



Federal Sex Offense Penalties

Mandatory Minimum Penalties for Sex Offenses in the Federal Criminal Justice System

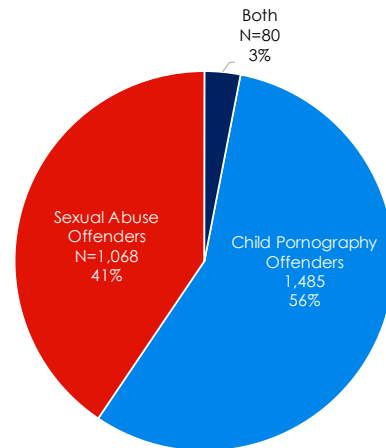
Overview

In January 2019, the Commission issued a report, *Mandatory Minimum Penalties for Sex Offenses in the Federal Criminal Justice System*, highlighting recent trends in the charging of federal sexual abuse¹ and child pornography² offenses. This publication is the sixth and final in a series of new reports building on the Commission's 2011 report to the Congress on mandatory minimum penalties.³ Below are some key findings of the report.

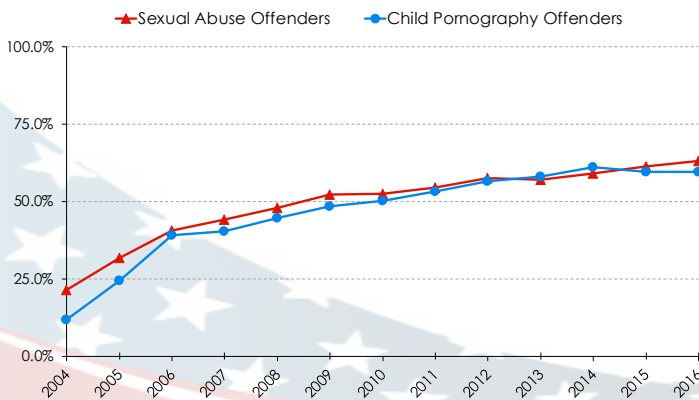
Highlights

- Sex offenders accounted for 4.2% of all federal offenders sentenced in fiscal year 2016. The majority (56.4%, n=1,578) were convicted of a child pornography offense alone, while 40.6 percent (n=1,055) were convicted of a sexual abuse offense alone. The remaining three percent (n=80) were convicted of both types of sex offenses.
- Mandatory minimum penalties apply to sex offenses less often than other offenses in the federal system (19.4% of all offenses carrying a mandatory minimum penalty); however, the percentage of sex offenders convicted of an offense carrying a mandatory minimum penalty has grown since fiscal year 2010 (from 21.4% to 63.2% of sexual abuse offenders, and from 50.2% to 59.6% of child pornography offenders).

**Federal Sex Offenders by Type of Offense
 Fiscal Year 2016
 (N=2,633)**

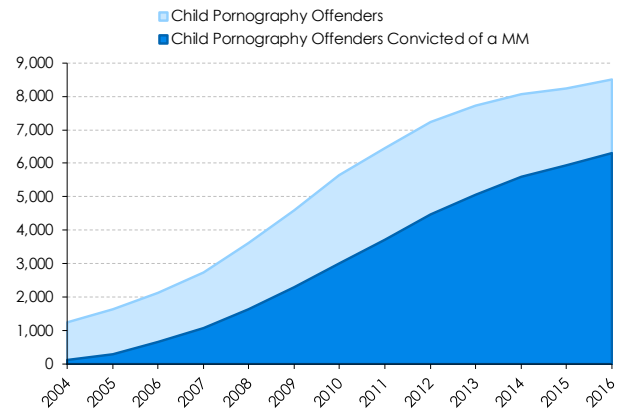
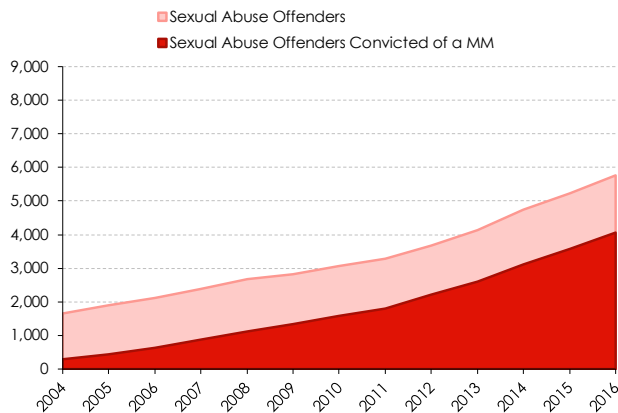


**Federal Sex Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty
 Fiscal Years 2004 - 2016**



- In fiscal year 2016, the average sentence for sexual abuse offenses carrying a mandatory minimum penalty was nearly three times longer than the average sentence for sexual abuse offenses not carrying a mandatory minimum penalty (252 months compared to 86 months).
- Although Commission analysis has demonstrated that there is little meaningful distinction between the conduct involved in receipt offenses and possession offenses,⁴ the average sentence for receipt of child pornography, which carries a five-year mandatory minimum penalty, was substantially longer than the average sentence for possession of child pornography, which carries no mandatory minimum penalty (85 months compared to 55 months).⁵ Average sentences were even longer for distribution of child pornography offenses (140 months).

Sex Offenders in Federal Bureau of Prisons Custody (as of September 30, 2016)



- While sex offenders constituted a relatively small proportion of the Federal Bureau of Prisons (BOP) population (3.5% sexual abuse offenders and 5.1% child pornography offenders), the number of sex offenders in BOP custody has steadily increased, reaching population highs as of September 30, 2016.
- The majority of sexual abuse offenders and child pornography offenders in BOP custody were convicted of an offense carrying a mandatory minimum penalty (over 70% for each group).

U.S. Sentencing Commission's 2011 Recommendations

The Commission's recent reports build on the Commission's previous reports and publications—particularly, its 2011 report. In the 2011 report, the Commission explained that it "stands ready to work with Congress on measures that can be taken to enhance the strength and effectiveness of the current guidelines system and address the problems with certain mandatory minimum penalties."

The Commission also made the following recommendations:

- A strong and effective federal sentencing guidelines system best serves the purposes of the Sentencing Reform Act.⁶
- If Congress decides to exercise its power to direct federal sentencing policy by enacting mandatory minimum penalties, such penalties should: (1) not be excessively severe, (2) be narrowly tailored to apply only to those offenders who warrant such punishment, and (3) be applied consistently.
- Congress should request prison impact analyses from the Commission as early as possible in its legislative process whenever it considers enacting or amending mandatory minimum penalties.

Endnotes

1. Sexual abuse offenses (also called "contact" offenses) involve actual or attempted sexual contact with the victim regardless of the victim's age. These include 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; 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 that are not cross-referenced to the child pornography guidelines.
2. Child pornography offenses include the four primary types of offenses (distribution, transportation, receipt, and possession), which are set forth in Chapter 110 of Title 18 of the United States Code at 18 U.S.C. §§ 2251, 2252, 2252A, 2260 and 18 U.S.C. § 1466A, which prohibits possession, receipt, distribution, and production of "obscene visual representations of the sexual abuse of children." The production of pornography depicting an actual child is considered a "contact" offense.
3. See U.S. SENTENCING COMM'N, REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM, (OCT. 2011).
4. See, e.g., U.S. SENTENCING COMM'N, REPORT TO THE CONGRESS: FEDERAL CHILD PORNOGRAPHY OFFENSES (2012).
5. Receipt offenders with a prior sex offense conviction, who faced a 15-year mandatory minimum, were excluded from this analysis. The Commission compared the average sentence for offenders convicted of a possession offense (without a prior sex offense conviction) with the average sentence for offenders convicted of a receipt offense.
6. Title II, Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473 (1984).

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