Child Pornography Sentencing: Comprehensive Review, Part 4

March 12, 2020
Staff Presentation
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mn.gov/sentencing-guidelines

Child Pornography Review Thus Far

September 2019
- The mandate
- History/structure of CP laws
- Sentencing data
- 2012 USSC study

October 2019
- Guidelines severity levels
- CP definition issues
- CP production issues

November 2019
- UMSP offense data
- Other states’ CP laws
- Federal & state CP prosecutors
- CP investigators
September: Overview of the law

- Review mandate arose from legislative response to (1) some tough cases and (2) 2016 report from the National Ass’n to Protect Children (with strongly worded conclusions)
- Our CP laws have been largely unchanged since 1983, with toughened penalties in 1999 and 2019

September: Overview of sentencing practices

- Statutory maximums constrain CP punishments & placement on grid
- 87% of CP cases are possession; 78% are SL G possession
- But: Most CP collections will apparently qualify for 2019 enhancement to SL F (victim < 13)
- For possessing multiple images, multiple convictions & sentences possible
- Of mitigated dispositional departures for possession, 88% were being sentenced for multiple counts (mostly other CP, most with zero CHS going in)
- Detailed offense characteristics in production & dissemination cases
### September: 2012 USSC study

- 2012 US Sentencing Commission study responded to criticism that nonproduction CP sentences were too harsh (though no changes were made)
- Some enhancements—preteen victims, computer use, large no. of images—applied to > 90% of cases
- Technology makes image-sharing easy; once shared, victimization is perpetual
- Thousands of individual victims; millions of unique images; half preteen
- Not all CP offenders are pedophiles or contact offenders
- CP offenders likelihood of prior contact sex offense: 12 to 55 percent
- Treatment reduces recidivism
- Study: Nonproduction CP offenders recidivated at rates lower than for contact sex offenders: 30% (general), 7.4% (sexual), and 3.6% (contact sex)

### October: Definitions

- Looked at CP definitions and possible associated issues
- Looked at whether Minnesota’s “conveys the impression” language opens our CP laws to constitutional challenge
- Discussed differences between child erotica and child pornography, and discussed complaints that Minnesota’s definition was too narrow
October: Production

• “Use of Minors in Sexual Performance”—which could cover a wide variety of behavior—is our CP production statute, though some production may not be “posing or modeling” in “sexual performance”

• Statute doesn’t squarely address sexting

• Production ranked as if equal to dissemination

• Susceptible to variety of means of commission, not separately punishable from underlying crime

• Discussed possibly recommending change to Minn. Stat. § 609.035

November: Panels of Experts

• Greater CP punishments federally vs. Minnesota

• Discussed peer-to-peer file sharing

• Discussed massive size of typical CP collections
SENTENCING GUIDELINES MODIFICATION.
The Sentencing Guidelines Commission shall comprehensively review and consider modifying how the Sentencing Guidelines and the sex offender grid address the crimes described in Minnesota Statutes, sections 617.246 and 617.247, as compared to similar crimes, including other sex offenses and other offenses with similar maximum penalties.

—2019 Minn. Laws 1st Sp. Sess. ch. 5, art. 4, § 22

Today: A different look at Guidelines severity levels

- A closer look at sex offenses and how they are ranked
- Goal: See exactly how severely Guidelines rank child pornography offenses
- “Offenses listed within each severity level are deemed equally serious.”
  – Guidelines § 1.B.17.
Key to abbreviations on these slides

- **SL** = Sex Offender Grid’s severity level (A through H)
- **CSC** = Criminal Sexual Conduct
- **CP** = Child Pornography
- **P** = Possession
- **D** = Distribution
- **U** = Use of Minor in Sexual Performance
- **P+, D+, U+** = An enhancing factors is present (subsequent, by predatory offender, or child under 13)
- **Terminology is not precise**

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**Penetration:** Relative <18; <16 & 4 yrs. older<br>
**Contact:** <13; relative <15; by force/coercion, physical/mental state, or occupational relationship; aggravated relative <18; relative <18; <16 & 4 yrs. older; relative <18; <16 & 4 yrs. older; repeat nonconsensual

**Contact:** Relative <18; <16 & 4 yrs. older; <18 & authority 4 yrs. older; repeat nonconsensual

**Penetration:** < 16 & 2 yrs. older