



MEMORANDUM

DATE: May 11, 2021

TO: MSCCSP

FROM: Guidelines Subcommittee

RE: Review of Offenses Involving Child Pornography or Sexual Solicitation of a Minor

Background

At the Commission's December 8, 2020, Public Comments Hearing, Joyce King, an assistant state's attorney in the Frederick County State's Attorney's Office, provided testimony, on behalf of the Frederick County Cyber Crimes Task Force and the Maryland State's Attorney's Association, to request an increase in the guidelines for online child sex abuse and exploitation offenses in Maryland, specifically possession and distribution of child pornography and sexual solicitation of a minor. Ms. King noted the increased prevalence of internet crimes against children, particularly during the COVID-19 pandemic, and provided three additional reasons for her request to increase the offenses' guidelines severity.

First, the Maryland General Assembly, in recent years, has expanded Maryland statutes related to the online sexual abuse and exploitation of children to bring them in line with Federal standards, thereby recognizing the severity of these crimes.¹ While the State's statutes have been expanded, Ms. King suggested that sentencing has been left behind. Though the Legislature generally did not increase penalties for internet crimes against children, Ms. King suggested that the expansion of crimes covered by Maryland laws warrants an increase in the guidelines.

Second, Ms. King noted that the guidelines do not currently consider the evolving and permanent nature of the internet. Images placed on the Internet and disseminated online exist in perpetuity. The victims of these crimes suffer lasting psychological consequences and are revictimized every time an image is viewed, possessed, or distributed.

¹ In 2019, the General Assembly voted unanimously to pass House Bill 1027/Senate Bill 736 (Chapters 25 and 26 of the Laws of Maryland), which added key language—"lascivious exhibition"—to the definition of "sexual conduct" contained in Maryland's child pornography statutes (CR, § 11-101). This change expanded Maryland's child pornography law and brought the State statute in line with federal laws and definition of child pornography. The same bills also added language that allows for the prosecution of pornographic content featuring computer-generated images that are indistinguishable from an actual child (CR, § 11-208).

In 2020, the General Assembly again took action to expand Maryland's internet crimes against children statutes and make them consistent with federal laws. House Bill 246/Senate Bill 231 (Chapters 128 and 129 of the Laws of Maryland) expanded the current Sexual Solicitation of a Minor law (CR, § 3-324) to include the prohibition of the sexual solicitation of a minor through their parent, guardian, or custodian. The bill also added an enhanced 20-year penalty for a second or subsequent offender. In response, the MSCCSP classified a subsequent sexual solicitation of a minor offense as a seriousness category III, one seriousness category more serious than a first-time offense.



Third, Ms. King noted that offenders who commit internet crimes against children may be distinguished from other offenders. Ms. King noted that research has found a correlation between online sex offenses and hands-on sex offenses. Research has also noted the progressive nature of online sex offenses and high rates of recidivism among its offenders.

In response to Ms. King's testimony, the Commission agreed to review the current classification of possession and distribution of child pornography and sexual solicitation of a minor.² The Guidelines Subcommittee reviewed the topic at its April 27, 2021, meeting. Specifically, the Guidelines Subcommittee reviewed two proposed revisions to the sentencing guidelines. One, the Guidelines Subcommittee reviewed increases to the seriousness categories for these offenses. Two, the Subcommittee reviewed revised language for the Maryland Sentencing Guidelines Manual (MSGM) and COMAR that would award permanent victim injury points to offenses involving evidence of child pornography. The Subcommittee ultimately decided against increasing the seriousness categories for offenses involving child pornography or sexual solicitation of a minor. The Subcommittee unanimously agreed to recommend to the Commission revisions to the MSGM and COMAR to instruct that permanent victim injury points shall be assigned in cases involving evidence of child pornography.

This memo provides a summary of how child pornography offenses and sexual solicitation of a minor are treated in the sentencing guidelines of other jurisdictions. Additionally, this memo provides a review of child pornography offenses and sexual solicitation of a minor sentenced in Maryland circuit courts in fiscal years 2016 through 2020. Finally, the memo provides recommended revisions to the MSGM and COMAR to instruct that permanent victim injury points shall be assigned in cases involving evidence of child pornography.

State and Federal Treatment of Child Pornography Offenses and Sexual Solicitation of a Minor

Presently, the District of Columbia, the Federal system, and 15 states maintain sentencing guidelines for use at criminal sentencings.³ Of the 17 jurisdictions that maintain sentencing guidelines, MSCCSP staff identified three jurisdictions that provide for sentence enhancements when calculating the sentencing guidelines for offenses involving child pornography or sexual solicitation of a minor. The United States' sentencing guidelines provide enhancements for offenses involving child pornography or sexual exploitation of minors based on the number of images involved in the offense, the number of victims, the victim's age, and the defendant's relationship to the victim.⁴ Pennsylvania's sentencing guidelines provide enhancements to

² The definition of and penalties for offenses involving distribution and production of child pornography are provided in Criminal Law Article (CR), § 11-207. The definition of and penalties for offenses involving the possession of child pornography are provided in CR, § 11-208. The definition of and penalties for sexual solicitation of a minor are provided in CR, § 3-324.

³ These states include: Alabama, Arkansas, Delaware, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, Oregon, Pennsylvania, Utah, Virginia, and Washington.

⁴ § 2G1.3 of the United States' 2018 Guidelines Manual provides instructions for determining the offense severity level for *Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor*; *Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct*; *Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor*; *Sex Trafficking of Children*; and *Use of Interstate Facilities to Transport*



offenses involving child pornography based on the number of images and nature of the abuse involved in the offense.⁵ Virginia's sentencing guidelines provide for enhancements to offenses

Information about a Minor. Enhancements to the base offense severity level are provided in the following scenarios: if the defendant was a parent, relative, or legal guardian of the minor involved in the offense, or if the minor was otherwise in the custody, care, or supervisory control of the defendant; if the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prohibited sexual conduct; if a participant otherwise unduly influenced a minor to engage in prohibited sexual conduct; if the offense involved the use of a computer or an interactive computer service to (a) persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct; or (b) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with the minor; if (a) the offense involved the commission of a sex act or sexual contact; if the offense involved a commercial sex act; or if the offense involved a minor who had not attained the age of 12 years.

§ 2G2.1 of the United States' 2018 Guidelines Manual provides instructions for determining the offense severity level for *Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material*; *Custodian Permitting Minor to Engage in Sexually Explicit Conduct*; and *Advertisement for Minors to Engage in Production*. Enhancements to the base offense severity level are provided in the following scenarios: if the offense involved a minor who had not yet attained the age of 12 years; if the offense involved a minor who had attained the age of 12 years but not attained the age of 16 years; if the offense involved a sexual act or sexual contact; if the defendant knowingly engaged in distribution; if the offense involved (a) material that portrays sadistic or masochistic conduct or other depictions of violence, or (b) an infant or toddler; if the defendant was a parent, relative, or legal guardian of the minor involved in the offense, or if the minor was otherwise in the custody, care, or supervisory control of the defendant; if, for the purpose of producing sexually explicit material or for the purpose of transmitting such material live, the offense involved (a) the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage sexually explicit conduct; or (b) the use of a computer or an interactive computer service to (i) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct, or to otherwise solicit participation by a minor in such conduct; or (ii) solicit participation with a minor in sexually explicit conduct; or if the offense involved the exploitation of more than one minor.

§ 2G2.2 of the United States' 2018 Guidelines Manual provides instructions for determining the offense severity level for *Trafficking in Material Involving the Sexual Exploitation of a Minor*; *Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor*; *Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic*; and *Possessing Material Involving the Sexual Exploitation of a Minor*. Enhancements to the base offense severity level are provided in the following scenarios: If the material involved a prepubescent minor or a minor who had not attained the age of 12 years; if the offense involved distribution for pecuniary gain; if the defendant distributed in exchange for any valuable consideration, but not for pecuniary gain; if the offense involved distribution to a minor; if the offense involved distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity; if the offense involved distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct; if the defendant otherwise knowingly engaged in distribution; if the offense involved material that portrays (A) sadistic or masochistic conduct or other depictions of violence; or (B) sexual abuse or exploitation of an infant or toddler; if the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor; if the offense involved the use of a computer or an interactive computer service for the possession, transmission, receipt, or distribution of the material, or for accessing with intent to view the material; if the offense involved at least 10 images but less than 150 images; if the offense involved at least 150 images but less than 300 images; if the offense involved at least 300 images but less than 600 images; or if the offense involved 600 or more images.

⁵ In 2013, House Bill 321 (Pennsylvania State Legislature) mandated that the Pennsylvania Commission on Sentencing shall provide for a sentence enhancement within its guidelines for certain offenses relating to the sexual abuse of children. The sexual abuse of children enhancement, effective September 26, 2014, provides for sentence enhancements for violations of 18 Pa.C.S. §6312 (relating to the production, distribution, and possession of child pornography) based on the number of images possessed by the offender (50 to 200 images, more than 200 images but less than or equal to 500 images, and more than 500 images) and/or whether the abuse depicted in the images



involving child pornography offenses or sexual solicitation of a minor based on the age of the victim and victim injury, including both physical and emotional injury.⁶ The Virginia Sentencing Guidelines Manual (p.18) specifically provides that, for possession of child pornography, victim injury is scored only if the defendant or co-defendant inflicted the documented injury.

Summary of Sentencing Guidelines Data Pertaining to Child Pornography Offenses and Sexual Solicitation of a Minor

MSCCSP staff conducted an analysis of sentences for and characteristics of offenses involving child pornography and sexual solicitation of a minor, sentenced in Maryland circuit courts in calendar years 2016 through 2020, for which a sentencing guidelines worksheet was received. Below is a summary of the main findings. More detailed findings can be found in Appendix A, at the end of the memo.

- The MSCCSP received sentencing guidelines worksheets for 605 sentencing events involving 1,039 counts of offenses involving child pornography or sexual solicitation of a minor, sentenced in 2016 through 2020. The majority of sentencing events occurred in the Third Circuit (29.4%, Baltimore and Harford Counties), followed by the 5th Circuit (18.8%, Anne Arundel, Carroll, and Howard Counties) and the 6th Circuit (17.4%, Frederick and Montgomery Counties). The smallest percentage (2.3%) of sentencing events occurred in the 8th Circuit (Baltimore City).
- The most common of these offenses was possession of child pornography, followed by manufacture, distribution, etc. child pornography, and sexual solicitation of a minor. The MSCCSP received few worksheets for defendants sentenced pursuant to subsequent offender statutes.
- The mean age of defendants sentenced for offenses involving child pornography or sexual solicitation of a minor was 37.8 years, slightly older than the average age of all defendants (31.4 years). Nearly all defendants were male (99.0%), and the majority of defendants were white (72.5%) and had no prior adult criminal record (77.8%).⁷

possessed by the offender portrays or contains any of the following: (i) the bondage of a child; (ii) a weapon used in a sexual context; (iii) penetration or attempted penetration of a child; or (iv) an act which would constitute a crime under 18 Pa.C.S. § 25 (relating to criminal homicide), 18 Pa.C.S. § 27 (relating to assault), or 18 Pa.C.S. § 31 (relating to sexual offenses). For the purposes of this enhancement, the number of images is defined as follows: (i) Each photograph, picture, computer generated image, or any similar visual depiction shall be considered to be one image. (ii) Each video, video-clip, movie, or similar visual depiction shall be considered to have 50 images. (Pennsylvania Commission on Sentencing, *Sentencing Guidelines Manual: 7th Edition, 2012, Amendment 2*, also located at 204 Pa.C.S. § 303.9(l) and 204 Pa.C.S. § 303.10(e)).

⁶ Virginia's sentencing guidelines provide for enhancements to offenses involving child pornography or the solicitation of a minor based on the age of the victim (less than 13 years) and victim injury (threatened or emotional; or physical, serious, or life-threatening). (Virginia Criminal Sentencing Commission. *Virginia Sentencing Guidelines Manual*. (2014); Other Sexual Assault/Obscenity Worksheet. (2020)).

⁷ When looking at all defendants for which the MSCCSP received a worksheet in 2016 through 2020, 82.1% are male, 30.5% are white, 62.0% are black, 6.2% are Hispanic, and 1.3% are another race; and 33.8% have no prior criminal record.



- Approximately, 61.1% of defendants convicted of offenses involving child pornography or sexual solicitation of a minor received a sentence that included incarceration. Just over half (50.5%) of defendants received a period of post-sentence incarceration.
- The majority (88.3%) of sentences for offenses involving child pornography or sexual solicitation of a minor were guidelines-compliant. When a departure from the guidelines occurred, it was more likely to be above versus below the guidelines (7.8% versus 3.9%, respectively).⁸
- Victim injury points were rarely assigned to offenses involving child pornography or sexual solicitation of a minor. Approximately 86.3% of these offenses were awarded no points for victim injury; 13.2% were awarded one point for a non-permanent injury; and 0.5% were awarded two points for permanent injury or death.
- Special victim vulnerability points were assigned in 54.1% of offenses involving child pornography or sexual solicitation of a minor, though the percentage varies by offense. More than half of offenses involving the manufacture, distribution, etc. of child pornography or the possession of child pornography (51.2% and 66.0%, respectively) were assigned points for special victim vulnerability, whereas the majority (86.3%) of offenses involving the sexual solicitation of a minor were not assigned points for special victim vulnerability. These findings suggest that the majority of victims of sexual solicitation of a minor are over the age of 11 years.⁹

Recommended Revisions to Part B of the Offense Score (Victim Injury)

The Guidelines Subcommittee recommends the Commission adopt the following revisions to the MSGM and COMAR to instruct that permanent victim injury points shall be awarded in cases involving evidence of child pornography.¹⁰ For an illustration of how the guidelines would increase with the application of permanent victim injury points, see Table #1 through Table #6, beginning on page 7 of the memo.

⁸ For the purpose of this analysis, guidelines-compliance is calculated at the offense-level. A sentence is defined as guidelines-compliant if it meets at least one of the following conditions: the guidelines-applicable sentence (defined as the sum of incarceration, credit for time served, and home detention) is within the guidelines range; the guidelines-applicable sentence exceeds the upper guidelines limit but includes only credit for time served; the sentencing event was disposed of by an ABA plea agreement; or the sentencing event involved the imposition of one or more correction options and the total sentence falls within or above the recommended guidelines range (excluding sentencing events that contain a crime of violence, child sexual abuse, or escape).

When looking at all offenses, 80.0% of sentences fall within the recommended guidelines range (i.e., are guidelines-compliant). When looking at just person offenses, 80.7% of sentences fall within the recommended guidelines range. Departures below the guidelines are much more common than departures above the guidelines when looking at all offenses (14.5% versus 5.3%, respectively) or just person offenses (12.6% versus 6.4%, respectively).

⁹ The MSCCSP does not collect data pertaining to the age of the victim.

¹⁰ This language is intended to apply permanent victim injury points to *any* offense involving photographic or video evidence of child pornography and is not limited to convictions for the possession, manufacture, or distribution of child pornography. For instance, this rule may apply in cases involving the following types of offenses, if evidence of child pornography is present: sexual solicitation of a minor, sextortion, visual and camera surveillance of a private place, obscene matter, prostitution, human trafficking, or electronic harassment.



MSGM, Chapter 6.1

B. Victim Injury

Victim injury means physical or psychological injury to the crime victim, the cause of which is directly linked to the conduct of the defendant in the commission of the convicted offense. **The individual completing the worksheet shall apply the following rules regarding victim injury.**

- a.** Victim injury, whether physical or psychological, shall be based on reasonable proof.
- b.** Psychological injury shall be based on confirmed medical diagnosis or psychological counseling or treatment. Rape crisis hotlines, clergy conferences, and other similar services are considered psychological counseling or treatment, but the contact with a counselor must be confirmed in writing or otherwise by the counseling or treatment provider. Psychological injury is presumed not permanent unless otherwise demonstrated.
- c.** Physical injury shall be more than minimal. Physical injuries such as lasting muscle damage or amputation are permanent.
- d.** **Offenses involving photographic or video evidence of child pornography shall be scored as permanent victim injury.**

The individual completing the worksheet shall assign a score of 0 if there was no victim injury. The individual completing the worksheet shall assign a score of 1 if victim injury occurred and the injury was not permanent. The individual completing the worksheet shall assign a score of 2 if victim injury occurred and the injury was permanent or resulted in the death of the victim.

COMAR

14.22.01.09

.09 Offense Score.

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(3) Victim Injury.

(a) Victim injury, whether physical or psychological, shall be based on reasonable proof. Psychological injury shall be based on confirmed medical diagnosis or psychological counseling or treatment. Rape crisis hotlines, clergy conferences, and other similar services are considered psychological counseling or treatment, but the contact with a counselor must be confirmed in writing or otherwise by the counseling or treatment provider. Psychological injury is presumed not permanent unless otherwise demonstrated. Physical injury shall be more than minimal. Physical injuries such as lasting muscle damage or amputation are permanent. **Offenses involving photographic or video evidence of child pornography shall be scored as permanent victim injury.**



Sample Scenarios

The following tables illustrate how the guidelines for a typical offender, with no prior adult criminal record, would increase with the application of permanent victim injury points to offenses involving evidence of child pornography.

Table 1. Sample Scenario #1

Child Pornography (Manufacture, Distribution, Etc.), 1 st Offense		
	No Injury	Permanent Injury
Offender Score	0 points	0 points
Offense Score		
Part A (Seriousness Category)	3 points	3 points
Part B (Victim Injury)	0 points	2 points
Part C (Weapon Presence)	0 points	0 points
Part D (Special Victim Vulnerability)	1 point	1 point
Total Offense Score	4 points	6 points
Guidelines	P-3Y	1Y-6Y

Table 2. Sample Scenario #2

Child Pornography (Manufacture, Distribution, Etc.), Subsequent Offense		
	No Injury	Permanent Injury
Offender Score	0 points	0 points
Offense Score		
Part A (Seriousness Category)	5 points	5 points
Part B (Victim Injury)	0 points	2 points
Part C (Weapon Presence)	0 points	0 points
Part D (Special Victim Vulnerability)	1 point	1 point
Total Offense Score	6 points	8 points
Guidelines	1Y-6Y	4Y-9Y

**Table 3. Sample Scenario #3**

Child Pornography (Possession), 1 st Offense		
	No Injury	Permanent Injury
Offender Score	0 points	0 points
Offense Score		
Part A (Seriousness Category)	1 point	1 point
Part B (Victim Injury)	0 points	2 points
Part C (Weapon Presence)	0 points	0 points
Part D (Special Victim Vulnerability)	1 point	1 point
Total Offense Score	2 points	4 points
Guidelines	P-6M	P-3Y

Table 4. Sample Scenario #4

Child Pornography (Possession), Subsequent Offense		
	No Injury	Permanent Injury
Offender Score	0 points	0 points
Offense Score		
Part A (Seriousness Category)	3 points	3 points
Part B (Victim Injury)	0 points	2 points
Part C (Weapon Presence)	0 points	0 points
Part D (Special Victim Vulnerability)	1 point	1 point
Total Offense Score	4 points	6 points
Guidelines	P-3Y	1Y-6Y

**Table 5. Sample Scenario #5**

Sexual Solicitation of a Minor, 1 st Offense		
	No Injury	Permanent Injury
Offender Score	0 points	0 points
Offense Score		
Part A (Seriousness Category)	3 points	3 points
Part B (Victim Injury)	0 points	2 points
Part C (Weapon Presence)	0 points	0 points
Part D (Special Victim Vulnerability)	0 points	0 points
Total Offense Score	3 points	5 points
Guidelines	P-2Y	3M-4Y

Table 6. Sample Scenario #6

Sexual Solicitation of a Minor, Subsequent Offense		
	No Injury	Permanent Injury
Offender Score	0 points	0 points
Offense Score		
Part A (Seriousness Category)	5 points	5 points
Part B (Victim Injury)	0 points	2 points
Part C (Weapon Presence)	0 points	0 points
Part D (Special Victim Vulnerability)	0 points	0 points
Total Offense Score	5 points	7 points
Guidelines	3M-4Y	3Y-8Y



Appendix A

The following provides a detailed analysis of sentences for and characteristics of offenses involving child pornography and sexual solicitation of a minor, sentenced in Maryland circuit courts in calendar years 2016 through 2020, for which a sentencing guidelines worksheet was received.

Table 1 provides a list of the six reviewed offenses, their statutory sources, and their maximum penalties.

Appendix Table 1. Maryland Offenses Involving Child Pornography or Sexual Solicitation of a Minor.

Offense	Source	Statutory Maximum	Fine	Seriousness Category	Classification
Child pornography (Manufacture, distribution, etc.)- 1 st offense	CR, § 11-207(b)(1)	10Y	\$25,000	IV	Felony
Child pornography (Manufacture, distribution, etc.)- subsequent offense	CR, § 11-207(b)(2)	20Y	\$50,000	III	Felony
Child pornography (Possession)- 1 st offense	CR, § 11-208(b)(1)	5Y	\$2,500	V	Misdemeanor
Child pornography (Possession)- subsequent offense	CR, § 11-208(b)(2)	10Y	\$10,000	IV	Felony
Sexual solicitation of a minor or law enforcement officer posing as a minor- 1 st offense ¹	CR, § 3-324(d)(1)	10Y	\$25,000	IV	Felony
Sexual solicitation of a minor or law enforcement officer posing as a minor- subsequent offense ^{1, 2}	CR, § 3-324(d)(2)	20Y	\$50,000	III	Felony

¹ Per Chapters 128/129 of the 2020 Laws of Maryland (House Bill 246/Senate Bill 231), effective October 1, 2020, CR, § 3-324 provides that a person may not, with the intent to commit a violation of CR, §3-304, CR, §3-307, CR, §11-303, CR, §11-304, CR, §11-305, CR, §11-306, or CR, §11-30, knowingly solicit the consent of a parent, guardian, or custodian of a minor, or a law enforcement officer posing as a parent, guardian, or custodian of a minor, to engage in activities with the minor that would be unlawful for the person to engage in under CR, §3-304, CR §3-307, CR, §11-303, CR, §11-304, CR, §11-305, CR, §11-306, or CR, §11-307 of this article.

² Per Chapters 128/129 of the 2020 Laws of Maryland (House Bill 246/Senate Bill 231), effective October 1, 2020, a subsequent violation of CR, § 3-324 is subject to a maximum penalty of 20 years incarceration, a \$50,000 fine, or both. Prior to October 1, 2020, both first and subsequent offenses were subject to a maximum penalty of 10 years, a \$25,000 fine, or both.



Table 2 provides a breakdown, by type of offense, for each of the offenses and sentencing events involving child pornography or the sexual solicitation of a minor. The MSCCSP received sentencing guidelines worksheets for 605 sentencing events and 1,039 offenses involving child pornography or the sexual solicitation of a minor in calendar years 2016 through 2020. The most common of these offenses was the possession of child pornography, followed by the manufacture, distribution, etc. of child pornography, and sexual solicitation of a minor. Maryland Law provides for subsequent offender penalties for each of the offenses involving child pornography or sexual solicitation of a minor. As Table 2 illustrates, the MSCCSP received few worksheets for defendants sentenced pursuant to subsequent offender statutes in 2016 through 2020.

Appendix Table 2. Maryland Sentencing Guidelines Worksheets Received for Offenses Involving Child Pornography or Sexual Solicitation of a Minor, Calendar Years 2016 through 2020.

	Offenses	Sentencing Events
Child pornography- Manufacture, distribution, etc., 1 st offense	333	234
Child pornography- Manufacture, distribution, etc., subsequent offense	3	2
Child pornography- Possession, 1 st offense	564	277
Child pornography- Possession, subsequent offense	8	7
Sexual solicitation of a minor, 1 st offense	131	119
Sexual solicitation of a minor, subsequent offense	0	0
Total	1,039	605

Table 3 provides a breakdown of offenses by judicial circuit. The largest percentage of sentencing events involving child pornography or sexual solicitation of a minor came from the 3rd Circuit (29.4%), followed by the 5th Circuit (18.8%) and the 6th Circuit (17.4%). The 8th Circuit, which sentences the largest overall percentage of cases in the State, sentenced the smallest percentage (2.3%) of sentencing events involving child pornography or sexual solicitation of a minor.



Appendix Table 3. Total Offenses and Sentencing Events Involving Child Pornography or the Sexual Solicitation of a Minor, by Judicial Circuit, Calendar Years 2016 through 2020

	Total				Offense Involving Child Pornography or Sexual Solicitation of a Minor			
	Offenses		Sentencing Events		Offenses		Sentencing Events	
	#	% State	#	% State	#	% State	#	% State
1st Circuit (Dorchester, Somerset, Wicomico, Worcester)	4,847	7.3%	3,333	7.0%	72	6.9%	48	7.9%
2nd Circuit (Caroline, Cecil, Kent, Queen Anne's, Talbot)	3,916	5.9%	2,728	5.7%	84	8.1%	36	6.0%
3rd Circuit (Baltimore, Harford)	11,925	18.0%	9,606	20.1%	224	21.6%	178	29.4%
4th Circuit (Allegany, Garrett, Washington)	3,497	5.3%	2,662	5.6%	117	11.3%	44	7.3%
5th Circuit (Anne Arundel, Carroll, Howard)	8,226	12.4%	6,100	12.8%	156	15.0%	114	18.8%
6th Circuit (Frederick, Montgomery)	9,370	14.1%	6,375	13.4%	223	21.5%	105	17.4%
7th Circuit (Calvert, Charles, Prince George's, St. Mary's)	11,316	17.1%	7,694	16.1%	135	13.0%	66	10.9%
8th Circuit (Baltimore City)	13,266	20.0%	9,238	19.4%	28	2.7%	14	2.3%
Total	66,363	100.0%	47,736	100.0%	1,039	100.0%	605	100.0%

Table 4 provides the mean age, gender, race, prior adult criminal record, and multiple offense sentencing event distributions for defendants convicted of one or more offenses involving child pornography or sexual solicitation of a minor in 2016 through 2020. The mean age of defendants convicted of one or more of these offenses was 37.8 years, slightly older than the average of all defendants (31.4 years). The majority were male (99%), white (72.5%), and had no prior adult criminal record (77.8%).¹¹ Approximately, 41.2% of sentencing events involving child pornography or sexual solicitation of a minor involved multiple offenses, most often multiple offenses involving the online sexual abuse or exploitation of children. Sentencing events involving the possession of child pornography were most likely to involve multiple offenses. The multiple victim stacking rule was applied in 4.3% of all sentencing events (or 10.4% of multiple offense sentencing events) involving at least one count of child pornography or sexual solicitation of a minor.

¹¹ When looking at all defendants for which the MSCCSP received a worksheet in 2016 through 2020, 82.1% are male, 30.5% are white, 62.0% are black, 6.2% are Hispanic, and 1.3% are another race; and 33.8% have no prior criminal record.



Appendix Table 4. Characteristics of Sentencing Events Involving Child Pornography or the Sexual Solicitation of a Minor, Calendar Years 2016 through 2020

	All Offenses Involving Child Pornography or Sexual Solicitation of a Minor		Child Pornography- Manufacture, Distribute, Etc.		Child Pornography- Possession		Sexual Solicitation of a Minor	
	#	Valid %	#	Valid %	#	Valid %	#	Valid %
Mean age	37.8 years		37.5 years		37.7 years		38.0 years	
Gender								
Male	586	99.0%	232	99.1%	271	99.3%	114	97.4%
Female	6	1.0%	2	0.9%	2	0.7%	3	2.6%
Missing	13		2		10		2	
Race								
Black	89	15.9%	37	17.0%	33	12.7%	24	21.4%
White	405	72.5%	151	69.3%	210	80.8%	68	60.7%
Hispanic	51	9.1%	24	11.0%	11	4.2%	18	16.1%
Other	14	2.5%	6	2.8%	6	2.3%	2	1.8%
Missing	46		18		23		7	
Prior record								
None	469	77.8%	188	79.7%	226	80.1%	82	69.5%
Minor	81	13.4%	30	12.7%	31	11.0%	23	19.5%
Moderate	37	6.1%	13	5.5%	20	7.1%	7	5.9%
Major	16	2.7%	5	2.1%	5	1.8%	6	5.1%
Missing	2		0		1		1	
Additional offenses								
No additional offenses	356	58.8%	146	61.9%	125	44.2%	85	71.4%
Multiple offenses	249	41.2%	90	38.1%	158	55.8%	34	28.6%
Multiple child pornography or sexual solicitation of a minor offenses	193	31.9%	66	28.0%	146	51.6%	14	11.8%
Crime of violence	28	4.6%	21	8.9%	7	2.5%	4	3.4%
Other person offense	21	3.5%	7	3.0%	8	2.8%	10	8.4%
Multiple victim stacking rule imposed	26	4.3%	13	5.5%	19	6.7%	1	0.8%
Total sentencing events	605		236		283		119	

Note. Valid percentages are based on non-missing data. First and subsequent offenses are combined into one offense category.



Table 5 provides the average total sentence, the average guidelines applicable sentence, and incarceration rates for offenses involving child pornography or sexual solicitation of a minor, sentenced in 2016 through 2020. Approximately 61.1% of these offenses received a sentence with some period of incarceration. Just over half (50.5%) of offenses received incarceration time beyond credit for time served.

Appendix Table 5. Average Sentences and Incarceration Rates for Offenses Involving Child Pornography or the Sexual Solicitation of a Minor, Calendar Years 2016 through 2020

	All Offenses Involving Child Pornography or Sexual Solicitation of a Minor		Child Pornography-Manufacture, Distribute, Etc., 1 st Offense		Child Pornography-Manufacture, Distribute, Etc., Subsequent		Child Pornography-Possession, 1 st Offense		Child Pornography-Possession, Subsequent		Sexual Solicitation of a Minor, 1 st Offense ¹	
	#	%	#	%	#	%	#	%	#	%	#	%
Mean total sentence	-		7.0 years		15.0 years		4 years		5.6 years		7.4 years	
Mean guidelines-applicable sentence ²	-		1.5 years		6.7 years		0.6 years (7.1 months)		1.5 years		1.6 years	
Incarceration												
Yes	635	61.1%	246	73.9%	2	66.7%	281	49.8%	4	50%	102	77.9%
No	404	38.9%	87	26.1%	1	33.3%	283	50.2%	4	50%	29	22.1%
Post-Sentence Incarceration												
Yes	525	50.5%	216	64.9%	2	66.7%	223	39.5%	2	25.0%	82	62.6%
No	514	49.5%	117	35.1%	1	33.3%	341	60.5%	6	75.0%	49	37.4%
Probation Only ³	55	5.3%	4	1.2%	0	0.0%	46	8.2%	1	12.5%	4	3.1%
Probation Before Judgement ³	66	6.4%	9	2.7%	0	0.0%	48	8.5%	0	0.0%	9	6.9%
Total offenses	1,039		333		3		564		8		131	

¹ Prior to October 1, 2020, there was no subsequent offender penalty for sexual solicitation of a minor.

² The guidelines-applicable sentence is defined as the sum of jail/prison time, home detention, and credit for time served. The guidelines-applicable sentence does not include suspended time. The guidelines-applicable sentence is used to determine guidelines compliance.

³ When looking at all offenses, 7.2% of offenses received a sentence of probation only; 7.8% of offenses received a probation before judgement (PBJ) disposition. When looking at just person offenses, 4.9% of offenses received a sentence of probation only; 5.4% of offenses received a PBJ. The percentage of offenses that receive a PBJ is higher than the percentage of offenses that receive probation only as defendants who receive a PBJ may still serve a brief period of incarceration or receive credit for time served.



Table 6 provides offense-level compliance rates for offenses involving child pornography or sexual solicitation of a minor, sentenced in 2016 through 2020.¹² Approximately, 88.3% of sentences for offenses involving child pornography or sexual solicitation of a minor were guidelines-compliant; approximately 3.9% of sentences fell below the guidelines; and approximately 7.8% of sentences percent fell above the guidelines. When looking at strict compliance, approximately 80.3% of sentences for offenses involving child pornography or sexual solicitation of a minor fell within the guidelines range; 5.9% fell below the guidelines; and approximately 13.8% percent fell above the guidelines. Looking at regular compliance, when a departure from the guidelines occurred, it was more likely to be above versus below the guidelines for first-time offenses involving child pornography.¹³ When looking at strict compliance, when a departure from the guidelines occurred, it was more likely to be above versus below the guidelines for first-time offenses involving child pornography or the sexual solicitation of a minor.

¹² A sentence is defined as guidelines-compliant if it meets at least one of the following conditions: the guidelines-applicable sentence (defined as the sum of incarceration, credit for time served, and home detention) is within the guidelines range; the guidelines-applicable sentence exceeds the upper guidelines limit but includes only credit for time served; the sentencing event was disposed of by an ABA plea agreement; or the sentencing event involved the imposition of one or more correction options and the total sentence falls within or above the recommended guidelines range (excluding sentencing events that contain a crime of violence, child sexual abuse, or escape).

A sentence is defined as compliant based on strict compliance if the guidelines-applicable sentence (defined as the sum of incarceration, credit for time served, and home detention) is within the guidelines range. Per this definition, sentencing events disposed of via ABA pleas are not automatically considered guidelines-compliant. Approximately, 36.2% of sentencing events involving child pornography or sexual solicitation of a minor were disposed of via an ABA plea.

¹³ When looking at all offenses, 80.0% of sentences fall within the recommended guidelines range (i.e., are guidelines-compliant). When looking at just person offenses, 80.7% of sentences fall within the recommended guidelines range. Departures below the guidelines are much more common than departures above the guidelines when looking at all offenses (14.5% versus 5.3%, respectively) or just person offenses (12.6% versus 6.4%, respectively). Several other person offenses, however, display a similar pattern to offenses involving child pornography, in that above departures are more common than below departures, most notably false imprisonment (30.4% above versus 19.6% below), accessory after the fact to first degree murder (25.8% above versus 12.9% below), and sexual abuse, third degree, with age based elements (CR, § 3-307(a)(3)-(a)(5), 25.6% above versus 2.5% below).



Appendix Table 6. Compliance Rates for Offenses Involving Child Pornography or the Sexual Solicitation of a Minor, Calendar Years 2016 through 2020

	All Offenses Involving Child Pornography or Sexual Solicitation of a Minor		Child Pornography-Manufacture, Distribute, Etc., 1 st offense		Child Pornography-Manufacture, Distribute, Etc., Subsequent		Child Pornography-Possession, 1 st Offense		Child Pornography-Possession, Subsequent		Sexual Solicitation of a Minor, 1 st Offense ¹	
	#	Valid %	#	Valid %	#	Valid %	#	Valid %	#	Valid %	#	Valid %
Compliance												
Within	917	88.3%	301	90.4%	3	100.0%	488	86.7%	7	87.5%	118	90.1%
Below	40	3.9%	5	1.5%	0	0.0%	27	4.8%	1	12.5%	7	5.3%
Above	81	7.8%	27	8.1%	0	0.0%	48	8.5%	0	0.0%	6	4.6%
Strict Compliance												
Within	796	76.7%	276	82.9%	0	0.0%	400	71.0%	6	75.0%	114	87.0%
Below	67	6.5%	14	4.2%	2	66.7%	42	7.5%	1	12.5%	8	6.1%
Above	175	16.9%	43	12.9%	1	33.3%	121	21.5%	1	12.5%	9	6.9%
Total offenses	1,039		333		3		564		8		131	

Note. For definitions of guidelines compliance, see Footnote 8 (bottom of page 11). Valid percentages are based on non-missing data. One count of child pornography-possession, 1st offense was missing compliance.

¹ Prior to October 1, 2020, there was no subsequent offender penalty for sexual solicitation of a minor.

Table 7 displays the percentage of offenses involving child pornography or sexual solicitation of a minor in which victim injury or special victim vulnerability points were assigned.¹⁴ The majority (86.3%) of offenses involving child pornography or the sexual solicitation of a minor were not assigned victim injury points. Approximately 13.2% of offenses involving child pornography or sexual solicitation of a minor were assigned points for a non-permanent injury. Very few cases (0.5%) were assigned points for permanent injury or death.

The assignment of special victim vulnerability points varies by offense. More than half of offenses involving the manufacture, distribution, etc. of child pornography or the possession of child pornography (51.2% and 66.0%, respectively) were assigned points for special victim vulnerability, whereas the majority (89.3%) of offenses involving the sexual solicitation of minor were not assigned points for special victim vulnerability. These findings suggest that the majority of victims of sexual solicitation of a minor are over the age of 11 years.¹⁵

¹⁴ Victim injury is defined in the Maryland Sentencing Guidelines Manual (MSGM, Version 13.0, Chapter 6.3.B) as “physical or psychological injury to the crime victim, the cause of which is directly linked to the conduct of the defendant in the commission of the convicted offense.”

Special victim vulnerability is defined in the MSGM (Version 13.0, Chapter 6.3.C) and “refers to cases in which the relative status of the victim tends to render the actions of the perpetrator more serious.” Per the MSGM, “[a] vulnerable victim is anyone: a. Younger than 11 years old; b. 65 years old or older; or c. Having a temporary or permanent physical or mental disability, including an individual who is physically or mentally limited in a material way. Examples of a temporary physical or mental limitation include, but are not limited to, instances when the offender knew or should have known the victim was pregnant, unconscious, asleep, or intoxicated.”

¹⁵ The MSCCSP does not collect data pertaining to the age of the victim.



Appendix Table 7. Victim Injury and Special Victim Vulnerability Among Offenses Involving Child Pornography or the Sexual Solicitation of a Minor, Calendar Years 2016 through 2020

	All Offenses Involving Child Pornography or Sexual Solicitation of a Minor		Child Pornography- Manufacture, Distribute, Etc.		Child Pornography- Possession		Sexual Solicitation of a Minor	
	#	Valid %	#	Valid %	#	Valid %	#	Valid %
Victim Injury								
No injury	888	86.3%	283	84.7%	492	87.2%	113	86.3%
Injury, non-permanent	136	13.2%	51	15.3%	68	12.1%	17	13.0%
Permanent injury or death	5	0.5%	0	0.0%	4	0.7%	1	0.8%
Missing	10		2		8		0	
Special Victim Vulnerability								
Yes	557	54.1%	171	51.2%	372	66.0%	14	10.7%
No	472	45.9%	163	48.8%	192	34.0%	117	89.3%
Missing	10		2		8		0	
Total offenses	1,039		336		572		131	

Note. Valid percentages are based on non-missing data. First and subsequent offenses are combined into one offense category.