

## Staff Memo

### Sentenced Case Data – Child Pornography and Use of Minors in Sexual Performance

August 28, 2019

MSGC staff has gathered information on child pornography cases. Table 1 summarizes sentencing practices for the past three years (child pornography possession and dissemination) or four years (use of minors in sexual performance). A total of 290 such cases were sentenced within these years.

**Table 1: Number of Cases & Sentencing Practices, Child Pornography, 2016–2018, & Use of Minors in Sexual Performance, 2015–2018**

Offense	Severity Level	Number of Cases 2015/16–2018	Presumptive Prison				Executed Prison Sentences			
			Cases		Received Mitigated Disposition		Number	Received Mitigated Duration		Average Prison Sentence (months)
Dissemination of Child Pornography	E	19	5	26%	2	40%	4	1	25%	61.5
Dissemination by Predatory Offender	D	3	2	67%	0		2	0		85
<b>Total Dissemination</b>		<b>22</b>	<b>7</b>	<b>32%</b>	<b>2</b>	<b>29%</b>	<b>6</b>	<b>1</b>	<b>17%</b>	<b>69.3</b>
Possession of Child Pornography	G	225	41	18%	23	56%	22	3	14%	44
Possession – Subsequent	F	5	2	40%	0		2	1	50%	46
Possession by Predatory Offender	F	21	19	91%	1	5%	18	2	11%	57.6
<b>Total Possession</b>		<b>251</b>	<b>62</b>	<b>25%</b>	<b>24</b>	<b>39%</b>	<b>42</b>	<b>6</b>	<b>14%</b>	<b>50</b>
Use of Minors in Sexual Performance	E	17	5	29%	1	20%	4	0		97.8
<b>Grand Total</b>		<b>290</b>	<b>74</b>		<b>27</b>		<b>52</b>	<b>7</b>		

In half of child-pornography possession cases—that is to say, cases in which a child-pornography possession charge resulted in the most severe presumptive sentence—and in over three-quarters of the child-pornography dissemination cases, one or more other counts were being sentenced at the same time. Table 2 displays the number of cases sentenced for multiple counts and describes the nature of the other offenses sentenced.

**Table 2: Multiple-Count Cases Sentenced, Child Pornography, 2016–2018, & Use of Minors in Sexual Performance, 2015–2018**

Offense	Severity Level	Number of Cases	Sentenced for Multiple Counts		Cases with Other Child Pornography (CP) Counts Sentenced						Cases with Other Non-CP Counts Sentenced	
					Possession Child Pornography		Dissemination Child Pornography		Dissemination and Possession			
			No.	%	No.	%	No.	%	No.	%	No.	%
Dissemination of Child Pornography	E	19	16	84%	6	32%	4	21%	5	26%	1	5%
Dissemination by Predatory Offender	D	3	1	33%	1	33%	0		0		0	
<b>Total Dissemination</b>		<b>22</b>	<b>17</b>	<b>77%</b>	<b>7</b>	<b>32%</b>	<b>4</b>	<b>18%</b>	<b>5</b>	<b>23%</b>	<b>1</b>	<b>5%</b>
Possession of Child Pornography	G	225	113	50%	107	48%	0		0		6	3%
Possession – Subsequent	F	5	1	20%	1	20%	0		0		0	
Possession by Predatory Offender	F	21	11	52%	9	43%	0		0		2	9%
<b>Total Possession</b>		<b>251</b>	<b>125</b>	<b>50%</b>	<b>117</b>	<b>47%</b>	<b>0</b>		<b>0</b>		<b>8<sup>1</sup></b>	<b>3%</b>
<b>Use of Minors in Sexual Performance</b>	E	<b>17</b>	<b>3</b>	<b>18%</b>	<b>3</b>	<b>18%</b>	<b>0</b>		<b>0</b>	<b>6%</b>	<b>1<sup>2</sup></b>	<b>6%</b>
<b>Grand Total</b>		<b>290</b>	<b>145</b>		<b>127</b>		<b>4</b>		<b>5</b>		<b>10</b>	

<sup>1</sup> These eight cases included the following other counts: Solicitation of Children to Engage in Sexual Conduct (Electronic) (3 cases); Interference with Privacy (1 cases); Controlled Substance Crime (1 cases); Stalking (1 cases); and Criminal Sexual Conduct in the Third Degree Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 48 mos. older than Complainant), ranked at severity level G (2 cases).

<sup>2</sup> This case included another count of Engage or Hire a Minor to Engage in Prostitution (involving a 16- or 17-year-old) as well as another count of possession of child pornography. This case is counted both in this column and in the “Possession Child Pornography” column.

“Hernandizing” is the unofficial term for the process described in Guidelines § 2.B.1.e of counting criminal history when multiple offenses are sentenced on the same day before the same court. As each offense is sentenced, it is included in the criminal history on the next offense to be sentence, with some exceptions. Many child pornography cases are presumptive commits only because multiple current offenses are sentenced at the same time. Table 3 displays the relationship between Hernandizing and mitigated dispositional departures. In many cases, the offender’s criminal history score on the first count was zero, but the sentence was a presumptive commit due to Hernandizing multiple counts.

**Table 3: Mitigated Dispositional Departures in Multiple-Count Cases, Child Pornography, 2016–2018, & Use of Minors in Sexual Performance, 2015–2018**

Offense	Severity Level	Number of Cases	Presumptive Prison		Mitigated Dispositional Departures					
					Total Cases		Number Sentenced for Multiple Counts		Number Start With CHS of 0	
			No.	%	No.	%	No.	%	No.	%
Dissemination of Child Pornography	E	19	5	26%	2	40%	2	100%	2	100%
Dissemination by Predatory Offender	D	3	2	67%	0		0		0	
<b>Total Dissemination</b>		<b>22</b>	<b>7</b>	<b>32%</b>	<b>2</b>	<b>29%</b>	<b>2</b>	<b>100%</b>	<b>2</b>	<b>100%</b>
Possession of Child Pornography	G	225	41	18%	23	56%	20	87%	16	80%
Possession – Subsequent	F	5	2	40%	0		0		0	
Possession by Predatory Offender	F	21	19	91%	1	5%	1	100%	0	0%
<b>Total Possession</b>		<b>251</b>	<b>62</b>	<b>25%</b>	<b>24</b>	<b>39%</b>	<b>21</b>	<b>88%</b>	<b>16</b>	<b>76%</b>
<b>Use of Minors in Sexual Performance</b>	E	<b>17</b>	<b>5</b>	<b>29%</b>	<b>1</b>	<b>20%</b>	<b>0</b>	<b>0%</b>	<b>0</b>	
<b>Grand Total</b>		<b>290</b>	<b>74</b>		<b>27</b>		<b>23</b>		<b>18</b>	

As Table 3 shows, an executed prison sentence was presumed in 32 percent of dissemination cases, 25 percent of possession cases, and 29 percent of Use of Minors in Sexual Performance. Of those, offenders received a mitigated dispositional departure in 29 percent of dissemination cases, 39 percent of possession cases, and 20 percent of Use of Minors in Sexual Performance. Among these mitigated dispositional departures, 18 of 27 offenders—67 percent—began with a criminal history score of zero, and were therefore presumptive commits solely because of Hernandizing multiple current offenses. In four other cases, Hernandizing played a role. In only 5 of 27 presumptive commits receiving mitigated dispositional departures (19 percent) did Hernandizing multiple current offenses play no role in the presumptive disposition; in two of those cases, the enhanced criminal history policies for repeat offenders on the sex offender grid resulted in the presumptive prison disposition.

Effective August 1, 2019, the Legislature amended the maximum penalties applicable to Child Pornography and Use of Minors in Sexual Performance when committed by repeat or predatory offenders, or when involving children under age thirteen. Under prior law, the maximum imprisonment terms for Child Pornography possession and dissemination were increased when committed by repeat or predatory offenders. The 2019 change maintained (with some revisions) those two factors and added a third: the involvement of a child under age thirteen. The three factors are now also applied to increase the statutory maximum imprisonment term for Use of Minors in Sexual Performance. [2019 Minn. Laws 1st Sp. Sess. ch. 5, art. 4, §§ 12–18.](#)

In response to these changes, the Commission ranked Child Pornography offenses (possession and dissemination) involving a child under age thirteen like those offenses committed by repeat or predatory offenders. In addition, the Commission ranked Use of Minors in Sexual Performance more severely when the newly enhanced penalties apply. Table 4 reflects staff’s estimate of the number of recent Child Pornography and Use of Minors in Sexual Performance cases that would have been enhanced if they had been committed after August 1, 2019. Age estimates are based on staff’s interpretation of words in criminal complaints suggesting victims’ age.

**Table 4: Estimate of Cases That Would Have Had Enhanced Severity Levels Under 2019 Ranking Change, Child Pornography Offenses, 2016–2018, & Use of Minors in Sexual Performance, 2015–2018**

Offense Title	SL	Total Cases	Minor Under Age 13 Involved								Enhanced Severity Level	Estimated at Enhanced SL	
			None		Under 13		Prepubescent <sup>3</sup>		Unknown <sup>4</sup>			No.	%
			No.	%	No.	%	No.	%	No.	%			
Dissemination of Child Pornography	E	19	2	11%	13	68%	4	21%	0		D	17	89%
Dissemination – Subsequent	D	0	---		---		---		---		D	---	
Dissemination by Predatory Offender	D	3	0		1	33%	2	66%	0		D	3 <sup>5</sup>	100%
<b>Total Dissemination</b>		<b>22</b>	<b>2</b>	<b>9%</b>	<b>13</b>	<b>60%</b>	<b>4</b>	<b>18%</b>	<b>0</b>		<b>D</b>	<b>20</b>	<b>91%</b>
Possession of Child Pornography	G	225	6	3%	114	51%	55	24%	50	22%	F	169	75%
Possession – Subsequent	F	5	0		0		0		0	0%	F	5 <sup>5</sup>	100%
Possession by Predatory Offender	F	21	0		0		0		0		F	21 <sup>5</sup>	100%
<b>Total Possession</b>		<b>251</b>	<b>6</b>	<b>2%</b>	<b>114</b>	<b>45%</b>	<b>55</b>	<b>22%</b>	<b>50</b>	<b>20%</b>	<b>F</b>	<b>195</b>	<b>78%</b>
<b>Use of Minors in Sexual Performance</b>	<b>E</b>	<b>17</b>	<b>10</b>	<b>59%</b>	<b>4</b>	<b>23%</b>	<b>0</b>		<b>0</b>		<b>F</b>	<b>7<sup>6</sup></b>	<b>41%</b>
<b>Grand Total</b>		<b>290</b>	<b>18</b>	<b>6%</b>	<b>131</b>	<b>45%</b>	<b>59</b>	<b>20%</b>	<b>50</b>	<b>17%</b>		<b>222</b>	<b>77%</b>

<sup>3</sup> May include some cases where proof that the victim was under 13 may be in question.

<sup>4</sup> May include cases with victims under 13.

<sup>5</sup> The severity of this offense was already enhanced before the 2019 ranking changes. These are included in the grand total.

<sup>6</sup> Includes three cases that would be aggravated due to violations by predatory offenders, rather than the age of the victim.

Excluding those cases with already-enhanced severity levels before the 2019 changes (namely, Child Pornography possession or dissemination by repeat or predatory offender), it is estimated that, among the remaining cases, application of the 2019 changes would have increased the severity level in 89 percent of dissemination cases, 75 percent of possession cases, and 41 percent of Use of Minors in Sexual Performance (among which there were no enhanced severity levels before 2019).

Table 5 displays a brief, unofficial synopsis of each violation of Use of Minors in Sexual Performance sentenced from 2015 through 2018. All seventeen cases involved violations of Minn. Stat. § 617.246, subd. 2 (“Use of Minors”); there were no sentences for subdivisions 3 (own/operate dissemination/reproduction business) or 4 (dissemination for profit) during this time. The synopses are derived from the sworn statement in each complaint establishing probable cause to support the allegation; not all facts were necessarily admitted to or otherwise proven beyond a reasonable doubt. The seventeen cases included five cases of sexting; five cases involving sex acts; two cases with victims under six years old; and four cases of offender taking/offering inducement for photos.

**Table 5: Offense Characteristics, Use of Minors in Sexual Performance Cases (all were § 617.246, subd. 2), Sentenced 2015–2018**

Table Key	
<b>P</b>	Photos (offender took/offered inducement to take photos)
<b>SA</b>	Sex Act (offender filmed sex act with minor)
<b>SX</b>	Sexting
<b>VY</b>	Very Young (offender took picture of victim under 6 yrs. old)

“CHS” refers to the criminal history score; “S/I” refers to a stay of imposition; and “S/E” refers to a stay of execution. “Top range” and “low range” refer to sentences at the top and bottom, respectively, of the presumptive-sentence range.

Key	Offense Synopsis	CHS	Presumptive Sentence	Pronounced Sentence	Departure Type	Post-2019 Enhanced Offense?
<b>SX</b>	Warrant for Facebook search reveals 19 yr. old asked for pics from 17 yr. old and she sent them	0	Stay 24 months	S/I -10 yrs probation	None	No
<b>P</b>	Mother reports text from her boyfriend to 14 yr. old daughter offering money to film her stripping -conviction for an attempted offense	0	Stay 1 year, 1 day	S/I -5 yrs probation	None	No
<b>VY</b>	tip from NCMEC led to search of 40 yr. old’s phone-pics of his 4 yr. old daughter found, also sentenced for possessing porn for other pics	0	Stay 24 months	S/E-24 m 10 yrs prob.	None	Yes- under 13
<b>SA</b>	21 yr. old recorded sex acts between 15 yr. old and himself	0	Stay 24 months	S/I -10 yrs probation	None	No

Key	Offense Synopsis	CHS	Presumptive Sentence	Pronounced Sentence	Departure Type	Post-2019 Enhanced Offense?
P	57 yr. old took photos and video of 16 yr. old touching herself after telling her she should be a model and he would do a photo shoot	0	Stay 24 months	S/E-24 m 5 yrs prob.	None	No
SX	Mom reports 16 yr. old son told her a 26-yr. old was offering to pay for nude pics. Son already took one and got a gift card in return. Offender appears to be selling the porn, but conviction was for an attempt	0	Stay 1 year, 1 day	S/E-1 year, 1 day 5 yrs prob.	None	No
VY	Girlfriend reports 28 yr. old is suicidal after she found explicit video of 5 yr. old she babysits on his phone	0	Stay 24 months	S/E-24 m 10 yrs prob	None	Yes- under 13
SA	Report of 15 yr. old runaway engaging in prostitution at hotel; search of 18 yr. old's phone shows videos of her in sex acts with 2 men, offender said he would post it on Facebook	0	Stay 24 months	S/I -3 yrs probation	None	No
SX	20 yr. old gets 14 yr. old victim's phone # from Facebook, sent nude photo of himself and asks her to send photos to him. She does. Parents find out and report.	0	Stay 24 months	S/I -10 yrs probation	None	No
SA	Investigation of back page ad leads to 16 yr. old who was paid for sex and pics from 43 yr. old	1	Stay 36 months	S/E-36 m 5 yrs prob	None	No
SA	Adult female reports she was looking at 31 yr. old's phone and found pics of 16 yr. old snorting cocaine off his penis	2	Stay 48 months	S/E-48 m 10 yrs prob.	None	No
	No complaint found, but also charged with CSC 2 under subd. 1a-under 13 so aggravated offense indicated	2	Stay 48 months	S/E-48 m 10 yrs prob.	None	Yes- under 13
SX	16 yr. old reports being coerced to take pics of younger sister after she skyped a pic of herself to 18 yr. old and he threatens to post it online; soon arrested in other county after coercing 12 and 13 yr. old into oral sex with him by similar threat, was sentenced for CSC 1	3	Commit 60 months	S/E-60 m 10 yrs prob.	Mitigated Disposition	No
P	11 yr. old tells parents 34 yr. old youth worker at community center had offered money for pics, when she refused, he grabbed her, pulled shirt up and took pics, 5 more victims ages 9-13 took videos of themselves exposing private areas	4	Commit 78 months	Prison 67 months (low range)	None	Yes- under 13
SX	Text exchange of pics between 16 and 37 yr. old found by parents	5	Commit 102 months	Prison 120 months (top range)	None	Yes- predatory offender
SA	34 yr. old filmed sex between 14 and 15 yr. old couple and 14 yr. old female doing oral sex on himself	6	Commit 120 months	Prison 102 months (low range)	None	Yes- predatory offender

Key	Offense Synopsis	CHS	Presumptive Sentence	Pronounced Sentence	Departure Type	Post-2019 Enhanced Offense?
P	Parents report runaway 16 yr. old staying with registered sex offender age 42, he took pics and video of girl naked from waist up	6	Commit 120 months	Prison 102 months (low range)	None	Yes- predatory offender

Table 6 displays a brief, unofficial synopsis of each violation of Dissemination of Child Pornography sentenced from 2016 through 2018, also derived from criminal complaints. Of the 22 cases, the three whose severity was enhanced due to the offender's status as a predatory offender are listed at the end of the table. Nineteen (86%) of the 22 cases were sharing with no evidence of creating the image/images.

**Table 6: Offense Characteristics, Dissemination of Child Pornography Cases, Sentenced 2016–2018**

Offense Synopsis	CHS	Presumptive Sentence	Pronounced Sentence	Departure Type	Post-2019 Aggravated Offense?
Admits sharing-posting to web, no evidence of production	1	Stay 36 months	S/I -7 yrs. probation	None	Yes Prepubescent
Sharing-posting to web, no evidence of production, peer to peer sharing site	1	Stay 36 months	S/I -10 yrs. probation	None	Yes Under 13
Sharing-posting to web, no evidence of production	0	Stay 24 months	S/I -3 yrs. probation	None	Yes Under 13
Sharing-posting to web, no evidence of production	3	Prison 60 months	S/I -7 yrs. probation	Mitigated Disposition	Yes Under 13
Sharing-posting to web, no evidence of production	1	Stay 36 months	Prison 36 months	Aggravated Disposition (Request)	Yes Under 13
Sharing-posting to web, no evidence of production	0	Stay 24 months	S/I -7 yrs. probation	None	Yes Under 13
Sharing-no evidence of production	1	Stay 36 months	S/I -10 yrs. probation	None	Yes Under 13
Sharing-no evidence of production	0	Stay 24 months	S/I -7 yrs. probation	None	Yes Under 13
Videoed 11 yr. old step daughter in shower, but not clear if he shared it	0	Stay 24 months	S/E-24 m 7 yrs. prob.	None	Yes Under 13

Offense Synopsis	CHS	Presumptive Sentence	Pronounced Sentence	Departure Type	Post-2019 Aggravated Offense?
Sharing-no evidence of production	2	Stay 48 months	S/E-36 m consecutive 7 yrs. prob.	Consecutive Departure	Yes Under 13
19 yr. old had sex with 15 yr. old, videoed it and sent it to her	1	Stay 36 months	S/I -7 yrs. probation	None	No
Sharing-no evidence of production	0	Stay 24 months	S/E-24 m 57 yrs. prob.	None	Yes Prepubescent
Sharing-no evidence of production	3	Prison 60 months	Prison 60 months	None	Yes Under 13
Sharing-no evidence of production	3	Prison 60 months	Prison 72 months	None	Yes Under 13
Sharing-no evidence of production	0	Stay 24 months	S/E-24 m 7 yrs. prob.	None	Yes Under 13
Sharing-no evidence of production	6	Prison 84 months (Stat Max)	Prison 78 months	Mitigated Duration	Yes Under 13
59 yr. old delivered photos of female engaged in sex with face of 15 yr. old photoshopped onto it. 15 yr. old and mother lived with recipient	0	Stay 24 months	S/E-24 m 7 yrs. prob.	None	No
Sharing-no evidence of production	5	Prison 84 months	Prison 57 months	Mitigated Duration	Yes Prepubescent
Sharing-no evidence of production	1	Stay 36 months	S/I -7 yrs. probation	None	Yes Prepubescent
<b>3 Cases Dissemination by Predatory Offender- Ranked at SL D</b>					
Sharing-no evidence of production, some victims clearly under 13	5	Prison 119 months	Prison 119 months	None	Yes
Sharing-no evidence of production, prepubescent	2	Prison 60 months	Prison 51 months (Low Range)	None	Yes
Sharing-no evidence of production, preteen and early teens	1	Stay 48 months	S/E-48 m 2.5 yrs. prob.	None	Yes



The demographic characteristics of child pornography offenders differ from those of all felony offenders sentenced from 2016–2018. Overall, 18 percent of felony offenders are female, but these offenders were all male. These offenders were more likely to be white (90%) than the felony population (59%), and less likely to be black (5% vs 26%). Child pornography offenders were older, on average, than members the general felony population. Table 6 displays these demographic characteristics by offense.

**Table 7: Offender Demographics, Child Pornography Offenses, 2016–2018, & Use of Minors in Sexual Performance, 2015–2018**

Offense	Offender Gender		Race of Offender					Age of Offender	
	Male	Female	White	Black	Am. Indian	Hispanic	Asian	Average	Median
Dissemination of Child Pornography	22 100%	0 0%	19 86%	1 5%	0 0%	2 9%	0 0%	35.7	33
Possession of Child Pornography	251 100%	0 0%	233 93%	9 4%	3 1%	5 2%	1 <1%	37.7	35
Use Minors in Sexual Performance	17 100%	0 0%	10 59%	3 18%	3 18%	0 0%	1 6%	31	31
<b>Total</b>	<b>290</b> <b>100%</b>	<b>0</b> <b>0%</b>	<b>262</b> <b>90%</b>	<b>13</b> <b>5%</b>	<b>6</b> <b>2%</b>	<b>7</b> <b>2%</b>	<b>2</b> <b>1%</b>	---	---
<b>All Felony Offenders, 2016–2018</b>	<b>82%</b>	<b>18%</b>	<b>59%</b>	<b>26%</b>	<b>7%</b>	<b>6%</b>	<b>2%</b>	<b>31</b>	<b>29</b>