

Child Pornography and Sex Offenses

Outline

- Selected sex offense guidelines
- 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

Mandatory Minimum Statutory Scheme for Child Porn Offenses

Possession		Receipt/Distribution/ Transportation		Production		Obscenity	
1 st Time Offender	Recidivist*	1 st Time Offender	Recidivist*	1 st Time Offender	Recidivist*	1466A	Other
No MM/ 10Y Max.	10Y MM/ 20Y Max.	5Y MM/ 20Y Max.	15Y MM/ 40Y Max.	15 Y MM/ 30Y Max.	25Y MM/ 50 Max.	Same penalties as CP offenses	No MM/ 5Y or 10Y Max.

* Sections 2252(b) and 2252A(b) both provide for a single "layer" of enhancements for possession and receipt/distribution/transportation recidivists, no matter how many priors (unlike production offenses, which have two layers of recidivist enhancements).

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

- 5-year mandatory minimum for receipt and trafficking offenses (18 U.S.C. § 2252 and 2252A)
- Base offense level depends on offense of conviction:
 - 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 to prove this
 - *U.S. v. Fore*, 507 F.3d 412 (6th Cir. 2007)
 - *U.S. v. Burgess*, 576 F.3d 1078 (10th Cir. 2009)

§2G2.2

Specific Offense Characteristics

- (b)(2) Pre-pubescent minor or minor under the age of 12. (+2): **96.3%**
- (b)(3) Distribution: (Total of (A)-(F) = **41.6%**)
 - To a minor or distribution for pecuniary or other gain. (+5): **19.7%**
 - Other distribution. (+2): **21.1%**
- (b)(4) Sadism, masochism, or other depictions of violence. (+4): **74.2%**

§2G2.2

Specific Offense Characteristics (Cont.)

- (b)(5) Pattern of activity. (+5): **10.2%**
- (b)(6) Use of computer. (+2): **96.3%**
- (b)(7) Number of images (Total of (A)-(D) = **96.8%**):
 - 10-149 (+2): **11.6%**
 - 150-299 (+3): **8.4%**
 - 300-599 (+4): **9.4%**
 - 600+ (+5): **67.4%**

§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 enhancement normally either 2 or 5 levels (*e.g.*, Limewire)

File Sharing as Basis for Distribution SOC

- *U.S. v. Layton*, 564 F.3d 330 (4th Cir. 2009)(+2)
- *U.S. v. Onken*, 440 F. App'x 304 (5th Cir. 2011)(+5)
- *U.S. v. Hardin*, 2011 WL 4036090 (6th Cir. 2009)(+5)
- *U.S. v. Darway*, 255 F. App'x 68 (6th Cir. 2007)(+2)
- *U.S. v. Carani*, 492 F.3d 867 (7th Cir. 2007)(+2)
- *U.S. v. Durham*, 618 F.3d 921 (8th Cir. 2010)(none)
- *U.S. v. Ultsch*, 578 F.3d 827 (8th Cir. 2009)(+5)
- *U.S. v. Griffin*, 482 F.3d 1008 (8th Cir. 2007)(+5)
- *U.S. v. Geiner*, 498 F.3d 1104 (10th Cir. 2007)(+5)
- *U.S. v. DuFran*, 430 F. App'x 855 (11th Cir. 2011)(+2)
- *U.S. v. Gaughran*, 429 F. App'x 877 (11th Cir. 2011)(+5)
- *U.S. v. Spriggs*, 2012 WL 48016 (11th Cir. 2012) (none)

§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
 - Can include morphed images (*U.S. v. Hotaling*, 634 F.3d 725 (2d Cir. 2011))
- Application Note 2: SOC applies regardless of whether defendant specifically intended to possess, receive, or distribute such materials
 - *See U.S. v. Maurer*, 639 F.3d 72 (3d Cir. 2011)

§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 (2^d Cir. 2009)
 - *U.S. v. Maurer*, 639 F.3d 72 (3^d 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. 2007)
 - *U.S. v. Kimler*, 335 F.3d 1132 (10th Cir. 2003)
 - *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
 - can be unidentified, generalized individual (attempts)
 - *See U.S. v. Strieper*, 666 F.3d 288 (4th Cir. 2012)
- *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) (27 yrs)
 - *U.S. v. Olfano*, 503 F.3d 240 (3^d Cir. 2007) (16 yrs)
 - *U.S. v. Bacon*, 646 F.3d 218 (5th Cir. 2011) (30 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)(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 one image
 - *U.S. v. McNerney*, 636 F.3d 772 (6th Cir. 2011) (duplicate digital images should be counted separately)

“Images” Instruction (cont.)

- Each video, video-clip movie, or similar recording shall be considered to have 75 images
- Thumbnail images created by video editing process when videos reviewed and edited could be considered to determine images
 - *U.S. v. Nissen*, 2012 WL 204539 (8th Cir. 2012)

§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. Caudill*, 427 F. App'x 301 (5th Cir. 2011)
 - *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)

“Policy disagreement” or “lack of empirical evidence” argument in child porn cases

- *U.S. v Dorvee*, 616 F.3d 174 (2d Cir. 2010)
- *U.S. v Tutty*, 612 F.3d 128 (2d Cir. 2010)
- *U.S. v Henderson*, 649 F.3d 955 (9th Cir. 2011)
- *U.S. v Grober*, 624 F.3d 592 (3d Cir. 2010)
 - But see
- *U.S. v Bistline*, 2012 WL 34265 (6th Cir. 2012)
- *U.S. v Miller*, 2011 WL 6160220 (5th Cir. 2011)
- *U.S. v Pugh*, 515 F.3d 1179 (11th Cir. 2008)

“Sentencing Memos”

U.S. v Bistline, 665 F.3d 758 (6th Cir. 2012)

“We also note the following facts about *Stall*:

‘the government submitted a cursory, two-page memorandum’ in support of its proposed sentence, 581 F.3d at 280,

‘the government did not cite a single case in either its Sentencing Memorandum or at the sentencing hearing[,]’ *id.* at 283, and

‘the government at sentencing put forward almost no evidence for why a sentence within the Guidelines was warranted and did not raise the same cogent arguments it presents only on appeal,’ *id.* at 278.”

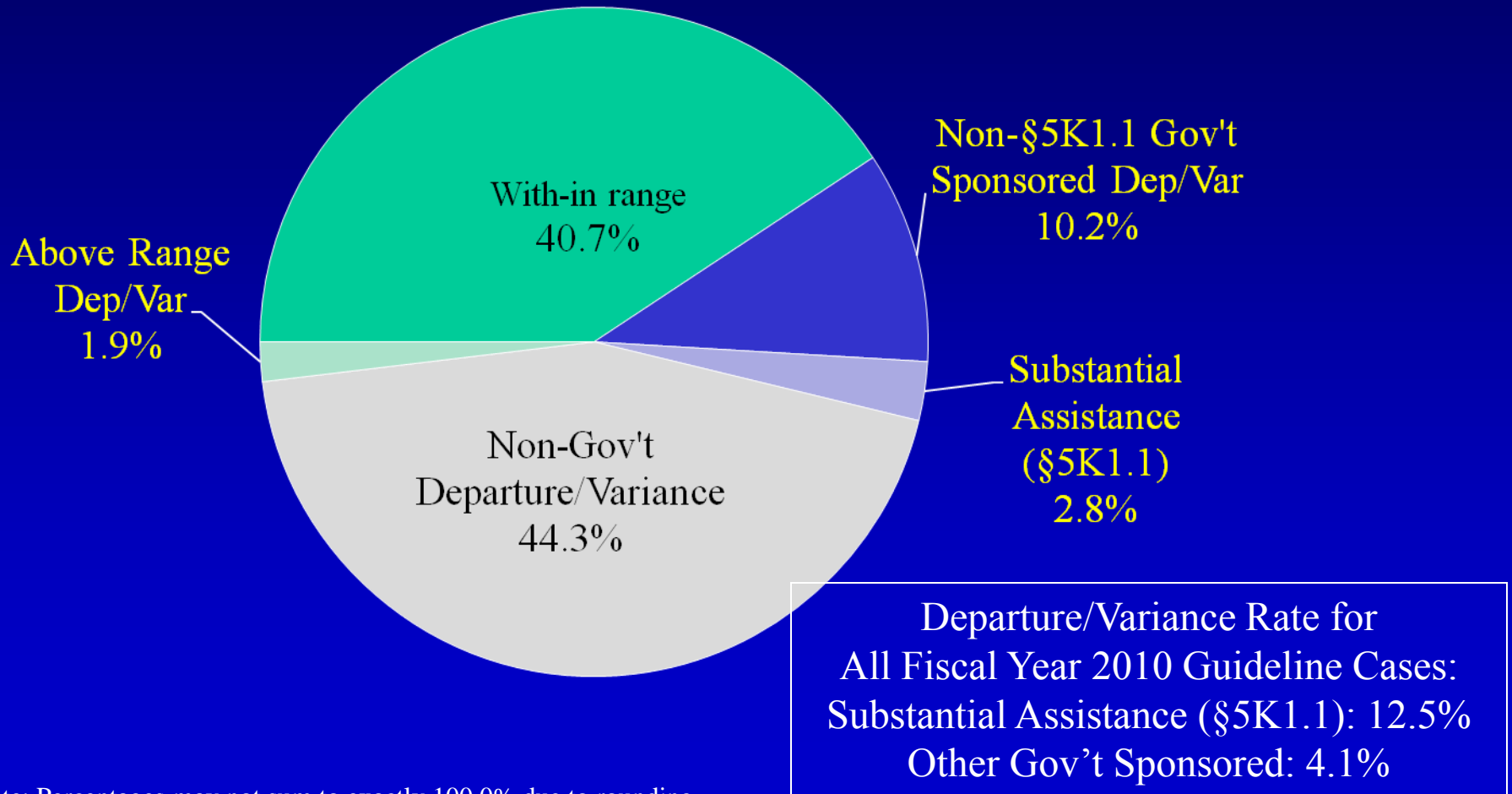
“Sentencing Memos” (cont.)

U.S. v Bistline, 665 F.3d 758 (6th Cir. 2012)

“The contrast here could hardly be more stark: the government submitted a detailed memorandum in support of its proposed sentence before the first sentencing hearing, submitted yet another after that hearing, presented extensive argument and evidence at both hearings, and objected on the spot to the court's announcement of sentence with a recitation of reasons that were virtually an outline of its arguments on appeal.”

Departures and Variances

Departures and Variances (N=1,654)



Note: Percentages may not sum to exactly 100.0% due to rounding.
SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10.

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. Goff*, 501 F.3d 250 (3d Cir. 2007)
 - Possession of child porn
- *U.S. v. Morace*, 594 F.3d 340 (4th Cir. 2010)
 - Possession of child porn

Below Guideline Sentences Remanded in Child Porn

- *U.S. v. Robinson*, 669 F.3d 767 (6th Cir. 2011)
 - Possession of child porn
- *U.S. v. Bistline*, 665 F.3d 758 (6th Cir. 2012)
 - 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

Below Guideline Sentences Remanded in Child Porn (cont.)

- *U.S. v. Kane*, 639 F.3d 1121 (8th Cir. 2011)
 - Aggravated sexual abuse
- *U.S. v. Pugh*, 515 F.3d 1179 (11th Cir. 2008)
 - Possession of child porn below range remanded
- *U.S. v. Irej*, 612 F.3d 1160 (11th Cir. 2010)
 - Production of child porn below range remanded
- *U.S. v. Olhovsky*, 562 F.3d 530 (3d Cir. 2009)
 - Possession of child porn below range remanded upon defendant appeal

Sixth Circuit Below Guideline Sentences Affirmed in Child Pornography Cases

- *U.S. v. Richards*, 659 F.3d 527 (6th Cir. 2011)
 - Production and possession
- *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

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. Rowan*, 530 F.3d 379 (5th 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
- *U.S. v. Duhon*, 541 F.3d 391 (5th Cir. 2008)
 - Possession of child porn

Above Guideline Sentences Affirmed in Child Porn

- *U.S. v. Gilmore*, 599 F.3d 160 (2d Cir. 2010)
- *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)

Restitution

Restitution Issues in Sex Offenses

- Restitution to a victim for a defendant convicted of possession/receipt/trafficking of child porn
 - *U.S. v. Kearney*, 672 F.3d 81 (1st Cir. 2012)
 - *U.S. v. Aumais*, 656 F.3d 147 (2d Cir. 2011)
 - *U.S. v. Wright*, 639 F.3d 679 (5th Cir. 2011)
 - *U.S. v. Kennedy*, 643 F.3d 1251 (9th Cir. 2011)
 - *U.S. v. Baxter*, 394 F. App'x 377 (9th Cir. 2011)
 - *U.S. v. McDaniel*, 631 F.3d 1204 (11th Cir. 2011)
 - *U.S. v. Monzel*, 641 F.3d 528 (D.C. Cir. 2011)

Restitution Issues in Sex Offenses (cont.)

- Restitution to victims can include anticipated future costs of psychological treatment
 - *U.S. v. Pearson*, 570 F.3d 480 (2d Cir. 2009)
 - *U.S. v. Johnson*, 400 F.3d 187 (4th Cir. 2005)
(restitution to treatment center)
 - *U.S. v. Danser*, 270 F.3d 451 (7th Cir. 2001)
 - *U.S. v. Palmer*, 643 F.3d 1060 (8th Cir. 2011)
 - *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*, 404 F. App'x 753 (4th Cir. 2010)
 - *U.S. v. Gonzalez*, 445 F.3d 815 (5th Cir. 2006)
 - *U.S. v. Burnette*, 414 F. App'x 795 (6th Cir. 2011)
 - *U.S. v. Inman*, 666 F.3d 1001 (6th Cir. 2012) (court did not explain why it imposed a life term of supervised release)

Term of Supervised Release

- Supervised release term can be imposed for life
 - *U.S. v. Cope*, 527 F.3d 944 (9th Cir. 2008)
 - *U.S. v. Williams*, 636 F.3d 1229 (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)
 - *U.S. v. Russell*, 600 F.3d 631 (D.C. 2010) (30 years)
 - *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. Rivera-Maldonado*, 560 F.3d 16 (1st Cir. 2009) (failure to inform the defendant that he faced a possible life term of supervised release was plain error)
- *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. 2008) (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. Perkins*, 207 F. App’x 559 (6th Cir. 2006)
 - *But see U.S. v. Carter*, 463 F.3d 526 (6th Cir. 2006)
(condition not reasonably related to def. criminal history)
 - *U.S. v. Sebastian*, 612 F.3d 47 (1st Cir. 2010)
 - *U.S. v. Dupes*, 513 F.3d 338 (2d Cir. 2008)
 - *U.S. v. Ross*, 475 F.3d 871 (7th Cir. 2007)
 - *U.S. v. Smart*, 472 F.3d 556 (8th Cir. 2006)
 - *U.S. v. Vinson*, 147 F. App’x 763 (10th Cir. 2005)
 - *U.S. v. Miles*, 411 F. App’x 126 (10th Cir. 2010)

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 (2d Cir. 2006)
 - *U.S. v. Crandon*, 173 F.3d 122 (3d Cir. 1999)
 - *U.S. v. Phillips*, 370 F. App'x 610 (6th Cir. 2011)
 - *U.S. v. Demers*, 634 F.3d 982 (8th Cir. 2011)
 - *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)
 - *U.S. v. Love*, 593 F.3d 1 (D.C. 2010)

Restriction on Computer and Internet Use (cont.)

- Total ban prohibited
 - *U.S. v. Lantz*, 443 F. App'x 135 (6th Cir. 2011)
 - *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 (2d Cir. 2002)
 - *U.S. v. Freeman*, 316 F.3d 386 (3d Cir. 2003)
 - *U.S. v. Voekler*, 489 F.3d 139 (3d 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*, 634 F.3d 982 (8th Cir. 2011)
- *U.S. v. Koch*, 625 F.3d 470 (8th Cir. 2010)

No Contact with Minors (cont.)

- *U.S. v. Levering*, 441 F.3d 566 (8th Cir. 2006)
- *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 child under 18 unless approved by P.O.)
- *U.S. v. Blinkinshop*, 606 F.3d 1110 (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. 2002) (defendant must report unauthorized contact with minors)
- *U.S. v. Love*, 593 F.3d 1 (D.C. 2010) (upheld)

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)
- *U.S. v. Zinn*, 321 F.3d 1084 (11th Cir. 2003) (same)

Cannot Reside Near Places Frequented by Children

- *U.S. v. Macmillen*, 544 F.3d 71 (2d Cir. 2008)
- *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 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. Teeple*, 447 F. App'x 712 (6th Cir. 2012)
- *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. 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. Teeple*, 447 F. App'x 712 (6th Cir. 2012)
- *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. 2002)
- *U.S. v. Zinn*, 321 F.3d 1084 (11th Cir. 2003)

Ban on Possession of Sexually Explicit Materials

- *U.S. v. Lantz*, 443 F. App'x 135 (6th Cir. 2011)
 - ban on material that “depicts or alludes to sexual activity” is certainly overly broad.
 - ban on any material depicts minors under 18 too broad because not limited to child porn

Other Conditions

- Penile Plethysmograph
 - *U.S. v. Lee*, 502 F.3d 447 (6th Cir. 2007) (not ripe for review yet)
 - *U.S. v. Warner*, 399 F. App'x 88 (6th Cir. 2010) (not ripe for review yet)
 - *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)

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)
(need to make specific finding)

Articles Regarding Child Pornography

- *The History of the Child Pornography Guidelines*, United States Sentencing Commission
 - http://www.ussc.gov/general/20091030_History_Child_Pornography_Guidelines.pdf
- *Deconstructing the Myth of Careful Study: A Primer on the Flawed Progression of the Child Pornography Guidelines*, Troy Stabenow
 - http://www.fd.org/pdf_lib/child%20porn%20july%20revision.pdf
- *Response to a “Reluctant Rebellion,”* Department of Justice
 - <http://www.justice.gov/criminal/ceos/ReluctantRebellionResponse.pdf>