THE SENTENCING PROJECT

Possession or Receipt of Child Sexual Abuse Material: Evidence-Based Legislation

Child sexual abuse material (CSAM) – visual depictions of sexually explicit content of youth under age 18 – is a widespread international issue, particularly as more people gain access to the internet.[1] In 2025, 802 people were sentenced in federal courts for CSAM possession or receipt.[2]

Federal judges, the U.S. Sentencing Commission (USSC), and legal experts have expressed two key concerns about sentencing in this area: 1) sentencing severity is disproportionate to the level of harm caused by these individuals due to the sentencing guidelines, mandatory sentencing laws, and sentencing enhancements; and 2) individuals convicted for similar behavior can receive vastly different sentences depending on whether they are charged with *receipt* of CSAM, which carries a mandatory minimum of five years in prison, or its *possession,* which does not carry a mandatory minimum. These sentencing disparities result, in part, from the power and charging discretion of prosecutors. Research on recidivism among individuals convicted of CSAM offenses shows that 1.5% or fewer go on to commit a direct contact sex-related crime against an adult or youth.[3]

Because lengthy sentences do not deter crime and mandatory minimum sentencing offers no overall crime control benefit, current sentencing laws divert attention and resources from victim support and effective preventative interventions.[4] The USSC, along with other scholars, has called for an end to the distinction between CSAM possession and receipt, noting that the underlying offense conduct is indistinguishable yet results in widespread sentencing disparity.[5] The USSC has also called on Congress since 2012 for authority to revise outdated sentencing enhancements (such as using a computer). These enhancements currently apply in the vast majority of cases and no longer distinguish degrees of severity of the offense.[6]

Based on evidence of excessive CSAM sentencing, sentencing disparity between CSAM possession and receipt, and judges' sentencing departures from the guidelines in these cases, as well as the low recidivism risk, The Sentencing Project recommends: 1) eliminating all mandatory minimum sentences for CSAM receipt offenses; 2) lowering the sentencing guideline ranges for both receipt and possession of CSAM; 3) aligning sentencing guidelines for CSAM receipt and possession due to the indistinguishable behaviors of the underlying conduct; and 4) expanding non-custodial sentencing options for judges.

Non-Production CSAM Sentences Are Lengthy and Have Substantially Increased

CSAM offenses have a two-tiered sentencing system. If a person is convicted of *possession* of CSAM, there is no statutory mandatory minimum sentence, and with no prior sex-related conviction, the statutory sentencing range is zero to 10 years of imprisonment.[7] The base offense level under the sentencing guidelines is 18. For *receipt* of CSAM, with no prior sex-related convictions, there is a statutory sentencing range from a mandatory minimum of 5 years up to 20 years of imprisonment.[8] The base offense level under the sentencing guidelines is 22. The USSC notes that many people convicted of non-production CSAM offenses lack a criminal history, yet some of these individuals have received longer sentences compared to people who have caused direct physical harm through a contact sex offense.[9]

Since the passage of the PROTECT Act of 2003, the USSC has documented how the guideline ranges and average sentences for non-production CSAM offenses have "increased substantially."[10] Following the creation of new sentencing enhancements by Congress through the PROTECT Act, four out of six sentencing enhancements now apply to most people convicted of non-production CSAM.[11] In 2019, 95% of people sentenced for non-production CSAM received an enhancement for using a computer.[12]

Judges and the USSC Have Called for Reform

In 2012, Chief U.S. District Judge M. Casey Rogers for the Northern District of Florida told the USSC:

> When the sentencing guidelines for child pornography propose sentences often viewed as disproportionate to the severity of the offense, there is a concern that the goals of fair administration of justice and respect for the law are not being met.[13]

A large proportion of federal judges have conveyed to the USSC that they view the guideline ranges for possession and receipt of CSAM as too severe.[14] A 2010 USSC survey found that approximately 70% of judges found that guidelines range for CSAM possession and receipt was too high; and a similar portion found the mandatory minimum sentence for receipt to be too high. A significant portion of judges thought a split sentence of imprisonment and community or home confinement should be more available for individuals convicted of CSAM possession or receipt.[15]

According to an analysis by the USSC comparing a sample of similar cases for CSAM possession and receipt, 82% of individuals convicted of possession were sentenced below the guideline range in 2019. For receipt of CSAM, 62% were sentenced below the guideline range in 2019.[16] Because judges continue to sentence many CSAM possession and receipt cases below the guideline ranges, these are indicators the sentencing guidelines are overly severe.[17]

Sentencing Disparity in Non-Production CSAM Cases

The USSC details in their 2021 report that "sentencing disparities among similarly situated [individuals convicted of non-production CSAM]...have become increasingly pervasive."[18] Disparities are fueled by prosecutorial discretion and differing charging practices which may, or may not, expose an individual to a mandatory sentence, judicial departures, and the sentencing guidelines ranges. Because of the statutory distinction between CSAM receipt and possession offenses, materially identical conduct results in vastly different sentences.[19]

The USSC found that sentences for receipt of CSAM convictions - indistinguishable conduct from possession of CSAM - resulted in sentences that were, on average, almost 3 years longer when compared to possession of CSAM convictions.[20] For a sample of similarly situated individuals convicted of CSAM *receipt* in 2019, the average sentence was 81 months in prison (ranging from 37 months to 180 months). On the other hand, for a sample of similarly situated individuals convicted of CSAM *possession* in 2019, the average sentence was 47 months in prison (ranging from probation to 228 months in prison).

Low Sexual Recidivism Rates Following CSAM Convictions

Multiple meta-analyses have established that individuals who have been convicted of a non-contact CSAM offense have very low rates of CSAM recidivism and even lower recidivism rates for a contact sexual offense.[21] Two key studies found that approximately 4% or fewer of individuals recidivated with a non-contact CSAM offense during the 4 to 5 year follow-up period; 1.5% or fewer went on to commit a contact sex-related crime.[22]

CSAM-exclusive individuals (no history of contact sex-related offenses) have an even lower rate: less than 1% recidivated with a contact sexual offense.[23] Individuals with non-contact CSAM offenses rarely "cross over" to hands-on or contact sexual offending.[24] Research also supports that individuals convicted of non-contact CSAM who have no criminal history of contact sexual offending are a lower-risk group, on average, compared to individuals convicted of contact sexual offenses.[25] The USSC finds these trends in their own analysis of federal data – only 3% recidivated with a CSAM offense and less than 1% recidivated with a contact sex-related crime. Moreover, 72% did not recidivate with *any* crime within three years.[26]

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Endnotes

[1] While child pornography is a common legal term, the term "CSAM" intends to highlight the nonconsensual nature of the production of this material. Seto, M. C. (2025). *Online sexual offending: Theory, practice, and policy* (2nd edition). American Psychological Association. https://doi.org/10.1037/0000428-000

[2] Of the 1,432 people sentenced under §2G2.2 for child pornography offenses, 56% were sentenced with receipt or possession of CSAM; This does not include production of child pornography §2G2.1.

[3] In these studies, CSAM offenses were broadly defined and included accessing, possessing, purchasing, distributing, or production of CSAM. Depending on the jurisdiction, production can include recording contact offending or secretly recording someone or creating content using software. Baskurt, S., Babchishin, K. M., Hilkes, G., & Seto, M. C. (2025). A meta-analysis of recidivism rates among individuals who commit child sexual exploitation (CSEM) offending. *Aggression and Violent Behavior*. https://doi.org/10.1016/j.avb.2025.102080; Clark, A., Coles, C., Lankester, M., Fernandes, D., Blackwood, N., Cavenham, J., & Dickson, H. (2025). Recidivism rates among online child sexual exploitation material offenders: Systematic review and meta-analyses. *Journal of Forensic Psychiatry and Psychology*, 1-26. https://doi.org/10.1080/14789949.2025.2603236

[4] Budd, K. M. (2024). *Responding to crimes of a sexual nature: What we really want is no more victims*. The Sentencing Project; National Research Council. (2014). *The growth of incarceration in the United States: Exploring causes and consequences* (J. Travis, B. Western, and F. S. Redburn, Eds.). The National Academies Press. https://doi.org/10.17226/18613

[5] United States Sentencing Commission. (2021). *Federal sentencing of child pornography non-production offenses*.

[6] United States Sentencing Commission. (2012). *Federal child pornography offenses*; United States Sentencing Commission. (2021). *Federal sentencing of child pornography non-production offenses*.

[7] If a person has a prior qualifying conviction for a CSAM-related offense, then there is a mandatory minimum sentence of 10 years, and a maximum of 20 years for a possession offense.

[8] If there is a qualifying prior sex-related conviction, the mandatory minimum increases to 15 years, with a maximum of 40 years.

[9] United States Sentencing Commission. (2012). *Federal child pornography offenses* (pgs. 125, 132).

[10] Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act. Pub. L. No. 108-21, 117 Stat. 650; United States Sentencing Commission. (2012). *Federal child pornography offenses*.

[11] The six enhancements include (1) victims under the age of 12 or prepubescent minors; (2) the defendant distributed child pornography; (3) the images included sadistic or masochistic acts or violence or the exploitation of an infant or toddler; (4) the defendant engaged in a "pattern of activity" involving the "sexual abuse or exploitation of a minor;" (5) the defendant used a computer to commit the offense; and (6) the offense involved a certain number of images. The four most frequently used enhancements are computer use, age of victim, having 600 or more images, and images depicting sadistic or masochistic conduct or the exploitation of an infant or toddler.

[12] See endnote 5.

[13] United States Sentencing Commission public hearing on federal child pornography offenses. (2012, February 15). *Statement of Chief United States District Judge M. Casey Rodgers, Northern District of Florida, on behalf of the judicial conference of the United States Committee on Criminal Law*.

[14] United States Sentencing Commission. (2010). *Results of survey of United States district judges January 2010 through March 2010*.

[15] 41% of judges answered affirmatively to make a split sentence more available for CSAM possession. 39% of judges answered affirmatively for CSAM receipt. United States Sentencing Commission. (2010). *Results of survey of United States district judges January 2010 through March 2010*.

[16] See endnote 5.

[17] See endnote 5.

[18] United States Sentencing Commission. (2021). *Federal sentencing of child pornography non-production offenses* (pg. 7).

[19] Bacon, S. L. (2011). A distinction without a difference: "Receipt" and "possession" of child pornography and the double jeopardy problem. *University of Miami Law Review*, *65*(3), 1027-1058; Hessick, C. B. (2011). *Disentangling child pornography from child sex abuse*, *88*(04), Washington University Law Review, 853-902; United States Sentencing Commission. (2012). *Federal child pornography offenses*.

[20] Fiscal year data from 2019, see Chapter 4 on Sentencing Disparities. United States Sentencing Commission. (2021). *Federal sentencing of child pornography non-production offenses* (pg. 56).

[21] In these studies, CSAM offenses were broadly defined and included accessing, possessing, purchasing, distributing, or production of CSAM. Depending on the jurisdiction, production can include recording contact offending or secretly recording someone or creating content using software.

[22] See endnote 3.

[23] See endnote 3.

[24] See endnote 3. Also, Seto, M. C., Hanson, R. K., & Babchishin, K. M. (2011). Contact sexual offending by men with online sexual offenses. *Sexual Abuse*, *23*(1), 124–145. https://doi.org/10.1177/1079063210369013

[25] Individuals who also had a history of contact sex-related crimes in addition to CSAM recidivated at a rate of 9% with a contact sex-related offense during the five year follow-up period. Baskurt, S., Babchishin, K. M., Hilkes, G., & Seto, M. C. (2025). A meta-analysis of recidivism rates among individuals who commit child sexual exploitation (CSEM) offending. *Aggression and Violent Behavior*. https://doi.org/10.1016/j.avb.2025.102080; Hanson, R., K., & Bussiere, M. T. (1998). Predicting relapse: A meta-analysis of sexual offender recidivism studies. *Journal of Consulting and Clinical Psychology*, *66*(2), 348-362. https://doi.org/10.1037/0022-006X.66.2.348; Hanson, R. K., & Morton-Bourgon, K. E. (2009). The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies. *Psychological Assessment*, *73*(6), 1154-1163. https://doi.org/10.1037/a0014421; Seto, M. C. (2025). *Online sexual offending: Theory, practice, and policy* (2nd edition). American Psychological Association. https://doi.org/10.1037/0000428-000

[26] See endnote 5.

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The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice.