



Study of Child Pornography and Electronic Solicitation of Minors Crimes in Virginia

Request by Attorney General

- **In April 2006, the Commission received a letter from Attorney General Robert McDonnell asking the Commission to consider establishing sentencing guidelines for child pornography and online child exploitation offenses.**
 - **General McDonnell expressed his desire for consistent and appropriate punishment for offenders committing these crimes and his concern that sentences in these cases have become increasingly disparate.**
- **The Commission considered General McDonnell's request at its June meeting and approved a special study of these offenses to determine if guidelines are feasible.**

Federal Cases from Virginia



Federal Cases from Virginia

- **Staff reviewed data from the US Sentencing Commission**
 - **Virginia cases involving sexual abuse, exploitation, prostitution or pornography offenses (FY1999-2003)**
- **Total of 128 cases identified**
 - **Nearly 81% of the federal cases originated in Eastern District of Virginia**
 - **19% of the federal cases were related to sexual abuse, including transportation with intent to engage in illicit sexual conduct (US Code 2423B)**
 - **81% of the federal cases were related to pornography, material involving sexual exploitation of minors, or prostitution**
- **Overall, 99% of the federal offenders received a prison term.**
- **In sexual abuse cases, the median sentence was 36 months.**
- **In pornography/prostitution cases, the median sentence was 30 months.**

Federal Data and Virginia's Sentencing Guidelines

- **While informative, federal data cannot be used to assess the feasibility of adding child pornography and online solicitation of minors crimes to Virginia's guidelines system.**
- **Virginia's sentencing guidelines reflect historical sentencing practices in circuit courts around the Commonwealth.**
- **Development of Virginia's sentencing guidelines has never included federal case data.**

Virginia Circuit Court Cases



Offenses included in the Guideline Analysis

- **Convictions for child pornography**
 - **Possession of child pornography (§ 18.2-374.1:1)**
 - **Class 6 felony – first offense**
 - **Class 5 felony – second or subsequent offense**
 - **Enticement of minor to perform – Class 5 felony (§ 18.2-374.1B1)**
 - **Production of sexually explicit materials involving minor Class 5 felony (§ 18.2-374.1B2)**
 - **Participation in filming – Class 5 felony (§ 18.2-374.1B3)**
 - **Sale or distribution – Class 5 felony (§ 18.2-374.1B4)**
 - **Finance – Class 4 felony (§ 18.2-374.1C)**
 - **Permitting minors in obscene performances, subsequent offense – Class 6 felony (§ 18.2-379)**
- **Production or possession of obscene pictures for sale – second or subsequent offense – Class 6 felony (§ 18.2-374)**

Offenses included in the Guideline Analysis

- **Convictions for electronic/online solicitation of minors**
 - **Electronic means for procuring minors for obscene material, etc. – Class 6 felony (§ 18.2-374.3A)**
 - **Electronic means to solicit minors for prostitution, sodomy, etc. – Class 5 felony (§ 18.2-374.3B)**

Data Sources

- **Pre/Post-Sentencing Investigation (PSI) report database**
 - **Reports are available for most offenders sentenced in circuit courts**
 - **Reports contain detail on offense, offender, victim and criminal history**
 - **FY2002 – FY2006 (incomplete)**

- **Local Inmate Data System (LIDS) database**
 - **Database of prisoners entering and exiting all local and regional jails in Virginia**
 - **No offense detail, victim information, or criminal history**
 - **FY2002 – FY2006**

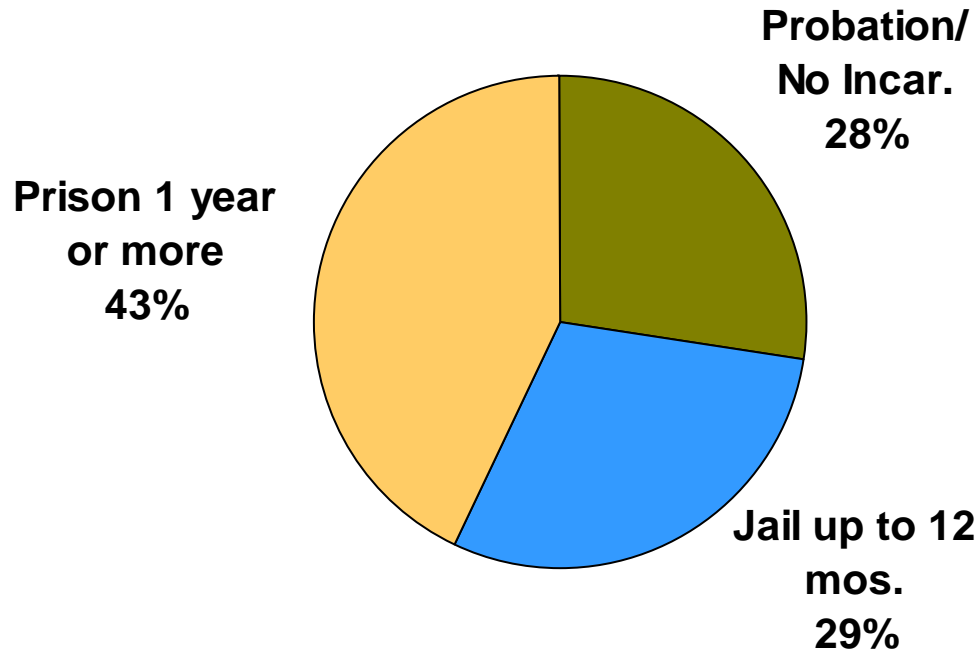
Special Data Collection Completed

- **The LIDS database was used to identify additional offenders not found in the PSI data.**
- **Staff requested information from Commonwealth's attorneys' files**
- **Data collection instrument designed to record detail that may affect sentencing outcomes**
 - **Was the case the result of a police operation?**
 - **Did the offender actually meet or arrange to meet the victim?**
 - **What was the victim's age?**
 - **Were there multiple victims?**
 - **Was the offender a registered sex offender?**
- **Criminal history was requested and received from State Police**

Cases Analyzed

Offense	Seriousness	Number	Percent
Electronic means to solicit minors for sodomy, etc. (§ 18.2-374.3 B)	Class 5 felony	38	24%
Electronic means for procuring minors for obscene material (§ 18.2-374.3 A)	Class 6 felony	29	18%
Possession of child pornography - 1st offense (§ 18.2-374.1:1 A)	Class 6 felony	28	17%
Produce sexually explicit materials involving minor (§ 18.2-374.1B2)	Class 5 felony	25	16%
Possession of child pornography - 2nd offense (§ 18.2-374.1:1 D)	Class 5 felony	16	10%
Participate in filming sexually explicit material of minor (§ 18.2-374.1 B3)	Class 5 felony	9	6%
Sell, give, distribute or transmit sexually explicit material of minor (§ 18.2-374.1 B4)	Class 5 felony	8	5%
Entice minor to perform in sexually explicit material (§ 18.2-374.1 B1)	Class 5 felony	3	2%
Finance sexually explicit material involving minor (§ 18.2-374.1 C)	Class 4 felony	2	1%
Produce or possess obscene pictures for sale - 2nd offense (§ 18.2-374)	Class 6 felony	2	1%
Unlawful filming, videotaping, photographing, etc., minor (§ 18.2-386.1)	Class 6 felony	1	0%
TOTAL		161	100%

Child Pornography/Online Solicitation Cases by Disposition



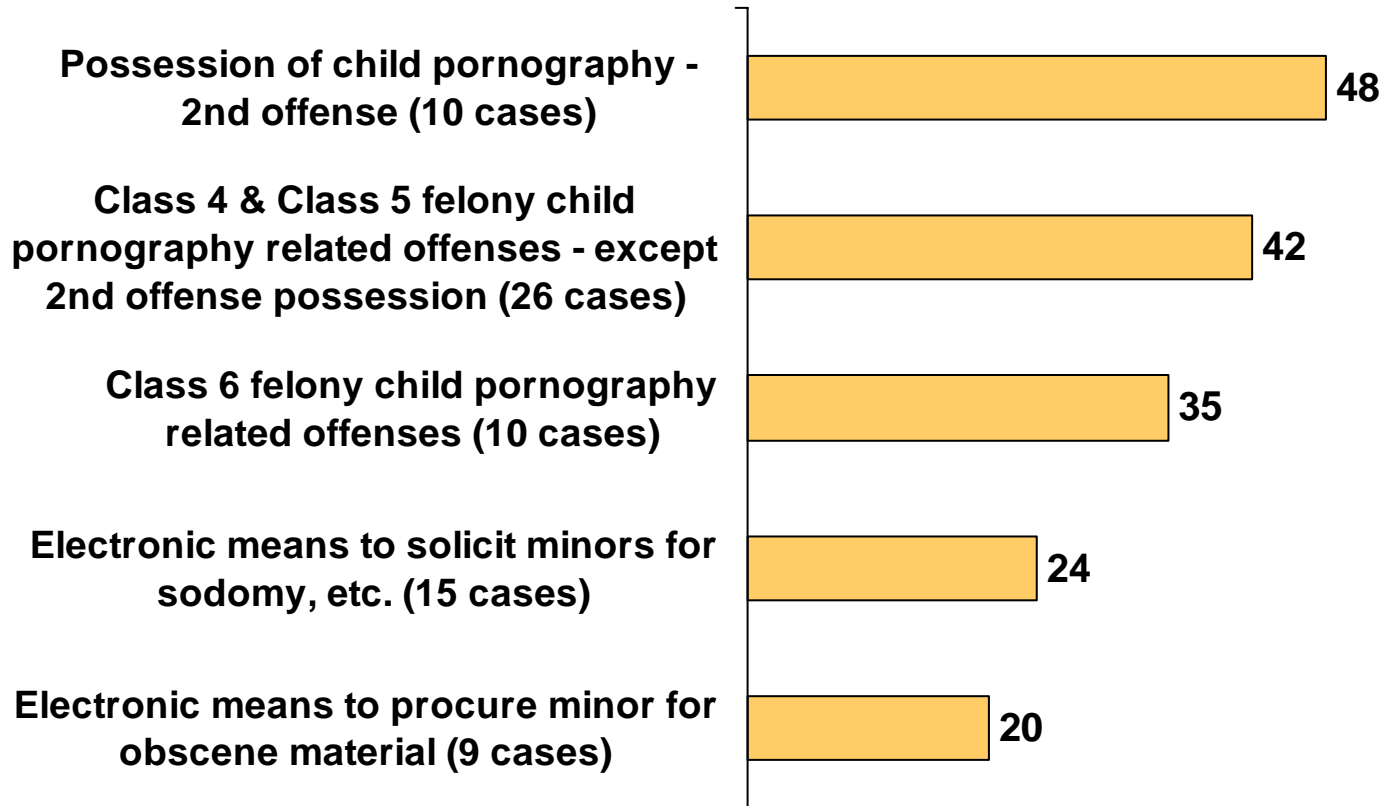
Number of cases = 161

Child Pornography/Online Solicitation Cases by Disposition

	Probation/ No Incar.	Jail up to 12 mos.	Prison 1 year or more
Possession of child pornography - 2nd offense (16 cases)	6%	31%	63%
Class 4 & Class 5 felony child pornography related offenses - except 2nd offense possession (47 cases)	19%	26%	55%
Electronic means to solicit minors for sodomy, etc. (38 cases)	24%	37%	39%
Class 6 felony child pornography related offenses (31 cases)	40%	30%	30%
Electronic means to procure minor for obscene material (29 cases)	45%	24%	31%

Note: Sentence data reflects the total effective sentence (imposed less suspended time) for all charges in the sentencing event.

Child Pornography/Online Solicitation Cases Resulting in Prison – Median prison sentence in months

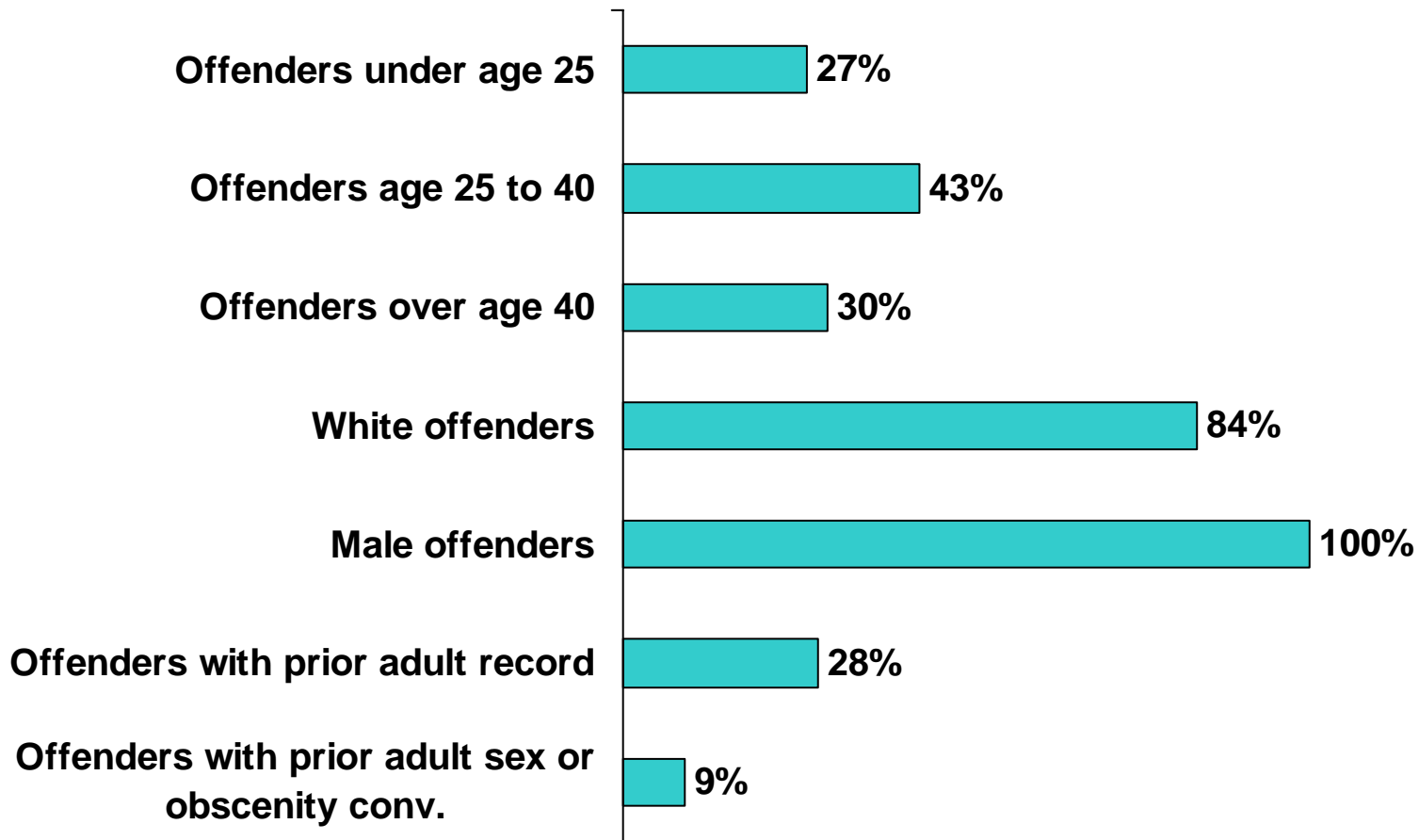


Note: Data represents only those cases resulting in a prison term. Sentence data reflects the median effective sentence (imposed less suspended time) including all charges in the sentencing event.

Online Solicitation of Minors Crimes in Virginia



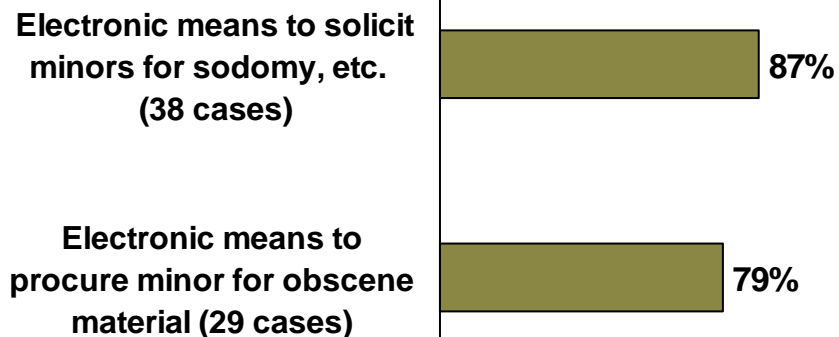
Who is being convicted of online solicitation?



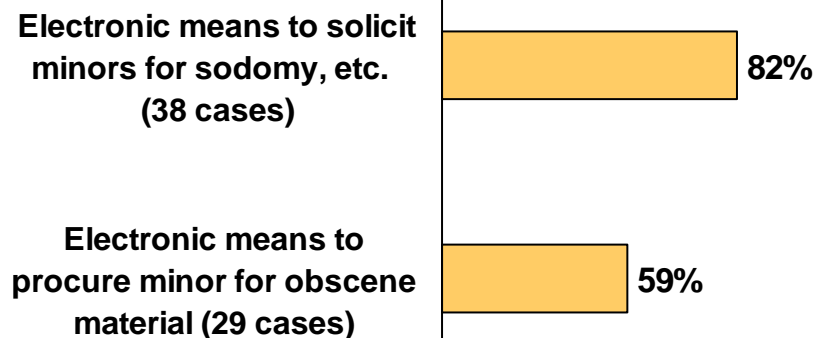
Number of cases = 67

Case Facts

Was the case the result of a police operation?

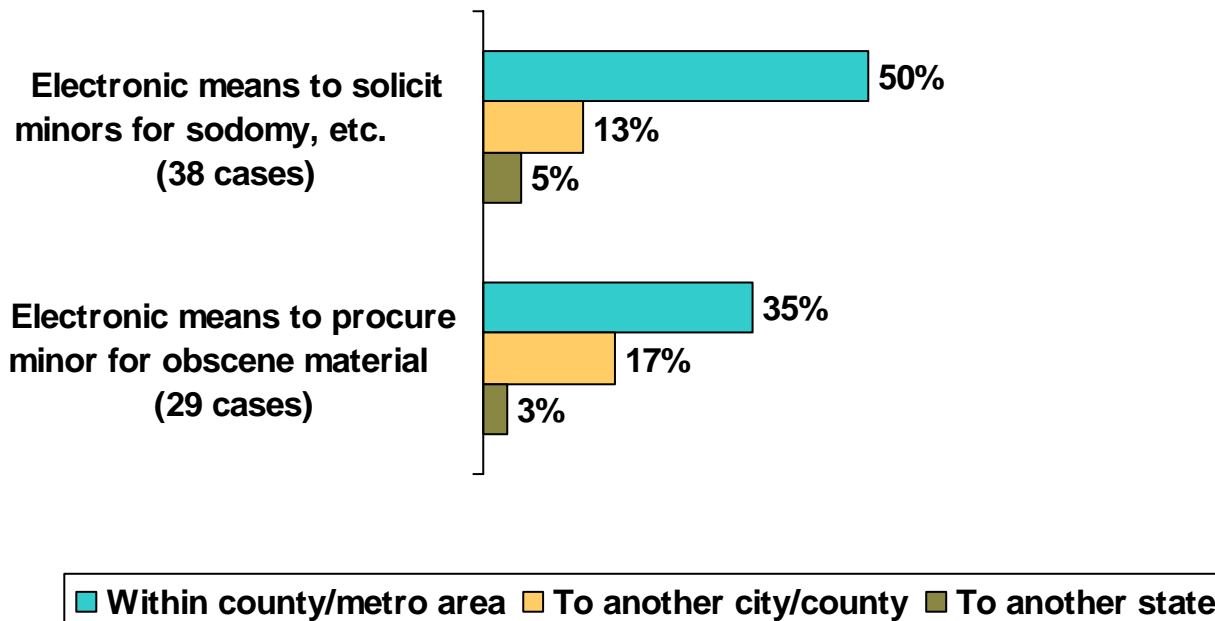


Did the defendant make contact with a particular victim/police officer?



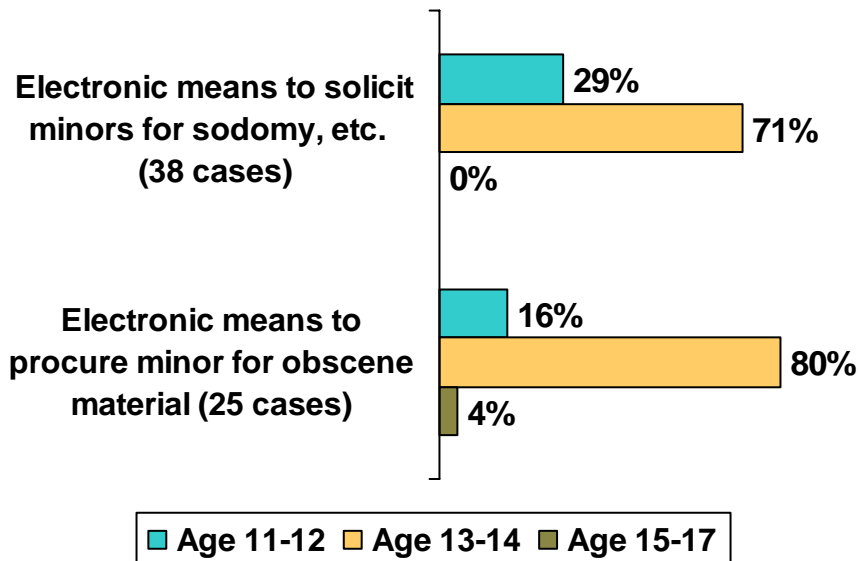
Case Facts

Did the defendant travel to meet an actual or assumed minor?



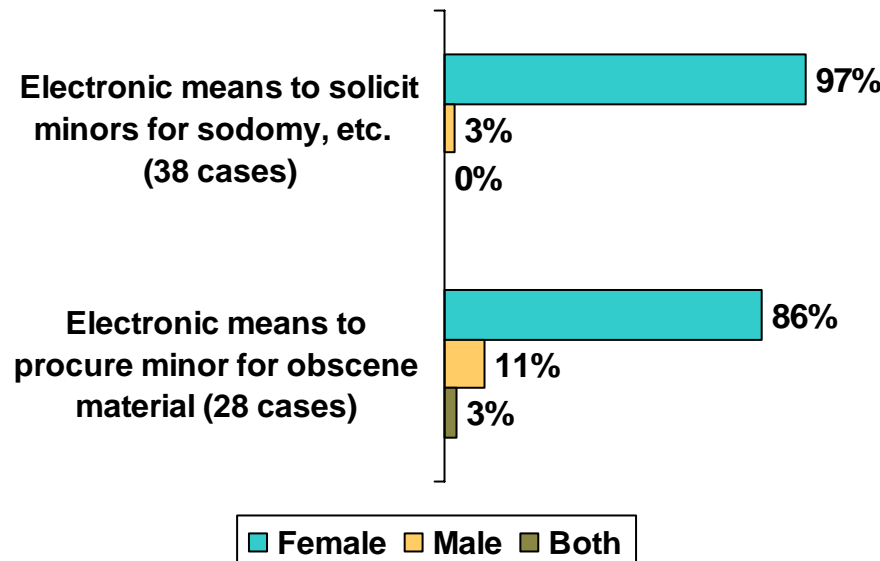
Case Facts

What was the age of the actual or portrayed victim?



Note: Analysis includes only those cases for which actual or portrayed age is known.

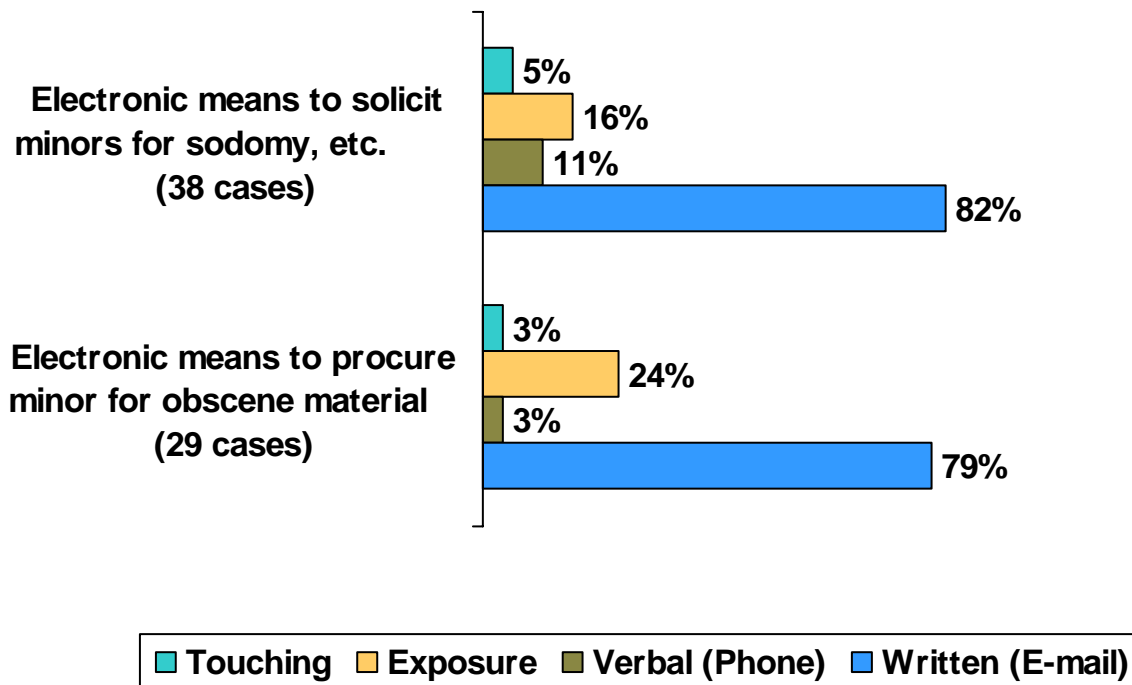
What was the gender of the actual or portrayed victim?



Note: Analysis includes only those cases for which actual or portrayed gender is known.

Case Facts

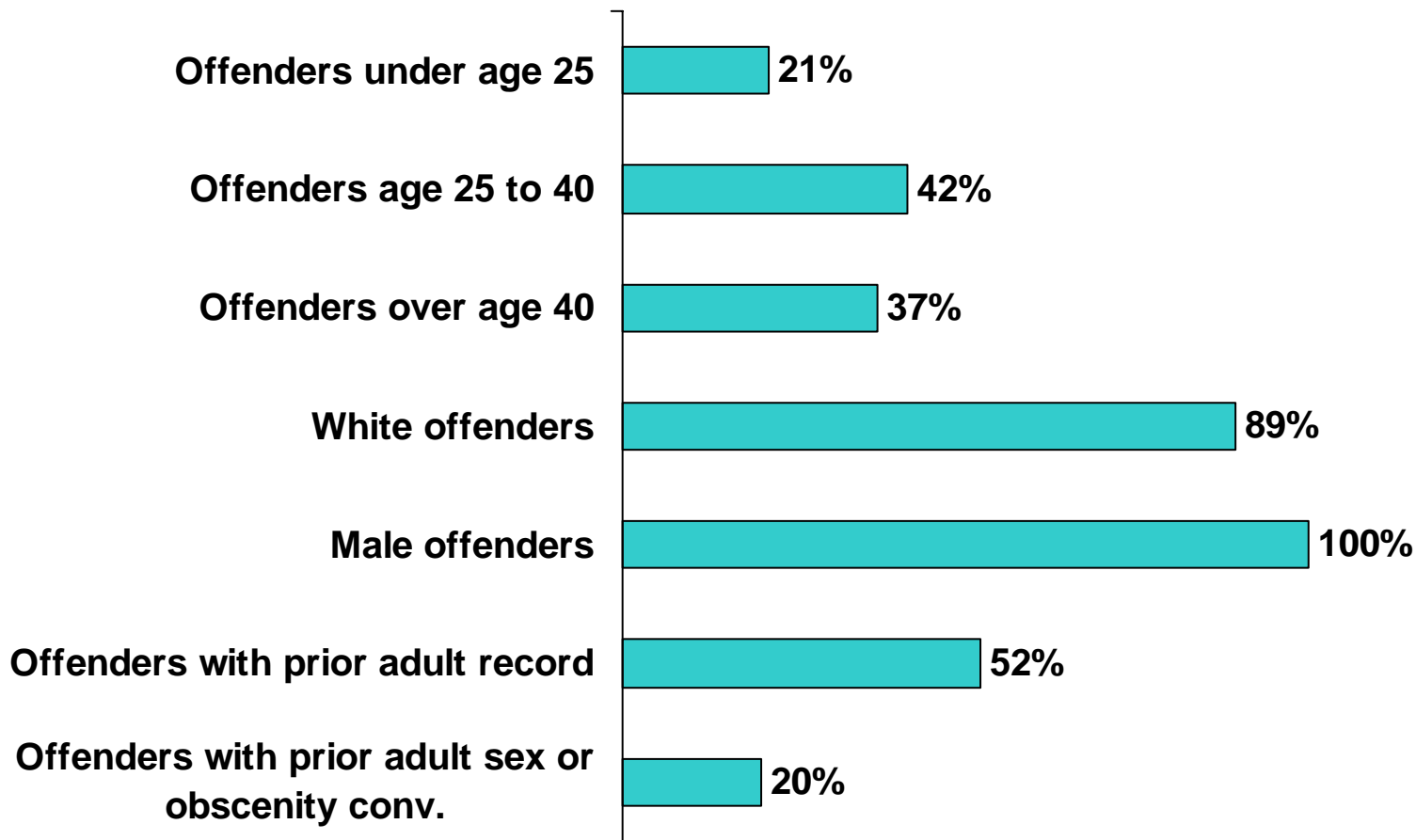
What, if any, sexual conduct occurred?



Child Pornography-Related Offenses in Virginia

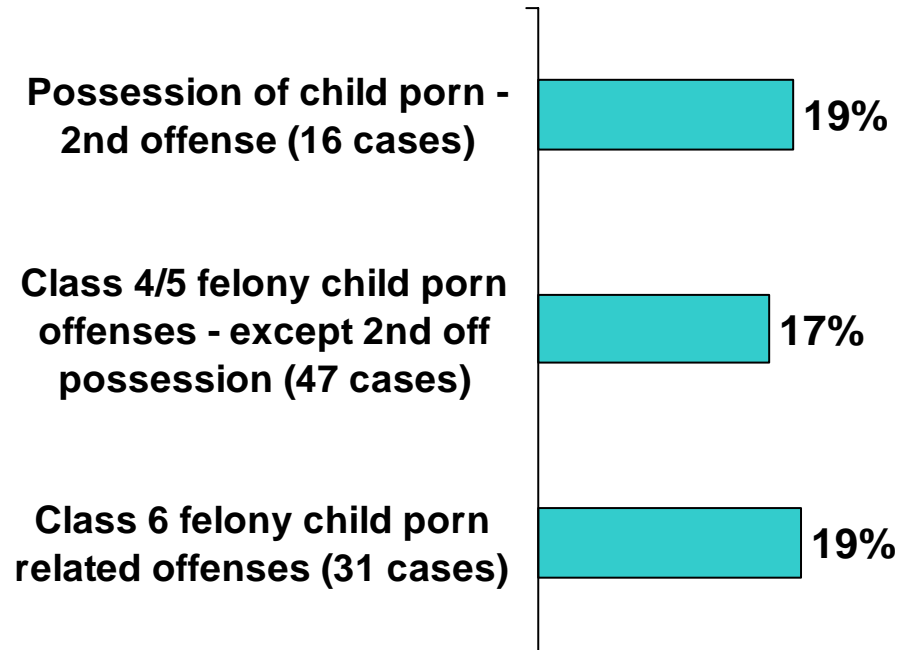


Who is being convicted for child pornography?

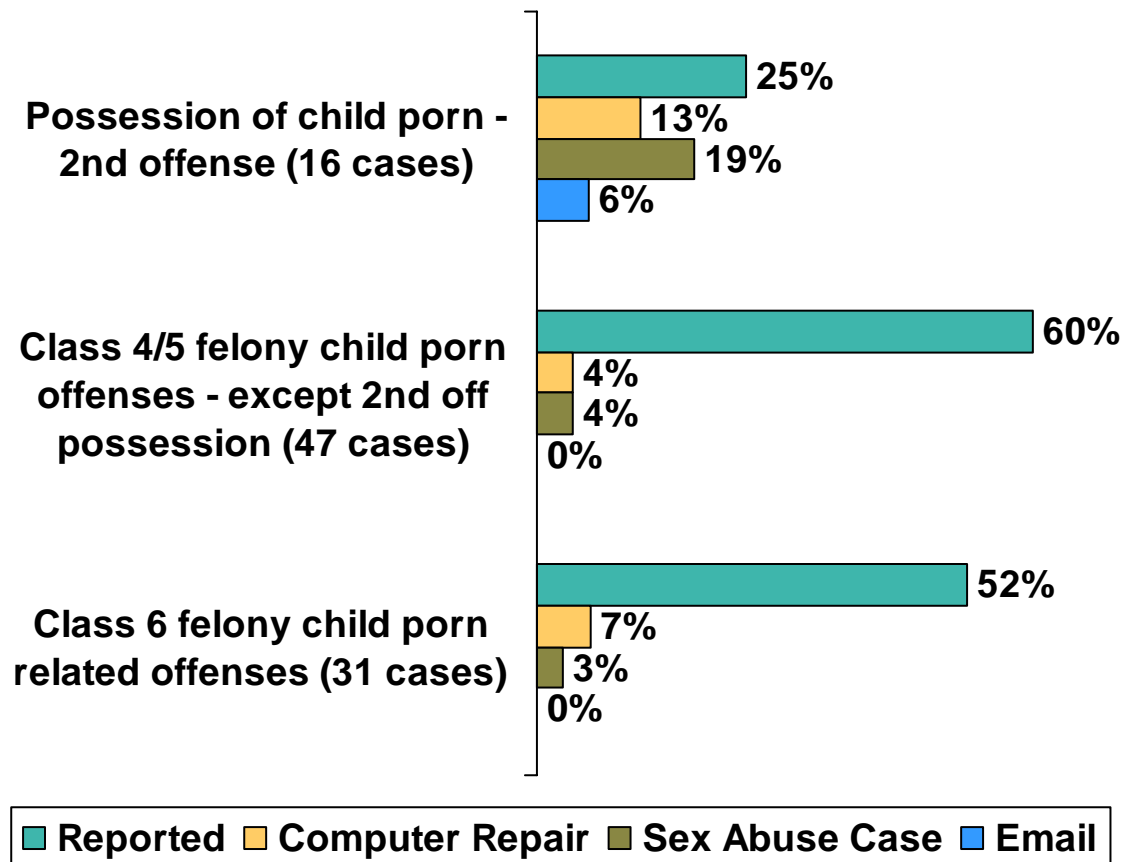


Number of cases = 94

Was the case the result of a police operation?

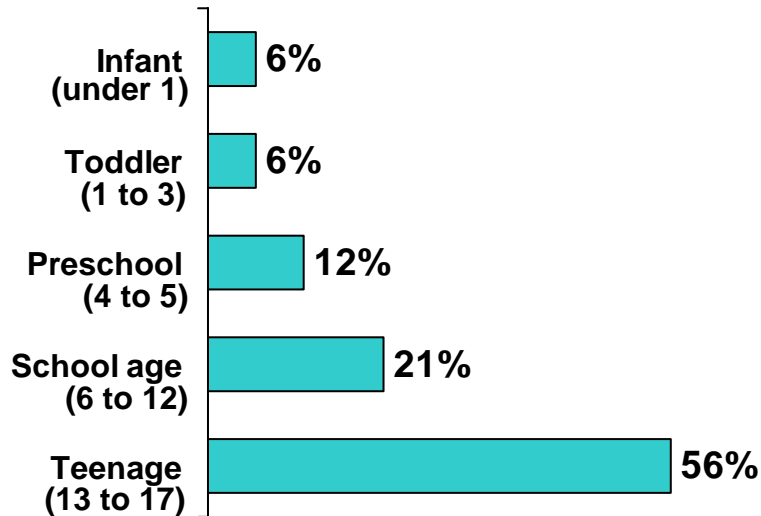


Besides police stings, how else do these crimes get discovered?



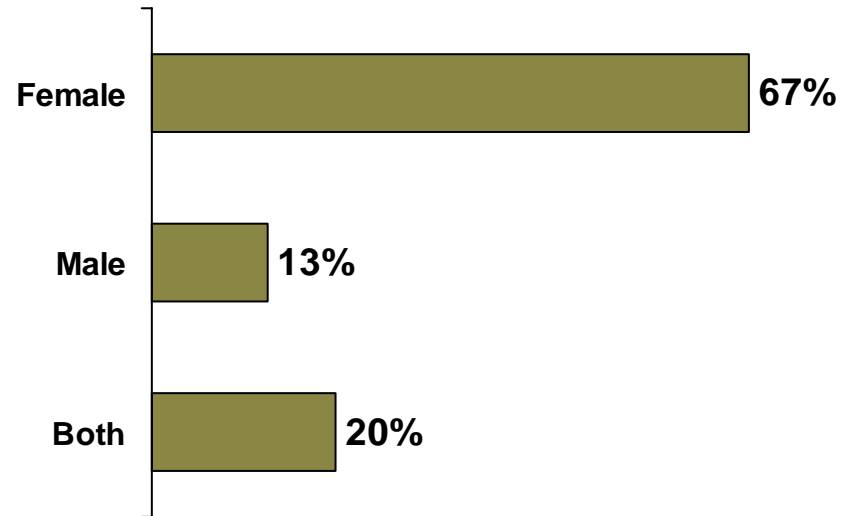
Case Facts

What ages of children are depicted in the pornographic material?



Note: Analysis includes only those cases for which age is reported (52 out of total 94 pornography cases studied).

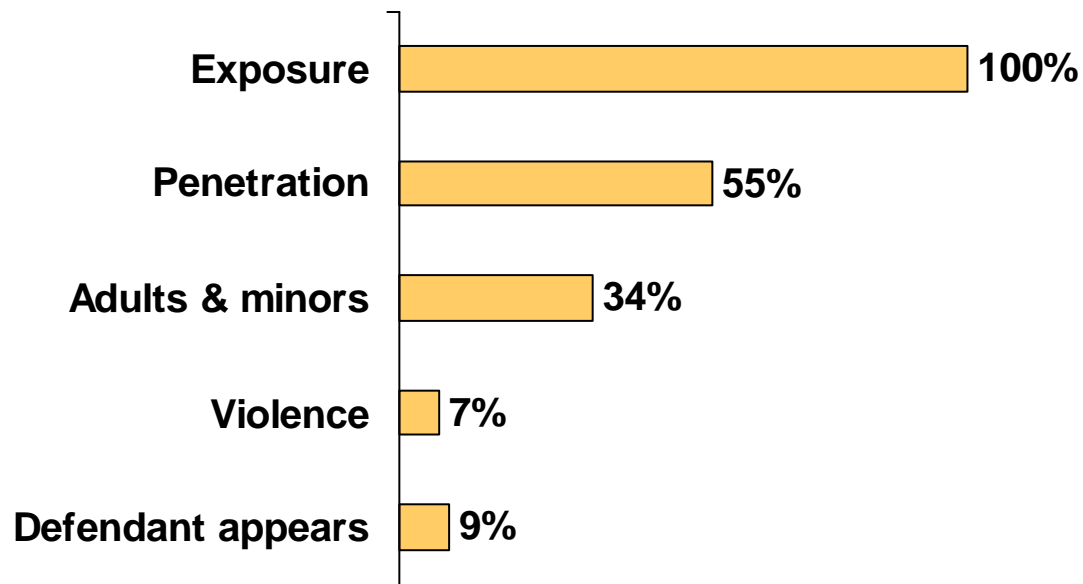
What gender of children are depicted in the pornographic material?



Note: Analysis includes only those cases for which gender is reported (54 out of total 94 pornography cases studied).

Case Facts

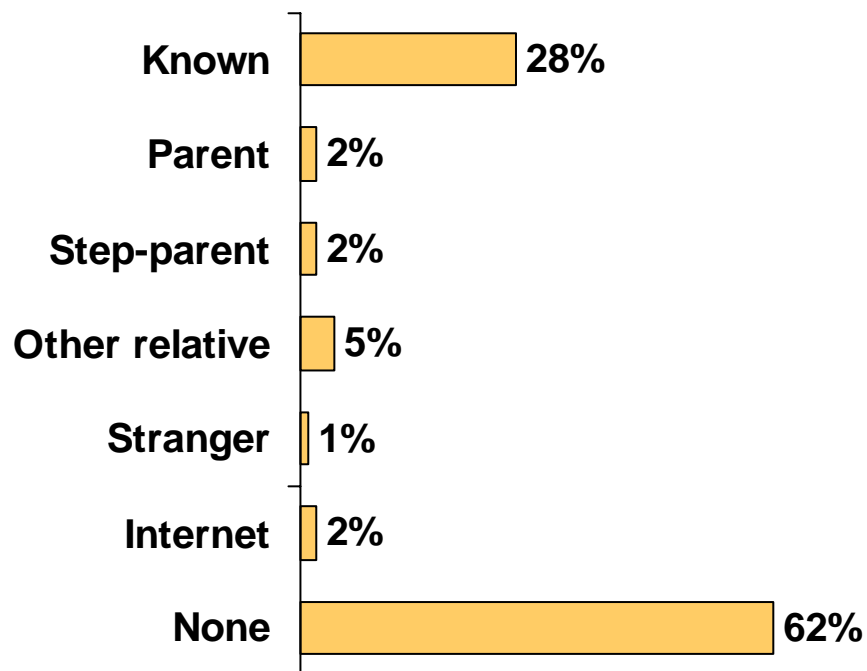
What sexual conduct is depicted in the image(s)?



Note: Analysis includes only those cases for which information on sexual conduct is reported (58 out of total 94 pornography cases studied).

Case Facts

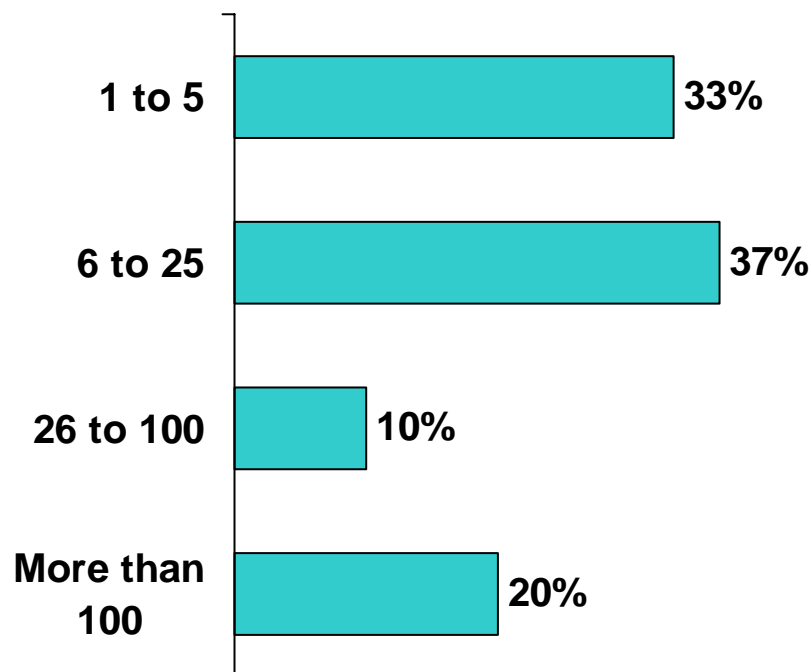
What is the relationship between the offender and the subject of the sexually explicit material?



Note: Analysis includes only those cases for which information on relationship is reported (89 out of total 94 pornography cases studied).

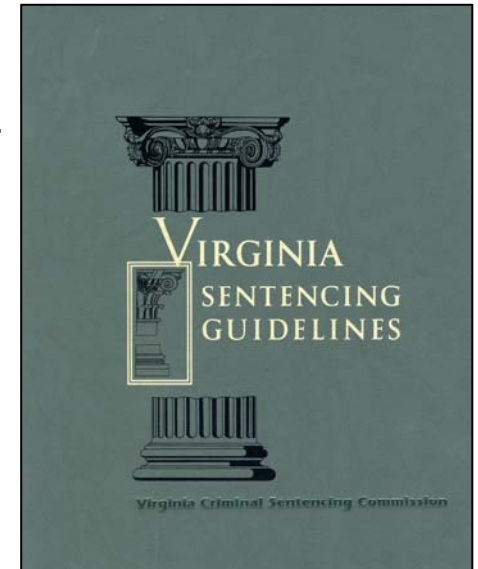
Case Facts

In possession of pornography cases, how many images did the offender possess?



Note: Analysis includes only those cases for which age is reported (30 out of total 44 pornography possession cases studied).

Proposed Recommendations for Sentencing Guidelines



Proposals for Sentencing Guidelines

- **Staff recommends adding child pornography and online solicitation of minors offenses to the Other Sexual Assault sentencing guidelines.**
 - **These guidelines encompass offenses such as indecent liberties, carnal knowledge and aggravated sexual battery.**
 - **Crimes of rape, forcible sodomy and object sexual penetration are not included in this offense category, but are captured on another guidelines worksheet.**

- **The proposals reflect the best fit for the historical data.**

- **Steps**
 - **Reviewed existing worksheet**
 - **Tested various scoring scenarios**
 - **Maximized compliance (and balance departures, if possible)**

Proposed Recommendation - Section A (Part I)

Other Sexual Assault - Section A (Part I) Offender Name: _____

Offenses Not Applicable for Risk Assessment:
 Risk Assessment is NOT APPLICABLE if the primary offense is adultery, bestiality, bigamy, non-forcible sodomy, or prostitution.
 (Go to Section A (Part II))

◆ **Offender's Age at Time of Offense** _____

Younger than 35 years	12	
35 to 46 years	4	
Older than 46 years	0	

◆ **Less than 9th Grade Education** _____ If YES, add 4 →

◆ **Not Regularly Employed** _____ If YES, add 5 →

◆ **Offender's Relationship with Victim** _____

Victim Under Age 10	Relative	0	
	Known to victim (not relative or step-parent)	4	
	Stranger	4	
	Step-parent	9	
Victim Age 10 or more	Relative	2	
	Known to victim (not relative or step-parent)	3	
	Stranger	8	
	Step-parent	2	

◆ **Aggravated Sexual Battery (Primary Offense §18.2-67.3)** _____

No penetration or attempted penetration of victim	0	
Penetration or attempted penetration of victim	4	

◆ **Location of Offense** _____

Place of employment	0	
Shared victim/offender residence	3	
Outdoors	3	
Motor Vehicle	4	
Victim's residence (not offender's)	5	
Offender's residence or other residence	9	
Location other than listed	3	

◆ **Prior Adult Felony/Misdemeanor Arrests for Crimes Against Person** _____

0 Felonies	1 - 3 Misdemeanors	1	
	4+ Misdemeanors	8	
1 Felony	0 - 2 Misdemeanors	5	
	3+ Misdemeanors	8	
2+ Felonies	0 - 3 Misdemeanors	8	
	4+ Misdemeanors	15	

◆ **Prior Incarcerations/Commitments** _____ If YES, add 3 →

◆ **Prior Treatment** _____

Prior mental health commitment	0	
Prior mental health treatment	2	
Prior alcohol or drug treatment	3	
No prior treatment	4	

Risk Score _____ →

Risk Level (Risk Score)

<input type="checkbox"/> 44 or more	Level 1
<input type="checkbox"/> 34 - 43	Level 2
<input type="checkbox"/> 28 - 33	Level 3
<input type="checkbox"/> up to 27	No Adjustment

Go to Section A (Part II)

Other Sexual Assault/Section A (Part I) - FII 7-1-0

Because child pornography and online solicitation offenses were not included in the original risk assessment study, it is recommended that these offenders be excluded from risk assessment evaluation on Part 1 of Section A of the Other Sexual Assault Guidelines.

Proposed Recommendation - Section A (Part II)

Other Sexual Assault - Section A (Part II) Offender Name: _____

◆ **Primary Offense**

A. Other than listed below (1 count)	1
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 (1 count)	7
C. Non-forcible sodomy, no parental relationship	
1 count	3
2 counts	4
3 counts	13
D. Indecent liberties with child	
1 - 2 counts	2
3 counts	3
E. Non-forcible carnal knowledge of child age 13, 14 (statutory rape)	
1 count	2
2 counts	8
3 counts	12
F. Aggravated sexual battery	
1 count	3
2 counts	6
3 counts	9
G. Incest with own child/grandchild (1 count)	3
H. Incest with own child/grandchild age 13 to 17 (1 count)	2
I. Marital sexual assault (1 count)	3

Score

◆ **Primary Offense Additional Counts** Total the maximum penalties for counts of the primary not scored above

Years: 5 - 26	1
27 - 52	2
53 or more	3

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

Years: Less than 1	0
1 - 26	1
27 - 52	2
53 or more	3

◆ **Victim Less than Age 13 at Time of Offense** ————— If YES, add 5 →

◆ **Victim Injury**

Threatened or emotional	2
Physical or serious physical	4

◆ **Prior Convictions/Adjudications** Total maximum penalties for the 5 most recent and serious prior record events

Years: Less than 3	0
3 - 18	1
19 - 31	2
32 - 44	3
45 or more	4

◆ **Prior Felony Sexual Assault Convictions/Adjudications**

Number: 1	1
2	2
3 or more	3

◆ **Prior Incarcerations/Commitments** ————— If YES, add 3 →

◆ **Legally Restrained at Time of Offense**

None	0
Other than parole/post-release, supervised probation or CCCA	2
Parole/post-release, supervised probation or CCCA	3

◆ **Risk Assessment Score (From Section A Part I)**

Less than 28	0
28 or more (Level 1, 2, or 3)	8

Total Score If total is 8 or less, go to Section B. If total is 9 or more, go to Section C.

Other Sexual Assault/Section A (Part II) EB 7-19

Proposed Recommendation - Section A (Part II)

Other Sexual Assault ♦ Section A (Part II) Offender Name: _____

♦ Primary Offense

- A. Other than listed below (1 count) 1
- B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 (1 count) 7
- C. Non-forcible sodomy, no parental relationship
 - 1 count 3
 - 2 counts 4
 - 3 counts 13
- D. Indecent liberties with child
 - 1 - 2 counts 2
 - 3 counts 3
- E. Non-forcible carnal knowledge of child age 13, 14 (statutory rape)
 - 1 count 2
 - 2 counts 8
 - 3 counts 12
- F. Aggravated sexual battery
 - 1 count 3
 - 2 counts 6
 - 3 counts 9
- G. Incest with own child/grandchild (1 count) 3
- H. Incest with own child/grandchild age 13 to 17 (1 count) 2
- I. Marital sexual assault (1 count) 3
- J. Finance sexually explicit material involving minor (§ 18.2-374.1 C)
 Produce sexually explicit materials involving minor (§ 18.2-374.1 B2)
 Entice, etc., minor to perform in sexually explicit material (§ 18.2-374.1 B1)
 Participate in filming, etc., of sexually explicit material involving
 minor (§ 18.2-374.1 B3)
 Sell, give, distribute, transmit sexually explicit material involving
 minor (§ 18.2-374.1 B4) 5**
- K. Electronic means for procuring minor for obscene material, etc. (§ 18.2-374.3 A)
 Electronic means to solicit minors for sodomy, etc. (§ 18.2-374.3 B)
 Possess obscene material - child pornography, 1st offense (§ 18.2-374.1:1 A) 6**
- L. Possess obscene material - child pornography,
 2nd or subsequent offense (§ 18.2-374.1:1 A) 9**

Score

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Proposed Recommendation - Section B

Other Sexual Assault - Section B Offender Name: _____

◆ **Primary Offense**

A. Other than listed below (1 count) 1

B. Aggravated sexual battery

1 count 2

2 counts 4

3 counts 6

Score

0

◆ **Primary Offense Additional Counts** Total the maximum penalties for counts of the primary not scored above

Years: 5 - 7 2 27 - 30 8

8 - 11 3 31 - 34 9

12 - 15 4 35 - 37 10

16 - 19 5 38 - 41 11

20 - 22 6 42 or more 12

23 - 26 7

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

Years: Less than 1 0 23 - 26 7

1 - 2 1 27 - 30 8

3 - 7 2 31 - 34 9

8 - 11 3 35 - 37 10

12 - 15 4 38 - 41 11

16 - 19 5 42 or more 12

20 - 22 6

◆ **Victim Less than Age 13 at Time of Offense** If YES, add 3 → 0

◆ **Prior Convictions / Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events

Years: Less than 3 0

3 - 19 1

20 - 39 2

40 or more 3

◆ **Prior Incarcerations / Commitments** If YES, add 1 → 0

SCORE THE FOLLOWING FACTORS ONLY IF PRIMARY OFFENSE AT CONVICTION IS MARITAL SEXUAL ASSAULT

◆ **Victim Injury** Physical or Serious Physical If YES, add 2 → 0

◆ **Weapon Used, Brandished, Feigned or Threatened** If YES, add 1 → 0

Total Score →

See Other Sexual Assault Section B Recommendation Table to convert score to guidelines sentence.

Other Sexual Assault/Section B - EH 7.1.10

Proposed Recommendation - Section B

Other Sexual Assault ◆ Section B

Offender Name: _____

◆ Primary Offense

A. Other than listed below (1 count)	X	2	<table border="1"> <tr> <td colspan="2">Score</td> </tr> <tr> <td>0</td> <td></td> </tr> </table>	Score		0	
Score							
0							
B. Aggravated sexual battery							
1 count	X	3					
2 counts	X	5					
3 counts	X	7					
C. Finance sexually explicit material involving minor (§ 18.2-374.1 C)							
Produce sexually explicit materials involving minor (§ 18.2-374.1 B2)							
Entice, etc., minor to perform in sexually explicit material (§ 18.2-374.1 B1)							
Participate in filming, etc., of sexually explicit material involving							
minor (§ 18.2-374.1 B3)							
Sell, give, distribute, transmit sexually explicit material involving							
minor (§ 18.2-374.1 B4)							
Electronic means for procuring minor for obscene material, etc. (§ 18.2-374.3 A)							
Electronic means to solicit minors for sodomy, etc. (§ 18.2-374.3 B)							
Possess obscene material - child pornography, 1 st offense (§ 18.2-374.1:1 A)							
Possess obscene material - child pornography,							
2 nd or subsequent offense (§ 18.2-374.1:1 A) 1							

Proposed Recommendation - Section B Recommendation Table

Recommendation Table	
Score	Guideline Sentence
0 - 3 ←	0 - 2 Probation/No Incarceration
4 - 5 ←	3 - 4 Incarceration 1 Day up to 3 Months
6+ ←	5+ Incarceration 3 to 6 Months

Proposed Recommendation - Section C

Other Sexual Assault - Section C Offender Name: _____

Prior Record Classification
 Category I Category II Other

◆ **Primary Offense**

A. All attempted or conspired sexual assault (1 count)	24	12	6
B. Completed sexual assault other than listed below (1 count)	36	18	9
C. Non-forcible sodomy, no parental relationship			
1 count	24	12	6
2 counts	40	20	10
3 counts	104	52	26
D. Non-forcible sodomy, parent/grandparent to child/grandchild age 13 - 17			
1 count	36	18	9
E. Indecent liberties with child			
1 count	24	12	6
2 counts	40	20	10
3 counts	104	52	26
F. Non-forcible carnal knowledge of child age 13 - 14 (statutory rape)			
1 count	36	18	9
G. Incest with own child/grandchild (1 count)	104	52	26
H. Incest with own child/grandchild age 13 - 17 (1 count)	104	52	26
I. Aggravated sexual battery			
1 count	90	60	34
2 counts	132	88	50
3 counts	288	192	108

Score [] [] []

◆ **Primary Offense Additional Counts** Assign points to each count of the primary not scored above and total the points

Maximum Penalty (years)	5	10	20
	5	10	19

[0] [] []

◆ **Additional Offenses** Assign points to each additional offense (including counts) and total the points

Maximum Penalty (years)	Less than 1	1	2	3	4	5	10	20	30	40 or more
	0	1	2	3	4	5	10	19	29	39

[] [] []

◆ **Weapon Used, Brandished, Feigned or Threatened** ————— If YES, add 4 → [0] [0]

◆ **Victim Injury**

Threatened or emotional	6
Physical or serious physical	9

[0] [0]

◆ **Prior Convictions/Adjudications** Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty (years)	Less than 2	2, 3, 4, 5	10	20	30	40 or more
	0	1	3	6	9	12

[0] [] []

◆ **Prior Felony Sexual Assault Convictions/Adjudications**

Number:	1	2	3 or more
	8	15	23

[0] [] []

◆ **On Post-Incarceration Supervision** ————— If YES, add 5 → [0] [0]

Total Score [] [] [] [] [] []

See Other Sexual Assault Section C Recommendation Table for guidelines sentence range.
 If necessary, on the cover sheet also enter the adjusted high end of the guidelines sentence range based on Risk Level: 1 2 3 or n/a

Other Sexual Assault/Section C - FR 7-1-0

Proposed Recommendation - Section C

Other Sexual Assault ◆ Section C

Offender Name: _____

◆ Primary Offense _____

— Prior Record Classification —

Category I Category II Other

A.	All attempted or conspired sexual assault (1 count)	24	12	6
B.	Completed sexual assault other than listed below (1 count)	36	18	9
C.	Non-forcible sodomy, no parental relationship			
	1 count	24	12	6
	2 counts	40	20	10
	3 counts	104	52	26
D.	Non-forcible sodomy, parent/grandparent to child/grandchild age 13 - 17			
	1 count	36	18	9
E.	Indecent liberties with child			
	1 count	24	12	6
	2 counts	40	20	10
	3 counts	104	52	26
F.	Non-forcible carnal knowledge of child age 13 - 14 (statutory rape)			
	1 count	36	18	9
G.	Incest with own child/grandchild (1 count)	104	52	26
H.	Incest with own child/grandchild age 13 - 17 (1 count)	104	52	26
I.	Aggravated sexual battery			
	1 count	90	60	34
	2 counts	132	88	50
	3 counts	288	192	108

Score

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- J. Participate in filming, etc., of sexually explicit material involving minor (§ 18.2-374.1 B3)
Electronic means for procuring minor for obscene material, etc. (§ 18.2-374.3 A)
Electronic means to solicit minors for sodomy, etc. (§ 18.2-374.3 B)
Possess obscene material - child pornography, 1st offense (§ 18.2-374.1:1 A)** 68 34 17 (1 count)
- K. Produce sexually explicit materials involving minor (§ 18.2-374.1B2)
Possess obscene material - child pornography, 2nd or subsequent offense (§ 18.2-374.1:1 D)
Sell, give, distribute, transmit sexually explicit material involving minor (§ 18.2-374.1 B4)
Finance sexually explicit material - minor (§ 18.2-374.1 C)** 100 50 25 (1 count)

Proposed Recommendation

Amend the Other Sexual Assault sentencing guidelines to add child pornography and online solicitation of minors offenses

