



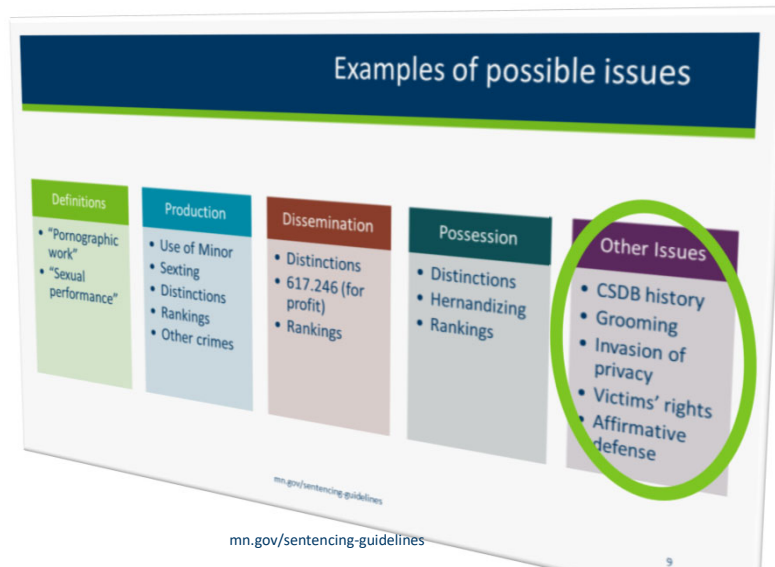
mn MINNESOTA
SENTENCING GUIDELINES
COMMISSION

Child Pornography Sentencing: Comprehensive Review, Part 6

June 4, 2020
Staff Presentation
Nate Reitz, MSGC Executive Director
mn.gov/sentencing-guidelines

1

Issues from September meeting



Examples of possible issues

Definitions	Production	Dissemination	Possession	Other Issues
<ul style="list-style-type: none"> • "Pornographic work" • "Sexual performance" 	<ul style="list-style-type: none"> • Use of Minor • Sexting • Distinctions • Rankings • Other crimes 	<ul style="list-style-type: none"> • Distinctions • 617.246 (for profit) • Rankings 	<ul style="list-style-type: none"> • Distinctions • Hermandizing • Rankings 	<ul style="list-style-type: none"> • CSDB history • Grooming • Invasion of privacy • Victims' rights • Affirmative defense

mn.gov/sentencing-guidelines

2

History of criminal sexually dangerous behavior

Recall 2012 USSC study's conclusion: **three aggravating factors** were primarily relevant to sentencing in non-production child pornography (NPCP) cases:

- **Collecting** behavior (size, duration, organization, and content of collection)
- Involvement in child pornography **communities**
- Known **history** of criminally sexual dangerous behavior (CSDB)

Study found consensus, among social scientists and others, that NPCP offenders with known CSDB histories are qualitatively different from others:

- They have a great risk of sexual recidivism
- They are more likely to have an undetected CSDB history
- CSDB history increases culpability of current NPCP offense

mn.gov/sentencing-guidelines

3

3

Is CSDB history captured in the Guidelines now?

- If convicted of prior sex offense, the prior conviction will likely be in criminal history
- Child pornography is on the sex offender grid
- Most prior sex offenses are given **greater weight** in criminal history on the sex offender grid than on the standard grid
- If registered as a predatory offender, then the statutory maximum and severity level is enhanced
- Child Pornography & Use of Minors in Sexual Performance are the only felony offenses enhanced due to offender's predatory offender registration status

mn.gov/sentencing-guidelines

4

4

How predatory offender registration works

Charged with a predatory offense, including—

- Criminal Sexual Conduct (CSC) and felony Indecent Exposure
- Kidnapping and False Imprisonment
- Soliciting a minor to engage in prostitution or sexual conduct
- Use of Minors in Sexual Performance/Child Pornography

- Convicted/adjudicated of that offense **or** another offense arising out of the same circumstances
- Minimum **10-year** registration period, **reset** every time newly released from **incarceration** for a conviction or probation revocation
- **Lifetime** registration period for certain CSC clauses & repeat offenses

mn.gov/sentencing-guidelines

5

5

Grooming

September: We learned that Solicitation of Children to Engage in Sexual Conduct (Minn. Stat. § 609.352, subd. 2a(3)) includes—

- Electronically distributing material/image relating to sexual conduct
- With sex-related intent
- When victim is (or is believed to be) under 16
- 3-yr. stat. max.; ranked at SL G

- April: We learned that some sex offenders use child pornography to normalize sexual behavior among child victims
- Should the offense be more serious if child pornography is the sexual material distributed? Should it matter if it's electronically or personally distributed?
- Or: Should this be an enhancement to child pornography dissemination?

mn.gov/sentencing-guidelines

6

6

Invasion of privacy

- September: We learned that Surreptitious Observation Device (Minor Victim and Sexual Intent) (Minn. Stat. § 609.746, subd. 1(f)) includes planting a camera with sexual intent in a private place where child is likely to expose him/herself
- 4-yr. stat. max.; ranked at SL G
- October: We discussed sentencing problem—cannot sentence this offense and Use of Minors in Sexual Performance if committed in single course of conduct
- Should this be enhanceable, or separately sentenced, if child pornography is produced?
- Or: Should invasion of privacy be an enhancement to Use of Minors in Sexual Performance?

mn.gov/sentencing-guidelines

7

7

Victim's rights

- Tension between victim's rights—
 - To be contacted about the case, to make a statement, and to claim restitution; and
 - To anonymity and to be left alone
- Feds have an opt-in/opt-out system for victims of child pornography
 - Also, minimum \$3,000 restitution for CP-trafficking offenders
- Difficult to see how states do this without access to victims' identities
 - NCMEC database: Child Victim Identification Program
- At least one state references NCMEC in its restitution statute
 - Fla. Stat. § 960.197
 - Not sure how this works in practice
- Minnesota: Requires \$750 assessment, to combat sexual exploitation of youth
 - \$100 for indigent defendants

mn.gov/sentencing-guidelines

8

8