

Staff Information Paper

U.S. Sentencing Commission’s 2012 Report to Congress: Federal Child Pornography Offenses

September 5, 2019

In 2012, the United States Sentencing Commission (USSC) completed a multi-year study assessing how federal child pornography (CP) offenders (CPOs) were prosecuted, sentenced, incarcerated, and supervised, with a focus on non-production child pornography (NPCP) offenses. The resulting report, “Federal Child Pornography Offenses,” may be found at <https://go.usa.gov/xVkJPf>.

Staff anticipates that the Minnesota Sentencing Guidelines Commission may find the methodology and findings of the USSC study informative to its recently mandated [comprehensive review](#) of the Minnesota Sentencing Guidelines’ treatment of child pornography. Accordingly, this paper contains, in question-and-answer format, a brief summary of selected portions of selected chapters of the USSC report, together with references to the page numbers where more complete information may be found. To keep topics together, some of the report’s chapters are taken out of order. Although the answers shown below may have been accurate at the time the USSC report was written in 2012, the information may no longer be current.

Question	Answer	Source
<u>CHAPTER 1 – PURPOSES & METHODOLOGY</u>		
What was the methodology of the study?	Review CP laws & history, sentencing data, and social-science & legal research. Seek views of stakeholders and social-science experts. Study all CP presentence reports and recidivism rates.	pp. 15–16
What panels were invited to the public hearing?	(1) Offender use of technology; (2) CP offending pathways, community, treatment; (3) relationship between CP and sexually dangerous behavior; (4) law enforcement; (5) victims; and (6) policy perspectives from courts, DOJ, and defense bar.	Appendix D

Question	Answer	Source
What was the impetus for the study?	A growth in CP caseload; a very high rate of mitigated departures in NPCP cases (and a growing judicial perception that the guidelines were too severe); disconnect between CP sentencing scheme and evolving technology; and emerging social science regarding CP offenses and offenders.	pp. 1–2
What were some of the criticisms of the NPCP guidelines?	(1) Because sentencing enhancements have not kept pace with emerging technology, some apply to the vast majority of typical offenders. (2) Aggravating factors are not adequately accounted for (<i>e.g.</i> , very young victims, involvement in CP “community”). (3) Harsh guidelines do not let judges distinguish offenders by dangerousness, and incorrectly assume that CPOs have abused children and/or will recidivate. (4) CP sentences were often harsher than “contact” sex offenders. (5) Irrational to treat “receipt” harsher than “possession.” (6) Harsh guidelines yield departures, and departures yield disparities.	pp. 10–14
<u>CHAPTER 8 – SENTENCING DISPARITIES</u>		
What sentencing enhancements applied to most NPCP offenders?	Each of the following enhancements applied to well over 90 percent of NPCP offenders: prepubescent/under age 12 victims; use of computer; and a large number of images. Depictions of sadomasochism or violence applied to over two-thirds.	p. 209
<u>CHAPTER 2 – STATUTES & GUIDELINES</u>		
What recurring legal issues were observed regarding enhancements?	(1) Is peer-to-peer (P2P) file sharing “distribution”? (2) What depictions qualify as “sadistic or masochistic conduct or other depictions of violence”? (3) Is it double-counting to combine “vulnerable victim” enhancement with “very young children”?	pp. 33–35
How do Minnesota CP penalties compare with those of other states?	All states criminalize child pornography, but to widely varying degrees. From its review of statutory penalties shown in the report, MSGC staff was unable to reach a conclusion that Minnesota is particularly harsh or lenient.	Appendix F
<u>CHAPTER 3 – TECHNOLOGY & INVESTIGATION</u>		
How has technology affected CP cases?	Technology has (1) decreased CP production & duplication costs; (2) increased CP accessibility & storage capacity; and (3) ensured perpetual victimization after initial CP circulation.	pp. 41–45

Question	Answer	Source
How does peer-to-peer (P2P) technology work?	P2P technology, such as LimeWire, creates a decentralized file-sharing network across its participants' computers, allowing unsupervised, impersonal, mutual access to CP.	pp. 48–53
What is the dark web?	An “emerging technology,” the dark web is a parallel Internet whose users are anonymous and difficult to trace, and where CP and other illicit activities are freely advertised. Its use may stymie law enforcement's ability to identify CPOs.	pp. 59–60
How might technology implicate offender culpability?	(1) With protective technology available, arguably only the least-sophisticated CPOs are getting caught today. (2) Technological investigative tools can rebut claims of accidental/innocent possession. (3) Some authorities view P2P distribution different than active distribution; others view it the same. (4) A subset of sophisticated CPOs use hard-to-detect technology to form/participate in CP-trading/producing communities.	pp. 61–62
What is ICAC?	Internet Crimes Against Children (ICAC) is an umbrella moniker for a group of federal/state/local/tribal law enforcement task forces & agencies dedicated to stopping CP creation/spread.	p. 63
What is NCMEC?	The National Center for Missing & Exploited Children (NCMEC) operates the national CP tip line and the database of circulating CP images and associated identities of known victims.	pp. 63–64
CHAPTER 5 – VICTIMS		
How many CP victims have been identified?	Among the millions of unique CP images in circulation, NCMEC has assisted law enforcement in identifying only over 4,103 individual victims.	p. 107
How old are CP victims?	About half were younger than 12 years of age. NCMEC reports 76 percent of identified victims were prepubescent, and ten percent were infants or toddlers. Young victims may be pre-verbal and unable to report, or understand, abuse.	p. 108

Question	Answer	Source
What is “sexting”?	“Sexting” (or “youth-only experimental” production) involves self-produced nude images without an adult producer’s involvement. There is little evidence that children are regularly prosecuted for this behavior.	p. 109
How do CP producers get victims to participate?	Grooming, manipulation, convincing/coercing child to take nude images of self. Most victims are abused by a family member or acquaintance, and may be pressured, threatened, paid, manipulated, or forced.	pp. 109–110
Does the victim know CP is being produced?	Not always. About one-quarter of CP images appear to have been produced without victim’s knowledge—using, e.g., hidden cameras, morphed images, or sleeping/drugged victims. Also, very young victims may not know of the abuse or recording.	pp. 110–111
Is CP production the only victimization?	No, the harm to victims is exacerbated by the perpetual circulation of the CP images among strangers and acquaintances.	pp. 112–114
Do CP victims have specific rights?	The DOJ’s victim notification system gives victims control over how much notice they receive every time one of their images is prosecuted, and to provide victim impact statements at sentencing. Restitution orders for CP possession are problematic.	pp. 114–118
CHAPTER 4 – CHILD PORNOGRAPHY OFFENDER (CPO) BEHAVIOR		
Are all CPOs pedophiles? or contact offenders?	While some CPOs may be pedophiles and/or contact offenders, not all CPOs meet the definition of pedophilia, not all CPOs are contact offenders, and not all pedophiles are contact offenders.	pp. 73–75
Why do CPOs collect CP?	(1) Sexual gratification (includes pedophiles and others with indiscriminate deviant sexual interests) and grooming potential victims. (2) Non-sexual reasons, such as compulsivity and stress release.	pp. 77–79

Question	Answer	Source
In general, what is a CP collection like?	CP collections can be very large and can contain a spectrum of images from legal child images, sexually explicit poses, sex acts, violence, humiliation, bondage, and bestiality. Some CPOs are very discriminating about type of content in their collections. More extensive traders likely have more organized collections.	pp. 80–83
What were actual CP collections like?	The overwhelming majority included images depicting oral, vaginal, or anal penetration of a prepubescent child. A substantial minority included images depicting sex acts involving infants or toddlers. Most images were of girls; images of boys were more likely to involve younger children.	pp. 84–90
What are online CP communities like?	CP communities range from informal bartering to organized and sophisticated forums, with rules for posting and participation. CP communities value, and some require, production of new CP. Producers, posters of new CP, and prolific re-posters are at the top of community hierarchies. Communities socialize CPO behavior and normalize distorted attitudes & reoffending.	pp. 94–99
Are all CPOs involved in CP communities?	P2P sharers or commercial purchasers may not communicate directly with other CPOs or be involved in CP communities.	p. 93
Are CP community participants more dangerous?	Research is inconclusive. Tech-savvy CPOs, or CPOs in communities, cannot be assumed to have engaged in other sex offenses—but the existence of communities encourages <i>others</i> in the community to engage in sex offenses.	p. 94
Does CP have a cathartic effect?	Not likely, and CPOs who view CP as therapeutic are less likely to accept responsibility for their actions.	pp. 103–104
How does CP relate to other sex offending?	There is some correlation between viewing CP and sex offending, but most research suggests that viewing CP alone does not “cause” other sex offending absent other risk factors; deviant sexual beliefs and antisociality are the two primary risk factors.	pp. 101–103

Question	Answer	Source
How is “criminal sexually dangerous behavior” (CSDB) defined?	The term includes contact sex offenses, non-contact sex offenses, and NPCP offenses. Offenses were counted in the USSC study if committed before the current NPCP offense. Contact and non-contact offenses were also counted if committed concomitantly with the current NPCP offense.	p. 100
<u>CHAPTER 7 – PRIOR CRIMINAL SEXUALLY DANGEROUS BEHAVIOR (CSDB) OF CPOs</u>		
For NPCP offenders, is a history of CSDB significant?	Yes, NPCP offenders with CSDB histories are qualitatively different. (1) They pose a greater risk of sexual recidivism. (2) They are more likely to have an undetected history of CSDB. (3) They are more culpable.	pp. 170–171
Are CPOs likely to have a previous contact offense?	One study of Internet sex offenders (mostly CPOs) found a prior contact sex-offense rate of 12 percent (measured by arrests or convictions) or 55 percent (measured by offender self-reports).	p. 173
In the USSC study, how common was CSDB?	About one in three NPCP offenders had engaged in CSDB (but likely more, based on the above study).	pp. 181, 204
What was the nature of the CSDB?	Vast majority of CSDB victims were minors. Most common CSDB type was sexual molestation of prepubescent female relative or family friend. Average victim/offender ages were 10/31.	pp. 181–186, 204
What about repeat NPCP offenders?	Nearly half of NPCP offenders who had previously committed NPCP had also committed contact or non-contact sex offenses.	p. 175, 204
Were NPCP sentencing enhancements linked to CSDB?	No, distribution of CP, number of images, and possession of sado-masochistic images were generally not associated with significantly higher rates of CSDB for NPCP offenders.	pp. 190–195, 204
Were particular distribution styles linked to CSDB?	Yes, CPOs who personally distributed CP (by email or otherwise in a CP community) had a 38.4 percent CSDB rate. By comparison, CPOs who impersonally distributed only (e.g., by open P2P sharing) had a 26.2 percent CSDB rate (which is actually lower than the non-distribution CSDB rate of 37.2 percent).	pp. 193, 205

Question	Answer	Source
What else was linked to CSDB?	CPO's reported history of childhood sexual abuse and lower socio-economic status appeared associated with somewhat higher CSDB rates.	pp. 196–197, 205
<u>CHAPTER 9 – PRODUCTION</u>		
What is the average federal sentence for CP production?	The PROTECT Act of 2003 established 15-year mandatory minimum for CP production. In fiscal year (FY) 2011, the average guideline minimum was 291 months, while the average sentence imposed was 274 months.	pp. 249, 256
What were CP producers like in FY 2010?	Like NPCP offenders, the overwhelming majority of production CPOs were white, male citizens who had graduated from high school. The average age was 41. Most were in the lowest criminal history category.	p. 257
What was the CP production like in FY 2010?	74 percent of production CPOs were present, or remotely aiding another adult, in committing a contact offense. 15.5 percent of production CPOs were present, but no contact offense was committed (e.g., surreptitious recordings). 10.5 percent of production CPOs were not present and no contact offense occurred (e.g., remotely soliciting images from minors).	p. 263
In FY 2010, how were CP producers otherwise involved in CP?	(1) 31.5 percent of production CPOs only possessed self-produced images. (2) 33 percent possessed self-produced images and other CP. (3) 35.5 percent distributed self-produced images or otherwise participated in a CP community.	pp. 264–265
<u>CHAPTER 10 – AFTER CONVICTION</u>		
Does sex offender treatment work for CPOs?	Sex offender treatment using commonly accepted treatment modalities such as cognitive-behavioral therapy is generally effective in reducing recidivism, particularly if implemented as part of the containment model. The containment model involves close cooperation between the supervising officer, the treatment provider, and a polygraph examiner.	p. 291
Can the future risk of CPOs be assessed?	Validated assessment instruments for CPOs with no known history of contact offenses do not yet exist. An offender's degree of sexual deviance and antisociality appear to be the factors most associated with sexual recidivism.	pp. 286–287

Question	Answer	Source
CHAPTER 11 – RECIDIVISM		
Among whom did the USSC study recidivism?	The USSC studied recidivism for 8.5 years after release among 610 NPCP offenders sentenced in FY 1999 & 2000. The results were comparable to other recent CPO recidivism studies.	pp. 295–298, 306–307
What was the general recidivism rate?	The known general recidivism rate was 30 percent. This rate is similar to the known general recidivism rate for a comparable segment of the total federal offender population, and lower than the rate for contact sex offenders.	pp. 300, 307–309
What was the sexual recidivism rate?	The known sexual recidivism rate was 7.4 percent. Limited to contact sex offenses only, the known recidivism rate was 3.6 percent. This is lower than the rate for contact sex offenders.	pp. 300, 307, 310
CHAPTER 12 – CONCLUSIONS		
What did the USSC conclude?	Considering the substantial and indelible harm caused by CP on one hand, and the flaws in the existing NPCP sentencing scheme on the other, the USSC recommended guidelines and statutory changes that would more proportionately and uniformly respond to NPCP behavior.	p. 331
What categories of offender behavior did the USSC conclude ought to be considered in sentencing NPCP cases?	(1) The content of a CPO’s CP collection and the nature of a CPO’s collecting behavior (volume, types of sexual conduct depicted in the images, victim ages, and extent to which a CPO has organized, maintained, and protected his collection over time, including through the use of sophisticated technology). (2) The degree of a CPO’s engagement with other offenders—in particular, in an Internet “community” devoted to CP and child sexual exploitation. (3) Whether a CPO has a history of engaging in sexually abusive, exploitative, or predatory conduct in addition to his CP offense.	p. 320
What statutory changes did the USSC recommend?	Aligning the penalties for “receipt” and “possession,” and amending statutory provisions governing notice to, and restitution for, victims of NPCP offenses.	p. 326
What about production CP cases?	Concern was expressed about the “wide variety of offense behavior” encompassed by production. No recommendations, but the USSC would “continue to monitor.”	p. 330