

Supervised Release Sentences of Child Pornography Offenders in U.S. District Courts: An Examination of Disparity

Ph.D. Dissertation

Department of Criminology and Criminal Justice
University of Missouri St. Louis

Niquita M. Loftis

Abstract

Child pornography has quickly escalated in the U.S. to one of most severely punished crimes in the federal criminal justice system. Responding to a moral panic, Congress passed the Protect Act of 2003. This act lengthened for child pornography offenses the term of supervised release, which is a term of post-conviction supervision, from a maximum of three years to a minimum of five years to life. Congress also directed the United States Sentencing Commission (USSC) to include a policy statement in the federal sentencing guidelines directing judges to impose lifetime supervised release for all child pornography offenders. This policy covers all offenses enumerated under child pornography statutes including possession, receipt, transportation, distribution, and production. If the policy is followed directly, one would expect that the exact same sentence of lifetime supervised release would be meted out across all child pornography cases. However, only approximately 33% of child pornography offenders convicted in federal court in fiscal year 2012 received a life term of supervised release. Such variation suggests two things: (1) a disconnect between Congressional will and the will of the sentencing court, and (2) the possibility of unwarranted supervised release sentencing disparities for child pornography offenders.

Since the passage of the Protect Act of 2003, no studies have examined judicial decision-making in the context of supervised release sentences and child pornography offenders. This issue is important in that the supervised release sentence has significant consequences for those receiving the most severe terms. Specifically, those who receive lifetime supervision are subject to lifelong formal social control and the possibility of life imprisonment if revoked. This study, which examines the effects of individual-level legal, extralegal, and district-level contextual factors on supervised release, is the first to explore the correlates of supervised release sentences for child pornography offenders. The focal concerns, the court communities, and social/group threat perspectives of judicial decision-making serve as the theoretical underpinnings to explain individual-level and district-level variation in sentencing outcomes.

The individual-level data for this dissertation comes from the USSC dataset for fiscal year 2012. These data are supplemented with district-level contextual factors tabulated and compiled from the USSC 2012 Annual Report and Sourcebook of Federal Statistics; 2012 Federal Court Management Statistics (FCMS); the USSC 2012 study of child pornography offenses; and the Federal Election Commission's 2013 report on the 2012 Federal Elections. District-level factors examined in the study include region, percent who voted Republican in the

2012 presidential election, district size, child pornography caseload pressure, guidelines compliance rate, *Kimbrough*-based policy disagreement, and mandatory minimum state-level penalties for possession of child pornography. Multilevel modeling techniques are used to analyze the data.

Preliminary data analyses reveal that approximately 27% of the variability in supervised release sentence length is at the district-level with the remainder at the individual-level. Findings also indicate that at the individual level, both legal (offense seriousness, plea, criminal history, detention, number of counts, departure/variance) and extralegal factors (race, education, citizenship, age, family ties) influence the sentence of supervised release. Findings also show that the effects of some of these factors vary across courts, meaning that there is variability in the extent to which individual district courts consider certain factors as relevant for their sentencing decisions. Finally, I find that at the district-level, courts located in the Western region of the United States sentence child pornography offenders to longer sentences of supervised release than those located in the East.

The findings from this study highlight the problematic nature of a statutory supervised release range of 5 years to life for all child pornography offenses. This wide range allows for disparity in sentencing decisions. With little guidance from the USSC, judges must decide on their own how to impose the sentence of supervised release, and extralegal and court contextual factors appear to play a role in this decision. In order to reduce disparities found in these sentences and promote greater uniformity and fairness in sentences, the USSC should consider revising the supervised release sentencing guideline. One way would involve the USSC calculating the supervised release sentence in the same manner that the sentence of imprisonment is calculated. This strategy would base supervised release sentences solely on legal factors such as offense seriousness and criminal history, thereby reducing unwarranted sentencing disparities and promoting greater uniformity and predictability of sentences.