

Child Pornography and Sex Offenses

San Diego, CA

May 20, 2011

10:00 am – 11:30

1:00 p.m. – 2:30

U.S. Sentencing Commission

Discussion Outline

- The guideline for traffic, receipt, and possession of child pornography
- Departures/variances in sex offense cases
- Supervised release conditions

Main Sex Offense Guidelines

| | | |
|--------|---------------------------|------------------------------|
| §2A3.1 | 18 U.S.C. § 2241 | Rape |
| §2A3.2 | 18 U.S.C. § 2243 | Stat. Rape |
| §2A3.4 | 18 U.S.C. § 2244 | Sex Abuse |
| §2G1.3 | 18 U.S.C. §§ 2422 & 2423 | Travel |
| §2G2.1 | 18 U.S.C. § 2251 | Production |
| §2G2.2 | 18 U.S.C. §§ 2252 & 2252A | Traffic, Receipt, Possession |

The History of the Child Pornography Guidelines

A document by the Sentencing Commission,
available on the Commission's website:

http://www.ussc.gov/general/20091030_History_Child_Pornography_Guidelines.pdf

§2G2.2 (Trafficking/Receipt/Possession)

- 5-year mandatory minimum for receipt and trafficking offenses (18 U.S.C. § 2252 and 2252A)
- Base offense level:
 - 18 for possession offenses
 - 22 for trafficking or receipt offenses
 - *See U.S. v. Davenport*, 519 F.3d 940 (9th Cir. 2008); *U.S. v. Overton*, 573 F.3d 679 (9th Cir. 2009); and *U.S. v Miller*, 527 F.3d 54 (3d Cir. 2009)

§2G2.2 (Trafficking/Receipt/Possession) (cont.)

- 2-level decrease (§2G2.2(b)(1)) for receipt if no intent to traffic or distribute material
 - Defendant's burden, *See U.S. v. Fore*, 507 F.3d 412 (6th Cir. 2007)

High Frequency of Some §2G2.2 Specific Offense Characteristics (FY 09)

- Minor under 12 (+2 OL) (94.8%)
- Distribution of material (+2 to +7 OL) (37.3%)
- Sadistic/masochistic/depictions of violence (+4 OL) (73.5%)
- Use of a computer (+2 OL) (97.2%)
- Images table (+2 to +5 OL) (96.6%)

§2G2.2(b)(3): Distribution

- Most common increase either 2- or 5- levels
- 5 levels for distribution for receipt/expectation of thing of value, but not pecuniary gain (*e.g.*, trading images)
- File sharing applicable to either 2 or 5 level enhancement(*e.g.*, Limewire)

File Sharing as Basis for Distribution SOC

- *U.S. v. Dyer*, 589 F.3d 250 (1st Cir. 2009)
- *U.S. v. Layton*, 564 F.3d (4th Cir. 2009)
- *U.S. v. Todd*, 100 F. App'x 248 (5th Cir. 2004)
- *U.S. v. Darway*, 255 F. App'x 68 (6th Cir. 2009)
- *U.S. v. Carani*, 492 F.3d 867 (7th Cir. 2007)

File Sharing as Basis for Distribution SOC

- *U.S. v. Durham*, 618 F.3d 921 (8th Cir. 2010)
- *U.S. v. Bastian*, 603 F.3d 460 (8th Cir. 2010)
- *U.S. v. Stults*, 575 F.3d 834 (8th Cir. 2009)
- *U.S. v. Ultsch*, 578 F.3d 827 (8th Cir. 2009)
- *U.S. v. Griffin*, 482 F.3d 1008 (8th Cir. 2007)
- *U.S. v. Geiner*, 498 F.3d 1104 (10th Cir. 2007)
- *U.S. v. Mathenia*, 409 F.3d 1289 (11th Cir. 2005)
- *U.S. v. Peacock*, 403 F. App'x 474 (11th Cir. 2010)

§2G2.2(b)(4): Sadistic/Masochistic/Violence

- If offense involved material that portrays sadistic or masochistic conduct or other depictions of violence increase by 4 levels
- Application Note 2: SOC applies regardless of whether defendant specifically intended to possess, receive, or distribute such materials

§2G2.2(b)(4): Sadistic/Masochistic/Violence (cont.)

- Courts apply broadly - most circuits have per se rule: if image involves something being inserted into young child, the SOC applies
 - *U.S. v. Hoey*, 508 F.3d 687 (1st Cir. 2008)
 - *U.S. v. Freeman*, 578 F.3d 142 (2d Cir. 2009)
 - *U.S. v. Hotaling*, 2011 WL 677398 (2d Cir. 2011)*
 - *U.S. v. Lyckman*, 235 F.3d 234 (5th Cir. 2000)
 - *U.S. v. Groenendal*, 557 F.3d 419 (6th Cir. 2009)
 - *U.S. v. Myers*, 355 F.3d 1040 (7th Cir. 2004)

§2G2.2(b)(4): Sadistic/Masochistic/Violence (cont.)

- Courts apply broadly - most circuits have per se rule: if image involves something being inserted into young child, the SOC applies
 - *U.S. v. Belflower*, 390 F.3d 560 (8th Cir. 2004)
 - *U.S. v. Rearden*, 349 F.3d 608 (9th Cir. 2003)
 - *U.S. v. Holt*, 510 F.3d 1007 (9th Cir. 2008)
 - *U.S. v. Kimler*, 335 F.3d 1132 (10th Cir. 2008)
 - *U.S. v. Hall*, 312 F.3d 1250 (11th Cir. 2002)

§2G2.2(b)(5): Pattern of Activity

- If defendant engaged in pattern of activity involving the sexual abuse or exploitation of a minor, increase by 5 levels

§2G2.2(b)(5): Pattern of Activity (cont.)

- Pattern means any combination of **two or more** separate instances of sexual abuse or sexual exploitation of a minor by the defendant, whether or not the abuse or exploitation occurred
 - during the course of offense
 - involved the same minor, or
 - resulted in a conviction for such conduct
- *See also* §4B1.5 (Repeat/Dangerous Sex Offender)

§2G2.2(b)(5): Pattern of Activity (cont.)

- No time limit on conduct
 - *U.S. v. Woodward*, 277 F.3d 87 (1st Cir. 2002) (25 yrs)
 - *U.S. v. Olfano*, 503 F.3d 240 (3d Cir. 2008)(16 yrs)
 - *U.S. v. Quinn*, 257 F. App'x 864 (6th Cir. 2007) (30 yrs)
 - *U.S. v. Lovaas*, 241 F.3d 900 (7th Cir. 2001) (26 yrs)
 - *U.S. v. Garner*, 490 F.3d 739 (9th Cir. 2007)(35 yrs)
 - *U.S. v. Turner*, 626 F.3d 566 (11th Cir. 2010) (20 yrs)

§2G2.2(b)(5): Pattern of Activity (cont.)

- Can potentially apply to attempts and sting cases
 - *U.S. v. Williams*, 183 F. App'x 246 (3d Cir. 2006)
(attempt)
 - *U.S. v. Morton*, 144 F. App'x 804 (11th Cir. 2005)
(sting)

§2G2.2(b)(7): Images

Number of Images table:

- 10-149 images 2-level increase
- 150-299 3-level increase
- 300-599 4-level increase
- 600 or more 5-level increase

“Images” Instruction

- Application Note 4 contains definition (*See* 18 U.S.C. § 2256(5) and (8))
- Each photo, picture, computer image, or any similar depiction shall be considered to be one image
 - *U.S. v. McNerney*, 2011 WL 691178 (6th Cir. 2011)
 - *U.S. v. Keefer*, 2010 WL 5421344 (6th Cir. 2010)
 - *U.S. v. Sampson*, 606 F.3d 505 (8th Cir. 2010),
 - *U.S. v. Goff*, 501 F.3d 250 (3d Cir. 2007)

“Images” Instruction (cont.)

- Each video, video-clip movie, or similar recording shall be considered to have 75 images

§2G2.2(c)(1) Cross Reference

- If offense involved transporting, permitting or offering, or seeking by notice or advertisement a minor to engage in sexually explicit conduct, for purpose of producing a visual depiction of such conduct, apply §2G2.1 (Production)

§2G2.2(c)(1) Cross Reference (cont.)

- Application Note 5 states that the cross reference is to be construed broadly
 - *U.S. v. Castro-Valenzuela*, 304 F. App'x 986 (3d Cir. 2008)
 - *U.S. v. Long*, 304 F. App'x 982 (3d Cir. 2008)
 - *U.S. v. Shuler*, 598 F.3d 444 (8th Cir. 2010)
 - *U.S. v. Starr*, 533 F.3d 985 (8th Cir. 2008)
 - *U.S. v. Speelman*, 431 F.3d 1226 (9th Cir. 2005)
 - *U.S. v. Huff*, 232 F. App'x 832 (10th Cir. 2007)

Departures and Variances

Congressional Acts Related to Child Pornography Sentencing

- Crime Control Act of 1990 -- (Pub L. 101-647)
- Treasury, Postal Service and General Government Appropriation Act -- 1991 (Pub. L. 102-141)
- Sex Crimes Against Children Prevention Act -- 1995 (Pub. L. 104-71)
- Protection of Children from Sexual Predators Act -- 1998 (Pub. L. 105-314)
- PROTECT Act -- 2003 (Pub. L. 108-21)
- Adam Walsh Act -- 2006 (Pub. L. 109-248)

Below Guideline Sentences Affirmed in Child Pornography Cases

- *U.S. v. Grober*, 624 F.3d 592 (3d Cir. 2010)
 - Receipt of child porn
- *U.S. v. Taylor*, 280 F. App'x 397 (5th Cir. 2008)
 - Receipt of child porn
- *U.S. v. Rowan*, 530 F.3d 379 (5th Cir. 2008)
 - Possession of child porn
- *U.S. v. Duhon*, 541 F.3d 391 (5th Cir. 2008)
 - Possession of child porn

Below Guideline Sentences
Affirmed in Child Porn Cases (cont.)

- *U.S. v. Stall*, 581 F.3d 276 (6th Cir. 2009)
 - Possession of child porn
- *U.S. v. Beach*, 275 F. App'x 529 (6th Cir. 2008)
 - Transporting child porn
- *U.S. v. Grossman*, 513 F.3d 592 (6th Cir. 2008)
 - Possession of child porn
- *U.S. v. Autery*, 555 F.3d 864 (9th Cir. 2009)
 - Possession of child porn
- *U.S. v. Huckins*, 529 F.3d 1312 (10th Cir. 2008)
 - Possession of child porn

Below Guideline Sentences Remanded in Child Porn

- *U.S. v. DeSilva*, 613 F.3d 352 (2d Cir. 2010)
 - Receipt of child porn
- *U.S. v. Lychock*, 578 F.3d 214 (3d Cir. 2009)
 - Possession of child porn
- *U.S. v. Olhovsky*, 562 F.3d 530 (3d Cir. 2009)
 - Possession of child porn below range remanded upon defendant appeal
- *U.S. v. Goff*, 501 F.3d 250 (3d Cir. 2007)
 - Possession of child porn

Below Guideline Sentences Remanded in Child Porn (cont.)

- *U.S. v. Morace*, 594 F.3d 340 (4th Cir. 2010)
 - Possession of child porn
- *U.S. v. Christman*, 607 F.3d 1110 (6th Cir. 2010)
 - Possession of child porn
- *U.S. v. Camiscione*, 591 F.3d 823 (6th Cir. 2010)
 - Possession of child porn
- *U.S. v. Harris*, 339 F. App'x 533 (6th Cir. 2009)
 - Possession/distribution of child porn
- *U.S. v. Kane*, 552 F.3d 748 (8th Cir. 2008)
 - Sexual abuse below range

Below Guideline Sentences Remanded in Child Porn (cont.)

- *U.S. v. Pugh*, 515 F.3d 1179 (11th Cir. 2008)
 - Possession of child porn below range remanded
- *U.S. v. Irey*, 612 F.3d 1160 (11th Cir. 2010)
 - Production of child porn below range remanded

Above Guideline Sentences Affirmed in Child Porn

- *U.S. v. Martinucci*, 561 F.3d 533 (2d Cir. 2009)
- *U.S. v. McGowan*, 315 F. App'x 338 (2d Cir. 2009)
- *U.S. v. Larkin*, 629 F.3d 177 (3d Cir. 2010)
- *U.S. v. King*, 604 F.3d 125 (3d Cir. 2010)
- *U.S. v. Whorley*, 550 F.3d 326 (4th Cir. 2008)
- *U.S. v. McGehee*, 261 F. App'x 771 (5th Cir. 2008)
- *U.S. v. Sprague*, 2010 WL 1140994 (6th Cir. 2010)

Above Guideline Sentences Affirmed in Child Porn

- *U.S. v. Angle*, 598 F.3d 352 (7th Cir. 2010)
- *U.S. v. Garnette*, 474 F.3d 1057 (8th Cir. 2007)
- *U.S. v. Gnavi*, 474 F.3d 532 (8th Cir. 2007)
- *U.S. v. Vanderwerfhorst*, 576 F.3d 929 (9th Cir. 2009)
- *U.S. v. Horsfall*, 552 F.3d 1275 (11th Cir. 2008)
- *U.S. v. Puente*, 267 F. App'x 863 (11th Cir. 2008)

Other Remands in Child Porn

- *U.S. v. Dorvee*, 604 F.3d 84 (2d Cir. 2010)
 - Distribution of child porn —“within guideline range” sentence remanded
- *U.S. v. Shay*, 2011 WL 1261577 (2d Cir. 2011).
- *U.S. v. Cossey*, 632 F.3d 82 (2d Cir. 2011)

Restitution Issues in Sex Offenses

- Restitution to victims for a defendant convicted of possession or receipt of child pornography
 - *In re: Amy Unknown*, 2011 WL 988882 (5th Cir. 2011)
 - *U.S. v. McDaniel*, 631 F.3d 1204 (11th Cir. 2011)
 - *U.S. v. Baxter*, 394 F. App'x 377 (9th Cir. 2011)

Restitution Issues in Sex Offenses

- Restitution to victims can include anticipated future costs of psychological treatment
 - *U.S. v. Johnson*, 400 F.3d 187 (4th Cir. 2005) (restitution to treatment center), *but see* *U.S. v. Follett*, 269 F.3d 996 (9th Cir. 2001)
 - *U.S. v. Danser*, 270 F.3d 451 (7th Cir. 2001)
 - *U.S. v. Laney*, 189 F.3d 954 (9th Cir. 1999)
 - *U.S. v. Doe*, 488 F.3d 1154 (9th Cir. 2007)
 - *U.S. v. Julian*, 242 F.3d 1245 (10th Cir. 2001)

Child Sex Crimes and Supervised Release

Supervised Release Statutes and Guidelines

- 18 U.S.C. § 3583(k): The authorized term for most sex offenses is 5 years to life
- §§5D1.1 - 5D1.3 – Supervised Release Terms and Conditions
- §5D1.2(b): If instant offense of conviction is sex offense, statutory maximum term of supervised release is recommended

Term of Supervised Release

- Supervised release term can be imposed for life
 - *U.S. v. Hayes*, 445 F.3d 536 (2d Cir. 2006)
 - *U.S. v. Proctor*, 281 F. App'x 72 (3d Cir. 2008)
 - *U.S. v. Hayes*, 2010 WL 5065991 (4th Cir. 2010)
 - *U.S. v. Gonzalez*, 445 F.3d 815 (5th Cir. 2006)
 - *U.S. v. Burnette*, 2011 WL 915707 (6th Cir. 2011)
 - *U.S. v. Cope*, 506 F.3d 908 (9th Cir. 2007)
 - *U.S. v. Williams*, 2011 WL 768082 (9th Cir. 2011)
 - *U.S. v. Daniels*, 541 F.3d 915 (9th Cir. 2008)
 - *U.S. v. Moriarty*, 429 F.3d 1012 (11th Cir. 2005)
 - *But see U.S. v. Miller*, 594 F.3d 172 (3d Cir. 2010)

18 U.S.C. § 3583(d)

Conditions of Supervised Release

- Must be reasonably related to 18 U.S.C. § 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D)
- Cannot involve greater deprivation of liberty than is reasonably necessary to achieve the goals of (a)(2)(B), (a)(2)(C), and (a)(2)(D)

18 U.S.C. § 3583(d) (cont.)

Conditions of Supervised Release

- Specifically states that if an offender is required to register under SORNA, the court shall order compliance with SORNA requirements

Notice Requirement

- *U.S. v. Moran*, 573 F.3d 1132 (11th Cir. 2009) (district court was not required to notify defendant before it imposed special conditions to address his proclivity for sexual misconduct)
- *U.S. v. Wise*, 391 F.3d 1027 (9th Cir. 2004) (where a condition of supervised release is not on the list of mandatory or discretionary conditions in guidelines, notice is required before it is imposed)

Notice Requirement (cont.)

- *U.S. v. Cope*, 527 F.3d 944 (9th Cir. 2007) (court has discretion as to form or timing of notice, but court cannot announce the sentence and conditions and only afterward provide defendant an opportunity to object - here, remand was necessary because court failed to provide notice)

Not Convicted of a “Sex Offense”

- Courts have upheld the imposition of —sex offense” conditions even if the instant offense of conviction is not a sex offense
 - *U.S. v. Sebastian*, 2010 WL 2794371 (1st Cir. 2010)
 - *U.S. v. Vinson*, 147 F. App’x 763 (10th Cir. 2005)
 - *U.S. v. Ross*, 475 F.3d 871 (7th Cir. 2007)
 - *U.S. v. Perkins*, 207 F. App’x 559 (6th Cir. 2006)
 - *U.S. v. Smart*, 472 F.3d 556 (8th Cir. 2006)
 - *U.S. v. Miles*, 2010 WL 4948961 (10th Cir. 2010)
 - *But see U.S. v. Carter*, 463 F.3d 526 (6th Cir. 2006)
(condition not reasonably related to defendant’s criminal history)

Specific Conditions of Supervised Release for Sex Offenders

Restriction on Computer and Internet Use

- Complete ban upheld
 - *U.S. v. Paul*, 274 F.3d 155 (5th Cir. 2001)
 - *U.S. v. Mark*, 425 F.3d 505 (8th Cir. 2005)
- Restrict use with USPO approval
 - *U.S. v. Johnson*, 446 F.3d 272 (2^d Cir. 2006)
 - *U.S. v. Crandon*, 173 F.3d 122 (3rd Cir. 1999)
 - *U.S. v. Demers*, 2011 WL 520838 (8th Cir. 2011)
 - *U.S. v. Boston*, 494 F.3d 660 (8th Cir. 2007)
 - *U.S. v. Rearden*, 349 F.3d 608 (9th Cir. 2003)
 - *U.S. v. Walser*, 275 F.3d 981 (10th Cir. 2001)
 - *U.S. v. Zinn*, 321 F.3d 1084 (11th Cir. 2003)

Restriction on Computer and Internet Use (cont.)

- Total ban prohibited
 - *U.S. v. Perazza-Mercado*, 553 F.3d 65 (1st Cir. 2009)
(at least where Internet was not used to commit offense)
 - *U.S. v. Sofsky*, 287 F.3d 122 (2^d Cir. 2002)
 - *U.S. v. Freeman*, 316 F.3d 386 (3rd Cir. 2003)
 - *U.S. v. Voekler*, 489 F.3d 139 (3^d Cir. 2007)
 - *U.S. v. Holm*, 326 F.3d 872 (7th Cir. 2003)
 - *U.S. v. Wiedower*, 634 F.3d 490 (8th Cir. 2011)
 - *U.S. v. Crume*, 422 F.3d 728 (8th Cir. 2005)
 - *U.S. v. Sales*, 476 F.3d 732 (9th Cir. 2007)
 - *U.S. v. White*, 244 F.3d 1199 (10th Cir. 2001)
 - *U.S. v. Russell*, 600 F.3d 631 (D.C. Cir. 2010)

No Contact with Minors

- *U.S. v. Roy*, 438 F.3d 140 (1st Cir. 2006)
- *U.S. v. Johnson*, 446 F.3d 272 (2d Cir. 2006)
- *U.S. v. Proctor*, 281 F. App'x 72 (3d Cir. 2008)
- *U.S. v. Loy*, 237 F.3d 251 (3d Cir. 2001)
(upholding condition that def. have no unsupervised contact with minors)
- *U.S. v. Voelker*, 489 F.3d 139 (3d Cir. 2007)(lacked clarity—remand)
- *U.S. v. Paul*, 274 F.3d 155 (5th Cir. 2001)
(affirmed prohibition on contact with minors)
- *U.S. v. Demers*, 2011 WL 520838 (8th Cir. 2011)
- *U.S. v. Koch*, 625 F.3d 470 (8th Cir. 2011)

No Contact with Minors (cont.)

- *U.S. v. Levering*, 441 F.3d 566 (8th Cir. 2006) (affirmed cond.)
- *U.S. v. Mark*, 425 F.3d 505 (8th Cir. 2005) (only with P.O. approval)
- *U.S. v. Davis*, 452 F.3d 991 (8th Cir. 2006) (no evidence that defendant had sexually abused a child so condition restricting access to daughter not reasonably related)
- *U.S. v. Bee*, 162 F.3d 1232 (9th Cir. 1998) (def. cannot have contact with children under 18 unless approved by P.O.)
- *U.S. v. Blinkinshop*, 2010 WL 2105181 (9th Cir. 2010)(remand)
- *U.S. v. Stoterau*, 524 F.3d 988 (9th Cir. 2008)
- *U.S. v. Mike*, 632 F.3d 686 (10th Cir. 2011)
- *See also U.S. v. Morgan*, 44 F. App'x 881 (10th Cir. 2008) (defendant must report unauthorized contact with minors)⁴⁷

Cannot Frequent Places Frequented by Children

- *U.S. v. Paul*, 274 F.3d 155 (5th Cir. 2001) (def. must avoid places, areas, and establishments frequented by minors)
- *U.S. v. Kerr*, 472 F.3d 517 (8th Cir. 2006) (has to get permission of probation officer)
- *U.S. v. Ristine*, 335 F.3d 692 (8th Cir. 2003) (same)
- *U.S. v. Rearden*, 349 F.3d 608 (9th Cir.) 2003 (def. cannot loiter w/in 100 feet of area frequented by children)

Cannot Frequent Places Frequented by Children (cont.)

- *U.S. v. Lindblad*, 254 F. App'x 647 (9th Cir. 2007)
- *U.S. v. Zinn*, 321 F.3d 1084 (11th Cir. 2003)
(same)
- *U.S. v. Macmillen*, 544 F.3d 71 (2d Cir. 2008)

Cannot Reside Near Places Frequented by Children

- *U.S. v. Peterson*, 248 F.3d 79 (2d. Cir. 2001)
(condition barring def. from school, park, etc.
where children likely to congregate too vague *see*
also, U.S. v. Raftopoulos, 254 F. App'x 829 (2d
Cir. 2007)
- *U.S. v. Guagliardo*, 278 F.3d 868 (9th Cir. 2002)
(condition that def. not reside in close proximity to
places frequented by children too vague;
remanded to specify precise distance limitation)

Polygraph Condition Allowed

- *U.S. v. Roy*, 438 F.3d 140 (1st Cir. 2006)
- *U.S. v. Johnson*, 446 F.3d 272 (2^d Cir. 2006)
- *U.S. v. Kosteniuk*, 251 F. App'x 97 (3^d Cir. 2007)
- *U.S. v. Lee*, 315 F.3d 206 (3^d Cir. 2003)
- *U.S. v. Dotson*, 324 F.3d 256 (4th Cir. 2003)
- *U.S. v. Locke*, 482 F.3d 764 (5th Cir. 2007)
- *U.S. v Sines*, 303 F.3d 793 (7th Cir. 2002)
- *U.S. v. Stoterau*, 524 F.3d 988 (9th Cir. 2008)
- *U.S. v. Begay*, 631 F.3d 1168 (10th Cir. 2011)
- *U.S. v. Zinn*, 321 F.3d 1084 (11th Cir. 2003)

Participate in Mental Health or Sex Treatment Program

- *U.S. v. Prochner*, 417 F.3d 54 (1st Cir. 2005)
- *U.S. v. Miller*, 594 F.3d 172 (3d Cir. 2010)
- *U.S. v. Lopez*, 258 F.3d 1053 (9th Cir. 2001)
- *U.S. v. Stoterau*, 524 F.3d 988 (9th Cir. 2008)
- *U.S. v. Morgan*, 44 F. App'x 881 (10th Cir. 2008)
- *U.S. v. Zinn*, 321 F.3d 1084 (11th Cir. 2003)

Ban on Possession of Sexually Explicit Materials

- *U.S. v. Perazza-Mercado*, 553 F.3d 65 (1st Cir. 2009) (too broad)
- *U.S. v. Voelker*, 489 F.3d 139 (3rd Cir. 2007) (too broad without explanation for prohibiting any materials depicting/describing “sexually explicit conduct”)
- *U.S. v. Armel*, 585 F.3d 182 (4th Cir. 2009) (more explanation needed)
- *U.S. v. Boston*, 494 F.3d 660 (8th Cir. 2007) (acceptable conditions)

Ban on Possession of Sexually Explicit Materials (cont.)

- *U.S. v. Demers*, 2011 WL 520838 (8th Cir. 2011)
- *U.S. v. Wiedower*, 634 F.3d 490 (8th Cir. 2011)
- *U.S. v. Stoterau*, 524 F.3d 988 (9th Cir. 2008)
- *U.S. v. Guagliardo*, 278 F.3d 868 (9th Cir. 2002)
(blanket prohibition of pornography overbroad)
- 18 U.S.C. § 2256(2)(A)(i)-(v)
- *U.S. v. Mike*, 632 F.3d 686 (10th Cir. 2011)
(acceptable)

Other Conditions

- **Penile Plethysmograph**
 - *U.S. v. Dotson*, 324 F.3d 256 (4th Cir. 2003)
(acceptable condition)
 - *U.S. v. Weber*, 451 F.3d 552 (9th Cir. 2006)
(court must make individualized finding before ordering as a condition)
 - *U.S. v. Morgan*, 44 F. App'x 881 (10th Cir. 2002)
(possibly)
 - *U.S. v. Mike*, 632 F.3d 686 (10th Cir. 2011)

Other Conditions (cont.)

- **Abel Test**
 - *U.S. v. Stoterau*, 524 F.3d 988 (9th Cir. 2008))
- **Prescribed Medication**
 - *U.S. v. Cope*, 527 F.3d 944 (9th Cir. 2008) (court must make individualized finding)
 - *U.S. v. Mike*, 632 F.3d 686 (10th Cir. 2011)(acceptable)

Occupational Restrictions

§5F1.5

- Court can impose supervised release condition prohibiting defendant from engaging in specified occupation, business, or profession under certain conditions
 - *U.S. v. Prochner*, 417 F.3d 54 (1st Cir. 2005)
 - *U.S. v. Gill*, 523 F.3d 107 (2^d Cir. 2008)
 - *U.S. v. Weber*, 186 F. App'x 751 (9th Cir. 2006)
 - *U.S. v. Mike*, 632 F.3d 686 (10th Cir. 2011)