

MANDATORY MINIMUM PENALTIES FOR SEX OFFENSES

A. INTRODUCTION

This chapter analyzes the application of mandatory minimum penalties for federal sex offenses. First, this chapter provides an overview of the statutory scheme and the applicable sentencing guideline provisions. Second, this chapter provides a general statistical overview of sex offenders with a focus on such offenders convicted of offenses carrying a mandatory minimum penalty. Third, this chapter considers the general effect of mandatory minimum penalties on sentences for sex offenders and, in particular, presents relevant findings of the Commission’s special coding project concerning a random sample of child pornography cases from fiscal year 2010. Finally, this chapter sets forth findings with respect to mandatory minimum penalties and sex offenses.

As used in this chapter, the term “sex offenses” refers to cases in which the primary sentencing guideline was in either: (1) Chapter 2, part A, subpart 3 (which concerns sexual abuse and sexual contact offenses victimizing adults or minors), excluding failure to register offenses;⁷⁴¹ or (2) Chapter 2, part G (which concerns promotion of illegal sex acts involving an adult or minor, offenses involving travel to engage in an illegal sexual act, and child pornography offenses), excluding obscenity offenses not cross-referenced to the child pornography guidelines.⁷⁴²

In addition, for purposes of this chapter, federal sex offenses are divided into two types: (1) sexual abuse (also called “contact”) offenses, *i.e.*, those offenses involving actual or attempted sexual contact with the victim regardless of the victim’s age; and (2) child pornography (other than an offense related to the production of pornography depicting an actual child, which is deemed a “contact” offense).⁷⁴³ Some parts of the analysis in this chapter aggregate both types of sex offenses; however, more often the analysis is divided according to the two types of sex offenses. Such bifurcation is appropriate because, as discussed below, sexual abuse cases involve actual or intended sexual *contact* with a victim, while child pornography offenses concern the possession, receipt, transportation, or distribution of sexually-oriented *images* of children.

⁷⁴¹ Such offenses are sentenced under USSG §§2A3.5 (Failure to Register as a Sex Offender) and 2A3.6 (Aggravated Offenses Relating to Registration as a Sex Offender).

⁷⁴² Such obscenity offenses are sentenced under USSG §§2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor; Misleading Domain Names) and 2G3.2 (Obscene Telephone Communications for a Commercial Purpose; Broadcasting Obscene Material).

⁷⁴³ A similar bifurcation of federal sex offenses appears in the Commission’s *2010 Sourcebook of Federal Sentencing Statistics* at 12 (Table 3); *see also id.* at 166–67 (definitions of “sexual abuse” and “child pornography” as “primary offense categories”).

B. OFFENSES AND RELATED GUIDELINES

1. *Federal Sex Offenses*

a. Sexual abuse offenses

The vast majority of federal sexual abuse offenses are found in Chapters 109A and 117 of Title 18 of the United States Code. A handful of other sexual abuse offenses, including offenses related to the production of child pornography, are found in other parts of the United States Code.⁷⁴⁴ Congress has provided for mandatory minimum terms of imprisonment for many sexual abuse offenses, including the majority of such offenses that involve the victimization or attempted victimization of minors. Mandatory minimum terms exist for violations of the following sections of Title 18:

- § 1591(b)(1) and (2) (minimum ten- or 15-year term for sex trafficking of a minor depending on the age of the victim);
- § 2241(c) (minimum 30-year term for traveling across state lines with the intent to have sex with a child under 12 years of age or for crossing state lines and having sex with a child between the ages of 12 and 16 under certain aggravating circumstances);
- §§ 2251(e) and 2260(c)(1) (minimum term of 15 years for production of child pornography and enhanced minimum terms if such a defendant has a prior felony conviction for an enumerated sex offense);⁷⁴⁵
- § 2251A(a) & (b) (minimum term of 30 years for buying or selling, or otherwise transferring, children for the purpose of participating in the production of child pornography);
- § 2422(b) (minimum term of ten years for using mails or facilities or means of commerce to cause a minor to engage in prostitution or other criminal sexual activity);

⁷⁴⁴ *See, e.g.*, 18 U.S.C. §§ 1591 (sex trafficking of children by fraud, force, or deception) and 2251 & 2251A (offenses related to production of child pornography).

⁷⁴⁵ Advertising for the exchange of completed child pornography in violation of § 2251(d)(1) also is subject to a 15-year mandatory minimum penalty, yet it is punished under USSG §2G2.2 rather than USSG §2G2.1. *See* USSG App. A. Conversely, advertising that seeks “participation” in the production of child pornography, which also is subject to a 15-year mandatory minimum penalty, is governed by USSG §2G2.1. *See* USSG App. A. The latter is deemed a “sexual abuse” offense for purposes of this chapter, while the former is deemed a “child pornography” offense.

If a defendant has a prior federal or state conviction for one of the enumerated sex offenses, the penalty range for production or advertising increases to a mandatory minimum term of 25 years and a maximum term of 50 years of imprisonment. If a defendant has a prior federal or state conviction for two or more enumerated sex offenses, the penalty range for production increases to a mandatory minimum term of 35 years and a maximum term of life imprisonment. *See* 18 U.S.C. §§ 2251(e) & 2260(c)(1).

- § 2423(a) (minimum term of ten years for transporting a minor in commerce for the purpose of engaging in prostitution or other criminal sexual activity); and
- § 3559(e) (mandatory life imprisonment for second conviction for certain sex offenses against minors).⁷⁴⁶

Many of the other sexual abuse offenses in Chapters 109A and 117 that do not carry mandatory minimum penalties outlaw similar conduct where the victim is an adult.⁷⁴⁷

b. Child pornography offenses⁷⁴⁸

Federal law broadly prohibits a variety of acts related to the distribution,⁷⁴⁹ transportation (including by shipping or mailing),⁷⁵⁰ importation, receipt, and possession of child pornography, including attempted acts and conspiracies to commit such acts.⁷⁵¹ The four primary types of offenses (distribution, transportation, receipt, and possession) are set forth in Chapter 110 of

⁷⁴⁶ Section 3559(e) is a rarely used statute. Only one offender was sentenced to life imprisonment under that statute in fiscal year 2010.

⁷⁴⁷ See, e.g., 18 U.S.C. § 2242 (providing for a fine and/or term of imprisonment of “any term of years or for life” for sexual abuse of an adult victim); 18 U.S.C. § 2422(a) (providing for a term of imprisonment of “not more than 20 years” for causing an adult to travel in interstate or foreign commerce in order to engage in prostitution or other illegal sexual activity).

⁷⁴⁸ See 18 U.S.C. § 2256(8) (defining “child pornography” as “visual depiction” of a minor “engaging in sexually explicit conduct”). “Sexually explicit conduct” encompasses various sexual conduct, including sexual intercourse, oral and anal sex, masturbation, bestiality, and the “lascivious exhibition of the genitals or pubic area.” 18 U.S.C. § 2256(2). Federal statutes outlawing obscenity – primarily 18 U.S.C. §§ 1462, 1466, and 1466A – also prohibit certain acts related to photographic and non-photographic visual representations of minors engaged in “sexually explicit conduct.” Such offenses, if they involve the obscene depiction of minors rather than adults, are subject to the guidelines’ child pornography provisions rather than the obscenity provisions. See, e.g., USSG §2G3.1(c).

⁷⁴⁹ Sections 2252 and 2252A use not only the term “distribute” but also the term “sell,” thus, broadly encompassing any type of transmission of child pornography to another, both electronic and non-electronic distribution and both commercial or non-commercial distribution. See, e.g., 18 U.S.C. §§ 2252(a)(1), (a)(3) & 2252A(a)(1), (a)(4)(B). In addition, §§ 2252, 2252A and 2260(b) each prohibit the possession of child pornography with the intent to distribute it (in different circumstances). See 18 U.S.C. §§ 2252(a)(3)(B), 2252A(a)(4)(B), & 2260(b). The sentencing guideline provisions related to child pornography use the terms “trafficking” and “distribution” interchangeably. See, e.g., USSC §2G2.2(b)(1). For simplicity’s sake, this report will use the term “distribute” to refer to all types of distribution (as well as possession with the intent to distribute). Cf. 21 U.S.C. § 841(a)(2) (treating distribution of drugs and possession with intent to distribute drugs as equivalents).

⁷⁵⁰ The transportation of child pornography proscribed by statute does not require that the defendant intended to distribute it to another person. See, e.g., *United States v. Fore*, 507 F.3d 412, 415 (6th Cir. 2007); *United States v. Burgess*, 576 F.3d 1078, 1102 (10th Cir. 2009). However, as explained below, unlike simple possession, transportation of child pornography (including shipping or mailing) is punished with a five-year mandatory minimum prison sentence.

⁷⁵¹ See 18 U.S.C. §§ 2251(e), 2252(b), 2252A(b), and 2260(c). Section 2252 concerns child pornography depicting an actual minor, while section 2252A concerns child pornography depicting a computer-generated image “indistinguishable from that of” an actual minor “engaging in sexually explicit conduct” or modified “to appear that an identifiable minor is engaging in sexually explicit conduct.” 18 U.S.C. §§ 2252A and 2256(8)(B) & (C).

Title 18 of the United States Code at 18 U.S.C. §§ 2251, 2252, 2252A, and 2260. The statutes prohibit distribution, shipping, and transportation of child pornography regardless of whether such activities have a commercial or non-commercial purpose (*e.g.*, exchanging child pornography through “peer-to-peer” Internet file-sharing programs).⁷⁵² The offense of receipt requires a defendant’s knowledge that he is coming into possession of child pornography at the time that the image is received.⁷⁵³ That a defendant knowingly possesses child pornography – a lesser-included offense of receipt – does not necessarily mean that the defendant previously knowingly received it.⁷⁵⁴ An additional statute, 18 U.S.C. § 1466A, prohibits possession, receipt, distribution, and production of “obscene visual representations of the sexual abuse of children”; its violation is considered a child pornography offense.⁷⁵⁵

The statutory penalty ranges for violations of these provisions vary in severity depending on both the act involved and the defendant’s prior criminal record. Violations of section 1466A involving receipt, distribution, or production of “obscene visual representations of the sexual abuse of children” carry a mandatory minimum penalty of five years of imprisonment and a maximum of 20 years of imprisonment, while violations of section 1466A involving simple possession of such obscene material carry no mandatory minimum penalty and have a statutory maximum of ten years of imprisonment.⁷⁵⁶

Simple possession of child pornography is punishable by up to ten years in federal prison but – unlike the other offenses involving actual child pornography⁷⁵⁷ – does not carry a mandatory minimum term of imprisonment.⁷⁵⁸ If a defendant has a prior federal or state conviction for one or more enumerated sex offenses,⁷⁵⁹ however, the penalty range for simple

⁷⁵² See *United States v. Holston*, 343 F.3d 83, 85-86 (2d Cir. 2003); see also *United States v. Williams*, 553 U.S. 285, 296 (2008) (“[I]n much Internet file sharing of child pornography each participant makes his files available for free to other participants.”).

⁷⁵³ See, *e.g.*, *United States v. Meyers*, 355 F.3d 1040, 1042 (7th Cir. 2004).

⁷⁵⁴ See, *e.g.*, *United States v. Ehle*, 640 F.3d 689, 698 (6th Cir. 2011).

⁷⁵⁵ See USSG App. A (referring violations of 18 U.S.C. § 1466A to USSG §2G2.2).

⁷⁵⁶ 18 U.S.C. § 1466A(a) & (b).

⁷⁵⁷ “Morphing” offenses – which do not involve actual child pornography – do not carry mandatory minimum penalties. See 18 U.S.C. § 2252A(a)(7), (b)(3). In addition, on rare occasions, a defendant convicted of an obscenity offense other than 18 U.S.C. § 1466A that does not carry mandatory minimum penalty (*e.g.*, 18 U.S.C. § 1462) will be cross-referenced to §2G2.2 under §2G3.1(c)(1) because the obscene matter was in fact actual child pornography. In such a case, a defendant may have engaged in conduct that, if charged under the child pornography statutes, would have carried a mandatory minimum penalty (*e.g.*, transportation or distribution of obscene matter that qualified as child pornography). However, because it was charged as an obscenity offense rather than a child pornography offense, it does not carry a mandatory minimum penalty.

⁷⁵⁸ 18 U.S.C. §§ 2252(b)(2) & 2252A(b)(2).

⁷⁵⁹ Such enumerated sex offenses include prior convictions for sex trafficking of children, obscenity offenses, sexual abuse of adults or children, and child pornography offenses. 18 U.S.C. § 2252(b)(2).

possession increases to a mandatory minimum term of ten years and a maximum term of 20 years of imprisonment.⁷⁶⁰

Transportation (including mailing or shipping), receipt, distribution, and possession with the intent to distribute or sell child pornography offenses each carry a mandatory minimum term of five years of imprisonment and a maximum term of 20 years.⁷⁶¹ If a defendant has a prior federal or state conviction for one or more enumerated sex offenses, however, the penalty range increases to a mandatory minimum term of 15 years and a maximum term of 40 years of imprisonment.⁷⁶² Section 2252A(b)(3) provides a separate punishment range of up to 15 years in prison for production (as well as distribution) of a “morphed” image of an actual, identifiable minor appearing to engage in sexually explicit conduct. No statutory mandatory minimum applies to this offense.

2. *Related Guidelines*

a. Sexual abuse offenses

The sentencing guidelines for sexual abuse offenses are contained in Chapter 2, part A, subpart 3 of the *Guidelines Manual*, as well as in section 2G2.1, which addresses offenses related to production of child pornography. Like the penal statutes governing sexual abuse offenses, the relevant guidelines cover a wide variety of conduct involving both adult and minor victims.⁷⁶³

b. Child pornography offenses

The sentencing guideline for child pornography offenses other than production is §2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor;

⁷⁶⁰ *See id.* In fiscal year 2010, 878 offenders were convicted of possession of child pornography. Offenders were so classified by having a base offense level of 18 under USSG §2G2.2. Of the 878 offenders convicted of possession, 6.8% (n=60) were subject to mandatory minimum ten-year prison sentences under 18 U.S.C. §§ 2252(b)(2) and 2252A(b)(2) based on prior convictions for sex offenses. The remaining 93.2% of offenders (n=827) who were convicted of possession were not subject to a mandatory minimum penalty and faced a maximum term of imprisonment of ten years under §§ 2252(b)(2) and 2252A(b)(2).

⁷⁶¹ 18 U.S.C. §§ 2252(b)(1), 2252A(b)(1), 2260(c)(2).

⁷⁶² *See id.*

⁷⁶³ The relevant provisions are §§2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse), 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts), 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts), 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact), 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor), 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor), and 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor). The Commission's 2009 report, *The History of the Child Pornography Guidelines*, details the evolving nature of the child pornography guidelines during the past three decades.⁷⁶⁴ As noted in that report:

For more than 30 years, and particularly in recent years, Congress has focused attention on the scope of child pornography offenses and the severity of penalties for child pornography offenders. Through creating new offenses, enacting new mandatory minimums, increasing statutory maximums, and providing directives to the Commission, Congress has repeatedly expressed its will regarding appropriate penalties for child pornography offenders. Congress has specifically expressed an intent to raise penalties associated with certain child pornography offenses several times through directives to the Commission and statutory changes aimed at increasing the guideline penalties and reducing the incidence of downward departures.⁷⁶⁵

Certain other guidelines contain cross-references to §2G2.2 if relevant conduct in the case included possession, transportation, receipt, or distribution of child pornography – including §2G3.1(c) (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor; Misleading Domain Names).

C. STATISTICAL OVERVIEW

Sex offenses constitute a small percentage of federal criminal cases. Of the 73,239 federal cases in fiscal year 2010 included in this analysis, just 3.2 percent (n=2,317) involved sex offenses. Of those 2,317 cases, 72.4 percent (n=1,677) were child pornography cases, while 27.6 percent (n=640) were sexual abuse cases. Of the total number of sex offense cases, 50.8 percent (n=1,176) involved a conviction of an offense that carried a mandatory minimum penalty, which represented only 1.6 percent of all federal criminal cases.

Although sex offenses have always been a small percentage of the federal criminal docket, the number of defendants convicted of sex offenses carrying a mandatory minimum penalty – both sexual abuse offenses and child pornography offenses – has increased significantly during the past decade, as demonstrated in Figure 10-1. Before 2001, a small fraction of defendants convicted of sex offenses were convicted of offenses that carried a mandatory minimum penalty. Of the 59,882 offenders for whom the Commission received sentencing information in fiscal year 2001, 733 were sex offenders, only 39 of whom (5.3%) were convicted of an offense carrying a mandatory minimum penalty. By fiscal year 2006, there were 1,471 sex offenders, 584 of whom (39.7%) were convicted of an offense that carried a mandatory minimum penalty. By fiscal year 2008, there were 2,017 sex offenders, 924 of whom (45.8%) were convicted of an offense that carried a mandatory minimum penalty.⁷⁶⁶

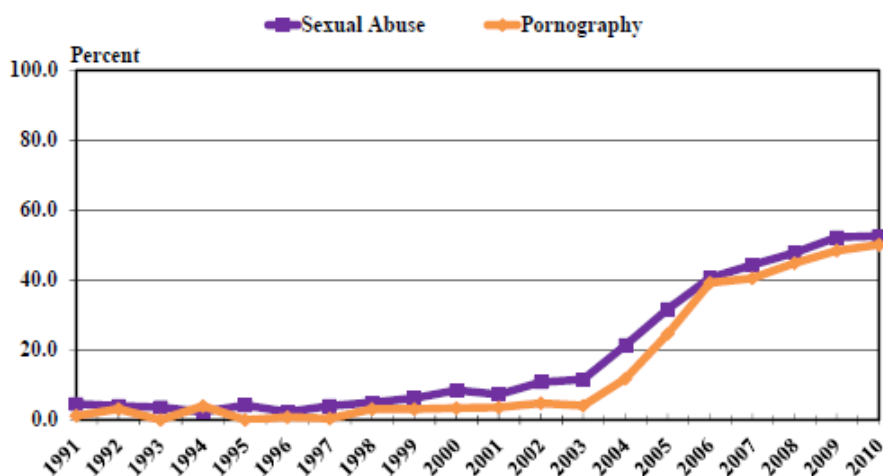
⁷⁶⁴ See U.S. SENT'G COMM'N, *THE HISTORY OF THE CHILD PORNOGRAPHY GUIDELINES* (2009).

⁷⁶⁵ *Id.* at 6.

⁷⁶⁶ The increase in the number of sex offenders convicted of an offense carrying a mandatory minimum penalty is partly explained by the fact that, before the PROTECT Act was enacted in 2003, trafficking and receipt of child pornography did not carry mandatory minimum penalties. See Chapter 2, *supra*.

Figure 10-1 shows that the number of both sexual abuse cases and child pornography cases involving convictions for offenses carrying mandatory minimum penalties has increased as a percentage of the overall sex offense caseload. In fiscal year 2010, 50.1 percent of all child pornography cases (840 of 1677 child pornography cases) and 52.5 percent of sexual abuse cases (336 of 640 sexual abuse cases) involved convictions carrying mandatory minimum penalties. Of the 837 child pornography cases involving convictions not carrying a mandatory minimum penalty, 98.1 percent (821 of 837) were convictions for simple possession of child pornography under 18 U.S.C. §§ 2252(a)(4) or 2252A(a)(5).

Figure 10-1
Sexual Abuse/Pornography Offenders Convicted of an Offense Carrying a
Mandatory Minimum Penalty
Fiscal Years 1991 - 2010



SOURCE: U.S. Sentencing Commission, 1991 through 2010 Datafiles, USSCFY91 – USSCFY10.

A discussion of several statistical analyses of federal sex offenses carrying mandatory minimum penalties – using the 73,239 offenders included in the analysis for this Report – is set forth below.

1. *Demographic Characteristics of Sex Offenders*

Table 10-1 presents the demographic characteristics of sexual abuse offenders in fiscal year 2010. The table also compares the demographic characteristics of four groups of sexual abuse offenders: (1) all sexual abuse offenders, including those not convicted of an offense carrying a mandatory minimum penalty; (2) those convicted of an offense carrying a mandatory minimum penalty; (3) those convicted of an offense carrying a mandatory minimum penalty who were relieved from the mandatory minimum penalty because of substantial assistance; and (4) those convicted of an offense carrying a mandatory minimum who remained subject to that penalty at the time of sentencing because they did not qualify for relief based on substantial assistance. Table 10-2 contains comparable information about child pornography offenders. As demonstrated in these two tables, the most notable difference between the two types of sex offenders is that sexual abuse offenders include substantially more non-white offenders (22.5%

Other Race offenders, typically Native American offenders), compared to child pornography offenders (who are 89.0% White).

**Table 10-1
Demographic Characteristics of Sexual Abuse Offenders
Fiscal Year 2010**

Demographics	All Offenders	Convicted of an Offense Carrying a Mandatory Minimum Penalty	Relieved of Application of Mandatory Minimum Penalty	Subject to a Mandatory Minimum Penalty at Sentencing
Total (# of offenders)	640	336	14	322
Race of Offender (Percent)				
White	55.2	76.4	50.0	77.6
Black	12.5	11.9	35.7	10.9
Hispanic	9.7	8.7	7.1	8.7
Other	22.5	3.0	7.1	2.8
Citizenship of Offender (Percent)				
United States Citizen	93.4	94.9	100.0	94.7
Non-Citizen	6.6	5.1	0.0	5.3
Gender of Offender (Percent)				
Male	94.2	97.9	85.7	98.4
Female	5.8	2.1	14.3	1.6

Table 10-2
Demographic Characteristics of Child Pornography Offenders
Fiscal Year 2010

Demographics	All Offenders	Convicted of an Offense Carrying a Mandatory Minimum Penalty	Relieved of Application of Mandatory Minimum Penalty	Subject to a Mandatory Minimum Penalty at Sentencing
Total (# of offenders)	1,677	840	35	805
Race of Offender (Percent)				
White	89.0	88.2	91.4	88.0
Black	2.8	3.2	0.0	3.4
Hispanic	6.2	6.4	5.7	6.5
Other	2.0	2.2	2.9	2.1
Citizenship of Offender (Percent)				
United States Citizen	97.4	97.9	100.0	97.8
Non-Citizen	2.6	2.1	0.0	2.2
Gender of Offender (Percent)				
Male	99.4	99.4	100.0	99.4
Female	0.6	0.6	0.0	0.6

Tables 10-3 and 10-4 present information about the criminal histories of those groups of offenders. The vast majority of sex offenders – both sexual abuse and child pornography offenders – had no prior criminal record at the time they were sentenced and only a very small percentage were in Criminal History Categories IV through VI. *See* Tables 10-3 & 10-4.

**Table 10-3
Criminal History of Sexual Abuse Offenders
Fiscal Year 2010**

Criminal History Category	All Offenders	Convicted of an Offense Carrying a Mandatory Minimum Penalty	Relieved of Application of Mandatory Minimum Penalty	Subject to a Mandatory Minimum Penalty at Sentencing
Total (# of offenders)	640	336	14	322
Criminal History Category (Percent)				
I	69.8	69.6	64.3	69.9
II	10.3	8.0	21.4	7.5
III	8.4	8.9	0.0	9.3
IV	3.3	2.7	0.0	2.8
V	5.0	6.9	7.1	6.8
VI	3.1	3.9	7.1	3.7

**Table 10-4
Criminal History of Child Pornography Offenders
Fiscal Year 2010**

Criminal History Category	All Offenders	Convicted of a Statute Carrying a Mandatory Minimum Penalty	Relieved of Application of Mandatory Minimum Penalty	Subject to a Mandatory Minimum Penalty at Sentencing
Total (# of offenders)	1,677	840	35	805
Criminal History Category (Percent)				
I	81.9	77.0	91.4	76.4
II	7.9	9.6	2.9	9.9
III	6.0	8.0	2.9	8.2
IV	2.4	3.2	2.9	3.2
V	0.9	1.3	0.0	1.4
VI	0.8	0.8	0.0	0.9

2. Guilty Pleas and Trials

Sex offenders convicted of an offense carrying a mandatory minimum penalty – both sexual abuse offenders and child pornography offenders – proceeded to trial more often than sex

offenders who were not convicted of an offense carrying a mandatory minimum penalty. In fiscal year 2010, the trial rate for such sexual abuse offenders was 15.2 percent – more than twice the rate for sexual abuse offenders not convicted of an offense carrying a mandatory minimum penalty (6.9%). In fiscal year 2010, the trial rate for child pornography offenders convicted of an offense carrying a mandatory minimum penalty was 6.4 percent – four times the rate for child pornography offenders not convicted of an offense carrying a mandatory minimum penalty (1.6%).

3. *Geographic Variations*

A majority of federal convictions of a sexual abuse offense carrying a mandatory minimum penalty occurred in the district courts in four of the 12 federal circuits. Of the 336 cases in fiscal year 2010 that involved a conviction of a sexual abuse offense carrying a mandatory minimum penalty, 50 (14.9%) were from districts within the Eleventh Circuit, 43 each (12.8%) were from districts within the Sixth and Ninth Circuits, and 38 (11.3%) were from districts within the Eighth Circuit.⁷⁶⁷ Thus, 51.8 percent (n=174) of the 336 cases involving a conviction for a sexual abuse offense carrying a mandatory minimum penalty came from those four circuits. By way of comparison, 42.4 percent of all federal criminal cases in fiscal year 2010 came from those four circuits.⁷⁶⁸

A majority of the convictions of a child pornography offense carrying a mandatory minimum penalty likewise occurred in the district courts within the same four circuits. Of the 840 cases in fiscal year 2010 that involved a conviction of a child pornography offense carrying a mandatory minimum penalty, 130 (15.5%) were from districts within the Ninth Circuit, 122 (14.5%) were from districts within the Eleventh Circuit, 118 (14.0%) were from districts within the Sixth Circuit, and 100 (11.9%) were from districts within the Eighth Circuit. Thus, 56.0 percent (n=470) of the 840 cases involving a conviction for a child pornography carrying a mandatory minimum penalty came from those four circuits.⁷⁶⁹ As noted, 42.4 percent of all federal cases sentenced in fiscal year 2010 came from those four circuits.

With respect to differences among the 94 districts, federal sexual abuse prosecutions occurred most often in Southern Florida (n=16, 0.7% of all cases sentenced in the district), Northern New York (n=11, 2.5%), Eastern California (n=10, 1.0%), and Northern Georgia (n=10, 1.5%). These four districts together accounted for 14.0 percent of all federal sexual abuse cases.⁷⁷⁰ Nevertheless, no district had more than 50 sexual abuse offenses. *See* Figure 10-2.

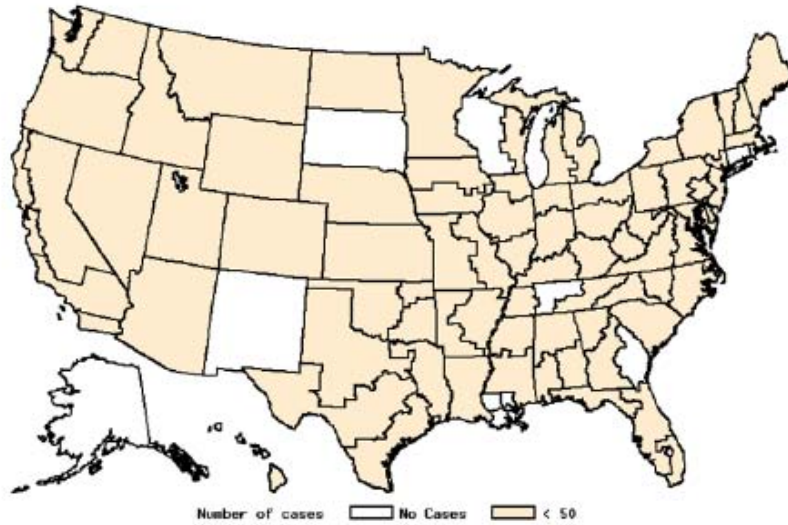
⁷⁶⁷ *See* Table D-16 (Mandatory Minimum Status for Sexual Abuse Offenders in Each Circuit and District (Fiscal Year 2010)) in Appendix D of this Report.

⁷⁶⁸ *See* Table D-1 (Mandatory Minimum Status of Cases in Each Circuit and District (Fiscal Year 2010)) in Appendix D of this Report.

⁷⁶⁹ *See* Table D-17 (Mandatory Minimum Status for Child Pornography Offenders in Each Circuit and District (Fiscal Year 2010)) in Appendix D of this Report.

⁷⁷⁰ *See* Table D-16 in Appendix D of this Report.

Figure 10-2
Number of Sexual Abuse Offenders Convicted of an Offense Carrying a
Mandatory Minimum Penalty
by District
Fiscal Year 2010



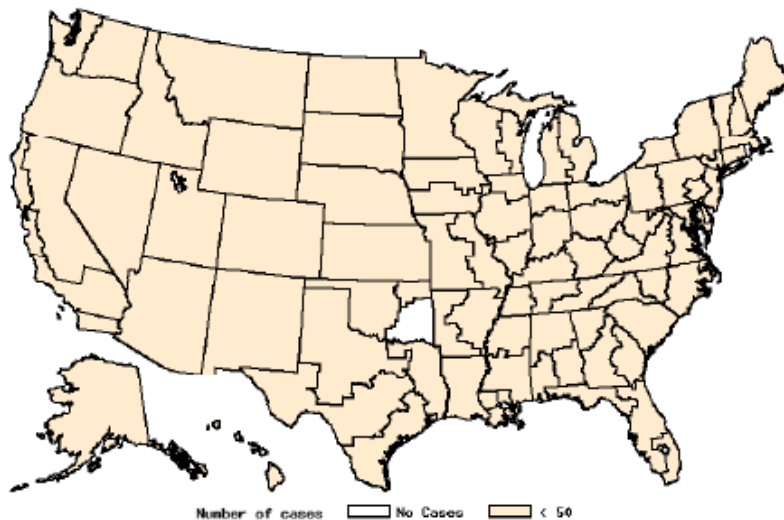
SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10.

Child pornography cases were also more concentrated in a few of the 94 districts, with the largest numbers occurring in Eastern Virginia (n=39, 3.2% of all cases sentenced in the district), Middle Florida (n=34, 2.0%), Southern Florida (n=30, 1.4%), Southern Indiana (n=28, 8.6%), and Western Texas (n=27, 0.4%). These districts together accounted for 18.8 percent of all child pornography cases⁷⁷¹ and 16.3 percent of all federal criminal cases.⁷⁷² As was the case with sexual abuse offenses, however, no district reported more than 50 child pornography cases. See Figure 10-3.

⁷⁷¹ See Table D-17 in Appendix D of this Report.

⁷⁷² *Id.*

Figure 10-3
Number of Child Pornography Offenders Convicted of an Offense Carrying a
Mandatory Minimum Penalty
by District
Fiscal Year 2010



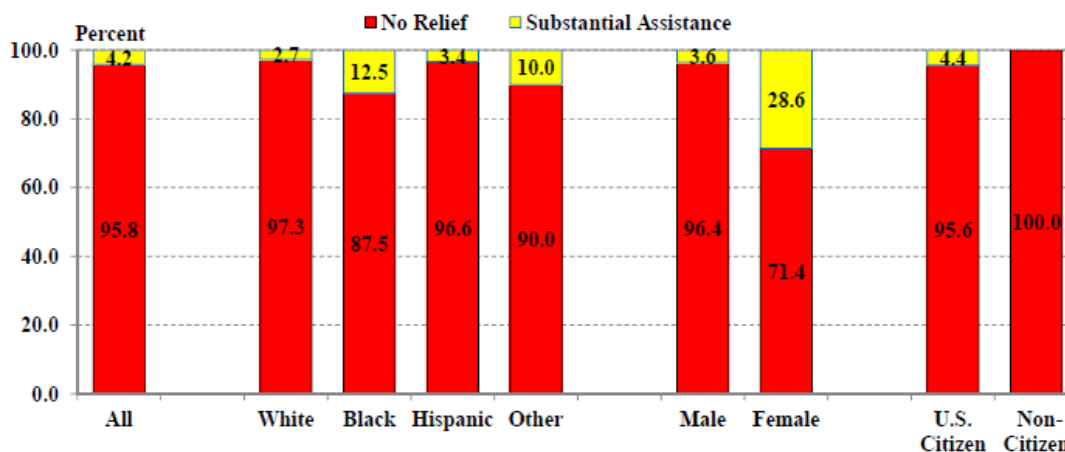
SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10.

4. *Relief from the Mandatory Minimum Penalty*

In fiscal year 2010, the overwhelming majority of offenders convicted of an offense carrying a mandatory minimum penalty – both sexual abuse offenders and child pornography offenders – were ultimately subject to that penalty at sentencing because they did not obtain relief under 18 U.S.C. § 3553(e) based on substantial assistance to the government. *See* Figures 10-4 and 10-5. Of the 336 sexual abuse defendants convicted of an offense carrying a mandatory minimum penalty, Black offenders (12.5%, n=5), Other Race offenders (10.0%, n=1) and female offenders (28.6%, n=2) were more likely to be relieved from the mandatory minimum penalty than members of other demographic groups. This number of cases is too small, however, to draw any meaningful conclusions about the role of race, gender, or citizenship as it relates to relief from the mandatory minimum penalty.⁷⁷³

⁷⁷³ In fiscal year 2010, there were 40 Black offenders, ten Other Race offenders, and seven female offenders convicted of a sexual abuse offense that carried a mandatory minimum sentence.

Figure 10-4
Percent of Sexual Abuse Offenders Convicted of an Offense Carrying a
Mandatory Minimum Penalty Who Were Relieved of the Penalty
Fiscal Year 2010

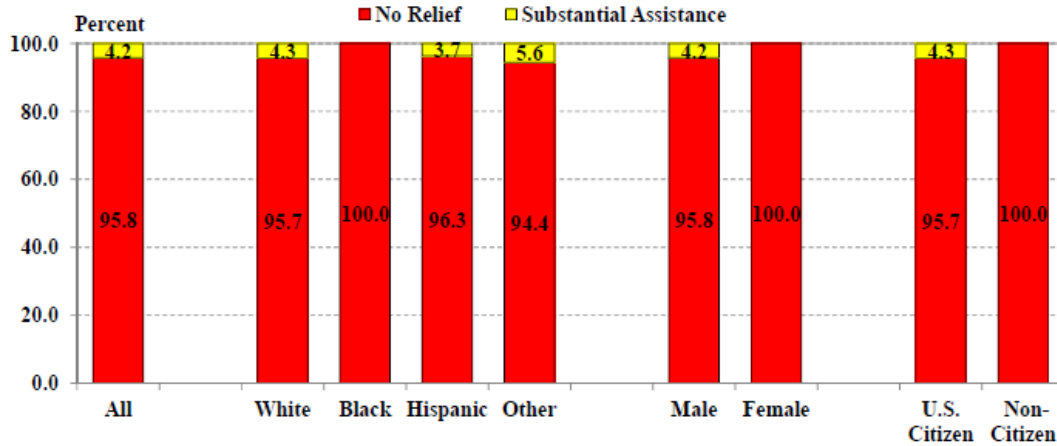


SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10.

The vast majority of the 840 child pornography defendants convicted of an offense carrying a mandatory penalty were White (88.0%, n=739), male (99.4%, n=835), and U.S. citizens (97.9%, n=822). No Black, female, or non-citizen offenders obtained relief from the operation of the mandatory minimum penalties. However, the number of each of those groups of child pornographers was so small that no meaningful conclusions can be drawn about the role of race, gender, or citizenship as it relates to substantial assistance relief.⁷⁷⁴

⁷⁷⁴ In fiscal year 2010, there were 27 Black offenders, 5 female offenders, and 18 non-citizen offenders convicted of a child pornography offense that carried a mandatory minimum sentence.

Figure 10-5
Percent of Child Pornography Offenders Convicted of an Offense Carrying a
Mandatory Minimum Penalty Who Were Relieved of the Penalty
Fiscal Year 2010



SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10.

D. SENTENCING OUTCOMES

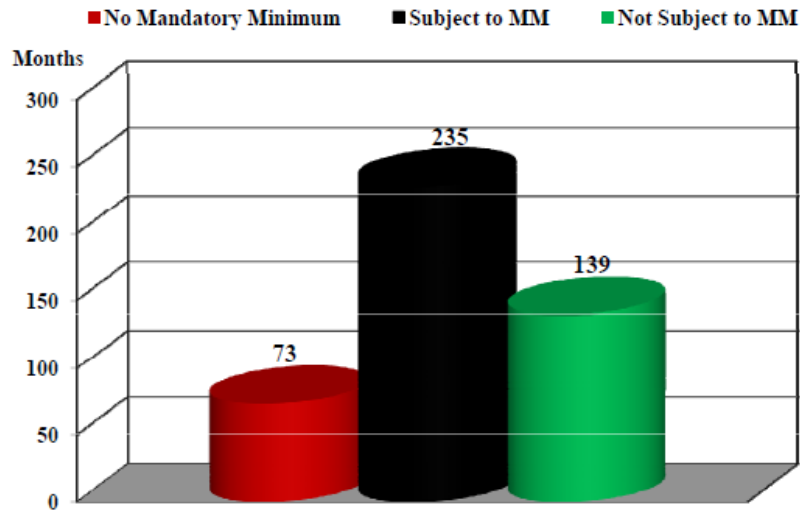
1. *Sentencing Outcomes Generally in Sex Offense Cases*

a. Average sentence length

In considering the effect of mandatory minimum penalties on sentencing outcomes for sex offenders, the Commission compared the average length of sentences imposed on sex offenders not convicted of an offense carrying a mandatory minimum penalty, sex offenders relieved from application of a mandatory minimum penalty because of substantial assistance, and sex offenders who remained subject to the mandatory minimum penalty at sentencing.

An analysis of the length of sentences imposed on each type of sex offender shows that the average sentences were highest for offenders convicted of an offense carrying a mandatory minimum penalty who remained subject to that penalty at sentencing. The average sentence for those sexual abuse offenders who remained subject to a mandatory minimum penalty (235 months) was substantially higher than the average sentence for sexual abuse offenders not convicted of an offense carrying a mandatory minimum penalty (73 months) and sexual abuse offenders relieved from application of a mandatory minimum penalty (139 months). *See* Figure 10-6.

Figure 10-6
Average Sentence Length by Mandatory Minimum Status for Sexual Abuse Offenders
Fiscal Year 2010

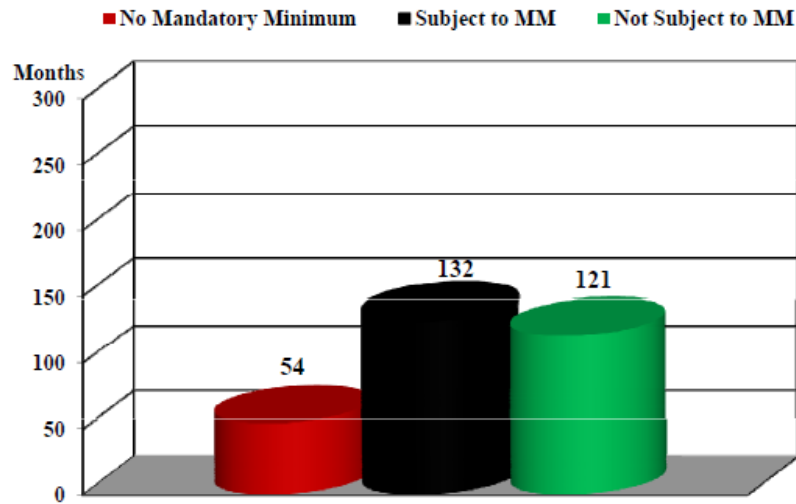


SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10.

The average sentence for those child pornography offenders subject to a mandatory minimum penalty (132 months) was higher than the average sentence for child pornography offenders not convicted of an offense carrying a mandatory minimum penalty (54 months)⁷⁷⁵ and child pornography offenders relieved from application of a mandatory minimum penalty (121 months). See Figure 10-7.

⁷⁷⁵ As noted above, of the 837 child pornography cases involving convictions not carrying a mandatory minimum penalty, 98.1% (821 of 837) were convictions for simple possession of child pornography under 18 U.S.C. §§ 2252(a)(4) or 2252A(a)(5).

Figure 10-7
Average Sentence Length by Mandatory Minimum Status for
Child Pornography Offenders
Fiscal Year 2010



SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10.

b. Sentences relative to the applicable guideline range

Table 10-5 compares the position of the sentence relative to the guideline range in sexual abuse cases. Table 10-5 demonstrates that most sexual abuse offenders are sentenced within the guideline range regardless of whether a mandatory minimum penalty applied. The departure and variance rates were similar when comparing all sexual abuse offenders in the aggregate to the subsets of sexual abuse offenders who were convicted of offenses carrying a mandatory minimum penalty and those who remained subject to the mandatory minimum penalty at sentencing.

Table 10-5
Position Relative to the Guideline Range of Sexual Abuse Offenders
Fiscal Year 2010

	All Offenders	Convicted of an Offense Carrying a Mandatory Minimum Penalty	Relieved of Application of Mandatory Minimum Penalty	Subject to a Mandatory Minimum Penalty at Sentencing
Total (# of offenders)	640	336	14	322
Sentence Relative to the Guideline Range (Percent)				
Within Range	60.2	63.7	0.0	66.5
Above Range	5.9	5.9	0.0	6.2
Substantial Assistance §5K1.1	4.5	4.2	100.0	0.0
Other Government Sponsored (no §5K1.1)	11.6	8.9	0.0	9.3
Other Below Range	17.8	17.3	0.0	18.0

Table 10-6 compares the position of sentences relative to the guideline range of child pornography offenders in the aggregate as well as the child pornography offenders convicted of an offense carrying a mandatory minimum penalty, child pornography offenders relieved from application of a mandatory minimum penalty because of substantial assistance, and child pornography offenders who remained subject to the mandatory minimum penalty at sentencing. As demonstrated in Table 10-6, courts imposed within-range sentences less frequently in child pornography cases compared to sexual abuse cases. Furthermore, the downward departure/variance rate in child pornography cases is higher than the rate in any of the other major offense types.⁷⁷⁶

Table 10-6 also demonstrates that the vast majority of all government-sponsored departures and variances were *not* based on a defendant's substantial assistance to the government. Only 3.0 percent of all child pornography offenders received a departure based on substantial assistance – in contrast to 10.4 percent who received a government-sponsored departure or variance for some other reason.

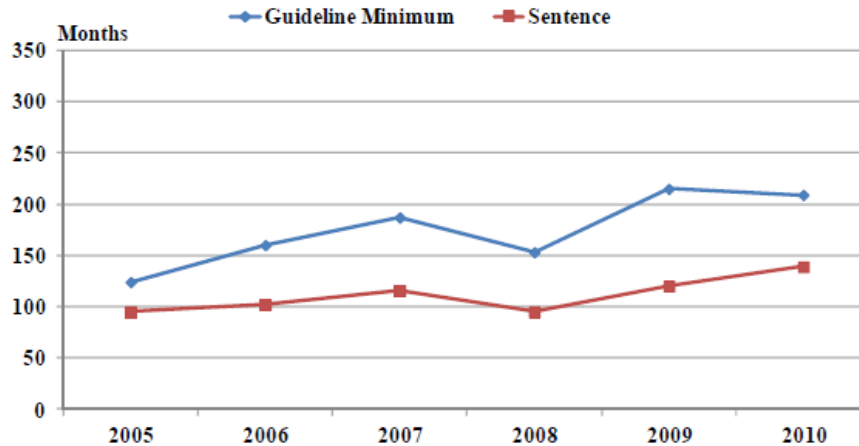
⁷⁷⁶ U.S. SENT'G COMM'N, THE HISTORY OF THE CHILD PORNOGRAPHY GUIDELINES 54 (2009). *See generally* Chapters 8 and 9, *supra*, and Chapter 11, *infra*, for the downward departure/variance rate for the offense types discussed in this report.

Table 10-6
Position Relative to the Guideline Range of Child Pornography Offenders
Fiscal Year 2010

	All Offenders	Convicted of an Offense Carrying a Mandatory Minimum Penalty	Relieved of Application of Mandatory Minimum Penalty	Subject to a Mandatory Minimum Penalty at Sentencing
Total (# of offenders)	1,677	840	35	805
Sentence Relative to the Guideline Range (Percent)				
Within Range	39.8	42.5	0.0	44.4
Above Range	2.0	2.1	0.0	2.2
Substantial Assistance §5K1.1	3.0	4.2	100.0	0.0
Other Government Sponsored (no §5K1.1)	10.4	9.2	0.0	9.7
Other Below Range	44.8	41.9	0.0	43.7

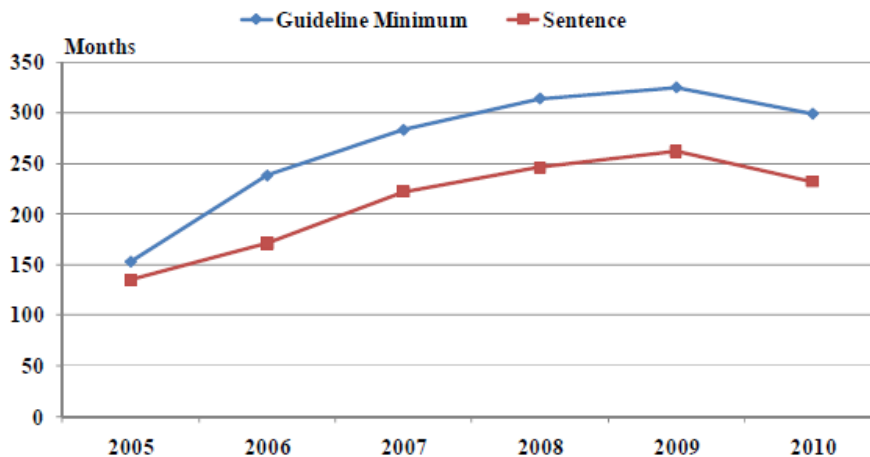
Figures 10-8 and 10-9 show the impact on sentences for sexual abuse offenders from substantial assistance departures and from non-substantial assistance below range sentences. These figures compare the average guideline range minimum to the average sentence imposed on offenders sentenced from fiscal year 2005 to 2010.

Figure 10-8
Average Guideline Minimum and Average Sentence for Offenders Convicted of an Offense
Carrying a Sexual Abuse Mandatory Minimum Penalty
Substantial Assistance Offenders
Fiscal Years 2005 - 2010



SOURCE: U.S. Sentencing Commission 2005 through 2010 Datafile, USSCFY2005– USSCFY2010.

Figure 10-9
Average Guideline Minimum and Average Sentence for Offenders Convicted of an Offense
Carrying a Sexual Abuse Mandatory Minimum Penalty
Non-Substantial Assistance Below Range Offenders
Fiscal Years 2005 - 2010

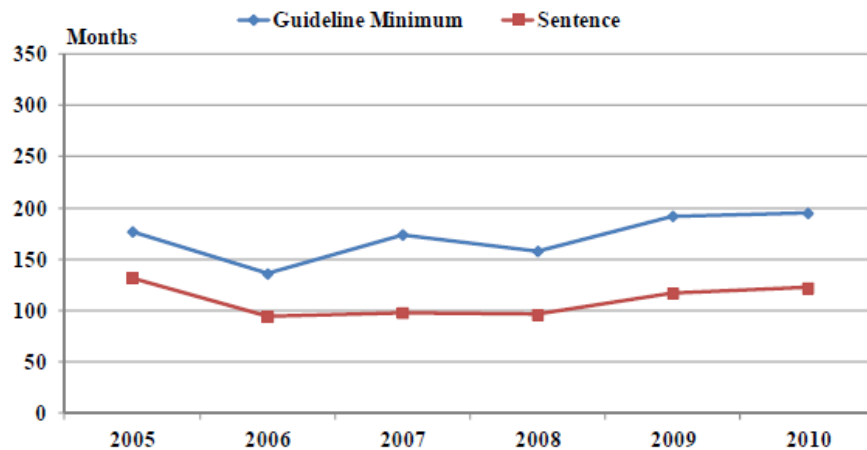


SOURCE: U.S. Sentencing Commission 2005 through 2010 Datafile, USSCFY2005– USSCFY2010.

In fiscal year 2010, the average extent of substantial assistance departures in sexual abuse cases was 35.9 percent (70 months) from the bottom of the otherwise applicable guideline range. In fiscal year 2010, the average extent of non-government sponsored below range sentences (*i.e.*, departures and variances combined) in sexual abuse cases that carried a mandatory minimum penalty was 19.2 percent (59 months) from the bottom of the otherwise applicable guideline range.

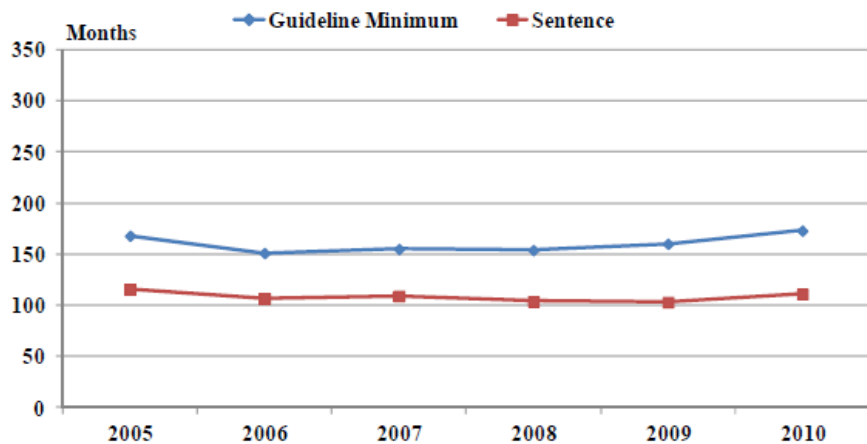
Figures 10-10 and 10-11 show the impact on sentences for child pornography offenders from substantial assistance departures and from non-substantial assistance below range sentences. These figures compare the average guideline range minimum to the average sentence imposed on offenders sentenced from fiscal year 2005 to 2010.

Figure 10-10
Average Guideline Minimum and Average Sentence for Offenders Convicted of an Offense Carrying a Child Pornography Mandatory Minimum Penalty
Substantial Assistance Offenders
Fiscal Years 2005 - 2010



SOURCE: U.S. Sentencing Commission 2005 through 2010 Datafile, USSCFY2005– USSCFY2010.

Figure 10-11
Average Guideline Minimum and Average Sentence for Offenders Convicted of an Offense Carrying a Child Pornography Mandatory Minimum Penalty
Non-Substantial Assistance Below Range Offenders
Fiscal Years 2005 - 2010



SOURCE: U.S. Sentencing Commission 2005 through 2010 Datafile, USSCFY2005– USSCFY2010.

In fiscal year 2010, the average extent of substantial assistance departures in child pornography cases was 31.9 percent (45 months) from the bottom of the otherwise applicable guideline range. In fiscal year 2010, the average extent of non-government sponsored below range sentences (*i.e.*, departures and variances combined) in child pornography cases that carried a mandatory minimum penalty was 36.0 percent (64 months) from the bottom of the otherwise applicable guideline range.

2. *Special Coding Project: Application of Mandatory Minimum Penalties in Child Pornography Cases*

In order to further assess the application of mandatory minimum penalties on child pornography offenders sentenced under USSG §2G2.2 – constituting nearly three out of four federal sex offenders in fiscal year 2010⁷⁷⁷ – the Commission conducted a special coding project of a 20-percent random sample of such cases (336 of 1,669 cases).⁷⁷⁸ That coding project involved an analysis of the charging instrument, judgment and commitment order, presentence report (PSR), and statement of reasons form in each case. The analysis focused on several issues, including two relevant to this report: (1) the nature of the most serious offense of conviction in each case; and (2) whether, in cases in which the sole offense of conviction was simple possession of child pornography, the offense conduct section of PSRs (unless rejected by sentencing courts) involved the offender’s knowing distribution of child pornography to another person.

The Commission is undertaking a broader special coding project of all 1,669 child pornography cases from fiscal year 2010 in which offenders were sentenced under USSG §2G2.2 and will include the results of that analysis in a separate report on child pornography cases that it expects to issue in the coming year. It should be noted that the results of an analysis of a relatively small sample, such as the 20-percent sample studied for this report, should be taken with some degree of caution. The findings of such an analysis are only intended to be preliminary. The findings of an analysis of all 1,669 cases will provide a more accurate empirical description of child pornography cases.

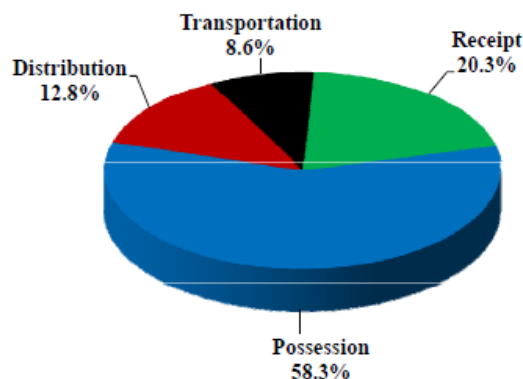
With respect to the first issue, the Commission identified all federal penal statutes under which a conviction resulted in sentencing pursuant to §2G2.2. Those statutes related to child pornography offenses are discussed above. The Commission classified such statutes according

⁷⁷⁷ Of the 2,317 sex offense cases in fiscal year 2010, 72% (n=1,669) were sentenced under USSG §2G2.2. It should be noted that the analyses discussed in the prior portions of this chapter refer to 1,677 child pornography offenders rather than 1,669 offenders. The additional eight offenders were sentenced under the former USSG §2G2.4, which solely applied to offenders convicted of simple possession and which was deleted by consolidation with USSG §2G2.2 on November 1, 2004. *See* USSC App. C, amend. 664. Those eight offenders, although sentenced in fiscal year 2010, committed their offenses before November 1, 2004, and thus were sentenced under the former §2G2.4 to avoid a violation of the *Ex Post Facto* Clause.

⁷⁷⁸ The original analysis included an additional case in which the offender was sentenced under USSG §2G2.2, but where the statute under which the offender was convicted was a federal obscenity statute (prohibiting the distribution of obscenity to a minor) that did not carry a mandatory minimum penalty. The Commission excluded that case from analysis because, although it involved distribution of child pornography and was treated as such under USSG §2G2.2, the offender was not subject to a mandatory minimum penalty.

to the nature of the conduct proscribed; the offense types (in order of most serious to least serious) include distribution, importation, transportation (including shipping and mailing), receipt, possession, and “morphing” offenses. An examination of the charging instrument and judgment and commitment order in each case revealed the most serious offense of conviction.⁷⁷⁹ The results of the Commission’s analysis⁷⁸⁰ are depicted in Figure 10-12. The most serious offense of conviction for the majority (58.3%) of the offenders studied was possession of child pornography.

Figure 10-12
Most Serious Offense of Conviction for Child Pornography Offenders
Fiscal Year 2010 Sample Group



SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10.

The Commission’s special coding project also sought to determine whether there was evidence that offenders convicted of possession who did not face any mandatory minimum penalty⁷⁸¹ could have been convicted and sentenced based on distribution, a more serious child pornography offense carrying a mandatory minimum penalty.⁷⁸² Figure 10-13 compares the

⁷⁷⁹ Occasionally, a particular statutory provision includes two or more offense types in the disjunctive (*e.g.*, receipt or distribution in 18 U.S.C. § 2252(a)(2)), which required the Commission to examine the indictment and judgment and commitment order to determine under which prong of a multi-prong statute the defendant was convicted. If the judgment and commitment order referred to multiple offenses disjunctively in a single count of conviction (*e.g.*, “receipt or distribution”), the less serious offense type was chosen.

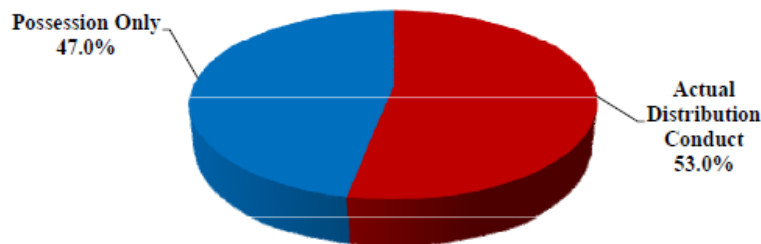
⁷⁸⁰ None of the 336 cases examined involved convictions of importation or morphing offenses.

⁷⁸¹ The 13 offenders convicted of simple possession but who were subject to a ten-year mandatory minimum penalty based on a prior conviction for a sex offense were not included in this analysis. Such offenders are subject to a mandatory minimum ten-year prison term (unless they receive a downward departure based on substantial assistance) and thus differ significantly from first-time sex offenders convicted of simple possession, who face a ten-year maximum penalty.

⁷⁸² An analysis of the offense conduct section of PSRs (except those portions rejected by district courts) in the 183 cases in which offenders were convicted only of possession and who did not receive an enhanced sentence based on a prior conviction for a sex offense revealed that the PSRs typically (but not always) discussed the offense conduct in sufficient detail to determine whether an offender had in fact knowingly distributed child pornography to

percentage of defendants convicted of simple possession who in fact engaged in distribution conduct to the percentage of those who did not. Of the offenders studied, the Commission found that the majority (53.0%) of offenders convicted of only simple possession also engaged in distribution conduct. However, because these offenders were convicted of simple possession, they were not subject to any mandatory minimum penalty.

Figure 10-13
Distribution Conduct Among Offenders Convicted Only of Simple Possession
Fiscal Year 2010 Sample Group



SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10.

The results of this preliminary analysis of a 20-percent sample of child pornography cases suggest that a substantial number of similarly situated offenders are being treated differently under the mandatory minimum penalties applicable to child pornography offenses. Further analysis of this issue will occur in the Commission's comprehensive study of all 1,669 child pornography cases from fiscal year 2010, which will appear in a future report on child pornography offenses. The Commission's comprehensive study of all fiscal year 2010 cases also will examine whether offenders convicted solely of possession also could have been convicted of and sentenced for knowing receipt, which (like distribution but unlike possession) carries a mandatory minimum penalty. The future report also will examine those possession cases with substantial evidence of one or more offenses carrying a mandatory minimum penalty with those possession cases in which no such evidence existed in order to determine whether any material similarities or differences appear in the two types of cases.

another person in violation of 18 U.S.C. §§ 2252(a)(2) or 2252A(a)(2). It should be noted that only those cases in which the offense conduct section of the PSR unequivocally found that the defendant had knowingly distributed child pornography were included in the analysis. Several cases were excluded from the analysis because the PSR mentioned possible distribution (*e.g.*, the defendant used a peer-to-peer file-sharing program) but was unclear whether the defendant *knowingly* distributed. Thus, the percentage of cases in which the Commission found that an offender convicted of possession appeared eligible for prosecution for a distribution offense may be an under-inclusive number.

E. PRISON IMPACT

The number of federal offenders convicted of sex offenses is a small but increasing part of the federal prison population. In 2010, 4.6 percent (8,767 of the 191,757 offenders) in federal prison were sex offenders. Of those 8,767, 52.5 percent (n=4,601) were convicted of an offense carrying a mandatory minimum penalty, 50.4 percent (4,414 of the 8,767) of whom were subject to that penalty at sentencing. In 1995, less than one percent (492 of the 71,972 offenders in federal prison) were sex offenders. Of those 492, 6.5 percent (n=32) were convicted of an offense carrying a mandatory minimum penalty, and all but one of those offenders remained subject to such a penalty at sentencing.

F. SUMMARY

With respect to mandatory minimum penalties and sex offenses, Commission analyses demonstrate the following:

Offenses and Offenders

- In fiscal year 2010, 2,317 (3.2%) offenders were convicted of a sex offense. Of the 2,317 offenders convicted of a sex offense, 640 (27.6%) were convicted of a sexual abuse offense and 1,677 (72.4%) were convicted of a child pornography offense.
- Of the 2,317 offenders convicted of a sex offense, 1,176 (50.8%) were convicted of an offense carrying a mandatory minimum penalty.
- Of the 640 offenders convicted of a sexual abuse offense, 336 (52.5%) were convicted of an offense carrying a mandatory minimum penalty.
 - Among sexual abuse offenders convicted of an offense carrying a mandatory minimum penalty, over three-quarters (76.4%) of the offenders were White, followed by Black (11.9%), Hispanic (8.7%), and Other Race (3.0%) offenders. By comparison, among all offenders convicted of a sexual abuse offense, 55.2 percent were White, followed by Other Race (22.5%), Black (12.5%), and Hispanic (9.7%) offenders.
 - The overwhelming majority of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty (97.9%) were male.
 - United States citizens accounted for 94.9 percent of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty.
- Of the 1,677 offenders convicted of a child pornography offense, 840 (50.1%) were convicted of an offense carrying a mandatory minimum penalty.

- o Among child pornography offenders convicted of an offense carrying a mandatory minimum penalty, 88.2 percent were White, followed by Hispanic (6.4%), Black (3.2%), and Other Race (2.2%) offenders.
- o The overwhelming majority of offenders convicted of a child pornography offense carrying a mandatory minimum penalty (99.4%) were male.
- o United States citizens accounted for 97.9 percent of offenders convicted of a child pornography offense carrying a mandatory minimum penalty.
- No district had more than 50 convictions for sexual abuse offenses. Convictions occurred most often in the Districts of Southern Georgia (n=16, 0.7% of all cases sentenced in the district), Northern New York (n=11, 2.5%), Eastern California (n=10, 1.0%), and Northern Georgia (n=10, 1.5%). These four districts together accounted for 14.0 percent of all federal sexual abuse cases.
- No district had more than 50 convictions for child pornography offenses. Convictions occurred most often in Eastern Virginia (n=39, 3.2% of all cases sentenced in the district), Middle Florida (n=34, 2.0%), Southern Florida (n=30, 1.4%), Southern Indiana (n=28, 8.6%), and Western Texas (n=27, 0.4%). These districts together accounted for 18.8 percent of all child pornography cases.
- The vast majority of sexual abuse and child pornography offenders had no prior criminal record at the time they were sentenced and only a very small percentage were in Criminal History Categories IV through VI.

Application and Relief

- In fiscal year 2010, the trial rate for sexual abuse offenders was 15.2 percent – more than twice the rate for sexual abuse offenders not convicted of an offense carrying a mandatory minimum penalty (6.9%). The trial rate for child pornography offenders convicted of an offense carrying a mandatory minimum penalty was 6.4 percent – four times the rate for child pornography offenders not convicted of an offense carrying a mandatory minimum penalty (1.6%).
- In fiscal year 2010, 4.2 percent of offenders convicted of a sexual abuse or child pornography offense carrying a mandatory minimum penalty were relieved of the mandatory minimum penalty at sentencing pursuant to 18 U.S.C. § 3553(e) because they rendered substantial assistance to the government.
 - o The number of cases is too small to draw any meaningful conclusions about the role of race, gender, or citizenship as it relates to substantial assistance relief in sexual abuse cases.
- Over 60 percent (63.7%) of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty and 42.5 percent of offenders convicted of a child

pornography offense carrying a mandatory minimum penalty were sentenced within the applicable guideline range.

- o Approximately 13 percent of offenders convicted of a sexual abuse or child pornography offense carrying a mandatory minimum penalty received a government sponsored below range sentence (13.1% and 13.4%, respectively).
- o Offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty received a non-government sponsored below range sentence in 17.3 percent of the cases, compared to 41.9 percent of offenders convicted of a child pornography offense carrying a mandatory minimum penalty.
- The average extent of substantial assistance departures in sexual abuse cases was 35.9 percent (70 months) from the bottom of the otherwise applicable guideline range; the average extent of substantial assistance departures in child pornography cases was 31.9 percent (45 months) from the bottom of the otherwise applicable guideline range.
- The average extent of non-government sponsored below range sentences in sexual abuse cases that carried a mandatory minimum penalty was 19.2 percent (59 months) from the bottom of the otherwise applicable guideline range; the average extent of non-government sponsored below range sentences in child pornography cases that carried a mandatory minimum penalty was 36.0 percent (64 months) below the otherwise applicable guideline range.

Sentencing

- In fiscal year 2010, 95.8 percent of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty were subject to the mandatory minimum penalty at sentencing.
- In fiscal year 2010, the rate at which offenders convicted of a sexual abuse offense who were subject to the mandatory minimum penalty at sentencing varied by race, gender and citizenship.
 - o White offenders were subject to the mandatory minimum penalty at sentencing most often, in 97.3 percent of their offenses carrying such a penalty, followed by Hispanic (96.6%) and Other Race (90.0%) offenders. Black offenders were subject to the mandatory minimum penalty at sentencing the least often, in 87.5 percent of their cases.
 - o Male offenders were subject to the mandatory minimum penalty at sentencing more often than female offenders (96.4% of their cases, compared to 71.4% of cases involving female offenders).

- o Non-citizens were subject to the mandatory minimum penalty at sentencing more often than United States citizen offenders (100.0% of their cases, compared to 95.6% of cases involving United States citizen offenders).
- The average sentence for offenders convicted of a sexual abuse offense who were subject to the mandatory minimum penalty (*i.e.*, who did not receive relief for rendering substantial assistance) was 235 months. The average sentence for those offenders who obtained relief from the mandatory minimum penalty was 139 months. The average sentence for offenders convicted of a sexual abuse offense not carrying a mandatory minimum penalty was 73 months.
- In fiscal year 2010, 95.8 percent of offenders convicted of a child pornography offense carrying a mandatory minimum penalty were subject to the mandatory minimum penalty at sentencing.
- In fiscal year 2010, the rate at which offenders convicted of a child pornography offense who were subject to the mandatory minimum penalty at sentencing varied by race, gender and citizenship.
 - o Black offenders were subject to the mandatory minimum penalty at sentencing most often, in 100.0 percent of their offenses carrying such a penalty, followed by Hispanic (96.3%) and White (95.7%) offenders. Other Race offenders were subject to the mandatory minimum penalty at sentencing the least often, in 94.4 percent of their cases.
 - o Female offenders were subject to the mandatory minimum penalty at sentencing more often than male offenders (100.0% of their cases, compared to 95.8% of cases involving male offenders).
 - o Non-citizens were subject to the mandatory minimum penalty at sentencing more often than United States citizen offenders (100.0% of their cases, compared to 95.7% of cases involving United States citizen offenders).
- The average sentence for offenders convicted of a child pornography offense who remained subject to the mandatory minimum penalty (*i.e.*, who did not receive relief for rendering substantial assistance) was 132 months. The average sentence for those offenders who obtained relief from the mandatory minimum penalty was 121 months. The average sentence for offenders convicted of a child pornography offense not carrying a mandatory minimum penalty was 54 months.

Prison Impact

- At the end of fiscal year 2010, 4.6 percent of the offenders in the custody of the Bureau of Prisons were convicted of a sex offense. Of those offenders, 52.2 percent were convicted of an offense carrying a mandatory minimum penalty. The percentage of prisoners convicted of a sex offense has slowly increased over time, rising from less than

one percent in 1995 (of those prisoners, only 6.5 were convicted of an offense carrying a mandatory minimum penalty).

Further Study

- The Commission's special coding project of a 20-percent random sample of child pornography cases indicates that approximately half of offenders convicted of possession (who did not face a mandatory minimum penalty) could have been prosecuted and sentenced for distribution of child pornography, an offense carrying a mandatory minimum penalty.
- The preliminary analysis of data concerning child pornography offenses contained in this report will be followed up by a more comprehensive analysis of child pornography offenses and offenders in a future report issued by the Commission.

