

United States Sentencing Commission

One Columbus Circle, NE Suite 2-500

South Lobby

Washington, DC 20002-8002

Attention: Public Affairs Priorities Comment

June 7, 2012

Dear Sir or Madam;

I am writing in response to the U.S. Sentencing Commission's recent request for input on the sentencing guidelines for possession of child pornography.

I am requesting your aid in working to have these punitive and ineffective laws changed to reflect sanity, fairness, and the constitutional goals set down by our country's forefathers.

These laws are especially punitive to first time, non-contact offenders, with no prior offenses of any kind. I make this request based on the following:

1. Empirical research shows no cause and effect between possession of child pornography and hands-on offending.
2. Judicial consent: 71% of Federal Judges express concern regarding mandatory minimum sentences.
3. An analysis and compilation of studies show a zero to very low (0% to .013%) risk factor for committing a hands-on offense.
4. Recommendation to Congress for statutory changes to guidelines and recognition by legislators that the Internet has complicated the traditional distinctions between possession, receipt, and distribution upon which many statutory schemes are built.
5. Analysis of the annual cost of housing a federal inmate.

I would suggest and request that mandatory sentencing guidelines be modified to reflect the following:

- a. Restructure the punitive sentencing guidelines for first-time offenders
- b. Removal of lifetime or extended supervised release conditions and replaced with treatment noted above.
- c. Modify guidelines to include treatment for those who possess child pornography that is different from those who create child pornography.
- d. Examine and use actuarial risk assessments that will address the profile of those who are charged with possession of child pornography.

I should like to add comments regarding my personal experience with these horrendous laws. [REDACTED] [REDACTED] has been charged with this offense and a plea bargain of eight years in federal prison has been presented by the prosecuting attorney. She stated to our attorney that she believes he would molest a child although there is no evidence to warrant that accusation. I am not sure what qualifies her to

judge. Her degree is in law, not psychology. Further, [REDACTED] had never before been charged with any crime, served his country honorably in the United States Navy for twenty-eight years, worked as a corrections deputy for the Sheriff's Department for over sixteen years and was injured on duty. He was medically retired after surgery and a determination that his injury would be permanent. It took two years and a lawyer to determine his status with the County.

I am aware that you have recently received testimony from Richard Wollert, PhD stating that there is no connection between viewing child pornography and hands-on molestation, and that offenders who have no prior offense are very unlikely to be a danger to society. Several judges (e.g. the late Judge Weinert), attorneys (e.g. Deirdre vanDornum), and mental health professionals (e.g. Wollert, Seto, Stabenow) have suggested that treatment, not incarceration is often sufficient. It is well known that recidivism among these men is practically nonexistent.

I am enraged by the fact that, through research and support groups, I have personally had contact with four wives of men convicted of hands-on molestation (two of them over a period of years) of granddaughters and step-daughters, and none of these men received prison sentences. Only Probation and mandated treatment. Furthermore, they will not be on the public registry to restrict further emotional harm to their victims. This is a travesty!!!

I do not know what might be done to convince our legislators to stop using 1.)the pretense that they are "saving our children" and 2.)the fear and ignorance of the general public to further their careers. They do not seem to care that this is done at the expense of men (who made a huge mistake in judgment, but are not a threat to anyone) and their families. This is also at the expense of the taxpayers who are paying for useless punishment and supervision.

Thank you for allowing and considering outside input on this issue. There has been much written by persons in many different professions expressing concern over the continued addition of new and ever harsher laws relating to sex offenses. It is my hope that the fear and hysteria driving the public, and the ambition driving our lawmakers can be curtailed soon before more lives are severely damaged.

Sincerely,



Kathleen Garner

[REDACTED]

[REDACTED]

[REDACTED]

Thank you for taking the time to hear our views on the current Child Pornography enhancements. I believe that the enhancements for these charges are outdated and are being applied in ways that are giving first time offenders longer sentences than are justified. For me, I received 20 years incarceration, life on supervised release and a \$10,000 fine for sending one photo across the internet. The way the enhancements are applied I was automatically given nearly every one related to my charge pushing me up from 5 years to 20. It is common to state cases of actual hands-on molestation of a child for a person to get less than a year incarceration or probation only. 20 years incarceration for a computer file versus probation only for actually molesting a child makes no sense to me. There is a huge disconnect between what the states are doing and what the feds are doing. I was a police officer and firefighter for a number of years. I made a single mistake and did something I should not have but I think two decades in prison and life on supervised release is overkill for a few clicks on the computer.

Thank you again for your time,

Jesse Ward

Members of the Commission,

Thank you for the opportunity to provide comments. My comments are related to the sentencing on child pornography.

I would like you to consider bringing the sentencing guidelines related to child pornography within a level that would be considered "punishment that fits the crime".

I believe that the current guidelines have an emotional connection based on the sexual content verses an appropriate level for the crime. If comparing child pornography to illegal drug it would show the same processes of similarity based on creating, distributing, and possessing. The argument could be made at this time that drugs involve and harm more children (including crack babies), than child pornography. Please don't misunderstand; I am not advocating the crime or punishment of the crime.

There are different sentences for producing and distributing drugs than there are for possession of drugs. There is no grouping to assume that one who possesses a drug is held responsible for those that produce and distribute. This responsibility has been placed on those that possess child pornography. It is said that if no one possessed the material (child pornography), then there would be no reason to produce or distribute (supply and demand). You could also say that in association with drug users (possessors), but they are not required to assume that responsibility within the courts and sentencing levels. There are papers that indicate that a victim of child pornography is continued to be victimized based on a continuing image. The question arises – is that the responsibility of the distributor and not the possessor?


I am sure that you are aware, but just wanted to point out a few of areas that seem to inconsistent within the sentencing guidelines in comparison to the punishment fitting the crime.

- A person that is convicted of distribution of drugs base level sentencing with 20 G of Heroin or less than 40,000 Schedule I drugs is the same as the base level of a person possessing child pornography. If a person has more than 10 images, there is a 2 point increase. Whereas a person can distribute 39,999 Schedule I drugs and have a small base line penalty. Even if only 10% of that distribution is to someone under the age of 18, that is still almost 4,000.
- If you were drunk and purposely got behind the wheel of a car and killed a child (involuntary manslaughter), the baseline sentencing is less (by 6 points) of a person have less than 10 images.
- If a person committed aggravated assault using a child, the baseline is the same as a person that has less than 10 images.

I would also like to address the sentencing of requiring Sex Offenders to be listed on a registry. Why would there be a limitation on just sex offenders? For public safety, shouldn't we publically publish anyone that 1) has committed a violent crime and 2) has a higher rate of recidivism? If the answer to this is no, I would ask the commission to consider whether the registry has any value to public safety in its current form? Does the list of names of children or a person that has been prosecuted for indecent exposure really provide any public safety information to anyone? Are these truly sexual predators?

In closing, I believe the existing guidelines have evolved based on 1) fear and anger and 2) what looks better for a re-election verses does it make sense. I do understand that there is a message trying to be sent, but having 1 in 4 American citizens either in prison or have been in prison indicates that we have lost reasonability in our court systems overall and have lost perspective in relation to child pornography specifically. Having over 750,000 individuals on the Sex Offender Registry has negated any intentions of its effectiveness in relation to public safety and has become a financial nightmare for the states.

Thank you,


Cecelia Wray

Members of the U.S. Sentencing Commission,

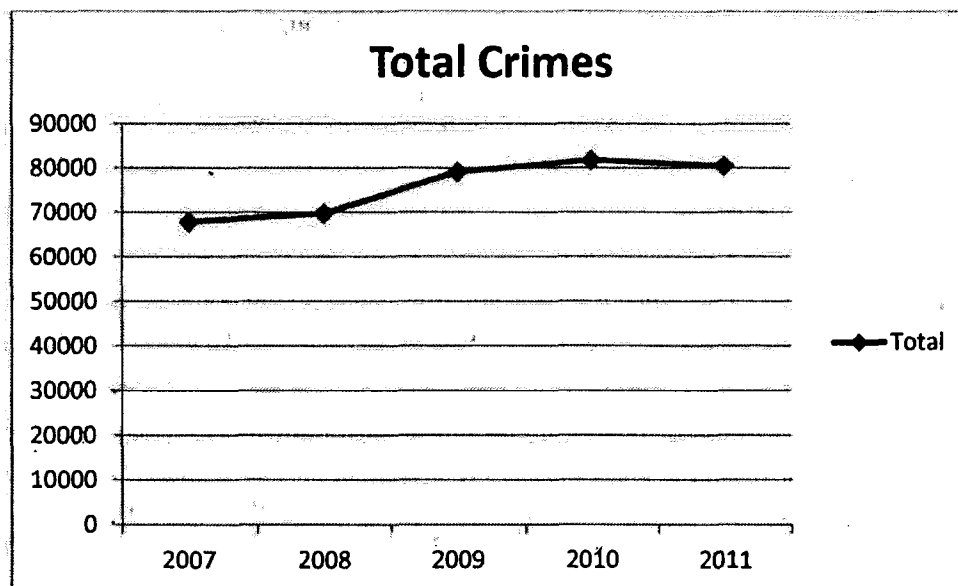
“What You Are Is Not Necessarily What You Will Be When” was a motivational video by Morris Massey that came out in the late 1970s. The thing that I remember most about this video is that he said what would change a person’s behavior is a “significant emotional impact”. Given the rate of recidivism in this country prison time it is not the impact or the underlying reason to change a person’s behavior. Nor does it seem increasing the penalties of prison terms.

The U.S. Sentencing Commission was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. The sentencing guidelines established by the Commission are designed to:

- **incorporate the purposes of sentencing (i.e., just punishment, deterrence, incapacitation, and rehabilitation);**
- **provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating and mitigating factors;**
- **reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.**

The Commission is charged with the ongoing responsibilities of evaluating the effects of the sentencing guidelines on the criminal justice system, recommending to Congress appropriate modifications of substantive criminal law and sentencing procedures, and establishing a research and development program on sentencing issues.

In the first mission of the U.S. Sentencing Commission (USSC) it states, just punishment, deterrence, incapacitation, and rehabilitation. Based on number of convicted individuals, the current and past guidelines for prison time does not seem a deterrent to others to commit crimes. The graph below shows a steady increase of those committing crimes.



I believe the primary focus of the USSC at this point has been just punishment for outlining the base plus additional factors as it related to prison time. Perhaps it is time to focus on deterrence and rehabilitation.

Overall for the US, we spend approximately \$74 billion dollars a year in prisons. Per capita have more individuals in jail than any other country in the world. Both of those should send a message that we are not doing something correctly. The USSC should consider that sentencing contains something other than jail time. We are supposed to be one of the most progressive countries in the world and we have barely changed our methods of affecting the criminal population with just punishment. I can say that we no longer cut off the hand of thieves, but beyond that we practice the same method of just punishment since the invention of a prison. Prisons are spoken about in the bible, and yet the concept of locking someone up for a crime remains the same.

The concept of intervention has been focused on to prevent crimes. Although, I believe this does provide something to the country or we would have even more criminals. However we do little to alter the behavior once a person has committed a crime. In fact once that has happened in some cases this country almost sets a person up to almost ensure that a repeat offense will happen. I would like to use as an example the most recent conviction of Jerry Sandusky. Immediately following there was a flurry of news stories about imposing more stringent restraints on sex offenders. Specifically, a story in Pennsylvania they talk about distance restrictions on registered sex offenders and bus stops. In the initial data that was released for fiscal year 2012, there were 181 sex crimes committed and 137 were failure to register. Once again I think there is a message here in the just punishment. Notice that the distance restriction relates to sex offenders, not sexual predators. I also do not believe that Mr. Sandusky choose any of his victims at a bus stop. The Sex Offender Registry has been used as launch for many political election campaigns. If the term in the sentencing guidelines were change to the Sexual Predatory Registry it may be a bit more effective. Something the USSC may want to consider:

- One study, by J.J. Prescott of the University of Michigan and Johan Rockoff of Columbia University, found that requiring sex offenders to register with police may significantly reduce the chances that they will re-offend. However the research also finds that making that same registry information available to the broader public may backfire, leading to higher overall rates of sex crime.
- Another study by University of Chicago Ph.D. student Amanda Agan finds no evidence that sex offender registries are at all effective in increasing public safety.
- A report by Sarah Tofte of Human Rights Watch, a pressure group, found that at least five states required men to register if they were caught visiting prostitutes. At least 13 required it for urinating in public (in two of which, only if a child was present). No fewer than 29 states required registration for teenagers who had consensual sex with another teenager. And 32 states registered flashers and streakers. Because so many offences require registration, the number of registered sex offenders in America has exploded.
- The Georgia Sex Offender Registration Review Board, an official body, assessed a sample of offenders on the registry last year and concluded that 65% of them posed little threat. Another 30% were potentially threatening, and 5% were clearly dangerous.

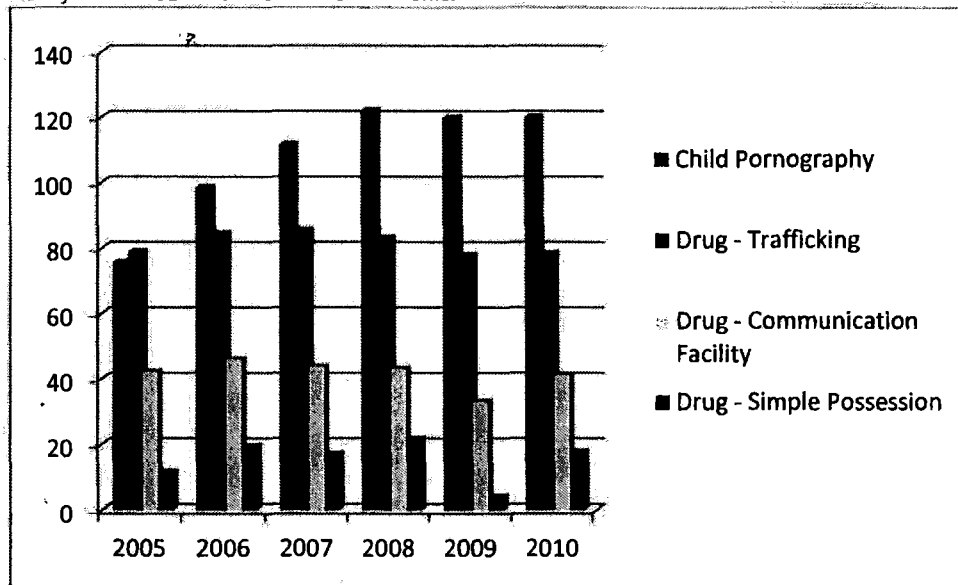
It states "provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating and mitigating factors" There will always be aggravating and mitigating factors since there is no person that mimics another. As an example, recently in Florida there were two cases of possession of Child Pornography. One was sentences to life in prison with no parole and the other one year and one day. Once again this lends itself

to considering alternates to prison time. Would it not be better to examine the root cause and start addressing the common causes that lead a person to prison time?

Lastly, I would like to specifically address the sentencing guidelines related to child pornography and do a comparison with drug crimes. It is a given in this comparison that the victims of child pornography are children.

- Drug crimes and Child Pornography crimes have the similarities of; producing, distributing, and possessing.
- Drugs are proven addictive, it has not been proven that child pornography is addictive.
- There are an estimated 30,000 – 40,000 crack babies born every year
- A study conducted by Project Harmony indicated that of the 929 children studied, 44% of them tested positive for illegal drugs. The average age was 3 years old.
- California studies show that there is a 30% recidivism rate related to illegal drugs compared to a 5.4% rate for sex offenders.
- The average rate of prison time for the worst drug crimes was 72-84 months. The average prison time for child pornography was 120 months.

In the following graph, it shows clearly that drug crimes are broken into three major areas. In these areas it is clear that the punishment is related to level of crime. For example, possession does not have the same punishment level as trafficking. Whereas with child pornography, all levels of the crime are treated the same. This infers that a possessor has the same responsibility for child pornography as one who would produce it. Although clearly drugs are much more damaging and harm more children, the possessors is not sentenced at the same level of one that produces showing that in the case of child pornography the punishment does not fit the crime. It appears that the guidelines are being determined based on emotional factors verses just punishment. Please see Attachment A, an article written by Maggie McNeill, writer of The Honest Courtesan.



In the cases of child-pornography, I would urge the USSC to split the crimes into separate levels that compare to the drug sentencing. That would accomplish two things:

- Make the just punishment better fit the crime
- Decrease the overpopulation issue with our prison system.

I would also urge the USSC not to continue down the same path of just punishment meaning a prison term. I don't have the answer of what that should mean, however, dedicating some funding for a study that would come up with alternative possibilities would appear to be a good decision. This country has to be more progressive or we will be spending more money on prisons than we do on education.

Thank you,

Cecelia Wray
Cecelia Wray



July 7, 2012

Sandra Grigsby
[REDACTED]
[REDACTED]
[REDACTED]

United States Sentencing Commission
Attn: Public Affairs - Priorities Comment
One Columbus Ave, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

RE: [REDACTED]

Dear Judge Saris:

I am writing to you on behalf of [REDACTED] who is currently an inmate at FCI Texarkana in Texas. I am hoping your Commission will change the child pornography sentencing. [REDACTED] received 17 ½ years for just looking at pictures. He was arrested September 11, 2008. He was sentenced on March 5, 2009 on One count of receipt of child pornography which is a felony. He had a lawyer that took \$25,000 and never helped [REDACTED] one time. He was committed to the custody of the Bureau of Prisons to be imprisoned for a total term of Two Hundred Ten Months which is 17 ½ years for receipt. This was decided in United States District Court - Eastern District of Virginia - by [REDACTED]. Case Number [REDACTED]. We were heart broken with this severe sentence. This was his first offense and he is not a violent person. He kept saying he ask for regular porn from Limewire but, got something he did not ask for and for this his life is ruined. He is not a pedifile but, is treated like one.

I am sending you a article from CBS 13 news report in Sacramento, California that was done by reporter Kim Pickel . This article tells about the 22 year old man using Limewire (a file sharing application) which [REDACTED] also used. Only this young man only had to serve 3 years in prison unlike [REDACTED]. [REDACTED] kept saying he never ask for any child pornography just like this boy Matt White did. [REDACTED] ask for pictures of girls his own age and was not sent that he said. This is happening to other people besides [REDACTED]. 17 ½ years for something he did not even ask for but, because he had it in his possession he was deemed guilty. Someone has to look into this Limewire and stop them from sending things people don't ask for because it can get them put in prison. There must be

a way to take a lie detector test on people or better check computers to find out just what people truly ask for from Limewire. [REDACTED]'s address is [REDACTED]
[REDACTED]

Now I want to tell you about [REDACTED]. He has never hurt anyone. He is forty one years old. He was in the United States Air Force during Dessert Storm for four years and after he was honorable discharged from there, he was in the reserves for two years. He worked on the electronics for air planes. Then [REDACTED] got his hand crushed in a 3000 lbs press machine at his job a few years ago. He has limited use of his left hand. A nerve was crushed in his hand. He was left alone when the accident happened and had to use a hammer to get his own hand out of the machine which now causes him to have Post Traumatic Stress Disorder. He developed CRPS II (complex regional pain syndrome) and R.S.D(reflex sympathetic dystrophy) and since the accident he has always gone to a pain management doctor for this and had to have pain medications, nerve blocks, injections and physical therapy for the pain. His pain doctor was [REDACTED] in Williamsburg, Va. He diagnosed [REDACTED] with CRPS II and R.S.D. He also gets depressed. At one point he was deemed disable by Social Security and received benefits. He went back to E.C.P.I and worked his way to a degree in computers to help him get a job. [REDACTED] worked at [REDACTED] at Langley Air Force Base .

[REDACTED] has lost his job, his home and his life is ruined. [REDACTED] is a good person. He has Never been in any trouble with the law. He worked his way through college. The Judge said the defendant shall receive all medical care and medications necessary for the proper treatment of his medical conditions, which he has not received. He has had medications but, not enough to help with his pain and at times has not received it at all. She also stated that the defendant shall further his education by obtaining his college degree. They have none of this at Texarkana FCI, Texas. He was placed in cells in jail and now in prison with violent offenders. He has the use of one good hand. In jail he was beaten up three times and left with a scar on his forehead from seven stitches and he was strangled once. The inmate that strangled him was never charged . Now in Texarkana prison he was repeatedly kicked while trying to work in the kitchen to earn some money. He says he never fought back he just told a guard. He can't fight back with one hand. He wears a brace on that hand. I have written the Warden, The Bureau of Prisons, The Director of Bureau of Prisons and the Medical Director of the Bureau of Prisons to try to get him transferred to a low security medical prison to get the proper medical help and to be closer to home. My husband and I are elderly and can only fly to Texas once a year to see [REDACTED]. He is not a violent person but, for receiving child pornography he has to struggle to survive every day and night. Before he was put in this "hole" cell he was put in a cell with three other inmates who would kick him to wake him up at night because he snored. If you are not a violent offender when you go into a prison, you are when you come out. I truly do not know how he has survived almost four years and has so many more years to go for 1 count of receiving and not hurting anyone.

I appreciate you reading [REDACTED] story and I hope there is someone that can help [REDACTED]
I am begging for you to change the sentencing on the child pornography when someone

has not really ask for it and receives it. He never gave it to anyone else. He does not deserves 17 ½ years in prison for 1 count of receipt. Murderers and others that have actually harmed children with their hands do not get this much time. He does not deserve this and after loosing everything anyway.

I need to know how [REDACTED] can get a court appointed lawyer and take his case back to court because of this Limewire. That was never brought up in the other trial. [REDACTED] has no more money after paying for his first lawyer. Please help [REDACTED]. [REDACTED] has suffered enough.

Sincerely,

Sandra Hugely