

Re: U.S.S.G. 2G2.2 (Child pornography)

Pursuant to my request, the USSC sent me data related to sentences imposed under U.S.S.G. 2G2.2 for the fiscal years 2007-2009. That data is presented in the attached tables.

Nationwide, from 2007 to 2009, the number of sentences imposed under this guideline almost doubled, from 853 to 1,546, and the percentage of below-guideline sentences increased from 30.8% to 51.6%. Similarly, the average percentage reduction increased from 36.3% in 2007 to 40.3% in 2009. Thus, during the last fiscal year more than half of all child porn sentences were below the minimum guideline sentence, and the average reduction was approximately 40%.

Excluding the First Circuit and DC Circuit (whose case loads are too small to draw meaningful data), the percentage of sentences below the guideline range from a high of 65% in the Third Circuit to a low of 30% in the Fifth Circuit. The average percentage reduction is highest in the Second Circuit at 47% and the lowest is the Seventh Circuit at 30%. Overall, there is not great disparity among the Circuits.

Compared with the Circuit Court data, the Middle District of Florida had a high percentage of below-guideline sentences – 70.6%, but the average percentage reduction was 38.8%, near the national average in fiscal year 2009. During that same period, the Eleventh Circuit was right at the national average with 51.4% of sentences below the guideline and an average reduction of 39%.

Gregory A. Presnell  
UNITED STATES DISTRICT JUDGE

**Below Range Sentences<sup>1</sup> for Child Pornography Cases (§2G2.2)  
All Districts  
Fiscal Year 2007 through 2009<sup>2</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>3</sup>	Average Sentence <sup>4</sup>	Average Percent Reduction
2007	853	263	30.8	107	71	36.3
2008	1,255	528	42.1	106	67	38.5
2009	1,546	797	51.6	111	68	40.3

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<sup>1</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>2</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>3</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>4</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>13</sup> for Child Pornography Cases (§2G2.2)  
DC Circuit  
Fiscal Year 2007 through 2009<sup>14</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>15</sup>	Average Sentence <sup>16</sup>	Average Percent Reduction
2007	2	0	0.0	NA	NA	NA
2008	7	3	42.9	135	87	48.4
2009	19	13	68.4	130	76	46.1

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<sup>13</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>14</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>15</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>16</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>17</sup> for Child Pornography Cases (§2G2.2)  
1<sup>st</sup> Circuit  
Fiscal Year 2007 through 2009<sup>18</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>19</sup>	Average Sentence <sup>20</sup>	Average Percent Reduction
2007	29	5	17.2	85	63	38.2
2008	26	10	38.5	85	63	31.3
2009	28	11	39.3	92	56	50.9

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<sup>17</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>18</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>19</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>20</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>21</sup> for Child Pornography Cases (§2G2.2)  
2<sup>nd</sup> Circuit  
Fiscal Year 2007 through 2009<sup>22</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>23</sup>	Average Sentence <sup>24</sup>	Average Percent Reduction
2007	65	26	40.0	127	61	55.8
2008	115	64	55.6	101	59	41.2
2009	115	65	56.5	112	62	47.0

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<sup>21</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>22</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>23</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>24</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>25</sup> for Child Pornography Cases (§2G2.2)  
3<sup>rd</sup> Circuit  
Fiscal Year 2007 through 2009<sup>26</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>27</sup>	Average Sentence <sup>28</sup>	Average Percent Reduction
2007	57	20	35.1	88	65	29.2
2008	102	37	36.3	73	53	31.1
2009	128	84	65.6	107	63	42.4

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<sup>25</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>26</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>27</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>28</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>29</sup> for Child Pornography Cases (§2G2.2)  
4<sup>th</sup> Circuit  
Fiscal Year 2007 through 2009<sup>30</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>31</sup>	Average Sentence <sup>32</sup>	Average Percent Reduction
2007	72	15	20.8	85	59	32.7
2008	109	36	33.0	112	73	35.4
2009	142	67	47.2	102	68	35.1

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<sup>29</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>30</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>31</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>32</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>33</sup> for Child Pornography Cases (§2G2.2)  
5<sup>th</sup> Circuit  
Fiscal Year 2007 through 2009<sup>34</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>35</sup>	Average Sentence <sup>36</sup>	Average Percent Reduction
2007	86	8	9.3	130	76	47.4
2008	108	23	21.3	133	82	38.4
2009	142	43	30.3	114	70	40.2

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<sup>33</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>34</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>35</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>36</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>37</sup> for Child Pornography Cases (§2G2.2)  
6<sup>th</sup> Circuit  
Fiscal Year 2007 through 2009<sup>38</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>39</sup>	Average Sentence <sup>40</sup>	Average Percent Reduction
2007	90	34	37.7	127	85	33.6
2008	118	53	44.9	120	80	37.1
2009	126	64	50.8	121	72	41.5

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<sup>37</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>38</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>39</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>40</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>41</sup> for Child Pornography Cases (§2G2.2)  
7<sup>th</sup> Circuit  
Fiscal Year 2007 through 2009<sup>42</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>43</sup>	Average Sentence <sup>44</sup>	Average Percent Reduction
2007	57	12	21.0	115	82	30.5
2008	75	33	44.0	126	83	37.8
2009	76	31	40.8	137	100	30.6

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<sup>41</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>42</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>43</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>44</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>45</sup> for Child Pornography Cases (§2G2.2)  
8<sup>th</sup> Circuit  
Fiscal Year 2007 through 2009<sup>46</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>47</sup>	Average Sentence <sup>48</sup>	Average Percent Reduction
2007	82	11	13.4	94	68	35.2
2008	139	50	36.0	108	72	36.9
2009	192	87	45.3	121	74	37.2

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<sup>45</sup> "Below Range Sentences" do not include substantial assistance departures or Early Disposition departures.

<sup>46</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>47</sup> Any guideline minimum greater than 470 months, including "Life", were capped at 470 months.

<sup>48</sup> Any sentence greater than 470 months, including "Life" sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>49</sup> for Child Pornography Cases (§2G2.2)  
9<sup>th</sup> Circuit  
Fiscal Year 2007 through 2009<sup>50</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>51</sup>	Average Sentence <sup>52</sup>	Average Percent Reduction
2007	152	71	46.7	93	64	33.9
2008	227	122	53.7	99	57	44.2
2009	310	192	61.9	101	61	40.8

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<sup>49</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>50</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>51</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>52</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>53</sup> for Child Pornography Cases (§2G2.2)  
10<sup>th</sup> Circuit  
Fiscal Year 2007 through 2009<sup>54</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>55</sup>	Average Sentence <sup>56</sup>	Average Percent Reduction
2007	59	18	30.5	103	66	38.3
2008	92	47	51.1	96	63	35.1
2009	93	50	53.8	91	54	41.0

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<sup>53</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>54</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>55</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>56</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>5</sup> for Child Pornography Cases (§2G2.2)  
11<sup>th</sup> Circuit  
Fiscal Year 2007 through 2009<sup>6</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>7</sup>	Average Sentence <sup>8</sup>	Average Percent Reduction
2007	102	43	42.2	122	82	34.6
2008	137	50	36.5	114	74	36.0
2009	175	90	51.4	128	80	39.1

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<sup>5</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>6</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>7</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>8</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.

**Below Range Sentences<sup>9</sup> for Child Pornography Cases (§2G2.2)  
Middle District of Florida  
Fiscal Year 2007 through 2009<sup>10</sup>**

Year	Total	Below Guideline Range				
		Number	Percent	Average Guideline Minimum <sup>11</sup>	Average Sentence <sup>12</sup>	Average Percent Reduction
2007	27	15	55.6	109	72	34.8
2008	53	26	49.0	106	62	41.4
2009	51	36	70.6	111	70	38.8

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<sup>9</sup> “Below Range Sentences” do not include substantial assistance departures or Early Disposition departures.

<sup>10</sup> Only cases in which all sentencing documents were submitted to the Sentencing Commission are included in this analysis. Also, the Child Pornography guidelines were drastically amended on November 1, 2004, and only cases that are subject to these amended guidelines are used in this analysis.

<sup>11</sup> Any guideline minimum greater than 470 months, including “Life”, were capped at 470 months.

<sup>12</sup> Any sentence greater than 470 months, including “Life” sentences, were capped at 470 months.

SOURCE: United States Sentencing Commission Data File OPAFY2007 - OPAFY2009.