lower rate (87.7%), there is little difference between the application rates for distribution and possession offenders (97.0% and 95.4%, respectively).

Thus, across all non-production child pornography offense types, §2G2.2 fails to distinguish adequately between more and less severe offenders.

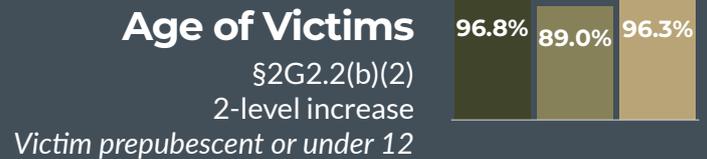
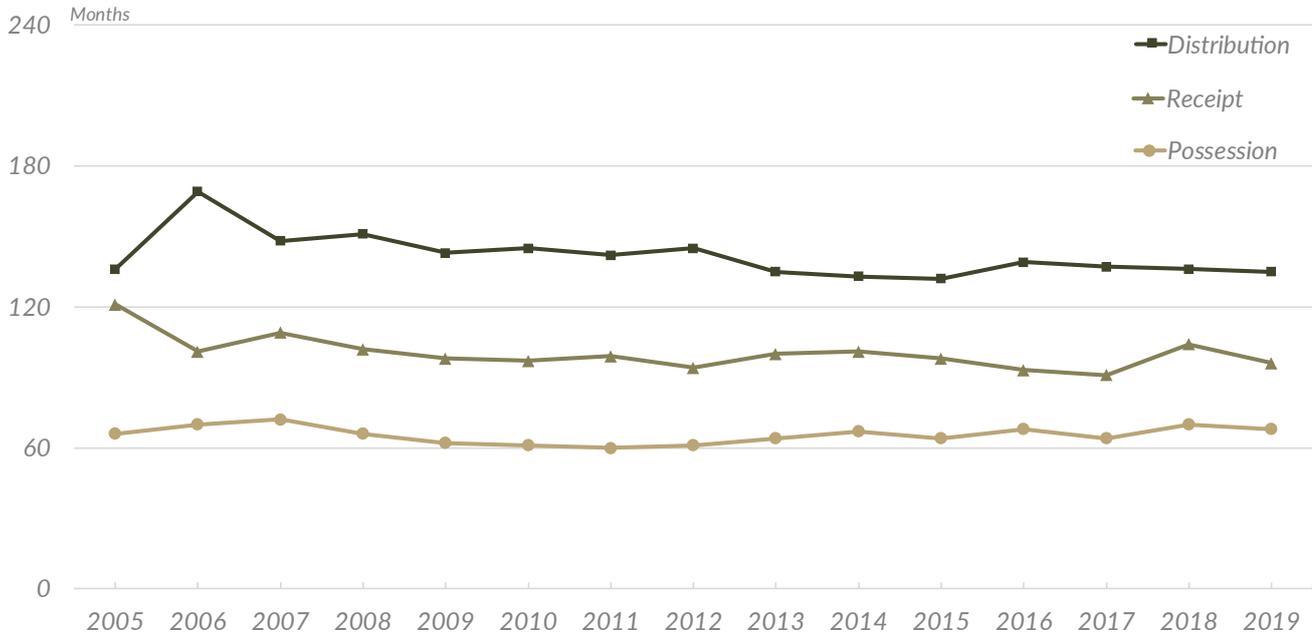


Figure 5. Trend in Sentence Length by Child Pornography Offense



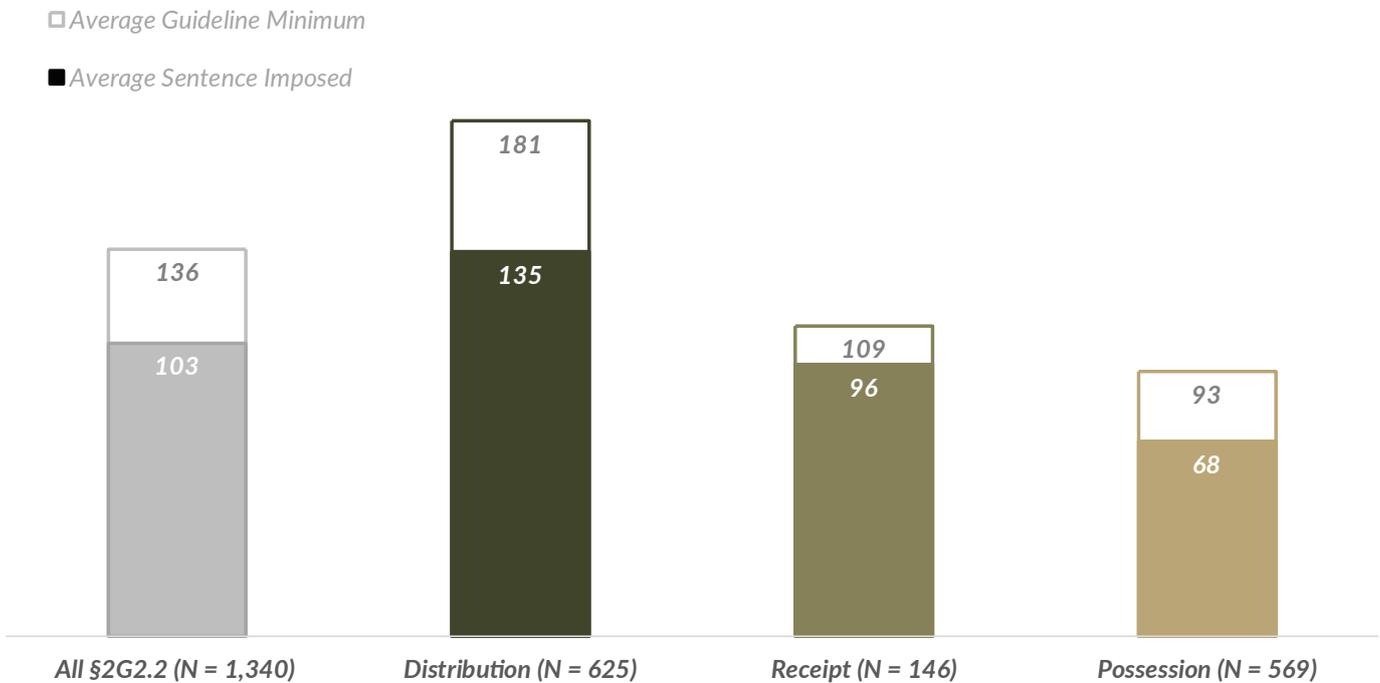
Sentencing Characteristics

Sentence Length

In fiscal year 2019, nearly all non-production child pornography offenders (99.0%) were sentenced to a term of imprisonment, with an average sentence of 103 months.⁴⁸ Mirroring the seriousness of each non-production child pornography offense type as measured by §2G2.2, distribution offenders received the longest sentences, on average (135 months), followed by receipt (96 months) and possession (68 months) offenders.

The trends from fiscal years 2005 to 2019 show that the sentence length imposed in non-production child pornography cases has generally remained stable over time across offense types. Largely a function of the difference in the base offense levels, sentences for distribution offenders have remained the highest over time, followed by sentences for receipt and possession offenders.

Figure 6.
Average Guideline Minimum and Sentence Imposed by Child Pornography Offense
Fiscal Year 2019



Average Guideline Minimum and Average Sentence Imposed⁴⁹

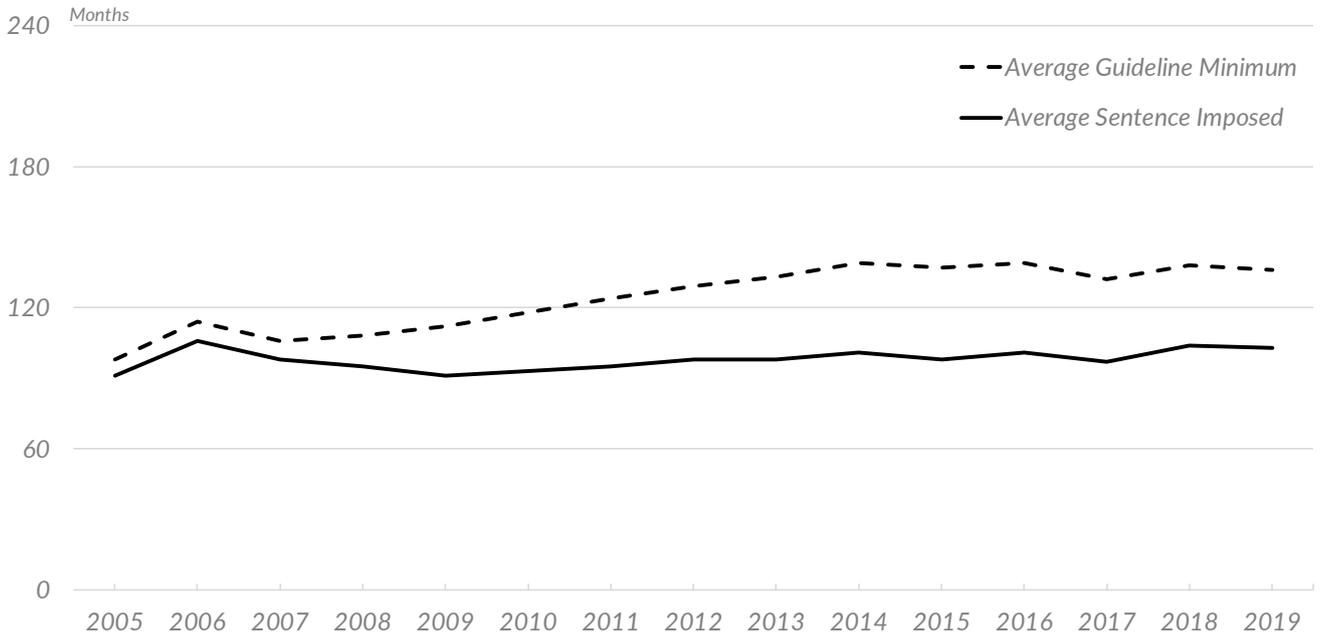
Fiscal Year 2019 Snapshot

Although the analysis above shows little variation in the application rates of specific offense characteristics between the three types of non-production child pornography offenses, the bottom of the average §2G2.2 guideline range—that is, the average guideline minimum—is highest for distribution offenders, followed by receipt and possession offenders. The difference in the average guideline minimum is driven primarily by the starting point in the guideline calculation—the base offense level—rather than

the specific offense characteristics. Thus, the ascension of the base offense level, rather than guideline enhancements, results in average guideline minimums that reflect, at least to some degree, the ascending seriousness of the offense type under §2G2.2.

In fiscal year 2019, the average sentence for non-production child pornography offenders was substantially lower than the average guideline minimum. For non-production child pornography offenses overall, the difference between the average guideline minimum (136 months) and average sentence imposed (103 months) was 33 months or 24.3 percent. Among the individual offense types, distribution offenders had the highest average guideline minimum (181 months) and highest average sentence imposed (135 months), a difference

Figure 7.
Trend in Average Guideline Minimum and Sentence Imposed for All §2G2.2 Offenses



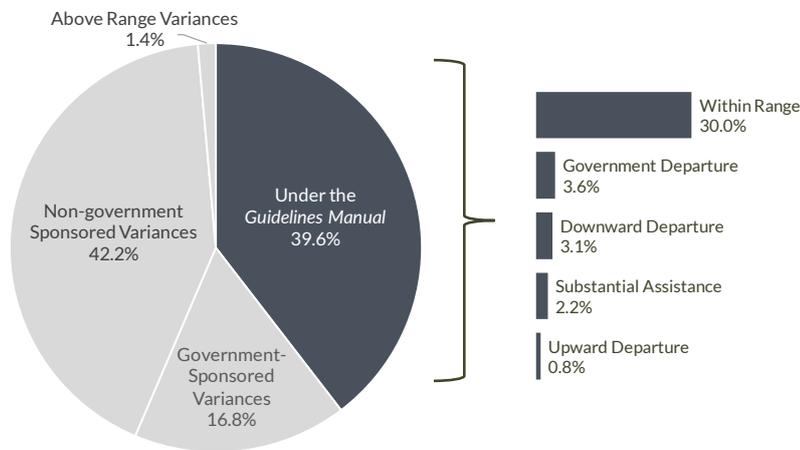
of 46 months or 29.1 percent. Possession offenders had a similar difference between the average guideline minimum (93 months) and average sentence imposed (68 months), a difference of 25 months or 31.1 percent. Receipt offenders had the smallest difference between the average guideline minimum (109 months) and average sentence imposed (96 months), a difference of 13 months or 12.7 percent.

Trends from Fiscal Years 2005 to 2019⁵⁰

Since the passage of the PROTECT Act, the average guideline minimum for non-production child pornography offenses has increased over time. This, in turn, has been accompanied by an increasing gap between the average guideline minimum and average sentence imposed. Over time, the average guideline minimum for non-production child pornography offenders has increased steadily,

from an average of 98 months in fiscal year 2005 to an average of 136 months in fiscal year 2019. The average sentence has increased more gradually, from an average sentence of 91 months in fiscal year 2005 to an average sentence of 103 months in fiscal year 2019.⁵¹ Accordingly, the gap between the average guideline minimum and average sentence imposed has generally widened over time, though the gap appears to have stabilized somewhat between fiscal years 2014 and 2019. Although the difference between the average guideline minimum and average sentence imposed has remained somewhat stable since fiscal year 2014, the long term trend shows that most courts believe §2G2.2 is generally too severe and does not appropriately measure offender culpability in the typical non-production child pornography case.

Figure 8.
Sentences Relative to the Guideline Range for All §2G2.2 Offenses
Fiscal Year 2019



Sentences Imposed Relative to the Guideline Range

Fiscal Year 2019 Snapshot

The non-production child pornography guideline has been subject to longstanding criticism from stakeholders and has one of the lowest rates of within-guideline range sentences each year.⁵² Courts increasingly apply downward variances in response to the high guideline ranges that now apply to the typical non-production child pornography offender, although sentences remain lengthy.

Only 39.6 percent of non-production child pornography offenders were sentenced under the *Guidelines Manual*.⁵³ Less than one-third (30.0%) of non-production child pornography offenders received a sentence within the guideline range in fiscal year 2019. Among the individual offense types, receipt offenders were sentenced within the guideline range at the highest rate (41.8%), followed by possession (32.2%) and distribution (25.3%) offenders.

Figure 9.
Sentences Relative to the Guideline Range by Type of Child Pornography Offense
Fiscal Year 2019

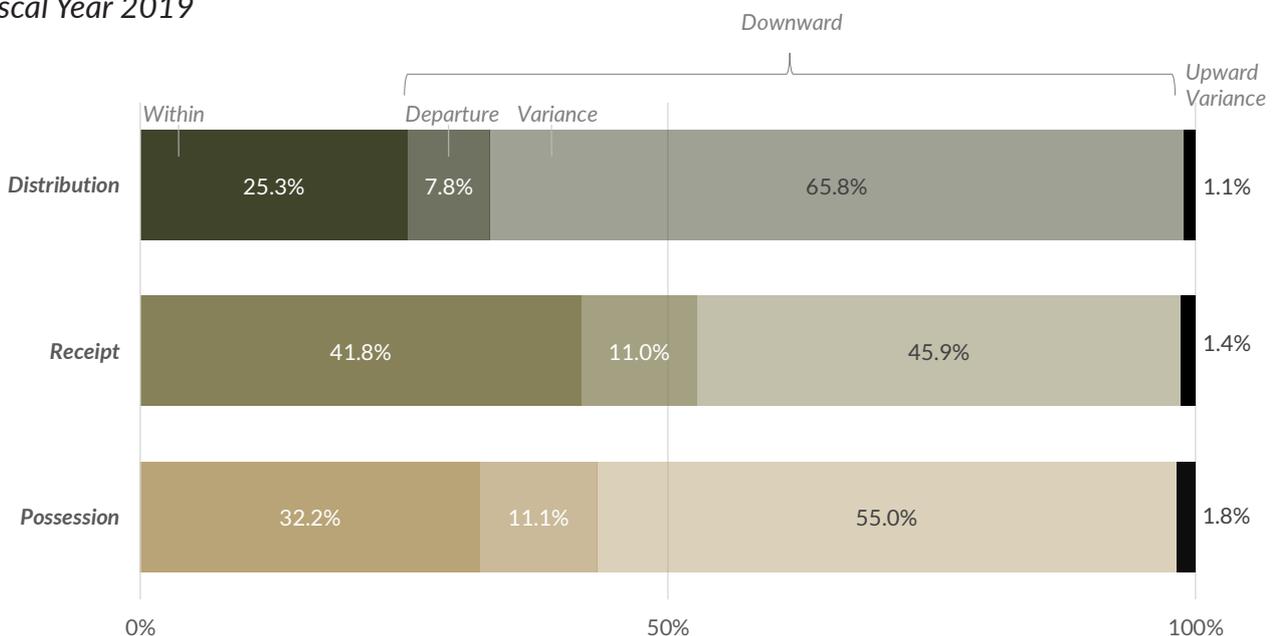
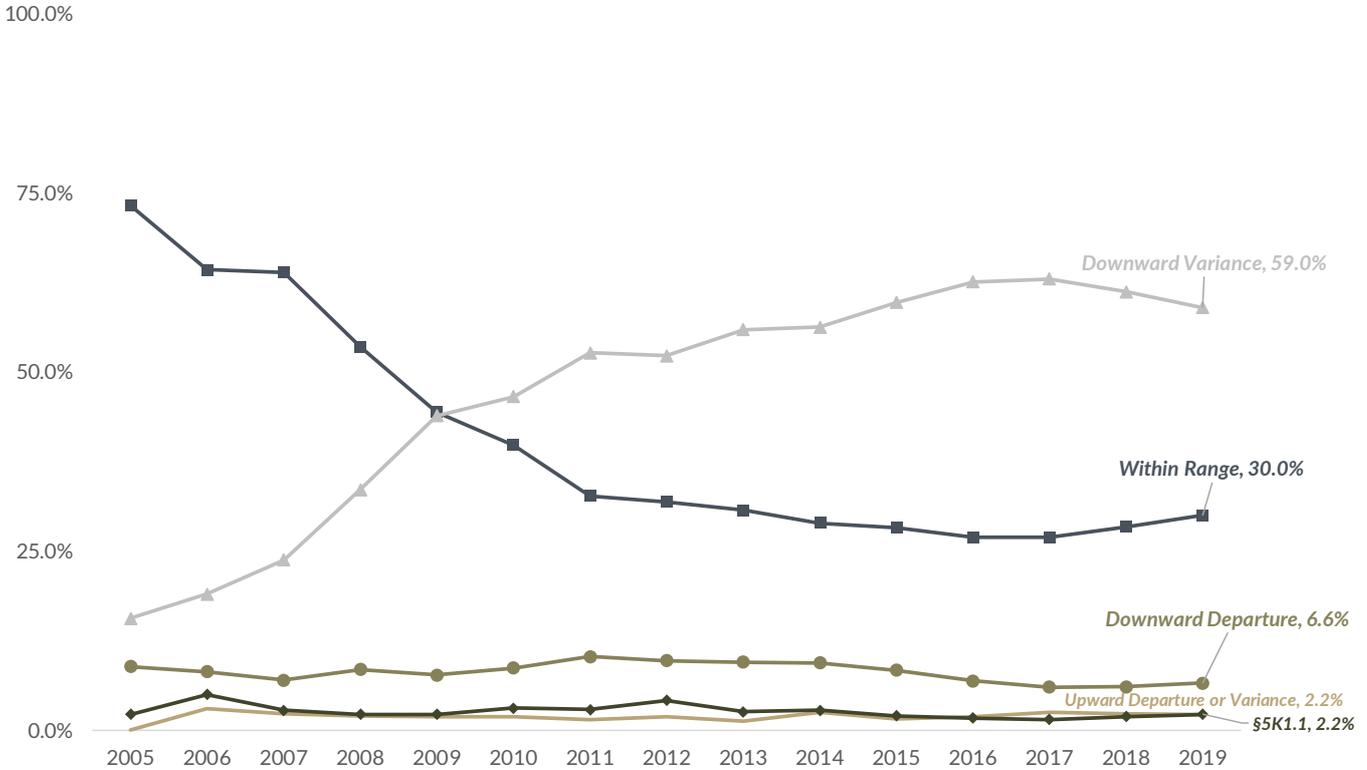


Figure 10.
Trend in Sentences Relative to the Guideline Range for All §2G2.2 Offenses



Of the non-production child pornography offenders, 8.9 percent received a departure below the guideline range based on a government-sponsored departure (3.6%),⁵⁴ court-sponsored downward departure (3.1%), or a downward departure based on substantial assistance to the government (2.2%).⁵⁵ Relatively few offenders (0.8%) received a departure above the applicable guideline range.

The majority of non-production child pornography offenders (59.0%) received a variance below the guideline range under 18 U.S.C. § 3553(a).⁵⁶ More than twice as many variances below the guideline range were non-government sponsored (42.2%) than government-sponsored (16.8%). Distribution cases received the highest rate of downward variances (65.8%), followed by possession cases (55.0%), and receipt cases (45.9%).

Trends from Fiscal Years 2005 to 2019

The percentage of non-production child pornography cases sentenced below the guideline range has changed over time. From fiscal years 2005 to 2011, the rate of within-range sentences decreased rapidly (from 73.3% to 32.7%) while the rate of downward variances increased rapidly (from 15.6% to 52.7%). Starting in fiscal year 2011, the rate of within-range sentences began stabilizing, decreasing only slightly from 32.7 percent in fiscal year 2011 to 30.0 percent in fiscal year 2019. The rate of downward variances increased from fiscal year 2005 to its peak at 63.0 percent in fiscal year 2017. Since the peak in fiscal year 2017, the rate of variances below the guideline range decreased slightly to 59.0 percent. The rate of substantial assistance departures, downward departures, and upward departures or variances has remained relatively steady over time.

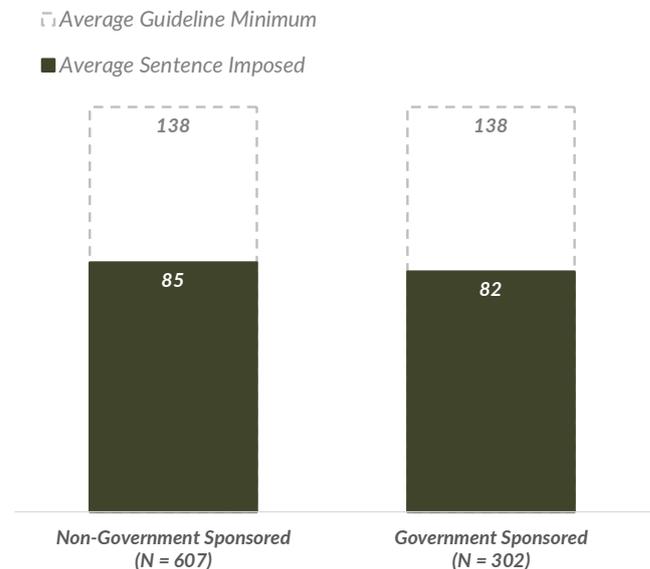
Effects of Departures and Variances on Sentencing Outcomes

Fiscal Year 2019 Snapshot

Finally, the Commission analyzed the rate at which, and extent to which, departures and variances resulted in sentences below the guideline range in cases sentenced under §2G2.2 in fiscal year 2019. The Commission compared the average guideline minimum (the average bottom of the guideline range) with the average sentence imposed in: (1) cases in which an offender received a government-sponsored downward departure or variance through §5K1.1 (Substantial Assistance), a joint motion, a binding plea under Federal Rule of Criminal Procedure 11(c)(1)(C), or another plea agreement; and (2) cases in which an offender received a downward variance or departure that was initiated solely by the defense or sentencing court (non-government sponsored).

The rate of non-government sponsored sentences below the guideline range for non-production child pornography offenders in fiscal year 2019 (45.3% of cases) is essentially unchanged from fiscal year 2010 (44.3% of cases).⁵⁷ By comparison, while comprising a smaller percentage of departures or variances, the rate of government sponsored below-range sentences has increased by 9.1 percentage points since fiscal year 2010. Of the 1,340 non-production child pornography offenders sentenced in fiscal year 2019, 22.5 percent received a government-sponsored departure or variance below the guideline range compared to only 13.4 percent in fiscal year 2010.

Figure 11.
Average Guideline Minimum and Sentence Imposed for §2G2.2 Below-Range Cases
Fiscal Year 2019

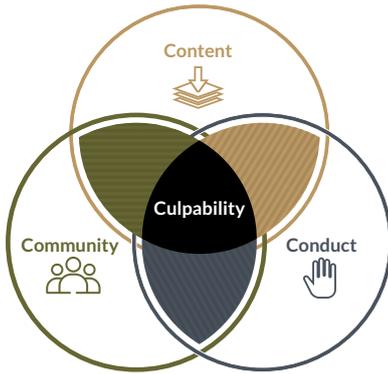


Both government and non-government sponsored departures or variances resulted in strikingly similar and substantial sentence reductions below the average guideline minimum.⁵⁸ The average guideline minimum was identical (138 months) for both offenders who received a government-sponsored below-range sentence and offenders who received a non-government sponsored below-range sentence. The average sentence length for non-government sponsored below-range cases (85 months) and government-sponsored below-range cases (82 months) was also similar. Thus, there was little difference between the effect of government and non-government sponsored departures or variances on the extent to which sentences were imposed below the guideline range for non-production child pornography offenders in fiscal year 2019.

Content, Community, and Conduct

Chapter

3



Introduction

This chapter examines the three primary factors identified in the 2012 *Child Pornography Report* as recommended areas of focus in sentencing non-production child pornography offenders: (1) content; (2) community; and (3) conduct. In the 2012 *Child Pornography Report*, the Commission examined social science research and data collected from other entities to discuss the content of non-production offenders' collections and their engagement in child pornography communities. Additionally, to examine conduct, the Commission completed a coding

project to analyze the offenders' criminal sexually dangerous behavior. The Commission concluded that the existing non-production child pornography sentencing guideline failed to account adequately for variations in offender culpability, sexual dangerousness, and changes in technology. The Commission concluded that §2G2.2 should be revised to focus on content, community, and conduct as the most relevant and distinguishing factors of non-production child pornography offenses and offender behavior.

For this report, the Commission conducted a more comprehensive coding project of data from fiscal year 2019 to analyze non-production child pornography offender behavior related to the content of child pornography collections, participation in child pornography communities, and engagement in aggravated conduct not captured by the guidelines.



Content

The first section of this chapter analyzes data regarding the **content** of the offender's child pornography collection and nature of the offender's collecting behavior.



Community

The second section examines the offender's degree of involvement with others in an internet **community** devoted to child pornography and child sexual exploitation.



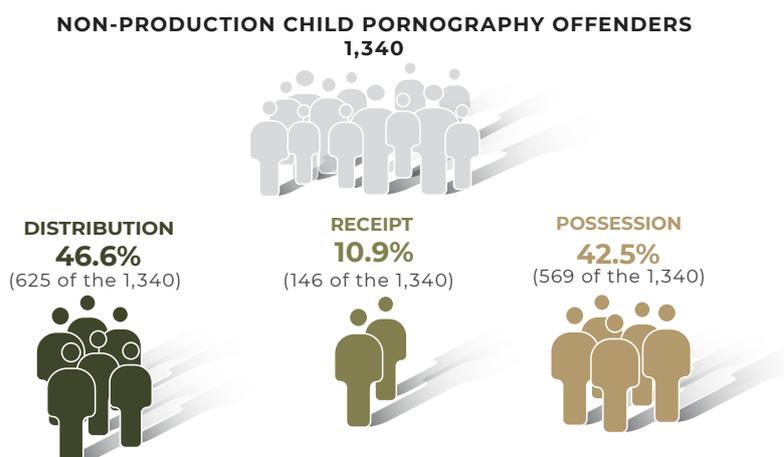
Conduct

The third section examines the offender's engagement in sexually abusive or exploitative **conduct** in addition to the child pornography offense, either during the instant offense or in prior history.

The final section of this chapter examines how the presence of these factors affects sentence length and the position of the sentence relative to the guideline range.

Content and Collection Behavior

Figure 12.
§2G2.2 Offenders by Child Pornography Offense
Fiscal Year 2019



In the 2012 *Child Pornography Report*, information about offenders' child pornography collections came primarily from social science research and judicial opinions.⁵⁹ Three sources provided data from law enforcement officials on child pornography images from the years 2000 to 2009: the National Juvenile Online Victimization Survey ("Online Victimization Survey"); the Child Exploitation and Online Protection database; and the National Center for Missing and Exploited Children.⁶⁰ These sources showed that the number of images containing very young victims, graphic sexual content, sexual penetration, and violent imagery had become more prevalent over time.⁶¹

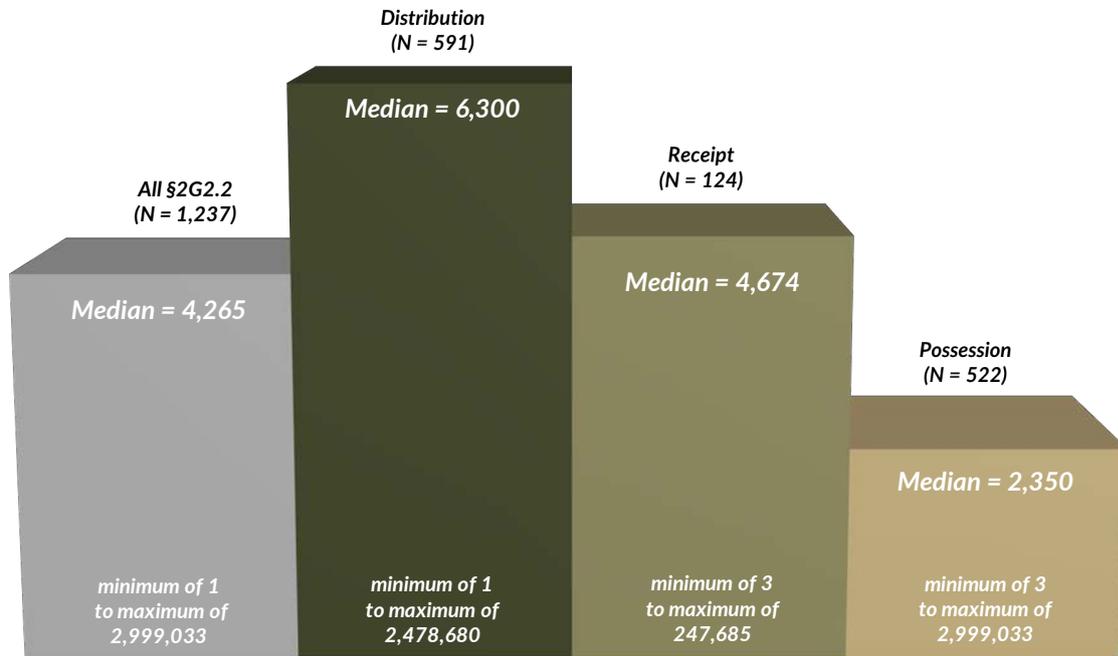
After describing child pornography images generally, the 2012 *Child Pornography Report* provided excerpts of presentence reports and judicial opinions describing representative images found in child pornography cases.⁶² Consistent with the survey data, the judicial opinions and presentence reports described violent and graphic content. Some minor victims appeared to be in pain or tortured, with images of

prepubescent minors being penetrated by other minors or adults and images of bestiality, urination, and defecation.⁶³

In this report, the Commission coded information from 1,340 non-production child pornography cases from fiscal year 2019 to analyze the content of the offenders' collections. This data set includes 625 distribution offenders, 146 receipt offenders, and 569 possession offenders.

Using charging documents, plea agreements, and presentence reports, the Commission coded information to identify factors related to the content of the offenders' collections. These factors included: (1) the quantity of still images and videos in the offender's collection; (2) the age of the youngest victim depicted; (3) the gender of the victims depicted; (4) the method of receiving child pornography; (5) the method of distributing child pornography; (6) where the offender stored the child pornography; and (7) whether sophisticated efforts were made to conceal the distribution, receipt, or possession of the child pornography collection.

Figure 13.
Total Image Equivalency⁶⁷
Fiscal Year 2019



Quantity of Images and Videos

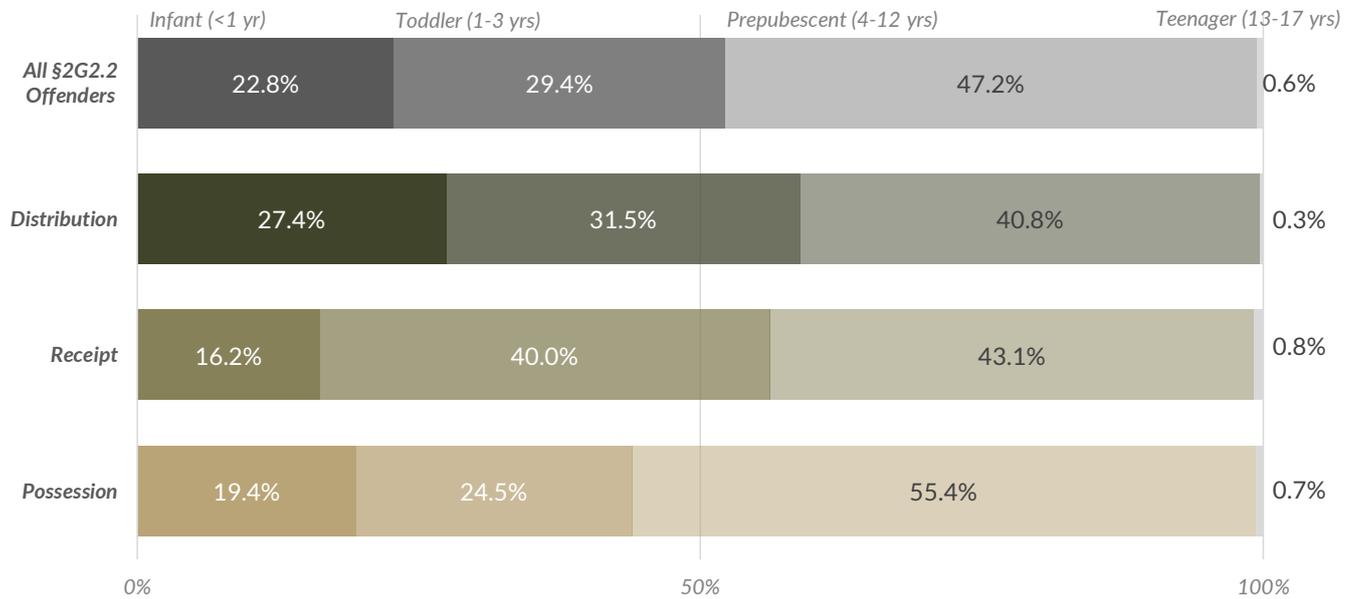
Technological changes have increased the volume and accessibility of child pornography. As a result of such changes, the typical offender's collection in fiscal year 2019 was voluminous and contained a wide variety of graphic sexual images, including images of very young victims. Most of the possession, receipt, and distribution offenses involved both images and videos. Of the 1,340 offenders, 981 (73.2%) had both images and videos, 166 offenders had only images (no videos), and the remaining 90 offenders had only videos (no images).⁶⁴ The prevalence of videos in an offender's collection is higher today than in the data provided in the 2012 *Child Pornography Report*; for example, the Online Victimization Survey in 2006 showed that 58.0 percent of offenders had at least one video.⁶⁵

As discussed in Chapter Two, most non-production child pornography offenses in fiscal year 2019 included a quantity of images, videos, or both that qualified for the maximum 5-level enhancement triggered under §2G2.2(b)

(7) because the offense involved 600 or more images. An application note in the guideline defines each video as equivalent to 75 images.⁶⁶ Figure 13 shows the total number of combined images and videos after converting each video to 75 images.

Most offenders across all three non-production child pornography offense types have well above the 600 images needed to qualify for the maximum 5-level enhancement under §2G2.2(b)(7). The maximum number of images for possession and distribution offenders numbered in the millions, exemplifying how technology has facilitated the ability to acquire and send enormous quantities of child pornography. Although all three types of offenders had large quantities of images, there was some difference between the offenders that generally appeared to reflect the seriousness of their offenses as measured by §2G2.2. Distribution offenders had the highest median number of images (6,300 images), followed by receipt (4,674 images) and possession offenders (2,350 images).

Figure 14.
Age of Youngest Victim
Fiscal Year 2019

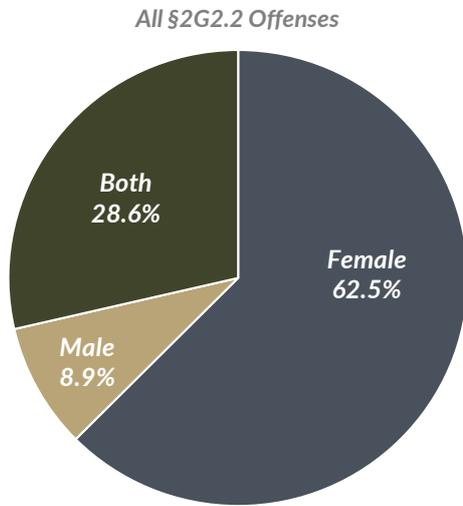


Age of Victims

A majority of the non-production child pornography offenders had images or videos of very young victims. In fiscal year 2019, over half (52.2%) of the offenders had images or videos of infants or toddlers (22.8% and 29.4%, respectively) and nearly every offender (99.4%) had images or videos depicting victims who were prepubescent or under the age of 13.⁶⁸ In other words, less than one percent of non-production offenders had images or videos consisting solely of victims age 13 years or older.

Although most non-production child pornography offenders had images of very young victims, there was some variation among the different types of offenders. Distribution offenders most commonly had images or videos of the youngest victims, followed by receipt offenders, and then possession offenders. Specifically, a majority of distribution (58.9%) and receipt (56.2%) offenders had images or videos of infants or toddlers. Among offenders sentenced for distribution, 27.4 percent of the cases involved images or videos of infant victims. An additional 31.5 percent of distribution cases involved images or videos of toddlers. Among receipt offenders, 16.2 percent of the offenders had images or videos of infant victims and an additional 40.0 percent had images or videos of toddlers. Comparatively, slightly less than half (43.9%) of possession offenders had images or videos of infants (19.4%) and toddlers (24.5%).

Figure 15.
Gender of Victims
Fiscal Year 2019



Gender of Victims

There is little variation in the gender of the victims depicted in the non-production child pornography images among offenders sentenced for distribution, receipt, and possession. Most offenses involved images depicting female victims only, with the percentages of such images for distribution offenders (61.6%), receipt offenders (65.6%), and possession offenders (62.9%) hewing closely to the overall rate for non-production child pornography offenders (62.5%). A similar percentage of distribution, receipt, and possession offenses involved child pornography depicting both genders, with 28.6 percent of non-production offenses overall involving images depicting both genders. A small minority of non-production child pornography offenses involved images or videos depicting male victims only (8.9%).

By Child Pornography Offense

Gender	Distribution	Receipt	Possession
Female	61.6%	65.6%	62.9%
Male	9.6%	6.6%	8.6%
Both	28.7%	27.9%	28.5%

Methods of Receipt

Technological advancements have facilitated offenders' access to child pornography. By 2012, widespread internet use had made it easy for offenders to receive child pornography. The 2012 *Child Pornography Report* identified three main methods of receiving child pornography through the internet—peer-to-peer (“P2P”) file sharing networks,⁶⁹ email or instant message, and websites.⁷⁰ The 2012 *Child Pornography Report* also noted that 6.0 percent of offenders fell into a catch-all “other” category that included receiving child pornography by text messages or mail.⁷¹ Today, P2P file sharing and texting, email, or instant message remain the most prevalent methods of receipt for non-production child pornography offenders.⁷²

All fiscal year 2019 offenders used mobile or digital means to acquire child pornography. The most common method of receiving child pornography for distribution and possession offenders was through a P2P network (43.8% and 32.0%, respectively), while the most common method of receiving child pornography for receipt offenders was through a website (34.9%). The fiscal year 2019 data analysis captures changes in technology that have introduced additional methods by which offenders received child pornography, including internet cloud-based hosts⁷³ (7.7%) and social media platforms (4.7%).

Table 1.
Method of Receipt
Fiscal Year 2019

Method of Receipt	All §2G2.2		Distribution		Receipt		Possession	
	N	%	N	%	N	%	N	%
Total Cases	1,340		625		146		569	
Peer-to-Peer Network	492	36.7%	274	43.8%	36	24.7%	182	32.0%
Text/Email/Instant Message	309	23.1%	181	29.0%	29	19.9%	99	17.4%
Website	260	19.4%	80	12.8%	51	34.9%	129	22.7%
Cloud-based Host	103	7.7%	60	9.6%	8	5.5%	35	6.2%
Social Media Platform	63	4.7%	31	5.0%	9	6.2%	23	4.0%
Internet (Unspecified)	46	3.4%	20	3.2%	7	4.8%	19	3.3%
Chatroom	38	2.8%	22	3.5%	0	0.0%	16	2.8%
Live Streaming	14	1.0%	5	0.8%	1	0.7%	8	1.4%
Self Produced or Unknown	44	3.3%	15	2.4%	15	10.3%	14	2.5%

Methods of Distribution

Offenders have also exploited technology to increase the methods by which they distribute child pornography. In the 2012 *Child Pornography Report*, P2P file sharing was the primary method of distribution, followed by email or instant message.⁷⁴ In fiscal year 2019, P2P file sharing and texting, email, or instant message were the most prevalent methods of distribution for non-production child pornography offenders. Of the 1,340 non-production child pornography offenders, the sentencing documents detailed evidence that 915 offenders (68.3% of offenders) distributed child pornography.⁷⁵ Table 2 analyzes the means by which the offenders distributed child pornography. Of the 1,340 offenders, 38.5 percent distributed child pornography through a P2P network, with the majority of those offenders using a P2P network as their exclusive method of distribution.⁷⁶ Moreover, a P2P network was the most common method of distributing child pornography for distribution, receipt, and possession offenders. Thus, although additional methods of distribution have surfaced through technological advancements, P2P networks remain the primary method of distribution for most offenders.

Text, email, or instant message (21.6% of cases) remained the second most common method to distribute child pornography. As noted in the 2012 *Child Pornography Report*, these “personal” methods of distribution indicate that the offender participated in an online child pornography community, which is discussed in greater detail in the next section.

Although there is considerable overlap with the methods of distribution described in the 2012 *Child Pornography Report*, the Commission’s fiscal year 2019 analysis demonstrates that new methods of electronic distribution have emerged in lockstep with advancements in technology. Accordingly, this report captures additional categories that were not included in the 2012 *Child Pornography Report*, such as distributing child pornography through cloud-based hosts and social media platforms.⁷⁷ Cloud-based hosting and social media platforms were used to distribute child pornography in 7.0 percent and 4.3 percent of the fiscal year 2019 cases, respectively. Only a small number of offenders (0.5%) distributed child pornography via a live streaming platform, which by its nature presents evidentiary challenges and is difficult to detect. While the vast majority of distribution is conducted through electronic-based

Table 2.
Method of Distribution
Fiscal Year 2019

Method of Distribution	All §2G2.2		Distribution		Receipt		Possession	
Total Cases	1,340		625		146		569	
	N	%	N	%	N	%	N	%
Cases with Distribution Conduct	915	68.3%	564	90.2%	31	21.2%	320	56.2%
Peer-to-Peer Network	516	38.5%	300	48.0%	23	15.8%	193	33.9%
Text/Email/Instant Message	290	21.6%	207	33.1%	5	3.4%	78	13.7%
Cloud-based Host	94	7.0%	71	11.4%	2	1.4%	21	3.7%
Social Media Platform	58	4.3%	35	5.6%	3	2.1%	20	3.5%
Chatroom	49	3.7%	30	4.8%	0	0.0%	19	3.3%
Website	33	2.5%	24	3.8%	0	0.0%	9	1.6%
Hand-to-Hand	15	1.1%	7	1.1%	1	0.7%	7	1.2%
Live Streaming	7	0.5%	4	0.6%	0	0.0%	3	0.5%

methods today, a small number of offenders (15 offenders) distributed child pornography through hand-to-hand transfers. Among the offenders who distributed via a hand-to-hand exchange, some were inmates already incarcerated for a child pornography offense who exchanged cell phones containing child pornography images between each other while in prison.

Table 3.
Method of Storage
Fiscal Year 2019

Method of Storage	All §2G2.2		Distribution		Receipt		Possession	
Total Cases	1,340		625		146		569	
	N	%	N	%	N	%	N	%
Computer	892	66.6%	440	70.4%	87	59.6%	365	64.2%
Phone/Tablet	599	44.7%	295	47.2%	62	42.5%	242	42.5%
Flash Drive/External Drive	584	43.6%	285	45.6%	57	39.0%	242	42.5%
Cloud-based Storage	178	13.3%	101	16.2%	12	8.2%	65	11.4%
Hard Copy	8	0.6%	4	0.6%	1	0.7%	3	0.5%
VHS/DVD	6	0.5%	1	0.2%	3	2.1%	2	0.4%
Video Game Console	5	0.4%	2	0.3%	0	0.0%	3	0.5%
Self-produced or Unknown	44	3.3%	15	2.4%	15	10.3%	14	2.5%

Storing Child Pornography

Very large volumes of data can be stored today as smaller and more easily transportable devices have proliferated. Some offenders possess child pornography collections numbering in the hundreds of thousands or even millions of images and videos. The typical non-production offender stored child pornography in more than one place, with 57.6 percent of offenders storing their collections on two or more devices.⁷⁸

Table 4.
Method of Concealment
Fiscal Year 2019

Method of Concealment	All §2G2.2		Distribution		Receipt		Possession	
Total Cases	1,340		625		146		569	
	N	%	N	%	N	%	N	%
Cases with Concealment	214	16.0%	69	11.0%	38	26.0%	107	18.8%
Dark Web	136	10.2%	35	5.6%	31	21.2%	70	12.3%
Software	65	4.9%	24	3.8%	6	4.1%	35	6.2%
Encryption	36	2.7%	20	3.2%	5	3.4%	11	1.9%
Hidden Files	11	0.8%	6	1.0%	1	0.7%	4	0.7%
Cryptocurrency	10	0.8%	0	0.0%	5	3.4%	5	0.9%

Nearly all non-production child pornography offenders stored their collections on electronic devices or online. Two-thirds (66.6%) of non-production child pornography offenders stored their child pornography collections on a computer hard drive. Slightly less than half of the offenders stored child pornography on a mobile phone or tablet device (44.7%) or on an external drive such as a flash drive (43.6%). Additionally, 13.3 percent of the offenders maintained a child pornography collection online in a cloud-based host. Very few offenders retained hard copies of images (0.6%) or videos on VHS or DVD (0.5%).

Sophisticated Methods of Concealing the Offense

Not only have technological advancements increased access to child pornography, but technologies aiding in the concealment of child pornography have challenged the government's ability to detect and prosecute offenders. The 2012 *Child Pornography Report* discussed social science research examining how offenders exploited technology to conceal their offenses through obscuring their location and identity, or safeguarding their child pornography collections.⁷⁹ In this report, the Commission coded information to identify the percentage of non-production child pornography cases in fiscal year 2019 that involved sophisticated efforts

to conceal the offense, such as using the Dark Web,⁸⁰ software that wipes files, encryption,⁸¹ or using cryptocurrency⁸² to facilitate the transfer of child pornography.

In fiscal year 2019, the Commission identified 16.0 percent of non-production child pornography offenders engaged in sophisticated concealment efforts. Notably, receipt offenders concealed the offense at the highest rate among the non-production child pornography offenders (26.0%). Comparatively, 18.8 percent of possession offenders and 11.0 percent of distribution offenders engaged in concealment efforts.

The most common method of concealment was through the Dark Web, with 10.2 percent of all non-production child pornography offenders receiving or distributing child pornography on the Dark Web. Again, receipt offenders used the Dark Web at the highest rate (21.2%). A higher percentage of possession offenders (12.3%) concealed the offense by using the Dark Web than distribution offenders (5.6%).

The next most common concealment method was using software to wipe or delete files (4.9%). While identified infrequently, non-production offenders also used encryption (2.7%) and cryptocurrency (0.8%) to facilitate the transmission of child pornography.

Child Pornography Communities

Overview

In the 2012 *Child Pornography Report*, the Commission examined the role of socialization and how internet communities contributed to the child pornography market and the development of offenders' sexual interest in children.⁸³ Like the discussion regarding the content of child pornography collections, the 2012 *Child Pornography Report* relied primarily on third party studies, information from the Department of Justice, and judicial opinions to discuss the role of online child pornography communities. As a proxy for examining online child pornography community participation, the Commission performed a data analysis of fiscal year 2010 child pornography cases regarding the receipt or distribution of child pornography through private or "closed" P2P file sharing programs and other "personal" forms of transmission, such as through email or a chatroom.⁸⁴

The 2012 *Child Pornography Report* examined social science research regarding how offenders socialized within online child pornography communities. Motivation for participating in such communities varied, from finding trading partners to furthering a sexual interest in children.⁸⁵ The level of engagement in communities also varied, with the lowest level of socialization involving an offender seeking to collect or share child

pornography online.⁸⁶ Progressively higher levels of socialization included using more interactive technologies to communicate about producing child pornography and discussing sexual interest in children through instant message, email, or online chatrooms.⁸⁷ Some communities were highly organized to screen prospective members and facilitate the trading of images.⁸⁸ The more sophisticated communities had explicit rules about security precautions, content posting, and gaining access to the group's images.⁸⁹

The Commission cautioned that while the culpability of offenders may be affected by their degree of participation in online child pornography communities and their use of sophisticated technology to share child pornography, existing social science research was inconclusive regarding whether an offender's degree of community involvement was associated with an increased risk of committing other sex offenses.⁹⁰ However, the Commission noted that some members produced new child pornography to gain access to other images.⁹¹

The 2012 *Child Pornography Report* also examined social science research regarding how child pornography communities provided social and supportive environments that normalized deviant beliefs about children. The Commission found that online communities provided a forum to discuss sexual interest in children without fear of condemnation and helped offenders to develop positive feelings about their online deviant sexual identities.⁹² However, the Commission noted that research was mixed regarding the pathways from such attitudes to other types of sex offending.⁹³

The 2012 *Child Pornography Report* concluded its examination of child pornography communities by discussing their contribution to the child pornography market. Social science research had not yet addressed whether criminal punishments had affected the commercial or non-commercial markets for child pornography since the advent of the internet and P2P file sharing.⁹⁴ The Commission's own data analysis of fiscal year 2010 child pornography cases revealed that the typical non-production offender received or distributed child pornography using a P2P program and not for financial gain.⁹⁵ In approximately 25 percent of cases, offenders engaged in "personal" distribution to another individual through chatrooms, email, or closed or private P2P programs.⁹⁶



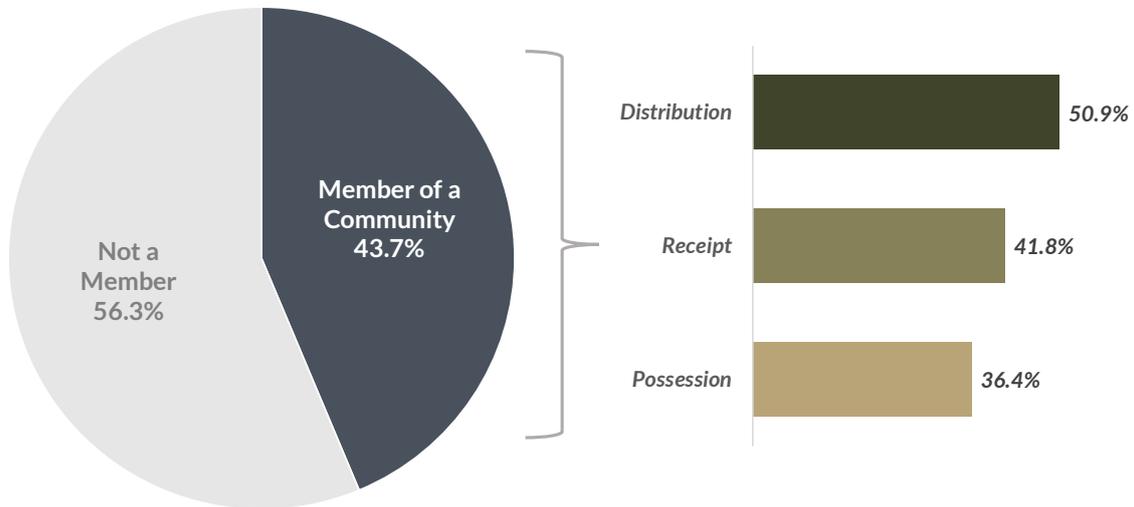
2012 *Child Pornography Report*

The Commission concluded that the non-production child pornography sentencing scheme should be revised to account for technological changes, emerging social science research, and variations in offender culpability and sexual dangerousness.

Recommendations:

- Focus sentencing of these offenders on three primary factors: content, community, and conduct.
- Enact legislation providing the Commission with express authority to amend the guidelines promulgated pursuant to congressional directives.
- Align the statutory penalty schemes for receipt offenses and possession offenses.

Figure 16.
Child Pornography Community Participation Among §2G2.2 Offenders
Fiscal Year 2019



Findings

In this report, the Commission conducted a robust coding project to collect data regarding offenders' participation in online child pornography communities. Rather than relying solely on the method of receipt or distribution as a proxy for community participation, the Commission collected specific data related to offenders' interactions with other individuals online. Using fiscal year 2019 data, the Commission identified an offender as part of a child pornography community if he or she engaged in any of the following: (1) participating in an online group whose members interact with each other primarily via the internet through posts, discussions, and one-on-one chatting in a forum devoted to child pornography; (2) having conversations with at least one other individual about child pornography or the sexual abuse of a minor; (3) distributing or receiving child pornography via personal means (*e.g.*, text, email, or instant message); or (4) working with another individual to produce child pornography.

More than forty percent (43.7%) of the 1,340 non-production child pornography offenders sentenced in fiscal year 2019 belonged to a child pornography community. The more serious types of non-production child pornography offenders under §2G2.2 were more likely to participate in a community (50.9% of distribution offenders and 41.8% of receipt offenders). However, even 36.4 percent of possession offenders, the least serious type of non-production offender under §2G2.2, participated in a child pornography community.

The Commission also collected data regarding whether an offender's participation in an online child pornography community promoted additional aggravating conduct. In the next section, as part of a broader analysis of offender behavior, the Commission analyzes whether the offender's community participation involved aggravating conduct, such as communicating about producing child pornography or soliciting a child for sexual abuse.

Aggravating Conduct

Overview

In the 2012 *Child Pornography Report*, the Commission examined the relationship between child pornography offending and other aggravating sexual conduct. The Commission reviewed social science research regarding other types of sex offending in conjunction with child pornography offending. The Commission also undertook a special coding project to determine the percentage of non-production child pornography offenders who had previously or concurrently committed other sex offenses.⁹⁷

The Commission found that while research had identified some correlation between viewing child pornography and other types of sex offending, most social science research suggested that viewing child pornography alone did not cause offenders to commit additional sex offenses absent other risk factors.⁹⁸ The primary risk factors for other sex offending were holding deviant sexual beliefs and anti-sociality.⁹⁹ Research also showed that viewing child pornography did not reduce the likelihood of committing other sex offending against children and that offenders who considered their use of child pornography to be preventative against additional sex offending were less likely to take responsibility for their actions.¹⁰⁰

The Commission then conducted its own data analysis of the prevalence of prior and concurrent criminal sexually dangerous behavior among 1,654 non-production child pornography offenders sentenced in fiscal year 2010.¹⁰¹ The 2012 *Child Pornography Report* defined “criminal sexually dangerous behavior” as: (1) contact sex offenses (any illegal sexually abusive conduct involving actual or attempted physical contact with a victim, before or concurrent with the non-production child pornography offense); (2) non-contact sex offenses (any illegal sexually abusive conduct not involving actual or attempted physical contact with a victim, such as soliciting a minor online, before or concurrently with the non-production child pornography offense); or (3) prior non-production child pornography offenses.¹⁰² Thus, the Commission only coded an offender’s conduct as criminal sexually dangerous behavior if it was illegal under state or federal law.¹⁰³ The Commission coded such conduct as criminal sexually dangerous behavior regardless of whether it resulted in a conviction.¹⁰⁴

In the 2012 *Child Pornography Report*, the Commission found that 35.1 percent of non-production child pornography offenders in fiscal year 2010 engaged in criminal sexually dangerous behavior concurrently or prior to their instant child pornography charge.¹⁰⁵ However, the Commission cautioned that the true prevalence was likely higher because social science research showed that the actual rate of criminal sexually dangerous behavior among child pornography offenders was higher than the known rate.¹⁰⁶

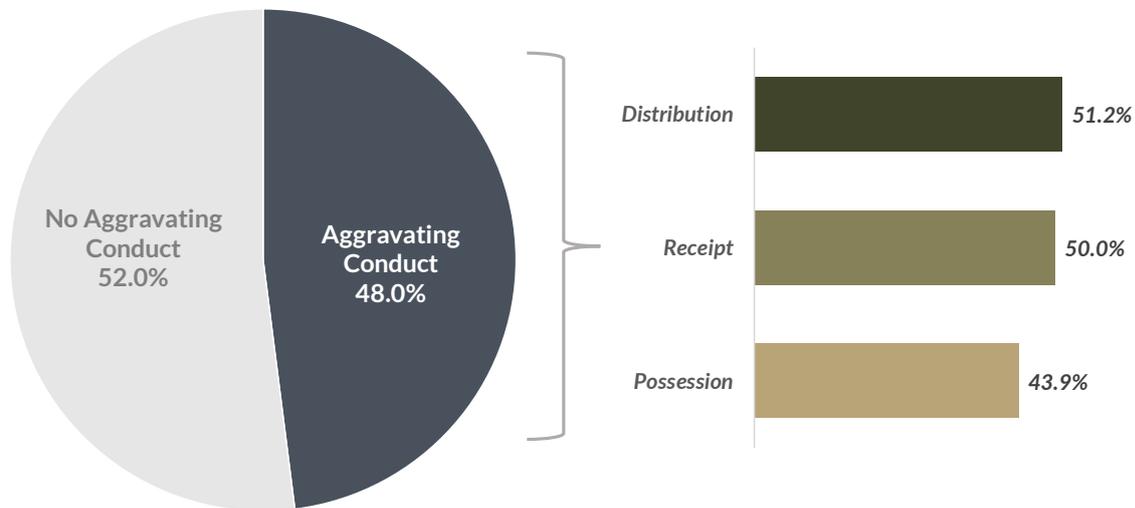
The Commission also found that the sentencing framework largely did not account for higher rates of criminal sexually dangerous behavior, save for the pattern of activity enhancement in the guidelines and the statutory enhancement for predicate sex offense convictions.¹⁰⁷ Of the offenders with known criminal sexually dangerous behavior histories in fiscal year 2010, 44.2 percent received the guideline or statutory enhancement for a predicate offense.¹⁰⁸ The remaining offenders did not receive either enhancement based on criminal sexually dangerous behavior, typically because the conduct did not constitute the required “pattern of activity” for the guideline enhancement or did not result in a conviction as required for the statutory enhancement.¹⁰⁹ Similarly, the guidelines’ Criminal History Category did not account for criminal sexually dangerous behavior in a majority of cases because of the lack of a conviction, age of a conviction, or other requirement under §4A1.2, which provides instructions on the computation of an offender’s criminal history.¹¹⁰

Data Collection

In this report, the Commission analyzed fiscal year 2019 cases to identify offender engagement in sexually abusive or exploitative conduct (hereinafter “aggravating conduct”) either prior to, or concurrent with, the instant offense. For purposes of this study, aggravating conduct includes the same components as the 2012 *Child Pornography Report*’s definition of criminal sexually dangerous behavior: (1) contact sex offenses; (2) non-contact sex offenses; and (3) prior non-production child pornography offenses. Consistent with the 2012 *Child Pornography Report*, within this broad categorization, the Commission identified aggravating conduct that encompasses not only illegal sexual contact with a victim (e.g., child molestation involving rape or sexual assault), but also non-contact sex offenses (e.g., illegally enticing a minor to engage in sexual conduct), as well as production of child pornography, which itself may involve contact with the victim (e.g., an offender videotaping himself having sexual contact with a minor), and acts that do not involve contact (e.g., an offender soliciting self-produced sexual images of a minor via the internet or a cellular phone, but not engaging in sexual contact with the minor).

In addition to attempted and completed acts involving actual victims, the Commission coded attempted criminal conduct involving perceived (but nonexistent) minors. The Commission reviewed presentence reports that recounted instances in which offenders engaged in a sexually-oriented internet “chat” with undercover law enforcement officers posing as minors. Frequently, such offenders solicited sex from the perceived minors, enticed the perceived minors to self-produce child pornography, or engaged in real-time sexual conduct via webcam (commonly called “cybersex”). If an offender arranged to meet a fictional minor for sexual contact and took affirmative steps to do so, such conduct was classified as an attempted “travel” offense. If

Figure 17.
Aggravating Conduct Among §2G2.2 Offenders
Fiscal Year 2019



the offender attempted to entice a perceived minor to engage in sexual conduct outside of the offender's physical presence or sight (e.g., encouraging the minor to engage in mutual masturbation with the offender while the two "chatted" via instant message, email, or over the telephone), such conduct was deemed a non-contact "solicitation" or enticement offense. If an offender requested self-produced sexual images or a video from the fictional minor (to be made in response to the offender's request), such conduct was deemed attempted production of child pornography. If the offender transmitted child pornography, adult pornography, or sexual images of himself or herself to a perceived minor, such conduct was treated as a non-contact offense (e.g., distributing obscenity to a minor or indecent exposure). Consistent with the 2012 *Child Pornography Report*, the Commission coded such conduct as aggravating sexual conduct regardless of whether it resulted in a conviction.

To identify aggravating conduct, the Commission analyzed presentence reports and plea agreements to determine whether the instant offense involved sexually abusive physical conduct, whether pretrial release was revoked for a sex offense or subsequent child pornography offense, and whether there was a criminal history of arrests or convictions for

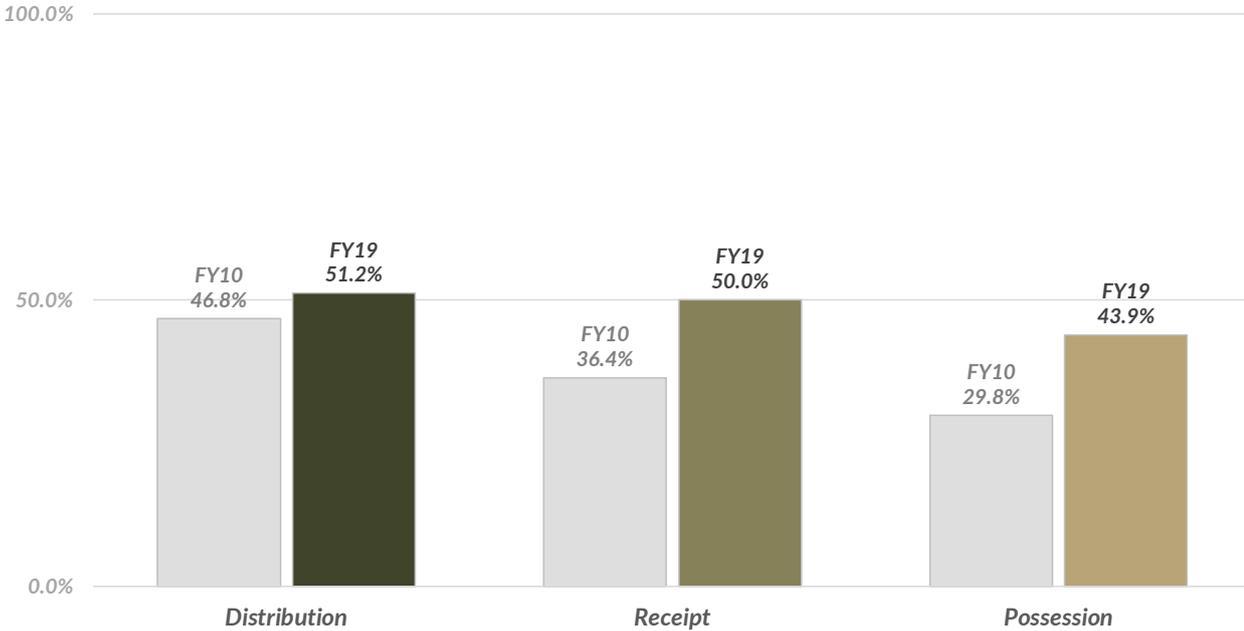
prior sexually abusive conduct or allegations of such conduct. Additionally, the Commission reviewed the Personal History section of the presentence report, which often described other allegations or admissions by the offender of engaging in aggravating sexual conduct.

Findings

Nearly half (48.0% or 643 offenders) of the 1,340 non-production child pornography offenders in fiscal year 2019 engaged in aggravating conduct, either prior to or concurrently with their instant federal child pornography offense. Furthermore, distribution offenders, the most serious type of non-production child pornography offender under §2G2.2, had the highest prevalence of aggravating conduct at 51.2 percent, followed closely by receipt offenders at 50.0 percent. However, even 43.9 percent of possession offenders, the least serious type of non-production child pornography offender under §2G2.2, engaged in aggravating conduct either prior to or concurrently with their instant federal child pornography offense.

Of the 643 offenders who engaged in aggravating conduct in fiscal year 2019, 296 offenders (46.0%) received a guideline enhancement for pattern of activity or a

Figure 18.
Trend in Aggravating Conduct by §2G2.2 Offenders



statutory enhancement for a predicate offense. An additional 19 of the 643 offenders were also convicted of production of child pornography and faced a 15-year mandatory minimum sentence. Thus, although a substantial portion of the offenders who engaged in aggravating conduct received a guideline or statutory enhancement accounting for that behavior, the guideline and statutory sentencing scheme for non-production child pornography offenses did not directly provide for an increased sentence based on aggravating conduct in more than half of such cases.

Compared to the data analyzed in the 2012 *Child Pornography Report*, the fiscal year 2019 data shows an increase in the prevalence of aggravating conduct among every type of non-production child pornography offense. Significantly, the increase is most pronounced among possession offenders. The rate of aggravating conduct among possession offenders increased by 14.1 percentage points, from 29.8 percent in 2010 to 43.9 percent in 2019. Similarly, the prevalence of aggravating conduct for receipt offenders rose by 13.6 percentage points, from 36.4 percent to 50.0 percent. The prevalence increased slightly for distribution offenders, rising by 4.4 percentage points from 46.8 percent to 51.2 percent.

Table 5 lists the subcategories of aggravating conduct among the 643 offenders who engaged in aggravating conduct in fiscal year 2019. An offender who falls into more than one subcategory (e.g., an offender with a prior rape offense and a separate non-contact solicitation offense) appears more than once; therefore, the total number of aggravating conduct events exceeds the 643 offenders who engaged in aggravating conduct. Among the non-production child pornography offenders, 22.2 percent engaged in two or more types of aggravating conduct.

Almost one-third (29.3%) of the non-production child pornography offenders engaged in a contact sex offense against a minor either prior to, or concurrently with, the instant non-production child pornography offense. Of the 1,340 non-production child pornography offenders, 11.1 percent were convicted of a contact sex offense against a minor. This includes offenders who engaged in a child pornography production offense that included sexual contact. A smaller percentage (6.5%) produced child pornography that did not include sexual contact either prior to, or concurrently with, the instant non-production offense.

Nearly one-fifth (19.8%) of non-production child pornography offenders committed a non-contact sex offense against a minor before or concurrently with the instant offense. Of the non-production offenders, 10.8 percent solicited a minor (either by contacting the minor directly or through communicating with an adult), and 12.8 percent either sent child pornography, adult pornography, or sexual images of himself to a minor, or committed a non-contact sexual offense (e.g., indecent

exposure). Separately, 12.9 percent of the offenders were previously convicted of a non-production child pornography offense.

Aggravating conduct involving a sexually abusive contact offense against an adult was comparatively rare among the non-production child pornography offenders. Less than two percent (1.4%) of non-production offenders engaged in such behavior.

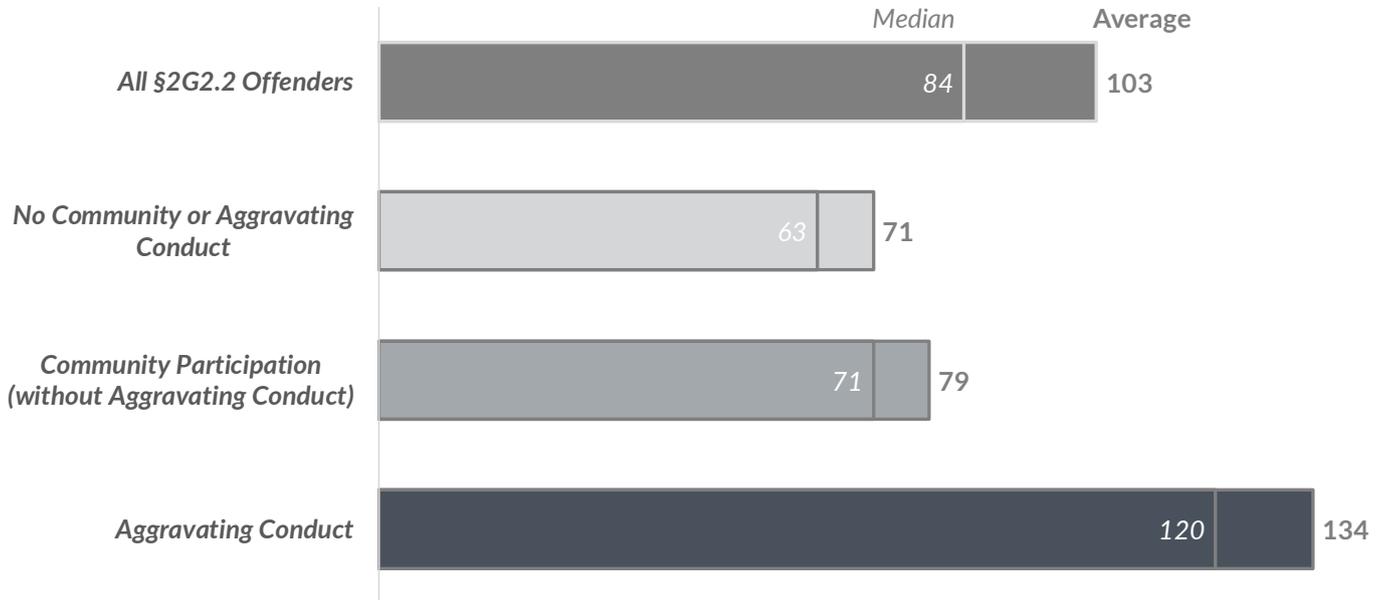
Table 5.
Type of Aggravating Conduct Among §2G2.2 Offenders
Fiscal Year 2019

Aggravating Conduct (Conduct Occurred in Instant or Prior Offense)		
Total Cases	1,340	
	N	%
Contact Sex Offenses Against a Minor	392	29.3%
<i>Conviction</i>	149	11.1%
<i>Revocation</i>	2	0.2%
<i>Arrest</i>	88	6.6%
<i>Admission/Allegation</i>	207	15.5%
<i>Attempted/Travel</i>	37	2.8%
Non-Contact Child Pornography Production Offenses	87	6.5%
Non-Contact Sex Offenses Against a Minor	265	19.8%
<i>Solicitation of a Minor</i>	144	10.8%
<i>Sent Pornography to Minors</i>	93	6.9%
<i>Other Non-Contact Sex Offenses</i>	88	6.6%
Prior Non-Production Child Pornography Offenses	173	12.9%
Contact Sex Offenses Against an Adult	19	1.4%

Prior Convictions

When focusing only on an offender's conviction for a sex offense prior to the instant federal non-production child pornography offense—referred to as “precidivism” in the 2012 *Child Pornography Report*—more than one-fifth (20.8%) of the 1,340 non-production child pornography offenders (n = 279) were previously convicted of a sex offense. Of the 1,340 offenders, 9.9 percent (n = 132) had a prior conviction for a contact sex offense; 0.4 percent (n = 5) were convicted of an offense involving production of child pornography, and 11.9 percent (n = 159) were previously convicted of a non-production child pornography offense. An additional 35 offenders (2.6%) were convicted of a non-contact sex offense, such as enticement or solicitation of a minor.

Figure 19.
Average and Median Sentence Length by Offense Behavior
Fiscal Year 2019



The Effect of Child Pornography Community Participation and Aggravating Conduct

Sentence Length

The analyses above (Figures 16 and 17) show that in fiscal year 2019, over forty percent of non-production child pornography offenders participated in a child pornography community and nearly half of non-production offenders engaged in aggravating conduct prior to, or concurrently with, the instant offense. Although these behaviors are widespread, they are not so prevalent as to prohibit meaningful comparisons among non-production child pornography offenders. Thus, in contrast to the specific offense characteristics, which apply very frequently across all types of non-production child pornography offenders, these behaviors may provide a more effective means of distinguishing offenders based on culpability and dangerousness.

Sentences Relative to the Guideline Range

The Commission previously identified participation in online child pornography communities and aggravating sexual conduct as factors that should be accounted for in the guidelines and in the sentences imposed on non-production child pornography offenders. Therefore, the Commission examined whether participation in a child pornography community or engaging in aggravating conduct did affect overall sentence length in fiscal year 2019. The Commission also examined whether these behaviors impacted the position of sentences relative to the guideline range for non-production child pornography offenders.

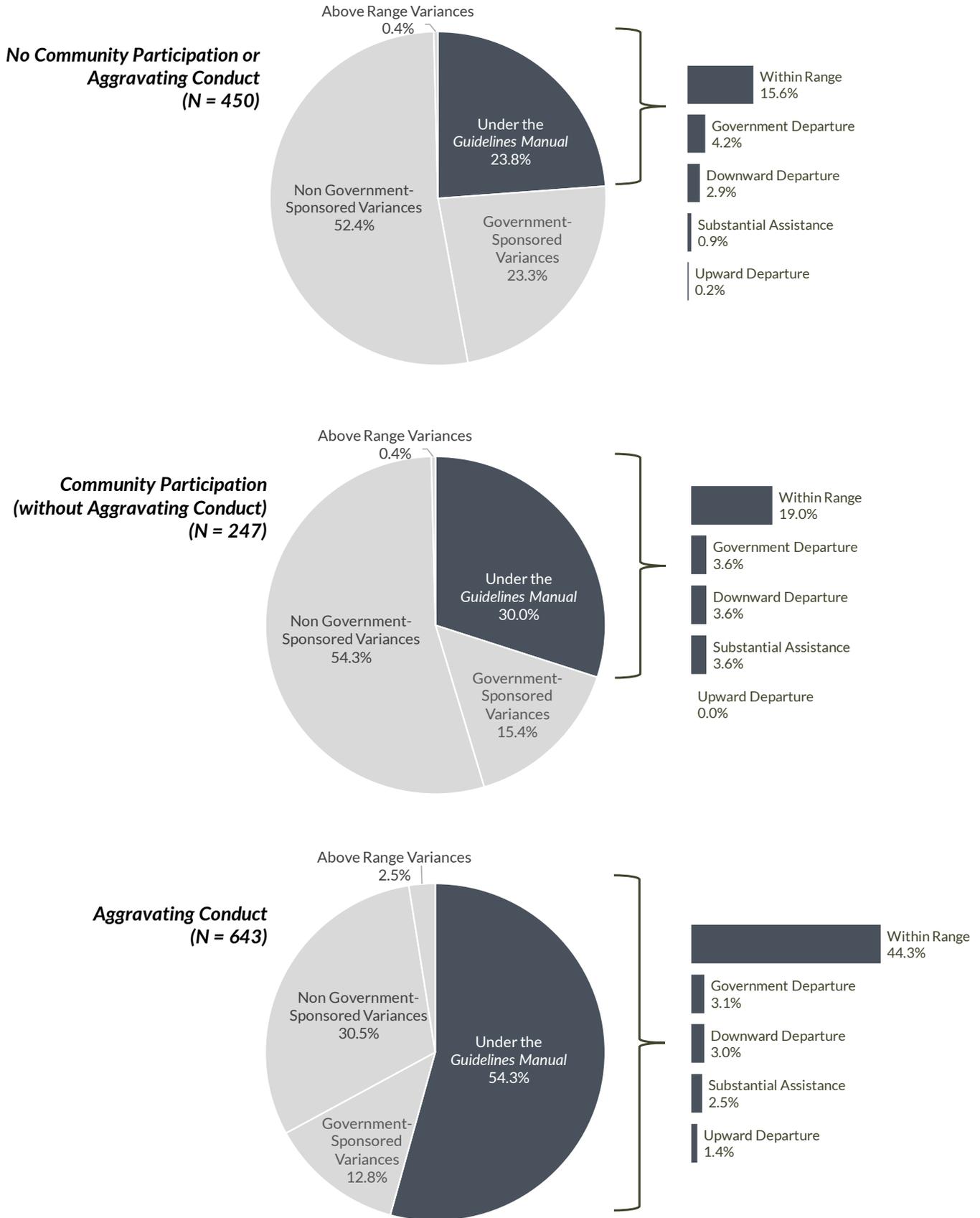
Consistent with the Commission's recommendations in the 2012 *Child Pornography Report*, participation in a child pornography community and engaging in aggravating conduct did impact the sentence length for non-production child pornography offenders. While the average and median sentence length for non-production child pornography offenders overall was 103 and 84 months, respectively, these figures varied depending on the presence of community participation or aggravating conduct.¹¹¹ Offenders who did not participate in a child pornography community or engage in aggravating conduct received the lowest average and median sentences (71 months and 63 months, respectively). Offenders who participated in a child pornography community (without aggravating conduct) had slightly higher sentences, with an average and median sentence of 79 and 71 months, respectively. Consistent with their increased culpability, offenders who engaged in aggravating conduct had the highest sentences, with substantially longer average and median sentences of 134 and 120 months, respectively.¹¹² Thus, sentencing courts likely account for these factors, at least in part, when imposing sentences, particularly with respect to the presence of aggravating conduct.

The presence of these factors also appeared to impact the rate at which courts imposed sentences within the guideline range. Over seventy-five percent of offenders who did not participate in a child pornography community or engage in aggravating conduct received downward variances, while only 15.6 percent of them received a within-guideline range sentence.

Comparatively, 69.7 percent of offenders who engaged in an online child pornography community (without aggravating conduct) received downward variances and a slightly higher percentage (19.0%) received a within-guideline range sentence.

Offenders who engaged in aggravating conduct received a substantially lower rate of downward variances (43.3% of cases), with a much higher rate (44.3%) receiving a sentence within the guideline range compared to offenders without aggravating conduct. Indeed, these offenders, who are arguably the most culpable among non-production child pornography offenders, received within-guideline range sentences at a rate that approaches the rate of within-guideline range sentences for the overall federal offender population in fiscal year 2019 (51.4%).¹¹³ Thus, the presence of these factors—particularly aggravating conduct—appears to have a substantial effect on whether non-production child pornography offenders received a sentence within the guideline range, rather than a lower sentence through a downward variance.

Figure 20. Sentences Relative to the Guideline Range by Offense Behavior Fiscal Year 2019



Sentencing Disparities

Chapter

4

Introduction

The 2012 *Child Pornography Report* found that sentencing disparities in non-production child pornography cases increased after 2004, the last year in which most offenders were sentenced based on pre-PROTECT Act penalty ranges.¹¹⁴ Among offenders sentenced under §2G2.2 in fiscal year 2010, nearly four out of five had their sentencing exposure limited by charging practices, stipulations in plea agreements, government-sponsored departures or variances, or court-sponsored departures or variances.¹¹⁵ The Commission found disparities in the sentencing outcomes of similarly situated offenders based on whether they were convicted of possession versus receipt or distribution.¹¹⁶ The Commission also found that sentencing outcomes differed among similarly situated offenders seemingly based on factors not accounted for by the guidelines.

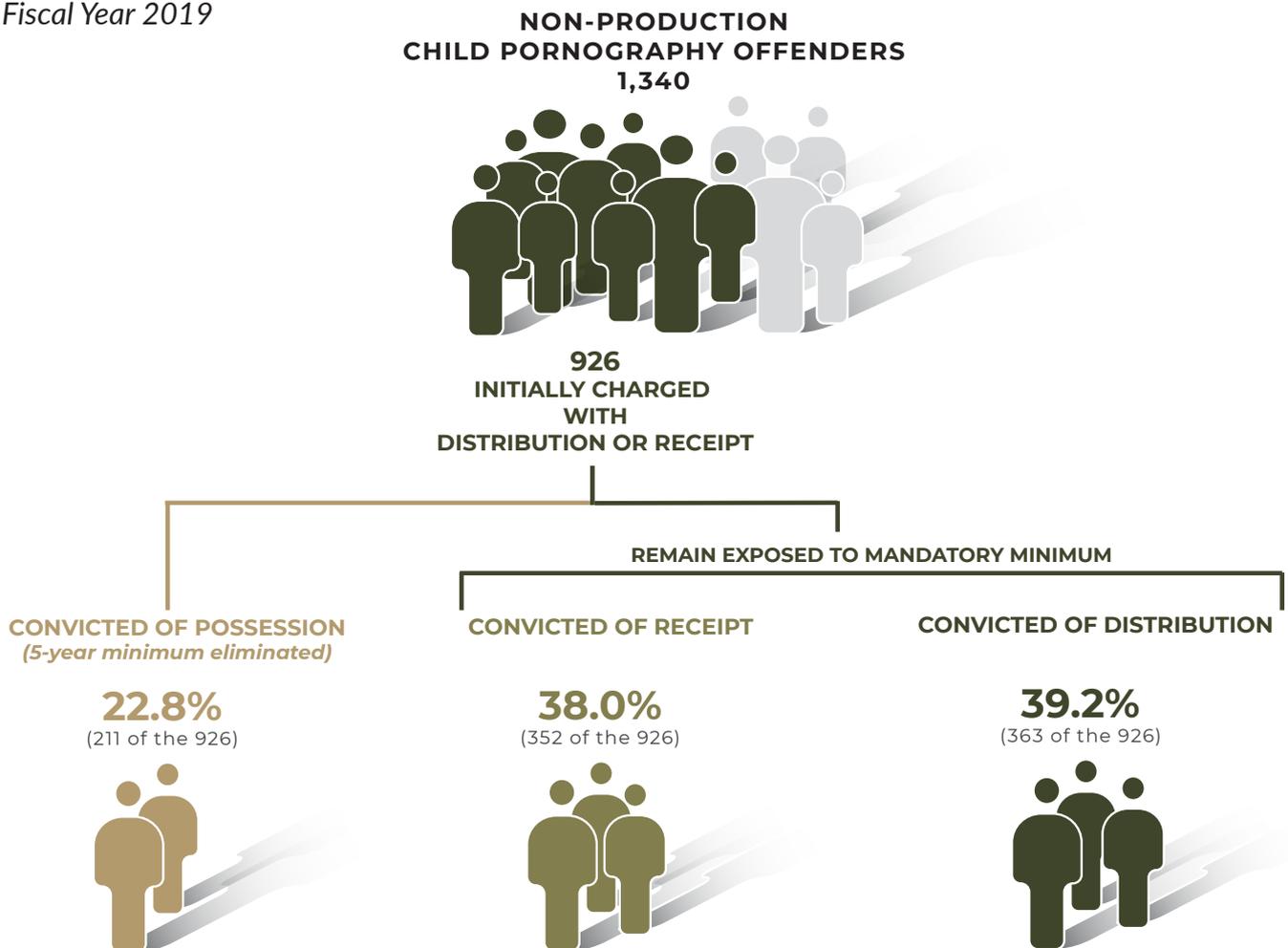
In the years since, although courts appear to be considering many of the factors identified by the Commission in its 2012 *Child Pornography Report*, sentencing disparities in non-production child pornography cases have persisted. To examine the extent of sentencing disparities in non-production child pornography cases today, the Commission conducted a special coding project of the 1,340 cases sentenced under §2G2.2 in fiscal year 2019. Analyzing indictments, plea agreements, and presentence reports, the Commission focused on charging practices and the role both the government and courts played in limiting sentencing exposure when crafting sentences below the guideline range. This chapter also presents sentencing outcomes for offenders who were similarly situated with respect to their offense conduct and criminal histories.



The Commission’s fiscal year 2019 analysis reveals continued disparities in sentencing outcomes among offenders who ostensibly committed similar non-production child pornography offenses. Prosecutorial and judicial practices contribute to the sentencing disparities. Prosecutors limited non-production child pornography offenders’ sentencing exposure by reducing charges in some cases. Additionally, offenders received substantial decreases below the guideline range based on government or court-sponsored departures and variances. Contrary to what one may expect, whether an offender’s sentencing exposure was limited by either of these prosecutorial or judicial means did not necessarily correlate with whether the offender engaged in less serious offense conduct.

Charging Practices

Figure 21.
Final Offense of Conviction for Offenders Initially Charged with Distribution or Receipt of
Child Pornography
Fiscal Year 2019

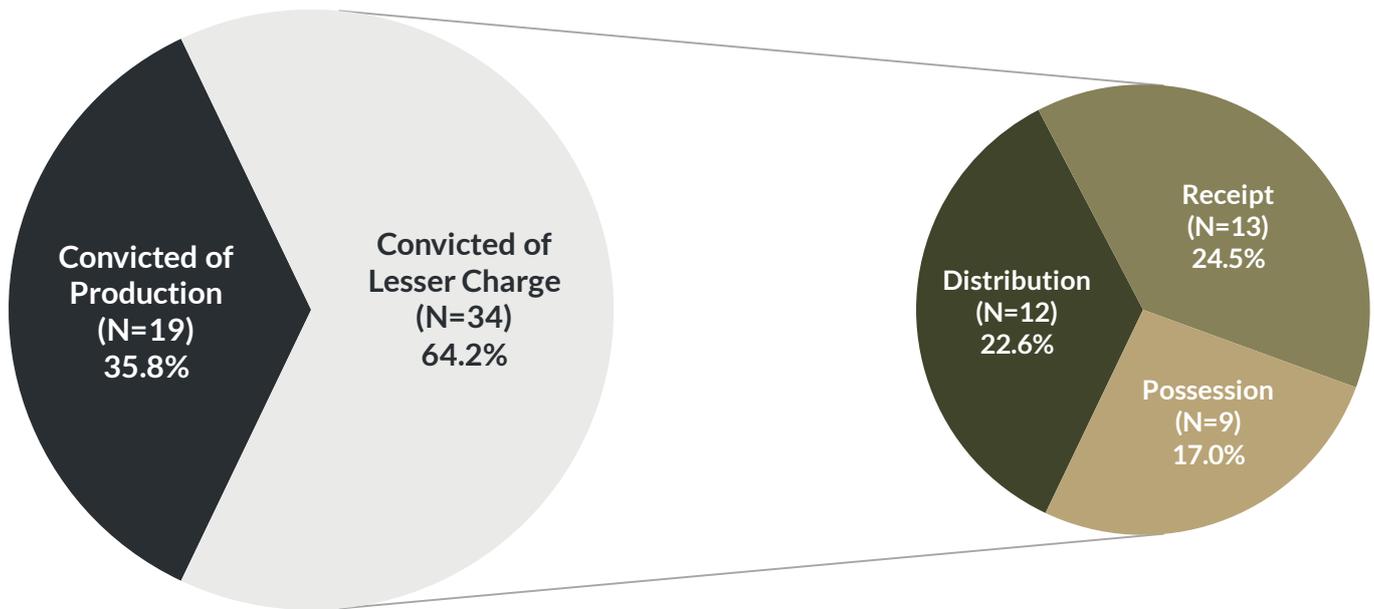


To analyze how charging practices affect sentencing exposure, the Commission examined the charging documents and judgments in the 1,340 non-production child pornography cases in fiscal year 2019 to compare the initial charges with the offenses for which the offender was eventually convicted and sentenced. Nearly all offenders convicted solely of possession had engaged in knowing or attempted receipt, distribution, or production of child pornography and, therefore, could have been charged with an offense carrying significantly higher penalties.¹¹⁷

Of the 1,340 non-production child pornography offenders in fiscal year 2019, 926 offenders were initially charged with distribution or receipt of child pornography, and thus faced a five-year mandatory minimum sentence.¹¹⁸ For 22.8 percent of the 926 offenders initially charged with receipt or distribution, charges were reduced to possession, thus eliminating the five-year mandatory minimum sentence required for a receipt or distribution conviction. The remaining offenders continued to be subject to a five-year mandatory minimum sentence, with 38.0 percent convicted of receipt and 39.2 percent convicted of distribution.

Figure 22.

Final Offense of Conviction for Offenders Initially Charged with Production of Child Pornography
Fiscal Year 2019

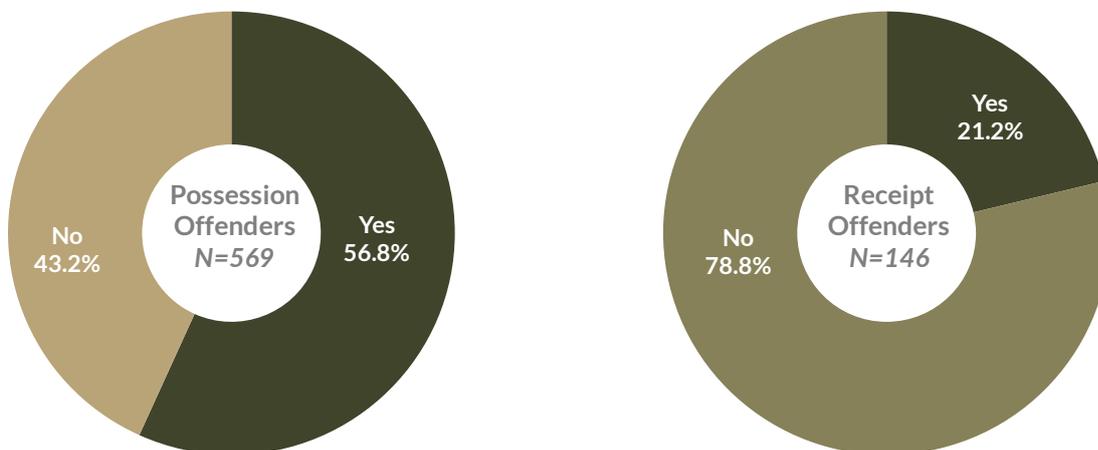


Some offenders initially charged with production of child pornography, which carries a 15-year mandatory minimum sentence, also had their charges reduced. Fifty-three offenders initially charged with production offenses were sentenced under §2G2.2 after pleading guilty.¹¹⁹ However, only approximately one-third (35.8% or 19 cases) of these offenders were convicted of production offenses. Almost two-thirds (64.2% or 34 cases) of the offenders initially charged with production offenses had all production charges dropped and thus faced reduced penalties after pleading guilty. Specifically, of the 53 offenders initially charged with production

of child pornography, 12 offenders (22.6%) were convicted of distribution as their most serious offense and 13 offenders (24.5%) were convicted of receipt, thereby reducing their statutory required minimum sentence from 15 years to five years. Notably, nine of the 53 offenders (17.0%) initially charged with production of child pornography were convicted of possession as the most serious offense, thereby reducing their sentencing exposure from a 15-year mandatory minimum to a conviction with no minimum term of imprisonment.

Distribution and Production Conduct

Figure 23.
Was Distribution Conduct Involved in the Child Pornography Offense?
Fiscal Year 2019

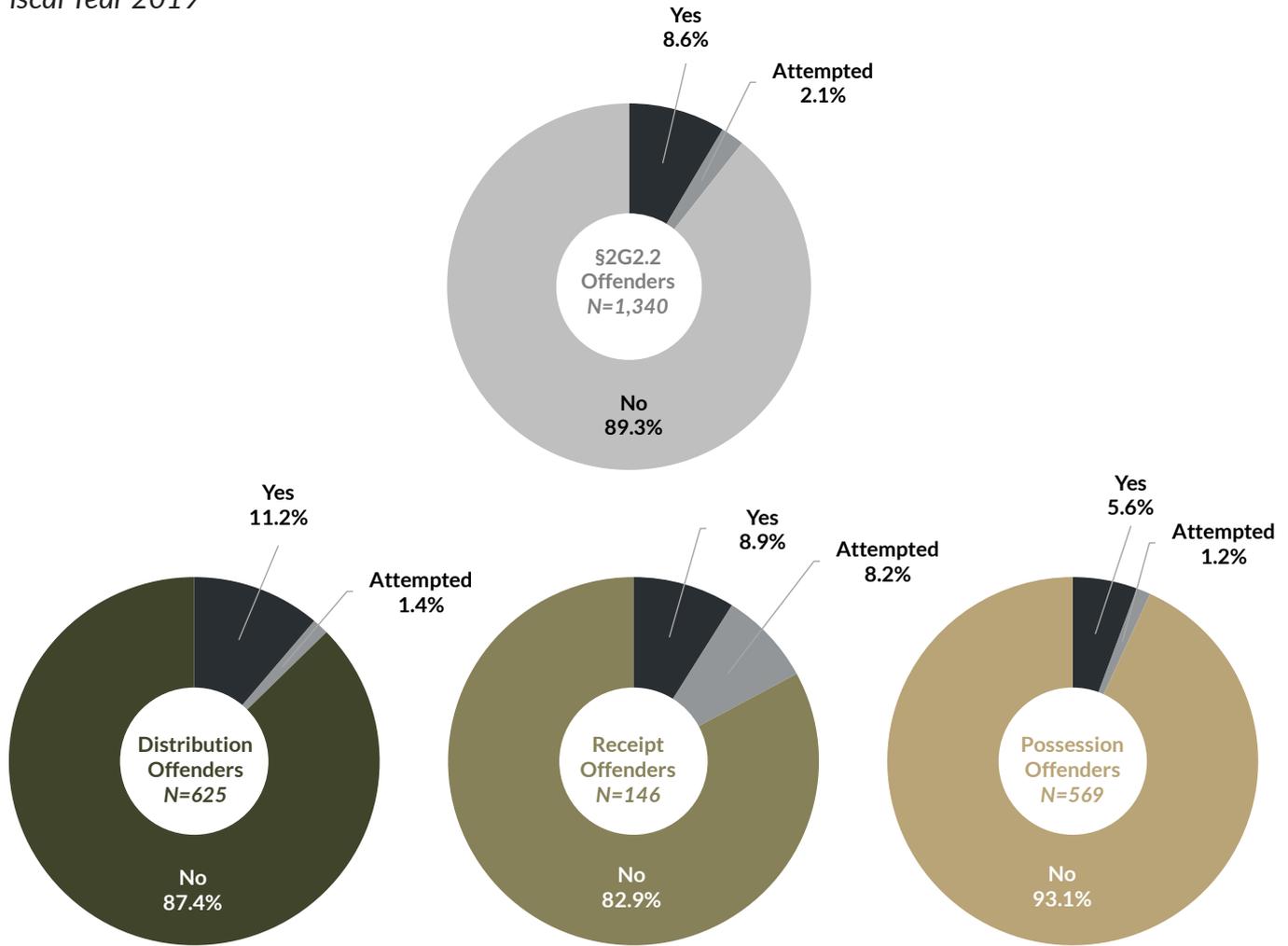


The Commission examined two factors likely to influence differences in sentence length to determine whether those factors explain why some offenders had their sentencing exposure limited by having more serious charges dropped. First, the Commission determined whether the offender distributed child pornography, because distributing child pornography is commonly cited as a basis for punishing non-production offenders more severely. Second, the Commission examined whether non-production offenders sentenced under §2G2.2 produced child pornography. Regardless of the charges and counts of conviction, the Commission coded information from the sentencing documents

in the fiscal year 2019 non-production child pornography cases to determine whether offenders produced or distributed child pornography.

Distributing child pornography did not lead to more serious charges in many cases. To the contrary, offenders sentenced for possession actually distributed child pornography (56.8%) at a rate almost three times higher than those sentenced for receipt (21.2%). Therefore, the decision to charge possession instead of receipt may not always reflect the seriousness of offender conduct with respect to distribution.¹²⁰

Figure 24.
Was Production Conduct Involved in the Child Pornography Offense?
Fiscal Year 2019



Conversely, offenders who produced child pornography were charged and convicted of more serious charges at a higher rate. The Commission examined how many offenders sentenced under §2G2.2 engaged in production or attempted production of child pornography concurrently with the instant federal offense, regardless of the charges and counts of conviction. Of the 1,340 non-production offenders sentenced under §2G2.2 in fiscal year 2019, 10.7 percent engaged in either the production (8.6%) or attempted production (2.1%) of child pornography.

Of the 1,340 non-production offenders sentenced in fiscal year 2019, distribution (12.6%) and receipt (17.1%) offenders produced or attempted to produce child pornography at a higher rate than possession offenders (6.8%). This suggests that with respect to the presence of production or attempted production conduct, the prosecutorial decision to charge distribution or receipt instead of possession may reflect, at least to some degree, the seriousness of offender conduct.

Overall, the Commission’s analysis of distribution and production conduct shows that the presence of these factors do not strongly equate with more serious convictions and thus do not fully explain why some offenders have their sentencing exposure limited.

Comparing Sentencing Outcomes

As discussed in Chapter Three, because the current statutory and guideline structure is outdated, courts are increasingly imposing sentences based on factors not accounted for in the guidelines, such as the three key factors identified in the Commission's 2012 *Child Pornography Report*: the content of the offender's collection; the offender's degree of involvement in an internet child pornography community; and the offender's prior or concurrent engagement in sexually abusive or exploitive conduct. However, in the absence of a guideline that accounts for these factors, courts cannot consider these key factors in a uniform manner.

The Commission analyzed the sentencing outcomes for a series of similarly situated possession, receipt, and distribution offenders to examine the extent of sentencing disparities among non-production child pornography offenders. The Commission compared offenders who received the same specific offense characteristics, and thus presumptively committed the offense in the same way, to analyze the degree to which courts imposed disparate sentences among similarly situated offenders. In doing so, the Commission replicated the 2012 *Child Pornography Report*'s examination of the most frequent sentencing outcomes among similarly situated offenders and found that sentencing disparities among similarly situated offenders continue to be pervasive.

In the 2012 *Child Pornography Report*, the Commission examined 498 non-production child pornography offenders in fiscal year 2010 whose guideline application represented the most

common sentencing scenario for non-production child pornography offenders.¹²¹ The analysis showed significant sentencing disparities not just between similarly situated offenders convicted of possession and offenders convicted of receipt, but also among offenders within the same conviction group—that is, sentencing disparities persisted even among similarly situated possession offenders as a distinct group and similarly situated receipt offenders as a distinct group.¹²²

The Commission also compared similarly situated possession and distribution offenders.¹²³ This comparison also showed significant sentencing disparities not just between the two groups of offenders but within each distinct group alone.¹²⁴ The Commission concluded that because courts and parties in §2G2.2 cases believe the current statutory and guideline structure is outdated, they appear to fashion sentences often based on factors not accounted for in the guidelines, resulting in increasing sentencing disparities among similarly situated offenders.¹²⁵

This report examines offenders in fiscal year 2019 who again represent the most common child pornography offender. The analysis below first compares the most common sentencing outcomes of possession and receipt offenders, followed by a comparison of the most common sentencing outcomes of similarly situated possession and distribution offenders. These analyses show that sentencing disparities for similarly situated non-production child pornography offenders persist today.

Sentencing Outcomes for Common Possession and Receipt Offenses

This section analyzes sentencing outcomes for possession and receipt offenders with the most frequently applied specific offense characteristics. The most common possession offenders (119 cases) received a base offense level 18, four specific offense characteristics that are applied in the vast majority of cases,¹²⁶ a 3-level reduction for acceptance of responsibility, and were assigned to Criminal History Category I. The resulting guideline range for these possession offenders was 78 to 97 months.

Figure 25 shows the disparate sentencing outcomes for these similarly situated possession offenders. The horizontal axis of the graph depicts sentence length (in increasing increments, stated in months). The vertical axis shows the number of cases in each increment, as represented by vertical bars, comprising the 119 possession offenders. The shaded area of the graph represents the applicable guideline range for the possession offenders (78–97 months). The figures that follow in this section are constructed in the same format.

The analysis shows considerable differences in how these similarly situated possession offenders were sentenced. The average sentence for these 119 possession offenders was 47 months,¹²⁷ with the overwhelming majority

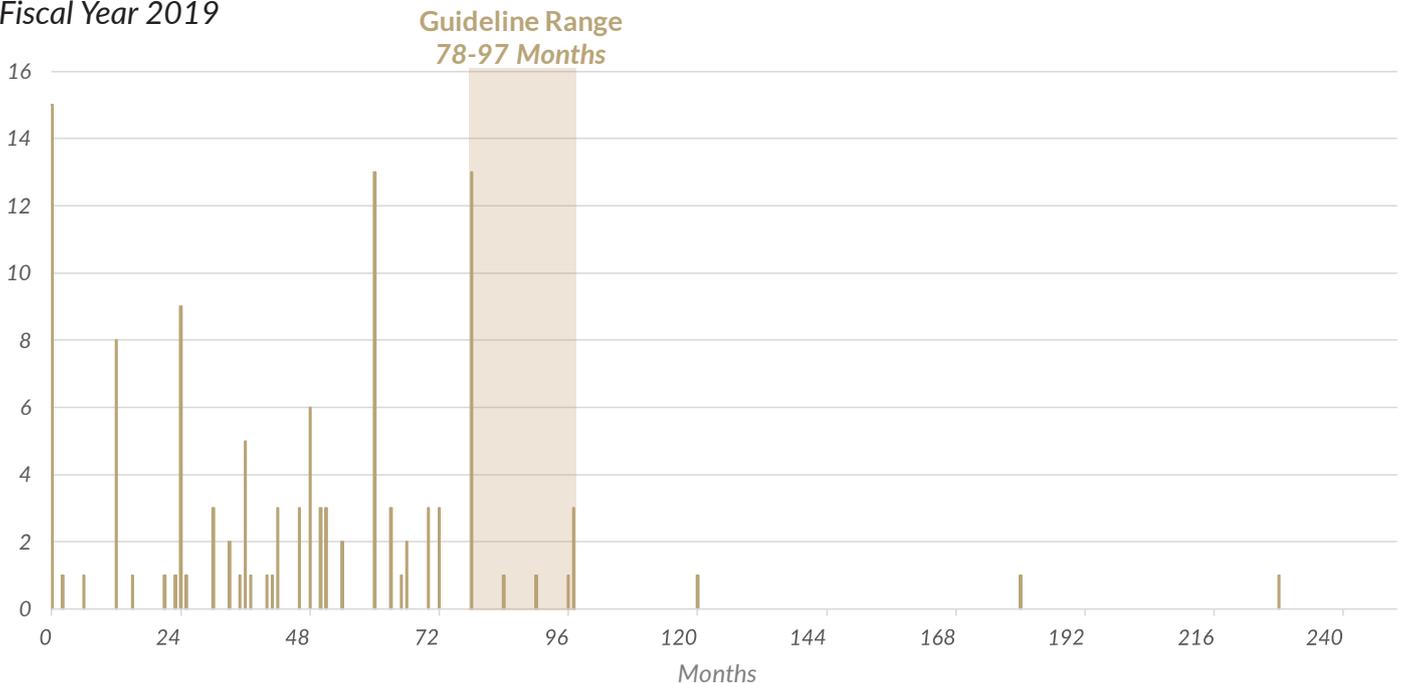


Most Common §2G2.2 Guideline Application

Possession Offenses (119 Cases)

- 18 **§2G2.2(a)(1)**
Base Offense Level
- 0 **§2G2.2(b)(1)**
Receipt only
- +2 **§2G2.2(b)(2)**
Victim prepubescent or under 12
- +4 **§2G2.2(b)(4)**
Sadistic or masochistic conduct or abuse of an infant or toddler
- +2 **§2G2.2(b)(6)**
Use of a computer
- +5 **§2G2.2(b)(7)**
600 or more images
- 3 **§3E1.1**
Acceptance of Responsibility
- 28 **Final Offense Level**
78-97 month range with CHC I

Figure 25. Variation of Sentence Length Among Similarly Situated Possession Offenders Fiscal Year 2019



(81.5%) sentenced below the guideline range. Notably, sentences ranged from probation to 228 months for these 119 possession offenders, who had the same guideline calculation through the application of the same specific offense characteristics and criminal history category.

A similar story unfolds with respect to similarly situated receipt offenders. The most common receipt offender (52 cases) received the same guideline range calculation as the possession offenders analyzed, except the base offense level started at 22 and was reduced by two levels because the actual conduct was limited to receipt of child pornography. The resulting guideline range for these receipt offenders was 97 to 121 months.

As with the possession offenders, the difference in sentencing outcomes for these similarly situated receipt offenders is considerable. The average sentence for these 52 receipt offenders was 81 months, with 69.2 percent sentenced below the guideline range. Remarkably, sentences ranged from 37 months to 180 months though these 52 receipt offenders had the same guideline calculation through the application of the same specific offense characteristics and criminal history category.



Most Common §2G2.2 Guideline Application

Receipt Offenses (52 Cases)

- 22 §2G2.2(a)(2)
Base Offense Level
- 2 §2G2.2(b)(1)
Receipt only
- +2 §2G2.2(b)(2)
Victim prepubescent or under 12
- +4 §2G2.2(b)(4)
Sadistic or masochistic conduct or abuse of an infant or toddler
- +2 §2G2.2(b)(6)
Use of a computer
- +5 §2G2.2(b)(7)
600 or more images
- 3 §3E1.1
Acceptance of Responsibility
- 30 **Final Offense Level**
97-121 month range with CHC I

Figure 26.
Variation of Sentence Length Among Similarly Situated Receipt Offenders
Fiscal Year 2019

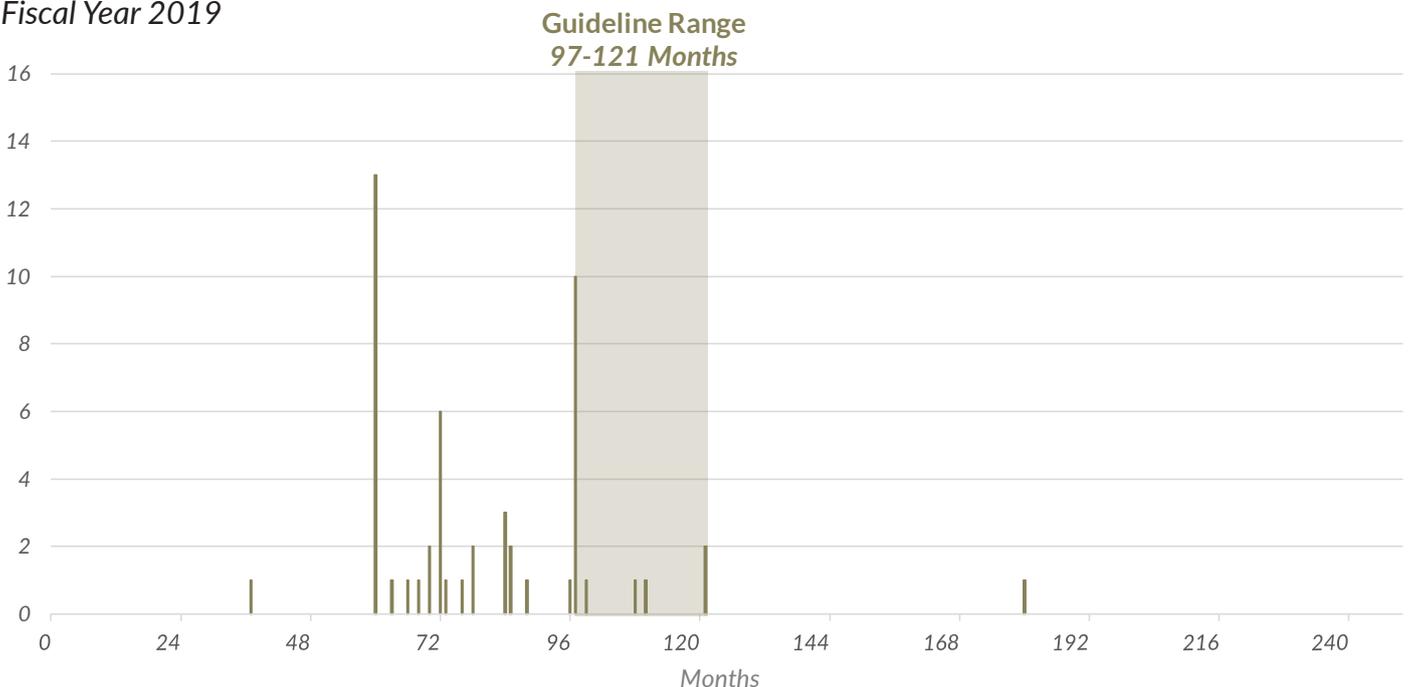


Figure 27 combines the previous two figures to provide the sentencing outcomes for 171 similarly situated offenders, comprising 119 possession offenders and 52 receipt offenders. The only difference between the two groups of offenders is the starting point of their guideline calculation based on the count(s) of conviction. Applying §2G2.2 resulted in a guideline range of 78 to 97 months for the possession offenders and 97 to 121 months for the receipt offenders. Thus, the guideline provides different sentencing ranges for two groups of offenders who seemingly engaged in the same conduct.

There are considerable differences in how these similarly situated possession and receipt offenders were sentenced. The average sentence for these receipt offenders (81 months) was 34 months longer than the similarly situated possession offenders (47 months).¹²⁸ Taken together, the overall spread of sentences for the 171 similarly situated offenders ranges from probation to 228 months. This analysis reveals striking sentencing differences both among and between similarly situated possession and receipt offenders. Thus, courts are sentencing these offenders, in part, based on factors not accounted for in §2G2.2.

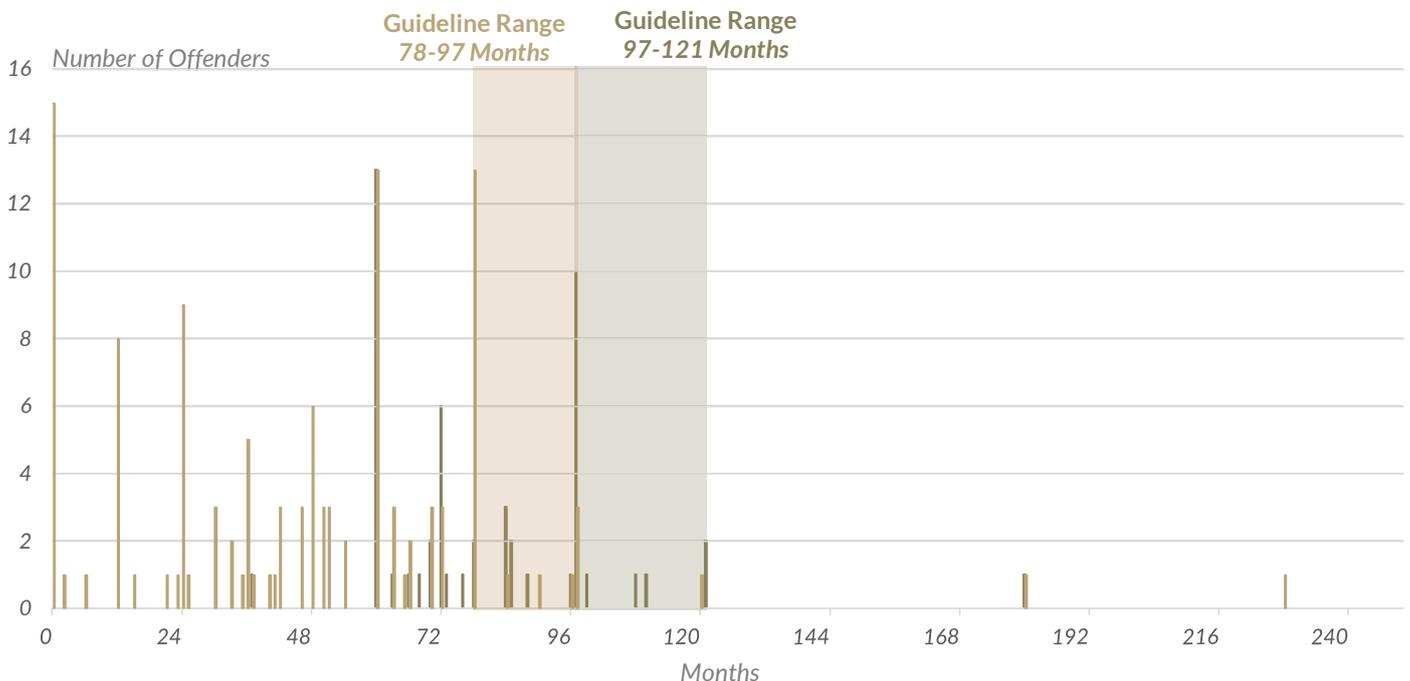


Most Common §2G2.2 Guideline Application

Possession vs. Receipt

18	22	§2G2.2(a) Base Offense Level
0	-2	§2G2.2(b)(1) Receipt only
+2	+2	§2G2.2(b)(2) Victim prepubescent or under 12
+4	+4	§2G2.2(b)(4) Sadistic or masochistic conduct or abuse of an infant or toddler
+2	+2	§2G2.2(b)(6) Use of a computer
+5	+5	§2G2.2(b)(7) 600 or more images
-3	-3	§3E1.1 Acceptance of Responsibility
28	30	Final Offense Level

Figure 27. Variation of Sentence Length Among Similarly Situated Possession and Receipt Offenders Fiscal Year 2019



Sentencing Outcomes for Common Possession and Distribution Offenders Who Distributed Child Pornography

This section analyzes the sentencing outcomes for possession and distribution offenders who received the same specific offense characteristics. The 82 possession offenders in this analysis received a base offense level 18, four specific offense characteristics that are applied in the vast majority of cases, as well as a 2-level distribution enhancement, a 3-level reduction for acceptance of responsibility, and were assigned to Criminal History Category I. The resulting guideline range for these 82 possession offenders was 97 to 121 months.

There are considerable differences in how these similarly situated possession offenders were sentenced. The average sentence for these 82 possession offenders was 57 months,¹²⁹ with the overwhelming majority (81.7%) sentenced below the applicable guideline range. Sentences ranged from time served to 121 months for these 82 possession offenders who had the same guideline calculation through the application of the same specific offense characteristics and criminal history category.

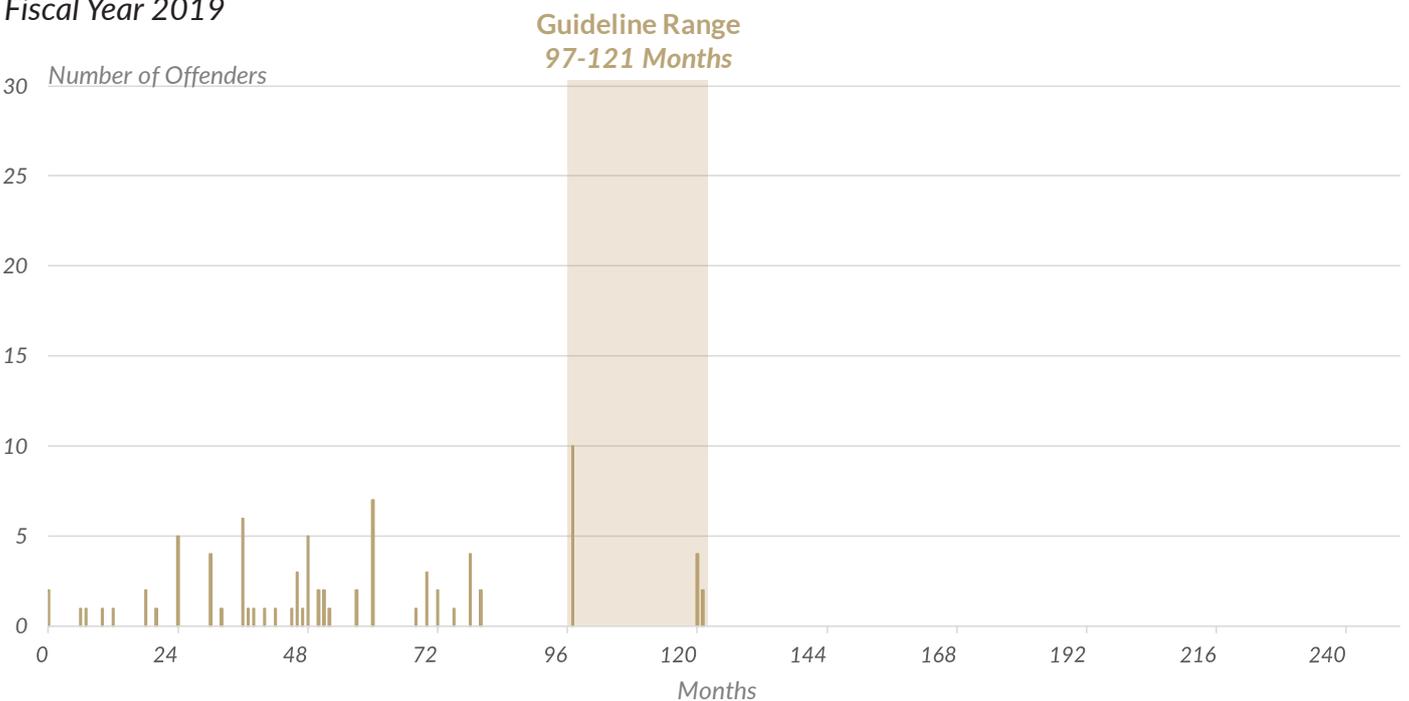


§2G2.2 Guideline Application

Possession Offenses with Distribution Enhancement (82 Cases)

- 18** §2G2.2(a)(1)
Base Offense Level
- +2** §2G2.2(b)(2)
Victim prepubescent or under 12
- +2** §2G2.2(b)(3)
Other distribution
- +4** §2G2.2(b)(4)
Sadistic or masochistic conduct or abuse of an infant or toddler
- +2** §2G2.2(b)(6)
Use of a computer
- +5** §2G2.2(b)(7)
600 or more images
- 3** §3E1.1
Acceptance of Responsibility
- 30** **Final Offense Level**
97-121 month range with CHC I

Figure 28. Variation of Sentence Length Among Similarly Situated Possession Offenders with Distribution Enhancement Fiscal Year 2019



The most common distribution offender (190 cases) received the same guideline range calculation as the possession offenders analyzed above, except their base offense level started at 22 based on the statute of conviction. The resulting guideline range for these 190 distribution offenders was 151 to 188 months.

As with the possession offenders, sentencing disparities are evident among the most common distribution offenders. The average sentence for the most common distribution offender was 100 months, with 85.8 percent of the 190 offenders sentenced below the guideline range. Sentences ranged from less than a month to 240 months for these 190 distribution offenders who had the same guideline calculation based on the application of the same specific offense characteristics and criminal history category. Thus, as apparent from the nearly 20-year difference between the minimum and maximum sentence, courts are sentencing these offenders, in part, based on factors not accounted for in §2G2.2.

Figure 30 combines the two figures above to provide the sentencing outcomes for 272 similarly situated offenders, comprising 82 possession offenders and 190 distribution

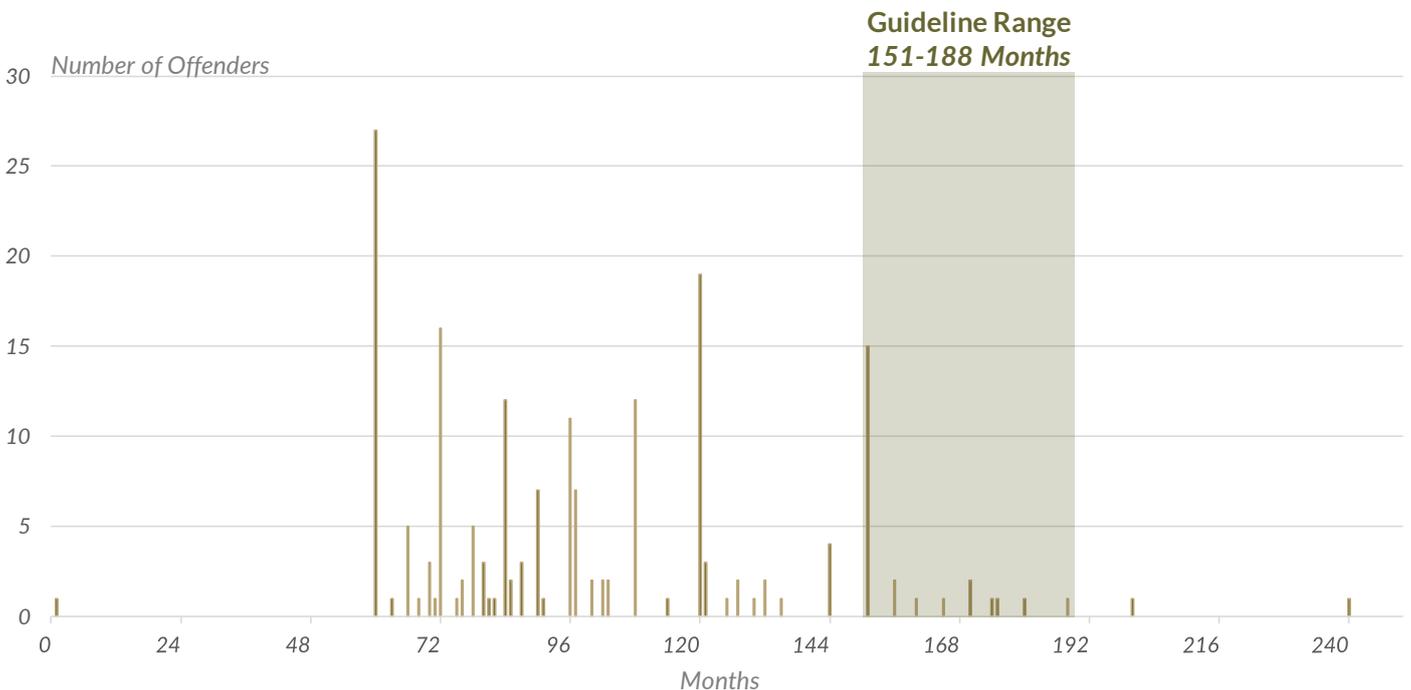


§2G2.2 Guideline Application

Distribution Offenses
(190 Cases)

- 22 **§2G2.2(a)(1)**
Base Offense Level
- +2 **§2G2.2(b)(2)**
Victim prepubescent or under 12
- +2 **§2G2.2(b)(3)**
Other distribution
- +4 **§2G2.2(b)(4)**
Sadistic or masochistic conduct or abuse of an infant or toddler
- +2 **§2G2.2(b)(6)**
Use of a computer
- +5 **§2G2.2(b)(7)**
600 or more images
- 3 **§3E1.1**
Acceptance of Responsibility
- 34 **Final Offense Level**
151-188 month range with CHC I

Figure 29.
Variation of Sentence Length Among Similarly Situated Distribution Offenders
Fiscal Year 2019



offenders. The only difference between the two groups of offenders is the starting point of their guideline calculation based on the statute of conviction. Applying §2G2.2 resulted in a guideline range of 97 to 121 months for the possession offenders and 151 to 188 months for the distribution offenders. Thus, the guideline provided different sentencing ranges for two groups of offenders who seemingly engaged in the same conduct.

Figure 30 below again shows marked differences in how these similarly situated possession and distribution offenders were sentenced. The average sentences for these distribution offenders (100 months) was 43 months longer than the similarly situated possession offenders (57 months).¹³⁰ Taken together, the overall spread of sentences for the 272 similarly situated offenders is substantial, ranging from time served to 240 months. Thus, consistent with the Commission’s finding in the 2012 *Child Pornography Report*, disparities between these similarly situated possession and distribution offenders remain pronounced, as do disparities among offenders within the same group.

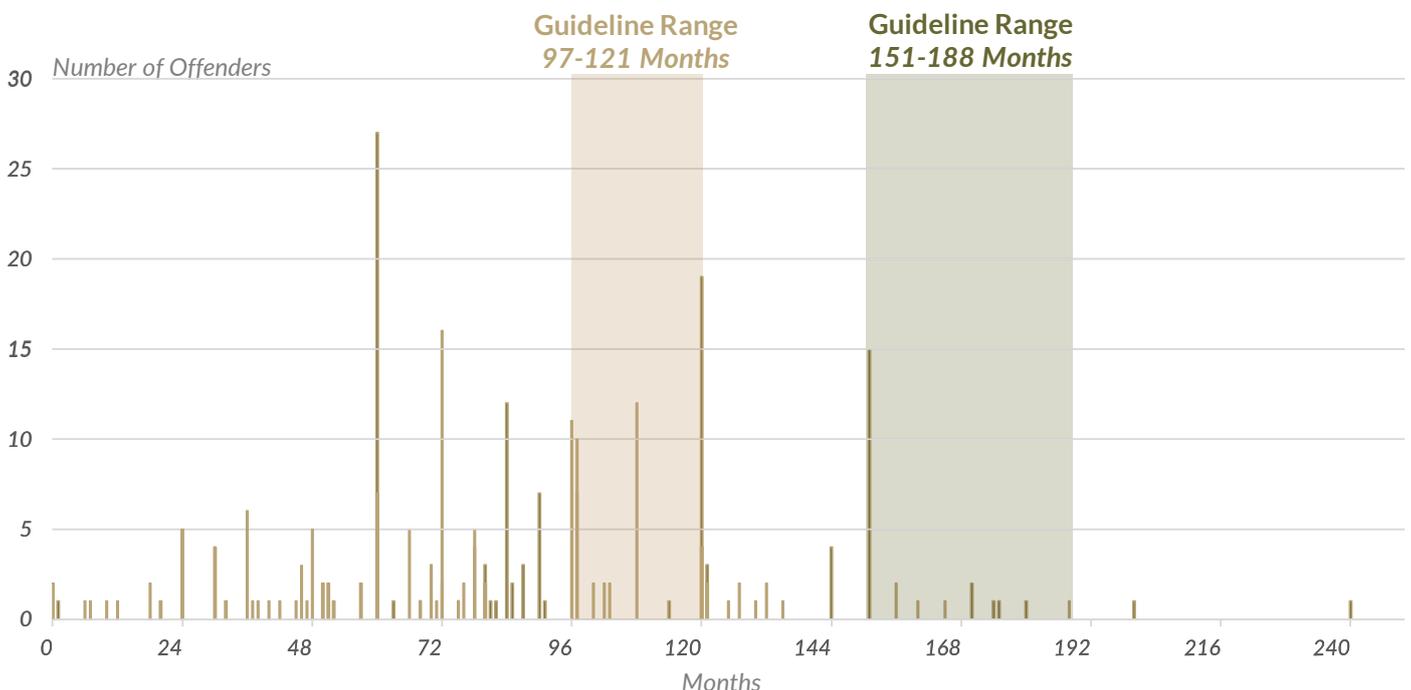


§2G2.2 Guideline Application

Possession vs. Distribution

18	22	§2G2.2(a) <i>Base Offense Level</i>
+2	+2	§2G2.2(b)(2) <i>Victim prepubescent or under 12</i>
+2	+2	§2G2.2(b)(3) <i>Other distribution</i>
+4	+4	§2G2.2(b)(4) <i>Sadistic or masochistic conduct or abuse of an infant or toddler</i>
+2	+2	§2G2.2(b)(6) <i>Use of a computer</i>
+5	+5	§2G2.2(b)(7) <i>600 or more images</i>
-3	-3	§3E1.1 <i>Acceptance of Responsibility</i>
30	34	Final Offense Level

Figure 30. Variation of Sentence Length Among Similarly Situated Possession and Distribution Offenders with Same Distribution Enhancement Fiscal Year 2019



Recidivism

Chapter

5



A primary issue facing sentencing judges and policymakers is the extent to which offenders sentenced under the non-production child pornography guideline recidivate—and, in particular, engage in new sex offenses (“sexual recidivism”)—after reentering the community. Recidivism information is central to three of the primary purposes of punishment described in the Sentencing Reform Act—specific deterrence, incapacitation, and rehabilitation—all of which focus on the prevention of future crimes through correctional intervention. Information about recidivism is also relevant to the Commission’s obligation to formulate sentencing policy that “reflect[s], to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process.”¹³¹

Introduction

This chapter analyzes the recidivism rates of federal non-production child pornography offenders released from incarceration or placed on probation in 2015. The Commission selected these offenders to account for, and balance, two primary research requirements:

1. the need to provide for a minimum three-year follow-up period during which a specific group of offenders was in the community;¹³² and
2. the need to study a group of offenders whose crimes were committed when internet use was common in order to provide recidivism data relevant to current offenders.

Offenders who were placed on probation or released from incarceration in 2015 satisfy both criteria to a sufficient degree.

Methodology for Recidivism Study

The methodology used for this report is consistent with the Commission’s most recent recidivism studies. To examine the rate of known recidivism of non-production child pornography offenders, the Commission entered into a data-sharing agreement with the FBI’s Criminal Justice Information Services (CJIS) Division and the Administrative Office of the United States Courts. Under the agreement, the Commission gained electronic access to criminal history records through the CJIS’s Interstate Identification Index (III).¹³³ The Commission identified all offenders sentenced under the non-production child pornography guideline who were released or put on probation in 2015 and could be matched to the FBI’s Record of Arrest and Prosecution database (“RAP sheets”).¹³⁴ These offenders were tracked for three years after release from prison or placement on probation. In

addition, the Commission collected data on their federal child pornography offense and offense characteristics from the relevant sentencing documents.

Although RAP sheets are generally considered the best source of data for recidivism studies, they can only be used to determine the rate of *known recidivism*. Some amount of criminal activity, including recidivism, is unreported—commonly referred to as the “dark figure” of crime.¹³⁵ This so-called “dark figure” of crime looms large in sexual offenses against children, which often go unreported or undetected¹³⁶ and therefore will not appear on RAP sheets. Accordingly, any research on sex offender recidivism based on reported arrests, including the Commission’s recidivism findings, should be viewed as a conservative measurement of actual recidivism.

The Commission’s study group included 1,093 non-production child pornography offenders who satisfied four conditions:

1. They were United States citizens released from federal prison or placed on probation for their non-production child pornography offense in 2015;
2. Their original sentencing documents (e.g., presentence reports and statement of reasons) provided complete guideline application information;
3. They were matched successfully to RAP sheets; and
4. They were tracked in the community for three years immediately after release following service of prison sentences¹³⁷ (or, in the case of a small minority, during service of their probation terms) for their federal child pornography offenses.

For this study, recidivism is defined as any of the following arrest events¹³⁸ occurring within the three-year study period:

- an arrest that led to a conviction for a felony or qualifying misdemeanor offense;
- an arrest with no evidence of an acquittal or dismissal;¹³⁹ or
- a reported “technical” violation of the conditions of an offender’s probation or supervised release that led to an arrest or revocation.¹⁴⁰

New criminal arrests included felony offenses and, with certain exceptions, misdemeanors that were committed during the three-year period.¹⁴¹ Arrests with dispositions of an acquittal or dismissal of all charges were not considered recidivist events.

The Commission analyzed the *overall recidivism* and *sexual recidivism* rates. Overall recidivism refers to any criminal justice failure that resulted in either an arrest (with or without a conviction) for a new criminal offense or an arrest (with or without a revocation) for a “technical” violation of the offender’s conditions of supervision. As part of the “overall recidivism” analysis, the Commission identified individuals who failed to register as sex offenders as well as offenders who were arrested for a crime that was not a sex offense.

Sexual recidivism is a subset of overall recidivism and refers to arrests for:

1. contact sex offenses (e.g., rape or sexual assault); or
2. non-contact sex offenses (e.g., indecent exposure).

Offender and Offense Characteristics

89.1%

White

Most non-production child pornography offenders released or placed on probation in 2015 were White (89.1%) followed by Hispanic (6.4%), Black (2.7%), and Other races (1.8%).

99.6%

Male

Nearly all were male (99.6%).

41 yrs

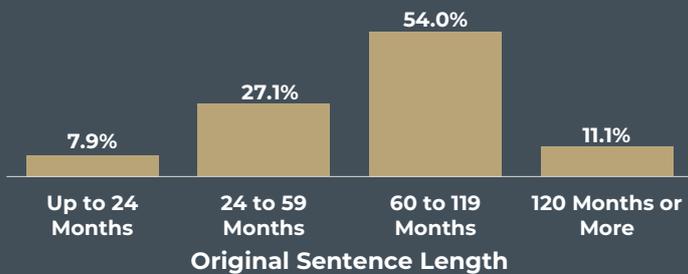
Average Age

The average age at sentencing was 41 years old, while the average age at release was 45 years old.

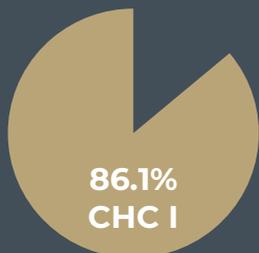
98.4%

Sentenced to Prison

The median sentence length was 60 months.



Less Extensive Criminal History



Most had little or no criminal history.



Characteristics of Non-Production Child Pornography Offenders Released or Placed on Probation in 2015

The Commission studied non-production child pornography offenders released or placed on probation in 2015 because it is a recent group of offenders that could be tracked for three years. These non-production child pornography offenders have several characteristics that are associated with lower recidivism rates, such as lengthy sentences, their age at sentencing and release, and minimal criminal history.¹⁴²

Like the offenders sentenced in fiscal year 2019, the non-production child pornography offenders released or placed on probation in 2015 were predominantly White (89.1%) and male (99.6%). When initially sentenced, the average age of non-production child pornography offenders released in 2015 was 41 years. When released from prison, their average age was 45 years.

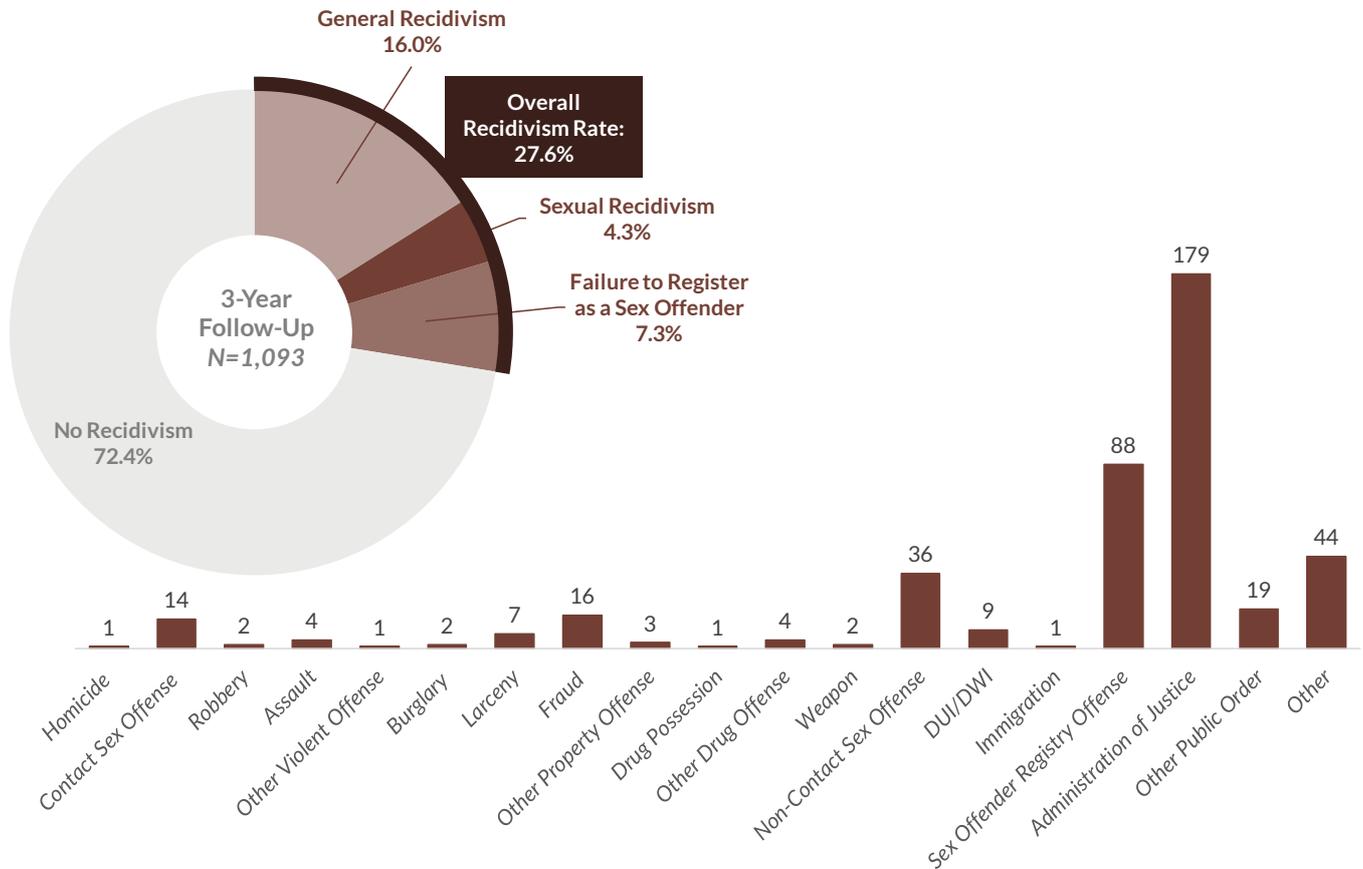
Nearly all non-production child pornography offenders in this recidivism study were sentenced to a term of imprisonment (98.4%) for their instant federal offense. Of the non-production child pornography offenders released in 2015, the median sentence length was 60 months. Over half (54.0%) received a sentence between 60 months and 119 months, and another 11.1 percent received a sentence of 120 months or more.

The median term of supervised release imposed on non-production child pornography offenders released in 2015 was 120 months.

Most non-production child pornography offenders released or placed on probation in 2015 had little or no criminal history. Over 86 percent were in Criminal History Category I (the lowest category). Less than two percent were in higher criminal history categories—Criminal History Category IV (1.1%), V (0.6%), or VI (0.2%).

Figure 31.

Recidivism Events by Non-Production Child Pornography Offenders Released or Placed on Probation in 2015 After Three-Year Follow-Up Period



Results of the Recidivism Study

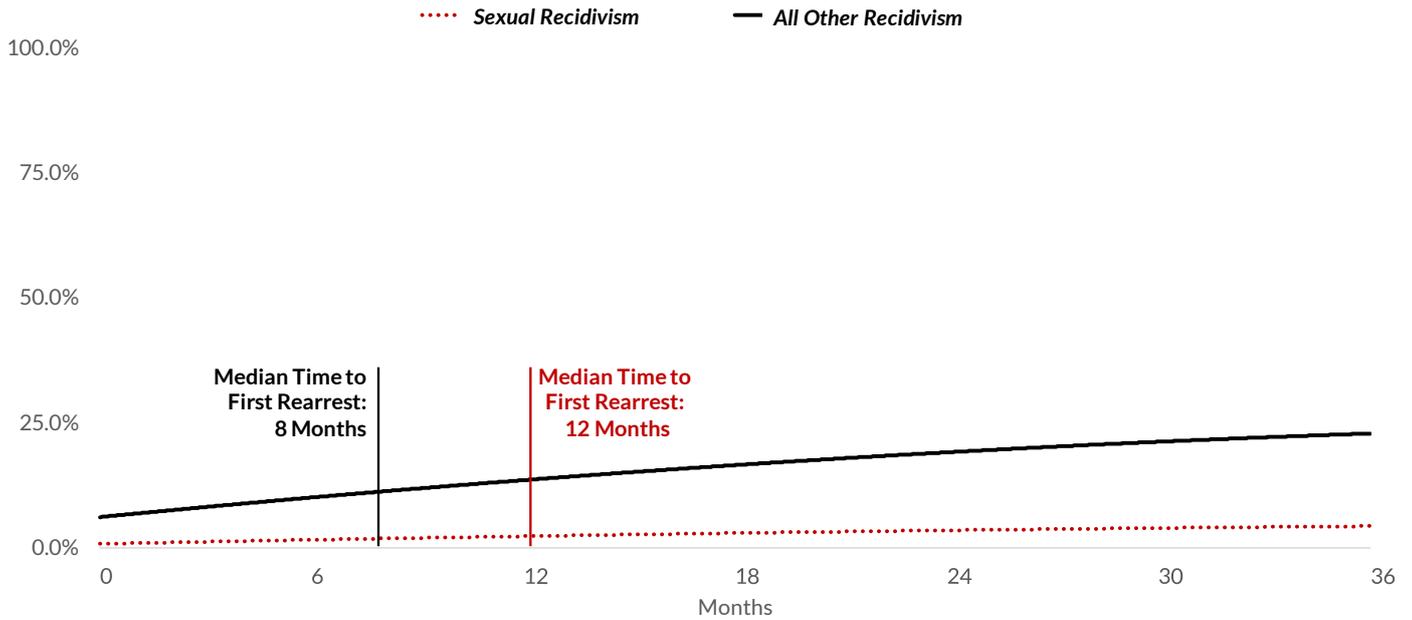
The overall recidivism rate of the 1,093 non-production child pornography offenders was 27.6 percent (302 of 1,093 offenders) three years after release from incarceration (or the commencement of probation). Of the 1,093 offenders, 16.0 percent were arrested for a crime that was not a sex offense or related to the offender's status as a sex offender (depicted as "general recidivism" in Figure 31).

The sexual recidivism rate for all non-production child pornography offenders was 4.3 percent (47 of the 1,093 offenders). An additional 7.3 percent of offenders were arrested or had their term of supervised release revoked for failing to register as a sex offender.¹⁴³

Rearrest Offense

In addition to the overall recidivism rate among non-production child pornography offenders, the Commission identified any criminal event during the three-year study period for which offenders were rearrested (Figure 31). Some offenders were rearrested more than once.¹⁴⁴ Of the 302 non-production child pornography offenders who recidivated, an administration of justice offense¹⁴⁵ was the most common new crime (179 offenders or 16.4% of the 1,093 offenders). Failure to register as a sex offender was the second most common offense among those who recidivated. Eighty-eight offenders (8.1% of the 1,093 offenders) failed to register as a sex offender following the non-production child pornography offense.¹⁴⁶ Although occurring infrequently, 14 non-production child pornography offenders (1.3% of the 1,093 offenders) were arrested for a contact sex offense and 36 offenders (3.3% of the 1,093 offenders) were arrested for a non-contact sex offense.

Figure 32.
Time to First Rearrest for Non-Production Child Pornography Offenders Released or Placed on Probation in 2015



Time to Rearrest

The Commission measured the period of time between reentry into the community and the first recidivism event. Figure 32 shows the recidivism rates over time in six-month increments. Among those non-production child pornography offenders who recidivated for a sex offense, the median time to the first arrest

was twelve months, meaning that one-half of those offenders were arrested for a sex offense within twelve months of their release, while the other half recidivated more than twelve months after release. Among those offenders who were arrested for an offense other than a sex offense, the median time to rearrest was eight months.

Conclusion

Conclusion

The guideline covering the distribution, receipt, and possession of child pornography, §2G2.2, is largely the result of statutory mandatory minimum penalties, congressional directives to the Commission, and direct amendments to the guideline by Congress in the PROTECT Act of 2003. The Commission's 2012 *Child Pornography Report* recommended that Congress authorize the Commission to revise §2G2.2 to eliminate outdated guideline enhancements and more fully account for relevant aggravating factors. Congress has not passed legislation amending either the statutory penalty scheme or the directives to the Commission. The guideline, therefore, remains largely intact. Although non-production child pornography offenses make up only a small portion of the federal caseload, interest in their penalty structure remains heightened because of the nature of these offenses, the harm to the victims, and their high variance rate compared to other federal offenses. This update to the

Commission's 2012 *Child Pornography Report* is intended to provide Congress, judges, and other stakeholders with current information on non-production child pornography offenses and offender behavior.

A central theme of the Commission's 2012 *Child Pornography Report* remains true today: the sentencing enhancements in §2G2.2 have not kept pace with technological advancements. Facilitated by technology, child pornography offenses increasingly involve images in great quantities and of a graphic nature, often depicting the youngest of victims. These factors are already accounted for in §2G2.2 by a series of enhancements that were initially added to target more serious offenses and more culpable offenders. However, the conduct covered by four of the six enhancements—accounting for a combined 13 offense levels—has become so ubiquitous that they now apply in the vast majority of cases sentenced under §2G2.2. Conversely,

Related Reports



***History of the Child
Pornography Guidelines***

2009



***Report to the Congress:
Federal Child
Pornography Offenses***

2012



***Mandatory Minimum
Penalties for Federal
Sex Offenses***

2019

significant aspects of an offender's collecting behavior, involvement in a child pornography community, and aggravating sexual conduct such as past or concurrent contact offenses may not be accounted for in the guideline at all. In short, the guideline is both overinclusive and underinclusive. Thus, it no longer effectively differentiates among offenders in terms of either the seriousness of the offense or culpability of the offender.

The inadequacies of the current penalty structure impact the sentencing practices of the courts and the charging practices of the government. Far fewer non-production child pornography offenders are sentenced within their guideline range under §2G2.2 compared to other federal offenders. Judges have continued to sentence most non-production child pornography offenders below the guideline range, most often by imposing variances pursuant to their authority under 18 U.S.C. § 3553(a), but also increasingly at the request of the government. Furthermore, the government often limits the sentencing exposure of non-production child pornography offenders by reducing distribution and receipt charges, which carry mandatory minimum penalties of at least five years, to possession charges, which carry no mandatory minimum penalty.

While courts are increasingly sentencing based on non-guideline factors, the key factors identified in the Commission's 2012 *Child Pornography Report* are reflected in sentencing practices in the aggregate. Consistent with the Commission's recommendations, offenders who participated in an online child pornography community or engaged in aggravating conduct received longer sentences than offenders who did not engage in such conduct. Furthermore, the offenders who engaged in the more serious conduct also were significantly more likely to receive a sentence within their applicable guideline range and less likely to receive a downward variance.

A more granular analysis revealed, however, significant sentencing disparities among similarly situated offenders as courts and the government contend with the outdated statutory and guideline structure. The analysis shows pervasive sentencing disparities not only between similarly situated offenders convicted of possession and offenders convicted of receipt, but also among similarly situated possession offenders as a distinct group and similarly situated receipt offenders as a distinct group. Charging practices, the resulting guideline ranges, and sentencing practices of judges all contributed to some degree to these disparities. Therefore, even though the key factors identified in the 2012 *Child Pornography Report* influence sentences, they cannot be considered in a sufficiently uniform manner in the absence of a properly calibrated guideline that jettisons outdated factors.



For More Information

Visit the Commission's website for additional resources on the child pornography guidelines.

www.ussc.gov

Appendices

Appendix A

Table A-1.
Districts with Highest Number of Non-Production Child Pornography Cases
Fiscal Year 2019

Top Districts	
	N
By Number of Cases	
<i>Eastern Virginia</i>	50
<i>Middle Florida</i>	47
<i>Western Missouri</i>	45
<i>Southern Florida</i>	44
<i>Eastern Missouri</i>	40

Table A-2.
Districts with Non-Production Child Pornography as Highest Percentage of Caseload
Fiscal Year 2019

Top Districts	
	%
By Percentage of Caseload	
<i>Northern New York</i>	7.1%
<i>Wyoming</i>	6.9%
<i>Eastern Virginia</i>	6.4%
<i>Western Pennsylvania</i>	6.3%
<i>Western Missouri</i>	6.0%

Geographic Distribution of Non-Production Child Pornography Cases

Tables A-1 to A-3 examine the geographic distribution of non-production child pornography cases across circuit and district courts. In fiscal year 2019, non-production child pornography cases were prosecuted in every circuit and almost all district courts, but the number of cases in each circuit and district court varied substantially. Tables A-1 and A-2 show the district courts with the highest number of non-production child pornography cases, by highest raw number of cases, and by highest percentage of the total caseload, respectively. Table A-3 provides the total number of non-production child pornography cases in each circuit and district.

Of the 1,340 cases in fiscal year 2019, the five districts with the highest number of non-production child pornography cases were as follows: 50 cases from the Eastern District of Virginia; 47 cases from the Middle District of Florida; 45 cases from the Western District of Missouri; 44 cases from the Southern District of Florida; and 40 cases from the Eastern District of Missouri.

The five districts where non-production child pornography cases made up the highest percentage of the district's overall caseload were the Northern District of New York (7.1%), the District of Wyoming (6.9%), the Eastern District of Virginia (6.4%), the Western District of Pennsylvania (6.3%), and the Western District of Missouri (6.0%).

Table A-3.
Non-Production Child Pornography Cases in Each Circuit and District
Fiscal Year 2019

CIRCUIT District	Total Number of Cases	Distribution				Receipt				Possession			
		Total		Non- Recidivists	Recidivists	Total		Non- Recidivists	Recidivists	Total		Non- Recidivists	Recidivists
		N	%	N	N	N	%	N	N	N	%	N	N
TOTAL	1,340	625	46.6%	559	63	146	10.9%	132	13	569	42.5%	455	118
D.C. CIRCUIT	7	4	57.1%	3	1	0	0.0%	0	0	3	42.9%	3	0
District of Columbia	7	4	57.1%	3	1	0	0.0%	0	0	3	42.9%	3	0
FIRST CIRCUIT	42	15	35.7%	13	2	1	2.4%	1	0	26	61.9%	19	7
Maine	7	5	71.4%	4	1	0	0.0%	0	0	2	28.6%	1	1
Massachusetts	12	4	33.3%	3	1	1	8.3%	1	0	7	58.3%	4	3
New Hampshire	2	2	100.0%	2	0	0	0.0%	0	0	0	0.0%	0	0
Puerto Rico	13	1	7.7%	1	0	0	0.0%	0	0	12	92.3%	11	1
Rhode Island	8	3	37.5%	3	0	0	0.0%	0	0	5	62.5%	3	2
SECOND CIRCUIT	93	39	41.9%	31	7	9	9.7%	8	1	45	48.4%	38	8
Connecticut	6	3	50.0%	3	0	2	33.3%	2	0	1	16.7%	1	0
New York													
Eastern	21	12	57.1%	11	1	1	4.8%	1	0	8	38.1%	8	0
Northern	22	14	63.6%	10	4	2	9.1%	1	1	6	27.3%	4	2
Southern	18	2	11.1%	2	0	1	5.6%	1	0	15	83.3%	11	4
Western	21	7	33.3%	4	2	3	14.3%	3	0	11	52.4%	10	2
Vermont	5	1	20.0%	1	0	0	0.0%	0	0	4	80.0%	4	0
THIRD CIRCUIT	74	38	51.4%	34	4	11	14.9%	9	2	25	33.8%	17	8
Delaware	4	1	25.0%	1	0	0	0.0%	0	0	3	75.0%	1	2
New Jersey	20	12	60.0%	11	1	3	15.0%	3	0	5	25.0%	1	4
Pennsylvania													
Eastern	22	13	59.1%	10	3	4	18.2%	3	1	5	22.7%	4	1
Middle	6	4	66.7%	4	0	2	33.3%	1	1	0	0.0%	0	0
Western	22	8	36.4%	8	0	2	9.1%	2	0	12	54.5%	11	1
Virgin Islands	0	0	0.0%	0	0	0	0.0%	0	0	0	0.0%	0	0
FOURTH CIRCUIT	147	79	53.7%	72	5	16	10.9%	14	2	52	35.4%	41	13
Maryland	18	11	61.1%	8	1	0	0.0%	0	0	7	38.9%	4	5
North Carolina													
Eastern	9	8	88.9%	8	0	0	0.0%	0	0	1	11.1%	0	1
Middle	19	11	57.9%	11	0	4	21.1%	4	0	4	21.1%	3	1
Western	24	16	66.7%	16	0	2	8.3%	1	1	6	25.0%	6	0
South Carolina	13	3	23.1%	2	1	0	0.0%	0	0	10	76.9%	8	2
Virginia													
Eastern	50	25	50.0%	23	2	10	20.0%	9	1	15	30.0%	12	3
Western	3	2	66.7%	1	1	0	0.0%	0	0	1	33.3%	1	0
West Virginia													
Northern	5	0	0.0%	0	0	0	0.0%	0	0	5	100.0%	5	0
Southern	6	3	50.0%	3	0	0	0.0%	0	0	3	50.0%	2	1

Table A-3 (cont.)

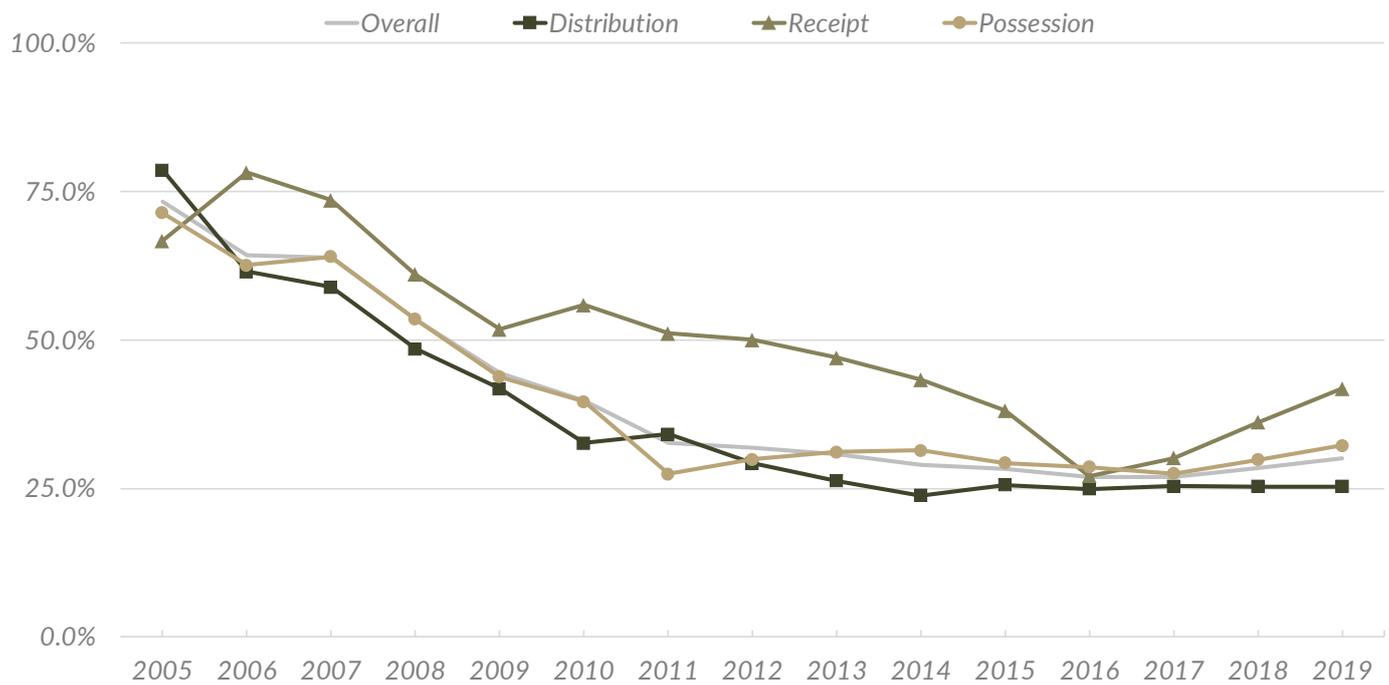
CIRCUIT District	Total Number of Cases	Distribution				Receipt				Possession			
		Total N	%	Non- Recidivists N	Recidivists N	Total N	%	Non- Recidivists N	Recidivists N	Total N	%	Non- Recidivists N	Recidivists N
FIFTH CIRCUIT	147	61	41.5%	58	3	13	8.8%	13	0	73	49.7%	67	6
Louisiana													
Eastern	7	2	28.6%	2	0	2	28.6%	2	0	3	42.9%	3	0
Middle	2	0	0.0%	0	0	1	50.0%	1	0	1	50.0%	1	0
Western	13	2	15.4%	1	1	1	7.7%	1	0	10	76.9%	7	3
Mississippi													
Northern	6	3	50.0%	3	0	0	0.0%	0	0	3	50.0%	3	0
Southern	3	0	0.0%	0	0	0	0.0%	0	0	3	100.0%	3	0
Texas													
Eastern	17	4	23.5%	4	0	3	17.6%	3	0	10	58.8%	9	1
Northern	25	8	32.0%	8	0	4	16.0%	4	0	13	52.0%	13	0
Southern	39	23	59.0%	21	2	0	0.0%	0	0	16	41.0%	15	1
Western	35	19	54.3%	19	0	2	5.7%	2	0	14	40.0%	13	1
SIXTH CIRCUIT	111	66	59.5%	58	8	13	11.7%	12	1	32	28.8%	23	9
Kentucky													
Eastern	4	2	50.0%	2	0	1	25.0%	1	0	1	25.0%	1	0
Western	13	9	69.2%	7	2	0	0.0%	0	0	4	30.8%	2	2
Michigan													
Eastern	24	14	58.3%	12	2	2	8.3%	2	0	8	33.3%	6	2
Western	8	7	87.5%	5	2	1	12.5%	1	0	0	0.0%	0	0
Ohio													
Northern	33	22	66.7%	20	2	7	21.2%	6	1	4	12.1%	3	1
Southern	11	4	36.4%	4	0	1	9.1%	1	0	6	54.5%	4	2
Tennessee													
Eastern	11	3	27.3%	3	0	0	0.0%	0	0	8	72.7%	6	2
Middle	4	3	75.0%	3	0	1	25.0%	1	0	0	0.0%	0	0
Western	3	2	66.7%	2	0	0	0.0%	0	0	1	33.3%	1	0
SEVENTH CIRCUIT	85	44	51.8%	37	7	12	14.1%	11	1	29	34.1%	18	11
Illinois													
Central	13	8	61.5%	8	0	2	15.4%	1	1	3	23.1%	1	2
Northern	9	6	66.7%	4	2	0	0.0%	0	0	3	33.3%	1	2
Southern	12	8	66.7%	7	1	1	8.3%	1	0	3	25.0%	2	1
Indiana													
Northern	10	2	20.0%	2	0	3	30.0%	3	0	5	50.0%	4	1
Southern	25	13	52.0%	10	3	5	20.0%	5	0	7	28.0%	5	2
Wisconsin													
Eastern	8	4	50.0%	4	0	0	0.0%	0	0	4	50.0%	4	0
Western	8	3	37.5%	2	1	1	12.5%	1	0	4	50.0%	1	3
EIGHTH CIRCUIT	188	95	50.5%	80	15	28	14.9%	25	2	65	34.6%	44	22
Arkansas													
Eastern	7	3	42.9%	3	0	0	0.0%	0	0	4	57.1%	3	1
Western	10	3	30.0%	3	0	1	10.0%	0	1	6	60.0%	3	3
Iowa													
Northern	4	1	25.0%	1	0	2	50.0%	2	0	1	25.0%	1	0
Southern	24	11	45.8%	10	1	4	16.7%	4	0	9	37.5%	6	3
Minnesota	20	16	80.0%	7	9	2	10.0%	2	0	2	10.0%	0	2
Missouri													
Eastern	40	11	27.5%	11	0	1	2.5%	1	0	28	70.0%	18	10
Western	45	33	73.3%	29	4	9	20.0%	7	1	3	6.7%	3	1
Nebraska	17	9	52.9%	9	0	2	11.8%	2	0	6	35.3%	5	1
North Dakota	5	2	40.0%	2	0	1	20.0%	1	0	2	40.0%	1	1
South Dakota	16	6	37.5%	5	1	6	37.5%	6	0	4	25.0%	4	0

Table A-3 (cont.)

CIRCUIT District	Total Number of Cases	Distribution				Receipt				Possession			
		Total N	%	Non- Recidivists N	Recidivists N	Total N	%	Non- Recidivists N	Recidivists N	Total N	%	Non- Recidivists N	Recidivists N
NINTH CIRCUIT	221	96	43.4%	88	8	19	8.6%	17	2	106	48.0%	90	16
Alaska	6	3	50.0%	3	0	0	0.0%	0	0	3	50.0%	3	0
Arizona	39	21	53.8%	20	1	0	0.0%	0	0	18	46.2%	18	0
California													
Central	17	4	23.5%	4	0	1	5.9%	1	0	12	70.6%	12	0
Eastern	20	14	70.0%	10	4	3	15.0%	1	2	3	15.0%	0	3
Northern	17	3	17.6%	3	0	4	23.5%	4	0	10	58.8%	8	2
Southern	17	6	35.3%	6	0	3	17.6%	3	0	8	47.1%	8	0
Guam	0	0	0.0%	0	0	0	0.0%	0	0	0	0.0%	0	0
Hawaii	1	1	100.0%	1	0	0	0.0%	0	0	0	0.0%	0	0
Idaho	15	5	33.3%	5	0	0	0.0%	0	0	10	66.7%	9	1
Montana	8	2	25.0%	1	1	2	25.0%	2	0	4	50.0%	2	2
Nevada	27	13	48.1%	12	1	4	14.8%	4	0	10	37.0%	8	2
Northern Mariana Islands	0	0	0.0%	0	0	0	0.0%	0	0	0	0.0%	0	0
Oregon	23	17	73.9%	16	1	0	0.0%	0	0	6	26.1%	5	1
Washington													
Eastern	15	5	33.3%	5	0	2	13.3%	2	0	8	53.3%	6	2
Western	16	2	12.5%	2	0	0	0.0%	0	0	14	87.5%	11	3
TENTH CIRCUIT	85	26	30.6%	24	2	6	7.1%	5	1	53	62.4%	43	10
Colorado	8	0	0.0%	0	0	0	0.0%	0	0	8	100.0%	6	2
Kansas	17	9	52.9%	9	0	2	11.8%	2	0	6	35.3%	6	0
New Mexico	9	4	44.4%	3	1	1	11.1%	0	1	4	44.4%	2	2
Oklahoma													
Eastern	3	0	0.0%	0	0	0	0.0%	0	0	3	100.0%	3	0
Northern	7	3	42.9%	3	0	2	28.6%	2	0	2	28.6%	2	0
Western	7	2	28.6%	2	0	0	0.0%	0	0	5	71.4%	4	1
Utah	23	2	8.7%	2	0	0	0.0%	0	0	21	91.3%	16	5
Wyoming	11	6	54.5%	5	1	1	9.1%	1	0	4	36.4%	4	0
ELEVENTH CIRCUIT	140	62	44.3%	61	1	18	12.9%	17	1	60	42.9%	52	8
Alabama													
Middle	6	5	83.3%	5	0	0	0.0%	0	0	1	16.7%	0	1
Northern	3	1	33.3%	1	0	0	0.0%	0	0	2	66.7%	2	0
Southern	4	3	75.0%	3	0	0	0.0%	0	0	1	25.0%	1	0
Florida													
Middle	47	27	57.4%	27	0	6	12.8%	6	0	14	29.8%	11	3
Northern	5	3	60.0%	3	0	0	0.0%	0	0	2	40.0%	1	1
Southern	44	15	34.1%	14	1	9	20.5%	8	1	20	45.5%	20	0
Georgia													
Middle	10	2	20.0%	2	0	1	10.0%	1	0	7	70.0%	6	1
Northern	14	5	35.7%	5	0	1	7.1%	1	0	8	57.1%	8	0
Southern	7	1	14.3%	1	0	1	14.3%	1	0	5	71.4%	3	2

Appendix B

Figure B-1.
Trend in Within-Range Sentences for Non-Production Child Pornography Offenses

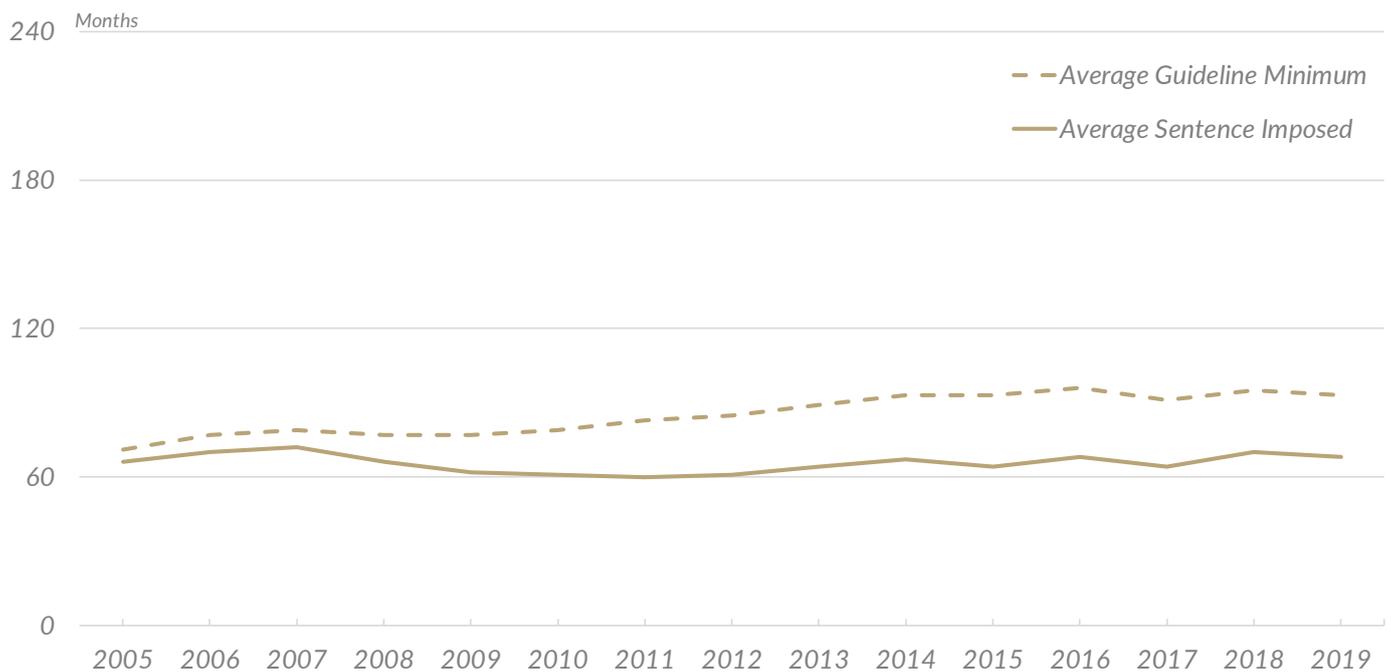


This graph shows how the percentage of within-range sentences for non-production child pornography offenses have changed over time, both overall and for each individual offense type. Between fiscal years 2005 to 2019, the rate of within-range sentences decreased for each offense type. While rates of within-range sentences are lower today compared to the rates in fiscal year 2005 or at the time of the 2012 *Child Pornography Report*'s publication, the percentage of within-range sentences increased for receipt and possession offenses

from fiscal years 2016 to 2019. Notably, the rate of within-range sentences increased 14.7 percentage points for receipt cases, from 27.1 percent in 2016 to 41.8 percent in 2019. The within-range rate for possession cases increased more modestly by 3.6 percentage points, from 28.6 percent in 2016 to 32.2 percent in 2019. Conversely, the within-range rate for distribution cases remained relatively unchanged in the most recent years of this report, hovering around 25 percent from fiscal years 2015 to 2019.

Appendix C

Figure C-1.
Trend in Average Guideline Minimum and Sentence Imposed for Child Pornography Possession Offenses¹⁴⁷

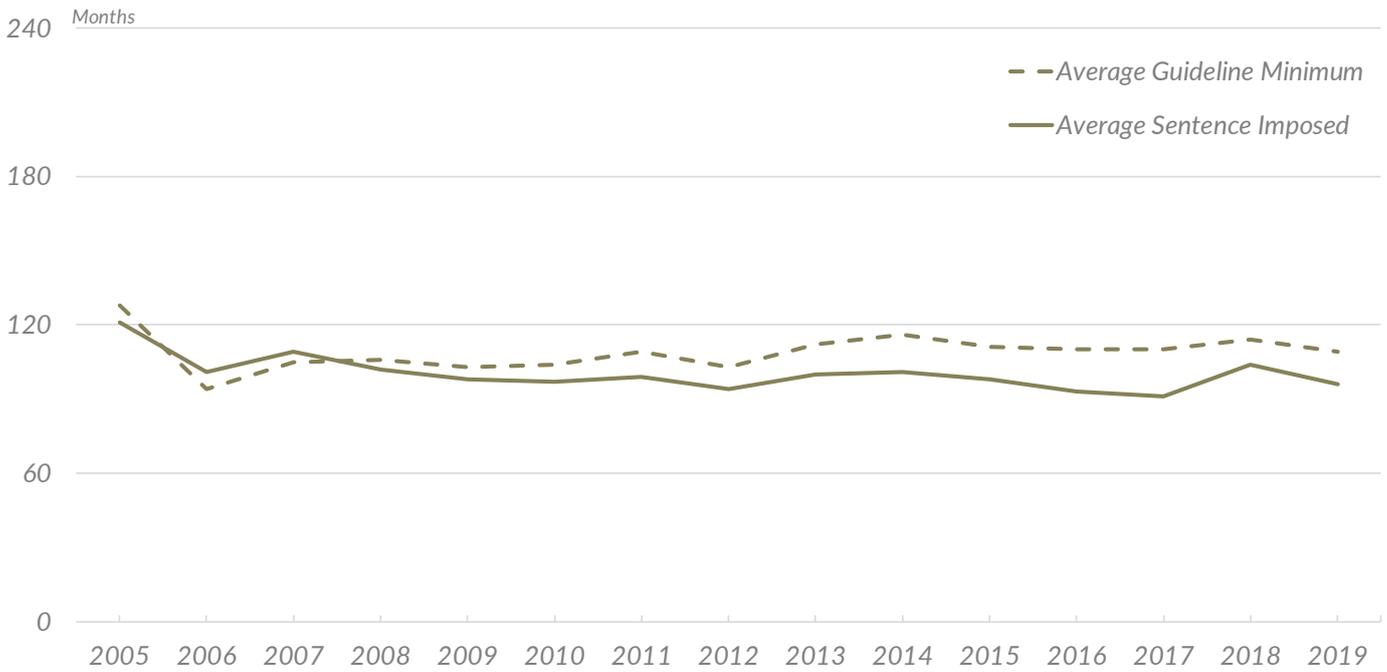


Figures C-1, C-2, and C-3 show the average guideline minimum and sentence imposed from fiscal years 2005 to 2019 for possession, receipt, and distribution cases.

In possession cases, the difference between the average guideline minimum and average sentence imposed has increased over time. From fiscal years 2005 to 2007, the difference between the average guideline minimum and average sentence was narrow and remained relatively stable. Starting in fiscal year

2007, however, the gap between the average guideline minimum and average sentence imposed began widening. From fiscal years 2010 to 2019, the difference between the average sentence and average guideline minimum increased 38.9 percent from 18 to 25 months. Since fiscal year 2016, however, the difference between the average guideline minimum and average sentence imposed has somewhat stabilized.

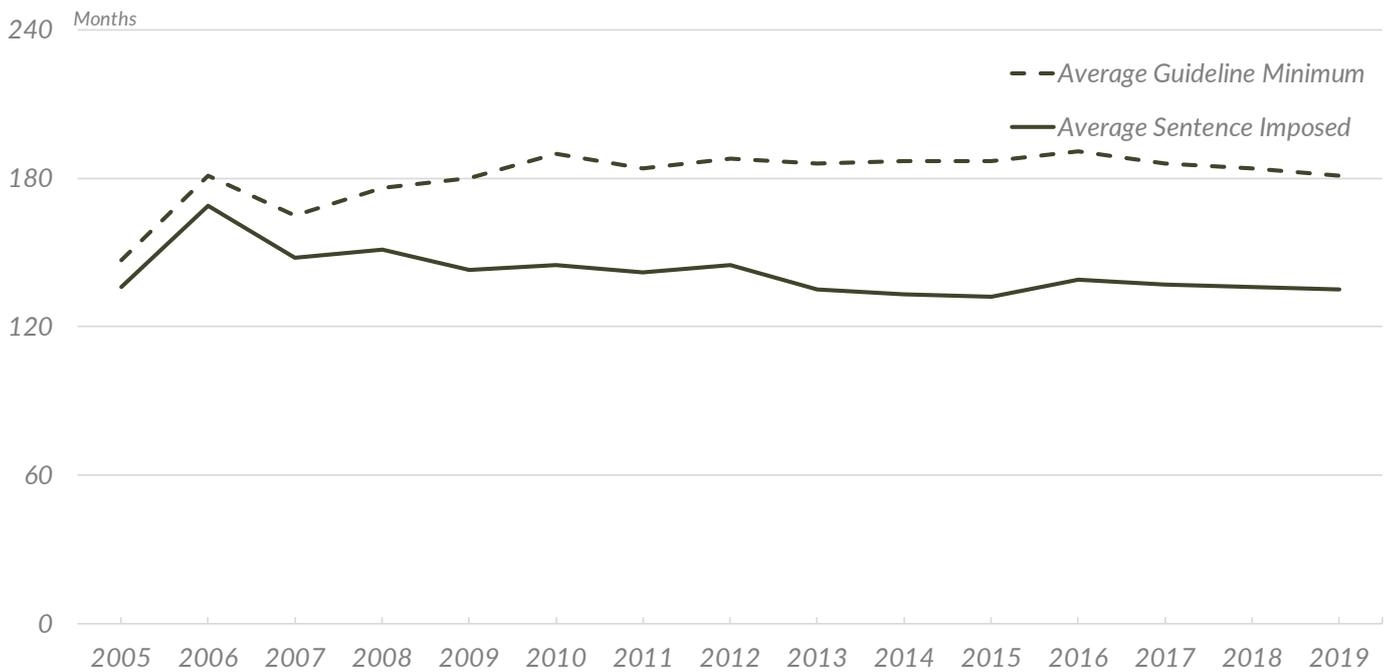
Figure C-2.
Trend in Average Guideline Minimum and Sentence Imposed for Child Pornography
Receipt Offenses¹⁴⁸



Compared to possession offenses, receipt offenses have shown a closer and more stable relationship between the average guideline minimum and average sentence imposed over time. From fiscal years 2005 to 2007, the difference between the average guideline minimum and average sentence imposed remained narrow, with the lines intersecting at times. Beginning in fiscal year 2008, the difference between the average guideline

minimum and average sentence began gradually widening. From fiscal years 2010 to 2019, the difference between the average guideline minimum and average sentence increased by 85.7 percent, from seven to 13 months. However, the difference between the average guideline minimum and average sentence has somewhat stabilized in the most recent years.

Figure C-3.
Trend in Average Guideline Minimum and Sentence Imposed for Child Pornography
Distribution Offenses¹⁴⁹



As with the other non-production child pornography offenses, the difference between the average guideline minimum and average sentence imposed for distribution offenses increased overall from fiscal years 2005 to 2019. From fiscal years 2005 to 2007, the gap between the two lines remained relatively stable, ranging from 11 months to 17 months. Starting in fiscal year 2008, however, the gap widened substantially. Although the difference between

the average guideline minimum and average sentence imposed for distribution offenses is substantially wider today compared to fiscal year 2005, the difference has remained relatively stable in recent years. From fiscal years 2010 to 2019, the difference increased by only one month (from 45 to 46 months or 2.2%).

Endnotes

- 1 U.S. SENT'G COMM'N, REPORT TO THE CONGRESS: FEDERAL CHILD PORNOGRAPHY OFFENSES (2012), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Full_Report_to_Congress.pdf [hereinafter 2012 CHILD PORNOGRAPHY REPORT].
- 2 U.S. SENT'G COMM'N, GUIDELINES MANUAL, §2G2.2 (Nov. 2018) [hereinafter USSG].
- 3 USSG §2G2.1.
- 4 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 126–27 (noting that the number of non-production child pornography cases increased from 77 cases (accounting for 0.2% of the total caseload) in fiscal year 1992 to 1,717 cases (accounting for 2.0% of the total caseload) in fiscal year 2010).
- 5 *Id.* at 1.
- 6 *Id.* at 312–13.
- 7 *Id.* at 5.
- 8 *Id.* at 312.
- 9 *Id.* at 314–15 (defining criminal sexually dangerous behavior to include actual or attempted contact sex offenses, non-contact sex offenses, and prior non-production child pornography offenses).
- 10 Pub. L. No. 108–21, 117 Stat. 650.
- 11 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 316.
- 12 *Id.* at 317.
- 13 *Id.*
- 14 *Id.* at xvii.
- 15 *Id.* at 320.
- 16 *Id.* at 321–22.
- 17 *Id.* at 322–25.
- 18 *Id.* at 326–30.
- 19 *Id.* at 328–29.
- 20 *Id.* at 329.
- 21 *Id.* at 329–30.
- 22 As authorized by Congress, the Commission's research responsibilities include: (1) the establishment of a research and development program to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on federal sentencing practices; (2) the publication of data concerning the sentencing process; (3) the systematic collection and dissemination of information concerning sentences actually imposed and the relationship of such sentences to the factors set forth in section 3553(a) of title 18; and (4) the systematic collection and dissemination of information regarding the effectiveness of sentences imposed. 28 U.S.C. § 995(a)(12)–(16).
- 23 Eight offenders who were sentenced under §2G2.2 but not convicted of a non-production child pornography offense were excluded from this analysis. The eight offenders were convicted of some other offense and §2G2.2 was applied through a cross-reference or applied as a pseudo-count. One offender whose offense involved morphing of images was also excluded from the analysis. Finally, one additional offender identified as having insufficient documentation for the special coding project was excluded from the analysis.

24 Pub. L. No. 108-21, 117 Stat. 650.

25 18 U.S.C. §§ 2251, 2252, 2252A, 2260.

26 Distribution offenses include the transportation and importation of child pornography. *See id.*

27 18 U.S.C. §§ 2252(b)(1), 2252A(b)(1), 2260(c)(2).

28 The enumerated predicate sex offenses include prior convictions under title 18, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any state relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children. 18 U.S.C. §§ 2252(b)(1) and 2252A(b)(1).

29 18 U.S.C. §§ 2252(b)(2) and 2252A(b)(2).

30 *Id.*

31 *See, e.g., United States v. Myers*, 355 F.3d 1040, 1042 (7th Cir. 2004).

32 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 147 n.60.

33 Pub. L. No. 108-21, § 101, 117 Stat. 650.

34 USSG §2G2.2(a).

35 USSG §2G2.2(a)(1).

36 USSG §2G2.2(a)(2).

37 USSG §2G2.2(b)(1).

38 A 2-level enhancement applies if the material involved a prepubescent minor or minor who had not attained the age of 12. USSG §2G2.2(b)(2).

39 Enhancements ranging from 2- to 7-levels apply based on varying degrees of distribution conduct. USSG §2G2.2(b)(3)(B)–(F). If the offense involved distribution for pecuniary gain, the increase is based on the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the retail value of the material, but not less than 5 levels. USSG §2G2.2(b)(3)(A).

40 A 4-level enhancement applies if the material portrayed sadistic or masochistic conduct or other depictions of violence, or the sexual abuse or exploitation of an infant or toddler. USSG §2G2.2(b)(4).

41 A 5-level enhancement applies if the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor. USSG §2G2.2(b)(5).

42 A 2-level enhancement applies if the offense involved the use of a computer or an interactive computer service. USSG §2G2.2(b)(6).

43 A 2-level enhancement applies if the offense involved at least ten images but fewer than 150; a 3-level enhancement applies if the offense involved at least 150 images but fewer than 300; a 4-level enhancement applies if the offense involved at least 300 images but fewer than 600; and a 5-level enhancement applies if the offense involved 600 or more images. USSG §2G2.2(b)(7).

44 *See* USSG §§5D1.1(a)(1) (Imposition of a Term of Supervised Release) & 5D1.2(b) (Term of Supervised Release) (policy statement “recommend[ing]” the “statutory maximum term of supervised release” for all offenders convicted of “a sex offense,” including a child pornography offense).

45 The percentages in the first pie differ slightly from the percentages in the second pie because three offenders who were convicted of possession and received the statutory recidivist enhancement had the guideline applied as a distribution offender (*i.e.*, base offense level 22) and one offender had the guideline applied as a receipt offender (*i.e.*, base offense level 22 with a 2-level reduction because the conduct was limited to receipt or solicitation).

46 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 41.

47 See 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 139, 141, 316 (explaining that in fiscal year 2010, the enhancements for prepubescent minor or a minor under the age of 12, use of a computer, and number of images applied in more than 90% of non-production cases, and the enhancement for sadistic and masochistic images applied in more than 70% of non-production cases).

48 Cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. The information presented in this analysis includes conditions of confinement as described in §5C1.1.

49 See *id.* Cases with guideline minimums of 470 months or greater (including life) were included in the guideline minimum average computations as 470 months. Guideline minimums account for applicable statutory mandatory penalties. See USSG §5G1.1.

50 See *id.*

51 The trends from fiscal years 2005 to 2019 for possession, receipt, and distribution offenses appear in Appendix B.

52 See 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 213.

53 Cases sentenced under the *Guidelines Manual* comprises all cases in which the sentence imposed was within the applicable guideline range or, if outside the range, where the court cited one or more of the departure reasons in the *Guidelines Manual* as a basis for the sentence.

54 “Government-sponsored” departures include cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant. Substantial assistance motions filed by the prosecution are categorized separately.

55 There are two types of “substantial assistance” motions filed by the prosecution—the first seeks a downward departure below the applicable guideline range, and the second seeks a downward departure below a statutory mandatory minimum sentence. Compare USSG §5K1.1, with 18 U.S.C. § 3553(e).

56 Variance cases are those in which the sentence was outside the guideline range where the court did not cite any guideline reason for the sentence.

57 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 224.

58 See *supra* notes 48, 49.

59 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 84–92.

60 *Id.* at 85.

61 *Id.* at 84–92.

62 *Id.* at 90–92.

63 *Id.* at 90.

64 Of the 1,340 offenders, 103 were excluded from this analysis because (1) the precise number of images was not provided in the sentencing documents or (2) the offender attempted receipt or viewed (or attempted to view) child pornography, but there was no evidence that the offender downloaded the images or videos.

65 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 86.

66 USSG §2G2.2, comment. (n.6 (B)(ii)).

67 *See supra* note 64 and accompanying text.

68 The Commission is not providing a direct comparison to the third-party data relied upon in the 2012 *Child Pornography Report* because that data was collected from different sources using different methodologies.

69 Peer-to-peer file sharing, commonly called “P2P,” refers to a software program or application that enables computers to share files easily over the internet. Computers connected through use of the same P2P software are deemed part of the same P2P network. P2P networks allow users to connect to other computers and swap files with one another.

70 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 149 (showing that P2P, websites, and email/instant message accounted for 94% of all receipt conduct in fiscal year 2010).

71 *Id.*

72 Some non-production child pornography offenders received child pornography by more than one method. Accordingly, the data provided in Table 1 will not sum to 100%.

73 “Cloud-based” host refers to remote digital storage accessed through internet connectivity. Files are stored in the “cloud” on remote servers maintained by third-party service providers and accessed by users through the internet. The “cloud” allows individuals to access software, files, and storage, without downloading such files or software to their personal computers or data storage systems.

74 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 150.

75 Of the 625 offenders sentenced as distribution offenders (*i.e.*, assigned base offense level 22 under §2G2.2 and did not receive a 2-level reduction under §2G2.2(b)(1)), information regarding the method of distribution was not available for 61 offenders. These offenders were convicted solely of transportation or importation of child pornography or the information was not otherwise specified in the sentencing documentation.

76 The offenders who distributed child pornography through a P2P network include 438 offenders who only distributed through a P2P network and 33 offenders who distributed through a P2P network as well as through other means.

77 The 2012 *Child Pornography Report* noted that 5.9% of offenders who distributed child pornography fell into a catchall “other” category that included hand-to-hand distribution and distribution via social media and photo sharing sites, among others. 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 150.

78 Accordingly, because offenders use more than one means to store child pornography, the data provided in Table 3 below will not sum to 100%.

79 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 57–59.

80 The Dark Web refers to a part of the internet located beyond the reach of traditional internet browsers. It is accessible only through use of special software and is designed to allow users and website operators to remain anonymous and difficult to trace.

81 Encryption secures data (in the form of images, videos, and text) so that it cannot be easily understood without a password or decryption software.

82 Cryptocurrency is a form of virtual asset that can be exploited for criminal use because it is decentralized and thus allows for a degree of anonymity.

83 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 92–99.

84 *Id.* at 98–99.

85 *Id.* at 92.

86 *Id.* at 93.

87 *Id.*

88 *Id.* at 94–95.

89 *Id.*

90 *Id.* at 94.

91 *Id.* at 96.

92 *Id.* at 97.

93 *Id.* at 97–98.

94 *Id.* at 98.

95 *Id.*

96 *Id.* at 99.

97 The 2012 *Child Pornography Report* referred to this aggravating conduct as “criminal sexually dangerous behavior” or “CSDB.”

98 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 102.

99 *Id.* at 103.

100 *Id.* at 103–04.

101 The 2012 *Child Pornography Report* supplemented its findings with an analysis of 382 offenders sentenced in the first quarter of fiscal year 2012. The Commission also compared those results to offenders sentenced in fiscal years 1999 and 2000 to study the prevalence of criminal sexually dangerous behavior over time. *Id.* at 169.

102 *Id.* at 174.

103 *Id.* at 176.

104 *Id.* at 179.

105 *Id.* at 181, 201.

106 *Id.* at 173, 204.

107 *Id.* at 186–87.

108 *Id.*

109 *Id.*

110 *Id.* at 195.

111 *See supra* notes 48, 49.

112 These findings are consistent with the 2012 *Child Pornography Report*, which showed that offenders with criminal sexually dangerous behavior histories had substantially higher average sentences (138 months) than those without a history of criminal sexually dangerous behavior (74 months). 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 199.

113 The fiscal year 2019 data for all offense types showed that 75.0% of sentences were imposed under the *Guidelines Manual*, 51.4% within the guideline range, 23.2% below the guideline range through a downward variance, and 1.9% above the guideline range through an upward variance. See U.S. SENT'G COMM'N, 2019 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 84 (2020), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/2019-Annual-Report-and-Sourcebook.pdf>.

114 See 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 213–18 (discussing growing sentencing disparities among non-production cases since 2004).

115 *Id.* at 244.

116 *Id.* at 245.

117 In fiscal year 2019, of the 569 possession offenders, evidence that the offender engaged in knowing or attempted receipt, distribution, or production of child pornography was present in 98.6% of the cases. For the remaining 1.4% (n=8), the offender was charged and convicted of attempted possession or access with intent to view child pornography. For these eight cases, the offender viewed (or attempted to view) child pornography on a website or in an online chat, but there was no evidence that the offender downloaded the images or videos. See also 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 147 (finding evidence in the presentence reports that 95.3% of possession offenders knowingly received child pornography in fiscal year 2010).

118 There were 928 offenders sentenced under §2G2.2 whose most serious initial charge was distribution or receipt. Two offenders were excluded from this analysis due to missing information.

119 Five additional offenders were initially charged with production but convicted of a lesser offense. The five offenders were excluded from the analysis because the sentencing documents did not detail any actual or attempted production.

120 The Commission also found that while only 14.5% of non-production child pornography offenders were subject to an enhanced mandatory minimum sentence for having certain predicate sex offense convictions, possession offenders actually made up a larger share of recidivists than the more serious receipt and distribution offenders. See *supra*, Figure 3.

121 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 213.

122 *Id.* at 215.

123 *Id.* at 215–16.

124 *Id.* at 216.

125 *Id.* at 244.

126 As described in Chapter Two of this report, these four commonly applied enhancements involve images depicting a prepubescent minor or a minor under the age of 12, images depicting sadistic or masochistic conduct, the use of a computer, and having 600 or more images.

127 See *supra* notes 48, 49.

128 The findings were similar for the fiscal year 2010 offenders analyzed in the 2012 *Child Pornography Report*, with slightly higher average sentences for possession offenders (52 months) and receipt offenders (81 months) with these guideline calculations. 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 215.

129 See *supra* notes 48, 49.

130 The findings were similar for the fiscal year 2010 offenders analyzed in the 2012 *Child Pornography Report* with slightly higher average sentences for distribution offenders (109 months) and possession offenders (70 months) with these guideline calculations. 2012 CHILD PORNOGRAPHY REPORT, *supra* note 1, at 216.

131 28 U.S.C. § 991(b)(1)(C).

132 Generally, a minimum three-year follow-up period is needed for a recidivism study of sex offenders. See R. Karl Hanson et al., *The Principles of Effective Correctional Treatment Also Apply To Sexual Offenders: A Meta-Analysis*, 36 CRIM. JUST. & BEHAV. 865, 887 (2009); but cf. Niklas Langstrom, *Long-Term Follow-Up of Criminal Recidivism in Young Sex Offenders: Temporal Patterns and Risk Factors*, 8 PSYCH., CRIME & LAW 41 (2001) (noting that studies indicate the risk for criminal reoffending by adult sex offenders may persist for decades).

133 The dataset used to conduct the analyses in this chapter includes information obtained pursuant to an interagency agreement with the Federal Bureau of Investigation and therefore cannot be publicly released.

134 The RAP database contains information voluntarily reported by law enforcement agencies across the country as well as information provided by federal agencies. It contains information on felonies, misdemeanors, and certain municipal and traffic offenses.

135 See William G. Skogan, *Dimensions of the Dark Figure of Unreported Crime*, 23 CRIME & DELINQUENCY 41, 50 (1977).

136 See Nicholas Scurich & Richard S. John, *The Dark Figure of Sexual Recidivism*, 37 BEHAV. SCI. & THE LAW 158 (2019); Ryan C. W. Hall & Richard C. W. Hall, *A Profile of Pedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic Issues*, 82 Mayo Clinic Proc. 457, 460–61 (2007) (noting that studies show that only an “estimated 1 in 20 cases of child sexual abuse is reported or identified” and that “an arrest was made in only 29% of reported juvenile sexual assaults”).

137 Release following service of a prison sentence means release from the custody of the Federal Bureau of Prisons into the community for the first time following incarceration for the federal child pornography offense. Offenders were removed from the sample if they died in prison or while on probation during the study period.

138 Rearrest was selected as the recidivism measure because many states do not report dispositions following arrest. A 2015 Government Accountability Office report indicated that only 16 states reported that more than 75% of their arrest records had dispositions during the relevant time-period. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-162, CRIMINAL HISTORY RECORDS: ADDITIONAL ACTIONS COULD ENHANCE THE COMPLETENESS OF RECORDS USED FOR EMPLOYMENT-RELATED BACKGROUND CHECKS 18 (2015), <https://www.gao.gov/assets/gao-15-162.pdf>.

139 RAP sheets did not always report the ultimate disposition of a case following an arrest. Consistent with other recidivism studies, arrests without dispositions were counted as well as arrests resulting in convictions. See Cassia Spohn & David Holleran, *The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders*, 40 CRIMINOLOGY 329, 333 (2002) (“[A]rrest is a better indicator of offender recidivism than is conviction.”).

140 Revocations of probation or supervised release result from violations of the conditions of supervision related to either: (1) the commission of a new crime, or (2) “technical” violations (or both). For this analysis, violations that were reported without dispositions were included along with violations that led to a reported sanction (e.g., imprisonment).

141 The Commission’s study excluded misdemeanor traffic offenses.

142 See U.S. SENT’G COMM’N, THE PAST PREDICTS THE FUTURE: CRIMINAL HISTORY AND RECIDIVISM OF FEDERAL OFFENDERS (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170309_Recidivism-CH.pdf; U.S. SENT’G COMM’N, THE EFFECTS OF AGING ON RECIDIVISM AMONG FEDERAL OFFENDERS 10-11 (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf.

143 Offenders who committed a contact or non-contact sex offense are excluded from this category.

144 Individual offenders may have been rearrested more than once during the three-year follow-up period; consequently, the total number of rearrests (n=433) exceeds the total number of non-production child pornography offenders who recidivated (n=302).

145 Administration of justice offenses include contempt of court, failure to appear, obstruction of justice, escape, prison contraband, and probation and parole violations (excluding failure to register as a sex offender).

146 See *supra* note 143 and accompanying text.

147 See *supra* notes 48, 49.

148 See *supra* notes 48, 49.

149 See *supra* notes 48, 49.



United States Sentencing Commission

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Recidivism Analysis
§ 6312 Offenders in PA

CHILD PORNOGRAPHY AND RECIDIVISM

REARREST OUTCOMES AMONG OFFENDERS CHARGED WITH CHILD PORNOGRAPHY IN PENNSYLVANIA

An Infographic Report issued to the Task Force on Child Pornography, by Pennsylvania Commission on Crime and Delinquency (PCCD) researchers

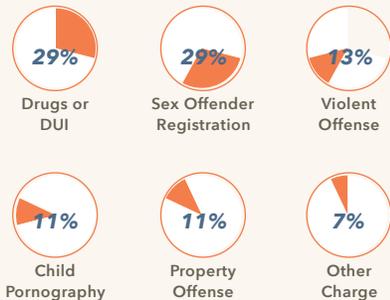
Research Team: Robert Orth, Ph.D., Charles Gartside, and Lindsay Vaughan, J.D.

OVERALL RECIDIVISM rearrest on any charge

Offender Characteristics: 1 & 3 Year Rearrest Rates

Characteristics	1 YR REARREST		3 YR REARREST	
	n	%	n	%
Overall Sample	34/885	3.8%	55/578	9.5%
<i>Cohort Year</i>				
2014	2/35	5.7%	4/35	11.4%
2015	4/121	3.3%	9/121	7.4%
2016	4/137	2.9%	17/137	12.4%
2017	6/145	4.1%	12/145	8.3%
2018	3/146	2.1%	13/146	8.9%
2019	9/159	5.7%	–	–
2020	6/142	4.2%	–	–
<i>Sentence Type</i>				
Probation	8/290	2.8%	19/229	8.3%
Jail	15/347	4.3%	25/253	9.9%
Prison	11/248	4.4%	11/96	11.5%
<i>§6312 Behavior</i>				
(B) Manufacturing	1/74	1.4%	6/43	14.0%
(C) Dissemination	8/270	3.0%	16/196	8.2%
(D) Possession	25/541	4.6%	33/339	9.7%
<i>§6312 Charge</i>				
Only	18/489	3.7%	25/327	7.6%
Plus Other Charges	16/396	4.0%	30/251	12.0%
<i>Touch Offense Charge</i>				
Yes	5/72	6.9%	6/31	19.4%
No	29/813	3.6%	49/547	9.0%
<i>Designated SVP</i>				
Yes	2/36	5.6%	2/18	11.1%
No	32/849	3.8%	53/560	9.5%

REARREST CHARGES 55 offenders, within 3 years



THE STUDY

885 offenders charged with a child pornography offense (18 Pa.C.S. §6312) between 2014-2020 were examined for recidivism. Special attention was paid to grouping the offenders by sentence type (e.g. probation, jail, or prison) and the §6312 criminal behavior associated with their child pornography charges (e.g. (B) Manufacturing, (C) Dissemination, or (D) Possession). Overall recidivism was defined as the first instance of rearrest following either the release from incarceration or the start of probation, and was measured at one and three-year timeframes.

RECIDIVISM AMONG CHARGED OFFENDERS

1 YEAR RECIDIVISM rearrest after incarceration release or start of probation

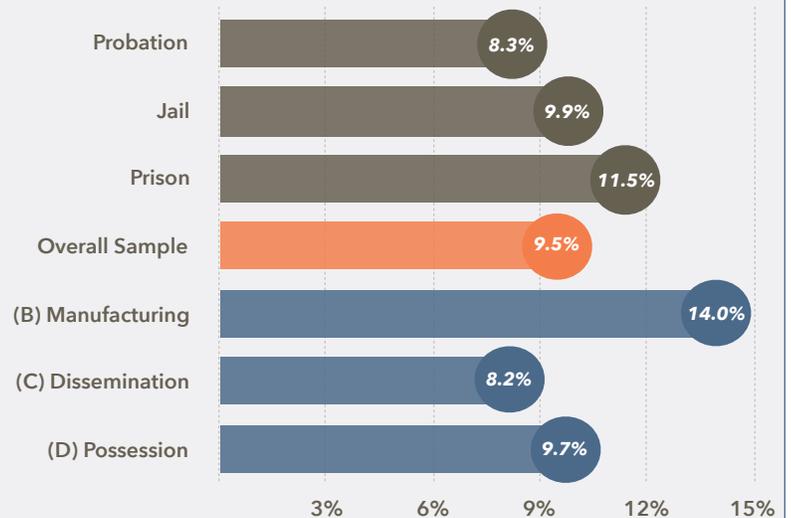


3 YEAR RECIDIVISM rearrest after incarceration release or start of probation



RECIDIVISM BY SENTENCE OR BEHAVIOR 3 year rearrest rate

■ Sentence Type vs. ■ §6312 Behavior; ■ Overall Sample added for reference



Note: 99% of all offenders in this sample were convicted on §6312 (child pornography) charges. Only 12 offenders (out of 885) were not convicted on their §6312 charges, however they were convicted on relevant charges associated with §6312, including touch offenses, corruption of minors, unlawful contact with a minor, etc.

RECIDIVISM THROUGH ANOTHER LENS

The 3.8% and 9.5% recidivism rates respectively found at 1 and 3 years are inclusive of any charge at rearrest. However, it is instructive to measure recidivism in other meaningful ways which emphasize specific rearrest charges. This allows us to understand the rates at which charged offenders are continuing similar criminogenic behavior (e.g. child pornography, accompanying sex offenses, etc.), or committing more serious crimes beyond manufacturing, disseminating, or possessing child pornography (e.g. violent offenses). Below, two new measures of recidivism are offered.

Reoccurrence: any rearrest for a sex offense charge (e.g. indecent exposure, sexual assault, etc.), another §6312 charge, or a connected §6312 charge (e.g. failure to register as a sex offender, failure to comply with sex offender registration, etc.).

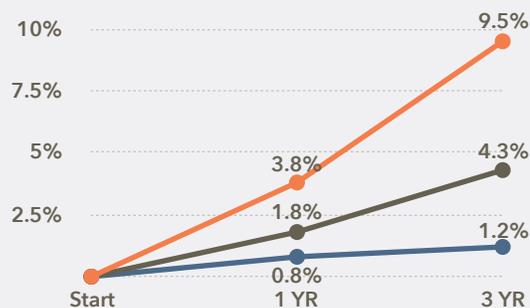
Violent Offense: any rearrest for a charge or offense that is violent in nature (e.g. rape, assault, etc.)

Recidivism Measures: 1 & 3 Year Rearrest Rates

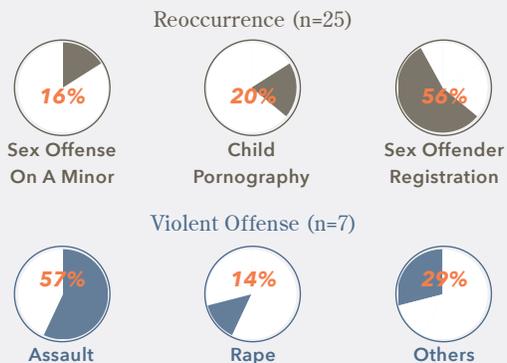
Recidivism Measure	1 YR REARREST		3 YR REARREST	
	n	%	n	%
Overall Sample	34/885	3.8%	55/578	9.5%
Reoccurrence	16/885	1.8%	25/578	4.3%
Violent Offense	7/885	0.8%	7/578	1.2%

RECIDIVISM MEASURES rates at 1 and 3 years

— Reoccurrence vs. — Violent vs. — Overall Sample



REARREST CHARGES within 3 years



RECIDIVISM BY SENTENCE & BEHAVIOR 1 & 3 year rearrest rates

Sentence Type	1 YR REARREST		3 YR REARREST	
	n	%	n	%
Probation				
(B) Manufacturing	0/12	0.0%	2/6	33.3%
(C) Dissemination	1/85	1.2%	4/73	5.5%
(D) Possession	7/193	3.6%	13/150	8.7%
County Jail				
(B) Manufacturing	0/30	0.0%	2/21	9.5%
(C) Dissemination	4/98	4.1%	10/85	11.8%
(D) Possession	11/219	5.0%	13/147	8.8%
State Prison				
(B) Manufacturing	1/32	3.7%	2/16	7.6%
(C) Dissemination	3/87	4.0%	2/38	12.0%
(D) Possession	7/129	5.4%	7/42	16.7%

KEY TAKEAWAYS from a study of §6312 charged offenders

- Low rates of recidivism were observed: 3.8% rearrested within 1 year; 9.5% within 3 years. Rearrest rates tended to be lower than other known offender subpopulations (e.g. DUI offenders, 15-20% within 3 years; Drug Offenders, 35-50% within 3 years) in Pennsylvania.
- Stable rearrest rates & no clear trend across multiple cohort years (approx. 2-6% range within 1 year).
- Offenders sentenced to incarceration (e.g. jail or prison) had higher rates of rearrest than probation.
- Offenders charged with manufacturing had a higher 3 year rate of rearrest than offenders charged with disseminating or possessing child pornography.
- Offenders charged with a touch offense (in addition to child pornography) were twice as likely to be rearrested than those without a touch offense charge.
- Offenders assessed to be a Sexually Violent Predator (SVP) had higher rearrest rates than non-SVPs.
- Roughly half of recidivating offenders were rearrested for charges associated with §6312, related offenses (e.g. failure to register, etc.), and sex offenses (e.g. IDSI, rape/sexual assault, etc.). Sex Offender Registration offenses and Drugs/DUI offenses collectively accounted for nearly 6 out of every 10 rearrested offenses.
- When recidivism was redefined to count only reoccurring sex offense charges (e.g. §6312 or a related/connected offense), the 3 year rearrest rate dropped by over half from 9.5% (rearrest on any charge) to 4.3%.
- When recidivism was redefined to count only violent offenses (e.g. assaults, rape, intent to terrorize, etc.), the 3 year rearrest rate dropped even further from 9.5% to 1.2%.
- Over half of all rearrest charges for reoccurring recidivism was an offender's failure to register or comply with sex offender registration. 20% was for child pornography, and 16% involved a sex offense committed on a minor.
- 7 out of every 10 rearrest charges for violent offense recidivism were for either assaults or rape.

18 U.S.C. § 2258A

§ 2258A. Reporting requirements of providers

(a) Duty to report.--

(1) In general.--

(A) **Duty.**--In order to reduce the proliferation of online child sexual exploitation and to prevent the online sexual exploitation of children, a provider--

(i) shall, as soon as reasonably possible after obtaining actual knowledge of any facts or circumstances described in paragraph (2)(A), take the actions described in subparagraph (B); and

(ii) may, after obtaining actual knowledge of any facts or circumstances described in paragraph (2)(B), take the actions described in subparagraph (B).

(B) **Actions described.**--The actions described in this subparagraph are--

(i) providing to the CyberTipline of NCMEC, or any successor to the CyberTipline operated by NCMEC, the mailing address, telephone number, facsimile number, electronic mailing address of, and individual point of contact for, such provider; and

(ii) making a report of such facts or circumstances to the CyberTipline, or any successor to the CyberTipline operated by NCMEC.

(2) Facts or circumstances.--

(A) **Apparent violations.**--The facts or circumstances described in this subparagraph are any facts or circumstances from which there is an apparent violation of section 2251, 2251A, 2252, 2252A, 2252B, or 2260 that involves child pornography.

(B) **Imminent violations.**--The facts or circumstances described in this subparagraph are any facts or circumstances which indicate a violation of any of the sections described in subparagraph (A) involving child pornography may be planned or imminent.

(b) **Contents of report.**--In an effort to prevent the future sexual victimization of children, and to the extent the information is within the custody or control of a provider, the facts and circumstances included in each report under subsection (a)(1) may, at the sole discretion of the provider, include the following information:

(1) **Information about the involved individual.**--Information relating to the identity of any individual who appears to have violated or plans to violate a Federal law described in subsection (a)(2), which may, to the extent reasonably practicable, include the electronic mail address, Internet Protocol address, uniform resource locator, payment information (excluding personally identifiable information), or any other identifying information, including self-reported identifying information.

(2) **Historical reference.**--Information relating to when and how a customer or subscriber of a provider uploaded, transmitted, or received content relating to the report or when and how content relating to the report was reported to, or discovered by the provider, including a date and time stamp and time zone.

(3) **Geographic location information.**--Information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified address, or, if not reasonably available, at least one form of geographic identifying information, including area code or zip code, provided by the customer or subscriber, or stored or obtained by the provider.

(4) Visual depictions of apparent child pornography.--Any visual depiction of apparent child pornography or other content relating to the incident such report is regarding.

(5) Complete communication.--The complete communication containing any visual depiction of apparent child pornography or other content, including--

(A) any data or information regarding the transmission of the communication; and

(B) any visual depictions, data, or other digital files contained in, or attached to, the communication.

(c) Forwarding of report to law enforcement.--Pursuant to its clearinghouse role as a private, nonprofit organization, and at the conclusion of its review in furtherance of its nonprofit mission, NCMEC shall make available each report made under subsection (a)(1) to one or more of the following law enforcement agencies:

(1) Any Federal law enforcement agency that is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes.

(2) Any State or local law enforcement agency that is involved in the investigation of child sexual exploitation.

(3) A foreign law enforcement agency designated by the Attorney General under subsection (d)(3) or a foreign law enforcement agency that has an established relationship with the Federal Bureau of Investigation, Immigration and Customs Enforcement, or INTERPOL, and is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes.

(d) Attorney General responsibilities.--

(1) **In general.**--The Attorney General shall enforce this section.

(2) **Designation of Federal agencies.**--The Attorney General may designate a Federal law enforcement agency or agencies to which a report shall be forwarded under subsection (c)(1).

(3) **Designation of foreign agencies.**--The Attorney General may--

(A) in consultation with the Secretary of State, designate foreign law enforcement agencies to which a report may be forwarded under subsection (c)(3);

(B) establish the conditions under which such a report may be forwarded to such agencies; and

(C) develop a process for foreign law enforcement agencies to request assistance from Federal law enforcement agencies in obtaining evidence related to a report referred under subsection (c)(3).

(4) **Reporting designated foreign agencies.**--The Attorney General may maintain and make available to the Department of State, NCMEC, providers, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a list of the foreign law enforcement agencies designated under paragraph (3).

(5) **Notification to providers.**--

(A) **In general.**--NCMEC may notify a provider of the information described in subparagraph (B), if--

(i) a provider notifies NCMEC that the provider is making a report under this section as the result of a request by a foreign law enforcement agency; and

(ii) NCMEC forwards the report described in clause (i) to--

(I) the requesting foreign law enforcement agency; or

(II) another agency in the same country designated by the Attorney General under paragraph (3) or that has an established relationship with the Federal Bureau of Investigation, U.S. Immigration and Customs

Enforcement, or INTERPOL and is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes.

(B) Information described.--The information described in this subparagraph is--

(i) the identity of the foreign law enforcement agency to which the report was forwarded; and

(ii) the date on which the report was forwarded.

(C) Notification of inability to forward report.--If a provider notifies NCMEC that the provider is making a report under this section as the result of a request by a foreign law enforcement agency and NCMEC is unable to forward the report as described in subparagraph (A)(ii), NCMEC shall notify the provider that NCMEC was unable to forward the report.

(6) Redesignated (5)

(e) Failure to report.--A provider that knowingly and willfully fails to make a report required under subsection (a)(1) shall be fined--

(1) in the case of an initial knowing and willful failure to make a report, not more than 150,000; and

(2) in the case of any second or subsequent knowing and willful failure to make a report, not more than 300,000.

(f) Protection of privacy.--Nothing in this section shall be construed to require a provider to--

(1) monitor any user, subscriber, or customer of that provider;

(2) monitor the content of any communication of any person described in paragraph (1);

or

(3) affirmatively search, screen, or scan for facts or circumstances described in sections (a) and (b).

(g) Conditions of disclosure information contained within report.--

(1) In general.--Except as provided in paragraph (2), a law enforcement agency that receives a report under subsection (c) shall not disclose any information contained in that report.

(2) Permitted disclosures by law enforcement.--

(A) In general.--A law enforcement agency may disclose information in a report received under subsection (c)--

(i) to an attorney for the government for use in the performance of the official duties of that attorney;

(ii) to such officers and employees of that law enforcement agency, as may be necessary in the performance of their investigative and recordkeeping functions;

(iii) to such other government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the government to assist the attorney in the performance of the official duties of the attorney in enforcing Federal criminal law;

(iv) if the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law;

(v) to a defendant in a criminal case or the attorney for that defendant, subject to the terms and limitations under section 3509(m) or a similar State law, to the extent the information relates to a criminal charge pending against that defendant;

(vi) subject to subparagraph (B), to a provider if necessary to facilitate response to legal process issued in connection to a criminal investigation, prosecution, or post-conviction remedy relating to that report; and

(vii) as ordered by a court upon a showing of good cause and pursuant to any protective orders or other conditions that the court may impose.

(B) Limitation.--Nothing in subparagraph (A)(vi) authorizes a law enforcement agency to provide visual depictions of apparent child pornography to a provider.

(3) Permitted disclosures by NCMEC.--NCMEC may disclose by mail, electronic transmission, or other reasonable means, information received in a report under subsection (a) only to--

(A) any Federal law enforcement agency designated by the Attorney General under subsection (d)(2) or that is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes;

(B) any State, local, or tribal law enforcement agency involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes;

(C) any foreign law enforcement agency designated by the Attorney General under subsection (d)(3) or that has an established relationship with the Federal Bureau of Investigation, Immigration and Customs Enforcement, or INTERPOL, and is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes;

(D) a provider as described in section 2258C; and

(E) respond to legal process, as necessary.

(4) Permitted disclosure by a provider.--A provider that submits a report under subsection (a)(1) may disclose by mail, electronic transmission, or other reasonable means, information, including visual depictions contained in the report, in a manner consistent with permitted disclosures under paragraphs (3) through (8) of section 2702(b) only to a law enforcement agency described in subparagraph (A), (B), or (C) of paragraph (3), to NCMEC, or as necessary to respond to legal process.

(h) Preservation.--

(1) In general.--For the purposes of this section, a completed submission by a provider of a report to the CyberTipline under subsection (a)(1) shall be treated as a request to preserve the contents provided in the report for 90 days after the submission to the CyberTipline.

(2) Preservation of commingled content.--Pursuant to paragraph (1), a provider shall preserve any visual depictions, data, or other digital files that are reasonably accessible and may provide context or additional information about the reported material or person.

(3) Protection of preserved materials.--A provider preserving materials under this section shall maintain the materials in a secure location and take appropriate steps to limit access by agents or employees of the service to the materials to that access necessary to comply with the requirements of this subsection.

(4) Authorities and duties not affected.--Nothing in this section shall be construed as replacing, amending, or otherwise interfering with the authorities and duties under section 2703.

[(5) Redesignated (4)]

Law Enforcement
and Prosecutor Survey Summary

WHAT (IF ANY) RECOMMENDATIONS WOULD YOU MAKE TO HELP IMPROVE IDENTIFICATION OF CHILD PORNOGRAPHY CASES?

Question Summary

Total LEO Respondents:	30
Total Prosecutor Respondents:	5
Response Trends:	11 responses mention training, 7 responses discuss a “task force” or MDT approach

Question Response Summary

Law Enforcement Officers

- Training
 - Child Sexual Abuse Material (CSAM) curriculum as part of mandated training
 - Best practices for CSAM identification, investigation, image collection, storage, digital chain of custody, and reporting to NCMEC
 - How to determine age of unidentified victim in suspected CSAM
 - How to conduct proactive investigations
- Create Regional CSAM Taskforces
 - CAC MDIT as model
- Capacity Building
 - Digital Forensics Analysts
 - Digital analytics software e.g. Griffey
 - Specially trained and dedicated CSAM detectives in each county
 - Specially trained officers for proactive investigations
- Utilization of Expert Witnesses
 - Access to more expert witnesses who can provide a medical opinion of whether an unidentified victim is a minor
- Enhanced Electronic Service Provider (ESP) Information Sharing
 - Standardize the information required from ESPs
 - Increase detail provided from ESPs
 - Improve information request turnaround times
- Standardized Protocol
 - How CSAM tips are received and investigated

Prosecutors

- Training
 - latest methods, terms and issues concerning this type of child pornography sharing will assist prosecutors in understanding the issue.
- Increased Authority for Administrative Subpoenas
- Capacity Building
- Specially trained and dedicated CSAM detectives

WHAT (IF ANY) BARRIERS DO YOU ENCOUNTER WHEN INVESTIGATING THESE CASES?

Question Summary

Total LEO Respondents:	53
Total Prosecutor Respondents:	7
Response Trends:	11 responses mention training, 10 responses mention time constraints, 7 responses mention difficulty identifying victim or perpetrator, 6 responses mention rapidly advancing technology, 4 responses mention lack of investigative resources

Question Response Summary

Law Enforcement Officers

- Insufficient Training
 - How and when to request subpoenas, court orders, and search warrants
- Lack of Capacity
 - Personnel, equipment, and software for digital forensics
 - Personnel dedicated to investigating CSAM tips
 - Expert witnesses
- Identifying Victims
 - Expert witnesses needed to determine age of unknown victims
- Rapidly Advancing Technology
 - Difficulty locating offenders
- Cooperation of ESPs
 - Slow to respond to administrative subpoenas
 - Lack of record retention
- Insufficient Community Education
 - CSAM laws and internet safety for students and parents
- Cooperation of Victims and Victims' Parents
- National Center for Missing and Exploited Children (NCMEC) Reports
 - Reports can be confusing
 - Contact information of the person reporting the allegation is sometimes missing, creating the additional step of an administrative subpoena
- Collaboration Between Multiple Agencies and Jurisdictions

Prosecutors

- Heightened level of evidence needed to identify perpetrators
- Turnaround time for collecting digital evidence
- Cooperation of ESPs
- Lack of Capacity
 - Personnel dedicated to investigating CSAM tips

WHAT (IF ANY) BARRIERS DO YOU ENCOUNTER WHEN PROSECUTING THESE CASES?

Question Summary

Total LEO Respondents:	25
Total Prosecutor Respondents:	7
Response Trends:	6 responses mention sentencing or judges, 3 responses mention training

Question Response Summary

Law Enforcement Officers

- Lenient Sentencing
 - No mandatory minimums
 - PA sentencing guidelines inconsistent with federal guidelines
 - Most defendants receive probation unless there are significant priors
 - Restorative sanctions are generally ineffective with offenders and harmful to communities
 - Defendant often considered not dangerous in no contact cases
- Insufficient Training
 - What prosecutors need from investigators to build strong cases
 - Courts are misinformed or undereducated in the danger of CSAM offenders and severity of this crime type
- Obtaining Expert Witnesses
 - Need easier access to expert witnesses who can provide a medical opinion of whether an unidentified victim is a minor
- Obtaining Victim Testimony
 - Victims are often located outside of PA

Prosecutors

- Difficult to Prosecute/Easy to Defend
 - Experts required to establish the age of unknown victims
 - Hard to prove that defendant knowingly downloaded CSAM and was not the victim of spam or another person using their electronic devices

WHAT (IF ANY) RECOMMENDATIONS WOULD YOU MAKE REGARDING CHANGES TO THE LAW TO IMPROVE THE INVESTIGATION OR PROSECUTION OF THESE CASES?

Question Summary

Total LEO Respondents:	34
Total Prosecutor Respondents:	5
Response Trends:	7 responses mention mandatory sentencing, 4 responses mention cartoons or animated images, 3 responses mention increased penalties

Question Response Summary

Law Enforcement Officers

- Mandatory Minimums
- Elevated Gravity Scores
 - Children under 5 years of age
 - Images depicting bondage of children
- Inclusion of Animated and Computer Generated CSAM
- Guidance for Enhancements
- Update Statutory Language
 - Replace mentions of Child Pornography with “Child Sexual Abuse Material”
 - Add language to include cell phones and media devices
- Expert Witnesses
 - Allow specially trained LEOs to provide expert testimony
- Establish County CSAM Taskforces
- Record Retention Requirements for ESPs
- County or Statewide Jurisdiction for CSAM Investigations
- Additional Fees to Support Digital Forensics Costs

Prosecutors

- Mandatory Minimums
- Increase Gravity Scores
- Sanctions for Search Warrant/Subpoena Noncompliance

IS THERE ANY OTHER INFORMATION THAT YOU WOULD LIKE TO CONVEY TO THE TASK FORCE REGARDING THE IDENTIFICATION, INVESTIGATION OR PROSECUTION OF CHILD PORNOGRAPY CASES?

Question Summary

Total LEO Respondents:	22
Total Prosecutor Respondents:	5
Response Trends:	8 responses mention training

Question Response Summary

Law Enforcement Officers

- Additional Training
 - Joint training with collaborating agencies (e.g. LEOs and Prosecutors)
- CSAM Specific Funding
 - Specialized investigative units at county and state level
 - Regional taskforces that meet regularly
 - Regional digital forensics labs
- System Improvements
 - Standardize reporting systems
 - Best practices and protocol for CSAM investigations
 - Victim identification
- Regular Review of Statute
 - Laws need to keep up with ever changing landscape of CSAM
- Stricter Sentencing Guidelines
- Wellness Programs for CSAM Investigators

Prosecutors

- Resources Needed to Build Capacity
- Sanctions for Search Warrant/Subpoena Noncompliance
- Authority Needed for Forfeiture of Electronic Devices
- CSAM Education Needed Throughout Criminal Justice System
 - Message needs to be clear that CSAM is not a victimless crime

SOAB Assessments by County

Percent of 6312 Convictions with a Court Order for SOAB Assessment

County Class	County	2014	2015	2016	2017	2018	2019	2020	2021	Total
First Class	Philadelphia	86%	84%	56%	23%	0%	22%	40%	33%	56%
Second Class	Allegheny	34%	44%	7%	20%	5%	0%	0%	0%	22%
Second Class A	Bucks	100%	94%	100%	78%	60%	67%	100%	100%	86%
	Delaware	100%	92%	86%	64%	0%	40%	73%	50%	78%
	Montgomery	94%	90%	80%	32%	70%	58%	60%		71%
Third Class	Berks	100%	100%	93%	78%	78%	91%	83%		91%
	Chester	100%	93%	85%	70%	100%	89%	90%	100%	91%
	Cumberland	100%	89%	100%	75%	60%	100%	100%	100%	91%
	Dauphin	100%	100%	86%	70%	100%	100%	67%	100%	91%
	Erie	83%	100%	100%	100%	60%	75%	100%	100%	81%
	Lackawanna	100%	100%	100%	100%	100%	100%	75%	100%	97%
	Lancaster	100%	100%	94%	84%	94%	100%	100%	100%	97%
	Lehigh	100%	100%	100%	86%	100%	83%	100%	100%	96%
	Luzerne	100%	100%	92%	87%	86%	92%	91%	67%	91%
	Northampton	83%	90%	100%	57%	100%	100%	100%	100%	91%
	Westmoreland	100%	100%	100%	100%	100%	100%	100%	100%	100%
	York	100%	100%	100%	77%	100%	100%	100%	88%	96%
Fourth Class	Beaver	100%	100%	100%	0%	100%	67%	78%		83%
	Butler	100%	100%	100%	100%	100%	100%	100%		100%
	Cambria		100%	100%	100%	100%	100%			100%
	Centre	100%	100%	100%	100%	0%	50%	50%	100%	82%
	Fayette	100%	100%	80%	100%	0%	0%		0%	67%
	Franklin	100%	100%	100%	67%	38%	75%	25%	100%	69%
	Monroe	86%	91%	100%	100%	100%	100%	67%		94%
	Schuylkill	100%	100%	100%	75%	50%	50%	86%	100%	81%
	Washington	100%	100%	80%	100%	100%	60%	100%		89%
	Fifth Class	Adams	100%	71%	100%	100%	100%	100%	100%	100%
Blair		75%	60%	75%	80%	90%	33%			59%
Lawrence		100%		100%	100%	100%	100%	100%		100%
Lebanon		100%	100%	100%	73%	100%	100%	100%		94%
Lycoming		100%	100%	100%	75%	67%	100%	100%		92%
Mercer		100%	100%	100%	67%	100%	100%	100%		90%
Northumberland		100%	100%	100%	60%		100%	100%		90%
Sixth Class	Armstrong	100%	100%		100%	0%	100%			89%
	Bedford	100%				100%				100%
	Bradford	100%	50%	100%	67%	100%	50%	100%		79%
	Carbon	100%	100%	100%	100%	100%	100%		100%	100%
	Clarion				0%			100%		50%
	Clearfield	100%	100%	100%		100%	100%	100%		100%
	Clinton	100%	100%	100%	100%		100%	100%	100%	100%
	Columbia		100%			100%				100%
	Crawford	100%	100%	100%	40%	33%	50%	100%		70%
	Elk	100%	100%	100%			100%			100%
	Greene	100%	100%			100%				100%
	Huntingdon			100%		0%	100%	100%		60%
	Indiana	100%					100%	100%	100%	100%
	Jefferson	67%	100%	100%	100%	100%	100%	100%	100%	95%
	McKean	100%		100%			100%	100%	100%	100%
	Mifflin	100%	100%	100%			100%	100%	100%	100%
	Perry		100%	100%	100%		100%	67%	100%	67%
	Pike	100%	100%	100%			100%	100%	100%	100%
	Somerset		100%		100%	100%			0%	75%
	Susquehanna	100%	100%	100%	100%			100%	100%	100%
Tioga		100%	100%	100%			100%		100%	
Venango	100%	100%	100%	50%	0%	75%	0%	0%	41%	
Warren	100%				0%	25%	100%	100%	56%	
Wayne	100%	100%	100%	100%	100%	100%		100%	100%	
Seventh Class	Juniata	100%				100%				100%
	Snyder				100%			100%	100%	100%
	Union	100%				0%	50%	100%		67%
	Wyoming					100%	100%			100%
Eighth Class	Cameron	100%	100%				100%		100%	100%
	Fulton	100%	100%			100%	100%			100%
	Montour		100%		100%		100%			100%
	Potter	100%	100%	100%	100%	100%	100%			100%
Total		89%	90%	84%	69%	70%	75%	83%	82%	81%

The information above shows the percentage of cases with a conviction on 6312 where the court ordered the defendant to receive an assessment by the Sexual Offender Assessment Board.

Sentencing Guideline Matrix – § 6312 Offenses

18 Pa.C.S. §	Description	Statutory Class	§ 303.3 Offense Gravity Score	§ 303.7 Prior Record Score Points
6312(b)	Sexual abuse of children-photographing/etc. sexual acts (13- 18 yrs)	F-2	8	2
6312(b)	Sexual abuse of children-photographing/etc. sexual acts (13 yrs or determination of prepubescence)	F-2	9	2
6312(b)	Sexual abuse of children-photographing/etc. sexual acts: when indecent contact depicted (13- 18 yrs)	F-1	10	3
6312(b)	Sexual abuse of children-photographing/etc. sexual acts: when indecent contact depicted (13 yrs or determination of prepubescence)	F-1	10	3
6312(c)	Sexual abuse of children-dissemination (13- 18 yrs) (1st off)	F-3	6	1
6312(c)	Sexual abuse of children-dissemination (13- 18 yrs) (2nd/subsq off)	F-2	8	2
6312(c)	Sexual abuse of children-dissemination (13 yrs or determination of prepubescence) (1st off)	F-3	7	1
6312(c)	Sexual abuse of children-dissemination (13 yrs or determination of prepubescence) (2nd/subsq off)	F-2	9	2
6312(c)	Sexual abuse of children-dissemination: when indecent contact depicted (13- 18 yrs) (1st offense)	F-2	9	2
6312(c)	Sexual abuse of children-dissemination: when indecent contact depicted (13- 18 yrs) (2nd/subsq offense)	F-2	10	2
6312(c)	Sexual abuse of children-dissemination: when indecent contact depicted (13 yrs or determination of prepubescence) (1st offense)	F-2	9	2
6312(c)	Sexual abuse of children-dissemination: indecent contact depicted (13 yrs or determination of prepubescence) (2nd/subsq offense)	F-2	10	2
6312(d)	Sexual abuse of children-possess child pornography (13- 18 yrs) (1st off)	F-3	6	1
6312(d)	Sexual abuse of children-possess child pornography (13- 18 yrs) (2nd/subsq off)	F-2	8	2
6312(d)	Sexual abuse of children-possess child pornography (13 yrs or determination of prepubescence) (1st off)	F-3	7	1
6312(d)	Sexual abuse of children-possess child pornography (13 yrs or determination of prepubescence) (2nd/subsq off)	F-2	9	2
6312(d)	Sexual abuse of children-possess child pornography: when indecent contact depicted (13- 18) (1st offense)	F-2	9	2
6312(d)	Sexual abuse of children-possess child pornography: when indecent contact depicted (13- 18) (2nd/subsq offense)	F-2	10	2
6312(d)	Sexual abuse of children-possess child pornography: when indecent contact depicted (13 yrs or determination of prepubescence) (1st offense)	F-2	9	2
6312(d)	Sexual abuse of children-possess child pornography: when indecent contact depicted (13 yrs or determination of prepubescence) (2nd/subsq offense)	F-2	10	

Legislation Enacted
Since Adoption of 7th Edition Amendment 6
Sentencing Guidelines



Legislation Enacted Since Adoption of 7th Edition Amendment 6 Sentencing Guidelines

Citation	Citation Description	Grade	OGS	PRS Points	Effective Date	Act	Bill
18 Pa.C.S. 2713.1 (a)(3)	Abuse of care-dependent person: intent to ridicule/demean	M3	1	m	8/30/2021	2021 - 49	HB1431 (PN 1547)
18 Pa.C.S. 3922.1(a)	Financial exploitation of older adult/care dependent person (=>\$500,000)	F1	8	3	8/30/2021	2021 - 48	HB 1429 (PN 1902)
18 Pa.C.S. 3922.1(a)	Financial exploitation of older adult/care dependent person (course of conduct)	F1	8	3	8/30/2021	2021 - 48	HB 1429 (PN 1902)
18 Pa.C.S. 3922.1(a)	Financial exploitation of older adult/care dependent person (\$100,000-<\$500,000)	F2	7	2	8/30/2021	2021 - 48	HB 1429 (PN 1902)
18 Pa.C.S. 3922.1(a)	Financial exploitation of older adult/care dependent person (<\$2,000-<\$100,000)	F3	5	1	8/30/2021	2021 - 48	HB 1429 (PN 1902)
18 Pa.C.S. 3922.1(a)	Financial exploitation of older adult/care dependent person (=<\$2,000)	M1	3	m	8/30/2021	2021 - 48	HB 1429 (PN 1902)
18 Pa.C.S. 6312 (b)	Sexual abuse of children-photographing/etc. sexual acts (<10 or determination of prepubescence)	F1	10	3	8/30/2021	2021 - 53	SB 87 (PN 64)



Legislation Enacted Since Adoption of 7th Edition Amendment 6 Sentencing Guidelines

Citation	Citation Description	Grade	OGS	PRS Points	Effective Date	Act	Bill
18 Pa.C.S. 6312 (b)	Sexual abuse of children-photographing/etc. sexual acts (10-<13 yrs)	F2	9	2	8/30/2021	2021 - 53	SB 87 (PN 64)
18 Pa.C.S. 6312 (c)	Sexual abuse of children-dissemination (<10 yrs or determination of prepubescence) (1st Offense)	F2	7	2	8/30/2021	2021 - 53	SB 87 (PN 64)
18 Pa.C.S. 6312 (c)	Sexual abuse of children-dissemination (<10 yrs or determination of prepubescence) (2nd/subsq off)	F2	9	2	8/30/2021	2021 - 53	SB 87 (PN 64)
18 Pa.C.S. 6312 (c)	Sexual abuse of children-dissemination (10-<13 yrs) (2nd/subsq off)	F2	9	2	8/30/2021	2021 - 53	SB 87 (PN 64)
18 Pa.C.S. 6312 (c)	Sexual abuse of children-dissemination (10-<13 yrs) (1st off)	F3	7	1	8/30/2021	2021 - 53	SB 87 (PN 64)
18 Pa.C.S. 6312 (d)	Sexual abuse of children-possess child pornography (10-<13 yrs) (2nd/subsq off)	F2	9	2	8/30/2021	2021 - 53	SB 87 (PN 64)
18 Pa.C.S. 6312 (d)	Sexual abuse of children-possess child pornography (<10 yrs or determination of prepubescence) (2nd/subsq off)	F2	9	2	8/30/2021	2021 - 53	SB 87 (PN 64)



Legislation Enacted Since Adoption of 7th Edition Amendment 6 Sentencing Guidelines

Citation	Citation Description	Grade	OGS	PRS Points	Effective Date	Act	Bill
18 Pa.C.S. 6312 (d)	Sexual abuse of children-possess child pornography (<10 yrs or determination of prepubescence) (1st off)	F2	7	2	8/30/2021	2021 - 53	SB 87 (PN 64)
18 Pa.C.S. 6312 (d)	Sexual abuse of children-possess child pornography (10-<13 yrs) (1st off)	F3	7	1	8/30/2021	2021 - 53	SB 87 (PN 64)

Sentencing Enhancement Usage by County

County Class	County	Total Cases with sentence on 6312	Total Cases with Enhancement based on abuse depicted	Total cases with Enhancement based on # of Images	Percent cases with Type of Image Enhancement	Percent cases with # of Images Enhancement	Percent cases using ANY Enhancement
First Class	Philadelphia	5	0	0	0.0%	0.0%	0.0%
Second Class	Allegheny	49	0	0	0.0%	0.0%	0.0%
Second Class A	Bucks	23	2	1	8.7%	4.3%	13.0%
	Delaware	18	10	10	55.6%	55.6%	111.1%
	Montgomery	44	7	9	15.9%	20.5%	36.4%
Third Class	Berks	25	0	1	0.0%	4.0%	4.0%
	Chester	21	0	0	0.0%	0.0%	0.0%
	Cumberland	13	5	7	38.5%	53.8%	92.3%
	Dauphin	13	2	4	15.4%	30.8%	46.2%
	Erie	9	0	0	0.0%	0.0%	0.0%
	Lackawanna	10	0	0	0.0%	0.0%	0.0%
	Lancaster	34	1	1	2.9%	2.9%	5.9%
	Lehigh	20	4	4	20.0%	20.0%	40.0%
	Luzerne	31	1	1	3.2%	3.2%	6.5%
	Northampton	13	0	1	0.0%	7.7%	7.7%
	Westmoreland	14	0	0	0.0%	0.0%	0.0%
	York	37	6	12	16.2%	32.4%	48.6%
Fourth Class	Beaver	8	0	0	0.0%	0.0%	0.0%
	Butler	6	0	0	0.0%	0.0%	0.0%
	Cambria	10	1	1	10.0%	10.0%	20.0%
	Centre	2	1	0	50.0%	0.0%	50.0%
	Fayette	5	0	0	0.0%	0.0%	0.0%
	Franklin	14	4	2	28.6%	14.3%	42.9%
	Monroe	16	1	4	6.3%	25.0%	31.3%
	Schuylkill	13	0	0	0.0%	0.0%	0.0%
	Washington	10	0	1	0.0%	10.0%	10.0%
Fifth Class	Adams	13	5	7	38.5%	53.8%	92.3%
	Blair	17	3	4	17.6%	23.5%	41.2%
	Lawrence	7	0	0	0.0%	0.0%	0.0%
	Lebanon	13	2	0	15.4%	0.0%	15.4%
	Lycoming	8	2	2	25.0%	25.0%	50.0%
	Mercer	12	1	2	8.3%	16.7%	25.0%
	Northumberland	6	1	0	16.7%	0.0%	16.7%
Sixth Class	Armstrong	2	0	0	0.0%	0.0%	0.0%
	Bedford	1	0	0	0.0%	0.0%	0.0%
	Bradford	10	1	0	10.0%	0.0%	10.0%
	Carbon	7	0	0	0.0%	0.0%	0.0%
	Clarion	2	0	0	0.0%	0.0%	0.0%
	Clearfield	7	3	0	42.9%	0.0%	42.9%
	Clinton	4	2	0	50.0%	0.0%	50.0%
	Columbia	2	0	0	0.0%	0.0%	0.0%
	Crawford	10	1	0	10.0%	0.0%	10.0%
	Elk	1	0	0	0.0%	0.0%	0.0%
	Greene	2	1	0	50.0%	0.0%	50.0%
	Huntingdon	2	0	0	0.0%	0.0%	0.0%
	Indiana	2	0	0	0.0%	0.0%	0.0%
	Jefferson	4	0	0	0.0%	0.0%	0.0%
	McKean	4	0	0	0.0%	0.0%	0.0%
	Mifflin	2	1	0	50.0%	0.0%	50.0%
	Perry	3	1	0	33.3%	0.0%	33.3%
	Pike	5	2	0	40.0%	0.0%	40.0%
	Somerset	2	0	0	0.0%	0.0%	0.0%
	Susquehanna	1	0	0	0.0%	0.0%	0.0%
	Tioga	2	1	0	50.0%	0.0%	50.0%
	Venango	6	0	0	0.0%	0.0%	0.0%
	Warren	4	1	2	25.0%	50.0%	75.0%
Wayne	2	0	0	0.0%	0.0%	0.0%	
Seventh Class	Juniata	1	0	0	0.0%	0.0%	0.0%
	Snyder	2	0	1	0.0%	50.0%	50.0%
	Union	4	0	4	0.0%	100.0%	100.0%
	Wyoming	2	0	0	0.0%	0.0%	0.0%
Eighth Class	Cameron	2	1	0	50.0%	0.0%	50.0%
	Forest						
	Fulton	2	0	0	0.0%	0.0%	0.0%
	Montour	2	1	1	50.0%	50.0%	100.0%
	Potter	5	1	2	20.0%	40.0%	60.0%
	Sullivan						
Total		646	76	84	11.8%	13.0%	24.8%

EARN IT Act

117TH CONGRESS
2D SESSION

S. 3538

To establish a National Commission on Online Child Sexual Exploitation Prevention, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2022

Mr. GRAHAM (for himself, Mr. BLUMENTHAL, Mr. DURBIN, Mr. GRASSLEY, Mrs. FEINSTEIN, Mr. CORNYN, Mr. WHITEHOUSE, Mr. HAWLEY, Ms. HIRONO, Mr. KENNEDY, Mr. CASEY, Mrs. BLACKBURN, Ms. CORTEZ MASTO, Ms. COLLINS, Ms. HASSAN, Ms. ERNST, Mr. WARNER, Mrs. HYDE-SMITH, Ms. MURKOWSKI, and Mr. PORTMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish a National Commission on Online Child Sexual Exploitation Prevention, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Eliminating Abusive
5 and Rampant Neglect of Interactive Technologies Act of
6 2022” or the “EARN IT Act of 2022”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) COMMISSION.—The term “Commission”
2 means the National Commission on Online Child
3 Sexual Exploitation Prevention.

4 (2) INTERACTIVE COMPUTER SERVICE.—The
5 term “interactive computer service” has the meaning
6 given the term in section 230(f)(2) of the Commu-
7 nications Act of 1934 (47 U.S.C. 230(f)(2)).

8 **SEC. 3. NATIONAL COMMISSION ON ONLINE CHILD SEXUAL**
9 **EXPLOITATION PREVENTION.**

10 (a) ESTABLISHMENT.—There is established a Na-
11 tional Commission on Online Child Sexual Exploitation
12 Prevention.

13 (b) PURPOSE.—The purpose of the Commission is to
14 develop recommended best practices that providers of
15 interactive computer services may choose to implement to
16 prevent, reduce, and respond to the online sexual exploi-
17 tation of children, including the enticement, grooming, sex
18 trafficking, and sexual abuse of children and the prolifera-
19 tion of online child sexual abuse material.

20 (c) MEMBERSHIP.—

21 (1) COMPOSITION.—

22 (A) IN GENERAL.—The Commission shall
23 be composed of 19 members.

1 (B) AGENCY HEADS.—The following Fed-
2 eral officials shall serve as members of the
3 Commission:

4 (i) The Attorney General or his or her
5 representative.

6 (ii) The Secretary of Homeland Secu-
7 rity or his or her representative.

8 (iii) The Chairman of the Federal
9 Trade Commission or his or her represent-
10 ative.

11 (C) OTHER MEMBERS.—Of the remaining
12 16 members of the Commission—

13 (i) 4 shall be appointed by the major-
14 ity leader of the Senate, of whom—

15 (I) 1 shall have the qualifications
16 required under clause (i) or (ii) of
17 paragraph (2)(A);

18 (II) 1 shall have the qualifica-
19 tions required under paragraph
20 (2)(B);

21 (III) 1 shall have the qualifica-
22 tions required under clause (i) or (ii)
23 of paragraph (2)(C); and

1 (IV) 1 shall have the qualifica-
2 tions required under clause (i) or (ii)
3 of paragraph (2)(D);

4 (ii) 4 shall be appointed by the minor-
5 ity leader of the Senate, of whom—

6 (I) 1 shall have the qualifications
7 required under clause (i) or (ii) of
8 paragraph (2)(A);

9 (II) 1 shall have the qualifica-
10 tions required under paragraph
11 (2)(B);

12 (III) 1 shall have the qualifica-
13 tions required under clause (i) or (ii)
14 of paragraph (2)(C); and

15 (IV) 1 shall have the qualifica-
16 tions required under clause (i) or (ii)
17 of paragraph (2)(D);

18 (iii) 4 shall be appointed by the
19 Speaker of the House of Representatives,
20 of whom—

21 (I) 1 shall have the qualifications
22 required under clause (i) or (ii) of
23 paragraph (2)(A);

1 (II) 1 shall have the qualifica-
2 tions required under paragraph
3 (2)(B);

4 (III) 1 shall have the qualifica-
5 tions required under clause (i) or (ii)
6 of paragraph (2)(C); and

7 (IV) 1 shall have the qualifica-
8 tions required under clause (i) or (ii)
9 of paragraph (2)(D); and

10 (iv) 4 shall be appointed by the minor-
11 ity leader of the House of Representatives,
12 of whom—

13 (I) 1 shall have the qualifications
14 required under clause (i) or (ii) of
15 paragraph (2)(A);

16 (II) 1 shall have the qualifica-
17 tions required under paragraph
18 (2)(B);

19 (III) 1 shall have the qualifica-
20 tions required under clause (i) or (ii)
21 of paragraph (2)(C); and

22 (IV) 1 shall have the qualifica-
23 tions required under clause (i) or (ii)
24 of paragraph (2)(D).

1 (2) QUALIFICATIONS.—Of the 16 members of
2 the Commission appointed under paragraph
3 (1)(C)—

4 (A) 4 shall have current experience in in-
5 vestigating online child sexual exploitation
6 crimes, of whom—

7 (i) 2 shall have such experience in a
8 law enforcement capacity; and

9 (ii) 2 shall have such experience in a
10 prosecutorial capacity;

11 (B) 4 shall be survivors of online child sex-
12 ual exploitation, or have current experience in
13 providing services for victims of online child
14 sexual exploitation in a non-governmental ca-
15 pacity;

16 (C)(i) 2 shall have current experience in
17 matters related to consumer protection, civil lib-
18 erties, civil rights, or privacy; and

19 (ii) 2 shall have current experience in com-
20 puter science or software engineering related to
21 matters of cryptography, data security, or arti-
22 ficial intelligence in a non-governmental capac-
23 ity; and

24 (D) 4 shall be individuals who each cur-
25 rently work for an interactive computer service

1 that is unrelated to each other interactive com-
2 puter service represented under this subpara-
3 graph, representing diverse types of businesses
4 and areas of professional expertise, of whom—

5 (i) 2 shall have current experience in
6 addressing online child sexual exploitation
7 and promoting child safety at an inter-
8 active computer service with not less than
9 30,000,000 monthly users in the United
10 States; and

11 (ii) 2 shall have current experience in
12 addressing online child sexual exploitation
13 and promoting child safety at an inter-
14 active computer service with less than
15 10,000,000 monthly users in the United
16 States.

17 (3) DATE.—The initial appointments of mem-
18 bers to the Commission under paragraph (1)(C)
19 shall be made not later than 90 days after the date
20 of enactment of this Act.

21 (d) PERIOD OF APPOINTMENT; VACANCIES.—

22 (1) PERIOD OF APPOINTMENT.—A member of
23 the Commission shall be appointed for a term of 5
24 years.

25 (2) VACANCIES.—

1 (A) EFFECT ON COMMISSION.—Any va-
2 cancy in the Commission shall not affect the
3 powers of the Commission.

4 (B) FILLING OF VACANCIES.—A vacancy
5 in the Commission shall be filled in the same
6 manner as the original appointment under sub-
7 section (c)(1).

8 (e) INITIAL MEETING.—The Commission shall hold
9 the first meeting of the Commission not later than 60 days
10 after the date on which a majority of the members of the
11 Commission have been appointed.

12 (f) CHAIRPERSON.—The Attorney General or his or
13 her representative shall serve as the Chairperson of the
14 Commission.

15 (g) QUORUM.—A majority of the members of the
16 Commission shall constitute a quorum, but a lesser num-
17 ber of members may hold a meeting.

18 (h) MEETINGS.—The Commission shall meet at the
19 call of the Chairperson.

20 (i) AUTHORITY OF COMMISSION.—The Commission
21 may, for the purpose of carrying out this section and sec-
22 tion 4, hold such hearings, sit and act at such times and
23 places, take such testimony, and receive such evidence as
24 the Commission considers appropriate.

25 (j) INFORMATION FROM FEDERAL AGENCIES.—

1 (1) IN GENERAL.—The Commission may secure
2 directly from any Federal department or agency
3 such information as the Commission considers nec-
4 essary to carry out this section and section 4.

5 (2) FURNISHING INFORMATION.—Upon request
6 of the Chairperson of the Commission for informa-
7 tion under paragraph (1), the head of a Federal de-
8 partment or agency shall furnish the information to
9 the Commission, unless the information is subject to
10 an active investigation or otherwise privileged or
11 confidential.

12 (k) TRAVEL EXPENSES.—A member of the Commis-
13 sion shall serve without compensation, but shall be allowed
14 travel expenses, including per diem in lieu of subsistence,
15 at rates authorized for employees of agencies under sub-
16 chapter I of chapter 57 of title 5, United States Code,
17 while away from the home or regular places of business
18 of the member in the performance of services for the Com-
19 mission.

20 (l) DURATION.—Section 14 of the Federal Advisory
21 Committee Act (5 U.S.C. App.) shall not apply to the
22 Commission.

23 **SEC. 4. DUTIES OF THE COMMISSION.**

24 (a) RECOMMENDED BEST PRACTICES.—

25 (1) INITIAL RECOMMENDATIONS.—

1 (A) IN GENERAL.—Not later than 18
2 months after the date on which a majority of
3 the members of the Commission required to be
4 appointed under section 3(c)(1)(C) have been so
5 appointed, the Commission shall develop and
6 submit to the Attorney General recommended
7 best practices that providers of interactive com-
8 puter services may choose to engage in to pre-
9 vent, reduce, and respond to the online sexual
10 exploitation of children, including the entice-
11 ment, grooming, sex trafficking, and sexual
12 abuse of children and the proliferation of online
13 child sexual abuse material.

14 (B) REQUIREMENTS.—

15 (i) ALTERNATIVE BEST PRACTICES.—

16 The best practices required to be developed
17 and submitted under subparagraph (A)
18 shall include alternatives that take into
19 consideration—

20 (I) the size, type of product, and
21 business model of a provider of an
22 interactive computer service;

23 (II) whether an interactive com-
24 puter service—

1 (aa) is made available to the
2 public;

3 (bb) is primarily responsible
4 for hosting, storage, display, and
5 retrieval of information on behalf
6 of third parties, including pro-
7 viders of other interactive com-
8 puter services; or

9 (cc) provides the capability
10 to transmit data to and receive
11 data from all or substantially all
12 internet endpoints on behalf of a
13 consumer; and

14 (III) whether a type of product,
15 business model, product design, or
16 other factors related to the provision
17 of an interactive computer service
18 could make a product or service sus-
19 ceptible to the use and facilitation of
20 online child sexual exploitation.

21 (ii) SCOPE.—Notwithstanding para-
22 graph (3), the alternatives described in
23 clause (i) of this subparagraph may ex-
24 clude certain matters required to be ad-
25 dressed under paragraph (3), as the Com-

1 mission determines appropriate based on
2 the nature of particular products or serv-
3 ices, the factors described in such clause
4 (i), or other factors relevant to the pur-
5 poses of this Act.

6 (2) SUPPORT REQUIREMENT.—The Commission
7 may only recommend the best practices under para-
8 graph (1) if not fewer than 14 members of the Com-
9 mission support the best practices.

10 (3) MATTERS ADDRESSED.—The matters ad-
11 dressed by the recommended best practices devel-
12 oped and submitted by the Commission under para-
13 graph (1) shall include—

14 (A) preventing, identifying, disrupting, and
15 reporting online child sexual exploitation;

16 (B) coordinating with non-profit organiza-
17 tions and other providers of interactive com-
18 puter services to preserve, remove from view,
19 and report online child sexual exploitation;

20 (C) retaining child sexual exploitation con-
21 tent and related user identification and location
22 data;

23 (D) receiving and triaging reports of online
24 child sexual exploitation by users of interactive
25 computer services, including self-reporting;

1 (E) implementing a standard rating and
2 categorization system to identify the type and
3 severity of child sexual abuse material;

4 (F) training and supporting content mod-
5 erators who review child sexual exploitation con-
6 tent for the purposes of preventing and dis-
7 rupting online child sexual exploitation;

8 (G) preparing and issuing transparency re-
9 ports, including disclosures in terms of service,
10 relating to identifying, categorizing, and report-
11 ing online child sexual exploitation and efforts
12 to prevent and disrupt online child sexual ex-
13 ploitation;

14 (H) coordinating with voluntary initiatives
15 offered among and to providers of interactive
16 computer services relating to identifying, cat-
17 egorizing, and reporting online child sexual ex-
18 ploitation;

19 (I) employing age rating and age gating
20 systems to reduce online child sexual exploi-
21 tation;

22 (J) offering parental control products that
23 enable customers to limit the types of websites,
24 social media platforms, and internet content
25 that are accessible to children; and

1 (K) contractual and operational practices
2 to ensure third parties, contractors, and affili-
3 ates comply with the best practices.

4 (4) RELEVANT CONSIDERATIONS.—In devel-
5 oping best practices under paragraph (1), the Com-
6 mission shall consider—

7 (A) the cost and technical limitations of
8 implementing the best practices;

9 (B) the impact on competition, product
10 and service quality, data security, and privacy;

11 (C) the impact on the ability of law en-
12 forcement agencies to investigate and prosecute
13 child sexual exploitation and rescue victims; and

14 (D) the current state of technology.

15 (5) PERIODIC UPDATES.—Not less frequently
16 than once every 5 years, the Commission shall up-
17 date and resubmit to the Attorney General rec-
18 ommended best practices under paragraph (1).

19 (b) PUBLICATION OF BEST PRACTICES.—Not later
20 than 30 days after the date on which the Commission sub-
21 mits recommended best practices under subsection (a), in-
22 cluding updated recommended best practices under para-
23 graph (5) of that subsection, the Attorney General shall
24 publish the recommended best practices on the website of
25 the Department of Justice and in the Federal Register.

1 **SEC. 5. PROTECTING VICTIMS OF ONLINE CHILD SEXUAL**
2 **ABUSE.**

3 Section 230(e) of the Communications Act of 1934
4 (47 U.S.C. 230(e)) is amended by adding at the end the
5 following:

6 “(6) NO EFFECT ON CHILD SEXUAL EXPLOI-
7 TATION LAW.—Nothing in this section (other than
8 subsection (c)(2)(A)) shall be construed to impair or
9 limit—

10 “(A) any claim in a civil action brought
11 against a provider of an interactive computer
12 service under section 2255 of title 18, United
13 States Code, if the conduct underlying the
14 claim constitutes a violation of section 2252 or
15 section 2252A of that title;

16 “(B) any charge in a criminal prosecution
17 brought against a provider of an interactive
18 computer service under State law regarding the
19 advertisement, promotion, presentation, dis-
20 tribution, or solicitation of child sexual abuse
21 material, as defined in section 2256(8) of title
22 18, United States Code; or

23 “(C) any claim in a civil action brought
24 against a provider of an interactive computer
25 service under State law regarding the advertise-
26 ment, promotion, presentation, distribution, or

1 solicitation of child sexual abuse material, as
2 defined in section 2256(8) of title 18, United
3 States Code.

4 “(7) ENCRYPTION TECHNOLOGIES.—

5 “(A) IN GENERAL.—Notwithstanding para-
6 graph (6), none of the following actions or cir-
7 cumstances shall serve as an independent basis
8 for liability of a provider of an interactive com-
9 puter service for a claim or charge described in
10 that paragraph:

11 “(i) The provider utilizes full end-to-
12 end encrypted messaging services, device
13 encryption, or other encryption services.

14 “(ii) The provider does not possess
15 the information necessary to decrypt a
16 communication.

17 “(iii) The provider fails to take an ac-
18 tion that would otherwise undermine the
19 ability of the provider to offer full end-to-
20 end encrypted messaging services, device
21 encryption, or other encryption services.

22 “(B) CONSIDERATION OF EVIDENCE.—
23 Nothing in subparagraph (A) shall be construed
24 to prohibit a court from considering evidence of
25 actions or circumstances described in that sub-

1 paragraph if the evidence is otherwise admis-
2 sible.”.

3 **SEC. 6. USE OF TERM “CHILD SEXUAL ABUSE MATERIAL”.**

4 (a) SENSE OF CONGRESS.—It is the sense of Con-
5 gress that the term “child sexual abuse material” has the
6 same legal meaning as the term “child pornography”, as
7 that term was used in Federal statutes and case law before
8 the date of enactment of this Act.

9 (b) AMENDMENTS.—

10 (1) TITLE 5, UNITED STATES CODE.—Chapter
11 65 of title 5, United States Code, is amended—

12 (A) in section 6502(a)(2)(B), by striking
13 “child pornography” and inserting “child sexual
14 abuse material”; and

15 (B) in section 6504(c)(2)(F), by striking
16 “child pornography” and inserting “child sexual
17 abuse material”.

18 (2) HOMELAND SECURITY ACT OF 2002.—The
19 Homeland Security Act of 2002 (6 U.S.C. 101 et
20 seq.) is amended—

21 (A) in section 307(b)(3)(D) (6 U.S.C.
22 187(b)(3)(D)), by striking “child pornography”
23 and inserting “child sexual abuse material”;
24 and

25 (B) in section 890A (6 U.S.C. 473)—

1 (i) in subsection (b)(2)(A)(ii), by
2 striking “child pornography” and inserting
3 “child sexual abuse material”; and

4 (ii) in subsection (e)(3)(B)(ii), by
5 striking “child pornography” and inserting
6 “child sexual abuse material”.

7 (3) IMMIGRATION AND NATIONALITY ACT.—Sec-
8 tion 101(a)(43)(I) of the Immigration and Nation-
9 ality Act (8 U.S.C. 1101(a)(43)(I)) is amended by
10 striking “child pornography” and inserting “child
11 sexual abuse material”.

12 (4) SMALL BUSINESS JOBS ACT OF 2010.—Sec-
13 tion 3011(c) of the Small Business Jobs Act of 2010
14 (12 U.S.C. 5710(c)) is amended by striking “child
15 pornography” and inserting “child sexual abuse ma-
16 terial”.

17 (5) BROADBAND DATA IMPROVEMENT ACT.—
18 Section 214(a)(2) of the Broadband Data Improve-
19 ment Act (15 U.S.C. 6554(a)(2)) is amended by
20 striking “child pornography” and inserting “child
21 sexual abuse material”.

22 (6) CAN-SPAM ACT OF 2003.—Section
23 4(b)(2)(B) of the CAN-SPAM Act of 2003 (15
24 U.S.C. 7703(b)(2)(B)) is amended by striking “child

1 pornography” and inserting “child sexual abuse ma-
2 terial”.

3 (7) TITLE 18, UNITED STATES CODE.—Title 18,
4 United States Code, is amended—

5 (A) in section 1956(c)(7)(D), by striking
6 “child pornography” each place the term ap-
7 pears and inserting “child sexual abuse mate-
8 rial”;

9 (B) in chapter 110—

10 (i) in section 2251(e), by striking
11 “child pornography” and inserting “child
12 sexual abuse material”;

13 (ii) in section 2252(b)—

14 (I) in paragraph (1), by striking
15 “child pornography” and inserting
16 “child sexual abuse material”; and

17 (II) in paragraph (2), by striking
18 “child pornography” and inserting
19 “child sexual abuse material”;

20 (iii) in section 2252A—

21 (I) in the section heading, by
22 striking “**material constituting**
23 **or containing child pornog-**
24 **raphy**” and inserting “**child sex-**
25 **ual abuse material**”;

- 1 (II) in subsection (a)—
- 2 (aa) in paragraph (1), by
- 3 striking “child pornography” and
- 4 inserting “child sexual abuse ma-
- 5 terial”;
- 6 (bb) in paragraph (2)—
- 7 (AA) in subparagraph
- 8 (A), by striking “child por-
- 9 nography” and inserting
- 10 “child sexual abuse mate-
- 11 rial”; and
- 12 (BB) in subparagraph
- 13 (B), by striking “material
- 14 that contains child pornog-
- 15 raphy” and inserting “child
- 16 sexual abuse material”;
- 17 (cc) in paragraph (3)(A), by
- 18 striking “child pornography” and
- 19 inserting “child sexual abuse ma-
- 20 terial”;
- 21 (dd) in paragraph (4)—
- 22 (AA) in subparagraph
- 23 (A), by striking “child por-
- 24 nography” and inserting

1 “child sexual abuse mate-
2 rial”; and

3 (BB) in subparagraph
4 (B), by striking “child por-
5 nography” and inserting
6 “child sexual abuse mate-
7 rial”;

8 (ee) in paragraph (5)—

9 (AA) in subparagraph
10 (A), by striking “material
11 that contains an image of
12 child pornography” and in-
13 sserting “item containing
14 child sexual abuse material”;
15 and

16 (BB) in subparagraph
17 (B), by striking “material
18 that contains an image of
19 child pornography” and in-
20 sserting “item containing
21 child sexual abuse material”;
22 and

23 (ff) in paragraph (7)—

24 (AA) by striking “child
25 pornography” and inserting

1 “child sexual abuse mate-
2 rial”; and

3 (BB) by striking the
4 period at the end and insert-
5 ing a comma;

6 (III) in subsection (b)—

7 (aa) in paragraph (1), by
8 striking “child pornography” and
9 inserting “child sexual abuse ma-
10 terial”; and

11 (bb) in paragraph (2), by
12 striking “child pornography”
13 each place the term appears and
14 inserting “child sexual abuse ma-
15 terial”;

16 (IV) in subsection (c)—

17 (aa) in paragraph (1)(A), by
18 striking “child pornography” and
19 inserting “child sexual abuse ma-
20 terial”;

21 (bb) in paragraph (2), by
22 striking “child pornography” and
23 inserting “child sexual abuse ma-
24 terial”; and

1 (cc) in the undesignated
2 matter following paragraph (2),
3 by striking “child pornography”
4 and inserting “child sexual abuse
5 material”;

6 (V) in subsection (d)(1), by strik-
7 ing “child pornography” and inserting
8 “child sexual abuse material”; and

9 (VI) in subsection (e), by striking
10 “child pornography” each place the
11 term appears and inserting “child sex-
12 ual abuse material”;

13 (iv) in section 2256(8)—

14 (I) by striking “child pornog-
15 raphy” and inserting “child sexual
16 abuse material”; and

17 (II) by striking the period at the
18 end and inserting a semicolon;

19 (v) in section 2257A(h)—

20 (I) in paragraph (1)(A)(iii)—

21 (aa) by inserting a comma
22 after “marketed”;

23 (bb) by striking “such than”
24 and inserting “such that”; and

1 (cc) by striking “a visual de-
2 piction that is child pornog-
3 raphy” and inserting “child sex-
4 ual abuse material”; and

5 (II) in paragraph (2), by striking
6 “any visual depiction that is child por-
7 nography” and inserting “child sexual
8 abuse material”;

9 (vi) in section 2258A—

10 (I) in subsection (a)(2)—

11 (aa) in subparagraph (A),
12 by striking “child pornography”
13 and inserting “child sexual abuse
14 material”; and

15 (bb) in subparagraph (B),
16 by striking “child pornography”
17 and inserting “child sexual abuse
18 material”;

19 (II) in subsection (b)—

20 (aa) in paragraph (4)—

21 (AA) in the paragraph
22 heading, by striking “VIS-
23 UAL DEPICTIONS OF APPAR-
24 ENT CHILD PORNOGRAPHY”
25 and inserting “APPARENT

1 CHILD SEXUAL ABUSE MA-
2 TERIAL”; and

3 (BB) by striking “vis-
4 ual depiction of apparent
5 child pornography” and in-
6 serting “apparent child sex-
7 ual abuse material”; and

8 (bb) in paragraph (5), by
9 striking “visual depiction of ap-
10 parent child pornography” and
11 inserting “apparent child sexual
12 abuse material”; and

13 (III) in subsection (g)(2)(B), by
14 striking “visual depictions of apparent
15 child pornography” and inserting “ap-
16 parent child sexual abuse material”;
17 (vii) in section 2258C—

18 (I) in the section heading, by
19 striking “**Use to combat child**
20 **pornography of technical ele-**
21 **ments relating to reports**
22 **made to the CyberTipline”** and
23 inserting “**Use of technical ele-**
24 **ments from reports made to**

1 **the CyberTipline to combat**
2 **child sexual abuse material”;**

3 (II) in subsection (a)—

4 (aa) in paragraph (2), by
5 striking “child pornography” and
6 inserting “child sexual abuse ma-
7 terial”; and

8 (bb) in paragraph (3), by
9 striking “the actual visual depic-
10 tions of apparent child pornog-
11 raphy” and inserting “any appar-
12 ent child sexual abuse material”;

13 (III) in subsection (d), by strik-
14 ing “child pornography visual depic-
15 tion” and inserting “child sexual
16 abuse material visual depiction”; and

17 (IV) in subsection (e), by striking
18 “child pornography visual depiction”
19 and inserting “child sexual abuse ma-
20 terial visual depiction”;

21 (viii) in section 2259—

22 (I) in paragraph (b)(2)—

23 (aa) in the paragraph head-
24 ing, by striking “CHILD PORNOG-

1 RAPHY” and inserting “CHILD
2 SEXUAL ABUSE MATERIAL”;

3 (bb) in the matter preceding
4 subparagraph (A), by striking
5 “child pornography” and insert-
6 ing “child sexual abuse mate-
7 rial”; and

8 (cc) in subparagraph (A), by
9 striking “child pornography” and
10 inserting “child sexual abuse ma-
11 terial”;

12 (II) in subsection (c)—

13 (aa) in paragraph (1)—

14 (AA) in the paragraph
15 heading, by striking “CHILD
16 PORNOGRAPHY PRODUCTION”
17 and inserting “PRO-
18 DUCATION OF CHILD SEXUAL
19 ABUSE MATERIAL”;

20 (BB) by striking “child
21 pornography production”
22 and inserting “production of
23 child sexual abuse material”;
24 and

1 (CC) by striking “pro-
2 duction of child pornog-
3 raphy” and inserting “pro-
4 duction of child sexual abuse
5 material”;

6 (bb) in paragraph (2), in the
7 matter preceding subparagraph
8 (A), by striking “trafficking in
9 child pornography offenses” each
10 place the term appears and in-
11 serting “offenses for trafficking
12 in child sexual abuse material”;
13 and

14 (cc) in paragraph (3)—

15 (AA) in the paragraph
16 heading, by striking “CHILD
17 PORNOGRAPHY” and insert-
18 ing “CHILD SEXUAL ABUSE
19 MATERIAL”; and

20 (BB) by striking “child
21 pornography” and inserting
22 “child sexual abuse mate-
23 rial”; and

24 (III) in subsection (d)(1)—

25 (aa) in subparagraph (A)—

1 (AA) by striking “child
2 pornography” each place the
3 term appears and inserting
4 “child sexual abuse mate-
5 rial”; and

6 (BB) by striking “Child
7 Pornography Victims Re-
8 serve” and inserting “Re-
9 serve for Victims of Child
10 Sexual Abuse Material”;

11 (bb) in subparagraph (B),
12 by striking “child pornography”
13 and inserting “child sexual abuse
14 material”; and

15 (cc) in subparagraph (C)—

16 (AA) by striking “child
17 pornography” and inserting
18 “child sexual abuse mate-
19 rial”; and

20 (BB) by striking “Child
21 Pornography Victims Re-
22 serve” and inserting “Re-
23 serve for Victims of Child
24 Sexual Abuse Material”;

25 (ix) in section 2259A—

1 (I) in the section heading, by
2 striking “**child pornography**
3 **cases**” and inserting “**cases in-**
4 **volving child sexual abuse**
5 **material**”;

6 (II) in subsection (a)—

7 (aa) in paragraph (2), by
8 striking “child pornography” and
9 inserting “child sexual abuse ma-
10 terial”; and

11 (bb) in paragraph (3), by
12 striking “a child pornography
13 production offense” and inserting
14 “an offense for production of
15 child sexual abuse material”; and

16 (III) in subsection (d)(2)(B), by
17 striking “child pornography produc-
18 tion or trafficking offense that the de-
19 fendant committed” and inserting “of-
20 fense for production of child sexual
21 abuse material or trafficking in child
22 sexual abuse material committed by
23 the defendant”; and

24 (x) in section 2259B—

1 (I) in the section heading, by
2 striking “**Child pornography**
3 **victims reserve**” and inserting
4 “**Reserve for child sexual**
5 **abuse material**”;

6 (II) in subsection (a), by striking
7 “Child Pornography Victims Reserve”
8 each place the term appears and in-
9 serting “Reserve for Victims of Child
10 Sexual Abuse Material”;

11 (III) in subsection (b), by strik-
12 ing “Child Pornography Victims Re-
13 serve” each place the term appears
14 and inserting “Reserve for Victims of
15 Child Sexual Abuse Material”; and

16 (IV) in subsection (c), by striking
17 “Child Pornography Victims Reserve”
18 and inserting “Reserve for Victims of
19 Child Sexual Abuse Material”;

20 (C) in chapter 117—

21 (i) in section 2423(f)(3), by striking
22 “child pornography” and inserting “child
23 sexual abuse material”; and

24 (ii) in section 2427—

1 (I) in the section heading, by
2 striking “**child pornography**”
3 and inserting “**child sexual abuse**
4 **material**”; and

5 (II) by striking “child pornog-
6 raphy” and inserting “child sexual
7 abuse material”;

8 (D) in section 2516—

9 (i) in paragraph (1)(c), by striking
10 “material constituting or containing child
11 pornography” and inserting “child sexual
12 abuse material”; and

13 (ii) in paragraph (2), by striking
14 “child pornography production” and in-
15 sserting “production of child sexual abuse
16 material”;

17 (E) in section 3014(h)(3), by striking
18 “child pornography victims” and inserting “vic-
19 tims of child sexual abuse material”;

20 (F) in section 3509—

21 (i) in subsection (a)(6), by striking
22 “child pornography” and inserting “child
23 sexual abuse material”; and

24 (ii) in subsection (m)—

1 (I) in the subsection heading, by
2 striking “CHILD PORNOGRAPHY” and
3 inserting “CHILD SEXUAL ABUSE
4 MATERIAL”;

5 (II) in paragraph (1), by striking
6 “property or material that constitutes
7 child pornography (as defined by sec-
8 tion 2256 of this title)” and inserting
9 “child sexual abuse material (as de-
10 fined by section 2256 of this title), or
11 property or items containing such ma-
12 terial,”;

13 (III) in paragraph (2)—

14 (aa) in subparagraph (A)—

15 (AA) by striking “prop-
16 erty or material that con-
17 stitutes child pornography
18 (as defined by section 2256
19 of this title)” and inserting
20 “child sexual abuse material
21 (as defined by section 2256
22 of this title), or property or
23 items containing such mate-
24 rial,”; and

1 (BB) by striking “the
2 property or material” and
3 inserting “the child sexual
4 abuse material, property, or
5 items”; and

6 (bb) in subparagraph (B),
7 by striking “property or mate-
8 rial” each place the term appears
9 and inserting “child sexual abuse
10 material, property, or items”;
11 and

12 (IV) in paragraph (3)—

13 (aa) by striking “property or
14 material that constitutes child
15 pornography, as defined under
16 section 2256(8)” and inserting
17 “child sexual abuse material (as
18 defined by section 2256 of this
19 title)”;

20 (bb) by striking “such child
21 pornography” and inserting
22 “such child sexual abuse mate-
23 rial”; and

24 (cc) by striking “Such prop-
25 erty or material” and inserting

1 “Such child sexual abuse mate-
2 rial”; and

3 (G) in section 3632(d)(4)(D)(xlii), by
4 striking “material constituting or containing
5 child pornography” and inserting “child sexual
6 abuse material”.

7 (8) TARIFF ACT OF 1930.—Section
8 583(a)(2)(B) of the Tariff Act of 1930 (19 U.S.C.
9 1583(a)(2)(B)) is amended by striking “child por-
10 nography” and inserting “child sexual abuse mate-
11 rial”.

12 (9) ELEMENTARY AND SECONDARY EDUCATION
13 ACT OF 1965.—Section 4121 of the Elementary and
14 Secondary Education Act of 1965 (20 U.S.C. 7131)
15 is amended—

16 (A) in subsection (a)—

17 (i) in paragraph (1)(A)(ii), by striking
18 “child pornography” and inserting “child
19 sexual abuse material”; and

20 (ii) in paragraph (2)(A)(ii), by strik-
21 ing “child pornography” and inserting
22 “child sexual abuse material”; and

23 (B) in subsection (e)(5)—

1 (i) in the paragraph heading, by strik-
2 ing “CHILD PORNOGRAPHY” and inserting
3 “CHILD SEXUAL ABUSE MATERIAL”; and

4 (ii) by striking “child pornography”
5 and inserting “child sexual abuse mate-
6 rial”.

7 (10) MUSEUM AND LIBRARY SERVICES ACT.—
8 Section 224(f) of the Museum and Library Services
9 Act (20 U.S.C. 9134(f)) is amended—

10 (A) in paragraph (1)—

11 (i) in subparagraph (A)(i)(II), by
12 striking “child pornography” and inserting
13 “child sexual abuse material”; and

14 (ii) in subparagraph (B)(i)(II), by
15 striking “child pornography” and inserting
16 “child sexual abuse material”; and

17 (B) in paragraph (7)(A)—

18 (i) in the subparagraph heading, by
19 striking “CHILD PORNOGRAPHY” and in-
20 sserting “CHILD SEXUAL ABUSE MATE-
21 RIAL”; and

22 (ii) by striking “child pornography”
23 and inserting “child sexual abuse mate-
24 rial”.

1 (11) OMNIBUS CRIME CONTROL AND SAFE
2 STREETS ACT OF 1968.—Section 3031(b)(3) of title
3 I of the Omnibus Crime Control and Safe Streets
4 Act of 1968 (34 U.S.C. 10721(b)(3)) is amended by
5 striking “child pornography” and inserting “child
6 sexual abuse material”.

7 (12) JUVENILE JUSTICE AND DELINQUENCY
8 PREVENTION ACT OF 1974.—Section 404(b)(1)(K) of
9 the Juvenile Justice and Delinquency Prevention Act
10 of 1974 (34 U.S.C. 11293(b)(1)(K)) is amended—

11 (A) in clause (i)(I)(aa), by striking “child
12 pornography” and inserting “child sexual abuse
13 material”; and

14 (B) in clause (ii), by striking “child por-
15 nography” and inserting “child sexual abuse
16 material”.

17 (13) VICTIMS OF CRIME ACT OF 1984.—Section
18 1402(d)(6)(A) of the Victims of Crime Act of 1984
19 (34 U.S.C. 20101(d)(6)(A)) is amended by striking
20 “Child Pornography Victims Reserve” and inserting
21 “Reserve for Victims of Child Sexual Abuse Mate-
22 rial”.

23 (14) VICTIMS OF CHILD ABUSE ACT OF 1990.—
24 The Victims of Child Abuse Act of 1990 (34 U.S.C.
25 20301 et seq.) is amended—

1 (A) in section 212(4) (34 U.S.C.
2 20302(4)), by striking “child pornography” and
3 inserting “child sexual abuse material”;

4 (B) in section 214(b) (34 U.S.C.
5 20304(b))—

6 (i) in the subsection heading, by strik-
7 ing “CHILD PORNOGRAPHY” and inserting
8 “CHILD SEXUAL ABUSE MATERIAL”; and

9 (ii) by striking “child pornography”
10 and inserting “child sexual abuse mate-
11 rial”; and

12 (C) in section 226(c)(6) (34 U.S.C.
13 20341(c)(6)), by striking “child pornography”
14 and inserting “child sexual abuse material”.

15 (15) SEX OFFENDER REGISTRATION AND NOTI-
16 FICATION ACT.—Section 111 of the Sex Offender
17 Registration and Notification Act (34 U.S.C. 20911)
18 is amended—

19 (A) in paragraph (3)(B)(iii), by striking
20 “child pornography” and inserting “child sexual
21 abuse material”; and

22 (B) in paragraph (7)(G), by striking “child
23 pornography” and inserting “child sexual abuse
24 material”.

1 (16) ADAM WALSH CHILD PROTECTION AND
2 SAFETY ACT OF 2006.—Section 143(b)(3) of the
3 Adam Walsh Child Protection and Safety Act of
4 2006 (34 U.S.C. 20942(b)(3)) is amended by strik-
5 ing “child pornography and enticement cases” and
6 inserting “cases involving child sexual abuse mate-
7 rial and enticement of children”.

8 (17) PROTECT OUR CHILDREN ACT OF 2008.—
9 The PROTECT Our Children Act of 2008 (34
10 U.S.C. 21101 et seq.) is amended—

11 (A) in section 101(c) (34 U.S.C.
12 21111(c))—

13 (i) in paragraph (16)—

14 (I) in the matter preceding sub-
15 paragraph (A), by striking “child por-
16 nography trafficking” and inserting
17 “trafficking in child sexual abuse ma-
18 terial”;

19 (II) in subparagraph (A), by
20 striking “child pornography” and in-
21 sserting “child sexual abuse material”;

22 (III) in subparagraph (B), by
23 striking “child pornography” and in-
24 sserting “child sexual abuse material”;

1 (IV) in subparagraph (C), by
2 striking “child pornography” and in-
3 serting “child sexual abuse material”;
4 and

5 (V) in subparagraph (D), by
6 striking “child pornography” and in-
7 serting “child sexual abuse material”;
8 and

9 (ii) in paragraph (17)(A), by striking
10 “child pornography” and inserting “child
11 sexual abuse material”; and

12 (B) in section 105(e)(1)(C) (34 U.S.C.
13 21115(e)(1)(C)), by striking “child pornog-
14 raphy trafficking” and inserting “trafficking in
15 child sexual abuse material”.

16 (18) SOCIAL SECURITY ACT.—Section
17 471(a)(20)(A)(i) of the Social Security Act (42
18 U.S.C. 671(a)(20)(A)(i)) is amended by striking
19 “child pornography” and inserting “offenses involv-
20 ing child sexual abuse material”.

21 (19) PRIVACY PROTECTION ACT OF 1980.—Sec-
22 tion 101 of the Privacy Protection Act of 1980 (42
23 U.S.C. 2000aa) is amended—

1 (A) in subsection (a)(1), by striking “child
2 pornography” and inserting “child sexual abuse
3 material”; and

4 (B) in subsection (b)(1), by striking “child
5 pornography” and inserting “child sexual abuse
6 material”.

7 (20) CHILD CARE AND DEVELOPMENT BLOCK
8 GRANT ACT OF 1990.—Section 658H(c)(1) of the
9 Child Care and Development Block Grant Act of
10 1990 (42 U.S.C. 9858f(c)(1)) is amended—

11 (A) in subparagraph (D)(iii), by striking
12 “child pornography” and inserting “offenses re-
13 lating to child sexual abuse material”; and

14 (B) in subparagraph (E), by striking
15 “child pornography” and inserting “child sexual
16 abuse material”.

17 (21) COMMUNICATIONS ACT OF 1934.—Title II
18 of the Communications Act of 1934 (47 U.S.C. 201
19 et seq.) is amended—

20 (A) in section 223 (47 U.S.C. 223)—

21 (i) in subsection (a)(1)—

22 (I) in subparagraph (A), in the
23 undesignated matter following clause

24 (ii), by striking “child pornography”

1 and inserting “which constitutes child
2 sexual abuse material”; and

3 (II) in subparagraph (B), in the
4 undesignated matter following clause
5 (ii), by striking “child pornography”
6 and inserting “which constitutes child
7 sexual abuse material”; and

8 (ii) in subsection (d)(1), in the undes-
9 ignated matter following subparagraph
10 (B), by striking “child pornography” and
11 inserting “that constitutes child sexual
12 abuse material”; and

13 (B) in section 254(h) (47 U.S.C.
14 254(h))—

15 (i) in paragraph (5)—

16 (I) in subparagraph (B)(i)(II), by
17 striking “child pornography” and in-
18 serting “child sexual abuse material”;
19 and

20 (II) in subparagraph (C)(i)(II),
21 by striking “child pornography” and
22 inserting “child sexual abuse mate-
23 rial”;

24 (ii) in paragraph (6)—

1 (I) in subparagraph (B)(i)(II), by
 2 striking “child pornography” and in-
 3 serting “child sexual abuse material”;
 4 and

5 (II) in subparagraph (C)(i)(II),
 6 by striking “child pornography” and
 7 inserting “child sexual abuse mate-
 8 rial”; and

9 (iii) in paragraph (7)(F)—

10 (I) in the subparagraph heading,
 11 by striking “CHILD PORNOGRAPHY”
 12 and inserting “CHILD SEXUAL ABUSE
 13 MATERIAL”; and

14 (II) by striking “child pornog-
 15 raphy” and inserting “child sexual
 16 abuse material”.

17 (c) TABLE OF SECTIONS AMENDMENTS.—

18 (1) CHAPTER 110 OF TITLE 18.—The table of
 19 sections for chapter 110 of title 18, United States
 20 Code, is amended—

21 (A) by striking the item relating to section
 22 2252A and inserting the following:

“2252A. Certain activities relating to child sexual abuse material.”;

23 (B) by striking the item relating to section
 24 2258C and inserting the following:

“2258C. Use of technical elements from reports made to the CyberTipline to combat child sexual abuse material.”;

1 (C) by striking the item relating to section
2 2259A and inserting the following:

“2259A. Assessments in cases involving child sexual abuse material.”;

3 and

4 (D) by striking the item relating to section
5 2259B and inserting the following:

“2259B. Reserve for victims of child sexual abuse material.”.

6 (2) CHAPTER 117 OF TITLE 18.—The table of
7 sections for chapter 117 of title 18, United States
8 Code, is amended by striking the item relating to
9 section 2427 and inserting the following:

“2427. Inclusion of offenses relating to child sexual abuse material in definition of sexual activity for which any person can be charged with a criminal offense.”.

10 (d) AMENDMENT TO THE FEDERAL SENTENCING
11 GUIDELINES.—Pursuant to its authority under section
12 994(p) of title 28, United States Code, and in accordance
13 with this section, the United States Sentencing Commis-
14 sion shall amend the Federal sentencing guidelines, in-
15 cluding application notes, to replace the terms “child por-
16 nography” and “child pornographic material” with “child
17 sexual abuse material”.

18 (e) EFFECTIVE DATE.—The amendments made by
19 this section to title 18 of the United States Code shall
20 apply to conduct that occurred before, on, or after the date
21 of enactment of this Act.

1 **SEC. 7. MODERNIZING THE CYBERTIPLINE.**

2 (a) IN GENERAL.—Chapter 110 of title 18, United
3 States Code, is amended—

4 (1) in section 2258A, as amended by section
5 6(b) of this Act—

6 (A) in subsection (a)—

7 (i) in paragraph (1)(B)(ii), by insert-
8 ing after “facts or circumstances” the fol-
9 lowing: “, including any available facts or
10 circumstances sufficient to identify and lo-
11 cate each minor and each involved indi-
12 vidual,”; and

13 (ii) in paragraph (2)(A)—

14 (I) by inserting “1591 (if the vio-
15 lation involves a minor),” before
16 “2251,”; and

17 (II) by striking “or 2260” and
18 inserting “2260, or 2422(b)”;

19 (B) in subsection (b)—

20 (i) in paragraph (1)—

21 (I) by inserting “or location”
22 after “identity”; and

23 (II) by striking “other identifying
24 information,” and inserting “other in-
25 formation which may identify or lo-
26 cate the involved individual,”;

1 (ii) by redesignating paragraphs (2)
2 through (5) as paragraphs (3) through (6),
3 respectively;

4 (iii) by inserting after paragraph (1)
5 the following:

6 “(2) INFORMATION ABOUT THE INVOLVED
7 MINOR.—Information relating to the identity or loca-
8 tion of any involved minor, which may, to the extent
9 reasonably practicable, include the electronic mail
10 address, Internet Protocol address, uniform resource
11 locator, or any other information which may identify
12 or locate any involved minor, including self-reported
13 identifying information.”; and

14 (iv) by adding at the end the fol-
15 lowing:

16 “(7) FORMATTING OF REPORTS.—When in its
17 discretion a provider voluntarily includes any content
18 described in this subsection in a report to the
19 CyberTipline, the provider shall use best efforts to
20 ensure that the report conforms with the structure
21 of the CyberTipline.”; and

22 (C) in subsection (d)(5)(B)—

23 (i) in clause (i), by striking “for-
24 warded” and inserting “made available”;
25 and

1 (ii) in clause (ii), by striking “for-
2 warded” and inserting “made available”;

3 (2) in section 2258B—

4 (A) in subsection (a)—

5 (i) by striking “arising from the per-
6 formance” and inserting the following: “,
7 may not be brought in any Federal or
8 State court if the claim or charge is di-
9 rectly attributable to—

10 “(1) the performance”;

11 (ii) in paragraph (1), as so des-
12 ignated, by striking “may not be brought
13 in any Federal or State court.” and insert-
14 ing a semicolon; and

15 (iii) by adding at the end the fol-
16 lowing:

17 “(2) transmitting, distributing, or mailing child
18 sexual abuse material to any Federal, State, or local
19 law enforcement agency, or giving such agency ac-
20 cess to child sexual abuse material, in response to a
21 search warrant, court order, or other legal process
22 issued by such agency; or

23 “(3) research voluntarily undertaken by the
24 provider or domain name registrar using any mate-

1 rial being preserved under section 2258A(h), if the
2 research is only for the purpose of—

3 “(A) improving or facilitating reporting
4 under this section, section 2258A, or section
5 2258C; or

6 “(B) stopping the online sexual exploi-
7 tation of children.”; and

8 (B) in subsection (b)(2)(C)—

9 (i) by striking “the performance of”;

10 (ii) by inserting “described in or per-
11 formed” after “function”; and

12 (iii) by striking “this section, sec-
13 tions” and inserting “this section or sec-
14 tion”; and

15 (3) in section 2258C, as amended by section
16 6(b) of this Act—

17 (A) in the section heading, by striking
18 **“the CyberTipline”** and inserting
19 **“NCMEC”**;

20 (B) in subsection (a)—

21 (i) in paragraph (1)—

22 (I) by striking “NCMEC” and
23 inserting the following:

24 “(A) PROVISION TO PROVIDERS.—
25 NCMEC”;

1 (II) in subparagraph (A), as so
2 designated, by inserting “or submis-
3 sion to the child victim identification
4 program described in section
5 404(b)(1)(K)(ii) of the Juvenile Jus-
6 tice and Delinquency Prevention Act
7 of 1974 (34 U.S.C.
8 11293(b)(1)(K)(ii))” after
9 “CyberTipline report”; and

10 (III) by adding at the end the
11 following:

12 “(B) PROVISION TO NON-PROFIT ENTI-
13 TIES.—NCMEC may provide hash values or
14 similar technical identifiers associated with vis-
15 ual depictions provided in a CyberTipline report
16 or submission to the child victim identification
17 program described in section 404(b)(1)(K)(ii)
18 of the Juvenile Justice and Delinquency Pre-
19 vention Act of 1974 (34 U.S.C.
20 11293(b)(1)(K)(ii)) to a non-profit entity for
21 the sole and exclusive purpose of preventing
22 and curtailing the online sexual exploitation of
23 children.”; and

24 (ii) in paragraph (2)—

1 (I) by inserting “(A)” after
2 “(1)”;

3 (II) by inserting “or submission
4 to the child victim identification pro-
5 gram described in section
6 404(b)(1)(K)(ii) of the Juvenile Jus-
7 tice and Delinquency Prevention Act
8 of 1974 (34 U.S.C.
9 11293(b)(1)(K)(ii))” after
10 “CyberTipline report”; and

11 (III) by adding at the end the
12 following: “The elements authorized
13 under paragraph (1)(B) shall be lim-
14 ited to hash values or similar tech-
15 nical identifiers associated with visual
16 depictions provided in a CyberTipline
17 report or submission to the child vic-
18 tim identification program described
19 in section 404(b)(1)(K)(ii) of the Ju-
20 venile Justice and Delinquency Pre-
21 vention Act of 1974 (34 U.S.C.
22 11293(b)(1)(K)(ii)).”; and

23 (C) in subsection (d), by inserting “or to
24 the child victim identification program de-
25 scribed in section 404(b)(1)(K)(ii) of the Juve-

1 nile Justice and Delinquency Prevention Act of
 2 1974 (34 U.S.C. 11293(b)(1)(K)(ii))” after
 3 “CyberTipline”.

4 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 5 The table of sections for chapter 110 of title 18, United
 6 States Code, is amended by striking the item relating to
 7 section 2258C (as amended by section 6(c)(1)(B) of this
 8 Act) and inserting the following:

 “2258C. Use of technical elements from reports made to NCMEC to combat
 child sexual abuse material.”.

9 **SEC. 8. ELIMINATING NETWORK DISTRIBUTION OF CHILD**
 10 **EXPLOITATION.**

11 Section 2258A(h) of title 18, United States Code, is
 12 amended—

13 (1) in paragraph (1), by striking “90 days” and
 14 inserting “180 days”; and

15 (2) by adding at the end the following:

16 “(5) EXTENSION OF PRESERVATION.—A pro-
 17 vider of a report to the CyberTipline may voluntarily
 18 preserve the contents provided in the report (includ-
 19 ing any comingled content described in paragraph
 20 (2)) for longer than 180 days after the submission
 21 to the CyberTipline for the purpose of reducing the
 22 proliferation of online child sexual exploitation or
 23 preventing the online sexual exploitation of chil-
 24 dren.”.

1 **SEC. 9. IT SOLUTIONS RELATING TO COMBATING ONLINE**
2 **CHILD EXPLOITATION.**

3 Title IV of the Juvenile Justice and Delinquency Pre-
4 vention Act of 1974 (34 U.S.C. 11291 et seq.) is amend-
5 ed—

6 (1) by redesignating section 409 (34 U.S.C.
7 11297) as section 410; and

8 (2) by inserting after section 408 (34 U.S.C.
9 11296) the following:

10 **“SEC. 409. IT SOLUTIONS RELATING TO COMBATING ON-**
11 **LINE CHILD EXPLOITATION.**

12 “(a) DEVELOPMENT OF IT SOLUTIONS.—The Ad-
13 ministrator shall enable the development of information
14 technology solutions and the creation and acquisition of
15 innovative tools to implement updates, improvements, and
16 modernization needed to enhance efforts to combat online
17 child exploitation in order to ensure that consistent, ac-
18 tionable information is provided to law enforcement agen-
19 cies, including Internet Crimes Against Children (com-
20 monly known as ‘ICAC’) task forces.

21 “(b) CONSULTATION WITH PARTNERS.—In devel-
22 oping the information technology solutions under sub-
23 section (a), the Administrator shall solicit input from all
24 partners in the effort to combat online child exploitation,
25 including the Center, ICAC task forces, the Federal Bu-
26 reau of Investigation, the Department of Homeland Secu-

1 rity, U.S. Immigration and Customs Enforcement, Home-
2 land Security Investigations, and the United States Mar-
3 shals Service.

4 “(c) FUNDING.—Each fiscal year, the Administrator
5 shall carry out this section using not less than \$1,000,000
6 of the amounts made available to carry out this title for
7 that fiscal year.”.

8 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

9 There are authorized to be appropriated such sums
10 as may be necessary to carry out this Act.

11 **SEC. 11. SEVERABILITY.**

12 If any provision of this Act or any amendment made
13 by this Act, or any application of such provision or amend-
14 ment to any person or circumstance, is held to be uncon-
15 stitutional, the remainder of the provisions of this Act and
16 the amendments made by this Act, and the application of
17 the provision or amendment to any other person or cir-
18 cumstance, shall not be affected.

○

Section 230 of the Communications Act of 1934

§ 230. Protection for private blocking and screening of offensive material

(a) Findings

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy

It is the policy of the United States--

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of--

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).1

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of Title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit--

(A) any claim in a civil action brought under section 1595 of Title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of Title 18; or

(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of Title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f) Definitions

As used in this section:

(1) Internet

The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term “access software provider” means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

- (A) filter, screen, allow, or disallow content;
- (B) pick, choose, analyze, or digest content; or
- (C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

18 U.S.C. § 2255

§ 2255. Civil remedy for personal injuries

(a) In general.--Any person who, while a minor, was a victim of a violation of section 1589, 1590, 1591, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains or liquidated damages in the amount of 150,000, and the cost of the action, including reasonable attorney's fees and other litigation costs reasonably incurred. The court may also award punitive damages and such other preliminary and equitable relief as the court determines to be appropriate.

(b) Statute of limitations.--Any action commenced under this section shall be barred unless the complaint is filed--

(1) not later than 10 years after the date on which the plaintiff reasonably discovers the later of--

(A) the violation that forms the basis for the claim; or

(B) the injury that forms the basis for the claim; or

(2) not later than 10 years after the date on which the victim reaches 18 years of age.

(c) Venue; service of process.--

(1) Venue.--Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

(2) Service of process.--In an action brought under subsection (a), process may be served in any district in which the defendant--

(A) is an inhabitant; or

(B) may be found.

Suggested Draft Legislation

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in human trafficking and in minors, making editorial changes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 3051(k) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 3051. Civil causes of action.

* * *

(k) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

* * *

"Victim of the sex trade." An individual who has:

(6) in the case of obscenity or child [pornography] sexual abuse material, has appeared in or been described or depicted in the offending conduct or material.

Section 2. Section 6312(c) of Title 18 is amended to read:

§ 6312. Sexual abuse of children.

* * *

(d) Child [pornography] sexual abuse material .--Any person who intentionally views or knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

* * *

AN ACT

Amending the act of November 30, 2004 (P.L.1556, No.197), entitled "An act providing for protection of children from obscene material, child pornography and other material that is harmful to minors on the Internet in public schools and public libraries; and providing for the duties of the Secretary of Education," in declaration of policy; in definitions; in school entity Internet policies; and in public library Internet policies; making editorial changes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2 of the act of November 30, 2004 (P.L.1556, No.197), known as the Child Internet Protection Act, is amended to read:

Section 2. Declaration of policy.

The General Assembly finds and declares as follows:

(1) The Commonwealth has a compelling interest and duty to protect children from exposure to obscenity, child [pornography] sexual abuse material and other material that is harmful to minors.

(2) The Commonwealth has a compelling interest in preventing any user from accessing obscene material and child [pornography] sexual abuse material within a public school or public library setting.

(3) There is a need to balance the goal of providing free access to educationally suitable information sources on the Internet against the compelling need and duty to protect children from contact with sexual predators and from access to obscene material, child [pornography] sexual abuse material and material harmful to children.

Section 2. Section 3 of the act is amended to read:

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

Child [pornography] sexual abuse material. As described in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

Section 3. Section 4 of the act is amended to read:

Section 4. School entity Internet policies.

(a) Acceptable-use policy.--Within 180 days after the effective date of this act, each school board shall adopt an acceptable-use policy for the Internet. At a minimum, the policy shall contain provisions which are reasonably designed to:

(1) Prevent students and employees of the school entity from using any computer equipment and communications services owned or leased by the school entity for sending, receiving, viewing or downloading visual depictions of obscenity, child [pornography] sexual abuse material or material that is harmful to minors.

(b) Implementation and enforcement.--The school board shall take such steps as it deems appropriate to implement and enforce the school entity's policy, which shall include, but need not be limited to:

(1) use of software programs reasonably designed to block access to visual depictions of obscenity, child [pornography] sexual abuse material or material that is harmful to minors; or

(2) selection of online servers that block access to visual depictions of obscenity, child [pornography] sexual abuse material or material that is harmful to minors.

Section 4. Section 5 of the act is amended to read:

Section 5. Public library Internet policies.

(a) Acceptable-use policy.--Within 180 days after the effective date of this act, the governing body of each public library shall adopt an acceptable-use policy for the Internet. At a minimum, the policy shall contain provisions which are reasonably designed to:

(1) Prevent library patrons, including those patrons under 18 years of age and library employees, from using the library's computer equipment and communications services for

sending, receiving, viewing or downloading visual depictions of obscenity, child [pornography] sexual abuse material or material that is harmful to minors.

(b) Implementation and enforcement of policy.--The governing body of the public library shall take such steps as it deems appropriate to implement and enforce the requirements of subsection (a). These steps shall include, but need not be limited to, the following:

(1) the use of software programs designed to block access by library patrons and employees to visual depictions of obscenity, child [pornography] sexual abuse material or material that is harmful to minors; or

(2) the selection of online servers that block access by library patrons and employees to visual depictions of obscenity, child [pornography] sexual abuse material or material that is harmful to minors.

(c) Immunity.--A public library shall not be subject to civil liability for damages to any person as a result of the failure of any approved software program or approved online server to block access to visual depictions of obscenity, child [pornography] sexual abuse material or material that is harmful to minors. Nothing in this section shall be deemed to abrogate or lessen any immunity or other protection against liability accorded to public libraries under existing law or court decision.

Section 5. Effective date.

This act shall take effect immediately.