



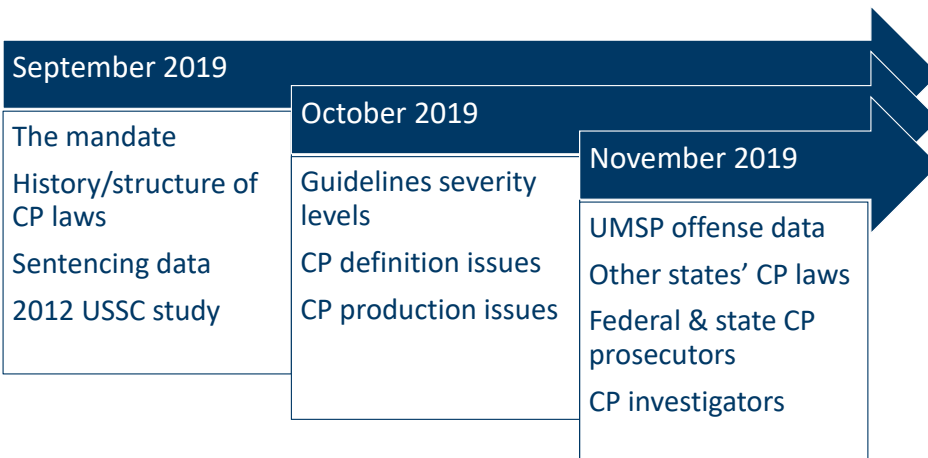
Child Pornography Sentencing: Comprehensive Review, Part 4

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Staff Presentation
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Child Pornography Review Thus Far



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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

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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

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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)

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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

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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

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November: Panels of Experts

- Greater CP punishments federally vs. Minnesota
- Discussed peer-to-peer file sharing
- Discussed massive size of typical CP collections

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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

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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.

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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

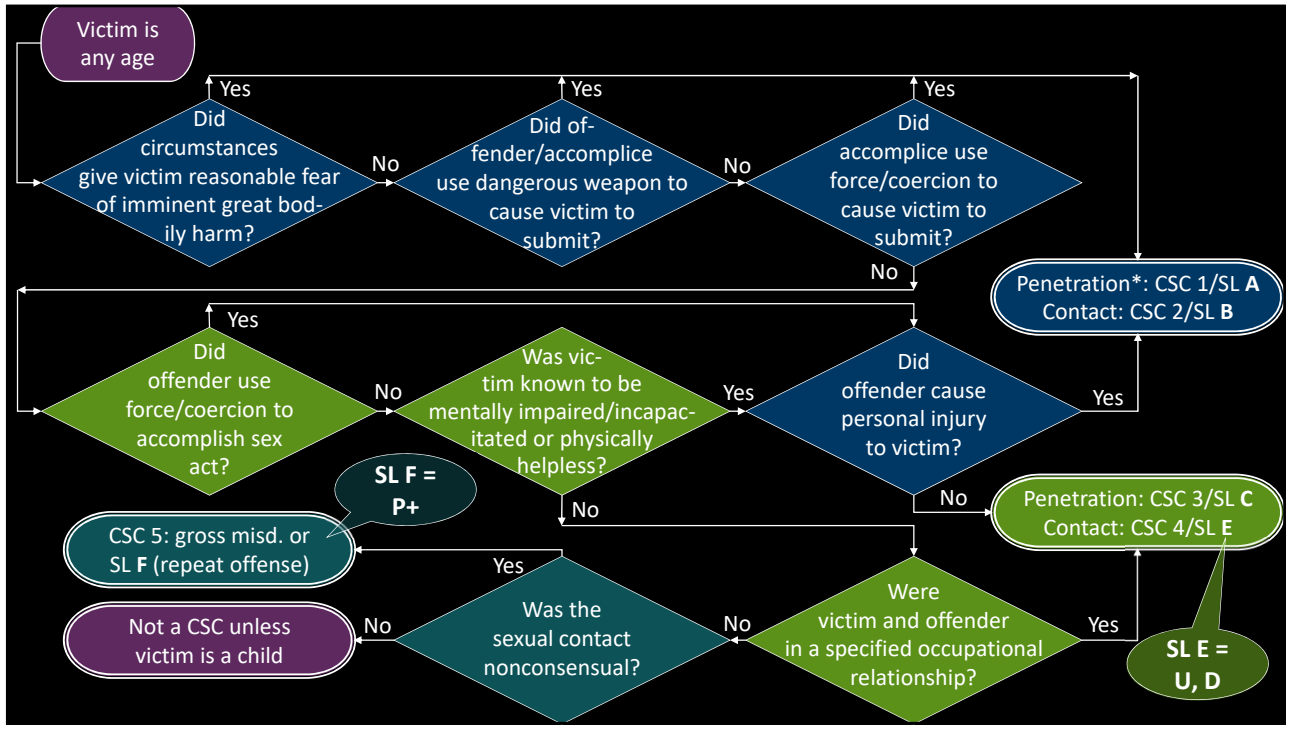
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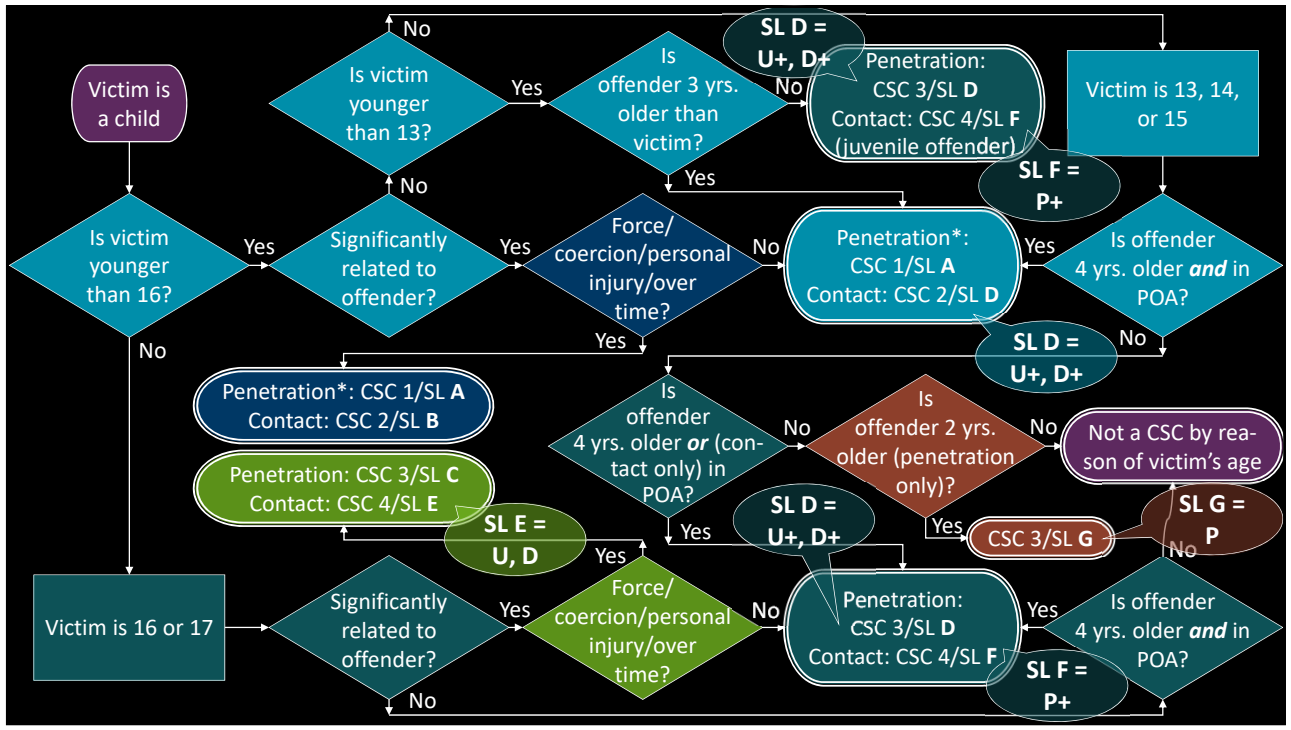
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CSC	CP	S L	CHS 0	CHS 1	CHS 2	CHS 3	CHS 4	CHS 5	CHS 6+
1		A	12	13	14	15	19.5	25.5	30
2		B	7.5	9.2	10.8	12.5	16.3	21.3	25
3		C	4	5.2	6.3	7.5	9.8	12.8	15
2/3	U+, D+	D			5	5.8	7.6	9.9	11.7
4	U, D	E	Presumptive stayed prison (up to 1 year in jail)			5	6.5	8.5	10
4/5	P+	F				3.8	4.9	6.4	7
3	P	G					3.3	4.3	5

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CSC	CP	S L	CHS 0	CHS 1	CHS 2	CHS 3	CHS 4	CHS 5	CHS 6+
1		A	12	13	14	15	19.5	25.5	30
2		B	7.5	9.2	10.8	12.5	16.3	21.3	25
3		C	4	5.2	6.3	7.5	9.8	12.8	15
2/3	U+, D+	D	Penetration: Relative <18; <16 & 4 yrs. older Contact: <13; relative <15		5	5.8	7.6	9.9	11.7
4	U, D	E	Contact: By force/coercion, physical/ mental state, or occupational relationship; aggravated relative <18			5	6.5	8.5	10
4/5	P+	F	Contact: Relative <18; <16 & 4 yrs. older; <18 & authority 4 yrs. older; repeat nonconsensual			3.8	4.9	6.4	7
3	P	G	Penetration: < 16 & 2 yrs. older				3.3	4.3	5