

**OUTLINE BY
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I will deal primarily with my experiences in the District of South Dakota involving child pornography and other sexual abuse of children. We have 9 Indian reservations in South Dakota and we are a non-public law 280 state which means that serious reservation crimes come to federal court. We have a substantial number of contact sex offenses against children. The off-the-reservation sex offenses are usually child pornography cases. We have a significant number of child pornography cases primarily as a result of new investigative techniques.

It is our experience in our District that in child sexual abuse cases the sentencing guidelines are usually appropriate. There are also child victims in each child pornography case, but the level of victimization sometimes is different than in sexual abuse cases. Usually our child sexual abuse cases involve a family member or someone else living in the home, and the abuse is usually repeated instances. There is no question about a cycle of abuse that gets manifested in our sexual abuse cases. The victims in turn offend and the cycle goes on. For a recognition and discussion of the problems presented, *see U.S. v. Miner*, 131 F.3d 1271, 1274-5 (8th Cir. 1997). “Over the last ten years at least forty convictions for sexual abuse of children or young adults, involving Native Americans, in the United States District Court for the District of South Dakota have been appealed to this court. [footnote to cases omitted] Of that number, at least twenty-five represented instances in which children or young adults were abused by a father or another family member.” And the sexual abuse continues, *Hubbeling v. U.S.*, 288 F.3d 363, 368 (8th Cir. 2002), (Judge Heaney concurring and citing twenty-two subsequent appeals from sexual abuse cases in the District of South Dakota.)

In comparing sexual abuse cases to child pornography cases, "There is scant research on the criminal histories and later offending of child pornography offenders. Research data reveal that child pornography offenders with prior criminal records are significantly more likely to offend in various ways (general, violent, sexual)." Dr. John Fabian, *"To Catch a Predator, and Then Commit Him for Life, Sexual Offender Risk Assessment,"* The Champion, Vol. XXXIII, No. 2, March 2009, pp. 32-44 at 41.

I have sentenced a significant number of Defendants for child pornography offenses. In determining where to sentence within the guidelines or whether to have a variance, and if so, how much of a variance, I try, among various considerations, to determine the likelihood of both the Defendant re-offending with child pornography as well as offending with sexual abuse of a minor. In many other types of criminal cases we have a criminal history and other information that allows us to make a reasonable prediction for sentencing purposes of the likelihood of re-offending. However, in child pornography cases the Defendants often have no criminal record or other predictors of re-offending. In addition, in child pornography cases there is not much literature that is of assistance in considering the likelihood of past and subsequent hands-on sexual abuse by a child pornography Defendant. The literature on re-offending by child pornography offenders is limited and not always consistent. I gathered much of the literature in *United States v. Kevin Clent Houston*, 2010 WL 4986480, D.S.D., October 7, 2010 (No. CR 10-40001), a copy of which is attached. The case also discusses some conflicting views between circuits.