

Staff Information Paper

District of Minnesota Child Pornography Offenses

October 21, 2020

MSGC staff requested data from the United States Sentencing Commission regarding the District of Minnesota Child Pornography offenses. The data in this paper derive from the Interactive Data Analyzer¹ (IDA) and encompass District of Minnesota Child Pornography offenses for fiscal years 2015 to 2019.

Federal Child Pornography Offenses

The U.S. Sentencing Commission categorizes child pornography offenses by non-production and production. This paper examines data concerning offenders sentenced under the non-production sentencing guidelines, U.S. Sentencing Guidelines (USSG) § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; and Possessing Material Involving the Sexual Exploitation of a Minor) and the production sentencing guidelines, USSG § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit conduct; and Advertisement for Minors to Engage in Production).

Presumptive Sentence

All child pornography offenses are recommended a prison sentence due to the zone the offenses are in on the Sentencing Table,² Zone C or D. Where the applicable guidelines range is in Zone C or D of the Sentencing Table the guidelines do not authorize a sentence of probation. Non-production offenses, as a base offense level, are ranked at an offense level 18 if the defendant is convicted of 18 U.S.C. § 1466A(b), 2252(a)(4), or 2252A(a)(5)(7); otherwise, an offense is ranked at an offense level 22. All offenders are recommended a prison sentence at an offense level 18, with presumptive durations ranging from 27 months (at a Criminal History Category of I) to 71 months (at a Criminal History Category of VI).

¹ The methodology of the Interactive Data Analyzer can be found here: <https://ida.usc.gov/analytics/saw.dll?Dashboard>

² See USSG, Annotated 2018 Ch. 5, Part A – [Sentencing Table](#)

Production offenses, as a base offense level, are ranked at an offense level 32. All offenders are recommended a prison sentence at an offense level 32, with presumptive durations ranging from 121 months (at a Criminal History Category of I) to 262 months (at a Criminal History Category of VI).

Specific offense characteristics (SOCs) are enhancements that can increase the offense level for child pornography offenses. Specific offense characteristics for non-production offenses include (1) images depicting a prepubescent minor; (2) use of a computer; (3) number of images possessed; (4) distribution; (5) sado-masochistic images; and (6) a “pattern of activity.” Specific offense characteristics for production offenses include (1) minors under 16 or under 12 years of age; (2) engaging in certain types of “sexual conduct” or “sexual acts” with a minor, including sexual acts under aggravating circumstances such as an unconscious victim; (3) distribution of child pornography; (4) sado-masochistic conduct or violence; (5) using a minor who was a relative or otherwise in the care of the defendant; and (6) either misrepresenting the defendant’s identity or using a computer for the purpose of enticing a minor or otherwise facilitating the offense. Data about SOCs could not be obtained for this staff information paper.

Sentencing Practices

From fiscal years 2015 to 2019, 161 (107 non-production and 54 production) offenders were sentenced for child pornography offenses in the District of Minnesota. The majority of non-production offenders have a criminal history category (CHC) of I (54 cases, 50.5%) (Figure 1). The majority of production offenders have a criminal history category (CHC) of I (30 cases, 55.6%) (Figure 2).

Figure 1. Percentage of Non-Production Offenses by Criminal History Record, 2015-2019

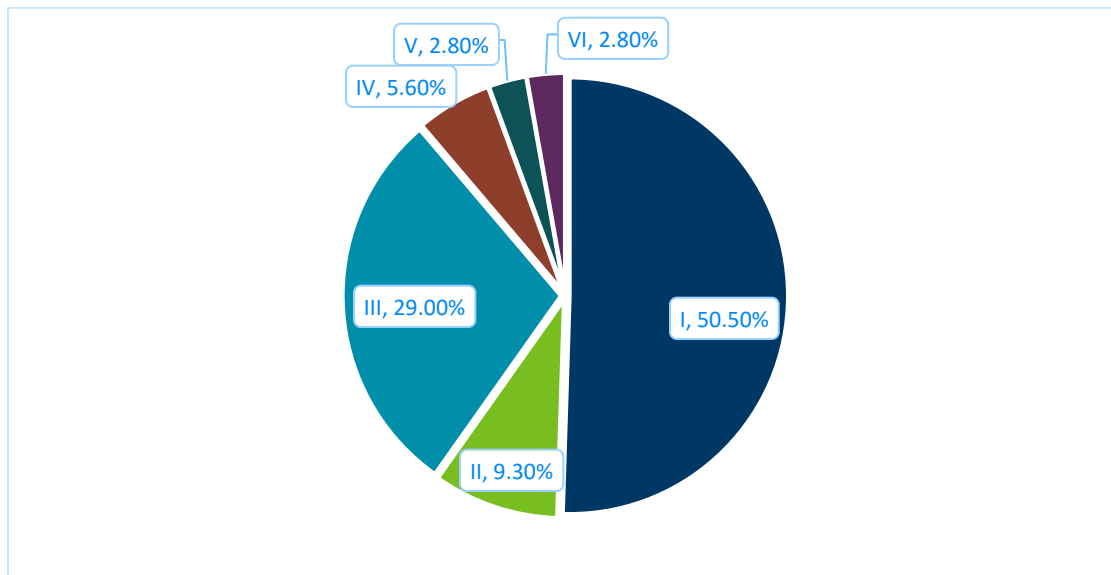
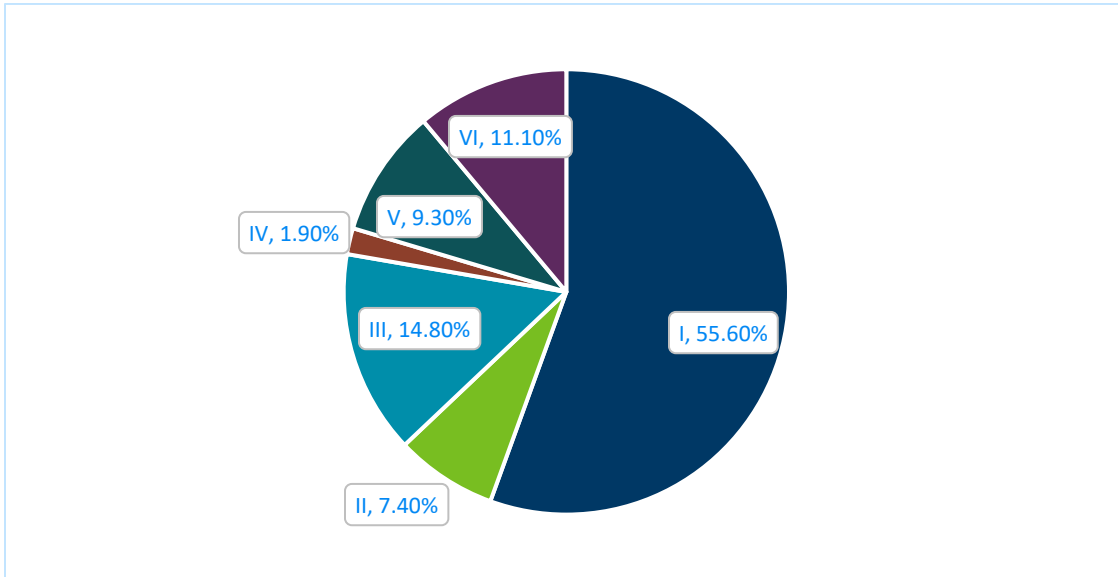


Figure 2. Percentage of Production Offenses by Criminal History Record, 2015-2019



From 2015 to 2019 all 161 offenders were sentenced to prison. Table 1 below displays the distribution of imprisonment length for child pornography offenses. For non-production (61.7%) and production (98.1%) offenders, a vast majority were sentenced to prison for 120 months or more.

Table 1. Imprisonment Lengths for Child Pornography Offenses, Sentenced Fiscal Year 2015-2019

Imprisonment Length in months	Non-Production		Production	
	Number	Percent	Number	Percent
24-59	2	1.90	--	--
60-119	39	36.4	1	1.9
120 or more	66	61.7	53	98.1
Total	107	100	54	100

Table 2 shows the sentence ranges for child pornography offenses. Sentence ranges include (1) within range; (2) non-government downward departure; (3) upward variance³; (4) downward variance government motion; and (5) non-government downward variance. Non-production offenders received within range sentences in only 25.5 percent of cases. A majority of non-production offenders received a non-government downward variance (58.5%). Production offenders received within range sentences in 30 percent of cases. A majority of production offenders received a non-government downward variance (44%). Because the IDA excludes missing data, the numbers in Table 2 add up to less than 161 offenders.

³ “A “variance” outside the guideline range provided for in the *Guidelines Manual* should occur after consideration of all relevant departure provisions.” Online at [2020 Primer Departures and Variances](#) (pg. 43)

Table 2. Sentence Ranges for Child Pornography Offenses, Sentenced Fiscal Year 2015-2019

Sentence Range	Non-Production		Production	
	Number	Percent	Number	Percent
Within Range	27	25.5	15	30
Non-Govt Downward Departure	3	2.8	1	2
Upward Variance	3	2.8	1	2
Downward Variance Govt Motion	11	10.4	11	22
Non-Govt Downward Variance	62	58.5	22	44
Total	106	100	50	100