4-13-2017

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

Niquita Marie Loftis
University of Missouri-St. Louis, niquita_loftis@nvp.uscourts.gov

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

Niquita M. Loftis
Master of Social Work, University of Missouri St. Louis - 2008
M.A., Criminology and Criminal Justice, University of Missouri St. Louis - 1999
B.S., Criminology and Criminal Justice University of Missouri St. Louis - 1997

A Dissertation Submitted to the Graduate School at the University of Missouri St. Louis
in Partial Fulfillment of the Requirements for the Degree
Doctor of Philosophy in Criminology and Criminal Justice

May 2017

Advisory Committee

Lee Ann Slocum, Ph.D.
Chairperson

Finn Esbensen, Ph.D.

Beth Huebner, Ph.D.

Cassia Spohn, Ph.D.

TABLE OF CONTENTS

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.

ACKNOWLEDGEMENTS

First and foremost, I give thanks to God. Without my faith, completing this dissertation and the Ph.D. program would not have been possible. Next, I am indebted to my dissertation chair, Dr. Lee Ann Slocum. Dr. Slocum has served as an incredible professor, mentor, and inspiration. I would also like to thank the other members of my dissertation committee – Dr. Finn Esbensen, Dr. Beth Huebner, and Dr. Cassia Spohn. I am grateful for all for your guidance, feedback, patience, and support.

I am also incredibly thankful and blessed to work for the United States Federal Court system. It was through my earlier position as a United States Probation Officer in the Eastern District of Missouri conducting presentence investigation reports on child pornography offenders that the question of supervised release sentencing disparities occurred to me. From there, the seed for this dissertation was planted, coming to fruition several years later. My employment in the federal court system not only inspired my dissertation, but greatly assisted me in having a more nuanced understanding of the data, the federal sentencing guidelines, and federal sentencing practices.

Of course, and it goes without saying, THANK YOU, THANK YOU to my husband, Bjorn E. Loftis. Thank you for believing in me and walking with me through this journey. Your work ethic and attention to detail inspired me to do my best work. I would also be remiss if I did not thank my extended family and friends who served multiple roles throughout my dissertation journey including serving as cheerleaders, therapists, and proofreaders.

Finally, I want to thank my three children – Justin, Sydney, and Dylan. Because of your sacrifice, I finished this study. I hope that I have set a good example - never give up on your dreams.

LIST OF TABLES

LIST OF FIGURES

CHAPTER ONE: INTRODUCTION

'There can be no keener revelation of a society's soul than the way in which it treats its children."[1]

Background

Child pornography is one of the fastest growing offenses prosecuted in federal courts. According to a special bulletin published by the Bureau of Justice Statistics (BJS), in 2006, 69.4% of sex offenses referred for federal prosecution were child pornography offenses, a figure up from 21.8% in 1994, representing a growth of 82% (BJS, 2007). More recent statistics place federal prosecution of child pornography offenses well over 2,000 cases per year (USSC, Sourcebook 2012). Although still only a small percentage of the overall federal court caseload, it is the punishment - particularly the supervised release sentence for child pornography offenses - that pales in comparison to other offenses.[2]

Both the sentences of imprisonment and supervised release term for child pornography offenses have increased in severity over the past thirty years (USSC, 2009; Kaiser and Spohn, 2014). The increase is due in large part to punitive legislation born out of what many argue is a "moral panic" and a political culture of fear of the sexual exploitation of children (Basbaum, 2010; Hamilton, 2011; Spearit, 2011). As Hamilton (2012) points out, "As child pornography is the most visible type of child sexual exploitation offense, it appears to have taken on the status of a signal crime, acting as an alarm to society that children are in danger" (p.1684). The fear ignited by the public, the media, and moral crusaders sparked sweeping congressional changes to federal child pornography laws. These laws ultimately call for longer minimum and maximum

[1] Nelson Mandela

[2] In fiscal year 2012, child pornography offenses comprised approximately 2.4% of all offenses adjudicated in federal court, a minority compared to drug and immigration offenses, which comprised 62.4% of all cases (USSC, Sourcebook 2012).

sentences of imprisonment. But it is the supervised release sentence that is most remarkable – a sentence aimed at total formal social control.

Supervised release is a period of post-conviction community supervision that is imposed at the time of sentencing.[3] Not to be confused with parole, supervised release adds a period of supervision to be served upon completion of the sentence of imprisonment. Parole on the other hand, is period of supervision carved out from the length of the original sentence.[4] For child pornography offenders specifically, the supervised release term is particularly important because of the statutory override found in 18 U.S.C 3583(k), which enhances the length of the term from a maximum of three years to a minimum of five years to life. No other category of offenders in the federal system faces a more serious supervised release term. Congress declared harsher penalties for all child pornography offenders with specific directives to the United States Sentencing Commission (USSC) to include policy statements in the sentencing guidelines regarding the imposition of supervised release. According to the policy statement, if the offense of conviction is a sex offense, the statutory maximum term of supervised release, which is a life term, is recommended.

Statement of the Problem

If the policy statement in the guidelines recommending the maximum supervised release term for all child pornography offenses is followed directly, one would expect a sentence of lifetime supervised release would be meted out across all child pornography cases. However,

---

[3] A sentencing court is authorized and, in some cases, statutorily required to impose a term of supervised release in addition to a term of imprisonment (see general supervised release statute under 18 U.S.C 3583 in Federal Criminal Code and Rules).

[4] The Sentencing Reform Act of 1984 abolished parole for federal offenders who committed their offenses on or after November 1, 1987.

federal data reveals that there is a great deal of variability in the length of supervised release sentences and that judges give out life sentences in over a third of cases (Vinyard, 2016). In fiscal year 2010, the average term of supervised release for non-production cases was approximately 20 years (220.3 months for offenders convicted of possession and 273.7 months for offenders convicted of receipt, transportation and distribution offenses). The average term of supervised release for offenders sentenced for production of child pornography was nearly 27 years (USSC, 2012, p.316). Such data suggests two things: (1) a disconnect or policy disagreement between Congress and the sentencing court; and (2) the possibility of unwarranted supervised release sentencing disparities for child pornography offenders. An unwarranted sentencing disparity refers to unequal sentencing resulting from unfair, unjustifiable or unexplained causes rather than a legitimate use of judicial discretion (Rigsby, 2010).

Significance of the Problem

It is particularly important for researchers and policymakers alike to explore potential supervised release sentencing disparities for child pornography offenses for several reasons. First, Congress did not differentiate between child pornography offense types when it set the statutory range of punishment for supervised release and ordered the USSC to include a policy statement in the guidelines for lifetime supervision. In other words, Congress has explicitly stated that all child pornography offenses are serious and deserve equal supervised release sentences. But some judges may not be willing to sentence similarly for offenses that are essentially different, which leaves room for disparity. As Kaiser and Spohn (2014) point out, one of the main criticisms of the current child pornography sentencing scheme is its failure to distinguish between variations of severity. Because of this, they argue it is possible that judges will be more likely to use their discretion when imposing sentences.

Perhaps one of the most important reasons to examine the supervised release sentences of child pornography offenders is the nature and potential consequences to those sentenced to the most severe term. For example, the supervised release statute allows for the revocation of supervised release for an offender who violates the terms of release, which could result in the incarceration of the offender for the remainder of the period.[5] As an example, if an offender who is required to register under the Sex Offender Registration and Notification Act (SORNA) engages in any conduct constituting a new sex offense, including child pornography, while on supervised release, the court must revoke the term of supervised release and require the offender to serve a term of imprisonment. Thus, child pornography offenders serving lifetime supervised release if revoked, would face life imprisonment. Second, irrespective of the threat of life imprisonment if revoked, child pornography offenders sentenced to lifetime supervised release will likely never be discharged from supervision.[6] Supervision includes at least twice monthly meetings with a probation officer either in the home, probation office, or community. The offender must also adhere to the standard conditions of supervised release (i.e., not leaving the judicial district without permission) as well as special sex offender conditions including but not limited to polygraph testing, sex offender treatment, sex offender registry, no contact with children under the age of eighteen, restricted use of a computer/internet, and a search condition allowing probation officers to search the residence, vehicle, office, and other personal items. In

[5] See 18 U.S.C 3583(e)(3) authorizing the incarceration of a defendant that violates the terms of supervised release.

[6] Under 18 U.S.C. § 3583(e)(1), a court may terminate an offender's term of supervised release "at any time after the expiration of one year of supervised release . . . if it is satisfied that such action is warranted by the conduct of the defendant released and the interests of justice." Such early terminations may occur even in cases where a statute originally required the sentencing court to impose a term of supervised release in excess of one year. Such early terminations have occurred in a relatively small percentage (12%) of total supervision cases in recent years. (USSC, 2010).

other words, a life term permanently binds an offender under a criminal justice sentence where the potential threat of revocation looms indefinitely.

Ramifications for lifetime supervised release sentences do not solely rest with the offender. Practical implications also exist for the federal criminal justice system. For instance, U.S. Probation Offices across the nation are tasked with the supervision and monitoring of these offenders for life, which among other things, requires advanced and specialized training in surveillance, electronic monitoring, and treatment techniques (Cornish, 2010; Palmiotto and MacNichol, 2010). U.S. Probation Offices may also have to allocate more funding toward sex offender treatment at the expense of other services such as drug treatment and mental health treatment in order to compensate for the increased number of offenders serving lifetime supervised release.

Moreover, additional officers may need to be hired to keep pace with the increased workload of child pornography offenders on community supervision (Bishop, 2010). For instance, the U.S. Probation Office in the Eastern District of Missouri (ED/MO) recently created a specialized sex offender unit. This unit, which is comprised of eight officers and one supervisor, supervises only child pornography offenders serving lifetime supervision.[7] One of the reasons for the creation of this unit was the caseload size. The ED/MO, District of Arizona and the Central District of California have the largest sex offender caseloads in the federal system (DSS Report, Administrative Office of the U.S. Courts, 2014). Similar resources for manpower may also be needed at U.S. Attorney's Offices and Federal Public Defenders Offices. These agencies are responsible for the prosecution and defense of supervised release violators.

[7] Each officer supervises approximately 35 offenders.

Likewise, the Bureau of Prisons (BOP) will require resources as they are tasked with housing offenders whose supervised release terms are revoked.

Purpose/Objective

Despite the serious implications associated with sentencing child pornography offenders to lifetime supervised release, few empirical studies have addressed the factors that influence this sentencing decision. In fact, there is only one published article (Kaiser and Spohn, 2014) that examines judicial discretion and child pornography offenses and this study focuses on the likelihood of downward departures. Even more scarce is empirical literature that uses the supervised release sentence as the dependent variable. This dissertation remedies this gap in two ways. First, I focus on the sentence of supervised release as the dependent variable. This is important because much of what matters in sentencing decision-making for the sentence of imprisonment and/or the decision to incarcerate is well established. Research consistently finds that legal factors at the individual-level including criminal history and offense seriousness are the best predictors of imprisonment sentence length and the decision to incarcerate. Research also finds that extralegal factors including gender, race, and age also influence imprisonment length and/or the decision to incarcerate. Missing in federal sentencing research is whether and the extent to which these factors influence the sentence of supervised release. And more importantly, whether these factors contribute to unwarranted supervised release sentencing disparities. Second, I marry the sentence of supervised release with the offense of child pornography, an offense recognized as one of the most serious federal crimes (Rigsby, 2010). The intersection of the supervised release sentence with the offense of child pornography draws together the purpose of this dissertation which is the exploration of factors that influence supervised release sentencing outcomes of child pornography offenders.

Overview and Outline of the Dissertation

In an earlier inquiry of supervised release sentencing outcomes for child pornography offenses, I explored the individual-level effects of legal and extralegal factors on the decision to impose lifetime supervised release (Vinyard, 2016). I found both legal and extralegal factors are statistically associated with the likelihood of being sentenced to the most severe term. Specifically, legal factors such as sentence length (months of imprisonment) significantly increased the likelihood that child pornography offenders were sentenced to lifetime supervised release, while a downward departure/variance significantly reduced the likelihood of lifetime supervised release. Additionally, I found that older child pornography offenders were more likely to be sentenced to lifetime supervised release. But major limitations of this work include the failure to use a multilevel methodology (hierarchical modeling) and failure to consider how district-level contextual factors influence supervised release sentencing outcomes. The problem, as explained Wu and Spohn (2010), with failing to use a multilevel approach in analyzing federal sentencing data is that aggregated data may cloud important differences among district courts and lead to misleading conclusions about the existence of unwarranted disparity. Sentencing research over the past several years using a multilevel methodology has revealed that sentence length varies significantly across courts and district-level contextual factors do play a role in federal sentencing outcomes (Kautt, 2002; Ulmer and Johnson, 2004; Weidner, Frase, and Schulz, 2005).

In view of the aforementioned limitations, this dissertation improves upon my initial efforts by using a multilevel methodology that includes both individual-level legal and extralegal factors as well as district-level court contextual factors hypothesized to influence supervised release sentences of child pornography offenders. These district-level factors, which will be

discussed in greater detail in Chapters Three and Four, include district size, child pornography caseload, guidelines compliance, region, political ideology, mandatory minimum state-level penalties for possession of child pornography, and *Kimbrough*-based policy disagreement.[8] In addition, instead of focusing solely on the most severe supervised release sentence (life) as I did in previous research, I also consider supervised release length and a four-category ordinal measure of the supervised release sentence. My rationale for transforming the dependent variable is explained in greater detail in Chapter Four. My three indicators of the dependent variable aid in providing a more comprehensive picture of supervised release sentences of child pornography offenders. I also improve on my previous analysis by adding additional case and individual independent variables not used before. These variables include: offense severity score, number of counts of conviction, detention status, offense type, number of dependents, and citizenship status.

Altogether using a more superior analytic technique, along with the addition of individual-level legal, extralegal, and district-level contextual factors not previously considered, this dissertation asks and answers:

1. *What proportion of the variability in supervised release sentences is at the individual-level versus the district-level?*

2. *What individual-level (legal and extralegal) variables account for variability in supervised release sentences?*

    2A. *Do individual-level correlates (legal and extralegal) of supervised release sentences differ across offense type (non-production versus production)?*

[8] *U.S. v. Kimbrough* (2007) is a case involving crack cocaine decided by the Supreme Court that allows judges to use their discretion and reject a guideline for policy reasons. According to Hamilton (2014), some sentencing judges have used the rationale applied in *Kimbrough* to disregard or reject the child pornography guidelines based on a policy disagreement. The result is a circuit split on whether judges can disregard the child pornography guideline based on this split.

3. *Above and beyond individual-level variables, are district-level contextual variables related to supervised release sentencing outcomes?*

4. *Do the effects of individual-level variables on sentence length differ across courts? If so, can these differences be explained by characteristics of the court and district?*

Equally important in this dissertation, is a discussion of moral panic and its tether to child pornography. Moral panic as described by Cohen (1972) occurs when a group of people who have social, political or economic power believe that a particular subgroup is threatening the established status quo. In this conceptualization of moral panic, Congress has a formative role in responding to the public's rising anxieties about the sexual exploitation of children through stiff legislation. This trend is evident in the increase over time in statutory minimum and maximum sentences of imprisonment and supervised release sentences of child pornography offenders. Given the argument that punitive legislation of child pornography offense is driven by moral panic (Basbaum, 2010), Chapter Two begins with a detailed review of the fear of child pornography and the moral panic surrounding this group of offenders. Then I discuss congressional response to this panic as well as disagreements within the federal judiciary on how to sentence child pornography offenders.

Chapter Three lays out a discussion of prominent theories of judicial decision-making including *uncertainty avoidance/causal attribution*, *focal concerns*, *court communities*, and *social/group threat.* Uncertainty avoidance/causal attribution theorizes that judicial actors attempt to make rational decisions, but do so within a context of uncertainty (Albonetti, 1991). The focal concerns perspective proposes that judicial sentencing decisions are guided by three key concerns: blameworthiness, community protection, and practical constraints and consequences (Steffensmeier, Ulmer, and Kramer, 1998). I use the courts communities perspective, which states that courts function like communities with their own working norms

and organizational relationships, to explain differences in sentencing outcomes across districts (Eisentein, Fleming, and Nardulli, 1988, Ulmer, 1997). I also employ Blalock's (1967) social/group threat perspective which says that as a subordinate group increases in size, the dominant group will feel threatened and in turn in-part methods of social control to maintain their superior status, to explain differences across district courts. Each of the theoretical perspectives outlined above are explained in greater detail in Chapter Three, followed by a review of the empirical literature more generally as it pertains to individual and contextual influences in sentencing. Drawing from theory and the empirical literature, Chapter Three concludes with a restatement of the research questions followed by theorized hypotheses of the influence of individual-level legal and extralegal factors and district-level contextual factors on supervised release sentencing outcomes.

Next, Chapter Four provides information on data sources, descriptions of measures, and the analytic strategy employed to test the research questions. Chapter Five presents the findings, followed by a detailed discussion in Chapter Six. In Chapter Seven, implications of the research are addressed, followed by ideas for future research, and final thoughts. The dissertation closes with two appendices - Appendix A and Appendix B. Appendix A includes the results of supplemental data analyses using ordinary least squares regression, logistic regression, and ordinal regression that assess the robustness of the multilevel models. Appendix B is an illustration of the sections and format of a standard presentence report as approved and adopted by the Administrative Office of the U.S. Courts. Each appendix is identified in the body of relevant chapters and cross referenced to the end of the dissertation.

CHAPTER TWO: MORAL PANIC, CONGRESSIONAL RESPONSE, AND JUDICIAL DISSONANCE

Introduction

Federal child pornography offenses are unique and unlike other federal offenses in terms of statutory and guideline punishment for the supervised release sentence. This chapter provides the underlying context of these penalties, starting with "*moral panic*." Specifically, I trace how the fear of child sexual exploitation escalated to a full-on moral panic of child pornography offenders. Next, I detail the development of child pornography legislation in response to this panic, and discuss congressional manipulation of sentencing policy as described by legal scholars (Stabenow, 2009). Afterwards, a discussion of child pornography recidivism in the context of actual risk versus moral panic is presented. To aid in understanding child pornography legislation alongside federal sentencing policy, I include an outline of the federal sentencing structure. More specifically, I discuss the specialized sentencing structure for child pornography offenders with particular attention to the supervised release sentence. Finally, this chapter introduces the main thesis of this dissertation, which is the apparent disconnect between congressionally mandated severe sentencing policies such as lifetime supervised release and actual sentencing decisions.

Fear of Child Sexual Exploitation

The origin of modern day child pornography laws and policies begins in the late 1970s when the problem of child sexual abuse was "discovered" (Adler, 2001; Jenkins, 1998). The term "discovered" is used lightly, as the treatment of children as sexual objects is as old as humanity (Jenkins, 1998; Wortley and Smallbone, 2012). Throughout the twentieth century, child pornography was a hidden and restricted activity (Jenkins, 1998). But it was not until the

1960s, a decade characterized for its sexual liberalism that child pornography came out of hiding and openly flourished. Wortley and Smallbone (2012) advance this change in public sentiment was due in large part to social liberalization and relaxation of obscenity laws in Scandinavia (Jenkins, 2001; Wortley and Smallbone, 2012). Indeed, the sexual liberation movement of the 1960s is credited with the development of pedophile organizations such as NAMBLA (North American Man/Boy Love Association) and British Pedophile Information Exchange (Jenkins, 2001). These groups openly expressed the idea of sexuality between adults and children. Moreover, the 1960s marked a time when well over 250 child pornography magazines were circulating in the U.S. with titles such as *Lolita* and *Children-Love Taken* (Wortley and Smallbone, 2012). As a result of seeming public tolerance, there was a mini-boom in the amount of child pornography being produced (Jenkins, 2001).

The 1970s marked a reversal of the pendulum when feminists, social workers, and decency campaigners began raising concerns over child abuse (Jenkins, 2001). During this period, the public, the media, and interest groups began recognizing child sexual exploitation, including child pornography, as a form of abuse (Jenkins, 2001). Immediately thereafter, the public began to react unfavorably to any sexual interest and/or contact between adults and children (Jenkins, 2001). This reaction soon transformed to a national and political concern that linked child pornography not only with child abuse, but with every other social ill involving children at the time, including kidnapping, child murders and organized sex rings (Bella, 2011; O'Brien, 1983; Jenkins, 2001). The media served to fuel public outrage. For example, a 1977 NBC television news broadcast claimed that "as many as two million American youngsters were involved in child pornography." (Jenkins, 2001, p.33). That same year, the *Chicago Tribune* reported that "child pornography has become a nation-wide multi-million dollar racket that is

luring thousands of juveniles into lives of prostitution and exploiting up to 100,000 children at any time" (Jenkins, 2001, p.34). Consequently, child pornography was touted as the new social menace of the time (Bella, 2011; Jenkins, 2001; Adler, 2001).

Following increased public scrutiny, the federal government stepped in and passed the first laws against producers, transporters, distributors, and receivers of obscene child pornography (Wortley and Smallbone, 2012; Rogers, 2013).[9] During this time, the states began passing their own laws against child pornography even without the obscenity requirement (Rogers, 2013).[10] This led to the notable landmark 1982 Supreme Court ruling in *New York vs. Ferber* (1982) (Adler, 2001). In this case the Supreme Court held that child pornography was not protected by the First Amendment even if it was not obscene because it was intrinsically related to the sexual abuse of children (Adler, 2001; Rogers, 2013). Specifically, the Supreme Court defined the harms linked to child pornography as:

> The distribution of photographs and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children. The materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation…pornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child's actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place. A child who has posed for a camera must go through life knowing that the

[9] Obscenity refers to material that is more than indecent. Specifically, it is regarded as any material depicting actual sex with a minor. The Child Protection Act of 1984 ultimately declared all sexual depictions of children as obscene whether or not the child was participating in sexual activity (Jenkins, 1998).

[10] The obscenity requirement was based on congressional fear that the courts would strike the legislation as unconstitutional if not included (Rogers, 2013).

> recording is circulating within the mass distribution system for child pornography (Rogers, 2013, p. 1017).

The public campaign waged against child pornography and the landmark Supreme Court decision in *New York vs. Ferber* succeeded in driving child pornography back underground (Wortley and Smallbone, 2012).

Child pornography later re-emerged with vigor in the 1990s due in large part to the proliferation of the Internet (Jenkins, 2001). The Internet and associated technologies including peer-to-peer networks, bulletin boards, and chat rooms are charged with exponentiating and revolutionizing the child pornography industry by increasing the volume that is available, the efficiency with which it is disseminated, and the ease by which it can be accessed (Wortley and Smallbone, 2012). From 1996 to 2002, online images of sexual exploitation of children increased by almost 2,000% (Spearit, 2009). It is estimated that there are at least 100,000 websites containing child pornography (Wortley and Smallbone, 2012). One report showed that from 2005 to 2009, the U.S. had the largest share of commercial child pornography websites, accounting for almost half of the global volume (Spearit, 2009).

Moral Panic and Child Pornography

The public's fear of child pornography that began in the 1970s and escalated with the emergence of the Internet, has all the makings of moral panic. By definition, moral panic is the sudden eruption of outrage towards a specific group disproportionate to any harm caused. Cohen (1972) was first to coin the term and his definition more specifically includes: (1) concern about the potential or imagined threat; (2) moral outrage toward the actors who embody the problem; (3) widespread agreement that the threat exists and that something should be done about it; (4) an exaggeration of the number or strength of cases, in terms of damages, moral offensiveness, and

risks if ignored; and (5) the panic erupts and dissipates suddenly without warning. Garland (2008) added two more elements: (1) the actors who embody the problem are viewed as threatening to the status quo; and (2) without action, they risk destroying society.

Jenkins (1998) and others have invoked Cohen's model of moral panic to explain societal fear of child pornography. Jenkins (2001) claims that it was during the initial crusade against child pornography in the 1970s that moral crusaders competed to assert the most incendiary claims about child pornography, including that it was a well-organized, multi-billion dollar industry and that the number of children exploited was in the millions. Jenkins (2001) notes that while most of these claims were discredited, fear persisted. As Walker (2010) describes:

> "Anxiety over child sexual abuse and the inability to protect children from harm is a salient fear in present society. Despite other, more probable dangers, these issues remain a large concern. Moreover, they are an agreed upon social harm. Child sexual abuse is decried unanimously as a moral wrong and a violation of social norms." (p.198)

Similarly, Ost (2002) explains that the main causes of the moral panic over child pornography "are the moral values which affirm the sacred status of the child and the rights that our society has ascribed to children." (p.443)

The only criterion of Cohen's moral panic model that appears not to have been met in the case of child pornography offenders is the fifth. Meaning, at this time, there is no dissipation of the panic. Unlike other panics such as the Salem Witch trials or the crack cocaine epidemic, both of which had a start and end date, the panic over child sexual exploitation has been durable, long-lasting and now in its fourth decade (O'Hear, 2008). Walker (2010) argues the only thing that has changed with the child pornography panic is the fervent role of the state in responding.

The federal government has created a number of laws intended to severely punish and control child pornography offenders.

Congressional Response to Child Pornography

Increasing scope of the law and manipulation of sentencing policy.

Many legal scholars contend that the current federal laws and resulting sentencing policies surrounding child pornography are inspired by moral panic directed toward child pornography offenders (Adler, 2001; Basbaum, 2010; Hamilton, 2011). Wortley and Smallbone (2012) point out that laws indeed are an expression of society's moral sentiments and that in furtherance of this expression, Congress has taken an undifferentiated approach that all child pornography offenses are universally heinous and deserve strict punishment. The rationale for such appears based on three concerns (Basbaum, 2010). First, is the notion that restricting child pornography reduces the demand, which in turn reduces the sexual abuse of children. Second, many believe that possession of child pornography leads to actual hands on physical and sexual abuse of children, and whets the appetites of pedophiles. Third, many argue that child pornography is not a victimless crime and in fact constitutes a permanent record of the child abuse and each viewing of an image is akin to another episode of abuse (Basbaum, 2010).

Walker (2010) explains that policymakers consider child pornography offenders a defined controllable risk that justifies ever-increasing surveillance and governmental intrusion. As a result, federal child pornography legislation has grown increasingly expansive and punitive, calling for lengthier periods of incarceration and supervised release (see Table 2.1 below).

Table 2.1

Development of Child Pornography Laws in the U.S.

Date	Legislation	Comment
1977	Protection of Children Against Sexual Exploitation Act	Outlawed commercial production, transportation, distribution and receipt of obscene material featuring children under age 16; established 10 year maximum for first time offenders and a 15 year maximum and 2 years minimum for a subsequent offense
1982	*New York v. Ferber (1982)*	Supreme Court held child pornography is not protected by the First Amendment
1984	Child Protection Act	Eliminated commercial purpose requirement and removed the obscenity requirement from production and distribution and changed the age of a minor from 16 to 18
1988	Child Protection and Obscenity Enforcement Act	Extended child pornography laws to use of a computer to transport, distribute or receive illegal material
1990	*Osborne v. Ohio (1990)*	Supreme Court upholds criminal sanctions for private possession of child pornography
1990	Child Protection Restoration and Penalties Enhancement Act	This act made the mere possession of child pornography a federal crime
1996	Child Pornography Prevention Act	Bans virtual child pornography – computer generated images that appear to depict real children. This Act was later struck down by the Supreme Court
2003	Protection Act (Prosecutorial Remedies and Other Tools to	Outlawed attempts to trade material under the pretense

	End the Exploitation of Children Today)	that they are, or contain child pornography; enhanced minimum and maximum sentence lengths for possession, transporting, distributing, receiving, and production of child pornography; amended the guidelines to reduce incidences of sentencing departures and increased guideline offense levels in child pornography cases; prohibited judges from considering family ties and responsibilities as well as community ties in cases involving a minor victim; amended the Bail Reform Act to create a presumption that child pornography defendants, except those charged with simple possession, are dangerous to the community and should be denied bail; **lengthened the supervised release range from three years to five years to life**
2008	Protect Our Children Act	Created a new offense – unlawful production with intent to distribute, or knowingly distributing child pornography that is an adapted or modified image of an identifiable minor
2012	Child Protection Act	Raised the statutory maximum penalty for possession, attempted possession, or conspiracy to possess child pornography from 10 to 20 years for offenders who possess images of minors under the age of 12

Table 2.1 demonstrates the increasingly punitive stance Congress has taken towards child pornography offenses. This message was made explicit by President George W. Bush in a press statement upon signing of the Adam Walsh Child Protection and Safety Act of 2006:[11]

> Protecting our children is our solemn responsibility. It is what we must do. When a child's life or innocence is taken it is a terrible loss - it's an act of unforgiveable cruelty. Our society has a duty to protect our children from exploitation and danger. By enacting this law we're sending a clear message across the country: those who prey on our children will be caught, prosecuted and punished to the full extent of the law (Kimball, 2011, p.1535).

An analysis by the USSC of child pornography laws revealed three key beliefs held by Congress about child pornography: (1) commercial and non-commercial distribution and receipt of child pornography contribute to molestation and abuse of children; (2) child pornography had become a highly organized, multi-million dollar industry that operates on a nationwide scale, and federal law enforcement efforts should not be limited to large scale distributors of child pornography; and (3) child pornography causes substantial harm to both the victim and to society as a whole (USSC, 2009). These beliefs comport with parts of Cohen (1972) and Garland's (2008) definitions of moral panic, which include concern about the potential threat; moral outrage toward the actors who embody the problem; and widespread agreement that the threat exists and that something should be done about it.

[11] According to the Fact Sheet, this law was promoted as a strengthening of federal laws to protect children from sexual abuse and other violent crimes, prevention of child pornography and a means of making the Internet safe for children (see Fact Sheet found at www.georgewbush-whitehouse.archives.gov/news/release/2006). This Act had no direct impact on child pornography laws.

In sum, this section described the congressional expansion of and increased statutory penalties for child pornography offenses. This provides important context for understanding the next section, which discusses congressional input in the federal sentencing guidelines for child pornography offenses.

Congressional manipulation of the federal sentencing guidelines.

The preceding section discussed the expanding scope of the law and rationale behind child pornography laws. This section discusses the evolution of the child pornography sentencing guidelines and congressional manipulation for severe sentences based on moral panic rather than empirical evidence. Although the focus of this dissertation is on the supervised release sentence, most of the guideline manipulation by Congress impacts the sentence of imprisonment. This is because the guideline for the supervised release sentence is open to far less congressional manipulation than the sentence of imprisonment: There are no adjustments or enhancements built into the supervised release guideline schemata. Nonetheless, this section establishes the foundation for congressional support for severe sentences and shows how this position extends to the supervised release sentence. This discussion sets up the final section of this chapter, which details the disharmony between congressional policy and the will of some sentencing courts.

While Congress is tasked with setting statutory minimum and maximum sentences of imprisonment and supervised release for child pornography offenses, the USSC's duty is to set proposed sentence lengths within the statute. [12] But power held by the USSC to make and

[12] The sentencing guidelines are created by the USSC - an independent body of neutral experts in the judicial branch (Krohel, 2011). The duties of the USSC are to formulate and constantly refine national sentencing policy by developing and monitoring the guidelines. This is done through an empirical methodology that considers data from national experience and past sentencing practices (Freidman and Supler, 2008).

influence federal sentencing outcomes for child pornography offenses, has slowly migrated toward congressional actors (Bowman, 2005). Over the past twenty years Congress has directly intervened or manipulated the work of the USSC, directing the agency to increase guideline penalties and reduce incidences of downward departures for child pornography offenses in an effort to achieve guideline sentences at or near statutory maximum sentences (Friedman and Supler, 2008).[13]

The first of many congressionally mandated guidelines enhancements came in 1990 after Congress passed, as part of the Crime Control Act of 1990, the Child Protection Restoration and Penalties Enhancement Act of 1990 (USSC, 2009). This Act contained a general directive regarding child sex abuse crimes that instructed the USSC to amend existing guidelines for offenses involving sexual crimes against children so that more substantial penalties may be imposed if the USSC determines current penalties are inadequate (USSC, 2009). But this was true so long as Congress agreed that the penalties proposed by the USSC were adequate. For example, in 1991 after possession of child pornography was criminalized, the USSC had to determine whether to treat possession cases as equivalent to trafficking cases or whether to create a separate guideline. The USSC proposed to refine the guidelines for trafficking in child pornography and implement a new guideline for the lesser harms of possession, receipt, and transportation of child pornography (USSC, 2009). Congress disagreed with the USSC's proposal. Senator Jesse Helms of North Carolina stated Congress's position: "The Sentencing Commission has undermined Congress's attempt to assure severe punishment for dealing in child pornography." (USSC, 2009, p.20). Congress responded to the USSC's proposed amendment

---

[13] For a complete history of congressional efforts pushing lengthier child pornography sentences – see History of Child Pornography Guidelines (2009).

with superseding legislation that directed the USSC to raise the base offense level for all child pornography offenses and return the offense of receipt of child pornography back to the trafficking guideline (USSC, 2009).

In December 1995, Congress passed the Sex Crimes Against Children Prevention Act of 1995, which directed the USSC to increase all penalties covering child pornography offenses, including increasing the base offense levels. In October 1998, Congress legislated the Protection of Children from Sexual Predators Act of 1998 which again addressed penalties for child pornography offenses. One of the main provisions of the Act was that it directed the USSC to ensure that sentencing guidelines and policy statements within the guidelines were consistent with congressional intent that offenders convicted of child pornography offenses be sentenced severely. Later, in 2003, specific directives in the Protect Act ordered the USSC to make adjustments to the offense levels for child pornography offenses based on the number of images and/or videos (Stabenow, 2009). Additional adjustments were included for images portraying depictions of sadistic and masochistic conduct or other depictions of violence. No empirical evidence or rationale was provided to justify these enhancements (Stabenow, 2009).

Congressional manipulation of the child pornography guidelines has contributed to average child pornography imprisonment lengths growing from 36 months in 1994 to 109.6 months in 2007, an increase of 300% (Friedman and Supler, 2008). Such congressional action has not been without public support. Various lobbyists, including Morality in Media, Inc., Citizens for Decency Through Law, and dozens of concerned citizens have favored congressional proposals for increases in sentence severity (USSC, 2009; Friedman and Supler, 2008).

Although most Congressional changes to the federal sentencing guidelines for child pornography offenses were directed at the sentence of imprisonment, they did not ignore the sentence of supervised release. Unlike the guidelines for the sentence of imprisonment, the supervised release guidelines do not allow for direct congressional manipulation because there are no adjustments or enhancements built into the supervised release guideline schemata. Instead, Congress passed the Protect Act of 2003 (see Table 2.1), which among other things lengthened the supervised release term for child pornography offenders from a maximum of three years to a minimum of five years to life. Congress specifically directed the USSC to include a policy statement in the supervised release guidelines recommending the maximum sentence of life for anyone convicted of a child pornography offense. Congress justified the enhanced supervised release term with deterrence and rehabilitation arguments:

> [18 U.S.C. 3583(k)] responds to the long-standing concerns of federal judges and prosecutors regarding the inadequacy of the existing supervision periods for sex offenders, particularly for the perpetrators of child sexual abuse crimes, whose criminal conduct may reflect deep-seated aberrant sexual disorders that are not likely to disappear within a few years of release from prison. The current length of the authorized supervision periods is not consistent with the need presented by many of these offenders for long-term--and in some cases, life-long-monitoring and oversight (Shockley, 2010, p. 356).

Congress's supervised release policy appears to provide punishment for child pornography offenders on the basis of their risk for future offending rather than punishment directly related to the instant offense. Hessick (2010) calls this preventative punishment. Preventative punishment is when you punish behavior in order to avoid the risk of future crime.

Thus, the supervised release policy appears to reflect notions of public protection and a belief that the recidivism rate of child pornography offenders is high and they cannot be rehabilitated. It also assumes all child pornography offenders are equally at risk for reoffending regardless of the crime or social circumstances. Thus, a particularly salient question likely in the minds of judges before they impose supervised release sentences is how likely are child pornography offenders to commit a sexual offense involving contact with a child while on supervised release? The next section assesses empirical evidence of actual risk posed by child pornography offenders.

Moral Panic vs. Real Danger: Empirical Evidence of Recidivism

As previously mentioned, some legal scholars argue that the increasingly punitive stance by Congress toward child pornography offenders is the result of moral panic and a political culture of fear of the sexual exploitation of children (Basbaum, 2010; Spearit, 2011; Stabenow, 2009). Others argue that the impetus behind Congress's punitive stance is an underlying presumption that anyone involved in child pornography is really an undetected child molester (Hamilton, 2011). An exploratory psychological study on child pornography offenders by Bourke and Hernandez (2009) bolstered this presumption. They found that what judges knew at the time of sentencing about the offender's documented criminal sexual history (as found in the presentence report), underestimated their self-reported criminal sexual history disclosed at the end of treatment.[14] Although the study had many limitations, including generalizability, it armed Congress and those who agree with its findings with empirical evidence to justify previously imposed punitive child pornography statutes and guidelines.

[14] At the time of sentencing, only 26% of the offenders had a prior documented contact offense. By the end of treatment, 85% admitted they had at least one hands-on offense.

There is much concern by Congress about the likelihood that child pornography offenders will commit contact sexual offenses against a child, but long-term recidivism studies are unavailable. However, researchers are beginning to explore this issue and have concluded that the rate of sexual recidivism for child pornography offenders is less than commonly assumed. For example, the USSC conducted its own study of 610 non-production offenders sentenced in fiscal years 1999 and 2000 to assess known general recidivism and sexual recidivism. The general recidivism rate for the sample was 30%, a rate similar to all federal offenders, and the sexual recidivism rate was 7.4% (45 of the 610). Of those 45 sexual recidivists, 3.6% were arrested for or convicted of a sexual contact offense (i.e., rape or sexual assault of an adult or child); 2.3% were arrested for or convicted of a subsequent child pornography offense and 1.5% were arrested for or convicted of a non-contact sex offense involving obscenity or commercial sex. The minimum follow up period was twenty-four months and the average follow-up period for all of the offenders was eight and half years.

A 2005 Canadian study by Seto and Eke monitored 201 child pornography offenders with the objective of answering two questions: (1) how likely are child pornography offenders to incur new charges or convictions of any kind?; and (2) how likely are they to specifically incur new charges or convictions for contact sexual offenses?[15] They found that 17% of the sample offended again during 2.5 year time period and 4% committed a new contact sexual offense (defined as physical contact with the victim). Child pornography offenders with prior records were significantly more likely to offend again in any way during the "at risk" period. Child pornography offenders who had committed a prior contact sexual offense were most likely to

[15] Seto and Eke examined new charges or convictions post-conviction of the instant child pornography conviction. They also examined their criminal records to identify potential predictors of later offenses. Fifty six percent of the sample had a prior criminal record, twenty-four percent had prior contact sexual offenses, and fifteen percent had prior child pornography offenses. The average time at risk was 2.5 years.

offend again, either generally or sexually. They found that, of 76 men with a history of child pornography offenses but no contact offenses, only one person committed a contact sexual offense during the follow-up period.

More recently, a meta-analysis by Seto, Hanson and Babchisin (2011) examined the recidivism rates from nine follow-up studies of child pornography offenders (N = 2,630). The meta-analysis revealed that 4.6% of child pornography offenders committed a new sexual offense; 2.0% committed a contact sexual offense, and 3.4% committed a new child pornography offense. These results suggest child pornography offenders are unlikely to commit a detected contact sexual offense. [16] But for those who did sexually recidivate, risk factors included criminal history, younger offender age, substance use, self-report sexual interest in children, low education, history of prior treatment for sexual offending, and being single. These factors varied across the nine studies, except for criminal history which was common to all.

Though these few recidivism studies appear to undermine congressional rationale for severe supervised release sentencing for child pornography offenders, such studies do have limitations. The use of criminal records to measure re-offending frequently leads to an underestimation of actual sex crimes (Basbaum, 2010) because sex offenses against children often go unreported or undetected. Thus, recidivism studies of child pornography offender should be viewed with caution and considered as *known rates of recidivism* (USSC, 2012). Nonetheless, these studies expose a serious flaw in the rationale behind strict sentencing for child pornography – namely that it is built around panic. The supervised release sentence rose

[16] The average time at risk was 1.5 to 6-years.

dramatically from a maximum of three years to five years to life, in part due to the belief that child pornography offenses lead to contact offenses.

But some judges in the federal judiciary appear not to respond to moral panic with severe sentencing. On the contrary, a number of sentencing courts have expressed their disagreement with the severity of child pornography sentencing guidelines through increased use of below-guidelines variance and downward departures (USSC, 2009, 2012). Before providing evidence of such sentencing variation, a review of the sentencing structure of the federal courts as well as the specific sentencing structure for child pornography offenses is necessary to show where variability and unwarranted supervised sentencing disparities can occur.

Sentencing Structure of the Federal Courts

The Sentencing Reform Act of 1984 (SRA).

Prior to 1984, federal judges possessed unfettered sentencing discretion as long as they imposed sentences within the statute. The problem with indeterminate sentences was that similarly situated defendants often received different sentences (Rigsby, 2010; Krohel, 2011). As a means of limiting disparities in sentencing, Congress in 1984, passed the SRA which established a statutory framework for federal sentences (Kimball, 2011; USSC Federal Sentencing Guidelines Manual 2012). The SRA was motivated in part by Congressional desire to establish a rational sentencing system to provide for certainty, uniformity, and proportionality in criminal sentencing (Rigsby, 2010). The intent of Congress was to eliminate an unjustifiably wide range of sentences for similarly situated offenders.

As such, the SRA also transformed federal sentencing from an indeterminate system to a determinate system through the use of presumptive sentencing guidelines (Rigsby, 2010). The

guidelines operated to constrain judicial discretion. That is, judges had to use the guidelines to calculate the guideline range, which was developed based on the seriousness of the offense and the defendant's criminal history (Kimball, 2011). Although the guidelines were mandatory, a judge could depart from the guidelines, but if and only if a particular case presented atypical features or upon a 5K1.1 motion filed by the U.S. Attorney's Office for the defendant's substantial assistance.[17] The guidelines were intended to base judicial sentencing entirely on legally relevant factors such as the seriousness of the offense and prior criminal history.

The SRA set forth several substantive requirements that have guided the USSC's actions in the area of child pornography offenses (USSC, 2009). Statutory provisions outlining the Commission's duties direct the Commission to act in a manner consistent with all pertinent provisions of any federal statute when creating guidelines and establishing sentencing policy. Accordingly, under the SRA, the USSC is required to consider the same factors that a sentencing court must consider (USSC, 2009). For example, the SRA directs the Commission to take into account certain characteristics of the offender, including criminal history, while assuring that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders.

Additional characteristics the SRA instructs the USSC to consider are the offense, including the nature and degree of the harm caused by the offense; the community view of the gravity of the offense; the public concern generated by the offense; the deterrent effect on others particular sentence may have; and the current incidence of the offense in the community and in the nation as a whole (USSC, 2009). Such characteristics are used by the Commission to

[17] Substantial assistance motions or 5K1.1 motions as they are typically called, are filed by the U.S. Attorney's Office when the defendant provides a substantial form of assistance in the investigation or prosecution of another person engaged or previously engaged in a federal crime. This motion allows judges to depart below any statutory minimum sentence.

establish the relative seriousness of the offense as compared to other offenses and to maintain proportionality throughout the guidelines (USSC, 2009).

The supervised release sentence.

The enactment of the SRA effectively eliminated parole and established supervised release. As explained in Chapter One, supervised release is a term of post-conviction supervision overseen by federal district courts with the assistance of federal probation offices (USSC, 2010). Initially, when the law for supervised release was written, the primary goal of supervised release was to ease the defendant's transition into the community after the service of a long prison term, or to provide rehabilitation to a defendant who had spent a fairly short period in prison for punishment or other purposes, but still needed supervision and training programs after release.[18] Accordingly, this meant that supervised release was not originally intended for purposes of control, revocation, or community safety. The law for supervised release was later amended in 1984 and 1986 respectively, to include provisions for affording adequate deterrence to criminal conduct; providing protection to the public from further crimes committed by the defendant; and providing the defendant with needed educational or vocational training, medical care, or other correctional treatment (USSC, 2010).

A sentencing court is authorized and in some cases required to impose a term of supervised release to follow a term of imprisonment.[19] Once a sentencing court determines that a term of supervised release is authorized or required, it must then decide the length of the term. Under 18 USC 3583(b), the primary statute governing supervised release, the maximum

---

[18] See S. Rep. No 98-225, p.124 (1983).

[19] A sentencing court is required to impose a term of supervised release to follow imprisonment when supervised release is required by statute or when a sentence of imprisonment of more than one year is imposed. The guidelines authorize the court to depart from the supervised release guideline and not impose a term of supervised release if supervised release is not required by statute.

authorized supervised release term for Class A or B felonies is five years; it is three years for Class C and D felonies; and one year for Class E felonies or misdemeanors. According to Section 5D1.2, Application Note 3 of the federal sentencing guidelines, in determining the length of supervised release, the court is required by statute to consider the guidelines and, among other factors: (1) the nature and circumstances of the offense and history and characteristics of the defendant; (2) the need to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment; (3) the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and (4) the need to provide restitution to any victims of the offense. The guidelines also indicate that a defendant with a more serious criminal history warrants a greater need for supervision. Finally, the guidelines direct the court to ensure that the term imposed on the defendant is long enough to address the purposes of imposing supervised release on the defendant.

When a court imposes a term of supervised release, it must set conditions of supervision which may include mandatory, standard and/or special conditions. The court also has discretion to order any condition set forth as a discretionary condition of probation and any other condition it considers to be appropriate as long as the condition is reasonable and appropriate to the effective supervision and rehabilitation of the offender (USSC Federal Sentencing Guidelines Manual, 2012). Common conditions include maintaining stable employment and refraining from use of illegal controlled substances. For child pornography offenses, common special conditions include: (1) requiring the defendant to participate in a program for the treatment and monitoring of sex offenders, including polygraph testing; (2) limiting the use of a computer or interactive

computer service in cases in which the defendant used such items; (3) limiting contact with children under the age of eighteen without supervision and with the approval of the probation office; and (4) requiring the defendant to submit to a search, at any time, of the defendant's person and any property, house, residence, vehicle, papers, computers, other electronic communication or data storage devices or media based upon a reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the defendant (USSC Federal Sentencing Guidelines Manual 2012, p. 424). Appeals courts have held that such conditions are reasonable as long as they are tailored specifically to each offender and are reasonably related to the effective supervision and rehabilitation of the offender.

Supervised release is very similar to probation and parole in that if an offender violates the terms of release, the sentencing court is authorized, and in some cases required, to revoke the term of supervised release and require the offender to serve all or part of the supervised release term in prison (USSC, 2010). Moreover, in the instance of a finding of a violation, the court may also *extend* the supervised release term, provided that the statutory maximum term was not previously imposed.

Specialized sentencing structure for child pornography offenses.

Congress has made it clear that child pornography is a serious crime. As a means of deterring offenders, eliminating the market and ending the abuse of children, Congress has said harsh punishment for all child pornography offenders is warranted (Hamilton, 2011). The statutory penalties for these offenses reflect this sentiment. Simple possession offenses prescribe no statutory mandatory minimum penalty and a maximum term of 10 or 20 years of imprisonment. However, if an offender has a prior sex offense conviction, possession would result in a mandatory minimum term of imprisonment of 10 years and a maximum term of 20

years (USSC, 2012). Receipt, transportation, or distribution offenses carry a statutory mandatory minimum sentence of five years of imprisonment and a maximum sentence of 20 years (with increased minimum and maximum penalties if the offender has a prior conviction for a sex offense). In justifying this punitive legislation, Congress has said that intrastate distribution, receipt and possession of child pornography fuel the interstate market and is harmful to the children depicted and to society as a whole (Krohel, 2011). Production offenses prescribe a statutory mandatory minimum term of 15 years of imprisonment and a maximum term of 40 years (with increased minimum and maximum penalties if the offender has a prior sex offense).

The sentencing guidelines for the sentence of imprisonment for these cases generally fall into two categories: non-production offenses and production offenses. Non-production offense types include possession, receipt, transportation, and distribution. These offense types represent approximately 90 percent of all federal child pornography prosecutions (USSC, 2012). The other 10 percent of federal cases are production offenses (USSC, 2012). Non-production cases are sentenced under 2G2.2 of the federal sentencing guidelines and production offenses are sentenced under 2G2.1. Each of these guidelines respectively, provide sentence enhancements or reductions to the base offense level for specific offense characteristics such as the use of a computer, material portraying sadistic or masochistic conduct or other depictions of violence, and the number of images/videos possessed. The base offense level for a non-production offense such as possession of child pornography is 18, while the base offense level for a production offense is 32.

Specialized supervised release sentencing structure for child pornography.

Prior to the Protect Act of 2003, offenders convicted of child pornography offenses were subject to the general supervised release provision in 18 USC 3583(b). This meant that the

maximum term of supervised release a court could impose was three years because child pornography offenses are either Class C or D felonies. The Protect Act significantly lengthened the supervised release term, creating an override from the general supervised release statute to 18 USC 3583(k). Under 18 USC 3583(k), the length of the supervised release term for child pornography offenses is a minimum of five years to life. The enumerated offenses in 18 USC 3583(k) includes an array of offenses varying in statutory maximum sentences, which demonstrate Congress's recognition that offenses have differing degrees of seriousness (Shockley, 2010). But there is an equalization of all child pornography offenses enumerated under 18 USC 3583(k), meaning regardless of the charge, all child pornography offenders are subject to a supervised release range of five years to life.

Supervised release sentencing guidelines for all federal offenses including child pornography offenses are found in Chapter Five, Part D of the Guidelines Manual. To aid in understanding the supervised release sentence, Section 5D1.2 of the guidelines manual is recreated here:

5D1.2 <u>Term of Supervised Release</u>

(a) Except as provided in subsections (b) and (c), if a term of supervised release is ordered, the length of the term shall be:

(1) At least three years but not more than five years for a defendant convicted of a Class A or B felony.

(2) At least two years but not more than three years for a defendant convicted of a Class C or D felony.

(3) One year for a defendant convicted of a Class E felony or a Class A misdemeanor.

(b) Notwithstanding subdivisions (a)(1) through (3), the length of the term of supervised release shall be not less than the minimum term of years specified for the offense under subdivisions (a)(1) through (3) and may be up to life, if the offense is-

(1) Any offense listed in 18 USC 2332b(g)(5)(B), the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person; or

(2) A sex offense.

(Policy Statement) If the instant offense of conviction is a sex offense, however, the statutory maximum term of supervised release is recommended.

(c) The term of supervised release imposed shall not be less than any statutorily required term of supervised release.

As shown, Section 5D1.2(b)(2) provides that a sentencing court must impose at least the statutory minimum term or life if the offense is a sex offense. The policy statement within the sentencing guidelines explicitly recommends the maximum term of supervised release (life) be imposed if the instant offense of conviction is a sex offense. Under the federal sentencing guidelines, such policy statements are to be considered by the sentencing judge (Shockley, 2010).

The policy statement within the guidelines recommending the maximum supervised release term has been criticized because it was promulgated before the Protect Act of 2003 increased the maximum term in child pornography offenses from three years to life (Shockley, 2010; USSC 2012). Meaning, before the Protect Act, it was the intent of Congress for child pornography offenders to receive three years of supervised release. Defense attorneys point out that the USSC never amended the language in Section 5D1.2 following the Protect Act of 2003, and that it does not necessarily comport that Congress intended for all child pornography offenders to receive lifetime supervised release (Stabenow, 2009). Nonetheless, the life term has been upheld by appeals courts. In *U.S. v. Cope* (2008), the appeal court ruled that imposition of lifetime supervised release is a reasonable sentence even for possession of child pornography cases.

Another criticism of the blanket policy recommendation for lifetime supervised release is that it does not differentiate among child pornography offenders with regard to the type of child pornography offense committed and need for lifelong monitoring (USSC, 2012). Specifically, 18 USC 3583(k) includes an array of child pornography offenses with varying seriousness, as evidenced by the wide range of maximum sentences of imprisonment (Shockley, 2010). Hamilton (2012) argues that such a blanket policy recommendation for lifetime supervised release represents a deontological perspective that judges all sexual images of children as immoral and therefore deems anyone who possesses, receives, distributes, transports or produces such images to be a criminal who deserves strict punishment and social control. The USSC, in their 2012 report to congress on child pornography, noted that they were considering amending the supervised release guideline in a manner that provides guidance to judges on how to impose a term of supervised release within the statutory range of five years to life that is more tailored to

an individual offender's risk and corresponding need for supervision (p.326). To date, there have been no changes to the supervised release guidelines for child pornography offenses.

The length of the supervised release term is of particular importance for child pornography offenders subject to the enhanced supervised release provisions because the statute also provides for the revocation of supervised release resulting in the incarceration of the offender for the remainder of the period. Another concern with the supervised release statute and revocation for child pornography offenders is the potential problem of revocation versus prosecution (Shockley, 2010). For example, if a child pornography offender serving lifetime supervised release for possession of child pornography commits another possession of child pornography offense, they would face a revocation sentence of five years to life. The revocation sentence could entail an even greater punishment than if the offender were prosecuted for committing a second offense for possession of child pornography, which carries a sentence of imprisonment of 10 to 20 years. Shockley (2010) argues "By allowing a steeper punishment for a second offense via the revocation process than that intended by Congress, the system undermines legislative intent" (p.32). This potential problem highlights why the supervised release sentence imposed for child pornography offenders is significant. Statistics regarding how often child pornography offenders on supervised release are revoked for committing new child pornography offenses and returned to prison are not available.

Return of Judicial Discretion – *U.S. v. Booker* (2005), *Rita v. U.S.* (2007), *Gall v. U.S.* (2007), and *Kimbrough v. U.S.* (2007*)*

The constitutionality of the federal sentencing guidelines was successfully challenged in 2005 with the landmark *U.S. v. Booker* (2005). The Supreme Court held that the mandatory Guidelines were unconstitutional. To remedy this, the Supreme Court excised the mandatory

nature of the guidelines, rendering them advisory. The Supreme Court reasoned that an advisory guideline system, while lacking the mandatory features that Congress enacted, retains other features that help to further congressional objectives, including promoting certainty and fairness in sentencing, avoiding unwarranted sentencing disparities, and maintaining flexibility to permit individualized sentences when warranted (USSC Federal Sentencing Guidelines Manual 2012). Excising the mandatory nature of the sentencing guidelines restored discretion to federal judges.

Although the *Booker* case demonstrated an inclination toward providing judges with greater discretion, it was not the only significant case with implications for federal sentencing. Decisions in *Rita v. U.S.* (2007), *Gall v. U.S.* (2007), and *Kimbrough v. U.S.* (2007) extended judicial discretion even more. In *Rita v. U.S.* (2007), the Supreme Court had to determine whether it was proper to apply a presumption of reasonableness to within guideline sentences on appeal. The Supreme Court found that a sentencing court could presume that a within guideline sentence was reasonable (Rigsby, 2010).

Following the *Rita* decision, the Supreme Court had to determine in *Gall v. U.S.* (2007) whether it was proper to apply a presumption of unreasonableness to sentences outside the guideline range (Rigsby, 2010). The Supreme Court ruled that appellate courts may not apply a presumption of unreasonableness to a sentence that departs from the guidelines (Basbaum, 2010; Rigsby, 2010). In other words, sentencing courts have the power to impose any sentence so long as they explain their reasoning for the sentence.

In *Kimbrough v. U.S.* (2007), the issue before the Supreme Court was whether a sentencing judge's policy disagreement with the crack cocaine guidelines was permissible to

impose a below-guideline sentence.[20] This case ultimately extended discretion to permit a categorical rejection of a guideline for policy reasons (Hamilton, 2014). The Supreme Court ruled that as long as a sentencing court appropriately considers the factors in 18 USC 3553(a) when imposing a sentence, the sentence is reasonable even if it does not fall within the prescribed sentencing guideline range (Basbaum, 2010; Rigsby, 2010).

Although the issue at hand in each of these Supreme Court decisions was the sentence of imprisonment, and although the Supreme Court was silent specifically on the sentence of supervised release, these cases have significant implications for supervised release sentences of child pornography offenders. Specifically, the rendering of the guidelines as advisory in effect rendered Chapter 5, Part D (Supervised Release) advisory as well. This means the policy statement recommending the maximum term of supervised release for child pornography offenders is also advisory. And while the supervised release guidelines are also advisory, judges must still consider them and any other applicable policy statements contained therein before imposing the supervised release sentence. At the same time, many circuit courts have authorized their district courts to use the decision in *Kimbrough* to depart from the guidelines in child pornography cases based on a policy disagreement (Kaiser and Spohn, 2014). According to legal scholars, district courts situated within circuits that authorize judicial departures based on *Kimbrough*, have used the rationale in *Kimbrough* to impose below guideline range sentences of imprisonment (Basbaum, 2010; Hamilton, 2014). Thus, if some district courts are applying the rationale in *Kimbrough* to categorically reject child pornography guidelines for the sentence of

[20] In *U.S. v. Kimbrough*, the sentencing judge declined to follow the sentencing guideline range of 228 to 270 months for crack cocaine trafficking and instead imposed a downward variance of 180 months in prison. The district court based this variance in part on the fact that the guidelines treat one gram of cocaine base as equivalent to one hundred grams of powder cocaine. The Supreme Court upheld the lower court's sentence. The Supreme Court ruled that the crack cocaine guideline does not exemplify the USSC's exercise of its institutional role because it was not based on empirical evidence and national experience (Basbaum, 2010).

imprisonment, it is not an illogical conclusion that they may also apply *Kimbrough* to reject the policy statement in the supervised release guideline for lifetime supervised release.

Judicial Dissonance

Child pornography sentencing is arguably the hottest topic in federal sentencing today (Hamilton, 2014). This is because there is a "tug of war" between Congress and some judges in the federal judiciary as to how to sentence these cases. As previously noted, Congress's position is for severe sentences. But some judges have responded in the opposite manner, refusing to follow the child pornography guidelines, willing to risk reversals of their sentences and face congressional backlash. Why one may ask? Because a number of scholars and judges believe the child pornography guidelines and resulting sentencing policies are a by-product of moral panic and congressional manipulation (Basbaum, 2010; Rogers, 2013). Additional grievances are that child pornography guidelines are not empirically based and are too severe. Indeed, a survey of district court judges conducted by the USSC in 2009, shows that 70% believed the guidelines range for possession of child pornography was too high; 69% believed the range for receipt was too high; and 30% believed the range for distribution was too high.[21] Some judges have expressed their discontentment with the guidelines by imposing sentences that fall below the recommended guidelines range, both before and after the Protect Act of 2003, which sought to eliminate downward departures for child pornography offenders (Rigsby, 2010).

Legal researchers offer three possible explanations for why judges are imposing non-guidelines sentences (Rigsby, 2010; Krohel, 2011). First, some judges view the current sentencing structure for child pornography offenses, particularly non-production offenses, as too severe. The child pornography guidelines as they currently stand call for enhancements if certain

[21] It should be noted that criticism by judges and others is not directed at guideline ranges for producers of child pornography, but rather at disproportionately harsh sentences for non-production case (Hughes, 2013).

factors such as use of a computer/Internet, number of images, or if images involved children under the age of twelve, are present. Some judges find these often-applicable enhancements, inherent factors in the crime of child pornography. For example, the Internet, which requires the use of a computer, is touted as revolutionizing the way child pornography is accessed, disseminated, and managed. Meaning, hard photographs of child pornography are virtually obsolete. Therefore, most people charged with child pornography receive the enhancement for use of a computer/Internet. Some judges believe these enhancements unfairly increase the guidelines range and use their discretion to circumvent what they believe are overly harsh sentences (Rigsby, 2010). In other words, sentencing courts are more likely to depart from the child pornography guidelines than from other guidelines, particularly for non-production offenses, because they believe the guideline sentence is too harsh. Indeed, Kaiser and Spohn (2014) found that judges were more likely to use downward departures for non-production child pornography offense compared with sexual abuse offenses. Some of the reasons judges gave when granting departures suggested that they believed the guidelines for non-production cases were too harsh (Kaiser and Spohn, 2014).

A second explanation is that some judges view child pornography as a victimless crime and/or view child pornography offenders as harmless (Hamilton, 2011). In her review of judicial justifications of non-guidelines sentences, Hamilton (2011) highlighted one judge's view: "From my experience, most of these men have no prior criminal history. They usually have healthy family lives and productive careers" (p.562). Similarly, U.S. District Judge Robin J. Cauthron during her 2009 testimony to the USSC in which she advocated reducing the severity of child pornography guidelines said "It is too often the case that a defendant appears to be a social misfit looking at dirty pictures in the privacy of his own home without any prospect of touching or

otherwise acting out to any person" (Cardona, 2009, see section titled "Several Medical Problems").

A third explanation is that child pornography offenders represent a different demographic than judges are accustom to encountering. Indeed, trends in federal data have distinguished child pornography offenders from the overall average defendants involved in federal prosecutions. Child pornography offenders, who account for 2.3% of federal prosecutions, are 99.3% male and 88.7% white; moreover, 35.1% have completed some college, 17.5% are college graduates and 27.2% are age 50 and older (USSC Sourcebook, 2010). Kimball (2011) argues that judges are using these characteristics in addition to family ties and employment to justify below guideline sentences. Krohel's (2011) review of sentences imposed on child pornography offenders highlighted one such example. In *United States v. Grossman* (2008), the offender pled guilty to possession of child pornography. The guideline sentencing range was 135 to 168 months and the supervised release range was five years to life. The judge imposed a non-guideline sentence of 60 months imprisonment and 10 years supervised release. In justifying the sentence, the judge noted he was "troubled" by the discovery that the thirty-five year old married father was facing more than ten years in prison for a single-count of possession of child pornography. The judge also highlighted that the offender was educated in justifying the non-guideline sentence.

Many of the below-guidelines opinions rely on the *Booker*, *Rita*, *Gall*, and *Kimbrough* line of cases (Basbaum, 2010). Under these cases, and *Kimbrough* in particular, district courts may refuse to follow the guideline ranges if they find that the guidelines do not exemplify the Commission's exercise of its characteristic institutional role. For example, in *United States v. Ontiveros* (2008), the recommended guideline range was 97 to 121 months for a defendant convicted of receiving child pornography. The range was so high in part because of

enhancements for computer use, distribution, and possession of a large number of images/videos (over 600). The judge disregarded the guidelines, and imposed a five-year sentence, pointing out the defendant's lack of criminal history, his steady employment, and his efforts to stop viewing child pornography as justification. Most important in the court's consideration was a finding that section 2G2.2 does "not reflect the kind of empirical data, national experience, and independent expertise that are characteristic of the Commission's institutional role." (Basbaum, 2010).

Notwithstanding the above, discontentment in the judiciary is not unanimous. There are some judges and scholars who support the guidelines and concur with Congress's position that all child pornography offenses including possession offenses are serious and warrant serious punishment. Like Congress, some judicial officers believe child pornography offenses fuel the interstate market increasing the production of child pornography resulting in more children being sexually abused. Judges who take this position do not find the guidelines excessive and expectedly comply with the guidelines ranges, including the policy statement to impose lifetime supervised release.[22]

As can be seen, the lack of agreement between Congress and some judges in the federal judiciary coupled with judicial discretion provided by *Booker* and its progeny has led to variation in child pornography sentencing outcomes. On one hand, a person convicted of a non-production offense could receive a sentence as lenient as probation if his/her sentencing judge deviates from the guidelines. On the other hand, another person convicted of the same offense could receive a sentence up to ten years if his/her sentencing judge abides by the guidelines. The literature contributes much of the below-guideline sentencing to a variety of factors including

[22] The author is a former Senior U.S. Probation Officer for the Eastern District of Missouri and has prepared hundreds of presentence reports for child pornography offenders. The statement is based on five years of direct observation of judicial officers imposing guideline sentences including lifetime supervised release for child pornography offenses in the U.S. District Court/Eastern District of Missouri.

extralegal factors. It is possible, however, that the extent to which these types of extralegal factors come into play in the supervised release decision depends on the type of offense.

Judicial Dissonance – Non-production versus Production

There are two types of child pornography: non-production and production. Non-production includes possession, receipt, transportation and distribution. According to the USSC's 2012 report on child pornography, much of the sentencing disagreements within the judiciary is for non-production offenses. This is because of the consensus that production offenses are more serious (USSC, 2012).[23] To demonstrate, in 2010, the USSC surveyed judges regarding their feelings about the production guideline and 67% responded that the mandatory minimum statutory penalty for production was appropriate. In a similar tone, 72% responded that the guideline ranges for production offenses were generally appropriate.

At the same time, the USSC finds that some courts, although a minority in the judiciary, have also expressed criticism of the production guideline and have rejected this guideline based on similar policy grounds as for non-production offenses. As a result, production offenses have also witnessed judicial discretion in the sentences imposed. According to the USSC, data for FY 2010 reveals that since *Booker, Rita, Gall,* and *Kimbrough*, 56.8% of production cases were sentenced within the guideline range and 35.9% were sentenced below the guideline range (USSC, 2012).

But we still do not know how this judicial dissonance affects the sentence of supervised release, and more specifically, whether it plays differently for production and non-production child pornography offenses. Neither Congress nor the USSC has differentiated between non-production and production offenses when it comes to the supervised release sentence. That is,

[23] The average sentence of imprisonment in fiscal year 2010 for non-production offenses was 63 months and 160 months for production offenses (USSC, 2012).

the supervised release guideline recommends lifetime supervised release for production and non-production cases. Ulmer, Eisentein, and Johnson (2010) point out that different offense types present qualitatively different implications for attributions of offender blameworthiness and community protection, which may ultimately impact the sentence imposed. For instance, because production is generally viewed as more serious, judges may be less likely to consider extralegal mitigating factors because the seriousness of the offense overrides any potential extralegal mitigating factors. At the same time, judges may be more willing to consider extralegal factors aside from seriousness in non-production cases because non-production offenders are viewed as less dangerous and blameworthy. Accordingly, if judges perceive producers as more culpable than non-producers, production cases may receive more severe sentences or be sentenced to lifetime supervised release a vast majority of the time. However, data from fiscal year 2012 shows that not all production offenders are sentenced to lifetime supervised release.[24] As such, uncovering the correlates of supervised release sentences for both production and non-production cases is important to help specify the nature of these sentences. This is particularly important given the variability of supervised release sentences and the potential for unwarranted supervised release sentencing disparities.

Conclusion

In sum, a combination of punitive child pornography statutes, born largely out of moral panic, alongside congressional manipulation of the child pornography sentencing guidelines and sentencing policy, has culminated into a seeming "power struggle" between Congress and some judges. Some judges are using their recently regained discretion in *Booker* and its progeny to impose below guideline sentences for child pornography offenders resulting in wide variation in

[24] Preliminary data analysis reveals that of the 237 production cases sentenced in fiscal year 2012, 57.4% received lifetime supervised release.

sentencing outcomes and potentially unwarranted sentencing disparities. The variation in sentencing outcomes among child pornography offenders is so great that one legal scholar likened child pornography sentencing to a lightning strike, wherein congressionally mandated severe sentences like lifetime supervised release strike some offenders and miss others (Rigsby, 2010). In the next chapter, I discuss leading theoretical perspectives used to explain variation in sentencing outcomes and unwarranted sentencing disparities, followed by a review of the empirical sentencing literature.

CHAPTER THREE: THEORETICAL FRAMEWORKS, EMPIRICAL LITERATURE, RESEARCH QUESTIONS, AND HYPOTHESES

Introduction

Other than the presentence report and the policy statement within the guidelines recommending lifetime supervised release, federal judges have little to assist them in making supervised release sentencing decisions for child pornography offenders. Complicating this issue is the fact that supervised release decisions are "back end" sentences. That is, sentences imposed at adjudication, but served after a period of incarceration. In other words, judges impose supervised release sentences including conditions of post-release supervision at the time the sentence of imprisonment is imposed. Unlike state parole boards who make "back end" discretionary release decisions of sex offenders with the aid of the presentence report, institutional records, and institutional risk scores (Huebner and Bynum, 2006), federal judges have limited knowledge of the offender and no tools for predicting future behavior with any degree of certainty.

In the face of incomplete information, what factors influence judges' decisions regarding supervised release sentences for child pornography offenders? Although the answer to this specific question is unknown, the extant sentencing literature reveals that in addition to legal factors including offense severity and criminal history, characteristics of the offender such as race (Mitchell, 2005; Spohn, 2000), age (Spohn and Holleran, 2000; Steffensmeier, Ulmer, and Kramer, 1995; Steffensmeier, Ulmer, and Kramer, 1998), education (Mustard, 2001), and gender (Steffensmeier, Ulmer, and Kramer, 1998) also influence sentencing decisions.

More recently, research found that above and beyond offender and case-level characteristics, contextual influences such as court contexts also are related to criminal

sentencing outcomes (Kautt, 2002; Ulmer and Johnson, 2004; Ulmer, Eisentein, and Johnson, 2010). This is particularly important for sentencing studies using federal data because of the federal courts' geographic organization and structure. The geographic organization and structure of the federal courts suggests that an exclusive focus on individual-level factors has the potential to omit important court contextual factors related to the sentencing decision. Indeed, Kautt (2002) calls into question the validity of a single-level approach to federal sentencing outcomes. Similarly, Johnson (2006) argues that from a methodological standpoint, sentencing studies that fail to incorporate court context not only risk omitted variable bias, but may also risk model misspecification. Researchers have found that together, both individual-level and court contextual factors provide a more comprehensive understanding of the correlates of sentencing outcomes (Kautt, 2002; Johnson, 2006).

Multilevel sentencing studies using federal data have almost exclusively focused on more common offense types such as drugs, fraud, firearms, and immigration (Kautt, 2002; Johnson, Ulmer and Kramer, 2008; Eisentein et al., 2010). This is significant because there are differences between these types of offenses and child pornography offenses that may yield different outcomes. The most obvious difference is the supervised release statute: for all child pornography offenses, the general supervised release statute found in 18 U.S.C 3583(b), is trumped by 18 U.S.C 3583(k) which authorizes the term and length of the supervised release specifically for child pornography offenses. Another difference is the personal characteristics of child pornography offenders. Trends in federal data depict the average child pornography offender as an older white male with at least a high school diploma whereas the typical federal offender is a young minority male with less than a high school education (USSC Sourcebook, 2012). Some legal scholars argue that it is these demographic differences between child

pornography offenders and the typical federal offender that may lead to differential and preferential treatment of child pornography offenders in the sentencing process (Kimball, 2011, Krohel, 2011). For example, Krohel (2011) argues that some judges use extralegal factors such as employment and family ties to impose below-guideline sentences for child pornography offenders.

Empirically, however, we do not know how these differences play out in the supervised release sentencing process because few studies focus solely on child pornography offenses. In fact, I know only one empirical study, conducted by Kaiser and Spohn (2014), that examines individual and case-level factors to determine whether downward departures are more likely for child pornography offenders than in case involving sexual abuse.[25] In general, they find child pornography offenders receive significant reductions in sentences. More specific findings from Kaiser and Spohn's (2014) study are discussed throughout this chapter. Another study by Patrick and Marsh (2011) examines the influence of characteristics of the offense, offender, and victim on sentence length of child sex offenders, not specifically child pornography offenders.[26] They find that characteristics of the offense play the largest role in sentencing outcomes. Neither Kaiser and Spohn (2014) nor Patrick and Marsh (2011) however, examine supervised release as the dependent variable. As such, there is no way to know whether the correlates of sentencing decisions observed for general offenders hold true for child pornography offenders and the sentence of supervised release. To be clear though, this dissertation does not aim to compare sentencing outcomes for child pornography offenders with sentencing outcomes for the typical federal offender. Instead, I expound that what we know about sentencing outcomes generally may or may not hold true for child pornography offenders and the sentence of supervised release.

[25] Kaiser and Spohn's analytic approach utilized a three-stage analysis: tobit regression, propensity score matching, and the rate at which judges go outside the traditionally accepted reasons for giving a below-guideline sentence.
[26] Patrick and Marsh's analytic approach utilizes binomial and linear regression techniques.

Many theoretical perspectives have been espoused to explain why individual-level legal and extralegal factors and court contextual factors influence sentencing decisions. In this chapter, I focus and review four of these perspectives – uncertainty avoidance/causal attribution, the focal concerns perspective, the courts as communities perspective, and social/group threat. Following my discussion of theoretical perspectives, I review empirical work on the correlates of sentencing outcomes. This includes summarizing the findings reported by a large body of individual-level sentencing research as well as multilevel studies that examine both individual-level and court context simultaneously. I close this chapter with a review of my research questions and hypotheses.

Sentencing Disparities: Theoretical Explanations at the Individual-Level

Because my study is a multilevel analysis, my conceptual approach to supervised release sentencing decisions draws on four theories of judicial decision-making – uncertainty avoidance/casual attribution; the focal concerns perspective; the court communities perspective; and social/group threat perspective. This approach provides theoretical grounding for including individual-level factors and district-level court contextual and environmental factors to explain supervised release sentencing outcomes for child pornography offenders. First, I present Albonetti's (1991) uncertainty avoidance/causal attribution theory of judicial discretion, followed by the focal concerns perspectives. Both of these perspectives provide a framework for understanding why individual-level extralegal factors influence sentencing decisions despite the formal guidelines system (Doerner & Demuth, 2010). Afterwards, I present the court communities perspective and group threat perspective, as these perspectives are frequently used to explain sentencing outcomes across courts.

Uncertainty avoidance/causal attribution.

Albonetti's (1991) uncertainty avoidance/casual attribution perspective theorizes that judicial actors attempt to make rational decisions, but do so within a context of uncertainty. This perspective merges research of the structural perspective of rational decision-making (March and Simon, 1958; Simon 1957; Thompson 1967) with the social-psychological perspective of causal attribution in punishment (Shaver, 1975; Hawkin, 1981; Carroll & Payne, 1976; Heider, 1958; Fontaine & Emily 1978; Lippman, 1922). Rational choice is a decision wherein all possible alternatives to an outcome and potential ramifications of the outcome are identified and known even though in reality, a decision-maker rarely has complete information (Albonetti, 1991). Rational choice surmises that complete knowledge of a situation eliminates uncertainty in decision-making. Accordingly, in a situation having incomplete knowledge, the court actor attempts to reduce uncertainty by relying upon a rationality that is the product of habit (Albonetti, 1991). This means decisions are based on past experiences, stereotypes, and prejudices (March and Simon, 1958). Stated differently, decision makers achieve a measure of rationality by developing "patterned responses" that serve to avoid, or at least reduce, uncertainty in obtaining a desired outcome (Albonetti, 1991).

Next, Albonetti (1991) links the concept of "patterned responses" to causal attribution, a second theoretical perspective useful in understanding discretionary decision-making. The causal attribution perspective on punishment says that judgments of causality are premised on both personal and environmental forces that are thought to contribute to behavior (Albonetti, 1991). In other words, court actors attribute meaning to past and future behavior consistent with stereotypes associated with members of certain social groups. Thus, according to Albonetti (1991):

> based on the work on uncertainty avoidance and casual attribution in punishment, judges would attempt to manage uncertainty in the sentencing decision by developing patterned responses that are themselves the product of an attribution process influenced by causal judgments. Judges would rely on stereotypes that link race, gender, and outcomes from earlier processing stages to the likelihood of future criminal activity. Imposing punishment in the criminal justice system, similar to other highly discretionary decisions, is the result of "satisficing" or simplifying causal assumptions in an effort to achieve rationality (p.250).

This perspective would suggest that extralegal factors may play a role in judicial stereotypes of child pornography offenders and their risk of recidivism when imposing supervised release sentences.

The Focal Concerns Perspective.

The focal concerns perspective is one of the more widely cited individual-level frameworks used to explain the influence of legal and extralegal factors on sentencing decisions. Drawing from Albonetti's (1991) work, the focal concerns perspective draws on the notion of uncertainty avoidance and causal attribution. This perspective asserts that judges or court actors base sentencing decisions on three main considerations: blameworthiness, protection of the community, and practical constraints and consequences (Steffensmeier, 1980; Steffensmeier et al., 1998).

Blameworthiness.

Blameworthiness centers on issues of culpability and just deserts (Steffensmeier et al., 1998). The main objective of blameworthiness is to assess whether the legal sanction imposed is

consistent with the seriousness of the offense (Huebner & Bynum, 2006). Judges' views of blameworthiness are constructed by legal factors including offense severity, guilty pleas, criminal history, and the offender's role in the offense such as being a leader or organizer (Steffensmeier et al., 1998). For example, offenders with longer criminal histories generally receive more severe punishments because such histories suggest greater culpability (Wooldredge, 2010).

The federal sentencing guidelines take into account indicators of blameworthiness to assist judges in making sentencing decisions. Blameworthiness is evaluated through the applicable offense level (offense seriousness), the offender's criminal history, the offender's role in the offense, and acceptance of responsibility. For example, Chapter Two of the USSC Federal Sentencing Guidelines Manual pertains to the offense conduct. This chapter is organized by offense type and each offense has a corresponding base offense level. Generally, more serious offenses have higher corresponding base offense levels. Additionally, offenses may have one or more specific offense characteristics that adjust the offense level upward or downward increasing or decreasing the applicable punishment.

Thus, in the case of child pornography offenses, production of child pornography carries a greater base offense level and corresponding punishment than a non-production offense like possession of child pornography. This is because production of child pornography carries a statutory minimum sentence of fifteen years imprisonment. The legal literature suggests that judges' view of the seriousness of child pornography is linked to the charge (Rigsby, 2010; Krohel, 2011; Hamilton, 2011). If this is the case, possessors may be deemed least culpable, followed by the receivers, transporters and distributors, who may be perceived as equally culpable, with the producers being most culpable. In their analysis of FY 2010 sentencing data,

the USSC found that variability of sentences was more likely to found within non-production cases (USSC, 2012). For instance, USSC FY 2010 data shows 39.8% of non-production cases were sentenced within the guideline range, in comparison to 56.5% for production offenses.

Another indicator of blameworthiness taken into account by the guidelines is criminal history. The federal sentencing guidelines also allow for incremental increases in punishment based upon an offender's criminal history. According to the introductory commentary of Chapter Four of the federal sentencing guidelines which pertains to criminal history:

> A defendant with a record of prior criminal behavior is more culpable than a first offender and thus deserving of greater punishment. General deterrence of criminal conduct dictates that a clear message is sent to society that repeated criminal behavior will aggravate the need for punishment with each recurrence. To protect the public from further crimes of the particular defendant, the likelihood of recidivism and future criminal behavior must be considered. Repeated criminal behavior is an indicator of a limited likelihood of successful rehabilitation. (2012 USSC Guidelines Manual, p. 3).

Together with offense severity and criminal history, the offender's role in the offense is another indicator of blameworthiness factored into the guidelines. Specifically, the federal sentencing guidelines also allow for increases or decreases in punishment based upon the role the defendant played in the offense (aggravating or mitigating role). With regard to an aggravating role, Chapter Three, Section 3B1.1 states:

> This Part provides adjustments to the offense level based upon the role the defendant played in committing the offense. The determination of a defendant's role in the offense is to be made on the basis of all conduct within the scope of Section 1B1.3 (Relevant Conduct) i.e., all conduct included under Sections 1B1.3(a)(1)-(4), and not solely on the

basis of elements and acts cited in the count of conviction (2012 USSC Guidelines Manual, p.341).

Alternatively, an offender who is deemed a minimal or minor participant would be entitled to decreased punishment. In essence, the role the offender plays in the offense speaks to the offender's level of culpability and likelihood of recidivism, which is important for supervised release.

Finally, the offender's acceptance of responsibility for the instant offense is another indicator of blameworthiness captured by the guidelines. Acceptance of responsibility is addressed in Chapter Three, Part E of the federal sentencing guidelines. Pursuant to Section 3E1.1(a), if a defendant clearly demonstrates acceptance of responsibility for his offense, he/she is entitled to a two-level decrease in their total offense level (2012 USSC Guidelines Manual). In determining whether a defendant qualifies for this decrease, considerations include, but are not limited to the following: truthfully admitting the conduct comprising the offense, and truthfully admitting or not falsely denying any additional relevant conduct; voluntary termination or withdrawal from criminal conduct or associations; voluntary payment of restitution prior to adjudication of guilt; voluntary surrender to authorities promptly after commission of the offense; and post-offense rehabilitative efforts (i.e., counseling or drug treatment). An additional one-level deduction pursuant to Section 3E1.1(b) is available upon a motion by the government stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government to allocate their resources efficiently.

Protection of Community.

Protection of the community refers to the level of danger an offender poses to the public and addresses judges' concerns with protecting the community from offenders who they believe are likely to recidivate (Steffensmeier & Demuth, 2001; Steffensmeier et al., 1998). Similar to blameworthiness, this concern is influenced by legal factors such as the seriousness of the offense and the offender's criminal history. In the case of the criminal history of child pornography offenders, the guidelines under Chapter Four, Section 4B1.5 (Repeat and Dangerous Sex Offender Against Minors) also makes special provisions for increases in punishment for any offender who commits the instant federal offense subsequent to sustaining at least one sex offense conviction.

Although all of the references to criminal history in the federal sentencing guidelines apply toward the sentence of imprisonment, this focal concern could also be extrapolated to the supervised release sentence. That is, the criminal history of an offender identified as a repeat and dangerous sex offender in a crime involving minor may play into the focal concerns of judges that there may be a likelihood of recidivism and may impact the ultimate length of the supervised release sentence.

In the case of child pornography offenders, Congress has explicitly stated through legislation that all child pornography offenders are dangerous and the public is in need of protection from these offenders. This notion of protecting the community from child pornography offenders is exemplified in the enhancement for lifetime supervised release and implies that these offenders cannot be rehabilitated, although a preliminary view of the data indicates that not all judges are imposing lifetime supervised release for all child pornography offenders. Protection of the community is one of the statutory sentencing factors judges are mandated to consider when imposing the supervised release term. In determining where within

the five years to life range to impose supervised release for child pornography offenders, the court is to consider the guidelines as well as statutory sentencing factors which include the nature and circumstances of the offense and history and characteristics of the offenders; deterrence; public protection; and needed educational/vocational training, medical care, or other correctional treatment.

Exactly how judges assess community protection and recidivism of child pornography offenders before imposing the supervised release term is unknown. But it is likely they employ cues similar as to the sentence of imprisonment, such as offense seriousness and criminal history. The legal literature finds that judicial perception of seriousness of child pornography is linked with the charge (Rigsby, 2010; Krohel, 2011). That is, non-production offenses are viewed as less serious than production offenses for reasons including lesser statutory imprisonment penalties and no "hands on" or actual victim. This may come into play as judges impose the length of the supervised release sentence. Meaning, we may find that those convicted of less serious or non-production offenses receive more lenient supervised release terms than those who produce child pornography because they are considered less culpable.

In like manner, criminal history, particularly any prior history that includes a prior sex offense conviction, and where the offender received a sentencing enhancement for being a repeat and dangerous sex offender against minor, may be more likely to receive a longer supervised release term or life. This is because the commentary in Application Note 5 of Section 4B1.5 specifically addresses public protection (2012 USSC Guidelines Manual). According to Application Note 5 (Treatment and Monitoring), the statutory maximum term of supervised release is recommended for any offender receiving the enhancement for being a repeat and dangerous sex offender against a minor. The maximum term is lifetime supervised release.

In addition to offense seriousness and criminal history, offender characteristics such as race, employment, education, and family ties also contribute to this focal concern (Albonetti, 1991; Steffensmeier et al., 1998). For example, in describing evolving perceptions of minority crime, Mauer (1999) explains that it was not until the 1970s and early 1980s that the stereotype of the young black man evolved from petty theft to ominous predator. Such fear has resulted in minority offenders being stereotyped as more dangerous and criminally responsible (Welch, 2007). Previous research has linked the defendant's race/ethnicity to notions of dangerousness and recidivism (Albonetti, 1991; Steen, Engen, & Gainey 2005). The threat that minorities are thought to pose has resulted in harsher sentencing outcomes (Welch, 2007).

But while race is relevant in sentencing of other types of crimes, it may not matter here given the unique makeup of child pornography offenders (i.e., older, white, male, educated). Instead, it may be possible that other extralegal statuses such as family ties, education, and employment inform the sentencing decisions of child pornography offenders. For example, education and employment have been linked with notions of reduced dangerousness. As an illustration, in *U.S. v. Ontiveros (2008),* the defendant pled guilty to receiving child pornography. The guideline sentencing range was 97 to 121 months imprisonment and a supervised release range of five years to life. The judge disregarded the guideline range and sentenced Ontiveros to five years of imprisonment, followed by lifetime supervised release. In justifying the non-guideline sentence, the court noted the defendant's lack of criminal history and his steady employment. In the same fashion, judges may view child pornography offenders who are married and/or have children as less dangerous than those child pornography offenders who are unmarried and living alone. The thought being that marriage/family curtails or insulates offenders from engaging in new criminal behavior. At this time, the USSC does not collect data

on marriage/family, but they do collect data on dependents. Information concerning marriage and family ties are indicated in presentence reports.

Practical Constraints and Consequences.

The final focal concern is practical constraints and consequences. This concern refers to how sentencing decisions impact the functioning of the criminal justice system as well as the individual defendants and their families and communities (Steffensmeier et al., 1998). Organizational concerns include efficiency, flow of cases, overcrowding of correctional organizations and maintaining positive working relationships among courtroom actors (Steffensmeier et al., 1998). Practical consequences for the individual offender include concerns about the offender's ability to do time, health conditions, special needs, and disruption of family ties (Steffensmeier et al., 1998).

Legal scholars maintain practical constraints and consequences are considerations that some judges consider before imposing sentencing for child pornography offenders (Hamilton 2011; Krohel, 2011). Specifically, Hamilton (2011), notes "when downward varying, judges also appeared concerned defendants would suffer ills beyond the sentence imposed, such as informal stigmatic harms and vulnerability to civil suits" (p.563). The case of *U.S. v. Beach* illustrates Hamilton's point. In this case, the district court varied downward from a guideline range of 210-240 months to a sentence of 96 months. In justifying the sentence, the court considered the special conditions (mental health treatment, sex offender treatment, sex offender registration, and no Internet use) of the three-year supervised release term a consequence and unnecessary hardship (Friedman and Supler, 2008).

Likewise, Krohel (2011) uses the case of *U.S. v Grossman (2006)* to demonstrate the sentencing court's concern of disruption to the family. In *Grossman,* the offender pled guilty to possession of child pornography. The guideline sentencing range was 135 to 168 months and a supervised release range of five years to life. The court imposed a non-guideline sentence of sixty months imprisonment and ten years supervised release. The court highlighted its concern of disrupting Grossman's family ties with a sentence of more than ten years imprisonment. And while the guidelines do not provide judicial actors with guidance on this particular focal concern and how it relates to the sentence of supervised release, it is not unreasonable to think that judges may consider practical constraints and consequences of the supervised release sentence of child pornography offenders.

Equally important to the practical constraints and consequences the supervised release sentence may have for the individual offender, there may also be constraints and consequences to the functioning of the criminal justice system that play into the focal concerns of judges, namely the functioning of U.S. Probation Offices. U.S. Probation Offices are tasked with monitoring and supervising child pornography offenders post-conviction. Indeed, the general nature of child pornography offenses and history and characteristics of these offenders led to the formation of separate and specialized policies for the supervision of these offenders (see Part I – Sex Offender Management in the *Guide to Judiciary Policy*).[27] In addition to specialized monitoring, the supervision of child pornography offenders requires specialized training in surveillance, electronic monitoring, and treatment techniques (Cornish, 2010; Palmiotto and MacNichol, 2010). There are also financial costs to probation offices including funding for sex offender treatment and the hiring of additional officers to supervise these offenders. As mentioned in

[27] Part I – Sex Offender Management provides specific guidance to U.S. Probation Officers in performing their duties related to the investigating and supervising persons charged or convicted of sex offenses.

Chapter One, the U.S. Probation Office in the Eastern District of Missouri recently created a specialized unit comprised of a supervising probation officer and seven line officers to supervise child pornography offenders serving lifetime supervised release. This appears to be a trend as the U.S. Probation Office for the District of Nevada instituted a similar specialized supervision unit specifically for child pornography offenders. In as much as there may be practical constraints and consequences for U.S. Probation Offices, this may play into the concerns of judges in considering the sentence of supervised release.

Similar resources for manpower may also be needed at U.S. Attorney's Offices and Federal Public Defenders Offices. These agencies are responsible for the prosecution and defense of supervised release violators. Likewise, the Bureau of Prisons (BOP) will require resources as they are tasked with housing offenders whose supervised release terms are revoked. In essence, all of these considerations are resources that judicial actors may be sensitive to when imposing the supervised release sentence of child pornography offenders.

To summarize, uncertainty avoidance/causal attribution and the focal concerns perspective of case processing and judicial actors' decision-making provides a framework for understanding why legal and extralegal factors might continue to influence supervised release sentencing decisions despite a formal guideline system (Steffensmeier et al., 1998; Ulmer, 1997; Spohn & Holleran, 2000). The next section reviews the empirical literature on the correlates of individual-level sentencing outcomes generally because very little empirical literature exists that examines sentences for child pornography offenders and/or the supervised release sentence.

Empirical Literature

Legally relevant sentencing factors.

USSC data for FY 2010 show that there is substantial variability in supervised release sentences imposed on child pornography offenders (USSC, 2012). And while prior research has not examined the individual-level legal, extralegal, and district-level factors that influence supervised release decisions, it is not unreasonable to assume that factors which influence the sentence of imprisonment may also influence supervised release decisions. This is because like the sentence of imprisonment, the sentence of supervised release also mandate that judges consider the guidelines as well as statutory sentencing factors which include the nature and circumstances of the offense and history and characteristics of the offender; deterrence; public protection; and needed educational/vocational training, medical care, or other correctional treatment of the offender. In addition, the theoretical perspectives discussed earlier imply that these considerations may also come into play in supervised release decision-making. Although some factors, like offender race, may operate differently for child pornography offenders due to the unique characteristics of this population of offenders.

By and large, prior research consistently finds that differences in legal factors operating at the individual-level – such as offense seriousness, criminal history, multiple charges, and mode of conviction – are the best predictors of whether the defendant is incarcerated and for how long (Johnson, 2006; Kautt, 2002). Indeed, the federal sentencing guidelines base guideline calculations for punishment on legal factors such as those mentioned above. It may follow then, that these same legal factors may account for the bulk of variation of supervised release sentences. Because the extant literature routinely finds that legal factors play a dominant role in sentencing decisions as they should, a review of these factors will not be elaborated upon.

Individual-level: extralegal influences on sentencing decisions.

Extralegal characteristics have also been found to influence sentencing outcomes. It is important to bear in mind, however, that the extralegal characteristics of child pornography offenders are vastly different than those of the average offender convicted in federal court. The typical child pornography offender is an older white male with at least a high school diploma, whereas the average federal offender is young minority male with less than a high school education (USSC, 2012). Moreover, most child pornography offenders are employed full-time (Wolak, Finkelhor & Mitchell, 2011). Given the uniqueness of child pornography offenders, extralegal factors may operate differently for these types of offenders. To be clear, this study is not comparing child pornography offenders to other types of offenders in terms of sentencing outcomes, but this study is interested in determining whether and to what extent extralegal factors account for variability of supervised release outcomes for child pornography offenders.

The federal sentencing guidelines manual devotes an entire section (see Chapter 5, Section H) to a discussion of offender characteristics including sex, race, national origin, creed, religion and socioeconomic status that are clearly identified as irrelevant and prohibited from consideration. Additional characteristics, such as age, education, vocational skills, mental and emotional conditions, physical condition, employment record, family and communities ties are identified "as not ordinarily relevant in determining if a departure is warranted" (see Chapter 5, Section H). This means that courts are not to consider these characteristics unless they are present to an unusual degree. Although legal factors operating at the offender level are the best predictors of whether the offender is incarcerated and for how long (Johnson 2006; Spohn & Holleran 2000), empirical studies have also found extralegal factors such as race, age, gender,

education and socioeconomic status play a role (for comprehensive reviews see Chiricos and Crawford, 1995; Spohn, 2000, Zatz, 2000).

Race effects.

Early studies found that race had little substantive effect on sentencing outcomes (Kleck, 1981; Kramer & Steffensmeier, 1993). More recent studies utilizing federal data have concluded that blacks, Hispanics and Native Americans receive harsher sentences than whites (Albonetti, 1997; Doerner & Demuth, 2010; Everett & Wojtkiewicz, 2002; Mustard, 2001). For example, Doerner and Demuth (2010) used USSC data for fiscal year 2001 to examine the independent and joint effect of race/ethnicity, gender and age on sentences imposed on 33,305 offenders convicted in federal court. They found that Hispanics and blacks, males, and younger offenders received harsher sentences than whites, females and older offenders. In another federal sentencing study, Everett and Wojtkiewicz (2002) found that blacks, Hispanics, and Native Americans received harsher sentences than whites and that these differences were only partly explained by offense-related variables. In her examination of the literature on race and sentencing under the federal sentencing guidelines, Spohn (2013) reviewed eight methodologically sophisticated studies and found that each of these studies revealed that racial or ethnic minorities were sentenced more harshly than whites, either for all offenses or for some types of offenses.

Mitchell (2005) conducted a meta-analysis of 71 published and unpublished studies on race (i.e., being black in comparison to being white) and sentencing outcomes. This analysis included a mix of studies that used federal data and state level data. As a whole, the studies found that even after taking into account offense seriousness and prior criminal history, blacks were generally sentenced more harshly than whites. Mitchell (2005) also found that the

magnitude of unwarranted disparity was generally statistically significant, but substantively small and variable.

Based on the literature, it would appear that race influences sentencing outcomes to the extent that methodological problems are eliminated. But if and how this factor influences child pornography offenders and supervised release sentences is unknown. Few studies examine the effects of extralegal factors on sentencing outcomes for child pornography offenders. Kaiser and Spohn's (2014) study is one of the few that does. They examined the effect of race and other extralegal characteristics on the likelihood of downward departures for child pornography offenders, and they found no differences by race. Patrick and Marsh (2011) examined whether race and other non-legal factors had an impact on sentencing outcomes of convicted child sex offenders (not specifically child pornography offenders) and also found that race was not related to sentencing outcomes. However, race differences have not been explored for the sentence of supervised release, which is a different consideration than the sentence of imprisonment because federal judges consider general deterrence and incapacitation for the sentence of imprisonment, but recidivism and community protection post-release (USSC, 2010).

Age effects.

Many empirical studies on sentencing outcomes fail to extensively address age (for exceptions see Spohn and Holleran, 2000; Steffensmeier et al., 1998). That is to say that age is not the primary focus and is frequently used as a control variable (Steffensmeier, Kramer & Ulmer, 1995; Steffensmeier & Motivans, 2000). Studies that have examined the impact of age on sentencing measure age in one of three ways: (1) a continuous variable; (2) two subgroups, "young offenders" and "old offenders"; or (3) multiple narrowly defined categories. Models that

code age as a continuous variable assume a linear effect (Klein, Petersilia & Turner, 1988; Myers & Talarico, 1987; Wolfe et al., 2010).

In their review of studies that examine the influence of age as a continuous measure, Wu and Spohn (2009) found that some studies concluded that older offenders were sentenced more severely than those who were younger (e.g., Curry, Lee, & Rodriguez, 2004; Helms & Jacobs, 2002; Mustard, 2001) or that age was inversely correlated with prison terms (e.g., Kempf-Leonard & Sample, 2001; Spohn, 1990;Ulmer, 2000), whereas others found that age did not have a significant effect (e.g., Bushway & Piehl, 2001; Chiricos & Bales, 1991; Engen & Gainey, 2000; Hebert, 1997; Johnson, 2006; Kautt & Spohn, 2002; Nobiling, Spohn, & DeLone, 1998; Pasko, 2002; Ulmer & Kramer, 1996; Wooldredge, 2007).

Studies that analyze age into two subgroups "young offender" and "old offender" do so because prior research has found that older offenders (age 50 and older) are sentenced more leniently than younger offenders (under age 50) and, if imprisoned, older offenders receive shorter sentence lengths (Champion, 1987; Steffensmeier & Motivans, 2000). However, those studies that compartmentalized age into more narrowly defined categories find that a curvilinear relationship emerges with those adults ages eighteen to twenty-one receiving more lenient sentences than adults ages twenty-one through twenty-nine but similar leniency for thirty to thirty-nine year olds (Steffensmeier et al., 1995). Steffensmeier et al. (1998) argue that models assuming a linear continuous age effect are inappropriate. Age influences sentence severity in a curvilinear fashion and is best depicted by an inverted U-shape, with offenders over 50 or under 21 receiving the least severe sentences (Steffensmeier et al., 1998).

According to Wu and Spohn (2009), these mixed findings of age are not theoretically inconsistent. In the case of the focal concerns notion of blameworthiness, Wu and Spohn contend that if judges stereotype the crime of the youngest offenders as most harmful, then sentencing decisions will produce a linear effect. Moreover, if judges stereotype the crime of the oldest and youngest offenders as less harmful than those in their twenties and thirties, sentencing decisions will produce a curvilinear effect. With regard to protection of the community, Wu and Spohn (2009) note that if judges view younger offenders as more likely to recidivate, they may receive a harsher punishment. But they also point out that if younger offenders are considered more amenable to rehabilitation than offenders in the crime prone years, they may receive more lenient sentences than similarly situated offenders in their twenties and thirties, and another curvilinear effect would result. Likewise, they note that judges' concerns about practical constraints and consequences such as the offender's ability to do time could produce either longer or shorter sentences for young and old offenders.

Wu and Spohn (2009) conducted a meta-analysis to assess the magnitude of the effect of age on sentence length. Their findings revealed that the age of the offender has no effect on the length of the prison term and that the strength of the association between the two variables is extremely weak. Kaiser and Spohn's (2014) study of the likelihood of downward departures for child pornography offenders also found that age was not statistically significant. In comparison, Patrick and Marsh's (2011) study of sentencing outcomes for child sex offenders found increases in age of the offender increased the odds of being sentenced to prison.

Notwithstanding the above, we still do not know how age influences supervised release sentences and in particular the supervised release sentences of child pornography offenders. It seems likely that age may be a focal concern of judges as they consider the sentence of

supervised release. For instance, age may speak to the focal concern of blameworthiness as judges consider the discrepancy in age between the depicted minor in the child pornography images and the age of the offender.[28] Federal data for fiscal year 2010 found that child pornography offenders ranged in age from 19 to 82 years of age with an average age of 42.26 years. So if judges stereotype the child pornography offenses of the youngest as being less harmful because they are closer in age to the depicted minor, they may receive a shorter term of supervised release than older offenders. Likewise, if judges stereotype the child pornography crimes of the youngest as being less harmful because "they are ignorant of the law," they may receive a shorter term of supervised release than older offenders. And given that judges impose the post-conviction supervised release sentence at the time sentence of imprisonment is imposed, age may speak to the focal concern of practical constraints consequences. The average sentence of imprisonment in FY 2010 for non-production offenses was 63 months and 160 months for production offenses (USSC, 2012). Judges' concerns about an offender's ability to complete supervised release may be a focal concern as the offender will be much older upon his release from prison.[29]

Education effects.

While the guidelines cite the defendant's education as generally irrelevant in determining a sentence, some studies have nevertheless found that those offenders who are poorly educated are sanctioned more harshly (Clarke & Koch, 1976; Kruttschnitt, 1980/1981). Mustard (2001) found offenders who did not graduate from high school received longer sentences (having no

[28]According to the USSC Sourcebook 2010, virtually all child pornography offenders (96.3%) possessed images of minors who were prepubescent or under the age of twelve.

[29] In my experiences in conducting presentence investigations of child pornography offenders in the Eastern District of Missouri and observing the sentencing hearings of these cases, there was one judge who did consider the age of the offender when determining the length of the supervised release sentence and would mention that he did not feel that an offender should be elderly and still on supervised release. Thus, he rarely imposed lifetime supervised release no matter the offense seriousness.

high school diploma resulted in an additional 1.2 months). Offenders with college degrees received shorter sentences than high school graduates. College graduates were more likely to receive downward departures, less likely to receive upward departures, and more frequently received large downward departures. Likewise, Albonetti's (1997) study of 14,189 drug offenders sentenced in federal court in 1991-92 found that offenders with higher levels of educational attainment received shorter sentences. More recent research using federal data reported similar findings. Specifically, Ulmer, Eisentein, and Johnson (2010) noted reductions in sentence lengths for offenders with greater levels of education. Franklin (2015) found that offenders who graduated from high school were less likely to be incarcerated than offenders who did not graduate high school.

Franklin (2015) ties previous research findings of the effects of education and sentencing outcomes to the focal concerns perspective. He surmises that offenders with higher levels of education may be viewed as less risky or possessing the necessary skill set to meaningfully contribute to society and remain crime free. In other words, it is possible that offenders' education levels directly influence court actors' perception of dangerousness and threat of future offending.

Notwithstanding the above, studies focused specifically on child pornography offenders found no effect of education on sentencing outcomes. For instance, Kaiser and Spohn (2014) examined the effect of education on the likelihood of downward departures for child pornography offenders. They found that education was not statistically significant. Patrick and Marsh (2011) included education in their study of convicted child sex offenders and also found that education was not related to sentencing outcomes. Given the findings of these two studies, education may or may not be a factor that judges likely consider when imposing a sentence of

imprisonment for child pornography offenders. However, this factor has not specifically been posed to the sentence of supervised release.

Socioeconomic effects.

Few studies examine the impact of socioeconomic status on sentencing outcomes because there are few good indicators of this in most sentencing data (Zatz, 2000). This is true for USSC datasets. In one of the few federal sentencing studies that examined socioeconomic status, Mustard (2001) found that offenders with incomes less than $5,000 were sentenced most harshly. This group received sentences 6.2 months longer than offenders who had incomes between $25,000 and $35,000. Mustard also found that offenders with annual incomes of less than $25,000 were less likely to have their sentences reduced, and offenders with annual incomes of more than $35,000 were more likely to have their sentences reduced. Low-income offenders were also more likely to receive upward departures.

Given the shortage of empirical literature examining socioeconomic status on federal sentencing outcomes, I also reviewed research examining state-level data and socioeconomic status. For example, Nobiling, Spohn and DeLone (1998) examined the effect of unemployment on sentence severity using data for offenders sentenced in state courts in Chicago, Illinois and Kansas City, Missouri. While unemployment was not considered a proxy for socioeconomic status in their study, we know that employment status is often related to an individual's income. Nobiling et al. (1998) concluded that unemployment had a direct effect on the decision to incarcerate in Kansas City and also had a direct effect on the sentence length in Chicago. They also found that in Chicago, unemployment increased the odds of incarceration for young males and for young Hispanic males and increased the sentence length for males, young males, and

black males. In Kansas City, unemployment had no effect on sentence length for any subgroup but influenced the decision to incarcerate for black males.

Family ties.

Under the previous mandatory federal guidelines, family support was generally irrelevant in determining departures from the guidelines. In fact, one of the main provisions of the Protect Act of 2003 was to amend the then-mandatory guidelines to prohibit judges from considering family and community ties in cases involving a minor victim (Krohel, 2011). Now that the guidelines are advisory in nature, these statuses may have become relevant for some judges (Hamilton, 2011; Krohel, 2011). Hamilton (2011) and Krohel's (2011) review of sentencing decisions of child pornography offenders found that in cases where defendants received sentencing reductions, it was common for judges to express that they were impressed by the defendant's family support. One judge was quoted as saying "aside from the offense, the defendant has led a law abiding life, and with his wife, who has stood by his side throughout, he has raised a good family and been a mainstay in his community." (Hamilton, 2011, p.562). Work by Daly (1987a, 1987b, 1989a, 1989b) appear to parallel Hamilton (2011) and Krohel's (2011) assertion. Specifically, she indicates that family ties constitute social bonds that decrease the likelihood of recidivism. In other words, the greater the stake in conformity judges believe the offender to have, the more positively judges view the offender's rehabilitative potential (Logue, 2011).

Federal sentencing literature that examines family ties is sparse because the USSC no longer collects data on marital status (USSC stopped collecting after FY 2003). Some studies using federal data have included family ties – either marriage and/or number of dependents as non-primary independent variables using data from the presentence report or data prior to FY

2003 (Stacey & Spohn 2006; Wu & Spohn, 2010; Logue, 2011). Stacey and Spohn (2006) examined the relationship between family ties and sentencing disparities in three U.S. district courts. Specifically, they examined the interaction effects of gender and parental status. They found that white females received more lenient sentences and that neither the defendants' marital status nor parental status had an effect on sentencing outcomes. Likewise, Wu and Spohn (2010) found marriage did not have an effect on sentence length. Logue (2011) examined the influence of family ties (marriage/dependents) on the likelihood of downward departures for drug offenders. Like other studies, Logue found offenders with family ties were no more likely to receive a downward departure than offenders without family ties.

Notwithstanding the above, we still do not know how family ties influence supervised release sentences of child pornography offenders. As a rough proxy for family status, the number of dependents a defendant has may be a factor judges consider when considering supervised release decisions, including the impact the sentence and conditions may have on the defendant's dependents. This can be seen in one of two ways – detrimental impact or safety concerns. In terms of having a detrimental impact, if a judge perceives the offender as having a stable family life, a long supervised release sentence may inhibit the family from moving on and cause instability. With regard to community protection, a judge may consider the defendant's dependents and whether the defendant's instant offense poses any future risk or harm to the defendant's own children or society's children. Kaiser and Spohn (2014) found the number of dependents a defendant has had no effect on downward departures for child pornography offenses.

Citizenship.

Most sentencing studies that consider citizenship status treat it as a control variable. Studies including citizenship status in analyses of sentencing decisions observed lengthier sentences for noncitizens than for U.S. citizens (Albonetti, 1997; Hartley and Armendariz, 2011; Mustard, 2001; Johnson and Betsinger, 2009; Wu, 2011; Wu & D'Angelo, 2014). Data from the USSC reveal that noncitizens receive lengthier sentences and that these differences have increased since the 2005 Booker decision (USSC, 2010). Other researchers found shorter sentence lengths for noncitizens (Wolfe, Pyrooz & Spohn, 2011; Wu and Spohn, 2010), while other studies find no effect (Demuth, 2002; Everett & Wojtkiewics, 2002; Kautt and Spohn, 2002). Again, with no prior studies using both the sentence of supervised release and the offense of child pornography, it is unknown how citizenship may or may not influence supervised release outcomes.

Summary of Extralegal Factors

In summary, both state and federal sentencing research conducted to date reveal that sentencing outcomes are influenced by extralegal factors and supports the conclusion that legally irrelevant factors appear to be a source of unwarranted sentencing disparity. We do not know yet, if and how extralegal factors influence supervised release sentences of child pornography offenders. As such, these extralegal variables known to influence federal sentencing outcomes may influence supervised release decisions. Socioeconomic status which has been studied less in the sentencing literature, is included in this study because of theoretical grounds. That is, there are reasons to believe that socioeconomically advantaged child pornography offenders may be treated more leniently than their disadvantaged counterparts. For the same reasons education, citizenship and family ties are also included in this study. As the USSC does not collect data on

mental health, substance abuse or employment, these factors will not be considered for study, although these factors may have important implications for child pornography offenders and supervised release sentences.

One of the biggest limitations of individual-level federal research is that it usually combines data from multiple districts and does not consider if sentencing outcomes vary depending on court context or if case-level factors operate differently across courts. Because of this, this study also looks at whether court contextual factors have an influence on supervised release sentencing outcomes. In the sections that follow, I review the court communities perspective and the social/group threat perspective, followed by the empirical literature on court level influences on sentencing outcomes.

Sentencing Disparities: Theoretical Explanations at the Court-Level

Court communities perspective.

The court communities perspective views courts as individual communities (Eisentein et al., 1988) or distinctive *social worlds* (Ulmer, 1997) and is based on participants' shared workplace, interdependent working relations between key sponsoring agencies and distinctive legal and organizational cultures (Ulmer & Johnson, 2004). Put another way, courts function like separate individual communities with their own working norms, organizational relationships, political climates. According to the court communities perspective, decision-making is determined within the organizational structure of the court and broader cultural, political, economic, and social context in which the court operates (Eisentein et al., 1988; Dixon, 1995). In other words, judges do not make decisions in a social vacuum, but are influenced by their social, political and organizational environment (Johnson, 2005). This environment includes the ongoing working relationship with other court actors including the government, defense counsel, and probation officers as well as the surrounding social and political environment.

Court communities are said to have locally distinctive, informal and ever-evolving case processing and sentencing norms or "going rates" (Eisentein et al., 1988; Ulmer, 1997). This reflects the attitudes, values, and norms that develop in an individual court community concerning criminal behavior and "going rates" (Hester and Sevigny, 2016). Such "going rates" provide courtroom work groups with "templates" for case processing strategies, including adjudications and sentencing (Eisentein et al., 1988). The "going rates" of individual courts may produce variation in case processing and sentence outcomes.

Based upon the description above, the 94 individual federal district courts comprising the federal court system appear to fit within Eisentein et al.'s (1988) definition of court communities. Kautt (2002) reached a similar conclusion explaining the court community concept within the federal courts this way: The federal criminal justice system is comprised of 94 individual district courts. The district courts are the federal systems primary trial courts. Each state has at least one district court with some states having as many as four. There are 12 circuit courts which make up the federal appellate courts and the de facto governing body for the district courts within them. Each circuit court is comprised of three or more states with the exception of the District of Columbia circuit. The district courts and the circuit courts make up what Kautt (2002) calls the "Nested Model of Federal Sentencing." This means for any case that enters the federal court, that particular case is nested within an individual district court, operating within its own local rules, case processing norms, "going rates" and sentencing norms. Finally, each district court is nested within a circuit. Kautt (2002) illustrates this in Figure 3.1.

Figure 3.1 about here

Figure 3.1 illustrates how individual cases are at the base, the district courts are in the middle and the circuit court is at the top. This shows how cases are "nested" or "clustered" within the contextual unit of analysis (district). Although not shown, the Supreme Court would be the apex. Most importantly though, this model shows how variation in sentencing practices based on court context is plausible based upon the structure of the federal courts and the court communities perspective.

The concept of the court communities perspective operating in the federal judiciary is more than just a notion. There is evidence suggestive of its existence. According to the *Third Branch* (2001), the federal judiciary's monthly print newsletter, the day to day operations and responsibility for judicial administration lies with each individual district court. Specifically, the chief judge of each district court plays a key leadership role in overseeing and coordinating the efficient operations, practices, and policies of the court. Some of these practices and policies include ensuring that the laws, regulations and court policies are followed. This includes monitoring court caseloads; overseeing local rule making; establishing procedures for setting trials; scheduling pretrial conferences; admitting attorneys to practice in the specific district; and establishing the term of the court (Kautt, 2002; The Third Branch, 2001). This illustrates the normative practices and "going rates" described by Eisentein et al., 1988.

Ulmer's (2005) qualitative study of four U.S. District Courts also supports the court communities perspective in terms of the existence of normative practices in federal courts. Ulmer's study was premised on the fact that the federal system provides a single set of federal statutes and identical rules of procedures that are supposed to ensure uniformity and predictability in sentencing. Ulmer found that each of the courts used key provisions of the guidelines such as substantial assistance, acceptance of responsibility, and presentence

investigation reports differently, which resulted in variations in punishment between the four courts. He explained: "there are many 'windows' of localized discretion" and that "local court community actors interpret guidelines and other federal justice policies differently, and use and transform these in a variety of ways." (p.272). Thus, the court communities perspective expects there will be variation in district practices. Court contextual factors which may accounts for these differences are discussed in greater detail toward the end of this chapter.

Based upon Ulmer's (2005) study and the court communities perspective, differences in district courts by way of court communities may translate not only into differences across courts, but differences in the effects of individual-level factors across courts (Johnson et. al, 2008). Indeed, the question of whether the effects of individual-level factors vary across courts was asked by Kautt (2002) and Johnson (2006) in their respective multilevel sentencing studies. In Kautt's (2002) study of federal drug offenders, she found the effects of virtually all of the legal and extralegal case-level factors with the exception of ethnicity, varied between districts. In other words, the individual-level factors influenced sentencing outcomes differently from one district to the next. Johnson (2006) reported similar findings in his study of the effects of judicial characteristics and county court contexts using Pennsylvania sentencing data, suggesting that different judges weigh the importance of individual offense and offender characteristics differently, and the influence of these factors also varies across county contexts. The issue of how much weight different courts give individual and case-level factors is also important for this study. For example, border district courts like those in California, Arizona, New Mexico, and Texas may apply more weight to citizenship status than courts like District of Iowa because these districts have larger noncitizen populations. Accordingly, citizenship may carry more weight in certain districts, leading the effect of citizenship to vary across district courts.

In addition to the court communities perspective, other theoretical perspectives such as the social group threat perspective (Blalock, 1967) indicate that the surrounding social environment is key to explaining macro level sentencing outcomes.

Social/Group threat perspective.

The social/group threat perspective comes from Blalock's (1967) research that says that as a subordinate group increases in size, the dominant group will feel threatened and in turn in-part methods of social control to maintain their superior status. In other words, criminal law and punishment are used as tools for containing groups identified as threatening by those in power (Ulmer and Johnson, 2004). The dominant group aims to control the perceived threat of the subordinate group because an increase in size is thought to precipitate an increase in power of the subordinate group (Wu and D'Angelo, 2014).

Historically, blacks and Hispanics are regarded as persons/groups to be feared or groups considered a threat to the status quo. Consequently, the social/group threat perspective is frequently used in examination of racial/ethnic group threat to explain variations in criminal punishment; however, much of the research has shown little to no support (Britt, 2000; Bridges, Crutchfield & Simpson, 1987; Johnson, Ulmer & Kramer, 2008; Ulmer & Johnson, 2004; Feldmeyer & Ulmer, 2011). Although this may be true, social/group threat is a broad concept that is not limited to analysis of race. Recent work on criminal sentencing extends to the perceived threat posed by Hispanics and noncitizens (Johnson, Stewart, Pickett & Gertz, 2011; Feldmeyer and Ulmer, 2011; Wu and D'Angelo, 2014). For example, Wu and D'Angelo (2014) examined noncitizen group as a potential social/group threat in criminal punishment and sentencing to explain aggregate level group outcomes at the federal level. They found support for the social/group threat perspective in that judges in districts with a large noncitizen

population imposed longer sentences on noncitizen offenders than those districts with a small noncitizen population. Despite research on social/group threat and sentencing outcomes, no research has extended threat conceptualized as a court contextual factor such as the child pornography caseload rate and its effect on sentencing outcomes.

I assert the social/group threat perspective may be particularly relevant in explaining sentencing variations across courts for child pornography cases. This is because of the analogous features to moral panic and punitive legislation of child pornography offenses. To illustrate, as panic rises, child pornography offenders are perceived as more threatening and dangerous, calling for increased prosecution, severe sentences, and social control. Take for example the Protect Act of 2003 and its specific provisions for supervised release. This act lengthened the supervised release term from a maximum of three years to a minimum of five years to life. Congress's basis for the increase was belief that child pornography offenders have deep-seated disorders that are not likely to disappear after release from imprisonment (Shockley, 2010). This rationale employed by Congress suggests that child pornography offenders are a threat to society and children in particular. It also suggests the only way to minimize or mitigate this threat is through long-term or lifelong monitoring of these offenders. Thus, the size of a child pornography caseload in a particular district may affect sentencing decisions, such that districts with large child pornography caseloads may be perceived as threatening to the status quo.

To summarize, the court communities perspective and the social/group threat perspective provide a theoretical basis for my inclusion of district-level court contextual and environmental factors to explain supervised release sentences of child pornography offenders and why these

sentences may vary across courts. The next section reviews the empirical literature on the impact of court contextual factors on sentencing outcomes.

Empirical Literature Court Context

Sentencing research considering court contexts has been spurred in large part by the court communities perspective and its recognition that judicial decision-making is determined within the organizational structure of the court and larger court environment (Eisentein et al., 1988; Dixon, 1995). Examples of organizational contextual factors include court size, region, guidelines compliance, and caseload pressure. Examples of the surrounding social environment of the court include the crime rate, unemployment rate, political ideology, racial composition, and socioeconomic disadvantage. These organizational and environmental contextual factors are theorized to influence sentencing outcomes.

Sentencing research examining court context has done so in three ways (1) the cross jurisdictional approach; (2) pooled statewide data; and (3) multilevel modeling. The cross jurisdictional approach as described by Britt (2000), assumes the effect of social context is indirect. This approach examines sentencing decisions across a small number of jurisdictions and compares the results of separate regression models for each jurisdiction or includes jurisdiction as a dummy variable (Eisentein, Fleming and Nardulli, 1988; Ulmer and Kramer, 1996; Albonetti, 1997). Some studies using the cross jurisdictional approach have examined the impact of the size of the jurisdiction (Eisentein et al., 1988; Eisentein and Jacob, 1977), while others have examined urban, suburban, or rural jurisdiction (Ulmer and Kramer, 1996; Ulmer, 1997). The drawbacks of the cross jurisdictional approach are that they focus on a small number of jurisdictions and preclude large scale generalizations to other courts (Britt, 2000; Ulmer and Johnson, 2004; Weidner, Frase, and Schulz, 2005). Moreover, comparing the effects of

jurisdictional dummy variables fails to show what contextual features condition variation in sentencing (Ulmer and Johnson, 2004).

The second way court context has been examined is via sentencing decisions that pool statewide sentencing data to allow for the simultaneous study of numerous jurisdictions (Weidner et al., 2005). For instance, Dixon (1995) studied sentencing outcomes in 73 counties in Minnesota and found a direct contextual effect for level of bureaucratization. In the same way, Steffensmeier, Kramer and Streifel (1993) examined sentencing outcomes of 67 counties in Pennsylvania and found direct contextual effects for racial composition and political conservatism. Myers and Talarico's (1987) study used data from all the counties in Georgia. They also found contextual effects for racial composition and urbanization. The main drawback of these studies is that they used ordinary least squares regression and/or logistic regression to study sentence length and/or the decision to incarcerate.

The third way that contextual factors have been studied in the literature is through multilevel models which remedy the single-level statistical approach mentioned above. Britt (2000) and Kautt (2002) were among the first researchers to use multilevel models to consider context. For example, Britt (2000) examined the simultaneous relationship between court context and racial disparities in sentencing decisions in Pennsylvania courts using data from 1991 to 1994. He found that the mean likelihood of incarceration and the mean sentence length varies by the county in which the court is located. Additionally, Britt found that racial disparities vary by court jurisdiction even after controlling for other offender and case characteristics.

Kautt (2002) used federal data to examine the influence of individual-level legal and extralegal factors and district-level contextual factors on sentencing decisions for drug trafficking cases. She used several court contextual factors she theorized as being related to

sentence length including drug crime caseload, size of population, appeal rate, substantial assistance rate, guidelines compliance rate, percentage of Hispanics in the population, percentage of blacks in the population and the unemployment rate. She included drug-crime caseload and size of the population as indicators of the impact that a district's workload may have on sentencing outcomes. Likewise, district appeal rate served as an indicator of lower work-group cooperation. Both guidelines compliance rate and substantial assistance rate gauge the influence of the guidelines on sentencing outcomes. Finally, the district unemployment rate and percentage of black and Hispanics were included to test if demographics of the district affected sentence length. Few of the contextual measures Kautt examined had a direct effect on sentence length. Specifically, she found no effect for population size, drug caseload, district-level minority composition or unemployment rate. She did find that the departure rate of the district was significantly related to sentence length.

Following Kautt (2002), Ulmer and Johnson (2004) utilized Pennsylvania data and examined a wide variety of direct contextual effects and cross-level interactions on sentencing decisions from 1997 to 1999. They used more extensive court characteristics and jurisdiction, including crime rate, poverty rate, unemployment rate, trial rate, judicial caseload, jurisdiction size, racial/ethnic composition, jail space, and local politics. They found that most of the variation in sentencing existed at the individual case-level, and most of the variance in sentencing outcomes was explained by individual case-level factors. They did find significant between-county variation in sentencing that was not explained by individual case-level factors and that the effects of individual case-level predictors themselves varied significantly across counties. Ulmer and Johnson (2004) found that court caseload pressure and racial/ethnic

composition of jurisdictions affect sentencing outcomes both directly and/or in interaction with individual case-level factors.

Weider et al. (2005) used a combination of individual-level and county-level contextual data from a national sample of criminal trial court cases in large urban jurisdictions. They examined several contextual factors including sentencing guidelines, the availability of alternative sanctions, crime rate, political conservatism, racial composition, and economic disadvantage. Results from hierarchical logistic regression analyses that control for the effects of individual-level factors found that use of sentencing guidelines, crime rate, and racial composition influenced the decision to incarcerate.

While many studies on court contextual influences on sentencing outcomes use state level data (Britt, 2000; Ulmer and Johnson, 2004), Kautt (2002) explains that it is not unreasonable to expect similar differences across federal courts despite its uniform appearance of structured sentences. Anderson and Spohn (2009) further explain:

> Although decision-makers in the federal criminal justice system are guided by a more uniform set of statutes and policies than those in the states, it does not necessarily follow that this will eliminate inter-district disparity or produce consistent sentencing across similarly situated offenders. Like courts at the state level, U.S. District Courts differ on a number of dimensions, such as different caseloads and different policies and practices regarding upward and downward departures, and these differences may influence case processing procedures and case outcomes (p. 367).

Still, research on federal guideline sentencing has focused almost exclusively on case-level influences (Kautt, 2002). Many studies that did consider court context, did so cursorily in that

dummy variables were used for geographic regions, districts and circuits (Steffensmeier and Demuth, 2000; Everett and Wojtkiewics, 2002; Kautt and Spohn, 2002). According to Johnson, Ulmer and Kramer (2008), the focus of this work is on controlling for jurisdictional variation rather than on investigating it.

Recent multilevel federal sentencing research continues to emphasize the importance of contextual influences on sentencing outcomes. For example, Johnson et al. (2008) examined interdistrict variations in the applications of downward departures from the federal sentencing guidelines. They found that substantial variation exists in the probability of prosecutor-initiated substantial assistance departures and judge-initiated downward departures. This variation is accounted for in part by organizational court contexts, such as caseload pressures, and by environmental considerations such as racial composition of the district.

In short, the literature finds that court context is an important consideration in judicial decision-making. While I discussed many of these contextual factors generally, in the following section, I review some of these contextual factors in-depth, particularly ones that will be used in this dissertation.

Theorized Impact of Court Contextual Factors on Supervised Release Sentencing Decisions

In addition to individual-level legal and extralegal factors, this dissertation assesses the impact of district-level court contextual and environmental factors that have found to be influential in prior multilevel studies, as well as court contextual factors theorized to specifically influence supervised release sentencing outcomes of child pornography cases. The impact of seven contextual factors is assessed: court size, caseload pressure, guidelines compliance rate, the Supreme Court decision in *Kimbrough v. U.S.,* mandatory minimum state-level penalties for

possession of child pornography, political conservatism, and region. In addition to examining the direct effects of these district-level court contextual factors, this dissertation also examines if the effects of individual-level variables on sentence length can be explained by characteristics of the court and district.

Court size (district size).

Eisenstein et al. (1988) maintain that the size of a court community shapes crucial aspects of its operations. They note that size can be defined in several ways – the number of people living within its jurisdiction, the number of judges, or the number of people at the core of the court community. They further maintain that increasing size of a court jurisdiction leads to greater diversity of interests and greater obstacles to forging a narrow consensus. In other words, a smaller court jurisdiction would likely have a more narrow interest which in turn would dominate leading to a greater likelihood of consensus. In contrast, larger court communities are said to have more diversified interests, reduced media visibility in routine case processing, greater bureaucratization of sponsoring agencies such as the U.S. Attorney's office and the Federal Public Defender's office, greater use of plea bargaining, and a normative tolerance or desensitization of deviant/criminal behavior (Eisentein et al., 1988; Ulmer, 1997; Johnson et. al, 2008).

Court size is salient in the federal system as the 94 judicial districts vary in size. The image in Figure 3.2 shows the 94 judicial districts, including at least one in each state, the District of Columbia and Puerto Rico. The three territories of the U.S. including the Virgin Islands, Guam, and the Northern Mariana Islands, have district courts that hear federal cases. The federal circuits are labeled with number one through eleven, with the District of Columbia representing the twelfth circuit.

Figure 3.2 about here

Court size is determined by the congressionally authorized number of judges in a district (Administrative Office of the U.S. Courts). This number is based on shifting population numbers or a changing workload in that district. From time to time Congress will increase or, less frequently, decrease the number of federal judgeships in a particular judicial district. The authorized judgeship number does not include senior judges or magistrate judges.[30]

Several federal districts have only 1 or 2 authorized judgeships, whereas others like the Central District of California have as many as 28. Based upon Eisenstein et al.'s (1988) hypothesis as well as the court communities perspective, larger size districts like the Central District of California would likely yield less severe sentences. Johnson et al., 2008 looked at the effects of district-level factors, including court size, on interdistrict variation in the application of downward departures from the federal sentencing guidelines. They used the number of authorized judges as their measure of court size and found no evidence that larger districts were more likely to grant downward departures. Even so, other research using the court community framework finds that sentence severity is inversely related to court community size (Ulmer, 1997; Kramer and Ulmer, 2002; Ulmer and Johnson, 2004). For example, Ulmer and Johnson (2004), using Pennsylvania sentencing data, found that larger courts were least likely to incarcerate offenders and smaller courts had more severe sentences.

[30] Magistrate judges are referred to as federal judges, but are neither appointed by the President nor confirmed by the Senate. A senior judge is a federal judge who has met the age and service requirement. Senior judges, who essentially provide volunteer service to the courts, typically handle about 15 percent of the federal courts' workload annually.

Despite these inconsistent findings, court size is included in this study because we do not know how this factor influences supervised release outcomes and it seems likely that larger courts may get less attention and less scrutiny for sentences they impose. This may be particularly important for child pornography offenses because these are often high profile cases.

Caseload pressure.

Varying child pornography caseload rates between districts could affect supervised release sentences. A few empirical studies have examined caseload as a correlate of sentencing outcomes. For example, Myers and Talarico (1987) found that caseload pressure reduced the severity of split sentences and resulted in slightly shorter sentence lengths. Results from Ulmer and Johnson's (2004) study of sentencing outcomes for county trial courts in Pennsylvania indicate that caseload pressure affects sentencing outcomes either directly, or in interaction with individual factors. Johnson et al., (2008) found that caseload pressure was significantly associated with an increased probability of both downward departures from judges and substantial assistance from the prosecutor. Still other studies found no influence of caseload pressure on sentencing outcomes (Kautt, 2002). Johnson et al. (2008) surmise that it is possible that it may be the particular type of caseload that matters for sentencing decisions. As an example, they noted that a high violent caseload may exert a different effect than a high property caseload. This may be true of a child pornography caseload. According to the USSC fiscal year 2010 data, non-production child pornography cases were prosecuted in every circuit and district, but the number of cases in each circuit and district varied substantially (USSC, 2012).[31]

[31] With respect to the 94 districts, non-production cases occurred most frequently in the Eastern District of Missouri (72, 3.7% of all such cases), the Central District of California (70, 3.6% of all such cases), the Middle District of Florida (60, 3.1% of all such cases), the Eastern District of Virginia (54, 2.8% of all such cases), the Western District of Texas (49, 2.5% of all such case), the Southern District of Florida (45, 2.3% of all such cases), and the Eastern District of California (41, 2.1% of all such cases). These seven districts accounted for 20.3 percent of all non-production cases in 2010.

Variation in scope and volume of child pornography cases is vastly different from one district to the next. It may be possible that this variation in caseload volume may influence and shape supervised release sentencing practices. Specifically, districts with a higher volume of child pornography cases may conclude that these offenses are problematic or large scale problems. This may influence supervised release sentence outcomes in that judges may sentence more harshly if they are routinely sentencing these types of cases, particularly if community protection is of concern. This may then lead to "going rates" or a normative practice of how such cases are sentenced in districts witnessing high volume. But judges could also sentence more leniently if these cases become viewed as common.

Guidelines compliance rate.

Some research on court level contextual factors also suggests that guideline compliance rates may influence sentencing outcomes beyond the impact of individual-level factors. For instance, Kautt (2002) found that both the guidelines compliance rate and the rate of substantial assistance departures influenced sentence length outcomes for federal drug trafficking offenders. It appears appropriate that this contextual factor is included in the data analyses because districts that generally comply with the guidelines may also comply with any policy statements contained therein. Therefore, districts that generally comply with the guidelines may be more likely to impose lifetime supervised release for all child pornography offenders.

***Kimbrough*-based policy disagreement.**

Another district-level factor theorized to influence supervised release sentence length is the Supreme Court decision in *U.S. v. Kimbrough* (2007) and the resulting circuit courts split on whether its application can be applied to child pornography sentencing. Recall, the *Kimbrough* decision held that judicial departures based on a policy disagreement with the guidelines (i.e,

crack cocaine guideline) are permissible. There is a circuit split among the circuit courts on whether district courts can apply the decision in *Kimbrough* to child pornography offenses. According to Kaiser and Spohn (2014), appellate decisions in circuits that have rejected the application of *Kimbrough*-based policy disagreements for non-production child pornography offenses include the 4th, 5th, 6th, 8th, 10th, and 11th circuits. Federal circuits that have allowed policy disagreements for non-production offenses include the 1st, 2nd, 3rd, 7th and 9th circuits.

It appears appropriate to consider and include this contextual factor in the current dissertation because at the heart of child pornography supervised release sentencing schemata is the policy statement in the guidelines for lifetime supervised release. Likewise, the heart of *Kimbrough* is the latitude for judicial downward departures based on a policy disagreement with the guidelines. As such, circuit courts that authorize their lower district courts to depart from the guidelines in child pornography cases based on such policy disagreements may impose supervised release sentences other than life because they disagree with the policy statement of the supervised release guidelines for child pornography offenders. Kaiser and Spohn (2014) looked at this variable in their study of downward departures among non-production child pornography offenders. They found statistical significance of a case receiving a downward departure if the case was sentenced in a circuit that rejected policy disagreements for child pornography offenders.

Mandatory minimum state-level penalties.

One of the main assumptions of the court communities perspectives is that the broader social environment in which a court is located may influence sentencing outcomes. This means that judges are likely sensitive or cognizant of the broader social environment including the social/legal environment. As such, while this dissertation is concerned with federal child

pornography offenses, a district-level contextual factor seemingly relevant to test is the influence of state-level penalties for possession of child pornography on supervised release sentencing outcomes. This contextual factor considers the influence of the broader social/legal environment of the district court as it specifically relates to child pornography. This may be important because child pornography is also criminalized at the state level and vary by state. According to Hessick (2010):

> States have...significantly increased their penalties [for child pornography offenses during the same time period that Congress and the United States Sentencing Commission have done so at the federal level]. All 50 states have specific provisions criminalizing the possession of child pornography, and thirty states have increased penalties available for possession of child pornography since criminalizing it. The pattern of increasing penalties appears to be getting stronger, as twenty-eight of those increases have occurred since 2000, nineteen have occurred since 2005, and four states have increased penalties associated with possession of child pornography multiple times in the past twenty years (p.5).

For example, Louisiana has a mandatory minimum of five to twenty years for possession of child pornography and Missouri has a mandatory minimum of five to fifteen years for possession of more than 20 images of child pornography. Mandatory minimum state-level penalties may speak to how serious child pornography offenses are considered and/or the level of moral panic in a state. Therefore, it is theorized that a district court located in a state with mandatory minimum state-level penalties for child pornography may perceive child pornography as a large scale moral problem or social group threat and thus yield more severe supervised release sentences.

Political conservatism.

According to research by Eisentein et al. (1988), political contexts shape sentencing practices. They explain that judges, who are typically selected from the local community, are likely to share the community's values. Research on political influence and sentencing outcomes are mixed. Some studies using a single-level analysis to assess contextual factors on individual-level sentence length have found that political ideology, defined as the percent who voted Republican in presidential election, has a positive influence on sentence length (Nardulli, Fleming and Eisentein, 1988; Huang, Finn Ruback and Friedmann, 1996). For instance, Nardulli, Fleming & Eisentein (1988), in their examination of political conservatism, used the percentage of residents who voted for Republican candidates in local and presidential elections as their measure of political ideology. They found that political conservatism was positively related to sentence length for repeat offenders. Huang et. al (1996) found that political conservatism had a positive effect on sentence length for violent crime, robbery, and assault.

In contrast, some studies using multilevel analyses have not found that the percentage voting Republican has a significant effect on either the odds of incarceration or sentence length (Johnson, 2005; Ulmer & Johnson, 2004; Weidner, Frase & Schultz, 2005). One explanation that has been espoused is that toughness on crime has become a universal campaign theme for both Democrats and Republicans (Ulmer & Johnson, 2004). Another explanation is that federal judges are insulated from political influences due to lifetime appointment to the bench.

All the same, findings from previous studies lead me to hypothesize that the political community in which the district court is situated may influence judges to reflect the values of the local community context in their decision-making. For instance, a district court situated in a state dominated by conservatism, may feel pressure to reflect the community's value in their

decision-making. Accordingly, a more punitive political milieu may result in lengthier terms of supervised release.

Region.

Prior to the passage of the SRA, Congress recognized differences among judges in sentencing philosophy and differences among regions in sentencing practices as sources of unwarranted extralegal disparity (Rigsby, 2010). Sentencing research in the 1970's sponsored by the Department of Justice showed that judicial officers placed differing importance on various factors depending on the region in which they practiced (Sutton, 1978; Rhodes & Conly, 1981). Later sentencing research also showed differences in sentencing outcomes by region. For instance, Albonetti (1997) reported that the probability and length of imprisonment for drug offenses sentenced in the early years of the guidelines was affected by region in about half of the circuits, after controlling for offense level, criminal history points, and a number of other legally relevant factors. Everett and Wojtkiewicz (2002) grouped the circuits into five regions and reported harsher sentencing in the southern circuits and more lenient sentencing in the northeastern and western circuits.

Summary of Court Context

In sum, the importance of considering court context cannot be overstated in sentencing research. This is because characteristics of the court may also influence sentencing decisions. Moreover, various aspects of the community in which a court is situated may indirectly affect judicial decisions as judges are likely drawn from the community they represent and are not immune to social or legal influences of the community (Eisentein et. al, 1988; Huang et. al, 1996). Accordingly, both the court communities perspective and the social group threat perspective are well-suited for organizing many of the familiar court contextual factors theorized to affect supervised release sentences at the aggregate level.

Current Study

This dissertation hopes to extend sentencing literature by presenting a multilevel analysis of supervised release sentencing outcomes for child pornography offenses using individual-level offender and district-level data. My aim is to uncover the circumstances under which variability and disparity in supervised release sentences emerge. This includes an examination of the effects of legal and extralegal individual-level factors as well as district-level factors on supervised release outcomes.

Research questions.

My research questions, which are guided by theory and previous empirical research on sentencing disparities, are as follows:

1. *What proportion of the variability in supervised release sentences is at the individual-level versus the district-level?*

2. *What individual-level (legal and extralegal) variables account for variability in supervised release sentences?*

   2A. *Do individual-level correlates (legal and extralegal) of supervised release sentences differ across offense type (nonproduction versus production)?*

3. *Above and beyond individual-level variables, are district-level factors related to supervised release sentencing outcomes?*

4. *Do the effects of individual-level variables on sentence length differ across courts? If so, can these differences be explained by characteristics of the court and district?*

Hypotheses.

Using the focal concerns perspective, the court communities perspective, social/group threat, and prior sentencing research as background, the following hypotheses frame this dissertation:

Hypothesis 1: Sentence severity will vary significantly across courts.

Hypothesis 2: Legally relevant factors will explain the majority of variation in supervised release outcomes, but extra-legal factors will also matter.

Hypothesis 3: The seriousness of the offense will moderate the effect of legal and extra-legal variables such that these factors will have less of an effect when the offense charge is more serious.

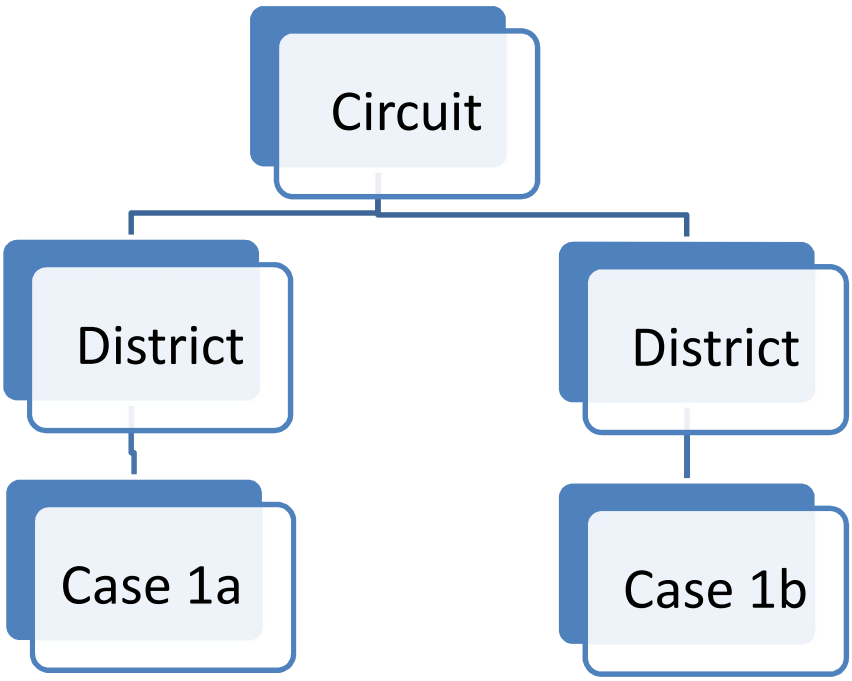
Hypothesis 4: The effects of individual-level sentencing factors will vary across courts.

Hypotheses 5: Above and beyond individual-level variables, district-level factors will have an effect on supervised release sentences.

As there is no research on the sentence of supervised release, not enough is known to hypothesize the direction of all effects.

In this chapter, I have reviewed theoretical frameworks and the empirical research from which I have speculated about the relationship between individual-level variables and district-level variables and supervised release sentencing outcomes. In the next chapter, I describe the data, methods, and analytical strategy to answer the research questions.

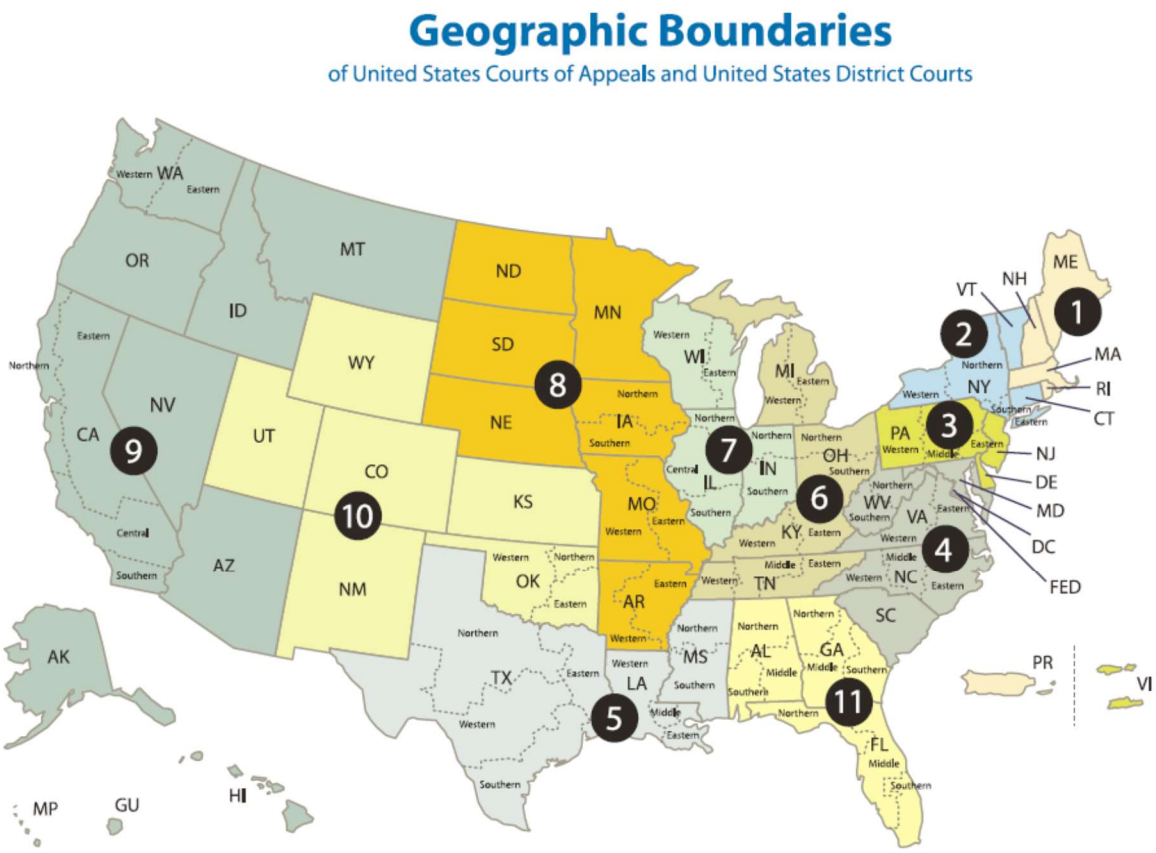
The Nested Model of Federal Sentencing



Source: Kautt (2002)

Figure 3.1 The Nested Model of Federal Sentencing

Geographic Boundaries of the U.S. Courts of Appeal and U.S. District Courts



Source: USSC's 2012 report to Congress on Federal Child Pornography Offenses

Figure 3.2 Geographic Boundaries of the U.S. Courts of Appeals and U.S. District Courts

CHAPTER FOUR: DATA AND METHODS

Data

I address my research questions using a combination of individual-level sentencing data and district-level contextual data. The individual-level data come from the USSC dataset for fiscal year 2012, which includes information on all federal offenders sentenced between October 1, 2011 and September 30, 2012. This fiscal year was selected because it marks a significant statutory change to the maximum sentence of imprisonment for possession of child pornography, raising the penalties from 10 years to 20 years (see Table 2.1). The USSC datasets for individual offenders contain measures of (1) legal or court-related case processing information (e.g., criminal history variables, departures/variances, guideline enhancements/reductions); (2) extralegal characteristics (e.g., gender, race, educational level, age); and (3) case and sentence outcomes. I supplemented these individual-level data with district-level contextual factors tabulated and compiled from USSC 2012 Annual Report and Sourcebook of Federal Statistics; 2012 Federal Court Management Statistics (FCMS); the Federal Election Commission's 2013 report on the 2012 Federal Elections; and the USSC's 2012 study of child pornography offenses.[32]

Following the methodology employed by Kautt (2002), who also conducted a multilevel analysis of federal sentencing data, this dissertation only includes those federal districts that fall within states. Kautt (2002) explained that since states have additional authorities and privileges than territories, treating territories as comparable may introduce nonrandom bias. Thus, the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands are not included. Additionally, since I am examining a district-level contextual factor that includes whether a

[32] FCMS provide information about the judicial caseload profile of each federal district on an annual basis.

mandatory minimum state-level penalty for child pornography is in effect in the state in which the district court is situated, Washington DC is also excluded. After omitting these district courts, 89 district courts remain (see Table 4.1 for a list).

The final individual-level data set for the analyses includes 1,900 males convicted of child pornography. This final number excludes cases where a term of supervised release was not imposed (n=29).[33] Women offenders were also excluded as they made up such a small percentage of the total sample (n=24). Likewise, all cases wherein the child pornography guideline (Sections 2G2.2 or 2G2.1) was not used in the guidelines sentencing computation were excluded (n=30). This can happen in one of two ways. The first way is when there is a cross reference to another guideline. For example, Section 2G2.1 (production guideline) has a cross reference to apply the guideline for murder (Section 2A1.1) if the victim was killed (USSC Guidelines Manual, 2012). The second way is when an individual is convicted of multiple counts involving different offenses. The guideline in Section 3D1.3 provides that in instances of multiple counts, courts are to group the offenses and apply the guideline comprising the more serious offense (USSC Guidelines Manual, 2012). For example, if an individual is convicted of possession of child pornography and distribution of cocaine, the guideline for drug distribution (Section 2D1.1) would be used because this charge is more serious in terms of the range of punishment for the sentence of imprisonment.

Measures

Dependent Variables

Supervised Release. For this study, supervised release sentencing decisions can be conceptualized in two ways: the decision to impose lifetime supervision; or, if life is not

[33] If a case is sentenced to probation instead of a term of imprisonment, supervised release is not imposed.

imposed, the length of the supervised release term. It is important to look at both these dependent variables because the guidelines policy statement in Section 5D1.2(b)(2) prescribes lifetime supervised release for all child pornography offenders. But we know that judges give out lifetime supervised release in over a third of cases (Vinyard, 2016). I therefore model these two sentencing decisions as follows: (1) The decision to impose lifetime supervised release was coded 1 if the offender was sentenced to lifetime supervised release and 0 if the offender was not sentenced to lifetime supervised release; (2) Supervised release length is defined as a continuous variable measured in months. Because of the skewness in the sentence length data, I use the log transformation of supervised release length.[34] The log transformation normalizes the skewed distribution. While scholars have taken a variety of approaches to coding life sentences, I followed the USSC in top-coding lifetime supervised release at 470 months. I therefore use 470 months to represent the maximum supervised release sentence.[35]

In addition to the skewness revealed by histogram, the shape of the distribution of supervised release sentence length is not normal (Kologorov-Smirnov significance value is .000 suggesting violation of the assumption of normality; kurtosis value is -1.584). A preliminary view of the data revealed a lot of clumping. For example, 19% of cases received five years supervised release, 25% received ten years, 8.9% received fifteen years, 5.6% received twenty years, 1.9% received twenty-five years, 1.5% received thirty years, and 33.2% received lifetime supervised release. The remainder of the cases received sentences other than those just described. Based upon the distribution of the data, I found it appropriate to create and include an ordinal dependent variable based upon meaningful categories of the data. Specifically, I created

[34] Skewness = .425; Standard error of skewness = .056
[35] There were 11 cases in this dataset that received supervised release sentences greater than 470 months. These cases were recoded to represent lifetime supervised release.

four categories: short-term supervised release (cases that received sentences of 60 months or less); intermediate term supervised release (sentences ranging between 72 and 120 months of supervised release); long-term supervised release (sentences ranging between 121 months and 420 months)[36]; and lifelong supervised release (cases sentenced to 470 months).

Individual-Level Independent Variables. The independent variables used in the analyses are legal variables and extralegal variables hypothesized to affect sentencing outcomes (Albonetti, 1997; Mustard, 2001; Spohn, 2006).

Legal Measures

Mode of Conviction (Plea). Plea bargaining is a common practice in the federal criminal justice system. Approximately 97 percent of convictions in federal courts (FY 2012) were the result of plea bargaining (USSC Sourcebook, 2012). Research has found that plea bargaining can reduce sentence severity (Kautt, 2002). This variable was dichotomized so that a value of 1 represents the defendant pled guilty either through a guilty plea or nolo contendere.[37] A value of 0 indicates that the defendant had a trial (bench or jury).

Departure. Courts can sentence an individual within the specified guideline range or impose an upward departure/variance or a downward departure/variance.[38] Departure is measured with a categorical variable (e.g., within guideline sentence, upward departure/variance, downward

[36] There were no cases with a supervised release sentence ranging between 121 to 143 months.
[37] Nolo contendere is a plea wherein the defendant neither admits nor disputes a charge, serving as an alternative to a pleading of guilty or not guilty.

[38] An upward or downward departure is a sentence that is greater or less than the advisory guideline range based upon the application of departure policy statements in the guidelines. An upward or downward variance refers to a sentence above or below the advisory guideline range based upon the court's weighing of one or more sentencing factors of 18 U.S.C 3553(a).

departure/variance [inclusive of all possible categories of downward departures and variances including substantial assistance]), with within guideline sentence as the reference category.[39]

Criminal History. This continuous variable is the final criminal history score as determined by the sentencing court. The criminal history score, which ranges from 1 to 6, is calculated based upon the total criminal history points calculated from Section 4A1.1 of the federal sentencing guidelines. The higher the score, the greater the criminal history. A higher criminal history score generally results in greater sentence severity.

Sex Offender Enhancement. This variable indicates whether an enhancement of Repeat and Dangerous Sex Offender (see Chapter Four, Section 4B1.5 of the 2012 USSC Guidelines Manual 2012) was applied at sentencing. This enhancement is applied if the court finds that the offender committed the current federal offense subsequent to sustaining at least one sex offense conviction. This variable is coded as 0 if the enhancement was not applied and 1 if it was applied.

Offense Severity Score. This continuous variable indicates the final offense level as determined by the court (which ranges from 1 to 43). Higher offense levels result in greater sentence severity.

Number of Counts of Conviction. This variable indicates the number of counts of conviction. For example, an individual convicted of three counts of child pornography is subject to three terms of supervised release whereas an individual convicted of a single-count of child

[39] Substantial assistance refers to information proffered by the defendant to the government that leads to the prosecution and conviction of another offender(s). I selected to keep this measure a three-category measure rather than a four-category measure (separating out substantial assistance and treating it as a separate category). This is because child pornography offenses are unique in that a computer is used nearly 100% of the time. As such, law enforcement can obtain computer IP address information to investigate any involvement of others. Therefore, the assistance of the defendant is not as necessary as is more common for drug conspiracies (Stacey and Spohn, 2006). In the current data, offenders receiving substantial assistance accounted for only 72 cases or 3.8%.

pornography is subject to a single term of supervised release. It should be noted that regardless of the number of terms of supervised release, all terms run concurrently. This variable is included because it may speak to blameworthiness or community protection. For example, a sentencing court may believe that an offender convicted of multiple counts of child pornography is more culpable and thus warrants longer community supervision as opposed to an individual convicted of a single-count.

Detention Status. This binary variable indicates the offender's presentence detention status. This variable is scored 1 if the offender is detained and a 0 if the offender is on bond. Detention status may speak to risk and/or community protection. Generally, for offenders to be detained prior to sentencing, there are risk factors present in the defendant's background such as failing to appear or violence. A defendant may also be detained before trial or sentencing if the statute mandates detention based on the seriousness of the charge.[40]

Offense Type. The USSC categorizes all child pornography offenses, including possession, receipt, transportation, distribution and production, into one offense group. For the purposes of this dissertation, the data will be disaggregated into two groups – non-production offenses and production offenses. Non-production offenses include possession, receipt, transportation and distribution. Offenders convicted for these offenses are sentenced under 18 USC 2252 or 2252A of the U.S. Code for Crime and Criminal Procedures. The applicable federal sentencing guideline for non-production offenses fall under Section 2G2.2. Non-production offenses involve child pornography images in which offenders had no actual contact with minors. Production offenses, which involve the actual physical abuse of minors in making or attempting

[40] Mandatory detention at arrest applies to all child pornography offenses except for possession of child pornography. Mandatory detention at the plea and sentencing hearings apply to all child pornography offenses.

to make child pornography images, are sentenced under 18 USC 2251 or 2260 of the U.S. Code for Crime and Criminal Procedures. The applicable federal sentencing guideline for production offenses fall under Section 2G2.1. The legal literature typically divides child pornography offenses into these two types because most of the disparity in sentences generally arises from non-production offenses (Rigsby, 2010, Krohel, 2011). This variable is scored 1 for non-production cases and 0 for production cases.

Extralegal Measures

Age. This variable is defined as the age of the defendant at the time of sentencing. Consistent with research that delineates age into two subgroups "young offenders" and "old offenders" (Steffensmeier & Motivans, 2000), as well as the fact that the average age of my sample is 41.41, I coded defendant age as a dichotomous variable, where 0 represents offenders ages 19-49 and a 1 represents offenders ages 50 and over. I did not code age as a continuous variable because preliminary modeling showed that the effect of age was not linear. I also conducted a preliminary analysis of the age variable using a three category measure (19-21; 22-49; and 50 and over), as suggested by Steffensmeier et al. (1998). There was no significant difference in the likelihood of lifetime supervised between those ages 19 to 21 and 22 to 49, which suggests that my two-category measure of age is appropriate.

Race. This variable indicates the defendant's race self-reported to the probation officer at the time the presentence report was prepared. Because the sample is mostly white (86.5%), this variable was dichotomized such that a value of 1 represents whites and a 0 value represents nonwhites. The nonwhite category is inclusive of defendants identified as black (3.5%), Hispanic (8.9%) and other (1.1%).

Education. This variable indicates the highest level of education completed by the defendant. Education is a categorical variable (e.g., less than high school, high school graduate, some college, and college graduate), with high school graduate as the reference category. This measure is similar to the one used by Mustard (2001), who found differences in sentence length based on levels of education. According to Franklin (2015), these four categories are meaningfully distinct from one another and have pronounced implication for future success that might weigh on the minds of court actors.

Fine. A variable representing socioeconomic status such as income is not available in the current dataset. The best proxy is the imposition of a fine at sentencing. An offender's ability to pay a fine is based upon the offender's net worth and net monthly cash flow documented in the presentence report. This continuous variable indicates the fine amount imposed by the court.

Citizenship. This variable indicates whether an offender is or is not a U.S. citizen (non-citizens include legal and illegal aliens). It is binary such that a 0 indicates the defendant is a non-U.S. citizen and 1 indicates the defendant is a U.S. citizen.

Dependents. The only measure of family circumstances collected by the USSC is whether the defendant has any financial dependents he is supporting, excluding himself. This variable is measured as a binary indicator wherein a 1 indicates the defendant has financial dependents and a 0 indicates the defendant has no financial dependents. Data on marriage and other extralegal factors such as substance abuse history and mental health status are unavailable in the dataset.

District-Level Independent Variables

To investigate whether court contextual factors influence supervised release sentence outcomes, I supplemented the USSC dataset with seven aggregate district-level variables

including district size, child pornography caseload rate, guidelines compliance rate, mandatory minimum state-level penalties for possession of child pornography, *Kimbrough*-based policy decision, political conservatism, and region. These court contextual factors are included because they are theoretically linked to supervised release sentencing decisions.

District Court Size. Following the same methodology employed by Johnson et al. (2008) to measure district size, this variable represents the number of authorized judgeships in a federal district for fiscal year 2012.

Caseload Pressure (Child Pornography Caseload Rate). This continuous variable indicates a district's child pornography caseload rate. It was calculated by taking the number of child pornography cases emanating from a district divided by the total number cases in that district. This quotient is multiplied by 100 to make the caseload rate a percentage. This variable is an indicator of the impact that a district's child pornography workload may have on sentencing outcomes for child pornography offenders.

Guidelines Compliance Rate. This continuous variable indicates a district's overall within guideline sentence compliance rate for all offenses. This variable is calculated by taking the number of cases that were sentenced within the guidelines range of a district divided by the total number of cases that were sentenced in the district. Multiplying by 100 makes the guidelines compliance rate a percentage. This variable gauges whether within guidelines sentence compliance rates is indicative of districts being more likely to follow the policy statement for lifetime supervised release.

Mandatory Minimum State-Level Penalties. This tabulated variable indicates whether a district is situated in a state where there are mandatory minimum state-level penalties for possession of

child pornography (State Child Pornography Statues – see Appendix F in the USSC's 2012 Report to Congress on Child Pornography Offenses). This binary variable is coded such that a 1 indicates a district is situated in a state where there are state-level child pornography statutes with a mandatory minimum penalty for possession of child pornography and a 0 indicates otherwise.

***Kimbrough*-based policy disagreement**. In *Kimbrough v. U.S.* (2007) the issue before the Supreme Court was whether a policy disagreement with the guidelines was permissible to impose a below-guideline sentence. The Supreme Court ruled that as long as a sentencing court appropriately considers the factors in 18 USC 3553(a) when imposing a sentence, the sentence is reasonable even if it does not fall within the prescribed sentencing guideline range (Rigsby, 2010). In other words, the *Kimbrough* decision allows sentencing courts to reject a sentencing guideline and impose a departure/variance based on a policy disagreement with the guidelines. In essence, this would mean that judges are allowed to impose supervised release sentences other than the guideline recommendation for life if they categorically disagree with the guideline recommendation for lifetime supervised release. Thus, a dichotomous variable was created to represent whether a district court was situated in a circuit that has rejected the application of *Kimbrough*-based policy disagreements regarding sentences for non-production child pornography offenses. According to Kaiser and Spohn (2014), appellate decisions in circuits that have rejected the application of *Kimbrough*-based policy disagreements for child pornography offenses include the 4th, 5th, 6th, 8th, 10th, and 11th circuits. Federal circuits that have allowed policy disagreements for non-production offenses include the 1st, 2nd, 3rd, 7th and 9th circuits. This dummy variable is measured such that at 1 indicates a district is located within a

circuit that has rejected the *Kimbrough* application and a 0 indicates a district is situated within a circuit that has not specifically rejected this application.

Political Conservatism (percent Republican). Following the lead of Johnson (2005), political conservatism is delineated as percent Republican. Percent Republican was measured as the percent of the total votes cast in the state in which the district court is located for the Republican candidate in the 2012 presidential election.

Region. This is a four-category nominal variable that indicates whether a district is situated in the West, South, East or Midwest. East is the reference category. East was selected as the reference category due to this region having the fewest number of district courts classified as being in the Eastern region of the U.S. (See Table 4.1 at the end of this chapter).

Methods

Analytical Approach – Multilevel Modeling

The use of hierarchical modeling or multilevel modeling to analyze nested data is well established in the literature (Kautt, 2002; Ulmer & Johnson, 2004; Fearn, 2005; Weidner, Frase & Schultz, 2005; Johnson, 2005, 2006; Ulmer, Eisentein, and Johnson, 2010). Essentially, multilevel models allow researchers to estimate the regression coefficient, while simultaneously modeling separate individual-level factors nested within district courts (Ulmer and Johnson, 2004). Multilevel models also allow for the partitioning of the overall variance into components for each level – individual-level and district-level. This partitioning of the variance allows for the calculation of the intraclass correlation coefficient, which measures the amount of variability between district courts, and coincidentally is the first test to determine if a study merits multilevel modeling (Garson, 2013).

Given that individual offenders are nested within district courts, similarities among cases at the district-level are likely to occur (Ulmer and Johnson, 2004). This means residual errors are correlated within districts, violating the ordinary least squares regression assumption of independent errors, risking misspecification of standard errors (Raudenbush and Bryk, 2002; Garson, 2013). To remedy this, multilevel modeling incorporates a unique error term into the equation for each county or district-level unit of analysis (Raudenbush and Bryk, 2002). Multilevel models also provide significance tests based on the proper degrees of freedom for the district-level variables (Johnson, 2005). Further, multilevel models also allow for the modeling of variations in the effects of individual-level data across court contexts (Ulmer and Johnson, 2004). Finally, these procedures allow one to properly assess theoretically important cross-level interactions between individual-level predictors and aggregate county-level or district-level characteristics (Johnson, 2005).

Following, the initial test of variability between districts, multilevel modeling procedures involves the sequential estimation of several models. So far example, if an unconditional model indicates a significant county-level or district court level variation, then a systematic sequence of random intercept models is estimated. According to Garson (2013), the major types of random intercept models include: random intercept model with only level 1 predictors; random intercept model with only level 2 predictors; random intercept model with level 1 and level 2 predictors; random coefficient model; and fully specified multilevel model with random intercept and coefficients.

Thus, in the current dissertation, as individual cases are nested within federal district courts, two levels of analysis are needed.[41] I estimated a two-level multilevel model. Given my

[41] Following the lead of Kautt (2002) no circuit-level predictors can be included because there are so few circuits (11 circuits).

three different outcomes measures, I use hierarchical linear regression and hierarchical generalized linear models (HGLM) with all variables centered around their grand means to analyze the data in this dissertation.[42]

Analytical Strategy

My first research question asks *what proportion of variability in supervised release sentences is at the case level versus the district-level?* This question was answered using a null model for logged supervised release length, that is, a model with no predictors at any level of analysis. The null model, also call the unconditional model or one-way ANOVA with random effects, is a type of random intercept model that predicts the level 1 intercept of the dependent variable as a random effect of the level 2 grouping variable, with no other predictors at level 1 or 2 in a two-level model (Garson, 2013). This model is used to calculate the intraclass correlation coefficient (ICC) which is a test of the need for mixed modeling (Garson, 2013). As a preliminary analysis, I did this using a one way between groups ANOVA to determine the magnitude of between district court variation in supervised release sentence length. I found a statistically significant difference at the $p<.001$ level and amount of variability between district courts is 28.8% with the remainder of the variability in sentence lengths within courts.

My second research question asks *what individual-level legal and extralegal factors account for variability in supervised release sentences?* This question was answered with a random-intercept model that included only level-1 predictors centered on their grand means, but no district-level variables.[43] This enabled me to determine how much of the variance in

[42] Grand mean centering facilitates model estimation and provides meaningful interpretation of the intercepts (Raudenbush and Bryk, 20002; Garland, 2013).
[43] Supervised release length is not normally distributed. As such, I will use the natural log of supervised release length.

supervised release sentence length is accounted for by characteristics of the case and the individual.

As part of this analysis I also addressed an additional research question: "*Do the individual-level correlates of supervised release sentences differ for production versus non-production cases?"* The most straightforward way to answer to this questions is to partition the data by offense type and compare the magnitude of the coefficients for the independent variables for the two offense types. However, preliminary analyses revealed that offense type and offense severity score are highly correlated. There is a moderate to strong correlation between total offense severity score and offense type, r=.-.491, $r^{2=}$ .24, n=1,900, p=.001. The interquartile range score for offense severity for non-production cases is 6. The interquartile range score for offense severity for production cases is 7. For these reasons including both offense-level severity score and offense type in the same model is problematic.

To remedy this, I examined whether a model with offense severity score or offense type best fit the data. I checked the model fit statistics by running two separate HLM models - one with offense type, but not offense severity score and the other with offense severity score but not offense type. I computed the variance for each. The non-production model explains 13.8% (.47705-.41086/.47705) of individual-level variation in sentencing and 10.5% (.17940-.16047/.17940) of the district-level variation. In comparison, the model containing offense severity score explains 22.7% (.47705-.36867/.47705) of the individual variation in sentencing and the explained variance at the district-level is 11.8% (.17940-.15822/.17940). Thus, offense severity had a better model fit and I used offense severity score to represent offense seriousness rather than offense type when conducting data analyses. Notwithstanding, I conducted

supplemental analyses partitioning the data by offense type. These models are presented as a robustness check to my findings and are presented in Appendix A.

My third research question asks "*Above and beyond individual-level case characteristics, are district-level contextual variables related to supervised release sentencing outcomes?"* In other words, I am examining whether the characteristics and/or context of the district court affect supervised release sentencing once the composition of the cases in the courts have been taken into account. To answer this question, I ran a random intercept model with level-2 predictors only. This variant of the random intercept model predicts the level-1 intercept on the basis of the level-2 grouping variable and one or more level-2 random effect predictors (Garson, 2013). Next, I re-ran the model introducing level-1 variables. This model estimated the joint influence of level-1 and level-2 predictors.

My fourth question asks "*Do the effects of level 1 factors on sentence length differ across courts?"* To answer this question, I estimated a random coefficient model in which I allowed the effects of level 1 variables of interest including criminal history, offense seriousness, and departure/variance to vary across courts.[44] These models assessed whether the impact of specific case/individual-level factors changed varied between districts. For the variables whose effect did vary across courts, I explored whether these differential effects could be accounted for by any of the district-level variables.

[44] These variables were of interest due to their known effects across courts found in other studies (Kautt, 2002) as well as for theorized reasons. Johnson (2010) explains "Regarding federal sentencing data, it might make theoretical sense to investigate variations in the effect of offense severity across courts because some literature suggests perceptions of crime seriousness involve relative evaluation by court actors (Emerson, 1983)." In terms of theoretical reasons for the current dissertation, some presentence reports for some district courts include all known arrests and convictions whereas presentence reports in other district court only include information for convictions only. It is possible that differences in the content of the criminal history section in presentence reports across courts may lead to variations in these effects across courts.

The analyses described above were first completed using the continuous measure of sentence length. They were then replicated using hierarchical generalized linear models for the binary measure of supervised release sentence (life/no life) and the ordinal measure of the supervised release sentence.

Strengths and Limitations

Before presenting the results of the analyses, a review of the strengths and limitations of the methodology is necessary. As the strengths of the methodology guide the analytic plan, I discuss the strengths first followed by a discussion of the study's limitations. One of the more important methodological strengths is the use of federal data. The strength of utilizing federal sentencing data as opposed to sentencing data collected by state courts is that state courts operate under various different sentencing guidelines which make generalizability of the findings an issue. The federal system eliminates this issue with its national guidelines system. In addition, the data includes a wide range of information for a large number of defendants across 89 judicial district courts and all 50 states. It includes information on demographic characteristics and sentencing details.

A second strength is the inclusion of multiple outcome measures of the supervised release sentence. Extant sentencing literature focuses on one or two sentencing outcomes – the decision to incarcerate and/or sentence length. The present study not only looks at the decision to impose lifetime supervised release and supervised sentence length, but also an ordinal outcome measure of supervised release length. This provides a more comprehensive exploration and evaluation of supervised release sentencing outcomes because it takes into account that even when log-transformed, supervised release sentence length is not normally distributed.

Despite these methodological strengths, my analytic strategy is not without limitations. One limitation is that I do not consider judge-level influences in sentences. This is significant given that individual offenders are nested within judges. The focal concerns perspective supports the notion that supervised release sentences could vary among judges. Specifically, judges may have different views on culpability, dangerousness, and practical consequences of their sentences, which may result in inter-judge sentencing disparities (Anderson and Spohn, 2010; Johnson, Ulmer and Kramer, 2008). Another way that supervised release sentences could vary among judges, concerns judicial characteristics including including age, gender, race, length of term on the bench, previous experiences as a prosecutor or defense counsel. Indeed, Johnson (2006) utilized tri-level hierarchical models to examine individual-level, judge-level, and county-level factors on sentencing outcomes using Pennsylvania sentencing data. He found sentence length and the likelihood of incarceration varied significantly between judges and counties. He also found that after controlling for individual case and offender characteristics, judge-level variables such as minority judge, age, prior military experience and judicial caseload composition exerted direct effects on the likelihood of incarceration and length of incarceration. The current dissertation does not consider judge-level influences on supervised release outcomes. This is because the publicly available USSC dataset does not identify the judge who imposed the sentence (Kautt, 2002; Anderson and Spohn, 2009).

There could be additional district-level factors that I may have failed to consider that may influence supervised release sentencing outcomes of child pornography offenders. As a result, this could potentially undermine the conclusions drawn about district-level contextual factors. I do attempt to mitigate this limitation, by exploring many of the district-level contextual factors used in the extant sentencing literature. But of course, these factors are

theoretically linked to sentence of imprisonment for the overall offender, not specifically child pornography offenders or the sentence of supervised release.

Even with these limitations, this dissertation contributes to the broader sentencing literature by providing an initial multilevel examination of the influence of individual-level legal, extralegal, and district-level factors on supervised release sentencing outcomes of child pornography offenders.

Chapter Five presents the findings of the multilevel models (hierarchical linear and generalized models – HLMs and HGLMs) estimated to address the research questions of this dissertation, followed by Chapter Six and Seven which discuss the results and the implications of the findings, respectively.

Table 4.1
List of the 89 Federal Districts Included in the Analyses by Geographic Region

South	***West***	***Midwest***	***East***
Oklahoma East	Washington East	North Dakota	Maine
Oklahoma North	Washington West	South Dakota	New Hampshire
Oklahoma West	Idaho	Nebraska	Vermont
Texas East	Montana	Kansas	Massachusetts
Texas North	Wyoming	Missouri East	New York East
Texas West	Colorado	Missouri West	New York North
Texas South	New Mexico	Iowa North	New York South
Arkansas East	Arizona	Iowa South	New York West
Arkansas West	Utah	Illinois Central	Pennsylvania East
Louisiana East	Nevada	Illinois North	Pennsylvania Middle
Louisiana Middle	Oregon	Illinois South	Pennsylvania West
Louisiana West	California Central	Wisconsin East	New Jersey
Mississippi North	California East	Wisconsin West	Connecticut
Mississippi South	California North	Michigan East	Rhode Island
Kentucky East	California South	Michigan West	
Kentucky West	Alaska	Indiana North	
Tennessee East	Hawaii	Indian South	
Tennessee Middle		Ohio North	
Tennessee West		Ohio South	
Alabama Middle		Minnesota	
Alabama North			
Alabama South			
Georgia Middle			
Georgia North			
Georgia South			
Florida Middle			
Florida North			
Florida South			
North Carolina East			
North Carolina Middle			
North Carolina West			
South Carolina			
West Virginia North			
West Virginia South			
Virginia East			
Virginia West			
Maryland			
Delaware			
*Regions based upon U.S. Census Bureau States Region Map			

CHAPTER FIVE: FINDINGS

Introduction

This chapter reports the results from the analyses of the effects of individual-level legal and extralegal factors, as well as district-level contextual factors on supervised release sentences for child pornography offenders. Presentation of the results is organized into four sections. Section I includes the descriptive statistics for the full sample and then by offense type (non-production and production). I present separate descriptive statistics by offense type because I am interested in exploring differences in sentencing based upon offense seriousness, which is highly dependent on whether the case involved production or non-production.[45] Also included in this section are the results of bivariate analyses of the relationships between the dependent variables (supervised release length and the decision to impose lifetime supervised release) and the individual-level legal and extralegal variables. Next, I report the results of the bivariate analyses of the relationships among my district-level independent variables. Section I concludes with the results of preliminary data analyses of the linearity of the relationships between the continuous individual-level independent variables and supervised release sentences.

Section II present results that correspond to each of my four research questions for my first dependent variable, sentence length measured in months (logged). This section begins with the results from the null model. This model provides estimates of the relative amount of sentencing variation that occurs at the individual and district level. The next part of this section includes results from hierarchical linear regression models that examine the influence of individual-level legal and extralegal factors on supervised release length. This section also

[45] As noted in Chapter 4, data analyses for all models in this study use the variable offense severity score rather than the offense type variable. This is due to the collinearity between offense type and the offense severity score variable. There is a moderate to strong correlation between offense type and offense level severity, r=.-.491, $r^{2=}$ .24, n=1,900, p=.001. I selected offense severity score for use in my data analyses because model estimates reveal it is a better fit than the offense type variable.

includes results from cross-product interaction terms between offense severity score and each of the legal and extralegal factors. The results of these two-way interactions address the second part of my second research question: Do individual-level correlates (legal and extralegal) of supervised release sentences differ by severity of the offense? Next, I present findings from my random coefficient models. The results of these models answer my third research question: Do the effects of individual-level factors vary across courts? Following this, I examine whether district-level contextual variables are related to supervised release sentencing outcomes above and beyond individual-level factors. I conclude this section with findings from my final model – a mixed multilevel model including random intercepts, random coefficients, and cross-level interactions. The results from this model provide information on how individual-level and district-level factors operate together to impact supervised release sentencing outcomes.

In Section III, I present the results of my four research questions, but with the binary dependent variable – the decision to impose lifetime supervised release. Finally, in Section IV I present the results of my research questions using a four-category ordinal measure of supervised release length because a preliminary view of the data shows sentence length is non-normal even when logged.[46] This chapter closes with a summary section that summarizes the main results of the analyses. All tables and figures referenced in this chapter are located at the end. In Appendix A, located at the end of this dissertation, I include supplemental analyses that assess the robustness of my earlier results. Specifically, I use ordinary least squares regression (OLS), logistic regression, and ordinal regression models to determine if the correlates of supervised release sentences differ by offense type (non-production versus production). Even though this

[46] Recall from Chapter 4 that a preliminary view of the data shows clumping. That is, 19% of cases received five years supervised release, 25% received ten years, 8.9% received fifteen years, 5.6% received twenty years, 1.9% received twenty-five years, 1.5% received thirty years, and 33.2% received lifetime supervised release. The remainder of the cases received sentences other than those just described.

step is completed as part of research question 2A using hierarchical linear modeling, this additional step assesses whether the decision to use offense seriousness instead of offense type as a moderator influences the results. This is necessary because of the collinearity between offense severity score and offense type.

SECTION I: Descriptive Statistics and Bivariate Analyses

Individual-Level Factors

Descriptive Statistics – Full Sample

Table 5.1 presents the descriptive statistics for the variables used in my analyses.[47] The sample is comprised of 1,900 male offenders convicted of child pornography offenses and sentenced to a term of supervised release. The shortest term imposed is 12 months and the longest term is life (470 months). The average term is 242 months (SD=170.78). Nearly half the sample (48.3%) was sentenced to either a short-term (20.1%) or an intermediate (28.2%) term of supervised release, while the other half (51.8%) received either long-term supervised release (18.6%) or lifetime supervised release (33.2%).

An overwhelming majority (95.7%) of the sample pled guilty. More offenders received a downward departure/variance (63.3%) than were sentenced within the guidelines range (34.5%). Only 2.2% received an upward departure/variance. The average criminal history score is 1.37 (SD=.902). This means they have no criminal history or only one criminal history point.[48] Only about 5% of the sample received an enhancement for having a previous sex offense. The offense severity score ranges from 16 to 43, with an average offense severity score of 32. The number of

[47] Included in these descriptive statistics are two district-level factors: (1) district average supervised release sentence length; and (2) district average percent of cases sentenced to lifetime supervised release. These factors are not included in the data analyses, but provide additional descriptive statistics of the 89 district courts.
[48] Recall, the criminal history score, which ranges from 1 to 6, is calculated based upon the total criminal history points calculated from Section 4A1.1 of the federal sentencing guidelines. The USSC codes this variable as 1 through 6. The higher the score, the greater the criminal history.

counts of conviction for the sample ranges from 1 to 26, averaging 1.49 counts per offender. Just under two-thirds (61.3%) of the sample was detained prior to sentencing.

The sample is comprised mostly (86.5%) of whites. Almost three-quarters (72.7%) of the offenders are younger than age 50. Although not shown in the table, the average age is 41.41 years (SD=13.23). This is an educated group of offenders. Just over 90% have at least a high school education. The average fine imposed was $808, with 87.4% of offenders not incurring a fine, and one offender receiving a fine totaling $100,000. The court generally waives fines based upon the inability to pay. The fact that most of the offenders did not receive a fine indicates that there was an inability to pay or the fine would have been a burden on the defendant's dependents. The sample is comprised mostly of U.S. citizens (96.7%). Finally, 29.6% of the sample claimed dependents.

Table 5.1 about here

Descriptive Statistics by Offense Type – Non-production & Production

Table 5.2 present descriptive statistics by offense type to visualize how legal and extra-legal characteristics differ between more serious (production) and less serious (non-production) cases. Starting with non-production, approximately 87.5% (n =1,663) of child pornography offenders were convicted for this offense type. The average supervised release sentence for this group is 229.09 months. The shortest term imposed is 12 months and the longest is 470 months (life). Approximately 29.7% of non-producers received the most severe term of life. Regarding individual-level legal factors, many of these descriptive statistics for non-producer's mimic those found in the full sample. There are, however a few exceptions. For instance, very few non-producers received the enhancement for having a prior sex offense (.7%) and at 30.9 points, the average offense severity score was almost two points lower than in the full sample.

Production cases (n=237) differ from non-production cases in many important ways. First, producers were sentenced to more severe terms of supervised release than non-producers. The minimum supervised release sentence for a producer is 36 months compared to 12 months for non-producers. The average supervised sentence length for production cases is 332.79 months (SD=167.39) versus 229.09 months (SD=167.35) for non-producers, a difference of over 8 years. An independent samples t-test indicates this difference is statistically significant (t (1898) =-8.922. p<.001). In addition, there is a significant difference in the likelihood of being sentenced to lifetime supervised release for production versus non-production offenders ($x^2(1)$ = 71.70, p<.001, phi=.194). More than half (57.4%) of the producers were sentenced to the most severe term (life) in contrast to 29.7% of non-producers.

Regarding individual-level legal factors, almost 10% of offenders convicted of production were disposed by trial compared to 3.5% of non-producers, which is a significant difference ($X^2(1)$ = 19.64, p<.001, phi=.102). Interestingly, 36.4% of production cases received the enhancement for having a prior sex offense compared to .7% of non-production cases ($X^2(1)$ = 538.75, p<.001, phi=.533). For producers, offense severity scores range from 24-43, and for non-producers scores range from 16-43. The average offense severity score for producers (M=39.13; SD=3.84) was 9 levels higher than for non-producers (M=30.98; SD=4.90), a significant difference (t(1898)=-24.537, p<.001, two-tailed). Likewise, production cases (M=2.28; SD=2.5) averaged 1 more count of conviction than non-production cases (M=1.38; SD=1.4) (t(1898)=-7.95, p<.001, two-tailed). Finally, over 90% of producers were detained prior to sentencing compared to 57.6% of non-producers ($X^2(1)$ = 119.66, p<.001, phi=.251). Production cases also differed from non-production cases with regard to the extralegal factor of

claiming dependents. Unexpectedly, 41% of producers claimed dependents compared to 27.9% of non-producers ($X^2(1) = 16.91$, p<.001, phi=.096).

Table 5.2 about here

Bivariate Analyses

Pearson and Point Biserial Correlations.

To examine the bivariate relationships among measures of sentence length and the independent variables, I computed Pearson and point biserial correlations for continuous and dichotomous variables, ANOVAs for continuous and categorical variables with more than two categories, and chi-square tests of independence for categorical variables. Table 5.3 presents the correlations for individual-level factors. Several of the legal independent predictors are significantly correlated with the dependent variables. Positive correlations include number of counts, sex offender enhancement, criminal history score, offense severity score, and detention. To illustrate one of these correlations, there is a weak to moderate relationship between supervised release length and detention, r=.276, r^2=.07, p<.001. This means that those who are detained prior to sentencing have longer sentences. In addition, non-production cases receive shorter sentences and are less likely to receive lifetime supervised release. There are also several significant correlations among the legal and extralegal variables. Among the strongest correlations is the relationship between offense severity score and offense type. There is a moderate to strong correlation between the two variables, r=.-.491, $r^{2=}$ .24, p<.001. Another strong correlation is between offense type and the enhancement for having a prior sex offense, r=-.533, r^2=.28, p=.001. Moderate and positive relationships also exist among offense severity score and each of the dependent variables (supervised release length and the decision to impose life), r=.338, r^2=.11 p<.001; r=.302, r^2=.09, p<.001. This means that as offense severity score

increases, supervised release length also increases as does the likelihood of being sentenced to lifetime supervised release.

Table 5.3 about here

ANOVA.

A one-way anova was utilized to explore the relationship between supervised release length and education. Education is categorized into four groups: less than high school, high school graduate, some college, and college graduate. There is a statistically significant difference in supervised release length and education level ($F(3, 1874) = 3.453$, $p < .01$.), although the actual difference in mean sentence lengths between the groups is quite small (eta squared = .005). Post-hoc comparisons using the Tukey HSD test indicate that the mean sentence for offenders with less than a high school degree (M=255.26, SD=171.94) is significantly longer than for those with some college (M=230.27, SD=167.50). There are no differences in sentence length between any of the other education groups.

While region is not an individual-level variable, I also used ANOVA to explore sentence length by region. This was done to further explore supervised release sentences in greater detail. There is a statistically significant but small difference in supervised release sentence length by region, $F(3, 1896) = 11.462$, $p < .001$, eta squared = .01. Cases in the East have the shortest average sentence length, 192.14 months (SD=153.64), while those in the West have the longest average supervise release lengths at 264.30 months (SD=169.63). Those in the South (SD=167.58) and Midwest (SD=180.25) are in between with average supervised release lengths of 251.22 and 242.54 months, respectively. Post-hoc comparisons using Tukey HSD test indicate that the mean supervised release length for those sentenced in the East is significantly different from those in the South, West, and Midwest.

Chi-square tests.

I conducted chi-square tests to explore the relationships between lifetime supervised release and each of my binary and categorical legal and extralegal variables. These variables include – the enhancement for having a prior sex offense, plea, detained, guidelines departure, race, citizenship, education, dependents, and age over 50. Chi-square tests revealed only statistically significant relationships between lifetime supervised release and two of the legal variables – detention and the enhancement for having a prior sex offense. Offenders who were detained are significantly more likely to receive lifetime supervised release (x^2 (1) =107.660, p<.001, phi=.240) as are those who received the enhancement for having a prior sex offense (x^2 (1) =52.814, p<.001, phi=.169).

While region is not an individual-level variable, I also used chi-square tests to explore the relationship between lifetime supervised release and region. A chi-square test indicated a significant association between region (West, East, South and Midwest) and the decision to impose lifetime supervised release, $x^2(3) = 27.288$, p<.001, Cramer's V=.120. Cases in the South are most likely to receive lifetime supervised release followed by the Midwest, West, and East. Likewise, there is also a significant association between region and the four-category ordinal measure of supervised release, $x^2(9) = 92.66$, p<.001, Cramer's V = .128.

District-Level Factors

Descriptive Statistics

The characteristics of the 89 federal district courts are also presented in Table 5.1. Districts vary widely in size with several federal districts having only 1 or 2 authorized judgeships, whereas others have as many as 28. The average number of judgeships for all districts is 7 (SD=5.60). The percentage of all cases in the district that are child pornography

cases (i.e., the child pornography caseload rate) ranges from 0.2% to 13.1%, with an average child pornography caseload rate of 3.7% (SD=2.4%). On average, the guideline compliance rate is 51.1% for all federal districts, with some districts having guidelines compliance rates as low as 22.8% and some as high as 81%. Just under half (49.4%) of district courts are situated within states that have a mandatory minimum state-level penalty for possession of child pornography. A little over three-quarters of the districts are located within circuits that rejected the application of *Kimbrough* to non-production offenses. Of those who voted in the 2012 presidential election, the average percent who voted Republican for all the districts was 50.4% (SD=9.6%) with a low of 28% and a high of 73%. Finally, the federal districts are split across the four regions of the United States with 19.1% of districts in the West, 42.7% in the South, 15.7% in the East, and 22.5% in the Midwest.

I also looked at the district average for the supervised release sentence length as well as the district average percentage of cases sentenced to lifetime supervised release. The shortest average supervised release term is 60 months and the longest average term is life (470). The average term for the mean of the 89 districts is 240.11 months (SD=101.40). The range of the percent distribution of districts that sentenced their cases to lifetime supervised release is 0% to 100%, with a mean of 33.2% (SD=26.1%).

Bivariate Analyses

Pearson and Point Biserial Correlations.

To examine the bivariate relationships among measures of mean supervised release length and the percent sentenced to lifetime supervised release for each of the 89 districts and the district-level independent variables, I computed Pearson and point-biserial correlations for continuous and dichotomous variables (see Table 5.4). District size is negatively related to child

pornography caseload rate, guidelines compliance rate, and percent of voters who voted Republican in the 2012 presidential election. These negative correlations are relatively weak. In districts situated within states with mandatory minimum state-level penalties, the mean supervised release length and percent sentenced to lifetime supervised release is higher. These correlations are also weak. The guidelines compliance rate is positively correlated with percent Republican. In addition, districts that reject *Kimbrough* have higher compliance rates than those that have not rejected *Kimbrough,* as do districts situated within states with mandatory minimum state-level penalties. But the correlation between *Kimbrough* and percent Republican is remarkably strong (r_{pb}=.518). Districts that reject the application of *Kimbrough* to non-production child pornography cases have greater percentages of voters that voted Republican.

Table 5.4 about here

Supervised Release Sentences in Context – Individual District Supervised Release Descriptive Statistics

To display the differences in supervised release sentences across districts, I created a separate table (see Table 5.5) displaying the percent distribution of districts that sentenced their cases to short-term supervised release (60 months or less), intermediate supervised release (sentences ranging between 72 months and 120 months), long-term supervised release (sentences ranging between 121 months to 420 months), and lifetime supervised release (cases sentenced to 470 months).[49] I also created a table showing the percentage of the total sample of child pornography cases sentenced in each district for all cases (see Table 5.6).[50] As shown in Table 5.5, twenty-two districts did not sentence any cases to a short-term period of supervised release and one district, Oklahoma East, sentenced 100% of its cases to short-term supervised release.

[49] There were no cases with a supervised release sentence ranging between 121 to 143 months.
[50] The table displaying the percentage of child pornography sentenced in each district is not the same as the child pornography caseload rate variable.

As far as intermediate terms of supervised release, twelve districts did not impose this term to any of their cases, while only Louisiana Middle sentenced 100% of its cases to an intermediate term. Regarding long-term supervised release, twenty-one districts did not sentence any of their cases to long-term supervised release, and no district sentenced all their cases to long-term supervised release. Finally, eleven districts including Maine, Massachusetts, New York South, Louisiana Middle, Tennessee Middle, Tennessee West, Iowa South, South Dakota, Kansas, Oklahoma East, and Oklahoma North did not impose lifetime supervised release on any of their cases.[51] Three districts, North Carolina East, Alabama Middle, and Alabama South, sentenced 100% of their cases to lifetime supervised.[52] Other districts including New Hampshire, Mississippi South, Indiana South, Wisconsin West, Missouri East and Arizona sentenced more than 75% of their cases to lifetime supervised release.[53]

Tables 5.5 and 5.6 about here

I also created separate tables that display descriptive statistics of how each district sentenced their cases to short-term, intermediate, long-term, and lifetime supervised release by offense type as well as the percentage of child pornography cases sentenced in each district by offense type (see Tables 5.7 through 5.10). Starting with non-production offenses, only three districts sentenced 100% of their cases to lifetime supervised release, in contrast to 22 districts that sentenced 100% of their production cases to lifetime supervised release. Oklahoma East was the only district to sentence 100% of its non-production cases to short-term supervised release, while only one district, Oklahoma West sentenced 100% of its production cases to short-term supervised release.

---

[51] All of these districts except for Iowa South and Kansas, sentenced less than 1% child pornography cases.
[52] Each of these districts sentenced less than 1% of child pornography cases.
[53] With the exception, of Missouri East, Nevada, and Indiana South, these districts sentenced less than 1% of child pornography cases in 2012.

Tables 5.7 through 5.10 about here

Preliminary Data Analyses

Prior to beginning my analyses, I explored the possibility that the relationships between my continuous independent variables (offense severity score, criminal history score, fine, and number of counts) and the supervised release term are non-linear.[54] This was done in two ways. First, I looked at the scatterplot between each of these variables. An examination of the scatterplots based on a visual inspection, suggests a non-linear relationship between supervised release length and all the continuous variables.

Second, I created squared terms for each of these variables. I regressed supervised release length on the linear and quadratic term for each of these variables, one at time and then all together. The squared terms of age, fine, and criminal history score were not statistically significant predictors of the logged supervised release sentence length. The squared terms for offense severity score and number of counts were significant, indicating that these variables have a curvilinear relationship with logged sentence length.

To obtain a visual picture of the curvilinear relationships of offense severity score and number of counts, I graphed each of these variables with the predicted unlogged measures of supervised release length. The unlogged outcome was graphed because it is easier to interpret months of supervised release than logged months. I also graphed offense severity score and number of counts with the binary dependent variable – the decision to impose lifetime supervised release. The graph for offense severity score show the first score of 16 yields a slightly longer sentence than a score of 17 through 23 (see Figure 5.1). But at score 24, the predicted value of the supervised release sentence length increases as offense severity increases. Likewise, the

[54] Although I calculate age as a dichotomous variable in my data analyses, as a preliminary strategy I examined the linearity of age.

graph for the predicted probability of lifetime supervised release showed a similar curve, except that the curve was more dramatic for the decision to impose lifetime supervised release (see Figures 5.2). Here, offenders with the lowest offense severity scores (15-23) have a greater predicted probability of lifetime supervised release than those with scores between 24 through 28. At approximately score 29, the predicted probability of life increases dramatically as the offense severity score increases.

Figures 5.1 and 5.2 about here

The graphs for the number of counts of conviction appear quite different from the graphs for offense severity. Here, the graphs for both the predicted value of supervised release length and the predicted probability of lifetime supervised release look like arches (see Figures 5.3 and 5.4). Specifically, the graphs for both supervised release length and decision to impose lifetime supervised release indicate that as the number of counts of conviction increase through 14, the supervised release sentence length increases steadily. From about 15 counts of conviction onward, sentence length decreases.

Figures 5.3 and 5.4 about here

Now that I have described the data used in these analyses and discussed the preliminary analyses and bivariate relationships between the independent and dependent variables, Section II presents results of multilevel models for supervised sentence length measured in months (logged).

SECTION II: Supervised Release Length

This section presents the results of multilevel models examining the correlates of supervised release length, beginning with the null model and culminating into a final mixed

multilevel model that explores the individual-level and district-level factors associated with supervised release sentence length.

Partitioning of Variability in Supervised Release Sentence Length at Individual and District-Level: The Null or Unconditional Model

The multilevel analysis begins with an unconditional hierarchical model, which includes supervised release sentence length as the dependent variable, and no covariates at either level-1 (individual-level) or level-2 (district-level). Table 5.11 presents the results from the unconditional model examining supervised release sentence length for child pornography offenders nested within U.S. district courts. The results are broken into two parts, one for the fixed effects, which reports the unstandardized regression coefficients, and one for the random effects, which reports the variance components for the model. The overall intercept is 5.17 logged months or 175.91 unlogged months. The level 1 variance provides a measure of within-district variation in sentence lengths and the level 2 variance captures between-district variation. The significance tests associated with the level 2 variance component indicates there is significant between district variations in sentences – supervised sentence lengths vary significantly across federal district courts. In other words, the significance test provides preliminary evidence that districts matter in federal punishment.

The intraclass correlation coefficient (ICC) was calculated to determine the magnitude of the inter-district variation in supervised release length.[55] The ICC indicates that 27.3% of the variance in supervised release sentence length is at the federal district-level and the remaining 72.7% is at the individual-level.[56] The standard deviation for the between group variance component can be added and subtracted to the model intercept to provide a range of plausible

[55] ICC = .17940/(.17940 +.47705) = 0.273 or 27.3%.

[56] I also calculated the ICC for the sentence of imprisonment to gauge the level of interdistrict variability that would appear normal for child pornography offenses. The ICC for the sentence of imprisonment length is 21.3%. Accordingly, while the 27.3% interdistrict variability discovered for sentence of supervised release appears large, this figure is consistent with the level of interdistrict variability found generally for this offense type.

values for average supervised release sentences among districts. Accordingly, adding and subtracting .42 gives a range between 4.74 logged months (111.76 unlogged months) and 5.59 logged months (268.69 unlogged months). To conclude, there is a great deal of variability of supervised releases sentences of child pornography offenders. The following sections report which individual-level and district-level contextual factors account for this variability.

Table 5.11 about here

Relationship between Individual-Level Factors and Supervised Release Sentence Length

To identify the individual-level (legal and extralegal) variables that account for variability in supervised release sentences hierarchical linear regression was used. First, supervised release length was regressed on individual-level legal variables. Next, I added individual-level extralegal variables to the model to see if they explain supervised release sentence length above and beyond the effect of the legally relevant variables.

With the natural log of supervised release length as the outcome and level-2 representing federal district courts, I estimate a random intercept model with only level-1 legal variables [see Table 5.12 (Model 1)]. Quadratic terms for number of counts and offense severity score were included in the model because exploratory analyses (described earlier) indicated the relationship between these variables and supervised release sentence length is non-linear. The level-2 error term represents the random effect of federal district court on the natural log of supervised release length.

As indicated in Table 5.12 (Model 1), several legal variables have statistically significant coefficients, controlling for all other variables included in the model. There is a non-linear relationship between number of counts and length of supervised release as indicated by the

significant quadratic term for this variable (see Figure 5.5). The criminal history score is also statistically significant, indicating that a one unit increase in the criminal history score results in a 7.2% increase in months of supervised release. Offenders who received a downward departure/variance received sentences that were 19.9% shorter than those who were sentenced within the guidelines range. Compared to those who were released on bond, child pornography offenders who were detained had supervised release sentences that were 19.1% longer. Those who pled guilty also had supervised release sentences that were 24.7% longer than offenders who went to trial.

The deviance statistic is reduced from the unconditional model (deviance= 4014.78) to the conditional model (deviance = 3618.61), indicating increased model fit. To better quantify the model fit, I calculated the approximate R^2 statistics at each level of the analysis. The explained variance at level 1 is computed as the reduction in level 1 variance relative to the total variance from the unconditional model reported in Table 5.11.[57] Legal factors explain 22.4% of the variance across cases in supervised release length (logged) among child pornography offenders. The inclusion of level-1 predictors can also explain between-district variation at level-2 of the analysis. Explained variance at level-2 is calculated by examining the reduction in level-2 variance from the unconditional to the conditional model.[58] Thus, 12.3% of inter-district variation in sentences is due to compositional differences in individual-level legal factors among district courts.

Table 5.12 (Model 1) and Figure 5.5 about here

[57] Computed as (unconditional estimate of level 1 variance - the conditional estimate)/total unconditional variance = Explained level 1 variance = (.47705 - .37020.)/(.47705) = .2239.
[58] The unconditional estimate for between district variation was .17940 and the conditional estimate is .15729. The difference (.02211) divided by the total (.1794) provides an estimate of explained variance at level 2 equal to .1232.

Next, I added level-1 extralegal factors to the random intercept model to see if these variables have an effect on supervised release sentence length above and beyond legal characteristics [see Table 5.12 (Model 2)]. As shown in Table 5.12 (Model 2), legal variables including number of counts, criminal history score, plea, detained, and downward departure/variance remain statistically significant predictors of sentence length when extralegal factors are included. Extralegal factors including race, citizenship status, dependents, and education are significantly associated with the length of supervised release. Specifically, whites receive supervised release terms that are 8.2% shorter than non-whites, while U.S. citizens receive supervised release terms that are 19.7% longer than non-citizens. Those with dependents receive supervised release terms that are 6.6% shorter than those without dependents. Offenders with less than a high school education receive supervised release sentences that are 13.1% longer than the reference category of high school graduate. Surprisingly, compared to the reference group of high school diploma, those with a college degree received a term that is 10.6% longer.[59]

Combined, extralegal factors and legally relevant case characteristics explain 23.1% of individual variation in supervised release length and 12.4% of district-level variation in supervised release length.[60] With less than a 1% change in explained individual variation in supervised release length compared to the preceding model only containing legal variables, this indicates that supervised release sentence length is primarily driven by legal factors.

Table 5.12 (Model 2) about here

[59] I also estimated regression models using alternate measures of age including age squared and age as a continuous measure. Neither of these age measures were statistically significant predictors of supervised release length.
[60] Level 1 variance computed as (.47705-. 36648)/.47705=.2317 or 23.1%. Level 2 variance is computed as (.17940-.15712)/.17940=.1241 or 12.4%.

Relationship between Case-Level Factors and Cross Product Interaction Terms

To assess whether the effects of legal and extralegal variables differ depending on the severity of the offense, I created a series of multiplicative interaction terms between the offense severity score and each of the legal and extralegal variables. These two-way interaction terms were added one at a time into the model containing legal and extralegal variables. None of the interaction terms are statistically significant indicating that the effects of legal and extralegal factors on supervised release sentence length are similar regardless of the seriousness of the offense.

Variability in the Effects of Case-Level Variables on Sentence Length across Courts

To determine whether the effects of legal and extralegal predictors on supervised release sentence length vary across district courts, a random coefficient model was estimated. To begin, one at a time the coefficient for each level-1 variable was allowed to vary across courts. The results indicate that the effects of offense severity score (linear and quadratic terms), upward departure/variance, and downward departure/variance (although weak at p=.08) on supervised release sentence length differ across district courts [see Table 5.13 (Models 1 through 4, respectively)]. The statistical significance of both offense severity and offense severity squared means that the main effect and the shape of the relationship between the two variables vary across courts. To quantify this effect for downward departure/variance, the standard deviation for the random effect (.16) can be added or subtracted from the coefficient for downward departure/variance. This suggests that compared to the reference category of within guideline sentence, a downward departure/variance decreases the logged supervised release sentence months between -0.354011 (.70 month unlogged) and -0.036711 (.96 month unlogged). In comparison, child pornography offenders with upward departure/variance have sentences that are

between -.59926 (.54 month unlogged) and .81428 (2.25 months unlogged) longer than comparable offenders who did not receive departures.

Table 5.13 (Models 1-4) about here

Next, the effects of offense severity, upward departure/variance and downward departure/variance were all allowed to vary in the same model.[61] Only the error term for offense severity score and upward departure/variance remained statistically significant (see Table 5.14). None of the error terms for the extralegal variables was statistically significant. Thus, extralegal predictors of supervised release length have similar effects across all districts.

Table 5.14 about here

Effects of District-Level Contextual Variables on Supervised Release Sentence Length

To further investigate the variation in supervised release sentencing severity across federal districts, I next add level-2 explanatory variables as predictors of mean sentencing differences across federal district courts. I first modeled only the district-level covariates without any of the level-1 factors. Following Raudenbush and Bryk (2002), I excluded district-level covariates with t values less than 1 from the model, leaving court size, districts situated within states with mandatory minimum state-level penalties for possession of child pornography, percent Republican, and region. In this model (see Table 5.15), court size, state mandatory minimums for possession of child pornography, and region are statistically associated with supervised release length.[62] A one unit increase in the number of authorized judgeships results in a 1.6% reduction in average months of logged supervised release length. Mean sentences in districts situated within states with a mandatory minimum state-level penalty for possession of

[61] The model cannot be estimated when both offense level severity and offense level severity squared are included. Accordingly, I removed offense severity squared.

[62] East was used as the reference category as this region had the shortest average supervised release sentence lengths. The eastern region also had the smallest percentage of supervised release sentences compared to the other three regions.

child pornography are on average 27.5% longer than those without a minimum state level penalty. Likewise, supervised release sentences in districts situated in the western region of the United States are on average 37.3% longer than those in the eastern region (reference category). When only district-level variables are in the model, they explain 14.4% of the between-court variance in supervised release sentences.[63]

Table 5.15 about here

Individual and District-Level Effects on Supervised Release Length - Best Fitting Model

Next, I modeled the fully conditional hierarchical model including all of the individual level covariates from the previous version of the model. Following Raudenbush and Bryk (2002), I excluded district-level variables with t values less than 1 from the model, leaving only state mandatory minimum and region at level 2. In this model (see Table 5.16), all the previous legal and extralegal factors that were significant in the initial model without the level 2 factors remain significant except race. The magnitude of the coefficient drops from -.08 to -.07 and the effect is significant only using alpha = .10.

Of the level-2 factors, only West remains statistically significant at the alpha=.05 level. The coefficient for state-level mandatory minimums is significant using a less restrictive criteria of alpha=.10 and the magnitude of this coefficient changes from .28 to .18 The level-2 predictors reduce the level-2 variance from .16 to .15. This is a reduction in variance of 7.4%.[64] Thus, region and state-level mandatory minimums for possession of child pornography account for just over 7.4% of the residual level-2 variance, after controlling for legal and extralegal factors.

---

[63] (.17940-.15343)/.17940=0.1447

[64] .14552-.15712/.15712 * 100 = 7.38

Comparing the random effects in the Null and Random Intercepts Models indicates that [65] when legal, extralegal factors, and district-level contextual factors are added to the model they explain 23.1% of individual variation and 18.8% of district-level variation in supervised release length.

Table 5.16 about here

Next, the effects of offense severity, upward departure/variance and downward departure/variance were all allowed to vary in the same model (see Table 5.17).[66] Only the error term for offense severity score and upward departure/variance remained statistically significant. None of the error terms for the extralegal variables was statistically significant. Thus, extralegal predictors of supervised release length have similar effects across all districts.

Table 5.17 about here

Individual, District-Level, and Cross-Level Effects on Supervised Release Length - Best Fitting Final Model

Finally, I assessed whether there are significant cross-level interactions between the district-level variables and the two individual-level variables with significant random effects. First, district-level contextual factors were added one at a time to the random coefficient for offense severity. None of the district-level factors individually are significantly associated with the effects of offense severity varying across courts. However, when all of the district-level factors with t-values greater than 1 are added together with the random coefficients for offense severity, the results show that caseload (p=.07), West (p=.08) and Midwest (p=.002) are significantly associated with these effects varying across courts (see Table 5.18). Offense

[65] Level 1 explained variance computed as (.47705-. 36656)/.47705=.2316 or 23.1%. Level 2 explained variance is computed as (.17940-.14552)/.17940= .1888 or 18.8%.

[66] The model cannot be estimated when both offense level severity and offense level severity squared are included. Accordingly, I removed offense severity squared.

severity has a stronger effect on sentence length in districts with larger child pornography caseloads and a weaker effect on sentence lengths in districts situated in the Midwest than in the East. Likewise, offense severity has a weaker effect on sentence lengths in districts situated in the West than in the East. None of the district-level variables had a significant interaction with upward departure/variance.

The results of this final "mixed model" further indicate that districts situated in the western region of the United States have average supervised release sentences that are 28.7% longer than those in the east. Legal factors including number of counts, criminal history score, plea, detained, downward departure/variance, and offense severity are significantly associated with supervised release length. Extralegal factors are less relevant for this outcome.

Table 5.18 about here

In sum, results indicate that both individual-level legal and extralegal factors as well as district-level contextual factors are significantly associated with supervised sentence length, but legally relevant factors are far more important than extra-legal factors. In addition, this section showed that the effects of offense severity and upward departure vary across courts. Finally, district location and child pornography caseload condition the effects of offense severity across courts.

SECTION III: The Decision to Impose Lifetime Supervised Release

This section examines the factors that are related to the binary outcome of the supervised release sentence – the decision to impose lifetime supervised release. I explore this binary outcome because I am interested in discovering factors associated with this most severe outcome.

There are important ramifications for those who receive the life term including never being discharged from supervision and the possibility of life incarceration if revoked.

First, I present the results from generalized hierarchical linear models (GHLM) that examine the influence of individual-level legal and extralegal factors, followed by results from district-level and full two-level models. An unconditional model was not run because there is no level-1 variance component included in the multilevel logistic model. According to Johnson (2010), this is because the level 1 variance is heteroskedastic and completely determined by the value of *p* where *p* is the predicted probability for the level-1 model. Johnson (2010) notes that the standard formulas for the intraclass correlation and explained variance at level-1 cannot be directly applied to the case of a binary dependent variable.

Relationship between Individual-Level Factors and the Decision to Impose Lifetime Supervised Release

With the decision to impose lifetime supervised release (yes/no) as the outcome variable, and level-2 representing federal district courts, I estimate a random intercept model with only level-1 legal predictors [see Table 5.19 (Model 1)]. When individual-level covariates corresponding to legal factors are added to the model, several variables have statistically significant coefficients. Criminal history score, downward departure/variance, plea, and detention, are statistically significant predictors of the decision to impose lifetime supervised release sentence for child pornography offenders. Offenders who accept a guilty plea are over two times more likely to be sentenced to lifetime supervised release compared to those offenders who go to trial (OR = 2.1), as are those offenders who are in custody at the time of sentencing compared to those on bond (OR = 1.97). As anticipated, receiving a downward departure/variance decreased the odds of receiving lifetime supervised release by a factor of .41.

Upward departure/variance was not statistically significant. In addition, there is a non-linear relationship between offense severity and the decision to impose lifetime supervised release as indicated by the significant quadratic term for this variable (see Figure 5.6). There is also a non-linear relationship for number of counts as indicated by the significant quadratic term (see Figure 5.7).

Table 5.19 (Model 1) and Figures 5.6 and 5.7 about here

Next, extralegal variables were added to the model to see if they explain lifetime supervised release above and beyond the effects of legally relevant variables [see Table 5.19 (Model 2)]. Of the extralegal factors, only age is significant at alpha =.05. Offenders age 50 and older are 1.45 times more likely than those under age 50 to be sentenced to lifetime supervised release.[67] Recall, age is not a significant predictor of supervised release length.

Table 5.19 (Model 2) about here

To assess whether the effects of legal and extralegal variables differed depending on the severity of the offense, I created a series of multiplicative interaction terms between the offense severity score and each of the legal and extralegal variables. These two-way interaction terms were added one at a time into the model containing legal and extralegal variables. The interaction term of offense severity and upward departure is the only two-way interaction that is statistically significant; however, there are very few cases with less serious offenses that received an upward departure. Using offense type as a proxy for seriousness, of the ten offenders with production offenses who received an upward departure/variance, seven (70.0%) received lifetime

[67] Alternate measure of age including age squared and age as a continuous measure were not statistically significant predictors of the decision to impose lifetime supervised release.

supervised release. By comparison, of the thirty offenders convicted of non-production offenses and who received and upward departure/variance, only ten (33.3%) were sentenced to lifetime supervised release.

Variability in the Effects of Individual-Level Variables on the Decision to Impose Lifetime Supervised Release across Courts

To determine whether the effects of legal and extralegal factors on the decision to impose lifetime supervised release vary significantly across district courts, I estimated a random coefficient model allowing one at a time, the coefficients for each of my variables to vary across courts. The results indicate that none of the effects of legal and extralegal factors vary significantly across courts.

Effects of District-Level Contextual Variables on the Decision to Impose Lifetime Supervised Release

Next, I investigated whether the decision to impose lifetime supervised release is related to court context. First, district-level factors were added one at a time to the model without any of the level-1 factors (see Table 5.20). As in the models for length of supervised release, the likelihood of receiving lifetime supervised release is related to whether the state in which the district is located has a mandatory minimum penalty for possession of child pornography and whether the district is located in the West versus the East. These variables remain statistically significant predictors of lifetime supervised release when all the contextual measures were added to the model at once. Again, only region and state are retained in the final model because the other contextual factors have t-values less than 1 (Bryk and Raudenbush, 2002). Offenders sentenced in districts situated in states with a mandatory minimum state-level penalty for possession of child pornography are two times (OR=2.00) more likely to receive lifetime supervised release than those districts situated within states without a state-level mandatory

minimum. Similarly, districts situated in West were two times more likely than those in the East to sentence offenders to lifetime supervised release.

Table 5.20 about here

Individual and District-Level Effects on the Decision to Impose Lifetime Supervised Release - Best Fitting Model

Next, I modeled the fully conditional hierarchical logistic model including all of the individual-level covariates from the previous version of the model (see Table 5.21). Following Raudenbush and Bryk (2002), I excluded district-level variables with t values less than 1 from the model and therefore, state and region were the only district-level factors included at level-2. In this model, all of the previous legal factors that were found in the initial model for the decision to impose lifetime supervised release without the level-2 factors remain significant. Similarly, the previous extralegal factor of age found to be statistically significant when only level-1 factors are included in the model continues to be statistically significant. Only the district-level contextual factor for West was found to be statistically significant. Using this full random intercept model, I employed random coefficient model to ascertain if the predictors in this full random intercept model differed across courts. None of the predictors differed across courts.

Table 5.21 about here

SECTION IV: Four-Category Ordinal Measure of the Supervised Release Sentence

Here, I present the results of my research questions using my four-category ordinal measure of the supervised release sentence. In this section, I estimated my models using

hierarchical ordinal regression. Again, a null model was not estimated because there is no level 1 variance component included in the multilevel ordinal model.

Relationship between Individual-Level Factors on the Four-Category Measure of the Supervised Release Sentence

With the four categories representing my ordinal outcome variable, and level-2 representing federal district courts, I estimate a random intercept model with only level-1 legal and extralegal predictors. Several level-1 legal predictors have statistically significant coefficients. From this model [see Table 5.22 (Model 1)], I can conclude that criminal history score, method of conviction (plea vs, trial), being held in pretrial detention and downward departure/variance are significantly related to the log odds of being sentenced to a higher supervised release term category. A one unit increase in the criminal history score increases the odds of being sentenced to the higher supervised release category by a factor of 1.3, controlling for all other factors in the model. Offenders who receive an upward departure/variance are 2.4 times more likely to receive a sentence in the higher supervised release category than those sentenced within the guidelines. Offenders who are detained are 1.57 times more likely to be sentenced to the higher supervised release category compared to those released before sentencing. There are non-linear relationships between the ordinal measure of supervised release and number of counts as well as the offense severity. As a side note, the legal factors that are related to this ordinal measure of supervised release length are the same as those associated with the continuous measure.

Table 5.22 (Model 1) about here

Next, extralegal variables were added to the model along with legal variables [see Table 5.22 (Model 2)]. Of the extralegal factors, citizenship, race (white) and dependents are statistically significant predictors of supervised release category. U.S. citizens are almost two

times more likely (OR= 1.87) than non-citizens to be sentenced in the higher supervised release category, controlling for all other factors in the model. Non-whites are 1.3 times more likely than whites to be sentenced to a higher supervised release category, while not having dependent increases the log odds of being sentenced to a higher supervised release category by a factor of 1.25.[68] The effects of legal variables remain relatively unchanged by the addition of extralegal variables.

Table 5.22 (Model 2) about here

Variability in the Effects of Individual-Level Variables on the Four-Category Measure of the Supervised Release Sentence

Next, I assessed whether the effects of legal and extralegal predictors on the four-category measure of supervised release vary significantly across district courts using a random coefficient model. The coefficients for each of the independent variables were allowed to vary across courts one at a time. The results showed that none of the effects of the legal and extralegal factors varied significantly across courts.

Effects of District-Level Contextual Variables on the Four-Category Measure of the Supervised Release Sentence

With the term of supervised release divided into four categories: short-term, intermediate, long-term, and lifetime as the outcome variable, I first modeled only the district-level covariates without any of the level-1 factors (see Table 5.23). In this model, only the contextual factors of state and region (West) was statistically significant in predicting the category of supervised

[68] To aid in interpretation, since the odds ratio of dependents was less than 1, I chose to invert the value. For example, for the odds ratio for dependents, 1 divided by .795 equals 1.257.

release.[69] District courts situated within states with a mandatory minimum state level penalty for possession of child pornography are 2.03 times more likely to sentence offenders to the higher supervised release category compared to districts situated in states without a mandatory minimum state-level penalty for possession of child pornography. Districts situated in the Western region of the U.S., are 2.45 times more likely than those in the East to sentence offenders to the higher supervised release category.

Table 5.23 about here

Individual and District-Level Effects on the Four-Category Ordinal Measure of the Supervised Release Sentence - Best Fitting Final Model

Next, both level-1 and level-2 factors are entered into the model using the four-category ordinal measure of supervised release and contextual factors with t values greater than 1 are retained in the model (see Table 5.24). [70] Region (west) is the only district-level contextual factor that is significant at alpha =.05. The variable measuring whether the district court is situated within a state that has a mandatory minimum penalty for possession of child pornography is marginally significant (alpha = .10). The effects of legal and extra-legal individual level factors are relatively unchanged except race (white) is only marginally significant (alpha = .10).

Table 5.24 about here

[69] I also modeled each district-level factor one at a time without any level 1 factors and only the variable state was statistically significant.

[70] Following Raudenbush and Bryk (2002), I excluded district-level variables with t values less than 1 from the model and therefore state and region were the only district-level factors included at level 2.

Using this full random intercept model, I employed a random coefficient model to ascertain if the effects of the predictors in this full random intercept model differed across courts. None of them indicated that legal and extralegal factors matter the same across courts.

Summary

In sum, most of the variation of supervised release sentences for child pornography offenses exists at the individual-level, and most of variance in sentencing outcomes is explained by individual-level factors. Specifically, examination of the fixed effects reveal results that are largely consistent with prior research on individual-level legal sentencing factors (see Spohn, 2000). Across all models, individual-level legal factors exhibit stronger influences on supervised release sentence length, the decision to impose lifetime supervised release, and a four-category measure of supervised release. For example, criminal history score and offense severity both increase supervised release sentence length, the likelihood of lifetime supervised release, and the likelihood of being sentenced to a higher supervised release category. But some extralegal individual-level factors also explain some of the variance in supervised release sentences, albeit a very small portion. For instance, being white and having dependents both decreased supervised release length and the likelihood of being sentenced to the higher supervised release category. These extralegal findings are consistent with federal sentencing literature, which generally finds that, despite the advent of the federal guidelines, extralegal factors in sentencing outcomes have not been eliminated.

Consistent with other multilevel sentencing studies, some of the effects of individual-level factors varied significantly across district courts, but only for the sentence of supervised release sentence length. Finally, there is significant between-district variation in sentencing that was not explained by individual-level case factors, but rather by district-level contextual factors.

Across most of the models court location (region) and the existence of state-level mandatory minimum penalties for the state offense of possession of child pornography are related to the supervised release sentence. Finally, the effects offense severity across courts was conditioned by district location and child pornography caseload.

The main overarching finding of the data analyses is that the effects of many individual-level legal and extralegal factors as well as district-level contextual factors of the sentence of supervised release mirror those found generally for the sentence of imprisonment. There are, however, a few exceptions such as the effect of plea and the effect of education (i.e., those with high level education are in some cases sentenced more harshly). Table 5.25 summarizes my hypotheses and how they fared in this investigation.

Table 5.25 about here

The next chapter which is the discussion chapter of this dissertation explains these results in detail in light of moral panic, the focal concerns and the court communities' perspectives as well as the social/group threat perspective.

Table 5.1

Descriptive Statistics (Mean or Percentages) for Dependent and Independent Variables

Variables		Mean/Percent	SD	Min	Max
Dependent variables					
Supervised Release Sentence length (capped at 470 months)		242.03	170.78	12	470
Lifetime Supervised Release	Yes	33.2%			
	No	66.8%			
Four-Category Ordinal Measure	Short-term	20.1%			
	Intermediate	28.2%			
	Long-term	18.6%			
	Lifetime	33.2%			
Independent variables: Case / Inidvidual (N=1900)					
Legal Factors					
Plea	Guilty Plea/Nolo Contendere	95.7%			
	Trial	4.3%			
Departure	Within guidelines	34.5%			
	Upward depart/variance	2.2%			
	Downward depart/variance	63.3%			
Criminal History Score		1.37	0.902	1	6
Sex Offender Enhancement	Yes	5.2%			
	No	94.8%			
Offense Severity Score		32	5.49	16	43
Number of Counts of Conviction		1.49	1.66	1	26
Detained	Yes	61.3%			
	No	38.7%			
Offense Type	Nonproduction	87.5%			
	Production	12.5%			
Extralegal Factors					
Age	Age (19-49)	72.7%			
	Age (50 and over)	27.3%			
Race	White	86.5%			
	Nonwhite	13.5%			
Education	Less than HS	9.2%			
	HS Graduate	36.2%			
	Some College	36.7%			
	College Graduate	17.9%			
Fine		808.0	4589	0	100000
Citizenship	US Citizen	96.9%			
	Non US Citizen	3.1%			
Dependents	Yes	29.6%			
	No	70.4%			
District Level variables (N=89)					
District Size		7	5.60	1	28
Child Porn Caseload Rate		3.7%	2.4%	0.2%	13.1%
Guidelines Compliance Rate		51.1%	13.4%	22.8%	81.0%
Mandatory Minimum State-level Penalty	No	50.6%			
	Yes	49.4%			
Kimbrough-based Policy Disagreement	Reject	75.3%			
	Do not reject	24.7%			
Region	West	19.1%			
	South	42.7%			
	East	15.7%			
	Midwest	22.5%			
Percent Republican		50.4%	9.6%	28%	73%
District Mean Supervised Release Sentence Length		240.11	101.4	60	470
District Mean Percent Lifetime Supervised Release		33.2%	26.03%	0%	100%

Table 5.2

Descriptive Statistics by Offense Type

		Nonproduction (N= 1663)				Production (N=237)			
Variables		Mean / Percentage	SD	Min	Max	Mean / Percentage	SD	Min	Max
Dependent variables									
Supervised Release Sentence length (capped at 470 months)		229.09	167.35	12	470	332.79	167.37	36	470
Lifetime Supervised Release	Yes	29.7%				57.4%			
	No	70.3%				42.6%			
Four-category Ordinal Measure	Short-term	20.6%				9.3%			
	Intermediate	29.8%				16.9%			
	Long-term	18.9%				16.5%			
	Lifetime	29.7%				57.4%			
Independent variables: Case / Individual (N=1900)									
Legal Factors									
Plea	Guilty Plea/Nolo Contendere	96.5%				90.3%			
	Trial	3.5%				9.7%			
Departure	Within guideline	34.5%				48.5%			
	Upward departure/variance	2.1%				4.2%			
	Downward departure/variance	63.4%				47.3%			
Criminal History Score		1.33	0.831	1	6	1.67	1.263	1	6
Sex Offender Enhancement	Yes	0.7%				36.4%			
	No	99.3%				63.6%			
Offense Severity Score		30.90	4.90	16	43	39.13	3.8	24	43
Number of Counts of Conviction		1.30	1.40	1	26	2.28	2.5	1	21
Detained	Yes	56.7%				93.7%			
	No	43.3%				6.3%			
Extralegal Factors									
Age	Age (19-49)	72.2%				76.4%			
	Age (50 and over)	27.8%				23.6%			
Race	White	87.3%				81.0%			
	Nonwhite	12.7%				19.0%			
Education	Less than HS	8.6%				13.2%			
	HS Graduate	36.1%				36.3%			
	Some College	37.1%				33.8%			
	College Graduate	18.1%				16.7%			
Fine		817.07	4665.0	0	100000	745.99	4027.0	0	50000
Citizenship	US Citizen	97.1%				95.8%			
	Non US Citizen	2.9%				4.2%			
Dependents	Yes	27.9%				41.0%			
	No	72.1%				59.0%			

Table 5.3

Bivariate Correlation Matrix – Individual-Level Legal and Extralegal Factors

		Fine	Supervised Release in Months	Number of Counts	Sex Offender Enhancement	Criminal History Score	Offense Severity Score	Race	Offense Type	Lifetime Supervised Release	Plea	Detained	Citizenship	Dependents	Age ≥ 50
Fine	Pearson Correlation	1													
Supervised Release in Months	Pearson Correlation	-.007	1												
Number of Counts	Pearson Correlation	-.005	.167**	1											
Sex Offender Enhancement	Pearson Correlation	.020	.178**	.184**	1										
Criminal History Score	Pearson Correlation	-.027	.146**	.022	.157**	1									
Offense Severity Score	Pearson Correlation	-.001	.338**	.277**	.392**	.065**	1								
Race	Pearson Correlation	.025	-.033	-.004	-.027	-.007	-.015	1							
Offense Type	Pearson Correlation	.005	-.201**	-.180**	-.533**	-.124**	-.491**	.061**	1						
Plea	Pearson Correlation	.008	-.007	-.155**	-.092**	-.086**	-.194**	.031	.102**	-.012	1				
Detained	Pearson Correlation	-.052*	.276**	.128**	.161**	.252**	.310**	-.015	-.251**	.240**	-.054*	1			
Citizenship	Pearson Correlation	-.052*	.010	.008	-.042	.036	-.010	.270**	.026	.008	.008	-.078**	1		
Dependents	Pearson Correlation	.018	-.019	-.023	.041	.052*	.005	.004	-.096**	-.012	.012	.023	-.022	1	
Age ≥ 50	Pearson Correlation	.120**	.012	-.025	-.020	-.056*	-.078**	.114**	.031	.040	-.028	-.050*	.026	-.031	1

*. Correlation is significant at the 0.05 level (2-tailed).

**. Correlation is significant at the 0.01 level (2-tailed).

Table 5.4

Bivariate Correlation Matrix – District-Level Factors

		Mean Supervised Release Length	District Size	Child Pornography Caseload Rate	Guidelines Compliance Rate	*Kimbrough*-based Policy Disagreement	Mandatory Minimum State-level Penalty	Percent Republican in 2012 Presidential Election	Percent Lifetime Supervised Release
Mean Supervised Release Length	Pearson Correlation	1							
District Size	Pearson Correlation	-.155	1						
Child Pornography Caseload Rate	Pearson Correlation	.010	-.245*	1					
Guidelines Compliance Rate	Pearson Correlation	.117	-.267*	-.129	1				
Kimbrough-based Policy Disagreement	Pearson Correlation	.103	-.152	-.238*	.288**	1			
Mandatory Minimum State-level Penalty	Pearson Correlation	.282**	-.084	-.090	.421**	.202	1		
Percent Republican in 2012 Presidential Election	Pearson Correlation	.052	-.312**	-.078	.465**	.518**	.337**	1	
Percent Lifetime Supervise Release	Pearson Correlation	.957**	-.113	-.001	.087	.072	.272**	.030	1

**. Correlation is significant at the 0.01 level (2-tailed).

*. Correlation is significant at the 0.05 level (2-tailed).

Table 5.5

89 Districts with Percentage of Cases Sentence to Short-term, Intermediate, Long-term and Lifetime Supervised Release

District	Short-term	Intermediate	Long-term	Lifetime
Maine	33.2%	33.2%	33.6%	0.0%
Massachusetts	57.1%	42.9%	0.0%	0.0%
New Hampshire	0.0%	20.0%	0.0%	80.0%
Rhode Island	0.0%	60.0%	0.0%	40.0%
Connecticut	15.0%	50.0%	5.0%	30.0%
New York East	32.0%	52.0%	0.0%	16.0%
New York North	10.4%	6.9%	37.9%	44.8%
New York South	57.1%	42.9%	0.0%	0.0%
New York West	24.4%	17.8%	46.7%	11.1%
Vermont	28.6%	42.9%	14.3%	14.2%
Delaware	71.4%	14.3%	0.0%	14.3%
New Jersey	77.3%	18.2%	0.0%	4.5%
Pennsylvania East	23.8%	57.1%	4.8%	14.3%
Pennsylvania West	17.5%	47.5%	20.0%	15.0%
Pennsylvania Middle	0.0%	39.4%	17.8%	42.8%
Maryland	0.0%	23.1%	12.8%	64.1%
North Carolina East	0.0%	0.0%	0.0%	100.0%
North Carolina Middle	0.0%	46.4%	35.7%	17.9%
North Carolina West	0.0%	34.7%	8.7%	56.5%
South Carolina	52.9%	5.9%	0.0%	41.2%
Virginia East	15.4%	30.8%	25.0%	28.8%
Virginia West	25.0%	25.0%	12.5%	37.5%
West Virginia North	25.0%	33.3%	16.7%	25.0%
West Virginia South	0.0%	16.7%	66.7%	16.6%
Louisiana East	50.0%	33.3%	0.0%	16.7%
Louisiana Middle	0.0%	100.0%	0.0%	0.0%
Louisiana West	12.2%	19.5%	17.1%	51.2%
Mississippi North	33.3%	33.3%	0.0%	33.4%
Mississippi South	0.0%	0.0%	20.0%	80.0%
Texas East	70.8%	8.3%	12.5%	8.4%
Texas North	12.2%	39.1%	7.3%	41.4%
Texas South	12.8%	21.2%	21.2%	44.8%
Texas West	20.4%	25.9%	20.4%	33.3%

Kentucky East	0.0%	0.0%	55.6%	44.4%
Kentucky West	18.1%	36.4%	18.2%	27.3%
Michigan East	81.3%	15.6%	0.0%	3.1%
Michigan West	21.7%	21.7%	4.3%	52.2%
Ohio North	44.4%	27.8%	5.6%	22.2%
Ohio South	19.2%	30.8%	17.3%	32.7%
Tennessee East	15.8%	15.8%	31.6%	36.8%
Tennessee Middle	27.3%	36.4%	36.4%	0.0%
Tennessee West	0.0%	71.4%	28.6%	0.0%
Illinois Central	3.1%	21.9%	12.5%	62.5%
Illinois North	37.5%	6.3%	25.0%	31.3%
Illinois South	19.2%	38.5%	15.4%	26.9%
Indiana North	38.9%	11.1%	22.2%	27.8%
Indiana South	0.0%	11.1%	8.3%	80.6%
Wisconsin East	25.0%	43.8%	6.3%	25.0%
Wisconsin West	0.0%	0.0%	22.2%	77.8%
Arkansas East	17.6%	58.8%	0.0%	23.5%
Arkansas West	27.3%	27.3%	18.2%	27.3%
Iowa North	41.2%	41.2%	5.9%	11.8%
Iowa South	62.9%	34.3%	2.9%	0.0%
Minnesota	10.0%	20.0%	55.0%	15.0%
Missouri East	0.0%	4.8%	7.1%	88.1%
Missouri West	21.1%	34.2%	15.8%	28.9%
Nebraska	43.3%	23.3%	10.0%	23.3%
North Dakota	38.5%	15.4%	0.0%	46.2%
South Dakota	60.0%	20.0%	20.0%	0.0%
Alaska	0.0%	25.0%	50.0%	25.0%
Arizona	6.3%	6.3%	6.3%	81.3%
California Central	3.7%	18.5%	18.5%	59.3%
California East	3.6%	45.5%	43.6%	7.3%
California North	56.3%	25.0%	0.0%	18.8%
California South	23.5%	58.8%	9.8%	7.8%
Hawaii	20.0%	20.0%	40.0%	20.0%
Idaho	18.2%	9.1%	54.5%	18.2%
Montana	5.3%	21.1%	31.6%	42.1%
Nevada	4.2%	4.2%	16.7%	75.0%
Oregon	30.0%	20.0%	0.0%	50.0%
Washington East	18.2%	0.0%	9.1%	72.7%
Washington West	6.7%	13.3%	20.0%	60.0%
Colorado	0.0%	33.3%	16.7%	50.0%

Kansas	70.0%	25.0%	5.0%	0.0%
New Mexico	23.1%	46.2%	0.0%	30.8%
Oklahoma East	100.0%	0.0%	0.0%	0.0%
Oklahoma North	0.0%	83.3%	16.7%	0.0%
Oklahoma West	41.7%	25.0%	16.7%	16.7%
Utah	16.7%	16.7%	36.7%	30.0%
Wyoming	4.8%	38.1%	38.1%	19.0%
Alabama Middle	0.0%	0.0%	0.0%	100.0%
Alabama North	7.7%	30.8%	7.7%	53.8%
Alabama South	0.0%	0.0%	0.0%	100.0%
Florida Middle	5.6%	39.4%	38.0%	16.9%
Florida North	0.0%	44.4%	33.3%	22.9%
Florida South	11.4%	27.3%	34.1%	27.3%
Georgia Middle	0.0%	0.0%	77.8%	22.2%
Georgia North	12.5%	43.8%	12.5%	31.3%
Georgia South	20.0%	0.0%	20.0%	60.0%

Table 5.6

89 Districts with Percentage of the Total sample (N=1,900) of Child Pornography Cases in Each District

Maine	0.3%	**Michigan East**	1.7%	**Washington East**	0.6%
Massachusetts	0.7%	**Michigan West**	1.2%	**Washington West**	0.8%
New Hampshire	0.3%	**Ohio North**	0.9%	**Colorado**	0.3%
Rhode Island	0.5%	**Ohio South**	2.7%	**Kansas**	1.1%
Connecticut	1.1%	**Tennessee East**	1.0%	**New Mexico**	0.7%
New York East	1.3%	**Tennessee Middle**	0.6%	**Oklahoma East**	0.2%
New York North	1.5%	**Tennessee West**	0.7%	**Oklahoma North**	0.3%
New York South	0.7%	**Illinois Central**	1.7%	**Oklahoma West**	0.6%
New York West	2.4%	**Illinois North**	0.8%	**Utah**	1.6%
Vermont	0.7%	**Illinois South**	1.4%	**Wyoming**	1.1%
Delaware	0.4%	**Indiana North**	0.9%	**Alabama Middle**	0.2%
New Jersey	1.2%	**Indiana South**	1.9%	**Alabama North**	0.7%
Pennsylvania East	1.1%	**Wisconsin East**	0.8%	**Alabama South**	0.1%
Pennsylvania West	1.5%	**Wisconsin West**	0.5%	**Florida Middle**	3.7%
Pennsylvania Middle	2.0%	**Arkansas East**	0.9%	**Florida North**	0.5%
Maryland	2.1%	**Arkansas West**	0.6%	**Florida South**	2.3%
North Carolina East	0.7%	**Iowa North**	0.9%	**Georgia Middle**	0.5%
North Carolina Middle	1.5%	**Iowa South**	1.8%	**Georgia North**	0.8%
North Carolina West	1.2%	**Minnesota**	1.1%	**Georgia South**	0.3%
South Carolina	0.9%	**Missouri East**	2.2%		
Virginia East	2.7%	**Missouri West**	2.0%		
Virginia West	0.4%	**Nebraska**	1.6%		
West Virginia North	0.6%	**North Dakota**	0.7%		
West Virginia South	0.3%	**South Dakota**	0.3%		
Louisiana East	0.3%	**Alaska**	0.2%		
Louisiana Middle	0.2%	**Arizona**	0.8%		
Louisiana West	2.2%	**California Central**	2.8%		
Mississippi North	0.2%	**California East**	2.9%		
Mississippi South	0.3%	**California North**	0.8%		
Texas East	1.3%	**California South**	2.7%		
Texas North	2.2%	**Hawaii**	0.3%		
Texas South	2.5%	**Idaho**	0.6%		
Texas West	2.8%	**Montana**	1.0%		
Kentucky East	0.5%	**Nevada**	2.5%		
Kentucky West	0.6%	**Oregon**	1.1%		

Table 5.7

89 Districts with Percentage Sentenced to Short-Term, Intermediate, Long-term, Lifetime Supervised Release (Non-production Cases Only)

District	Short-term	Intermediate	Long-term	Lifetime
Maine	40.0%	40.0%	20.0%	0.0%
Massachusetts	57.1%	42.9%	0.0%	0.0%
New Hampshire	0.0%	33.3%	0.0%	66.7%
Rhode Island	0.0%	0.0%	60.0%	40.0%
Connecticut	16.7%	50.0%	5.5%	27.8%
New York East	34.8%	52.2%	0.0%	13.0%
New York North	12.5%	8.3%	41.7%	37.5%
New York South	57.1%	42.9%	0.0%	0.0%
New York West	27.5%	17.5%	52.5%	2.5%
Vermont	28.6%	42.9%	14.2%	14.3%
Delaware	71.4%	14.6%	0.0%	14.5%
New Jersey	77.3%	18.2%	0.0%	4.5%
Pennsylvania East	27.7%	61.1%	5.6%	5.6%
Pennsylvania West	18.9%	51.4%	21.6%	8.1%
Pennsylvania Middle	0.0%	45.8%	20.8%	33.3%
Maryland	0.0%	29.0%	16.1%	54.9%
North Carolina East	0.0%	0.0%	0.0%	100.0%
North Carolina Middle	0.0%	50.0%	45.5%	4.5%
North Carolina West	0.0%	38.1%	9.5%	52.4%
South Carolina	60.0%	6.7%	0.0%	33.3%
Virginia East	17.5%	35.0%	27.5%	20.0%
Virginia West	28.6%	28.6%	14.3%	28.6%
West Virginia North	27.0%	36.4%	18.2%	18.4%
West Virginia South	0.0%	16.7%	66.7%	16.7%
Louisiana East	60.0%	20.0%	0.0%	20.0%
Louisiana Middle	0.0%	100.0%	0.0%	0.0%
Louisiana West	13.9%	22.2%	16.7%	47.2%
Mississippi North	50.0%	50.0%	0.0%	0.0%
Mississippi South	0.0%	0.0%	20.0%	80.0%
Texas East	80.0%	10.0%	5.0%	5.0%
Texas North	13.2%	36.8%	7.9%	42.1%
Texas South	11.9%	23.8%	23.8%	40.5%

Texas West	22.0%	28.0%	20.0%	30.0%
Kentucky East	0.0%	0.0%	57.1%	42.9%
Kentucky West	18.2%	36.4%	18.1%	27.3%
Michigan East	81.3%	15.6%	0.0%	3.1%
Michigan West	22.2%	27.8%	5.6%	44.4%
Ohio North	44.4%	27.8%	5.6%	22.2%
Ohio South	19.6%	34.8%	17.4%	28.3%
Tennessee East	17.7%	17.6%	35.3%	29.4%
Tennessee Middle	37.5%	37.5%	25.0%	0.0%
Tennessee West	0.0%	100.0%	0.0%	0.0%
Illinois Central	3.8%	26.9%	15.4%	53.9%
Illinois North	35.7%	0.0%	28.6%	35.7%
Illinois South	18.2%	45.5%	18.2%	18.2%
Indiana North	43.8%	12.5%	25.0%	18.7%
Indiana South	0.0%	12.1%	9.1%	78.8%
Wisconsin East	30.8%	38.5%	0.0%	30.8%
Wisconsin West	0.0%	0.0%	22.0%	77.8%
Arkansas East	20.0%	60.0%	0.0%	20.0%
Arkansas West	42.9%	14.3%	28.6%	14.3%
Iowa North	55.6%	44.4%	0.0%	0.0%
Iowa South	66.7%	30.3%	3.0%	0.0%
Minnesota	14.3%	28.6%	50.0%	7.1%
Missouri East	0.0%	5.6%	8.3%	86.1%
Missouri West	19.2%	42.3%	15.4%	23.1%
Nebraska	50.0%	29.2%	0.0%	20.8%
North Dakota	38.5%	15.4%	0.0%	46.2%
South Dakota	60.0%	20.0%	20.0%	0.0%
Alaska	0.0%	25.0%	50.0%	25.0%
Arizona	6.7%	6.7%	6.7%	80.0%
California Central	3.8%	18.9%	18.9%	58.5%
California East	3.7%	46.3%	42.6%	7.4%
California North	64.3%	28.6%	0.0%	7.1%
California South	20.8%	62.5%	8.3%	8.3%
Hawaii	25.0%	25.0%	50.0%	0.0%
Idaho	25.0%	12.5%	62.5%	0.0%
Montana	6.7%	20.0%	40.0%	33.3%
Nevada	4.3%	4.3%	17.0%	74.5%
Oregon	35.3%	17.6%	0.0%	47.1%
Washington East	25.0%	0.0%	0.0%	75.0%
Washington West	7.1%	14.3%	21.4%	57.1%

Colorado	0.0%	40.0%	20.0%	40.0%
Kansas	78.6%	14.3%	7.1%	0.0%
New Mexico	18.2%	45.5%	0.0%	36.4%
Oklahoma East	100.0%	0.0%	0.0%	0.0%
Oklahoma North	0.0%	83.3%	16.7%	0.0%
Oklahoma West	30.0%	30.0%	20.0%	20.0%
Utah	22.7%	18.2%	31.8%	27.3%
Wyoming	4.8%	38.1%	31.8%	19.0%
Alabama Middle	0.0%	0.0%	0.0%	100.0%
Alabama North	11.1%	33.3%	0.0%	55.6%
Alabama South	0.0%	0.0%	0.0%	100.0%
Florida Middle	4.4%	38.4%	41.3%	15.9%
Florida North	0.0%	42.9%	28.6%	28.6%
Florida South	11.6%	27.9%	34.9%	25.6%
Georgia Middle	0.0%	0.0%	87.5%	12.5%
Georgia North	13.3%	46.7%	6.7%	33.3%
Georgia South	50.0%	0.0%	50.0%	0.0%

Table 5.8

89 Districts with Percentage of the Total Sample (N=1,900) of Child Pornography Cases (Non-production Offenses)

Maine	0.3%	**Michigan East**	1.9%	**Washington East**	0.5%
Massachusetts	0.8%	**Michigan West**	1.1%	**Washington West**	0.8%
New Hampshire	0.2%	**Ohio North**	1.1%	**Colorado**	0.3%
Rhode Island	0.6%	**Ohio South**	2.8%	**Kansas**	0.8%
Connecticut	1.1%	**Tennessee East**	1.0%	**New Mexico**	0.7%
New York East	1.4%	**Tennessee Middle**	0.5%	**Oklahoma East**	0.2%
New York North	1.4%	**Tennessee West**	0.5%	**Oklahoma North**	0.4%
New York South	0.8%	**Illinois Central**	1.6%	**Oklahoma West**	0.6%
New York West	2.4%	**Illinois North**	0.8%	**Utah**	1.3%
Vermont	0.8%	**Illinois South**	1.3%	**Wyoming**	1.3%
Delaware	0.4%	**Indiana North**	1.0%	**Alabama Middle**	0.2%
New Jersey	1.3%	**Indiana South**	2.0%	**Alabama North**	0.5%
Pennsylvania East	1.2%	**Wisconsin East**	0.8%	**Alabama South**	0.1%
Pennsylvania West	2.2%	**Wisconsin West**	0.5%	**Florida Middle**	3.8%
Pennsylvania Middle	1.4%	**Arkansas East**	0.9%	**Florida North**	0.4%
Maryland	1.9%	**Arkansas West**	0.4%	**Florida South**	2.6%
North Carolina East	0.7%	**Iowa North**	0.5%	**Georgia Middle**	0.5%
North Carolina Middle	1.3%	**Iowa South**	2.0%	**Georgia North**	0.9%
North Carolina West	1.3%	**Minnesota**	0.8%	**Georgia South**	0.1%
South Carolina	0.9%	**Missouri East**	2.2%		
Virginia East	2.4%	**Missouri West**	1.6%		
Virginia West	0.4%	**Nebraska**	1.4%		
West Virginia North	0.7%	**North Dakota**	0.8%		
West Virginia South	0.4%	**South Dakota**	0.3%		
Louisiana East	0.3%	**Alaska**	0.2%		
Louisiana Middle	0.1%	**Arizona**	0.9%		
Louisiana West	2.2%	**California Central**	3.2%		
Mississippi North	10.0%	**California East**	3.2%		
Mississippi South	0.3%	**California North**	0.8%		
Texas East	1.2%	**California South**	2.9%		
Texas North	2.3%	**Hawaii**	0.2%		
Texas South	2.5%	**Idaho**	0.5%		
Texas West	3.0%	**Montana**	0.9%		
Kentucky East	0.4%	**Nevada**	2.8%		
Kentucky West	0.7%	**Oregon**	1.0%		

Table 5.9

89 Districts with Percentage Sentenced to Short-term, Intermediate, Long-term and Lifetime Supervised Release (Production Offenses)

District	Short-term	Intermediate	Long-term	Lifetime
Maine	0.0%	0.0%	100.0%	0.0%
Massachusetts	0.0%	0.0%	0.0%	0.0%
New Hampshire	0.0%	0.0%	0.0%	100.0%
Rhode Island	0.0%	0.0%	0.0%	0.0%
Connecticut	0.0%	50.0%	0.0%	50.0%
New York East	0.0%	50.0%	0.0%	50.0%
New York North	0.0%	0.0%	20.0%	80.0%
New York South	0.0%	0.0%	0.0%	0.0%
New York West	0.0%	20.0%	0.0%	80.0%
Vermont	0.0%	0.0%	0.0%	0.0%
Delaware	0.0%	0.0%	0.0%	0.0%
New Jersey	0.0%	0.0%	0.0%	0.0%
Pennsylvania East	0.0%	33.3%	0.0%	66.7%
Pennsylvania West	0.0%	0.0%	0.0%	100.0%
Pennsylvania Middle	0.0%	0.0%	0.0%	100.0%
Maryland	0.0%	0.0%	0.0%	100.0%
North Carolina East	0.0%	0.0%	0.0%	100.0%
North Carolina Middle	0.0%	33.3%	0.0%	66.7%
North Carolina West	0.0%	0.0%	0.0%	100.0%
South Carolina	0.0%	0.0%	0.0%	100.0%
Virginia East	8.3%	16.7%	16.7%	58.3%
Virginia West	0.0%	0.0%	0.0%	100.0%
West Virginia North	0.0%	0.0%	0.0%	100.0%
West Virginia South	0.0%	0.0%	0.0%	0.0%
Louisiana East	0.0%	100.0%	0.0%	0.0%
Louisiana Middle	0.0%	100.0%	100.0%	0.0%
Louisiana West	0.0%	0.0%	20.0%	80.0%
Mississippi North	0.0%	0.0%	0.0%	100.0%
Mississippi South	0.0%	0.0%	0.0%	0.0%
Texas East	25.0%	0.0%	50.0%	25.0%
Texas North	0.0%	66.7%	0.0%	33.3%
Texas South	20.0%	0.0%	0.0%	80.0%
Texas West	0.0%	0.0%	25.0%	75.0%

Kentucky East	0.0%	0.0%	50.0%	50.0%
Kentucky West	0.0%	0.0%	0.0%	0.0%
Michigan East	0.0%	0.0%	0.0%	0.0%
Michigan West	20.0%	0.0%	0.0%	80.0%
Ohio North	0.0%	0.0%	0.0%	0.0%
Ohio South	16.7%	0.0%	16.7%	66.7%
Tennessee East	0.0%	0.0%	0.0%	100.0%
Tennessee Middle	0.0%	33.3%	66.7%	0.0%
Tennessee West	0.0%	20.0%	80.0%	0.0%
Illinois Central	0.0%	0.0%	0.0%	100.0%
Illinois North	50.0%	50.0%	0.0%	0.0%
Illinois South	25.0%	0.0%	0.0%	75.0%
Indiana North	0.0%	0.0%	0.0%	100.0%
Indiana South	0.0%	0.0%	0.0%	100.0%
Wisconsin East	0.0%	66.7%	33.3%	0.0%
Wisconsin West	0.0%	0.0%	0.0%	0.0%
Arkansas East	0.0%	50.0%	0.0%	50.0%
Arkansas West	0.0%	50.0%	0.0%	50.0%
Iowa North	25.0%	37.5%	12.5%	25.0%
Iowa South	0.0%	100.0%	0.0%	0.0%
Minnesota	0.0%	0.0%	66.7%	33.3%
Missouri East	0.0%	0.0%	0.0%	100.0%
Missouri West	25.0%	16.7%	16.7%	41.7%
Nebraska	16.7%	0.0%	50.0%	33.2%
North Dakota	0.0%	0.0%	0.0%	0.0%
South Dakota	0.0%	0.0%	0.0%	0.0%
Alaska	0.0%	0.0%	0.0%	0.0%
Arizona	0.0%	0.0%	0.0%	100.0%
California Central	0.0%	0.0%	0.0%	100.0%
California East	0.0%	0.0%	100.0%	0.0%
California North	0.0%	0.0%	0.0%	100.0%
California South	66.7%	0.0%	33.3%	0.0%
Hawaii	0.0%	0.0%	0.0%	100.0%
Idaho	0.0%	0.0%	33.3%	66.7%
Montana	0.0%	25.0%	0.0%	75.0%
Nevada	0.0%	0.0%	0.0%	100.0%
Oregon	1.3%	33.3%	0.0%	66.7%
Washington East	0.0%	0.0%	33.3%	66.7%
Washington West	0.0%	0.0%	0.0%	100.0%
Colorado	0.0%	0.0%	0.0%	100.0%

Kansas	50.0%	50.0%	0.0%	0.0%
New Mexico	50.0%	50.0%	0.0%	0.0%
Oklahoma East	0.0%	0.0%	0.0%	0.0%
Oklahoma North	0.0%	0.0%	0.0%	0.0%
Oklahoma West	100.0%	0.0%	0.0%	0.0%
Utah	0.0%	12.5%	50.0%	37.5%
Wyoming	0.0%	0.0%	0.0%	0.0%
Alabama Middle	0.0%	0.0%	0.0%	0.0%
Alabama North	0.0%	25.0%	25.0%	50.0%
Alabama South	0.0%	0.0%	0.0%	0.0%
Florida Middle	12.5%	50.0%	12.5%	25.0%
Florida North	0.0%	50.0%	50.0%	0.0%
Florida South	0.0%	0.0%	0.0%	100.0%
Georgia Middle	0.0%	0.0%	0.0%	100.0%
Georgia North	0.0%	0.0%	100.0%	0.0%
Georgia South	0.0%	0.0%	0.0%	100.0%

Table 5.10

89 Districts with Percentage of Total Sample (N=1,900) of Child Pornography Cases (Production Cases)

Maine	0.4%	**Michigan East**	0.0%	**Washington East**	1.3%
Massachusetts	0.0%	**Michigan West**	2.1%	**Washington West**	0.4%
New Hampshire	0.8%	**Ohio North**	0.0%	**Colorado**	0.4%
Rhode Island	0.0%	**Ohio South**	2.5%	**Kansas**	2.5%
Connecticut	0.8%	**Tennessee East**	0.8%	**New Mexico**	0.8%
New York East	0.8%	**Tennessee Middle**	1.3%	**Oklahoma East**	0.0%
New York North	2.1%	**Tennessee West**	2.1%	**Oklahoma North**	0.0%
New York South	0.0%	**Illinois Central**	2.5%	**Oklahoma West**	0.8%
New York West	2.1%	**Illinois North**	0.8%	**Utah**	3.4%
Vermont	0.0%	**Illinois South**	1.7%	**Wyoming**	0.0%
Delaware	0.0%	**Indiana North**	0.8%	**Alabama Middle**	0.0%
New Jersey	0.0%	**Indiana South**	1.3%	**Alabama North**	1.7%
Pennsylvania East	1.3%	**Wisconsin East**	1.3%	**Alabama South**	0.0%
Pennsylvania West	1.3%	**Wisconsin West**	0.0%	**Florida Middle**	3.4%
Pennsylvania Middle	1.7%	**Arkansas East**	0.8%	**Florida North**	0.8%
Maryland	3.4%	**Arkansas West**	1.7%	**Florida South**	0.4%
North Carolina East	0.8%	**Iowa North**	3.4%	**Georgia Middle**	0.4%
North Carolina Middle	2.5%	**Iowa South**	0.8%	**Georgia North**	0.4%
North Carolina West	0.8%	**Minnesota**	2.5%	**Georgia South**	1.3%
South Carolina	0.8%	**Missouri East**	2.5%		
Virginia East	5.1%	**Missouri West**	5.1%		
Virginia West	0.4%	**Nebraska**	2.5%		
West Virginia North	0.4%	**North Dakota**	0.0%		
West Virginia South	0.4%	**South Dakota**	0.0%		
Louisiana East	0.4%	**Alaska**	0.0%		
Louisiana Middle	0.4%	**Arizona**	0.4%		
Louisiana West	2.1%	**California Central**	0.4%		
Mississippi North	0.4%	**California East**	0.4%		
Mississippi South	0.0%	**California North**	0.8%		
Texas East	1.7%	**California South**	1.3%		
Texas North	1.3%	**Hawaii**	0.4%		
Texas South	2.1%	**Idaho**	1.3%		
Texas West	1.7%	**Montana**	1.7%		
Kentucky East	0.8%	**Nevada**	0.4%		
Kentucky West	0.0%	**Oregon**	1.3%		

Table 5.11

Unconditional Model of Supervised Release Sentence Length (logged)

Supervised release length in months (logged)									
	Fixed Effects		***b***	**SE**	**df**	**p-value**			
		Intercept (y00)	5.17	0.04	88	<.001			
	Random Effects		**Var. Comp**	**SD**	**df**	X^2	**p-value**	**Intraclass Coeff.**	
		Level 1 (r*ij)*	0.47705	0.69069					
		Level 2 (u*oj)*	0.1794	0.42356	88	745.1877	<.001	0.273	
	Deviance= 4014.780504								
	Parameters = 2								

Table 5.12

Random Intercepts Model (Supervised Release Length) – Individual-Level Legal and Extralegal Factors

Supervised release length in months (logged)												
	Model 1						**Model 2**					
Fixed Effects	**b**	**SE**					**b**	**SE**				
Overall mean (intercept)	5.166614	0.0456***					5.166998	0.045543***				
Number of Counts	0.062707	0.023286**					0.064545	0.023080 **				
Sex Offender Enhancement	0.004863	0.067152					0.007328	0.066417				
Criminal History Score	0.072678	0.020072***					0.068885	0.020618 ***				
Offense Severity	-0.005698	0.02955					-0.0051	0.029516				
Plea	0.247289	0.080055**					0.24852	0.079246 **				
Detained	0.190964	0.033532***					0.202326	0.034275 ***				
Upward Depart/Variance	0.083659	0.168175					0.101386	0.166063				
Downward Depart/Variance	-0.199277	0.042142***					-0.19933	0.041927 ***				
Offense Severity Sq.	0.000813	0.000454*					0.000799	0.000451 *				
Number of Counts Sq.	-0.003218	0.001121**					-0.00337	0.001103 ***				
Fine							0.00000	0.000002				
White							-0.08211	0.042731**				
Citizen							0.197196	0.078998**				
Dependents							-0.06612	0.033867**				
Less than HS							0.131794	0.048219**				
Some College							-0.0238	0.036533				
College Grad							0.106518	0.04747**				
Age > 50							0.01511	0.031491				
	Random Effects	**Var.Comp.**	**SD**	X^2	*df*	**p-value**	**Random Effects**	**Var.Comp**	**SD**	X^2	*df*	**p-value**
	Level 1	0.3702	0.60844				Level 1	0.36648	0.60538			
	Level 2	0.15729	0.3966	861.00	88	<0.001	Level 2	0.15712	0.39638	864.39	88	<0.001
	Deviance=3618.619741						Deviance= 3647.556054					
	Number of estimated parameters = 2						Number of estimated parameters = 2					
	*p≤.10; **p≤.05; ***p≤.001						*p≤.10; **p≤.05; ***p≤.001					

Table 5.13

Random Intercepts Models (Supervised Release Length) – Random Coefficients

Supervised release length in months (logged)

Model 1

Fixed Effects	b	SE
Overall mean (intercept)	5.169145	0.044673***
Number of Counts	0.066182	0.021477 **
Sex Offender Enhancement	-0.00488	0.057689
Criminal History	0.067512	0.020708 **
Offense Severity	-0.005305	0.026864
Plea	0.25114	0.077912 ***
Detained	0.208376	0.035154 ***
Upward Depart/Variance	0.090955	0.161198
Downward Depart/Variance	-0.19194	0.041625 ***
Offense Severity Sq.	0.000821	0.000412 **
Number of Counts Sq.	-0.00335	0.001012 ***
Fine	0.000001	0.000002
White	-0.07657	0.041752 *
Citizen	0.206717	0.078060 **
Dependents	-0.05809	0.033680 *
Less than HS	0.12149	0.046879 **
Some College	-0.02458	0.036624
College Grad	0.098524	0.045696 **
Age ≥ 50	0.02435	0.030333

Random Effects	Var.Comp.	SD	df	X^2	p-value
Offense severity	0.0003	0.01719	87	120.64	0.01
Level 1	0.35840	0.59867			
Level 2	0.15072	0.38823	87	714.72	<0.001

Deviance= 3596.240545

Number of estimated parameters = 4

*p≤.10; **p≤.05; ***p≤.001

Model 2

Fixed Effects	b	S.E.
Overall mean (intercept)	5.169772	0.044608
Number of Counts	0.067254	0.021420 **
Sex Offender Enhancement	-0.00565	0.057579
Criminal History Score	0.067699	0.020685 **
Offense Severity	-0.00532	0.027009
Plea	0.252164	0.078288***
Detained	0.208443	0.035098***
Upward Depart/Variance	0.085261	0.160686
Downward Depart/Variance	-0.19145	0.041625 ***
Offense Severity Sq.	0.000822	0.000413 **
Number of Counts Sq.	-0.0034	0.001004 ***
Fine	0.000001	0.000002
White	-0.07661	0.041527*
Citizen	0.205251	0.078091 **
Dependents	-0.05868	0.033688 *
Less than HS	0.122972	0.046982 **
Some College	-0.02342	0.036723
College Grad	0.099492	0.045838**
Age ≥ 50	0.024302	0.030404

Random Effects	Var.Comp.	S.D.	df	X^2	p-value
Offense severity sq.	0.00000	0.00026	85	117.53	0.01
Level 1	0.3591	0.59925			
Level 2	0.15009	0.38741	85	702.34	<0.001

Deviance= 3596.461386

Number of estimated parameters = 4

*p≤.10; **p≤.05; ***p≤.001

Model 3

Fixed Effects	b	SE
Overall mean (intercept)	5.171204	0.045759***
Number of Counts	0.067348	0.022215**
Sex Offender Enhancement	0.1359	0.064583
Criminal History	0.073128	0.019058 ***
Offense Severity	-0.01245	0.028126
Plea	0.260418	0.079743***
Detained	0.202816	0.034140***
Upward Depart/Variance	0.10751	0.16047
Downward Depart/Variance	-0.19605	0.041539***
Offense Severity Sq.	0.000908	0.000427**
Number of Counts Sq.	-0.00376	0.001010 **
Fine	0.000001	0.000002
White	-0.07193	0.043046*
Citizen	0.221043	0.078555**
Dependents	-0.06945	0.035034**
Less than HS	0.133851	0.048653 **
Some College	-0.01709	0.037021
College Grad	0.10335	0.046956 **
Age ≥ 50	0.017964	0.03109

Random Effects	Var.Comp.	SD	df	X^2	p-value
Upward depart/variance	0.49953	0.70677	23	70.8	<0.001
Level 1	0.35709	0.59797			
Level 2	0.15933	0.39916	23	422.34	<0.001

Deviance= 3588.772427

Number of estimated parameters = 4

*p≤.10; **p≤.05; ***p≤.001

Model 4

Fixed Effects	b	SE
Overall mean (intercept)	5.170887	0.045529***
Number of Counts	0.068259	0.022301**
Sex Offender Enhancement	-0.00599	0.065188
Criminal History	0.069234	0.020822 ***
Offense Severity	-0.0039	0.029109
Plea	0.259201	0.079412***
Detained	0.199533	0.034802***
Upward Depart/Variance	0.098677	0.169031
Downward Depart/Variance	-0.19536	0.041369***
Offense Severity Sq.	0.000788	0.000444*
Number of Counts Sq.	-0.00352	0.001044 ***
Fine	0.000001	0.000002
White	-0.08383	0.041404**
Citizen	0.208066	0.078848 **
Dependents	-0.06587	0.034174**
Less than HS	0.131401	0.048339**
Some College	-0.02408	0.03601
College Grad	0.105387	0.046577**
Age ≥ 50	0.017213	0.031535

Random Effects	Var.Comp	SD	df	X^2	p-value
Downward Depart/Variance	0.02517	0.15865	78	95.85	0.083
Level 1	0.36155	0.60129			
Level 2	0.15597	0.39493	78	719.98	<0.001

Deviance= 3609.857352

Number of estimated parameters = 4

*p≤.10; **p≤.05; ***p≤.001

Table 5.14

Random Intercepts Models (Supervised Release Length) with Random Coefficients (Offense Severity Score, Upward Depart/Variance, Downward Depart/Variance)

Supervised release length in months (logged)						
	Fixed Effects	**b**	**SE**			
	Overall mean (intercept)	5.161073	0.045127***			
	Number of Counts	0.064721	0.022131 **			
	Sex Offender Enhancement	0.017308	0.058281			
	Criminal History	0.076992	0.019169 ***			
	Offense Severity	-0.0074	0.026599			
	Plea	0.239185	0.076748 **			
	Detained	0.208994	0.035137 ***			
	Upward Depart/Variance	0.116842	0.159121			
	Downward Depart/Variance	-0.185477	0.039595 ***			
	Offense Severity Sq.	0.000824	0.000406* *			
	Number of Counts Sq.	-0.003288	0.001085 **			
	Fine	0.00001	0.000002			
	White	-0.076882	0.039001**			
	Citizen	0.227406	0.078471**			
	Dependents	-0.057935	0.033102*			
	Less than HS	0.124978	0.047314**			
	Some College	-0.01703	0.036324			
	College Grad	0.098922	0.046403**			
	Age ≥ 50	0.017097	0.029872			
	Random Effects	**Var.Comp.**	**SD**	**df**	***X2***	**p-value**
	Offense Severity	0.0003	0.01735	22	47.41952	0.002
	Upward Depart/Variance	0.57052	0.75532	22	76.18816	<0.001
	Downward Depart/Variance	0.0278	0.16672	22	28.00957	0.175
	Level 1	0.34292	0.5856			
	Level 2	0.15463	0.39324	22	311.9662	<0.001
	Deviance= 3594.817997					
	Number of estimated parameters = 11					
	*p≤.10; **p≤.05; ***p≤.001					

Table 5.15

Random Intercepts Model (Supervise Release Length) – District-Level Factors

Supervised release length in months (logged)						
Fixed Effects	**b**	**SE**				
Overall mean (intercept)	5.178009	0.044021				
Court Size	-0.01639	0.008417**				
State w/mandatory min.	0.27573	0.093898**				
Percent Republican	-0.00809	0.005351				
South	0.191631	0.171789				
West	0.373547	0.162108 **				
Midwest	0.04871	0.16684				
Random Effects	**Var.Comp.**	**SD**		**df**	X^2	**p-value**
Level 1	0.47702	0.69067				
Level 2	0.15343	0.3917		82	617.16	<0.001
Deviance= 4023.308187						
Number of estimated parameters = 2						
*p≤.10; **p≤.05; ***p≤.001						

Table 5.16

Random Intercepts Model (Supervised Release Length) – Individual-Level and District-Level Factors

Supervised release length in months (logged)						
Fixed Effects	**b**	**SE**				
Overall mean (intercept)	5.169091	0.042685				
Number of Counts	0.065207	0.023125 **				
Sex Offender Enhancement	0.009573	0.06751				
Criminal History	0.069323	0.020611 ***				
Offense Severity	-0.00454	0.029461				
Plea	0.24883	0.079091 ***				
Detained	0.202326	0.034275 **				
Upward Depart/Variance	0.103053	0.165379				
Downward Depart/Variance	-0.19643	0.042045 ***				
Offense Severity Sq.	0.000789	0.000450 *				
Number of Counts Sq.	-0.0034	0.001101 **				
Fine	0.00	0.000002				
White	-0.07934	0.042393 *				
Citizen	0.195087	0.078812 **				
Dependents	-0.0664	0.033780 **				
Less than HS	0.131436	0.048418**				
Some College	-0.02477	0.036518				
College Grad	0.106252	0.047428 **				
Age > 50	0.013428	0.031747				
State w/mandatory min.	0.178955	0.100544*				
South	0.050419	0.130736				
West	0.287358	0.128531 **				
Midwest	-0.04037	0.149012				
Random Effects	**Var.Comp.**	**SD**		**df**	***X2***	**p-value**
Level 1	0.36656	0.60544				
Level 2	0.14552	0.38147		84	742.77	<0.001
Deviance=3648.449106						
Number of estimated parameters = 2						
*p≤.10; **p≤.05; ***p≤.001						

Table 5.17

Random Intercepts Model (Supervised Release Length) – Individual-Level and District-Level Factors with Random Coefficients (Offense Severity, Upward Depart/Variance and Downward Depart/Variance)

Supervised release length in months (logged)						
	Fixed Effects	**b**		**SE**		
	Overall mean (intercept)	5.163487		0.042511		
	Number of Counts	0.06496		0.022203 **		
	Sex Offender Enhancement	0.018295		0.059114		
	Criminal History	0.07824		0.019375 ***		
	Offense Severity	-0.007876		0.026532		
	Plea	0.240138		0.076561**		
	Detained	0.206803		0.035140***		
	Upward Depart/Variance	0.112204		0.165773		
	Downward Depart/Variance	-0.182936		0.039898 ***		
	Offense Severity Sq.	0.000828		0.000405**		
	Number of Counts Sq.	-0.003314		0.001083 **		
	Fine	0.00000		0.000002		
	White	-0.075188		0.039011**		
	Citizen	0.225557		0.078533**		
	Dependents	-0.057701		0.032997*		
	Less than HS	0.123432		0.047494**		
	Some College	-0.018312		0.036413		
	College Grad	0.099643		0.046620**		
	Age ≥ 50	0.014426		0.030414		
	State w/mandatory min.	0.142683		0.09193		
	South	0.056783		0.132012		
	West	0.198504		0.122265*		
	Midwest	-0.054265		0.15147		
	Random Effects	**Var.Comp.**	**SD**	**df**	***X2***	**p-value**
	Offense Severity	0.00031	0.01761	22	47.37891	0.002
	Upward Depart/Variance	0.60706	0.77914	22	76.37784	<0.001
	Downward Depart/Variance	0.02853	0.1689	22	28.21638	0.168
	Level 1	0.34249	0.58523			
	Level 2	0.14438	0.37997	18	280.79	<0.001
	Deviance=3599.173498					
	Number of estimated parameters = 11					
	p≤.10; **p≤.05; ***p≤.001					

Table 5.18

Fully Specified Final Mixed Model

Supervised release length in months (logged)					
Fixed Effects	b	SE			
Overall mean (intercept)	5.165338	0.042235***			
Number of Counts	0.063736	0.021843 **			
Sex Offender Enhancement	0.03456	0.058619			
Criminal History	0.076964	0.019256 ***			
Offense Severity	-0.01961	0.027078			
Plea	0.254613	0.078970 ***			
Detained	0.209417	0.034519 ***			
Upward Depart/Variance	-0.01328	0.153134			
Downward Depart/Variance	-0.1825	0.040919 ***			
Offense Severity Sq.	0.000992	0.000411**			
Number of Counts Sq.	-0.00318	0.001083 **			
Fine	0.00000	0.000002			
White	-0.06703	0.041075*			
Citizen	0.215621	0.080109**			
Dependents	-0.05612	0.033354*			
Less than HS	0.122634	0.047791**			
Some College	-0.019	0.038355			
College Grad	0.095717	0.046272**			
Age ≥ 50	0.019945	0.031781			
State w/mandatory min.	0.166827	0.100051*			
South	0.058606	0.13053			
West	0.286706	0.125272**			
Midwest	-0.03561	0.146859			
Offense severity * Caseload	0.002692	0.001474*			
Offense severity*West	-0.02473	0.014225*			
Offense severity*Midwest	-0.02793	0.008650**			
Random Effects	Var.Comp.	SD	df	*X2*	p-value
Level 1	0.34838	0.59024			
Level 2	0.14442	0.38002	19	297.31	<0.001
Offense Severity	0.00029	0.0169	14	44.15	<0.001
Upward depart/variance	0.70269	0.83826	14	52.43	<0.001
Deviance= 3699.001471					
Number of estimated parameters = 7					
*p≤.10; **p≤.05; ***p≤.001					

Table 5.19

Random Intercepts Model (Decision to Impose Life) – Individual-Level Legal and Extralegal Factors

Life vs. No life (Unit-Specific Model with Robust Standard Errors)														
	Model 1							Model 2						
Fixed Effects	**b**	**SE**	**Odds Ratio**					**b**	**SE**	**Odds Ratio**				
Intercept	-1.09001	0.174483	0.336214					-1.10071	0.176452	0.332637				
Number of Counts	0.292001	0.100211	1.339104 **					0.30105	0.100647	1.351277 **				
Sex Enhancement	-0.04857	0.303718	0.952594					-0.02724	0.310984	0.973124				
Criminal History Score	0.236221	0.067703	1.266455 ***					0.237137	0.069837	1.26715 ***				
Offense Severity	-0.18765	0.125876	0.828904					-0.18186	0.124733	0.833717				
Plea	1.047625	0.3357	2.850874 **					1.071597	0.345338	2.920039 **				
Detained	0.64714	0.139089	1.91007***					0.661879	0.144278	1.983431***				
Upward depart/variance	0.416416	0.414755	1.516516					0.533225	0.409604	1.704421				
Downward depart/variance	-0.84979	0.174797	0.427506***					-0.84892	0.175341	0.427877***				
Offense Severity Sq.	0.00547	0.001962	1.005485**					0.005431	0.001942	1.005445**				
Number of Counts Sq.	-0.01487	0.005168	0.985240 **					-0.01548	0.005052	0.984635 **				
Fine								-2.3E-05	0.000014	0.999977 *				
White								-0.18749	0.174942	0.829042				
Citizen								0.456467	0.315215	1.578488				
Dependents								-0.15369	0.139297	0.857541				
Less than HS								0.191291	0.217469	1.210812				
Some College								-0.22524	0.159928	0.798324				
College Grad								0.258616	0.217384	1.191989				
Age > 50								0.375938	Model	1.456357**				
	Random Effects		**Var.Comp.**	**SD**	**df**	X^2	**p-value**	**Random Effects**		**Var.Comp**	**SD**	**df**	X^2	**p-value**
	Level 2		1.92127	1.3861	88	550.33	<0.001	Level 2		1.96792	1.40283	88	553.72	<0.001
	*p<.10; **p<.05; ***p<.001							*p<.10; **p<.05; ***p<.001						

Table 5.20

Random Intercepts Model (Decision to Impose Life) – District-Level

Life vs. No life (Unit-Specific Model with Robust Standard Errors)						
	Fixed Effects	**b**		**SE**		**Odds Ratio**
	Intercept	-0.85553		0.128885		0.425058***
	State w/mandatory min.	0.693842		0.279242		2.00139**
	South	0.304935		0.39368		1.356537
	West	0.864391		0.426675		2.373561**
	Midwest	0.341851		0.46135		1.407551
	Random Effects	**Var.Comp.**	**SD**	**df**	***x2***	**p-value**
	Level 2	1.5807	1.0714	84	390.77	<0.001
	*p<.10; **p<.05; ***p<.001					

Table 5.21

Random Intercepts Model (Decision to Impose Life) – Individual-Level and District-Level

Life vs. No life (Unit-Specific Model with Robust Standard Errors)					
Fixed Effects	**b**		**SE**		**Odds Ratio**
Intercept	-1.110187		0.169329		0.329497 ***
Number of Counts	0.307216		0.102768		1.359635 **
Sex Enhancement	-0.03560		0.314982		0.965024
Criminal History Score	0.239456		0.070137		1.270557 ***
Offense Severity	-0.182759		0.125893		0.832969
Plea	1.085541		0.347343		2.961043 **
Detained	0.652361		0.143867		1.920069 ***
Upward depart/variance	0.534923		0.409049		1.707316
Downward depart/variance	-0.841068		0.177751		0.431250 ***
Offense Severity Sq.	0.005457		0.001962		1.005472 **
Number of Counts Sq.	-0.0158		0.005134		0.984339 **
Fine	-0.00003		0.000014		0.999975 *
White	-0.18078		0.17386		0.834616
Citizenship	0.450924		0.315524		1.569762
Dependents	-0.15971		0.139722		0.852394
Less than HS	0.193024		0.218473		1.212911
Some College	-0.232507		0.161362		0.792544
College Graduate	0.269642		0.220201		1.309496
Age ≥ 50	0.368442		0.130297		1.445481 **
State w/mandatory min.	0.567482		0.373226		1.76382
South	0.23436		0.505579		1.2641
West	0.986079		0.510137		2.680704**
Midwest	0.219051		0.571548		1.244895
Random Effects	**Var.Comp**	**SD**	**df**	***x2***	**p-value**
Level 2	1.92956	1.38909	84	494.38	<0.001
*p<.10; **p<.05; ***p<.001					

Table 5.22

Random Intercepts (Four-Category Ordinal) – Individual Level Legal Factors and Extralegal Factors

Four-Category Ordinal (short-term, intermediate, long-term or life) [Unit-Specific Model with Robust Standard Errors]

	Model 1							Model 2						
Fixed Effects	**b**	**SE**	**Odds Ratio**					**b**	**SE**	**Odds Ratio**				
Intercept	-1.13388	0.169423	0.321782					-1.13388	0.169423	0.321782				
Number of Counts	0.243829	0.091892	1.276127	**				0.249856	0.091968	1.283841	**			
Sex Enhancement	0.187025	0.26793	1.205658					0.227554	0.269938	1.255525				
Criminal History Score	0.275078	0.061006	1.316633	***				0.265078	0.062614	1.303533	***			
Offense Severity	-0.10724	0.085299	0.898312					-0.09853	0.086565	0.906166				
Plea	0.863811	0.279916	2.372184	**				0.891422	0.282482	2.438596	**			
Detained	0.452034	0.099234	1.571506	***				0.504841	0.100968	1.656722	***			
Upward depart/variance	0.878246	0.501014	2.406674	*				0.952345	0.498652	2.591781	*			
Downward depart/variance	-0.65726	0.138507	0.518270	***				-0.66562	0.139585	0.513957	***			
Offense Severity Sq.	0.004073	0.001362	1.004081	**				0.003935	0.001375	1.003943	**			
Number of Counts Sq.	-0.01218	0.004285	0.987895	**				-0.01271	0.004291	0.987367	**			
Fine								0.000009	0.000008	1.000009				
White								-0.25034	0.132167	0.778539	**			
Citizenship								0.631136	0.252194	1.879744	**			
Dependents								-0.22878	0.104596	0.795503	**			
Less than HS								0.23222	0.177117	1.261397				
Some College								-0.11331	0.112935	0.892871				
College Grad								0.259648	0.14185	1.296474	*			
Age ≥ 50								0.120766	0.109498	1.128361				
	Random Effects		**Var.Comp.**	**SD**	**df**	X^2	**p-value**	**Random Effects**		**Var.Comp.**	**SD**	**df**	X^2	**p-value**
	Level 2		1.8391	1.35614	88	782.27	<0.001	Level 2		1.87154	1.36804	88	786.23	<0.001
	*p<.10; **p<.05; ***p<.001							*p<.10; **p<.05; ***p<.001						

Table 5.23

Random Intercepts (Four-Category Ordinal) – District-Level Factors

Four-category Ordinal (short-term, intermediate, long-term or life) [Unit-Specific Model with Robust Standard Errors]					
Fixed Effects	**b**		**SE**		**Odds Ratio**
Intercept	-0.945451		0.138856		0.388504***
State w/mandatory min.	0.718897		0.282896		2.052169**
South	0.264673		0.390874		1.303005
West	0.987948		0.388078		2.685718**
Midwest	0.038535		0.456363		1.039287
Random Effects	**Var.Comp.**	**SD**	**df**	**p-value**	
Level 2	1.27977	1.13127	84	<0.001	
*p<.10; **p<.05; ***p<.001					

Table 5.24

Random Intercepts (Four-Category Ordinal) – Individual-Level and District-Level

Four-category Ordinal (short-term, intermediate, long-term or life) [Unit-Specific Model with Robust Standard Errors]						
Fixed Effects	**b**		**SE**		**Odds Ratio**	
Intercept	-1.14670		0.158049		0.317684	
Number of Counts	0.251026		0.092425		1.285344	**
Sex Enhancement	0.231912		0.271882		1.261009	
Criminal History	0.266511		0.062468		1.305402	***
Offense Severity	-0.097896		0.086814		0.906743	
Plea	0.891659		0.28098		2.439172	**
Detained	0.497248		0.100992		1.644190	***
Upward depart/variance	0.958763		0.491341		2.608467	*
Downward depart/variance	-0.65850		0.140195		0.517628	***
Offense Severity Sq.	0.003929		0.001378		1.003936	**
Number of Counts Sq.	-0.012737		0.004303		0.987344	**
Fine	0.00001		0.000009		1.00001	
White	-0.24039		0.131207		0.786318	*
Citizenship	0.625814		0.252179		1.869768	**
Dependents	-0.22965		0.11461		0.794810	**
Less than HS	0.23739		0.159021		1.267935	
Some College	-0.11688		0.115757		0.889691	
College Grad	0.258137		0.15449		1.294516	*
Age ≥ 50	0.116192		0.108533		1.123212	
State w/mandatory min.	0.57815		0.343704		1.782738	*
South	0.131562		0.434575		1.140608	
West	0.987897		0.400683		2.685581	**
Midwest	-0.234292		0.496885		0.791131	
Random Effects	**Var.Comp.**	**SD**	**df**	**x2**	**p-value**	
Level 2	1.74167	1.31972	84	690.48	<0.001	
*p<.10; **p<.05; ***p<.001						

Table 5.25

Hypothesized Predictions of Individual-Level Legal, Extralegal, and District-level Effects (Supported or Not Supported)

Table 6.1 Results for Theoretical Predictions of Individual-Level Legal, Extalegal, and District-level Effects

	Description of Hypotheses	*Length*	*Life/No life*	*4-Category*
1	Sentence length will vary significantly across courts.	Yes	N/A	N/A
2	Legally relevant factors will explain the majority of variation in supervised release outcomes, but extralegal factors will also matter.	Yes	Yes	Yes
3	The seriousness of the offense will moderate the effect of legal and extralegal variables such that these factors will have less of an effect when the offense of the charge is more serious.	No	N/A	N/A
4	The effects of individual-level sentencing factors will vary across courts.	Yes	No	No
5	Above and beyond individual-level factors, district-level factors will have an effect on supervised release sentences.	Yes	Yes	Yes

Graph of Predicted Value of Supervised Release Length (unlogged) and Offense Severity

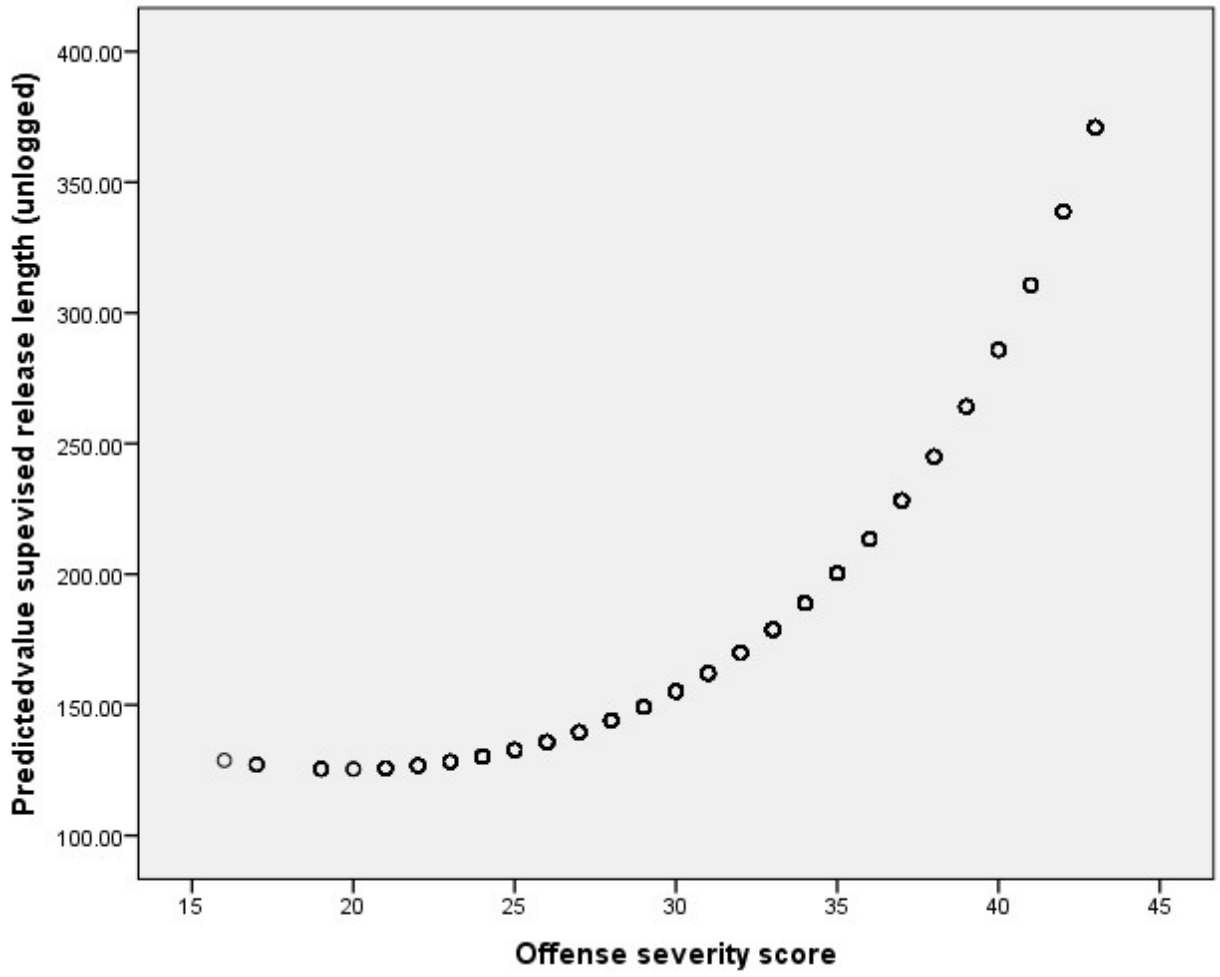


Figure 5.1 Graph of Predicted Value

Graph of Predicted Probability of Lifetime Supervised Release and Offense Severity

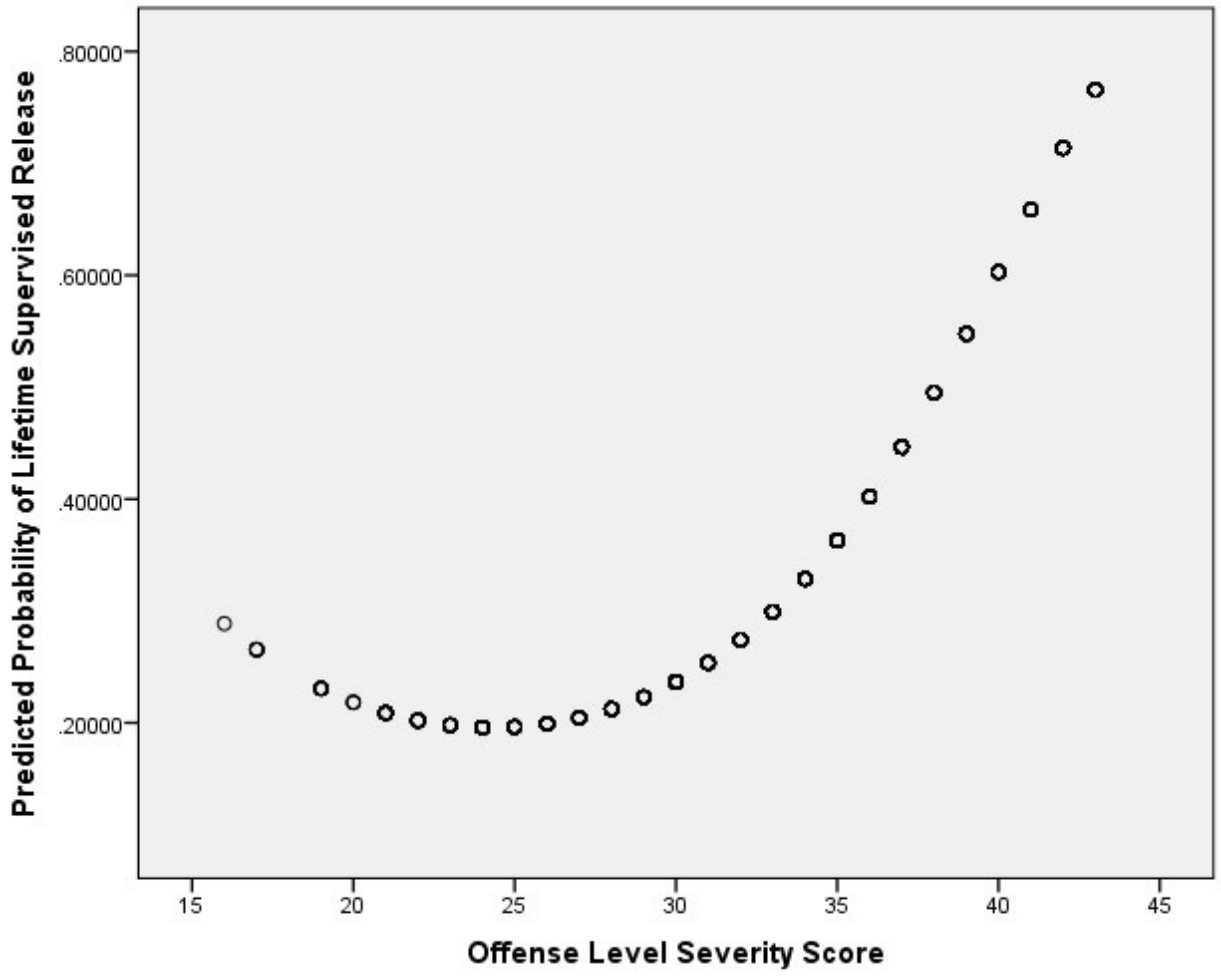


Figure 5.2 Graph of Predicted Probability

Graph of Predicted Value Supervised Release Length (unlogged) and Number of Counts

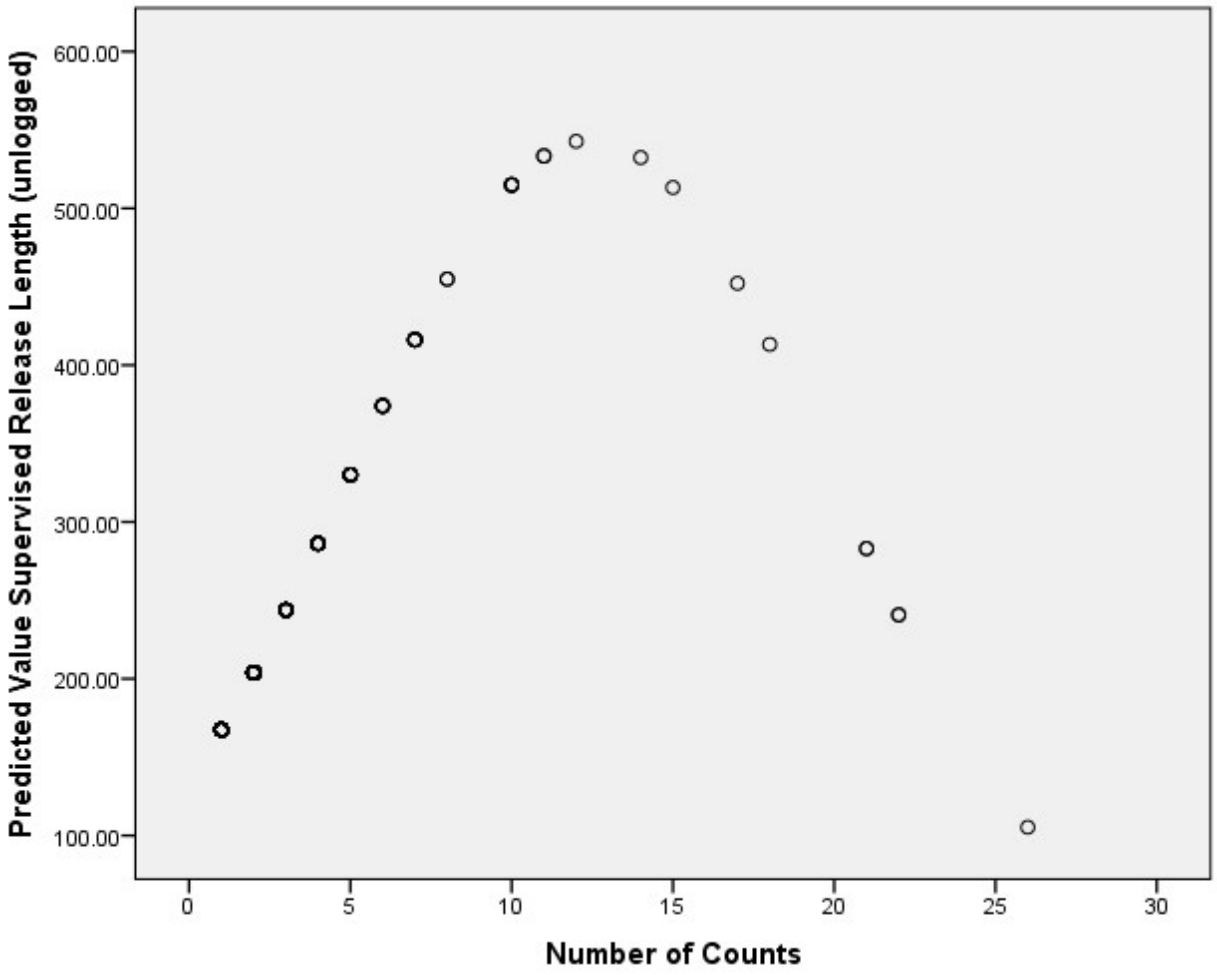


Figure 5.3 Graph of Predicted Value

Graph of Predicted Probability of Lifetime Supervised Release and Number of Counts

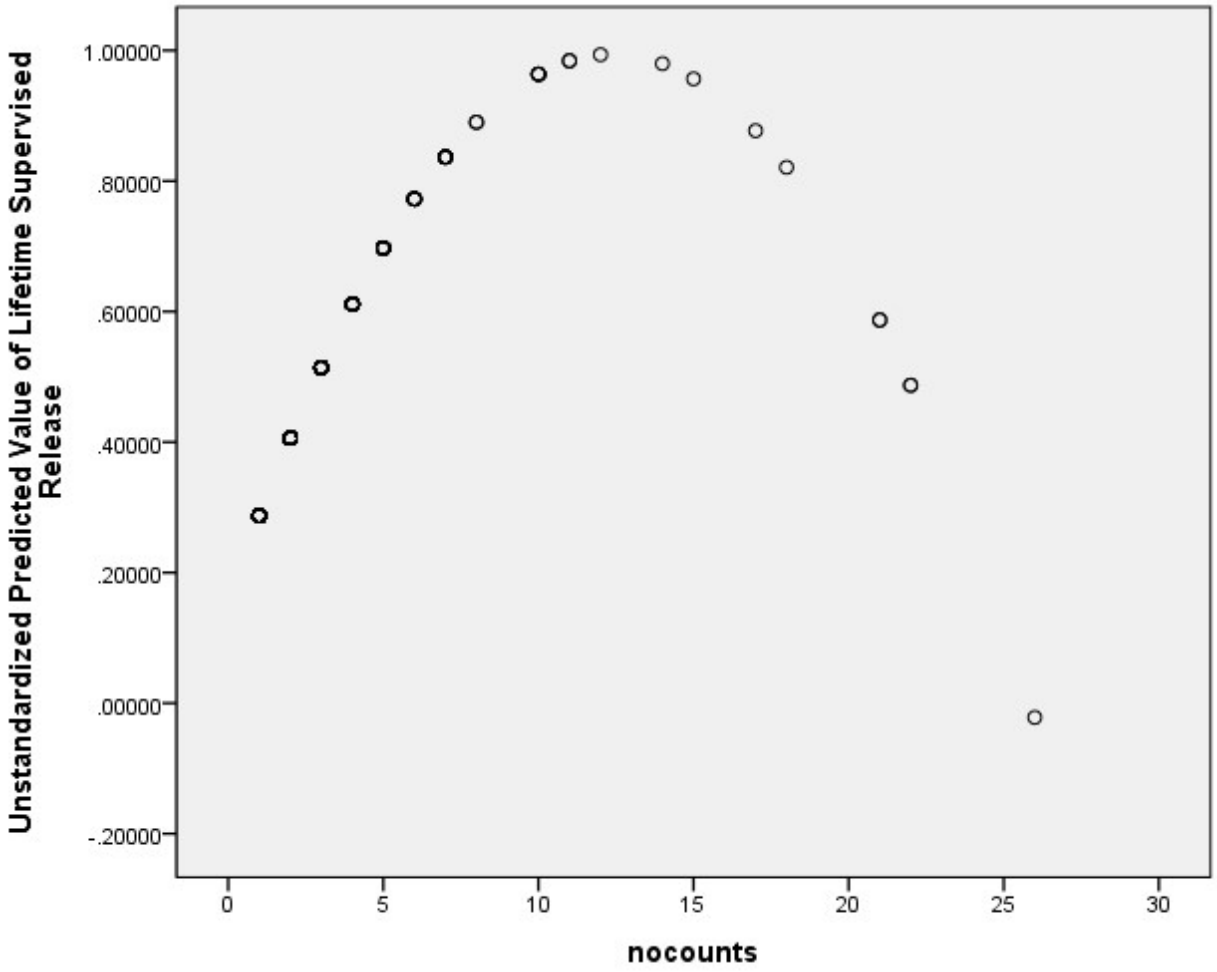


Figure 5.4 Graph of Predicted Probability

Graph of HLM Equation of the Relationship Between Number of Counts Squared and Supervised Release Length

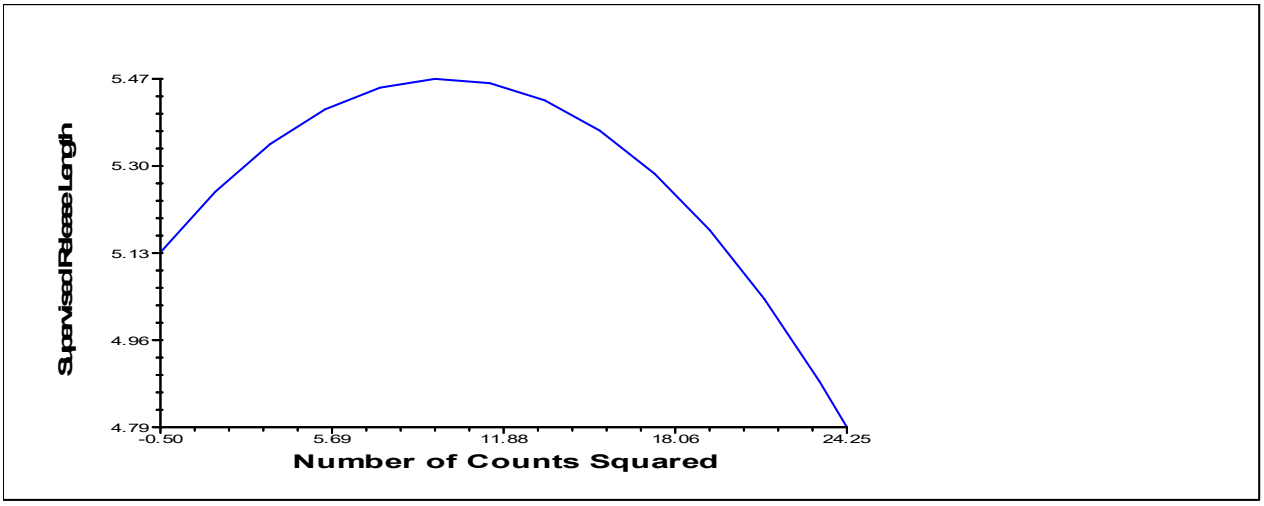


Figure 5.5 Graph of HLM Equation

Graph of HLM Equation of the Relationship Between Offense Severity Squared and Lifetime Supervised Release

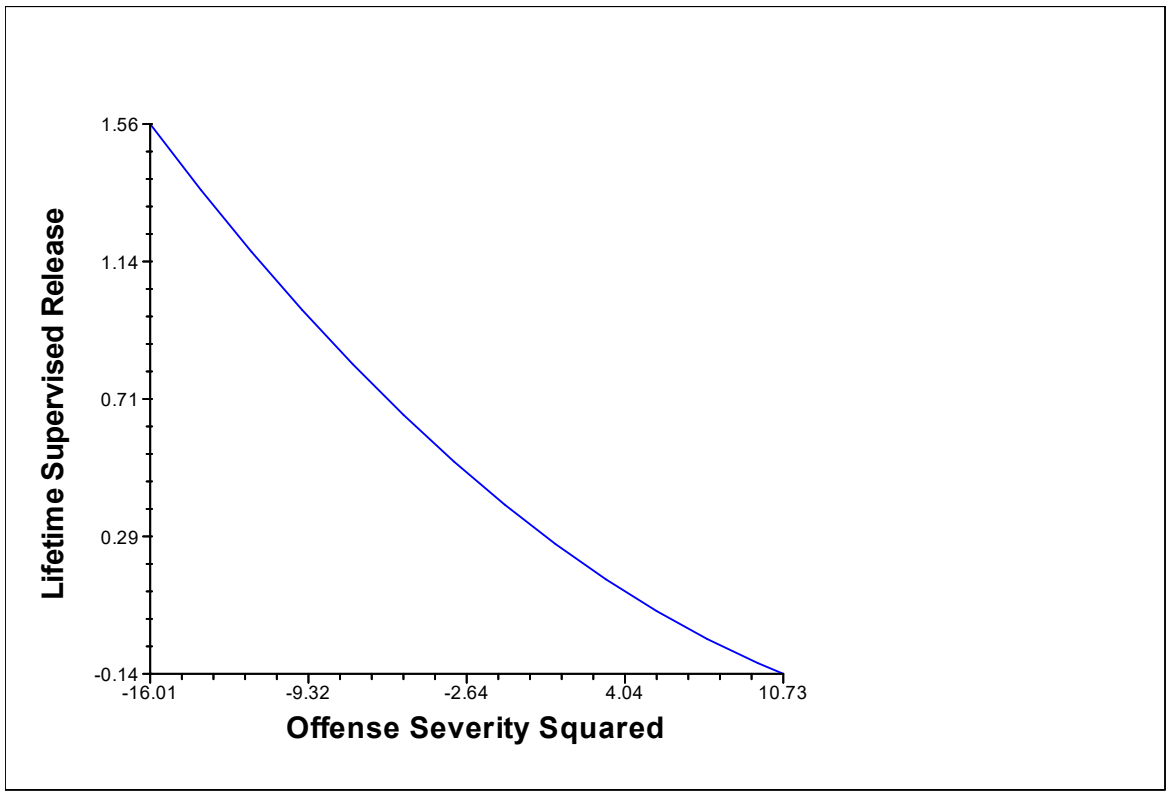


Figure 5.6 Graph of HLM Equation

Graph of HLM Equation of the Relationship between Number of Counts Squared and Lifetime Supervised Release

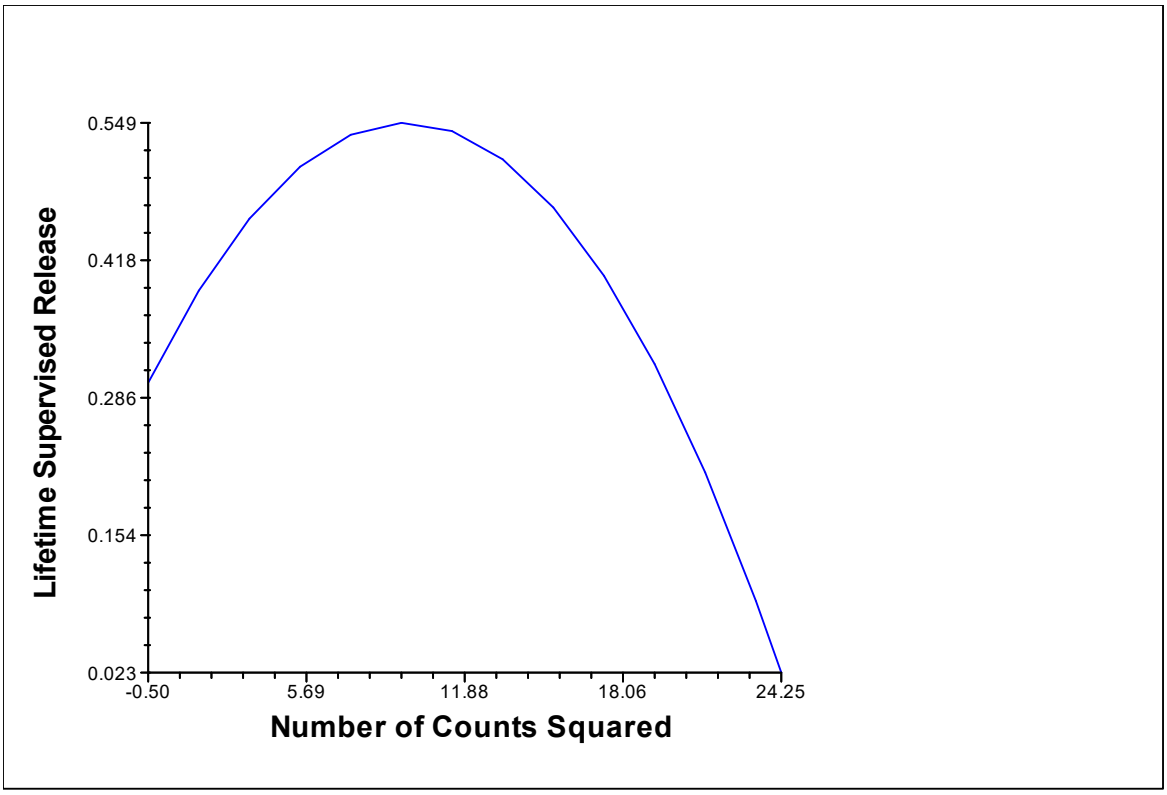


Figure 5.7 Graph of HLM Equation

CHAPTER SIX: DISCUSSION

Introduction

In the previous chapter, I used multilevel modeling techniques to explore the effects of individual-level legal and extralegal factors, as well as district-level contextual factors on supervised release sentence length, the decision to impose life, and a four-category measure of the supervised release sentence. Generally, I found that supervised release sentences vary significantly across courts and that legal factors are the primary determinants of the supervised release sentence. Extralegal factors play a role, but minimally. I also found disparities in sentences based on the region of the district court. In this chapter, I systematically review and discuss my findings in the context of sentencing theory, the empirical sentencing literature, and moral panic.

Variation of Supervised Release Sentence Lengths across Courts

At the heart of this dissertation, and from which all the research questions arise, is the policy within the guidelines for lifetime supervised release for all child pornography offenders. The policy covers all child pornography offenses enumerated under 18 U.S.C 3583(k) and explicitly applies to every offender convicted and sentenced in each of the 94 judicial districts. As much as Congress intended the lifetime policy to be a uniform outcome for all child pornography offenders, the results from the null model indicate supervised release sentences are not uniform. As a matter of fact, supervised release sentence length varies significantly across the 89 district courts included in the analyses.

This finding it not surprising and is consistent with prior multilevel federal sentencing studies that find imprisonment length differs significantly across courts (Kautt, 2002; Johnson, 2005, Ulmer, Eisentein and Johnson, 2010). What is surprising though, is the magnitude of the variability across courts for supervised release length for child pornography offenses.

Comparatively speaking, the 27% cross-court variability found in this dissertation is considerably larger than the typical 3% to 6% found in multilevel studies examining imprisonment length for the average federal offender (Kautt, 2002; Ulmer, Eisentein and Johnson, 2010). To gauge whether the large percent variability was due to the difference in outcome measure or perhaps a function of the offense of child pornography, I ran a null model for imprisonment length. This model also showed a relatively large percent (18%) of cross-court variability. The relatively large cross-court variability found in both the sentence of imprisonment and the sentence of supervised release seems to imply what legal scholars have long held – that there is judicial dissonance in the sentencing of child pornography offenders and a lack of congruence within the federal judiciary on how to sentence these individuals (Krohel, 2011, Rigsby, 2010).

Beyond the lack of consensus, there may also be other issues at play that account for this variability. One possible explanation may lie in the court communities perspective. The court communities perspective explains that variations in sentencing outcomes could be explained by the fact that each court community has its own case processing and sentencing norms. Thus, in the case at hand, we have 89 different district courts that conceivably have 89 different norms or "going rates" in how they sentence child pornography offenders within the statutory supervised release range. The descriptive statistics of the district courts found in Tables 5.5 through 5.10, allude to these "going rates."

Indeed, one of the most intriguing findings to discuss are the descriptive statistics of districts that almost always sentence to lifetime supervised release compared to districts that almost never sentence their cases to lifetime supervised release. Take for example the Eastern District of Missouri (ED/MO). According to the district descriptive statistics, ED/MO sentenced

nearly 90% of its cases in fiscal year 2012 to lifetime supervised release. When delineated by offense type, ED/MO sentenced 100% of its production cases to lifetime supervised release, and 86.1% of non-production cases to lifetime supervised release. In general, the judges of ED/MO follow the policy in the federal guidelines for lifetime supervised release.[71] In other words, the policy for lifetime supervised release is the "going rate" or "routine sentencing norm." Because of this, defense counsel in ED/MO rarely if ever, argue for a sentence other than lifetime supervised release. In other words, there exists in the ED/MO a "certainty" or expectation that the term of supervised release for all child pornography offenders is life.

In striking contrast, some districts *do not* routinely sentence all child pornography offenders to lifetime supervised release. Take for instance, the Middle District of Florida which has a slightly higher percentage of the total sample (3.7%) than Eastern Missouri (see Table 5.6). Florida Middle sentenced only 16.9% of its child pornography offenders to lifetime supervision, sentencing the majority of their cases to intermediate and long-term supervision (see Table 5.5). These statistics imply that the "norm" or "going rate" in Florida Middle are intermediate and long-term supervised release sentences.[72]

Indeed, the USSC in their 2012 report on child pornography offenses, confirm the existence of variation in sentencing outcomes across district courts explaining "differences primarily appear to be a function of local charging and sentencing practices and policies."

---

[71] As a former employee of the ED/MO court workgroup, this statement comes from six years of experience writing presentence reports for child pornography offenders and attending sentencing hearings of these cases. It is the policy of the ED/MO to follow the policy statement in the guidelines and recommend lifetime supervised release for all child pornography offenders.

[72] On March 7, 2017, the author spoke with a Supervisory U.S. Probation Officer from the Middle District of Florida to discuss child pornography sentencing practices in Middle Florida. The supervisor explained that from about 2007 onward, at the direction of the court executive, they stopped recommending lifetime supervised release for all child pornography offenders, reserving the life recommendation for production cases or non-production cases with serious risk indicators (criminal history, prior hands on offense). This was done because of limited resources of the U.S. Probation Office to supervise child pornography offenders for life. The supervisor indicated that most sentencing recommendations for non-production cases range between 10 to 15 years, depending on specifics of the case.

(p.237). And while the USSC stipulates that variation in sentencing outcomes across district courts is a function of local court sentencing practices, they fail to offer a tangible district-level variable to account for this. One possibility I surmise is "local court rules." Local court rules are a formal written set of rules that govern/describe case processing procedures for each individual court ("Current Rules of Practice and Procedure," n.d). Each district court has a copy of their local rules posted on their website. By comparing local rules from one district court to the next, one can see the variations in case processing.

One example of a "local court rule" that may account for variation in sentences is the format and content of presentence reports. The standard presentence report format as approved by the Administrative Office of the U.S. Courts (AO) include the following components: Face sheet; Part A: The Offense; Part B: The Defendant's Criminal History; Part C: Offender Characteristics; Part D: Sentencing Options; Part E: Factors that May Warrant Departure; and Part F: Factors that May Warrant a Sentence Outside the Advisory Guideline System (see Appendix B). However, at the direction of individual courts, some presentence reports deviate from the standard format. For example, presentence reports in the Southern District of California adds a subsection in Part F called *Probation Officer's Analysis/Justification and Sentencing Recommendation*. In this subsection, the probation officer summarizes the case and makes a sentencing recommendation within the body of the presentence report.

Slightly different from the Southern District of California are presentence reports in the District of Nevada. The District of Nevada adds a "Part G" to their presentence reports. "Part G" is a section called *Sentence Justification* wherein the probation office analyzes the case and provides a sentencing recommendation. In another example, presentence reports in the Eastern District of New York do not have a "Part F," concluding instead with "Part E." "Part E" is a

section called *Mitigating and Aggravating Factors* wherein any mitigating or aggravating factors are identified which may impact the final sentencing outcome. In addition, presentence reports in Eastern New York deviate from the standard presentence report with a subsection in "Part C" called *Family Ties, Responsibilities, and Community Ties*. The point of the preceding examples is to demonstrate district deviations from the standard presentence report approved by the AO. The inclusion or exclusion of content may contribute to sentencing variations across courts.

Another explanation for the variation could be an external event that causes a district or districts to alter the way they sentence. Consider for example the following headlines taken from a 2014 news article, *"Renz Case had Drastic Impact on Handling of Syracuse Child Porn Cases"* (O'Brien, 2014). This article discusses a child pornography case in New York that turned deadly after David Renz, who was on pretrial bond supervision for a child pornography offense, dismantled his electronic global positioning system (GPS) ankle bracelet and raped a ten-year-old girl. He also murdered her mother who had attempted to prevent the rape.[73] The article discusses how this case did not specifically result in new national policy for pretrial detention for all child pornography offenders, but it did change the way prosecutors and judges in the Northern District of New York consider pretrial detention in these cases. Specifically, the article highlighted that in the fourteen months before the Renz attacks, eight of twelve child pornography offenders in the Northern District of New York were released from jail to await trial. But out of the ten child pornography defendants who could have been released at the time the article was written in 2014, only one defendant had been released. The point of this example is that a sensational case could change the way a district court sentences.

[73] The sexual assault and murder occurred in March 2013.

While there is a great deal of variability across courts in supervised release sentences, the majority, 73%, is at the individual-level. I turn next to a discussion of the individual-level factors that influence supervised release sentencing outcomes of child pornography offenders.

Individual-Level Legal Factors

An examination of the individual-level legal and extralegal factors that are related to the supervised release sentence indicate that the best predictors of supervised release sentence length, the decision to impose lifetime supervised release, and the four-category ordinal measure of supervised release are legal factors. These factors include number of counts, offense severity score, detention, pleading guilty, criminal history score, and downward departure/variance. All these legal factors exerted significant effects in the expected direction across all models, except for plea. In the next section, I separately discuss these significant predictors.

Curvilinear effect – Number of Counts.

The results indicate that the relationship between the number of counts of conviction and supervised release length is curvilinear. Specifically, there is a positive relationship between the number of counts and sentence length until the number of counts hits a threshold of 11 counts (see Figure 5.5). Thereafter, sentence length decreases as the number of counts increases such that a person with 20 counts of child pornography has a shorter supervised release length than someone convicted of 10 counts. As mentioned in earlier chapters, legal researchers contend that some judges believe that non-producers are less culpable than producers, so one explanation could be that those cases that had more than 15 counts were predominantly counts for non-production offenses. For example, a judge may perceive a non-producer convicted of 25 counts of possession of child pornography less culpable than an offender convicted of production regardless of the number of counts of conviction. This line of reasoning is supported by the data.

Specifically, I examined separate crosstabulations of the relationship between supervised release length and number of counts for non-production and production. A visual inspection of the crosstabulation between supervised release length and production shows that offenders with at least 8 or more counts of conviction all received lifetime supervised release.[74] A visual inspection of the crosstabulation of the relationship between supervised release length and non-production showed that some cases with greater than 15 counts received shorter supervised release terms than some cases with less than 15 counts.[75] When you compare both crosstabulations, non-producers with increasing counts of conviction after 15 counts had shorter supervised release sentences than comparable producers.

Curvilinear effect – Offense Severity.

Analyses also showed that there is a curvilinear or U-shaped relationship between offense severity and supervised release length (see Figure 5.1). Specifically, an offense severity score beginning with 16 has a slightly higher supervised release length than those offenders with offense severity scores of 17 through 23. Those with offense severity scores of 17 through 23 have a similar supervised release length. After an offense score of 23, supervise release length increases steadily.

The U-shaped relationship between offense severity and supervised release length may be explained by judges departing or varying downward from the advisory guideline range calculated (the offense level plus the criminal history score) in the presentence report. To explain, before imposing the sentence, the court must first properly calculate and consider the guidelines and make a determination if the findings of the presentence report is adopted without change. If

[74] There were no offenders with greater than 21 counts of conviction.
[75] The greatest number of counts of conviction was 26 counts.

adopted without change, the offense score calculated in presentence report is the offense score used in determining the sentence. Next, the court considers any departure options outlined in the federal sentencing guidelines, followed by consideration of factors in 18 USC 3553(a) for a variance. If the court downward departs or varies, this is how one can have a higher offense severity score and receive a shorter sentence than someone with a lower offense score.

In any event, the positive parabolic relationship between offense severity and supervised release sentence length does not come as a surprise. Work by Kautt (2002) also revealed a U-shaped relationship between offense severity score and sentence length.

Detention.

Of all the legal factors included in this study, detention is the closest variable to mimicking the dynamics of supervised release. This is because at its foundation, pretrial detention in the federal system assesses risk and focuses on issues of community safety. In striking similarity, public safety and risk are the same types of considerations for the sentence of supervised release. Prior research shows that detention is associated with increased likelihood of receiving a prison sentence and longer sentences (Phillips, 2012; Williams, 2003). In the present study, detention is associated increased supervised release length, a greater likelihood of being sentenced to lifetime supervised release, and a greater likelihood of being sentenced to a higher supervised release category. This is consistent with the focal concerns perspective, particularly as it relates to blameworthiness and protection of the public. For instance, judges may perceive a child pornography offender on bond as less dangerous than a detained counterpart. Williams (2003) notes that a person who is on bond can use their time to demonstrate to a judge that they are not a danger to the community (i.e., incurring no pretrial bond violations; compliant with bond conditions). Likewise, a child pornography offender on bond has time to enter sex offender

treatment to further demonstrate to a judge that they are somehow less dangerous, something that a person who is detained is not able to do. Williams (2003) maintains that it is this rationale that may lead a sentencing judge to think that a person who behaved well on bond may be a good candidate for less post-conviction supervised release.

Plea.

While research typically finds that pleading guilty results in more lenient sentences, for child pornography offenders pleading guilty resulted in a longer term of supervised release as well as a higher probability of receiving lifetime supervised release and a greater likelihood of being sentenced to the higher supervised release category. While this result is counterintuitive, it is possible this finding may also be explained by the focal concerns notion of blameworthiness. At the federal level, when the court accepts a guilty plea of a child pornography offender, the assistant U.S. Attorney describes the evidence that would have been presented if the case had proceeded to trial. The evidence includes graphic descriptions of the child pornographic images and/or videos. In addition, the defendant also must advise the judge in his or her own words what he or she did and describe the images he or she possessed, distributed, received, or produced. It is plausible that the graphic and heinous nature of the evidence coupled with the defendant admitting guilt and describing his or her offense conduct may magnify the defendant's culpability in the eyes of the court. Another possibility could also be *how* the defendant admits his guilt. For example, if a defendant minimizes the seriousness of the offense this could lead the judge to perceive that the offender is not accepting responsibility. In contrast, in a trial, a defendant is not likely to admit guilt or take the stand, perhaps minimizing culpability. It is also possible that this finding is just noise due to the small number of cases that had trials.

Another likely scenario is the role that the impact of the plea agreement may play. For instance, child pornography offenses are unique in that the offense of possession of child pornography is a lesser included offense in distribution, transportation, receipt and production of child pornography. So, in the case of someone charged with the more onerous offense of distribution of child pornography, the government could theoretically stipulate to the lesser included offense of possession of child pornography and plea away the more serious charge. Consider for example the following language taken from a plea agreement of an offender charged with possession and distribution of child pornography:

"*In exchange for the defendant's plea of guilty to count one of the four-count indictment, which charges possession of child pornography, the government agrees to dismiss counts two through four, each charging distribution of child pornography at the time of sentencing*." [76]

Having considered the above example, there is a section in Part D of the presentence report called the *Impact of Plea* (see Appendix B), which highlights for the sentencing court, the range of punishment and the guideline sentence had the defendant been found guilty or pled guilty to all counts charged in the indictment. This information can be used for consideration of the final sentence. Per Section 1B1.4 of the federal sentencing guidelines – Information to be Used in Imposing Sentence, in determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, without limitation, any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law.

---

[76] Sample excerpt taken from a plea agreement of an offender convicted of possession of child pornography in the Eastern District of Missouri in 2009.

The commentary of Section 1B1.4 of the federal sentencing guidelines more specifically lays out that a court is not precluded from considering information that the guidelines do not consider in determining a sentence within the guideline range or from considering that information in determining whether and to what extent to depart from the guidelines. For example, if the defendant committed two robberies, but as part of a plea negotiation entered a guilty plea to one count, the robbery that was not taken into account by the guidelines would provide a reason for sentencing at the top of the guideline range and may provide a reason for an upward departure (2012 USSC Federal Guidelines Manual). Accordingly, it may be that counts that are dismissed as part of plea agreement may speak to the ultimate culpability of the defendant and/or the dangerousness which may account for longer supervised release sentences or the likelihood of lifetime supervised release. Unfortunately, we cannot test this theory because the USSC does not collect data on dismissed counts.

Criminal History.

My finding that a child pornography offender's criminal history significantly and positively effects the supervised release sentence on all three derivations of the outcome is consistent with theory and prior research. Consistently, sentencing research using both state and federal data has found criminal history to be a statistically significant predictor of sentence length and/or the decision to impose imprisonment. The federal sentencing guidelines state that an offender's past criminal conduct is directly relevant to the four purposes of sentencing: (1) reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (2) to afford adequate deterrence to criminal conduct; (3) to protect the public from further crimes of the defendant; and (4) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most

effective manner. The introductory commentary in Section 4A1.1 of the guidelines state that an offender with a prior criminal history is more culpable than a first-time offender and thus deserving of greater punishment.[77]

While the four goals of sentencing described above appear to be for the sentence of imprisonment, these goals can also be extended to the sentence of supervised release. Consider for example the purposes of sentencing as described in sentencing purpose #2 (to afford adequate deterrence to criminal conduct) and #3 (to protect the public from further crimes of the defendant). Some judges may perceive that an offender with a lengthy criminal history having not been previously deterred by past punishment may be deterred under a long period of supervision especially, while under the supervision of the U.S. Probation Office. Likewise, some judges may consider child pornography offenders with a lengthier criminal history, a threat to public safety thereby warranting an extended term of supervised release. Or perhaps judges perceive those child pornography offenders with longer criminal histories as needing extended time on supervised release to provide necessary correctional and rehabilitative treatment.

All the foregoing possibilities I use to explain why criminal history positively affects the sentence of supervised release point to the theoretical underpinnings of the focal concerns perspective, specifically blameworthiness and protection of the community. Most of what judges know about the offenders they sentence comes from the presentence report. At present, there is no section of the presentence report that includes information on future risk.[78] Therefore, in the

[77] The commentary indicates that the factors included in calculating the criminal history are consistent with the extant research assessing correlates of recidivism and patterns of career criminal behavior.
[78] The U.S. Probation Office utilizes risk tools including the Risk Prediction Index (RPI) and the Post-Conviction Risk Assessment (PCRA) to assess risk for those offenders under active supervision. This information is not disclosed in the presentence report.

absence of full information on risk to assess dangerousness to the public, judges resort to what information they do have – the prior criminal history.

Downward Departure/Variance.

Prior sentencing research has found that downward departures/variances are significantly related to sentencing outcomes such that those who receive a downward departure/variance have shorter sentence lengths than those who do not receive a downward departure/variance. Consistent with prior research on the effects of downward departures on sentence length, I found that downward departure/variance shortens supervised release length, decreases the odds of being sentenced to lifetime supervised release, and decreases the probability of being sentenced to a supervised release term in the higher supervised release category. Kaiser and Spohn (2014) contend that as it relates specifically to the offense of child pornography, judges may be more likely to use downward departures to mitigate what they perceive as disproportionately severe sentences. Legal scholars argue that now that the guidelines area advisory in nature, the basis for many of these departures are extralegal factors such as family and community ties (Hamilton, 2011; Krohel, 2011). Conversely though, one of the main provisions of the Protect Act of 2003 was to prevent judges from granting downward departures for child pornography offenders from the then-mandatory guidelines based on family and community ties.

In the case at hand, I surmise a downward departure/variance is indicative of offenders being less culpable. In a similar vein, Kaiser and Spohn (2014) make note of departures being used for child pornography offenders labeled salvageable or sympathetic. This notion of salvageability and less culpability is consistent with the focal concerns perspective of blameworthiness. In other words, child pornography offenders granted downward

departure/variances may be deemed less dangerous or risky on the basis of extralegal factors that mitigate judicial perceptions of dangerousness such as family ties. My findings suggest that those with the benefit of a downward departure/variance were perceived as less dangerous, thereby sentenced to shorter supervised release terms.

Effects of Individual-level Factors Across Districts

In the model for supervised release length, I found that the effects for offense severity score, offense severity score squared, upward departure/variance, and downward departure/variance differed across district courts (see Table 5.13 – Models 1 though 4). This finding is consistent with other sentencing studies that found the effects of individual-level factors vary by district court (Kautt, 2002; Johnson, 2006). This suggests that judicial officers in different districts weigh the importance of some individual-level legal factors differently. Johnson, Ulmer and Kramer (2008) explain this is because the focal concerns of courts vary because they are embedded in local court communities' organizational and cultural milieus.

One explanation to account for why the effect of offense severity differed across courts could be that some courts consider all relevant conduct when calculating the offense severity score. As noted in Section 1B1.3 in the federal sentencing guidelines, relevant conduct refers to all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant. This means that courts can consider all relevant conduct in establishing the offense severity score regardless of how the score is calculated in the plea agreement. Thus, in some districts, courts accept and agree with the offense severity score

calculated in the plea agreement. On the other hand, some courts independently calculate the offense severity score and include relevant conduct in their calculations.[79]

Another explanation for the effect of offense severity differing across courts could be due to variation in how the offense conduct is investigated in the presentence report (Bowman, 1996). As shown in Appendix B, there is a section in the presentence report called the "Offense Conduct." This section includes all pertinent information regarding the offense as established by the probation officer's investigation. In some districts, probation officers conduct independent investigations, even interviewing witnesses (i.e., case agent, victims) and examining evidence or laboratory reports. In other districts, probation officers rely solely on the U.S. Attorney's Office version of the offense conduct, even using the government's written version of the offense from the plea agreement directly into the "Offense Conduct" section of the presentence report. These types of differences in the offense conduct sections of presentence reports could directly impact judicial findings of some chapter two, three, and four enhancements or deductions in calculating the total offense severity score.

The varying effects of upward and downward departure/variances may have a different explanation. There are sections in Part F of the presentence report called "Factors That May Warrant Departure" and "Factors that May Warrant a Sentence Outside the Advisory Guideline System" (see Appendix B) wherein the probation office is to identify and include factors for consideration for an upward departure/variance or downward departure/variance. The degree to which a probation office investigates opportunities for courts to vary/depart upward or downward is likely to differ from one district court to the next. For example, since

[79] In my tenure with the United States Probation system and my position as a Supervising U.S. Probation Officer, I have reviewed many presentence reports from different districts and have observed calculations consistent with the plea agreement as well as calculations based upon the independent calculations of the court.

approximately 2006 or 2007, it has been the practice of the presentence unit in Eastern Missouri to make concerted efforts to identify potential factors for downward departures/variances.[80] This is because judges in Eastern Missouri grew weary of the probation office seemingly only able to identify factors to vary/depart upward. At the behest of the then Chief Judge, the probation office was directed to identify and provide more ways in which the court could depart/vary downward. Although this may be true in practice in Eastern Missouri, a different occurrence may be the case elsewhere. Meaning, the emphasis or de-emphasis of certain factors could yield varying effects of these factors across courts. Theoretically speaking, this is consistent with Johnson et al.'s (2008) notion that focal concerns vary across courts because they are embedded in the local court communities organizational and cultural milieus. In similar fashion, my findings follow the tradition of the court communities perspective. In the example given, Eastern Missouri appears to have its own presentencing norms afforded via "local court rules" such as the inclusion of certain information in the presentence report that may or may not be operating in other districts which may produce variation in sentencing outcomes.

Summary of Individual-Level Legal Factors

To summarize, all the individual-level legal factors except the variable for the enhancement for having a prior sex offense, demonstrated direct meaningful effects on all three outcome measures of the supervised release sentence, and the effects of some of these factors varied across courts. In line with expectations, a series of extralegal factors also influenced supervised release sentences and are discussed next.

[80] During approximately 2006 and 2007, the author was a Senior U.S. Probation Officer assigned to the presentence unit in the Eastern District of Missouri wherein the district court's desire for the identification of downward departures/variances in the presentence reports was disseminated to the probation office as policy.

Individual-level Extralegal Effects

While legal factors have been shown to be the primary determinants of supervised release sentences, extralegal factors, although minimally have also been shown to effect supervised release sentencing outcomes. Before beginning the discussion of the results of extralegal factors, it is important to reference and address the sentencing guidelines and the policy statements contained therein relative to offender characteristics. This is because the guidelines provide specific guidance for the consideration or relevance of these characteristics for child pornography offenders. For instance, Section 5K2.22 (Specific Offender Characteristics as Grounds for Downward Departure in Child Crimes and Sexual Offenses) provides a policy statement for specific offender characteristics that, while not ordinarily relevant, may be considered for a downward departure for child pornography offenders under the appropriate mitigating circumstances. Section 5K2.22 of the guidelines is recreated here and specifically states:

In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 110, 117 of tile 18, United States Code:

(1) Age may be a reason to depart downward only if and to the extent permitted by Section 5H1.1.
(2) An extraordinary physical impairment may be a reason to depart downward only if and to the extent permitted in Section 5H1.4.
(3) Drug, alcohol, or gambling dependence or abuse is not a reason to depart.

For a court to use either age or physical impairment as a basis for a departure, the guidelines require the following criteria be met: (1) affirmatively and specifically identified; and (2) the mitigating circumstances forming the basis for the departure must be of a kind or degree, not adequately taken into consideration by the USSC.

As a precursor to Section 5K2.22, Section 5K2.0 notes that the standard for a departure for a child pornography offender differs from the standard for other departures in that it includes a requirement that any mitigating circumstance that forms the basis for such a departure be affirmatively and specifically identified as a ground for a departure in Chapter 5, Part K. Age and physical impairment are the only offender characteristics that have been affirmatively identified as a ground for departure in Chapter 5, Part K.

Notwithstanding the guidance in 5K2.22, the Protect Act of 2003 further constrains judicial discretion by specifying that judges are not to depart based on family or community ties. In spite of Section 5K2.22 and the statutory prohibition of consideration of family or community ties, this dissertation identified several extralegal factors including citizenship, race, education, and family ties (dependents) that effect supervised release sentencing outcomes and are discussed next.

Citizenship.

The findings indicate that U.S. citizenship is significantly related to supervised release length and the likelihood of being sentenced to a higher supervised release category. While most prior research on citizenship find that non-citizens are punished more harshly, it makes intuitive sense for non-citizen child pornography offenders to receive more leniently supervised release sentences. Generally, non-citizen offenders are deported after service of the sentence of imprisonment. After deportation of the offender, the supervised release term is active, but the offender is not being supervised.[81] Instead, the case is assigned to a specialized caseload where it is monitored for any violations of the conditions of supervised release (i.e., illegal reentry into

[81] Upon service of the sentence of imprisonment, deportable aliens are deported and the term of supervised release begins and is active. The supervised release term is active in the event that the deported alien returns illegally into the U.S. The active supervised release sentence allows the U.S. Probation Office to issue a supervised release warrant in the event the offender returns to the U.S.

the U.S.) until the term of supervised release expires. Therefore, it would be counterproductive and not a good use of probation office resources to sentence non-citizen offenders to lengthy periods of supervised release given these factors.

Application Note 5 of Section 5D1.1 in the federal guidelines manual indicate that in the case of a deportable alien, if a term of supervised release is not required by statute, then the Court should not ordinarily impose a term of supervised release (2012 Federal Sentencing Guidelines Manual). It is plausible that judges may extend this reasoning to non-citizens convicted of child pornography. The only difference is that in the case of child pornography offenders, judges are mandated by statute to issue a supervised release term. It follows then, that judges impose more lenient supervised release sentences because ordinarily they would not have to impose a supervised release term on a non-citizen, but must because of statute.

Again, these findings appear to support the focal concerns perspective – practical constraints and consequences. This concern refers to the impact that sentencing decisions have on the functioning of the criminal justice system as well as the individual defendants and their families and communities. Organizational concerns include efficiency, flow of cases, overcrowding of correctional organizations and maintaining positive working relationships among courtroom actors (Steffensmeier et al., 1998). Accordingly, judges may be considering the resources of the U.S. Probation Office and the possible misuse of resources to monitor these cases for any extended period of time.

Race.

According to Section 5H1.10 of the federal sentencing guidelines, race along with sex, national origin, religion, and socioeconomic status are not relevant in determination of the sentence. In fact, these considerations are expressly prohibited. The findings indicate that white

child pornography offenders receive supervised release sentences that are 8.2% shorter than non-whites and non-whites 1.3 times more likely to be sentenced to the higher supervised release category than whites. This finding, which is consistent with research on race and sentencing that finds non-whites are sentenced more harshly (Albonetti, 1997; Doerner & Demuth, 2010; Everett & Wojtkiewicz, 2002; Mustard, 2001), is somewhat unexpected because non-whites make up a relatively small percentage of those convicted of child pornography offenses. Indeed, the average child pornography offender is a white male.

One explanation for this finding could be the general criminal stereotypes of non-whites as more dangerous and culpable (Barkan & Cohn, 2005; Beim & Fine, 2007). More specifically and in accordance with the Albonetti's (1991) uncertainty avoidance/causal attribution and the focal concerns perspective, judges' assessments of dangerousness and protection of the community from child pornography offenders may be influenced by racial stereotypes. Both these perspectives predict that some judges perceive non-whites as particularly dangerous and lacking much potential for rehabilitation compared to other offenders. Stated differently, non-white child pornography offenders may appear more dangerous, more crime prone, and more likely to recidivate based on negative stereotypes attached to non-whites. Judges may be using race as a proxy for culpability and recidivism.

Nonetheless, my findings contradicts work by Kaiser and Spohn (2014), the only published federal study that specifically examines the offense of child pornography. Their study found that race was not significantly related to the likelihood that a person convicted of a child pornography charge receives a downward departure. Likewise, my finding on race is also contradictory with research by Patrick and Marsh (2011) who found that race does not affect the sentencing outcomes of convicted child sex offenders (not specifically child pornography

offenders). The differences in race findings between the current dissertation and work by Kaiser and Spohn (2014) and Patrick and Marsh (2011) could be a function of the difference in the outcome variable. Nonetheless, race is a prohibited consideration in determining the sentence. This finding that race matters in supervised release sentences appears to be an unwarranted sentencing disparity.

Education.

The results of this dissertation provide evidence that educational attainment (i.e., college graduate) or lack thereof (i.e., less than high school education), has a direct, though limited effect on supervised release sentence length. Specifically, offenders with less than a high school education received a 13.6% increase in months of supervised release, controlling for all other variables in the model. Surprisingly, those offenders with a college degree in comparison to those without a high school diploma face an 11.2% increase in months of supervised release. According to the federal sentencing guidelines, educational and vocational skills are not ordinarily relevant in determining whether a departure from the guidelines is warranted. However, the guidelines add that education and vocational skills might be relevant in determining the conditions of probation or supervised release for rehabilitative purposes or public protection by restricting activities that allow for the utilization of a certain skill, or in determining the appropriate type of community service (2012 USSC Guidelines Manual). My hypothesis that those with less education would be subject to longer supervised release terms was supported by the analyses. This finding was also consistent with some of the extant sentencing literature that finds offenders who are poorly educated are sanctioned more harshly (Clarke & Koch, 1976; Kruttschnitt, 1980/1981; Mustard, 2001). Perhaps judges view poorly educated

child pornography offenders as more culpable, more likely to recidivate and less amenable to rehabilitation.

However, contrary to my hypothesis and unlike previous research that finds offenders with college degrees receive shorter sentences (Albonetti, 1997), I find that a college education is not a buffer or protective factor for leniency. This finding is also unexpected as several studies find offenders who have completed a higher level of education are less likely to recidivate once they return to the community (Huebner, DeJong & Cobbina, 2010; Bellair & Kowalski, 2011).

This unexpected finding may have to do with the nature of this offense and its tie to educated offenders. The average federal offender has less than a high school education. But as shown in the descriptive statistics of this dissertation, only 9.2% of child pornography offenders had less than a high school education and 17.9% were college graduates. It may follow then that persons holding a college degree may be more likely to hold positions of public trust (i.e., teacher, physician). Thus, child pornography offenders who hold positions of public trust may be deemed more culpable, perhaps due to a sentiment of betrayal or broken trust. This is because public trust positions are characterized by professional or managerial discretion and such persons ordinarily are subject to less supervision than those whose responsibilities are non-discretionary in nature (2012 USSC Guidelines Manual). Per the policy statement in the guidelines manual, "such persons generally are viewed as more culpable." (p.345). So, it seems offenders with higher levels of education are viewed as risky since they possess skills and aptitude to conceal their crimes.[82] This notion too, is consistent with focal concerns, but in the opposite direction of

[82] My semi-formal interview conducted with an active U.S. District judge for the Eastern District of Missouri supported this notion. The judge advised he views many child pornography offenders like "white collar" offenders in terms of sophistication and cleverness. He added that due to the level of sophistication required of this crime (i.e., computer use), those with college degrees are less sympathetic.

my hypothesis. It seems court actors are concerned with potential dangerousness of educated offenders because they may be stereotyped as calculating or sophisticated. I surmise that in addition to factors typically linked to perceptions of dangerousness such as race, ethnicity, age, gender, and detention status, educational status may also be linked to dangerousness.

A different pattern emerged for the decision to impose lifetime supervised release and the four-category ordinal measure of the supervised release sentence. In these models, education has no influence on the decision to impose life or the likelihood of being sentenced to a higher supervised release category.[83] Since my education finding was not robust across all derivations of the dependent variable, this may need to be replicated. My finding for the relationship between education and length of supervised release conflicts with work by Kaiser and Spohn (2014), who find that education was not related to the likelihood of downward departures. My findings also contradict with research on sentencing outcomes of convicted child sex offenders by Patrick and Marsh (2011), who found a null effect for education.

Family Ties (Dependents).

Pursuant to Section 5H1.6 (Family Ties and Responsibility) in the federal sentencing guidelines, in sentencing an offender convicted of an offense involving a minor victim, family ties are not relevant in determining whether a sentence should be below the applicable guideline range (2012 USSC Guidelines Manual). In addition, the Protect Act of 2003 prohibits the consideration of family ties for child pornography offenders. Despite these explicit statements in the guidelines and the Protect Act of 2003, family ties appear to permeate judicial decision-making. Specifically, I found that those offenders with dependents received supervised release

[83] Having a college degree was a significant predictor at alpha level p=.09 level. Offenders with college degrees were just over one time more likely (OR=1.29) than high school graduates to be sentenced to a higher supervised release category.

terms that were 6.6% shorter than those without dependents. Likewise, I found that offenders without children are 1.25 times more likely to be sentenced to a higher supervised release category.

Indeed, family ties appears to have an insulating effect for sentence severity. For example, in Hamilton's (2011) review of judges' consideration of family ties before they imposed below guideline sentences, she quoted one judge as saying: "From my experience, most of these men have no prior criminal history. They usually have healthy family lives and productive careers" (p.561-562). She quoted another judge who stated: "Aside from this offense, the defendant has led a law-abiding life, and with his wife, who has stood by his side throughout, he raised a good family and has been a mainstay in his community" (p.562). The line of reasoning displayed in these two examples appear to align with the focal concerns notion of practical constraints and consequences, which is based on the idea that judges consider how sentencing decisions impact the functioning of the criminal justice system as well as the individual offender and their families and communities. Judges may be concerned that a lengthier term of supervised release may interfere with family ties and may blemish or intrude upon the offender's family life. Indeed, long-term or lifelong supervised release may have collateral consequences for families – that is, a family may suffer embarrassment from having a probation officer in the home twice monthly. This in turn, could lead to emotional costs, such that the family cannot move forward. In short, perhaps judges are concerned with the collateral consequences to the family and consider shorter supervised release terms as less traumatic or intrusive.

On the other hand, judges may also consider the focal concern of blameworthiness when considering family ties. Blameworthiness refers to the culpability of the offender. If we

consider blameworthiness in view of the results, perhaps judges believe that offenders with dependents are less dangerous or are more likely to be deterred. In other words, judges may find that family ties serve as informal social control to mitigate future risk of the offender. Likewise, those without dependents may be perceived as riskier (i.e., sitting at home alone and tempted to view child pornography) in that they lack a built-in mechanism of informal social control. Ulmer et al. (2010) echoed this sentiment indicating dependents might reduce defendants' perceived threat. Regardless, family ties are expressly prohibited for child pornography offenders by statute (see Table 2.1 – Protect Act of 2003) and the guidelines. The fact that family ties matters in supervised release sentences of child pornography offenders appears to be an unwarranted sentencing disparity.

Age.

Unlike the previous extralegal variables discussed thus far, age was not a significant predictor for supervised release length or the four-category measure of supervised release, but it was for the decision to impose lifetime supervised release. It is possible that this finding represents noise in the data since it was not observed with all specification of the dependent variable. In addition, the results are contradictory to findings in recent sentencing literature, which finds that those offenders who are younger are more likely than those who are older to be punished more harshly. One might suggest that the effect of age may be influenced by the criminal history of the older offender being greater than that of a younger offender (the older offender having had more time to offend than a younger offender). While this seems plausible, I suspect that criminal history has little to no bearing on the effect of age.[84] Instead, I surmise that it is based on the focal concerns notion of protection of the community. Protection of the

[84] The effect of age remained significant using the alternate measure of criminal history (criminal history points) provided in the dataset.

community draws on similar attributions as blameworthiness but is distinct in that it focuses on the need to incapacitate or control the offender or to deter would-be offenders (Steffensmeier et al., 1998). This also includes assessments about dangerousness or recidivism. Predictions about dangerousness and risk of recidivism are based on attributions predicated on the nature of the offense, case information, criminal history, and demographic characteristics of the offender such as employment, education, age or family history (Steffensmeier et al., 1998). For example, Kimball (2011) reviewed a sentencing opinion where the judge cited the defendant's youthful age and immaturity as reason for a downward variance [see *U.S. v Polito* (2007)]. This justification for a downward variance based on youthfulness suggests that younger offenders may be perceived as "getting caught up" in child pornography based on their immaturity or that their entanglement may have more innocent origins.[85] It has also been suggested that those who are youthful or young, do not understand the magnitude of the crime they committed. In other words, younger offenders fail to appreciate the harm that viewing child pornography inflicts upon the victims. Indeed, in *U.S. v Polito*, the court in justifying a below guideline sentence said Polito "was only 18" at the time of the offense.

The flip side of this argument may be the perception that older and mature offenders "know better." That is, someone age sixty may be less likely to be perceived as accidently "getting caught up" and their entanglement in child pornography may have less than innocent origins. In other words, "ignorance of the law" may be a tougher argument to believe for older offenders.

[85] A news article highlighted nineteen year old Neil Geckle who was charged with child pornography offenses after he downloaded photos of high school girls he "friended" from Facebook then took pictures of his penis next to the photos. He then uploaded the defiled photos to the victims' Facebook pages. When confronted with the charges the nineteen year old pleaded ignorance, telling police he "didn't think it was a big deal." (Moraff, 2012).

The notion that older age may be viewed as a greater threat may also be due to the age discrepancy between older offenders and the depicted minors. According to the USSC Sourcebook 2010, virtually all child pornography offenders (96.3%) possessed images of minors who were prepubescent or under the age of twelve. The idea of an offender over age 50 receiving sexual gratification from images depicting the sexual assault of children under the age of twelve including infants and toddlers, may be unsettling for judges. Another possible rationale for this finding is that the average age of child pornography offenders sentenced in fiscal year 2012 was age 41.41. If judges on average are seeing this age offender in the court room, then it may play in their focal concerns that older child pornography offenders may be at more risk to re-offend.

Fine.

Of all the extralegal factors included in this dissertation, fine was the only variable that was not statistically significant in predicting supervised release length, the decision to impose lifetime supervised release, and/or the four-category ordinal measure of supervised release. It is possible that there was no effect because this variable is not a good indicator of socioeconomic status. Better measures of socioeconomic status include income or employment status. Information for both these factors are included in the presentence reports. However, the USSC does not collect data on these measures so there is no way to examine this with these data without access to the presentence reports.

Non-production vs. Production

One of the inquiries of this dissertation was whether the effects of individual-level legal and extralegal factors differed by offense type. As mentioned in Chapter Four, I had to use

offense severity score as my indicator of offense type due to the high correlation between offense type and offense severity. Data analysis revealed that none of the effects of legal and extralegal factors differed by offense seriousness. But descriptive statistics do show that production offenses, which by statute are more serious than non-production cases, on average receive harsher supervised release sentences, 332.79 months compared to 229 months for non-producers, a difference of 103.79 months or 8.53 years. Likewise, a low end of 36 months supervised release was imposed for producers compared to 12 months for non-producers. More than half (57.4%) of the sample was sentenced to the most severe term (life) in contrast to 29.7% of non-producers who were sentenced to the most severe term. These statistics seems to support what legal scholars have argued, that judges consider producers more culpable than non-producers.

District-level Effects

When legal, extralegal factors, and district-level contextual factors are added to the supervised release length model, these factors explain 18.8% of district-level variation. Many of the theoretically relevant district-level factors did not have a discernable direct effect on supervised release sentence length, decision to impose lifetime supervised release, or the four-category ordinal measure of supervised release in my full hierarchical models. According to Wu and D'Angelo (2014), this is not unusual. They point out that few multilevel federal sentencing studies find significant contextual factors or contextual effects that are strong in magnitude [see for example, Johnson, Ulmer, & Kramer (2008) and Feldmeyer and Ulmer (2011)]. Even in their own study, Wu and D'Angelo (2014) did not find any of their district-level contextual variables to be significant.

Notwithstanding the above, I did find two district-level contextual factors that were significantly related to supervised release sentence length, the decision to impose lifetime

supervised release and the four-category ordinal measure of supervised release – region (west) and mandatory minimum state-level penalty for the charge of possession of child pornography. I begin my discussion of these variables first, followed by a discussion of the null district-level findings.

Region.

Results indicate that supervised release length varies across regions and more specifically, cases sentenced in the West versus the East received longer sentences (using a continuous and ordinal outcome) and were more likely to be sentenced to lifetime supervised release. This finding that region influences sentencing outcomes is consistent with prior research; however, most work finds harsher sentences in the southern region of the country (Chiricos and Crawford, 1995). Out of the seventeen district courts situated in the West, seven districts sentenced greater than 50% of cases to lifetime supervised release.[86] It is possible that districts like Arizona and Nevada are driving these numbers: Arizona has the one of the highest child pornography caseloads in the federal system (DSS Report, Administrative Office of the U.S. Courts, 2014). Arizona sentenced 81.3% of its cases to lifetime supervised release (see Table 5.9). When Arizona's child pornography cases are delineated by offense type (see Tables 5.14 and 5.19), 80% of non-production cases are sentenced to lifetime supervised release and 100% of production cases are sentenced to lifetime supervised release. These figures seem to suggest the sentence of lifetime supervised release is a "norm" or "going rate" in Arizona. Similarly, the District of Nevada sentenced 75% of its cases to lifetime supervised (see Table 5.9). Supervised release sentences in Nevada delineated by offense type mimicked Arizona, with 74.5% of non-

[86] The seventeen western districts include: Washington East, Washington West, Idaho, Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Oregon, California Central, California East, California North, California South, Alaska, and Hawaii. The seven districts that sentenced over 50% of cases to lifetime supervised release include: Arizona, California Central, Nevada, Oregon, Washington East, Washington West, Colorado.

production cases sentenced to lifetime supervised release and 100% of production cases sentenced to lifetime supervised release.

In contrast, out of fourteen district courts situated in the East, three districts did not sentence any of its cases to lifetime supervised release.[87] In fact, only one district in the East (New Hampshire) sentenced more than 50% of its cases to lifetime supervised release. These figures suggest sentences other than lifetime supervised release are the norms in the East. The only obvious difference between district courts situated in the East and district courts situated in the West is that eastern districts comprise the 1st, 2nd, and 3rd circuits, while the western districts comprise the 9th and 10th circuits. Notwithstanding the difference in circuits, both the eastern and western districts were situated in circuits that allow policy disagreements for non-production offenses based upon the legal argument in *Kimbrough*.

Looking beyond the data for an explanation, another possibility for regional differences between western and eastern districts may be the surrounding social environment with respect to funding and investigations of child exploitation offenses. For example, each district court is located within a state that has an Internet Crimes Against Children (ICAC) task force (see Table 6.1). ICAC is tasked primarily with the investigation of child pornography offenses (U.S. Department of Justice, April 2016 Report to Congress). As shown in Table 6.1, the amount of funding for each ICAC task force varies across the states. In examining Table 6.1, in fiscal year 2012, western states received in excess of 5.1 million dollars in funding, in contrast to eastern states that received approximately 2.1 million dollars. It may be possible that judges in western districts are influenced by the amount of funding committed to the child exploitation crimes. In

[87] The three districts that did not sentence any cases to lifetime supervised release include Maine, Massachusetts, and New York South.

other words, the court communities perspective which views courts as distinctive *social worlds* says that outlying conditions such as the current example, may influence courts and that these factors may exert differential influence (Ulmer, 1997).

Table 6.1 about here

Similarly, recent prioritization by the U.S. Department of Justice of child exploitation in Indian reservations (U.S. Department of Justice, April 2016 Report to Congress) may also be a reason for longer sentences in the West. Specifically, in 2010, the U.S. Department of Justice created the Indian Country Initiative, declaring the investigation and prosecution of child exploitation in Indian reservations a top priority. A map of Indian territories shows Western districts having greater number of Indian territories than those in the East (see Figure 6.1). Drawing again from the court communities perspective, perhaps judges in Western districts are influenced by the surrounding prioritization of child sex exploitation offenses, such that it permeates their sentencing decisions and results in longer sentences.

Figure 6.1 about here

Mandatory Minimum State-Level Penalty.

Mandatory minimum state-level penalty for possession of child pornography was also a significant district-level predictor of supervised release sentences of child pornography offenders. It appears district courts may be cognizant of state court sentencing practices, particularly in the state in which the district court is located. According to Lopez, Allenbaugh, and Ellis (2012), district courts are not precluded from considering state sentencing practices [see *U.S. v. Ringgold*, (2009)]. Thus, it seems plausible that a district court may be aware of the state penalties for child pornography and may be influenced by any mandatory minimum penalties for

possession of child pornography as it may speak to how serious this crime is considered in the state legislature. Indeed, the court communities and social worlds perspectives says that outlying conditions may influence courts such as state penalties for the same type of crime and that these factors may exert differential influence (Nardulli, Eisentein, & Fleming, 1988; Ulmer, 1997).

Null District-level Findings

Like other multilevel sentencing studies, many of my district-level contextual factors failed to be statistically significant in predicting supervised release sentences of child pornography offenders. In this section, I try to explain why this may be the case and start with guidelines compliance rate. Contrary to the statistical significance of guideline compliance rates found by Kautt (2002), this district-level factor did not influence supervised release sentencing outcomes. This may be because the supervised release sentence is less likely to be impacted by the federal guidelines because there are no enhancements or adjustments upward or downward for the supervised release sentence other than the policy recommendation for lifetime supervised release. Because of this, perhaps judges are less likely to consider them. Or perhaps as legal scholars have pointed out, some judges believe the child pornography guidelines in and of themselves are too harsh and/or congressionally manipulated and not subject to deference.

Political context also has no influence on supervised release sentencing outcomes, which is consistent with many multilevel studies (Fearn 2005; Johnson 2005; Ulmer and Johnson 2004; Weidner, Frase, and Schultz 2005). It was hypothesized that districts situated within a state characterized as Republican based on the percent of people that voted Republican in the 2012 presidential election would be more punitive and more likely to sentence more severely. While empirical findings on the link between punishment and political context have been mixed, my

work falls alongside other researchers who found no effect for political context and sentencing outcomes. Ulmer and Johnson (2004) argue the null findings regarding the direct effect of percent Republican could indicate that a district's political context has very little to do with sentencing, once you control for other significant sentencing predictors. Indeed, it is possible that district judges, who are appointed for life pursuant to Article III of the Constitution do not feel pressure from political influences. In addition, percent Republican may be too crude a measure to capture political influence or it could be a lack of a real difference between Republicans and Democrats regarding their stance on criminal justice issues, particularly sex offenses (Ulmer and Johnson, 2004).

In similar fashion, child pornography caseload rate did not have an effect on supervised release sentencing outcomes. Initially, I hypothesized that districts with larger child pornography caseloads would sentence more severely based upon the social/group threat perspective. According to the social/group threat perspective, as a subordinate group increases in size, the dominant group will feel threatened and, in turn, use methods of social control to maintain their superior status. The child pornography caseload rate, however, was not related to supervised release outcomes, suggesting that judges do not feel threatened by increasing child pornography populations.

Finally, the *Kimbrough*-based policy disagreement did not influence supervised release sentence length above and beyond the effects of legal and extralegal factors. Recall from *Kimbrough* that the issue before the Supreme Court was whether a sentencing judge's policy disagreement with the crack cocaine guidelines was permissible to impose a below-guideline sentence. The Supreme Court upheld a district court's decision to sentence below the guideline range for crack cocaine offenses based upon a policy disagreement with the crack cocaine

guideline. Legal scholars argue that an increasing number of courts rely on *Kimbrough* when sentencing child pornography offenders below the recommended guideline range (Basbaum, 2010; Hamilton, 2014). Based upon the apparent disconnect between the Congressional policy for lifetime supervised release and the actual sentences imposed, I hypothesized that if some districts apply the rationale in *Kimbrough* to categorically reject child pornography guidelines because of a policy disagreement that they may also apply *Kimbrough* to reject the policy for lifetime supervised release. But the data did not support this finding using the *Kimbrough* decision as a predictor of supervised release. Perhaps the application of the rationale in *Kimbrough* does not carry over to the sentence of supervised release.

As just described, many of my district-level contextual measures did not impact the supervised release sentence. This could be attributed to the difference in outcome measures – supervised release as opposed to the sentence of imprisonment. But a more plausible possibility may be an omitted district-level factor(s). Additional theorizing leads me to hypothesize that "*local court rules"* discussed earlier in this chapter, may be the missing district-level variable. As alluded earlier, differences of local rules and practices by district courts may include the presentence report. While the basic structure of a presentence report is the same across districts [see Appendix B], emphasis on and/or the inclusion or exclusion of information may differ by district courts.[88] For example, in the Eastern District of Missouri, Part B of the presentence report only includes information for juvenile and adult *convictions*. In contrast, in the Southern District of Illinois, Part B of the presentence report not only includes juvenile and adult convictions, but *all arrests*. Likewise, presentence reports in the Eastern District of Missouri

[88] The basic structure of a federal presentence report includes the following parts: Part A – Charges, Stipulation of Facts and Offense Conduct; Part B – Criminal History; Part C – Offender History and Characteristics; and Part D – Sentencing Options.

provide additional information relative to the employment section of the presentence report that other districts do not. For example, in the Eastern District of Missouri in addition to the standard chronological employment history, the Eastern District of Missouri also provides information on employment barriers, outcomes of employment assessments, and information of the offender's preferred career.

In essence, more or less information available to the court at sentencing by way of local court rules and practices could very well influence sentencing variation from one district to the next and ultimately impact the supervised release sentence imposed. Local rules appear indicative of the court communities perspective in that local rules reflect the culture, attitudes, values, traditions, and case processing procedures of a particular district court. The difficulty is determining how to measure local court rules to test empirically. One way this could be done is by a review of sample child pornography presentence reports from each district to determine the extent to which the presentence report deviates in information from the standard/basic structure of a presentence report as outlined by the AO. This could be done by counting up the number of ways the district presentence report deviates from the standard report. For example, if a district includes all arrests in the criminal history and includes a sentencing justification section, this would be equivalent to two deviations from the standard structure of a presentence report. I would hypothesize that more deviations from the standard/base presentence report yields greater sentencing variations.

In summary, the many null district-level contextual findings reinforce the need to study and fully consider district-level contextual factors that may be theoretically related to district-level supervised release outcomes. This is important because ICC notes that 27% of the variability of supervised release sentences is at the district-level.

Moral Panic and Supervised Release Sentences

Before closing this discussion chapter, it is important to revisit the notion of moral panic in the context of my findings. Recall from Chapter Two that legal scholarship has interpreted sex offender laws as the manifestation of moral panic (Adler, 2001; Basbaum, 2010; Hamilton, 2011). Few if any, would argue against the policy for lifetime supervised release as a representation of the most severe manifestation of moral panic of child pornography offenders. An implied question woven throughout this dissertation is whether judicial officers respond to this panic by executing lifetime supervised release sentencing for all child pornography offenders. While many courts are sentencing a majority of their cases to lifetime supervised release, there is no evidence in this dissertation to suggest that judges are responding to moral panic in their decision-making. On the contrary, the fact that only 33% of all child pornography offenders were sentenced to lifetime supervised release in fiscal year 2012 suggest that judges are insulated from moral panic. As an illustration, 57% of production cases, which by statutory definition are more serious, received lifetime supervised release. So, if not moral panic, what are judges responding to?

The answer to the preceding question is not easily answered, but one possibility is the purported disagreement of some judges with the child pornography guidelines. Some judges may believe the policy for lifetime supervision is a by-product of congressional manipulation and perhaps too severe for some offenders (Basbaum, 2010; Rogers, 2013). Therefore, they may be unwilling to abide by Congress' directive. Another possibility is that judges have educated themselves on child pornography recidivism research. Current recidivism research generally finds that the rate of sexual recidivism for child pornography offenders is lower than commonly assumed. Because of this, judges may not think lifetime supervised release is necessarily

warranted in every case. This is not to say that judges are necessarily sympathetic to child pornography offenders. On the contrary, evidence from this dissertation shows average supervised release sentences of approximately 242 months, an average term more than fifteen years above the mandatory minimum of 5 years. These longer average sentences imply that judges are likely considering risk and public protection.

A more likely scenario though, is proportionality in sentencing. According to Hamilton (2011), the culpability continuum for child pornography offenses portrays possessors as least culpable, followed by distributors and then producers. Hamilton (2011) goes on to add that many judges place offenders before them on this continuum and sentence accordingly. Findings from this dissertation corroborate this statement. Specifically, average supervised release sentences for non-production offenses (possession, receipt, transportation and distribution) were almost eight years less than for production offenses.[89]

Summary

This dissertation explored several theoretical hypotheses regarding the influence of legal, extralegal, and district-level contextual factors on supervised release sentences. Overall, the findings demonstrate that sentence length varies significantly across courts and supervised release decision-making process is jointly influenced by individual-level legal and extralegal factors as well as district-level contextual factors. Findings show that legal factors are the strongest predictors of criminal sentencing. Results from this study also suggest the wide discretion "built into" the statute, coupled with the advisory nature of the guidelines appears to

[89] This was confirmed by a judge in Eastern Missouri. The judge indicated that he does in fact distinguish amongst offense types, finding producers more culpable than non-producers. He added that because producers are more culpable, they thus deserve longer supervised release terms than their counterparts.

have opened the door, ever so slightly to extralegal considerations. Indeed, race and family ties, both of which are expressly irrelevant are significant predictors of supervised release outcomes, suggesting unwarranted disparities. Age, citizenship, and education while not ordinarily relevant, are also significant extralegal predictors of either supervised release length, the decision to impose lifetime supervised release, and/or the four-category measure of supervised release. This demonstrates that the sentence of supervised release is not immune to sentencing disparities.

Turning to district-level contextual factors, some district-level variation was explained by two of my district-level factors when the full model was specified. These include region and district courts situated within states with mandatory minimum penalties for possession of child pornography. Presumably, there is much more involved in district-level jurisdictional differences than these two variables. As I noted, other contextual factors such as local court rules may be at work.

The final chapter is presented next wherein I discuss implications, limitations of my study, and avenues for future research.

Table 6.1

ICAC TASK FORCE FUNDING AMOUNTS

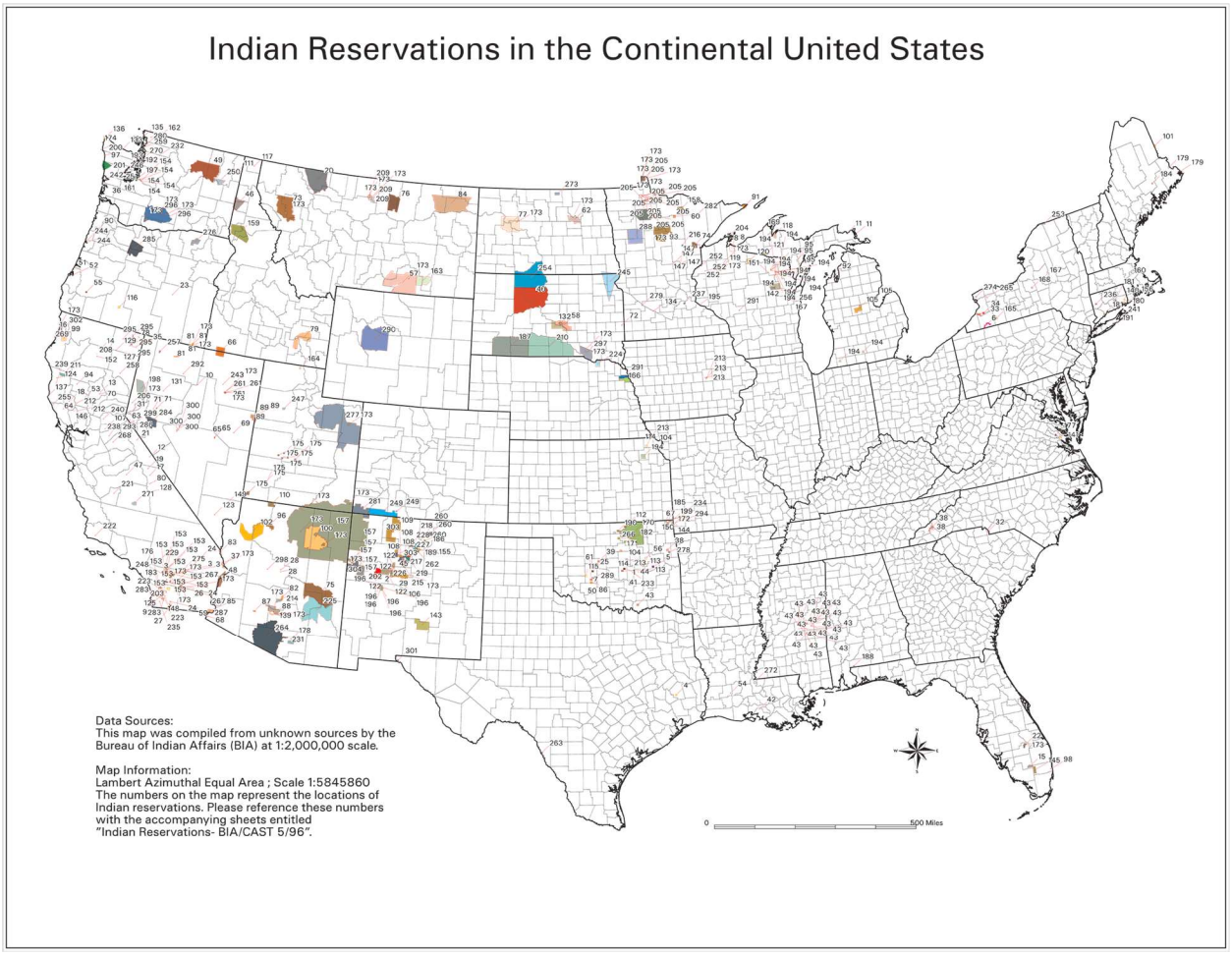
State	Task Force Agency	Fiscal Years 2010	2011	2012	2013
AK	Anchorage Police Department	219,103	222,663	227,522	241,641
AL	Alabama Department of Public Safety	295,777	317,848	310,090	327,407
AL	Alabama Law Enforcement Agency				
AR	Arkansas State Police	292,419	297,127	305,086	339,477
AZ	Phoenix Police Department	357,900	362,527	350,122	392,207
CA	Fresno County Sheriff's Office	268,353	293,890	296,329	312,159
CA	Los Angeles Police Department	575,051	622,829	582,812	614,561
CA	Sacramento County Sheriff's Office	315,925	340,511	326,979	347,736
CA	San Diego Police Department	320,403	354,109	356,378	368,066
CA	San Jose Police Department	355,102	392,960	360,756	399,655
CO	Colorado Springs Police Department	317,604	328,856	345,744	371,877
CT	Connecticut State Police	268,353	278,997	274,436	301,359
DE	Delaware Department of Justice	214,625	224,606	221,893	241,006
FL	Broward County Sheriff's Office	379,168	391,665	388,279	414,442
FL	Gainesville Police Department	318,164	330,799	357,751	353,454
FL	Polk County Sheriff's Office	380,287	393,608	366,386	412,537
GA	Georgia Bureau of Investigation	409,390	447,352	450,830	476,066
HI	Hawaii Department of Attorney General	223,580	233,023	238,156	256,253
IA	Iowa Division of Criminal Investigation	279,547	284,177	299,456	330,583
ID	Idaho Office of Attorney General	226,378	233,671	235,654	254,983
IL	Cook County State's Attorney's Office	296,897	319,143	311,341	343,924
IL	Illinois Office of Attorney General	388,682	386,485	378,896	414,442
IN	Indiana State Police	341,670	359,289	369,513	410,631
KS	Sedgwick County Sheriff's Office	255,481	271,874	273,810	298,183
KY	Kentucky State Police	305,292	317,848	325,102	362,348
LA	Louisiana Department of Justice	292,979	310,078	333,859	360,442
MA	Massachusetts State Police	341,670	362,527	353,875	390,936
MD	Maryland State Police	301,374	318,496	302,584	342,654
ME	Maine State Police	231,415	233,023	227,522	246,724
MI	Michigan State Police	459,200	494,621	471,471	482,419
MN	Minnesota Department of Public Safety	320,000	326,913	320,098	347,101
MO	Glendale Police Department	332,715			
MO	St. Charles County Sherrif's Department		335,000	372,015	404,913
MS	Mississippi Office of Attorney General	247,646	267,989	278,814	296,277
MT	Billings Police Department	220,782	255,253	230,650	256,253
NC	North Carolina State Bureau of Investigation	388,682	403,968	405,793	447,478
NC	North Carolina Department of Public Safety				
ND	North Dakota Bureau of Criminal Investigation	204,551	216,188	241,909	247,359

Table 6.1 continued

ICAC TASK FORCE FUNDING AMOUNTS

State	Task Force Agency	Fiscal Years 2010	2011	2012	2013
NE	Nebraska State Patrol	244,288	249,858	250,041	276,583
NH	Portsmouth Police Department	226,938	234,318	237,531	256,253
NJ	New Jersey State Police	379,727	396,197	382,649	425,242
NM	New Mexico Attorney General's Office	256,041	254,391	272,559	298,183
NV	Las Vegas Metropolitan Police Department	261,078	273,817	276,938	312,795
NY	New York State Police	431,217	458,360	435,817	494,490
NY	New York City Police Department	371,332	381,305	363,884	422,066
OH	Cuyahoga County Prosecutor's Office	446,887	477,138	477,101	508,467
OK	Oklahoma State Bureau of Investigation	286,823	293,243	296,329	314,065
OR	Oregon Department of Justice	301,374	319,190	312,592	349,577
PA	Delaware County District Attorney's Office	450,805	466,130	587,718	645,761
RI	Rhode Island State Police	216,304	224,606	233,152	247,359
SC	South Carolina Attorney General's Office	305,851	315,258	318,847	339,477
SD	South Dakota Division of Criminal Investigation	215,185	218,130	219,391	239,100
TN	Knoxville Police Department	341,670	361,879	364,509	402,372
TX	Pasadena Independent School District Police Dept.	364,616	405,911		
TX	Houston Metro Police Department			349,719	394,113
TX	Dallas Police Department	390,921	433,106	427,686	477,337
TX	Office of Attorney General of Texas	351,184	387,780	428,311	491,313
UT	Utah Office of Attorney General	263,316	271,874	303,209	328,677
VA	Bedford County Sheriff's Office	305,292	325,618	333,859	350,913
VA	Virginia State Police	277,868	296,480	290,699	317,242
VT	Burlington Police Department	214,061	222,016	224,395	242,912
VT	Vermont Office of Attorney General				
WA	Seattle Police Department	355,662	384,543	375,143	429,690
WI	Wisconsin Department of Justice	342,230	373,535	355,752	383,313
WV	West Virginia State Police	238,691	251,154	275,687	386,747
WY	Wyoming Division of Criminal Investigation	212,387	222,016	234,291	258,159

Source: U.S. Department of Justice, April 2016 Report to Congress.



Source: U.S. Department of Justice, April 2016 Report to Congress

Figure 6.1 Indian Reservations

CHAPTER SEVEN: IMPLICATIONS, LIMITATIONS, FUTURE RSEARCH, AND CONCLUSIONS

This dissertation adds to the body of federal sentencing research by focusing on a sentencing outcome not previously studied, coupled with an offense type that is arguably one of the most serious in the federal criminal justice system. This dissertation discovered variation in supervised release sentences across district courts and sentencing disparities at both the individual and district levels. More importantly, the dissertation demonstrates that the supervised release sentencing schemata for child pornography offenses is as equally problematic as legal scholars have argued the guidelines are for the sentence of imprisonment.

This chapter closes the dissertation with a discussion of the implications for various stakeholders involved in federal sentencing including defense counsel, the U.S. Attorney's Office, the U.S. Probation Office, the USSC, Congress, child pornography offenders, and federal judges. I also include a discussion of the potential for evidenced-based sentencing in the federal judiciary. Afterwards, I highlight limitations of the dissertation, followed a brief discussion of avenues for future research as well as consideration for where the current study sits within the broader sentencing literature.

Implications

Defense counsel.

One of the primary objectives of defense counsel is to argue for the best possible sentences for their clients. Arguably, the best possible sentence is one that is at the low end of the guideline range (Etienne, 2004). In the case of child pornography offenders, the low end of the supervised release statutory range is the mandatory minimum of five years. It is in the interests of the offender for counsel to argue for the low end of the range considering the implications for longer sentences. The longer the sentence of supervised release, the longer the

offender is subject to formal social control and the restrictive conditions of supervised release. Moreover, there is also greater opportunity for revocation the longer an individual remains on supervised release. And revocations sentences carry their own implications (Shockley, 2010). For example, if a child pornography offender serving lifetime supervised release for possession of child pornography commits another possession of child pornography offense, they would face a revocation sentence of life. The revocation sentence would entail an even greater punishment than if the offender were prosecuted for committing a second offense for possession of child pornography, which carries a sentence of imprisonment of ten to twenty years.

In consideration of these implications, as well as the supervised release sentencing disparities revealed in this dissertation, we may begin to see defense counsel arguing at allocation for supervised release sentences at the low end of the range. Defense counsel may use findings from this dissertation to inform sentencing courts of the implications of a life term including life imprisonment if revoked. Defense counsel may also disclose to sentencing courts the sentencing disparities or differences in supervised release sentences by region, to sway the court in imposing the low end of the statute.

We may also begin to see more sentencing memorandums filed by defense counsel. A sentencing memorandum is akin to a defense counsel conducted presentence report, wherein the personal background and the social history of the defendant is presented in favor of the defendant (Weintraub, 1987). Through this memorandum, counsel may focus on extralegal offender characteristics shown in this dissertation that produce shorter sentences. For example, this dissertation found that offenders with dependents receive shorter sentences than those without children. Accordingly, we may see counsel highlighting family ties at sentencing. Likewise, this dissertation found that those with a college degree received longer sentences

compared to those with a high school diploma. As such, we could see defense counsel minimizing the education of those with college degrees.

Another implication we may see is defense counsel focusing on mitigating perceived risk of their defendants. For example, defense counsel may encourage offenders on pretrial bond supervision to begin the rehabilitation process, specifically directing them to engage in sex offender treatment. According to Weintraub (1987), if a client, at the early stage in a case, is referred to and successfully completes a treatment program, they will be in better standing when sentencing is imposed. This is because counsel can present evidence that the offender has responded well to treatment and is a low risk to re-offend. We may also see counsel calling witnesses such as sex therapists to testify at sentencing hearings to the likelihood of recidivism post-conviction.

U.S. Attorney's Office.

As shown in the results section of this dissertation, legal factors such as offense seriousness, detention, and criminal history are the strongest predictors of supervised release sentence length, the decision to impose lifetime supervised release, and the likelihood of being sentenced to a higher supervised release category. It follows then, that if one of the sentencing goals for defense counsel is the shortest possible supervised release sentence, then for U.S. Attorneys it is the longest possible sentence. With this being said, they may think twice about offenders pleading guilty to a lesser included offense, particularly if they desire a longer supervised release term. For example, given what we know from this dissertation, we may find that U.S. Attorneys are less inclined to allow offenders to plea to the lesser included offense of possession of child pornography, particularly if they have evidence to convict on more serious charges.

The only alternative to the scenario above is a push by U.S. Attorneys for "*real offense sentencing*" for the supervised release sentence. This term refers to the actual conduct in which the defendant engaged regardless of the charges for which he was indicted or convicted (2012 USSC, p.5). Real offense sentencing is synonymous to relevant conduct and would require the sentencing court to sentence on the basis of all identified conduct. In drug offenses, for example, a court following relevant conduct rules must aggregate all drugs trafficked by the defendant that were "part of the same course of conduct or common scheme or plan as the offense of conviction." This means, for example, that a defendant convicted of selling drugs to an undercover officer on one occasion is sentenced for the amount of drugs involved in all the drug trafficking known to the court. Even conduct for which the defendant had been acquitted could be considered, if a preponderance of the evidence established it. Thus, U.S. Attorneys can influence this process through the evidence they introduce as relevant conduct.

U.S. Probation.

U.S. Probation Offices play an integral role in the federal sentencing process via the preparation of the presentence reports and recommendations for sentencing. In as much as U.S. Probation Officers are recognized as guidelines specialists, sentencing courts rely upon their expertise in their application of the guidelines, sentencing options, and recommendations (Campbell, McCoy, and Osigweh, 1990). Astonishingly though, training on sentencing disparities is not a segment of the initial or continuing training of presentence writers. Sentencing disparities may be addressed at the annual USSC guidelines training or provided via USSC reports available online, but not all presentence writers attend this yearly training or review these reports.[90] As one of the key players in the federal sentencing process, U.S.

[90] Each year the USSC provides a seminar to U.S. Probation staff for training on sentencing matters including guideline applications, amendments, and case law, etc.

Probation Offices should be informed of sentencing disparities as sentencing court rely on their knowledge of guideline sentencing issues.

As far as the current study is concerned, whether the findings contained herein will influence presentence writers to consider supervised release sentencing disparities or informing the court of supervised release disparities remains to be seen. But it is the duty of the U.S. Probation Office to provide the sentencing court with all available information to consider when imposing sentencing. This should include issues of sentencing disparities.

In recognizing that this study is the first of its kind and has not yet been replicated empirically by the USSC or other scholars, the current state of child pornography supervised release sentencing remains status quo. However, should subsequent studies confirm the existence of supervised release sentencing disparities, it may be a best practice to modify the components of the standard presentence report to include a section informing the court of supervised release sentencing disparities. This way, U.S. Probation Offices will have done their due diligence in providing sentencing courts with all available information prior to the imposition of sentence.

In addition to the above, if U.S. Probation Offices are better informed about supervised release disparities, it may result in more specific justifications for supervised release sentences. As it stands now, the language for the justification of the supervised release sentence for child pornography offenders is general. For example, in a review of child pornography supervised release recommendations in Eastern Missouri, the only justification for the length of the supervised sentence is the reliance upon Section 5D1.2(b)(2) in the federal guidelines, which says if the instant offense is a sex offense, the statutory maximum term is recommended. It is

possible that we may see more specific justification such as seriousness of the offense, or criminal history to justify the supervised release term.

USSC.

In their 2012 study of child pornography sentencing, the USSC included a brief section on supervised release sentences and acknowledged the problematic nature of the blanket policy statement for lifetime supervised release. One problem in their view, is that the policy was promulgated before the Protect Act of 2003 raised the maximum term in child pornography cases from three years to lifetime supervised release. Another problem they highlight, is the guideline's categorical recommendation of a life term which fails to distinguish among offenders with respect to their levels of risk and corresponding need for lifetime supervision (USSC, 2012). In 2012, USSC promised to study the supervised release guideline to determine whether the guideline should be amended in response to these criticisms.

It has been nearly five years since the USSC's promise and as of this writing, there is no published report addressing the issue of lifetime supervised release. The policy for lifetime supervised release for all child pornography offenders remains in effect. This dissertation provides notification to the USSC that there is in fact supervised release sentencing disparities, and reinforces the USSC's recommendation to study supervised release sentences. By way of recommendations to the USSC to mitigate the disparities created by the statute and the blanket policy statement, I recommend the USSC first inform Congress. Depending on Congress's position, this could involve revising Section 5D1.2(b)(2) and the policy statement in the federal sentencing guidelines which says if the instant offense of conviction is a sex offense, the statutory maximum term of supervised release is recommended.

The first step the USSC should take may be to define "sex offense." By their own admission, the USSC defined "sex offense" not by attempting to classify various types of sex offenders with respect to their relative risks of recidivism or their needs for ongoing supervision and treatment, but by adopting Congress's definition (USSC, 2012). By classifying the term sex offense into the various types of sex offenders with respect to risk and recidivism, this could quell judicial concern that the lifetime policy fails to distinguish among offenders with respect to their levels of risk and corresponding need for lifetime supervision.

Alternatively, another recommendation involves developing guideline calculations for the sentence of supervised release, like those used for the sentence of imprisonment. In this sense, the sentence of supervised release would be based on legal factors such as offense seriousness and criminal history. While this idea may not necessarily eliminate disparities, at the very least it may reduce the wide spread variability of sentences.

It may be time that the USSC make good on their vow to study the supervised release guideline if they have not done so already. As shown in this dissertation, there is wide variation in supervised release sentences. This issue is too important to linger unabated given the serious implications for those disproportionately impacted. Action by the USSC could result in a report to Congress describing recommendations for modifications of substantive criminal law and sentencing procedures for supervised release.

Congress.

A salient theme presented throughout this dissertation has been Congress' desire for severe sentences for all child pornography offenders. Clearly, the courts are not universally abiding by this desire as only approximately 33% of child pornography offenders receive the most severe term. Short of the Supreme Court repealing the decisions in *Booker*, *Rita*, *Gall*, and

Kimbrough, it appears unlikely Congress can effectuate its will regarding severe supervised release sentences. The only potential solution is to amend the child pornography supervised release statute - 18 USC 3583(k).

As it stands, the statute covers all child pornography offenses including the least serious (non-production) to the most serious (production). The range of 5 years to life creates broad discretion. For example, judges who focus on future risk may take into consideration that long-term recidivism studies (greater than 10 years) are unavailable. This may lead some judges to, out of an abundance of caution, to impose lifetime supervised release under the guise of "better safe than sorry." Or judges who focus on offense seriousness and culpability, may view non-production as less serious by virtue of the statutory penalties in comparison to production. Accordingly, they may sentence these offenders to the low end of the statutory supervised release range. Hence, supervised release sentencing disparities.

It is the argument of this dissertation that the broad range encompassed in the supervised release statute leads to unpredictability, non-uniformity of sentences, and sentencing disparities. This is contrary to the SRA of 1984 which sought to reduce unwarranted sentencing disparities. More specifically, the SRA was created by Congress with two main objectives: uniformity and proportionality. Congress aimed to narrow the wide disparity in sentences imposed for similarly situated offenders. Congress also sought proportionality in sentencing - a system that imposes appropriately different sentences for criminal conduct of differing severity. But the USSC tells us that there is a clash between these two factors and they describe it this way:

> Simple uniformity – sentencing every offender to five years – destroys proportionality. Having only a few simple categories of crimes would make the guidelines uniform and easy to administer, but might lump together offenses that are different in important

> aspects. For example, a single category for robbery that included armed and unarmed robberies, robberies with and without injuries, robberies of a few dollars and robberies of millions, would be far too broad. (2012 USSC Sentencing Guidelines Manual, p.3)

Hence, the likely problem with the policy for lifetime supervised release for all child pornography offenders. Sentencing everyone to life destroys proportionality. We know from this dissertation, judges are not sentencing everyone to life, suggesting two things. First, some judges are interested in proportionality; and second, little deference to the policy statement.

To this end, I suggest that Congress revisit 18 USC 3583(k). In doing so, they must determine which objective is more important – uniformity or proportionality. So, for example, if Congress desires lifetime supervised release for all child pornography offenders, then they should set the statutory sentence of supervised release as life. In doing so, this will effectively set the guideline sentence to life because per the guidelines, the supervised release term cannot be less than the statutorily authorized mandatory minimum term. This will alleviate disparity of supervised release sentences and promote uniformity.

The problem if Congress amends the statute and mandates supervised release for child pornography offenses is that proportionality is destroyed. Alternatively, as mentioned in the last chapter, the USSC could develop guideline calculations for the sentence of supervised release wherein offense seriousness and the criminal history score is calculated to provide the advisory supervised release sentencing range. This route brings back proportionality, but then effectively eliminates Congressional aim for lifetime supervised release for all child pornography offenders. To this end, there appears no completely satisfying solution to this enigma.

The Child Pornography Offender.

Based upon the findings presented in this dissertation, a child pornography offender pending supervised release sentencing can expect that legal factors will likely drive the length of the sentence, as it should. However, the findings from this dissertation also show that *where* one is sentenced also matters. As such, a child pornography offender pending sentencing in a Western district can likely expect a longer sentence than if he would have been sentenced in an Eastern district. Moreover and to a lesser extent, a child pornography offender pending sentencing with the following characteristics can likely expect a longer sentence: nonwhite, poorly educated, college educated, older than age 50, a U.S. citizen, and no family ties.

If the supervised release term was more bark than bite, perhaps these disparities in sentences would not matter as much. But for those facing the longer terms, there are many implications. One of the more obvious is being under a form of formal social control longer. Longer terms of supervised release create longer or greater opportunity to potentially violate the terms, risk revocation and face life imprisonment.

The Federal Judge.

Pursuant to 18 USC 3553(a)(6), in addition to consideration of the nature and circumstances of the offense and history and characteristics of the defendant, the court is to also consider other factors including the need to avoid unwarranted sentence disparities among offenders with similar records who have been found guilty of similar conduct. Prior to my previous work on this topic (Vinyard, 2016), there was no information on supervised release sentencing disparities for judges to consider. This dissertation provides more information to the federal court regarding the nature and extent of disparate supervised release sentences for child pornography offenders. This information can be used as courts deliberate on supervised release sentences and consider all factors before imposing sentencing.

Summary of Implications

The previous section discussed the implications of this research for the offender and the various stakeholders involved in sentencing and identified ways in which supervised release sentencing disparities could be mitigated by either congressional changes or changes by the USSC. Another option gaining traction for mitigating sentencing disparities is evidenced-based sentencing which is discussed next.

Evidence-Based Sentencing and the use of Actuarial Risk Assessments

In the absence of congressional changes to 18 USC 3583(k) and/or the guideline policy for lifetime supervised release as noted in the preceding section, evidenced-based sentencing could provide a solution. Social scientists and legal scholars refer to the use of risk assessments in sentencing as evidence-based sentencing or informed sentencing (Hyatt, Bergstrom, and Chaneson, 2011; Ruback, Kempinen, Tinik and Knoth, 2016). Currently, risk assessments are not used in sentencing at the federal level, but scholars are pushing the USSC to explore the integration of risk assessments into the guidelines (Hyatt et al., 2011). Hyatt et al. (2011) argue that the use of risk assessments hardly would be a huge change as federal judges already consider risk, although crudely, by way of focal concerns. They argue risk assessments could formalize and standardize risk consideration making it fairer across the board. Proponents also argue the use of risk assessments in sentencing is not meant to replace judicial discretion, but rather inform judges about potential outcomes in sentencing. More specifically, they contend that as the guidelines are not mandatory, the integration of risk assessments into the guidelines is consistent with *Booker*. That is, the use of risk assessments within the guidelines will not alter the advisory nature of the guidelines which is to inform sentencing decisions.

Given the amount of variability and disparities in supervised release sentences, coupled with the risk-focused nature of the supervised release sentence for child pornography offenders, one can see the appeal of incorporating risk assessments into the supervised release guidelines. However, one of the primary arguments against using risk assessments to inform sentencing practice is the potential to punish individuals for crimes they have not committed (Hannah-Moffat, 2013). But when measured against the yardstick of risk assessment tools versus professional judgment in the form of focal concerns and the court communities perspectives, some argue the pros of actuarial risk assessment outweigh the cons (Skeem, 2013).

While risk assessments are not used in federal sentencing, they are used at the onset of supervised release and periodically throughout the supervision term to re-assess risk. Federal probation uses the Post-Conviction Risk Assessment (PCRA) and the Risk Prediction Index (RPI). These instruments use both static (i.e., criminal history) and dynamic factors--those factors that are changeable such as social networks, education/employment, and cognitions--to accurately predict and identify those at greatest risk to re-offend. The results from the risk assessments are applied to formulate supervision strategies (i.e., referring an offender with a dynamic risk factor for cognitions to a cognitive behavioral treatment program), which when appropriately targeted should reduce risk.

It remains to be seen if the USSC and the federal courts will adopt an evidence-based approach to sentencing and specifically integrate a risk assessment tool into the supervised release guidelines specific to child pornography offenders.[91] If it is to work as suggested by

[91] The author contacted the USSC on February 9, 2017 and discussed the notion of evidenced-based sentencing. According to the USSC, informal discussions of risk assessments have occurred within the USSC; however, at this time, risk assessments are not a priority.

Ruback et al. (2016), this should result in improved decision-making, limited discretion, and increased accountability for the sentences of supervised release.

Limitations of the Dissertation

As with any research, this dissertation also has limitations that could have impacted the results of the study. First, there is the issue of omitted individual-level extralegal factors including those related to the offender's character, physical and mental condition, marital status, community ties, employment status, and history of drug and alcohol abuse. Like those extralegal factors included in my analyses that *did* influence the sentence of supervised release, these other factors may also influence the ultimate supervised release term imposed. Take for example mental health. Research has shown that mental health conditions like schizophrenia have been linked to stereotypes of dangerousness (Markowitz, 2011). Through the presentence report, the sentencing court is made aware of any mental health and/or emotional conditions the offender may suffer as well as any medications prescribed. Accordingly, a judge may consider the mental health status of the offender as a focal concern in determining which individuals require enhanced supervision to protect the public. In other words, it seems plausible that an offender with a severe mental illness may be perceived as dangerous, and thus more likely to receive lifetime supervised release than an offender with no mental health condition.

Legal scholars argue that extralegal factors such as marital status and employment status, have become relevant for some judges particularly now that the guidelines are advisory (Hamilton, 2011; Krohel, 2011). Hamilton (2011) and Krohel's (2011) review of sentencing decisions found that in cases where defendants received sentencing reductions, it was common for judges to express that they were impressed by the defendant's family support and/or career. One judge was quoted as saying "aside from the offense, the defendant has led a law-abiding life,

and with his wife, who has stood by his side throughout, he has raised a good family and been a mainstay in his community." (Hamilton, 2011, p.562). Other judges give weight to the defendant's career as a reason for non-guideline sentences. Examples of careers receiving non-guideline sentences include military personnel, physicians, and teachers (Hamilton, 2011). Unfortunately, it is not possible to empirically test the influence of marital status and employment because the USSC does not collect data on these variables. However, if researchers are given access to presentence reports, this data could be collected.

In addition to potential individual-level omitted factors, there could be additional district-level factors that I may have failed to consider. As a result, this could potentially undermine the conclusions drawn about district-level contextual factors. I did attempt to mitigate this limitation, by exploring many of the district-level contextual factors used in the extant sentencing literature.

Another limitation of the dissertation is that it does not consider the effects of judge-level influences or judge-level characteristics on supervised release sentencing outcomes. This is because the publicly available USSC dataset does not identify the judge who imposed the sentence (Kautt, 2002). This information may have provided additional insight into supervised release sentences outcomes of child pornography offenders, because judges may have different views and opinions on child pornography offenses. Meaning, a female judge with children may have a different view of the dangerousness of child pornography offenders than a male judge without children, potentially sentencing differently.

Future Research

Drawing from the findings of the present research, the following issues are critical considerations for future research. First, an important next step for understanding the supervised release sentences of child pornography offenders is a qualitative analysis of judges' decision-making for child pornography offenses. In particular, in-depth interviews of judges from across the nation should be explored to ascertain what factors are most important to judges when they consider the sentences of supervised release. Information about judges' perceptions of child pornography offenders, public fear, recidivism, and fairness of the supervised release guidelines should be collected in these interviews. Questions regarding specific district policies and local rules for sentencing should also be asked, as well as why judges believe there are differences across courts.

Another avenue for future research is to examine if and how high profile cases (e.g., Jacee Dugard case, David Renz case, etc.) affect supervised release sentences of child pornography offenders. This is important because as mentioned in the previous chapter, in the aftermath of the Renz case which happened in the Northern District of New York, judges in Northern New York are now less likely to allow pretrial detention than before the case. A potential research strategy to examine this scenario would be to conduct a time series analysis of the probability of child pornography offenders sentenced to lifetime supervised release before and after the scandals received intense public scrutiny. In this sense, it would be interesting to see how these high profile cases influence lifetime supervised release imposed by the court.

Another possible avenue for research is to examine decision-making of U.S. Probation Officers. As mentioned earlier, one of the primary functions of U.S. Probation Offices is to

complete presentence investigation reports. Presentence investigations require probation officers to investigate not only the instant offense and criminal history, but also report on extralegal factors such as family ties, employment, education, substance abuse, military status, and finances. In addition to writing the presentence investigation report, officers are also expected to make sentencing recommendations for the sentence of imprisonment and the supervised release term. Thus, it is possible that these extralegal statuses may play into the focal concerns of probation officers, particularly the concerns of blameworthiness and protection of the public. As illustrated by Weintraub (1987), "Although the presentence investigation report is intended to be an objective document for review by the court, as mere mortals, probation officers necessarily inject their subjective impression about the defendant and the offense into the report." (p. 26). Therefore, it is important to study the decision-making of U.S. Probation officers because judges generally, but not always, follow the recommendations.

The Dissertation and the Broader Sentencing Literature

Given what we know from the findings of this dissertation, where does the current study fit within the broader sentencing literature? There are four answers to this questions. First, the dissertation extends federal sentencing research in an important way by examining a federal sentencing outcome previously neglected by researchers – supervised release. Given the significance of this second part of the federal sentence, it is hoped that this research is a stepping stone for continued growth and research in this area. Second, the dissertation is consistent with sentencing research in general that finds legal factors are the primary determinants of sentencing outcomes and that extralegal and district-level factors also influence sentencing outcomes, regardless of the difference in the outcome variable. Third, this study joins the legal literature and the very limited empirical literature (Kaiser and Spohn, 2014), on child pornography

sentencing that finds wide disparities in sentencing child pornography offenders. And fourth, from a multilevel standpoint, this dissertation adds to the growing body of multilevel research showing a great deal of variation in supervised release sentences across courts. In other words, this dissertation confirms Kautt's (2002) notion that variation for differential sentencing patterns by federal district (i.e., geographic location) is also a source of extralegal sentencing disparity.

CONCLUSION

As I close this dissertation, I reflect to Chapter One wherein I highlighted the 33% variability of supervised release sentences. In doing so, I surmised the variability is suggestive of two things: (1) a disconnect between Congress and the judiciary; and (2) the possibility of supervised release sentencing disparities. The findings of my dissertation offer sound evidence that there are in fact supervised release sentencing disparities for child pornography offenders. In terms of the disconnect between Congress and the judiciary, I offer as evidence the testimony of Chief U.S. District Judge M. Casey Rodgers (Northern District of Florida) before the USSC on behalf of the Judicial Conference of the U.S. Committee on Criminal Law (February 15, 2012):

> "Child sex crimes are gravely serious offenses, involving unspeakable acts by offenders and unimaginable harm to the child victims, and thus, are deserving of severe punishment. With that understanding, it must also be recognized that within the spectrum of child sex crimes there are many offenses, ranging from child sexual abuse offenses at one end to child pornography offenses at the other, all representing varying degree of harm and levels of culpability. Thus, the punishment for child sex crimes, while deservingly severe, must be made between offenders and their conduct as judges attempt to mete out sentences that do justice in each case considering the statutory range of penalties and the pertinent sentencing

factors set forth in the Sentencing Reform Act which include consultation of the United States Sentencing Commission's *Guidelines Manual* (Rodgers, 2012, pp. 1-2).

Judge Rodgers continues:

"The judiciary as a whole has divided perspectives regarding the reasonableness of child pornography guidelines. While some judges often impose within-guideline sentences in child pornography cases, trusting that the guidelines are the product of the Commission's traditional expertise and congressional policy, many are increasingly imposing below-guideline sentences based on a concern over the integrity and reliability of the guidelines. There is a common sentiment among many trial judges that these sentencing guidelines fail to provide the appropriate baseline or starting point for child pornography offenses which, combined with numerous offense characteristics, restrictions on departures, and congressionally mandated provisions not fully supported by the Commission's empirical study, produce guidelines ranges that are too high compared to the statutory range, particularly in possession and receipt cases (pp. 3-4).

He adds:

> "Applying the guidelines as drafted has produced conflict for judges, especially in sentencing first-time receipt and possession offenders, because imposing a within-guidelines sentence often appears disproportionate to the harm and yet imposing a sentence that varies in order to achieve a better sense of proportionality frustrates the goal of uniformity in sentencing." (p.7).

Judge Rodgers exposes the sentencing incongruence stating:

> "A sentencing anomaly becomes apparent when the statutory range is compared with the resulting sentencing guidelines range in the average case. On one hand, Congress has

provided a broad statutory range for these offenses, spanning from zero to ten years for possession and five to twenty years for receipt offenses, indicating that Congress contemplated both a wide spectrum of culpable conduct as well as a broad range of appropriate sentences for these two offenses. On the other hand, Congress has issued directives and amendments to the guidelines that have the effect of ignoring this wide range by placing all first-time offenders at the high end of the statutory range. A guideline that consistently produced a range for the mine-run first-time offender that far exceeds the statutory minimum is an indication of a serious imbalance and calculation." (p. 10-11).

Judge Rodgers' statements, while focused on the sentence of imprisonment, would likely be the same for the sentence of supervised release. Let's juxtapose the last statement to the sentence of supervised release as an example:

(1) "*Congress has provided a broad statutory range for these offenses… indicating that Congress contemplated both a wide spectrum of culpable conduct as well as a broad range of appropriate sentences for these two offenses.*"

Now juxtaposed to supervised release:

The statutory supervised release range for child pornography offenses as found in 18 USC 3583(k) is 5 years to life, indicating a wide spectrum of culpability for the offenses enumerated under the statute.

(2) "On the other hand, Congress has issued directives and amendments to the guidelines that have the effect of ignoring this wide range… an indication of a serious imbalance and calculation."

Now juxtaposed to supervised release:

The policy statement in the guidelines for lifetime supervised release for all child pornography offenders that in effect ignores the wide range of the supervised release statute (5 years to life).

Judge Rodgers's testimony is nearly five years old, yet the state of child pornography sentencing remains unchanged – that is, the imbalance remains. So long as the imbalance remains, it is likely we will continue to witness disparate supervised release sentences of child pornography offenders. I close with a statement from Basbaum (2010) whose words best capture and characterize the findings of this dissertation, "The politicization of child pornography has resulted in a flawed and irrational sentencing scheme." (p.5). I would add to his statement by saying this flawed and irrational scheme has resulted in supervised release sentencing disparities and severe consequences for those disproportionately sentenced to the most severe terms including: (1) lifelong formal social control; and (2) the possibility of revocation and life imprisonment if revoked.

REFERENCES

Adler, A. (2001). The perverse law of child pornography. *Columbia Law Review*, 2, 209-273.

Adler, A. (2011). To catch a predator. *Columbia Journal of Gender and Law,* 21, 532.

Albonetti, C. (1991). An integration of theories to explain judicial discretion. *Social Problems,* 38, 247-266.

Albonetti, C. (1997). Sentencing under the federal sentencing guidelines, effects of offender characteristics, guilty pleas, and departures on sentencing outcomes for drug offenses, 1991-1992. *Law and Society Review,* 31, 789-822.

Albonetti, C. (2003). Model misspecification: Why aggregation of offenses in federal sentencing equations is problematic. *Criminology*, 41, 449-56.

Anderson, A. & Spohn, C. (2010). Lawlessness in the federal sentencing process? A test for uniformity and consistency in sentence outcomes. *Justice Quarterly*, 27, 362-393.

Barkan, S., & Cohn, S. (2005). Why whites favor spending more money to fight crime: The role or racial prejudice. *Social Problems*, 52, 300-314.

Basbaum, J. (2010). Inequitable sentencing for possession of child pornography: A failure to distinguish voyeurs from pederasts. *Hastings Law Journal*, 61, 1281-1305.

Baumer, E., Messner, S., & Rosenfeld, R. (2003). Explaining spatial variation in support for capital punishment. *American Journal of Sociology,* 108, 844-875.

Beim, A, & Fine, G. (2007). The cultural frameworks of prejudice: Reputational images and the postwar disjuncture of Jews and communism. *Sociological Quarterly*, 48, 373-398.

Bellair, P. & Kowalski, B. (2011). Low-skill employment opportunity and African-American-White difference in recidivism. *Journal of Research in Crime and Delinquency,* 48, 176-208.

Black, D. (1989). *Sociological Justice.* New York: Oxford University Press.

Blalock, H. (1967). *Toward a Theory of Minority-Group Relations.* New York: Wiley.

Bowman, F. (1996). Assessing the Probation Officers' Survey: Does Fact Bargaining Undermine the Sentencing Guidelines? *Federal Sentencing Reporter*, 8, 303-313.

Bridges, G., Crutchfield, R. & Simpson, E. (1987). Crime, social structure and criminal punishment: White and nonwhite rates of imprisonment. *Social Problems*, 34, 345-361.

Britt, C. (2000). Social context and racial disparities in punishment decisions. *Justice Quarterly*, 17, 707-732.

Campbell, C., McCoy, C. & Osigweh, C. (1999). The influence of probation recommendations on sentencing decisions and their predictive accuracy. *Federal Probation*, 54, 13-21.

Cardona, F. (2009, November 29). Federal judges argue for reduced sentences in child-porn convicts. *The Denver* Post. Retrieved from http://www.denverpost.com.

Carroll, J. & Payne, J. (1976). *The psychology of the parole decision process: A joint application of attribution theory and information processing psychology.* In J.S. Carroll & J.W. Payne, eds., *Cognition and Social Behavior*. Hillsdale, NJ: Erlbaum.

Champion, D. (1987). Elderly felons and sentence severity: Interregional variations in leniency and sentencing trends. *Criminal Justice Review*, 12, 7-14.

Chen, E. (2014). In furtherance of justice, injustice, or both? A multilevel analysis of courtroom context and the implementation of three strikes. *Justice Quarterly*, 31, 257-286.

Chiricos, T., & Crawford, C. (1995). *Race and imprisonment: A contextual assessment of the evidence.* Albany NY: State University of New York Press.

Cohen, J. (1988). *Statistical power analysis for the behavioral sciences* (2nd edn). Hillsdale, NJ: Lawrence Earlbaum Associates.

Cohen, S. (1972 and 1980). *Folk devils and moral panics – the creation of mods and rockers*. St. Albans: Paldin.

Cornish, T. (2010). The many purposes of location monitoring. *Federal Probation*, 74, 12-13.

CRS Report for Congress. *Child protection act of 2012: A brief legal analysis.* Retrieved on October 18, 2014 from http://www.law.umaryland.ed/marshall/crsreports/crsdocuments/R48270-12192012.pdf.

Current Rules of Practice and Procedure. (n.d.). Retrieved on November 29, 2016 from http://www.uscourts.gov/rules-policies/current-rules-practice-procedure.

Demuth, S. (2002). The effect of citizenship status on federal sentencing outcomes in drug cases. *Federal Sentencing Reporter*, 14, 271-275.

Dixon, J. (1995). The organizational context of criminal sentencing. *American Journal of Sociology*, 100, 1157-1198.

Doerner, J., & Demuth, S. (2010). The independent and join effects or race/ethnicity, gender, and age on sentencing outcomes in U.S. Federal Courts. *Justice Quarterly,* 27, 1-27.

Eisenstein, J., Flemming, R., & Nardulli, P. (1988). *The contours of justice: Communities and their courts.* Boston, MA: Little, Brown and Co.

Eke, A., Seto, M., & Williams, J. (2011). Examining the criminal and future offending of child pornography offenders: An extended follow-up study. *Law and Human Behavior*, 35, 466-478.

Engen, R. & Gainey, R. (2000). Modeling the effect of legally relevant and extralegal factors under sentencing guidelines: The rules have changed. *Criminology*, 38, 1207-1230.

Etienne, M. (2004). A declining utility of the right to counsel in federal criminal courts: An empirical study of the diminished role of defense attorney advocacy under the sentencing guidelines. *Criminal Law Review.*92, 425-485.

Everett, R., & Wojtkiewicz, R. (2002). Difference, disparity, and race/ethnic bias in federal sentencing. *Journal of Quantitative Criminology,* 18, 189-211.

Exum, J. (2010). Making the punishment fit the (computer) crime: Rebooting notions of possession for the federal sentencing of child pornography offenses. *Richmond Journal of Law & Technology,*16, 1-30.

Fearn, N. (2005). A multilevel analysis of community effects on criminal sentencing. *Justice Quarterly*, 22, 452-487.

Federal Courts Governance and Administration, (n.d.). Retrieved from http://www.fjc.gov/federal/courts.nsf/FCGA9.

Feldmeyer, B. & Ulmer, J. (2011). Race/ethnic threat and federal sentencing. *Journal of Research in Crime and Delinquency*, 48, 238-270.

Fontaine, G. & Emily, C. (1978). Causal attribution and judicial discretion: A look at the verbal behavior of municipal court judges, *Law and Human Behavior,* 2, 323-337.

Franklin, T. (2015). Sentencing Outcomes in U.S. District Courts: Can offenders' educational attainment guard against prevalent criminal stereotypes. *Crime & Delinquency*, 6, 1-29.

Freiburger, T. (2009). Race and the sentencing of drug offenders: an examination of the focal concerns perspective. *Southwest Journal of Criminal Justice*, 6, 163-177.

Friedman, I. & Supler, K. (2008). Child pornography sentencing: The road here and the road ahead. *Federal Sentencing Reporter*. 21, 83-89.

Garland, D. *Punishment and Modern Society: A study in social theory.* Chicago, Il: University of Chicago Press.

Garland, D. (2008). On the concept of moral panic. *Crime, Media, Culture,* 4, 9-30.

Garson, G. (2013). *Hierarchical linear modeling: Guide and applications*. Sage Publications.

Hagan, J., Levi, R., & Dinovitzer, R. (2008). The symbolic violence of the crime-immigration nexus: Migrant mythologies in Americas. *Crime and Public Policy*, 7, 95-112.

Hamilton, M. (2011). The efficacy of severe child pornography sentencing: Empirical validity or political rhetoric. *Stanford Law and Policy Review, 22,* 545-586.

Hamilton, M. (2012). The child pornography crusade and its net-widening effect. *Cardozo Law Review*, 33, 1679-1732.

Hamilton, M. (2014). Sentencing adjudication: Lessons from child pornography policy nullification. *Georgia State University Law Review*, 30, 375-460.

Hamilton, M. (2014). Sentencing policy disputes. *Criminology and Public Policy*, 13, 237-240.

Hannah-Moffat, K. (2013). Actuarial sentencing: An "unsettled" proposition. *Justice Quarterly,* 30, 270-296.

Hartley, R. & Armendariz, L. (2011). Border justice? Sentencing federal narcotics offenders in southwest border districts: A focus on citizenship status. *Journal of Contemporary Criminal Justice*, 27, 43-62.

Hartley, R., Maddan, S. & Spohn, C. (2007). Concerning conceptualization and operationalization: Sentencing data and the focal concerns perspective – a research note. *The Southwest Journal of Criminal Justice*, 4, 58-78.

Hawkins, D. (1981). Causal attribution and punishment for crime, *Deviant Behavior: An Interdisciplinary Journal,* 2, 207-230.

Heider, F. (1958). *The psychology of interpersonal relations.* New York: John Wiley & Sons.

Helms, R., & Jacobs, D. (2002). The political context of sentencing: An analysis of community and individual determinants. *Social Forces*, 81, 577-604.

Hessick, C. (2011). Disentangling child pornography from child sex abuse. *Washington University Law Review*, 88, 853-902.

Hester, R. & Sevigny, E. (2016). Court communities in local context: a multilevel analysis of felony sentencing in South Carolina. *Journal of Crime and Justice*, 39, 55-74.

Heydebrand, W. & Seron, C. (1990). *Rationalizing justice: The political economy of federal district courts.* Albany, NY: State University of New York.

Hofer, P., Blackwell, K. & Ruback, R. (1999). The effect of the guidelines on inter-judge sentencing disparity. *Criminal Law and Criminology*, 90, 239-287.

Huang, W., Finn, M., Ruback, R. & Friedman, R. (1996). Individual and contextual influence on sentence lengths: Examining political conservatism. *The Prison Journal*, 76, 398-419.

Huebner, B. & Bynum, T. (2006). An analysis of parole decisions making use of a sample of sex offenders: A focal concerns perspective. *Criminology,* 44, 961-991.

Huebner, B., DeJong, C., & Cobbina, J. (2010). Women coming home; Long-term patterns of recidivism. *Justice Quarterly,* 27, 225-254.

Hughes, J. (2013). Reacting to the judicial revolt: Applying innovations in narcotics sentencing to federal non-production child pornography cases. *Columbia Journal of Law and Social Problems*, 47, 31-68.

Hyatt, J, Bergstrom, M. & Chanenson (2011). Follow the evidence: Integrating risk assessment into sentencing. *Federal Sentencing Reporter*, 23, 266-268.

Jacobs, D. & Carmichael, J. (2001). The politics of punishment across time and space: A pooled analysis of imprisonment rates. *Social Forces*, 80, 61-89.

Jacobs, D. & Helms, R. (2001). Toward a political sociology of punishment: Politics and changes in the incarcerated population. *Social Science Research*, 30, 171-194.

Jenkins, P. (1998). *Moral panic: Changing concepts of the child molester in modern America*. Yale University Press.

Jenkins, P. (2001). *Beyond tolerance: Child pornography on the internet*. New York University Press.

Johnson, B. (2005). Contextual disparities in guideline departures: Courtroom social contexts, guidelines compliance, and extralegal disparities in criminal sentencing. *Criminology*, 43, 761-796.

Johnson, B. (2006). The multilevel context of criminal sentencing: integrating judge and county level influences. *Criminology*, 44, 259-298.

Johnson, B. (2010). Multilevel analysis in the study of crime and justice. In Piquero, A & Weisburd, D. (Eds.), *Handbook of quantitative criminology*. Retrieved from https://ccjs.umd.edu/sites/ccjs.umd.edu/files/pubs/HLMChapter.pdf

Johnson, B. & Betsinger, S. (2009). Punishing the "model minority": Asian-American criminal sentencing outcomes in federal district courts. *Criminology*, 47, 1045-1091.

Johnson, B., & DiPietro, S. (2012). The power of diversion: Intermediate sanction and sentencing disparity under presumptive guidelines. *Criminology,* 50, 811-850.

Johnson, B., Stewart, E., Pickett, J., and Gertz, M. (2011). Ethnic threat and social control: Examining public support for judicial use of ethnicity in punishment. *Criminology*, 49, 401-441.

Johnson, B., Ulmer, J, & Kramer, J. (2008). The social context of guidelines circumvention: The case of federal district courts. *Criminology*, 47, 737-783.

Kaiser, K. & Spohn, C. (2014). Fundamentally flawed? Exploring the use of policy disagreements in judicial downward departures for child pornography sentencing. *Criminology and Public Policy,* 13, 241-270.

Kautt, P. (2002). Location, location, location: inter-district and inter-circuit variation in sentencing outcomes for federal drug trafficking offenses. *Justice Quarterly,* 19, 633-671.

Kautt, P. & Spohn, C. (2002). Cracking down on black drug offenders? Testing for interactions among offenders' race, drug type, sentencing strategy in federal drug sentences. *Justice Quarterly,* 19, 1-35.

Kimball, K. (2011). Losing our soul: Judicial discretion in sentencing child pornography offenders. *Florida Law Review, 63,* 1515-1548.

Klein, S., Petersilia, J., & Turner, S. (1988). Racial Equity in Sentencing. Santa Monica, CA: Rand.

Kramer, J. & Ulmer, J. (1996). Sentencing disparity and departures from guidelines. *Justice Quarterly*, 13, 81-106.

Krohel, H. (2011). Dangerous discretion: Protecting children by amending the federal child pornography statutes to enforce sentencing enhancements and prevent noncustodial sentences. *San Diego Law Review, 48,* 623-676.

Lippman, W. (1922). *Public opinion*, New York: Hartcourt Brace.

Liska, A. (1992). *Social threat and social control.* Albany : State University of New York Press.

Liska, A., Chamlin, M., & Reed, M. (1985). Testing the economic production and conflict models of crime control. *Social Forces,* 64, 119-138.

Liska, A., Lawrence, J., & Benson, M. (1981). Perspectives on the legal order: The capacity for social control. *American Journal of Sociology,* 87, 413-426.

Logue, M. (2011). Downward departures in U.S. federal courts: do family ties, sex, and race/ethnicity matter? *Ethnic and Racial Studies*, 34, 683-706.

Lopez, T., Allenbaugh, M., & Ellis, A. (2012). Trends and practice tips for representing child pornography offenders at sentencing. *Criminal Justice,* Volume 27, Number 3, Fall 2012.

Lupfer, M., Hopkinson, P., & Kelly, P. (1988). An exploration of the attributional styles of Christian Fundamentalist and of authortarians. *Journal for the Scientific Study of Religion.* 27, 389-398.

March, J. & Simon, H. (1958). *Organizations*. New York: John Wiley & Sons.

Mauer, M. (1999). Race to incarcerate. New York: New Press.

Miethe, T & Moore, C. (1986). Racial differences in criminal processing: The consequences of model selection on conclusions about differential treatment. *Sociological Quarterly*, 27, 217-237.

Mitchell, O. (2005). A meta-analysis of race and sentencing research: Explaining the inconsistencies. *Journal of Quantitative Criminology*, 21, 439-466.

Mustard, D. (2001). Racial, ethnic, and gender disparities in sentencing: evidence from the U.S. Federal Courts. *Journal of Law and Economics,* 44, 1-30.

Myers, M., & Talarico, S. (1986). Urban justice, rural justice? Urbanization and its effect on sentencing. *Criminology*, 24, 367-390.

Myers, M. & Talarico, S. (1987). *The social contexts of criminal sentencing.* New York: Springer-Verlag.

Nardulli, P., Fleming, R., & Eisentein, J (1988). *The tenor of justice: Criminal court and the guilty process.* Urbana: University of Illinois Press.

Nobiling, T., Spohn, C., & DeLone, M. (1998). A tale of two counties: Unemployment and sentence severity. *Justice Quarterly*, 3, 459-485.

O'Brien, J. (2014, April 20). Renz case had drastic impact of handling of Syracuse child porn cases. Retrieved from: Syracuse.com/news/index.sssf/2014/04.

O'Brien, S. (1983). *Child pornography*. Kendall/Hunt Publishing Company.

O'Hear, M. (2008). Editor's observations: Perpetual panic. *Federal Sentencing Reporter,* 21, 69-77 .

Oleson, J., Lowenkamp, C., Wooldredge, J., VanNostrand, M., & Cadigan, T. (2014). The sentencing consequences of federal pretrial supervision. *Crime and Delinquency,* 74, 1-21.

Ost, S. (2002). Legal and societal perceptions of the potential threat that the possession of child pornography poses to society. *Journal of Law and Society*, 29, 436-460.

Palmiotto, M. & MacNichol, S. (2010). Supervision of sex offenders: A multi-faceted approach. *Federal Probation,* 74, 27-30.

Patrick, S., & Marsh, R. (2011). Sentencing outcomes of convicted child sex offenders. *Journal of Child Sexual Abuse*, 20, 94-108.

Peterson, R. & Hagan, J. (1984). Changing conceptions of race: Towards an account of anomalous finding of sentencing research. *American Sociological Review*, 49, 56-70.

Phillips, M. (2012). *A decade of bail research in New York City*. New York: New York City Criminal Justice Agency.

Raudenbush, S. & Bryk, A. (2002). *Hierarchical linear models: Applications and data analysis methods* (2nd ed.). Thousand Oaks, CA: Sage.

Reitler, A., Sullivan, C. & Frank, J. (2012). The effects of legal and extralegal factors on detention decisions in U.S. district courts. *Justice Quarterly*, 30, 340-368.

Renz case had drastic impact on handling of Syracuse child porn cases. (2014, April 20). Retrieved from http://www.syracuse.com/news/index.ssf/2014/04/renz_case_appears_to_have_had_drastic_impact_on_the_handling_of_child_porn_cases.html.

Rigsby, L. (2010). A call for judicial scrutiny: How increased judicial discretion has led to disparity and unpredictability in federal sentencings for child pornography. *Seattle University Law Review, 33,* 1319-1347.

Rodgers, M. (2012, February 15). *Statement of Chief United States District Judge M. Casey Rodgers, Northern District of Florida, on Behalf of the Judicial Conference of the United States Committee on Criminal Law, Before the Sentencing Commission Public Hearing on Federal Child Pornography Offenses*. Washington, DC. Retrieved from http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20120215-16/Testimony_15_Rodgers.pdf.

Rogers, A. (2013). From peer-to-peer networks to cloud computing: How technology is redefining child pornography laws. *St. John's Law Review*. 87,1013-1049.

Ruback, R., Kempinen, C., Tinik, L., & Knoth, L. (2016). Communicating Risk Information at Criminal Sentencing: An Experimental Analysis. *Federal Probation, September 2016*.

Sayed, A. (2004). The suffering of the immigrant. Cambridge, UK: Polity Press.

Seto, M. & Eke, A. (2005). The criminal histories and later offending of child pornography offenders. *Sexual Abuse: A Journal of Research and Treatment*, 2, 201-210.

Seto, M., Hanson, K. & Babchishin, K. (2011). Contact sexual offenses by men with online sexual offenses. *Sexual Abuse: Journal of Research and Treatment*, 23, 124-145.

Shaver, K. (175). *An introduction to Attribution Process.* Cambridge, MA: Winthrop.

Shockley, B. (2010). Protecting Due Process from the Protect Act: The Problems with increasing periods of supervised release for sexual offenders. 67 *Washington and Lee Law Review,* 353-399.

Simon, H. (1957). *Administrative behavior: A study of decision making processes in administrative organizations.* New York, Macmillan.

Skeem, J. (2013). Risk technology in sentencing: Testing the promise and perils (commentary on Hannah-Moffat, 2001). *Justice Quarterly*, 30, 297-303.

Smith, K. (2004). The politics of punishment: Evaluating political explanations of incarceration rates. *The Journal of Politics,* 66, 925-938.

Spearit. (2011). Child pornography sentencing and demographic data: Reforming through research. *Federal Sentencing Reporter, 24,* 102-108.

Spohn, C. (2013). The effects of the offender's race, ethnicity, and sex on federal sentencing outcomes in the guidelines era. *Law and Contemporary Problems*, 76, 75-104.

Spohn, C. & Holleran D. (2000). The imprisonment penalty paid by young, unemployed, black and Hispanic male offenders. *Criminology,* 38, 281-306.

Stabenow, T. (2009). Deconstructing the myth of careful study: A primer on the flawed progression of the child pornography guidelines.

Stacey, A. & Spohn, C. (2006). Gender and the social costs of sentencing: An analysis of sentences imposed on male and female offenders in three U.S. district courts. *Berkeley Journal of Criminal Law*, 11, 43-76.

Steffensmeier, D. (1980). Assessing the impact of the women's movement on sex-based differences in handling of adult criminal defendants. *Crime and Delinquency,* 26, 344-357.

Steffensmeier, D. & Demuth, D. (2000). Ethnicity and sentencing outcomes in US federal courts: Who is punished more harshly? *American Sociological Review,* 65, 705-729.

Steffensmeier, D. & Demuth, D. (2001). Ethnicity and judges' sentencing decisions: Hispanic-black-white comparisons. *Criminology,* 39, 145-178.

Steffensmeier, D., & Motivans, M. (2000). Older men and older women in the arm of criminal law: offending patterns and sentencing outcomes. *Journal of Gerontology*, 55, 141-151.

Steffensmeier, D., Kramer, J., and Ulmer, J. (1995). Age differences in sentencing. *Justice Quarterly,* 12, 584-601.

Steffensmeier, D., Ulmer, J., & Kramer, J. (1998). The interaction of race, gender and age in criminal sentencing: The punishment costs of being young, black, and male. *Criminology*, 36, 763-798.

The Third Branch (2001). *On being the chief judge.* Retrieved from www.uscourts.gov/New/TheThirdBranch/09-02-01/onbeingthechiefjudge. Retrieved on February 28, 2015.

Thompson, J. (1967). *Organizations in action: Social sciences of administrative theory.* New York: McGraw-Hill Book Co.

Ulmer, J. (1997). *Social worlds of sentencing: Court communities under sentencing guidelines.* Albany: State University of New York Press.

Ulmer, J. (2005). The localized uses of federal sentencing guidelines in four U.S. District Courts: Evidence of processual order. *Symbolic Interaction*, 28, 255-279.

Ulmer, J. (2012). Recent developments and new directions in sentencing research. *Justice Quarterly*, 29, 1-40.

Ulmer, J. (2014). Mismatch of guidelines and offender danger and blameworthiness departures as policy signals from courts. *Criminology and Public Policy*, 13, 217-280.

Ulmer, J., Bader, C. & Gault, M. (2008). Do moral communities play a role in criminal sentencing? Evidence from Pennsylvania. *The Sociological Quarterly*, *49,* 737-768.

Ulmer, J., Eisenstein, J. & Johnson, B. (2010). Trial penalties in federal sentencing: Extra-guidelines factors and district variation. *Justice Quarterly*, 27, 560-592.

Ulmer, J. & Kramer, J. (1996). Court communities under sentencing guidelines: Dilemmas of formal rationality and sentencing disparity. *Criminology*, 42, 137-177.

Ulmer, J. & Johnson, B. (2004). Sentencing in context: A multilevel analysis. *Criminology*, 42, 137-177.

U.S. Department of Justice (2016). *The national strategy for child exploitation prevention and interdiction (April 2016).* Available at http://2016_natl_strategy_rpt_-online_version_updated_final_08_16)2016.pdf.

U.S. Sentencing Commission (1991). *Special report to Congress: Mandatory minimum penalties in the federal criminal justice system (August, 1991).* Available at http://www.ussc.gov/news/congressional-testimony-and-reports/mandatory-minimum-penalties/special-report-congress.

U.S. Sentencing Commission (2009). *History of the child Pornography guidelines (October 2009).* Available at http://ussc.gov/Research/Research_Projects/Sex_Offenses/20091030_History_Child_Pornography_Guidelines.pdf.

U.S. Sentencing Commission (2010). *Federal offenders sentenced to supervised release.* Available at http://ussc.gov/Research/Research_Publications/Sex_Offenses/20100722_Supervised_Release.pdf.

U.S. Sentencing Commission (2010). *Sourcebook of federal sentencing statistics*. Washington, DC: Author.

U.S. Sentencing Commission (2012). *Report to the Congress: Federal Child Pornography Offenses (December 2012)*. Available at http.://ussc.gov/news/congress-federal-child-pornography-offenses.

U.S. v. Grossman, 513 F.3d 592 (6th Circuit, 2008).

U.S. v. Ontiveros, No. 07-CR-333, 2008 U.S. Dist. LEXIS 58774, at 1 (Eastern District of Wisconsin. July 24, 2008).

Vess, J. (2009). Fear and loathing in public policy: Ethical issues in laws for sex offenders. *Aggression and Violent Behavior,* 14, 264-272.

Vinyard, N. (2016). Extralegal factors and the imposition of lifetime supervised release for child pornography offenders. *Federal Probation,* June 2016, 45-57.

Walker, B. (2010). Essay: Deciphering risk: sex offender statutes and moral panic in a risk society. *Baltimore Law Review,* 40, 183-214.

Weidner, R., Frase, R. & Pardoe, I. (2004). Explaining sentence severity in large urban counties: a multilevel analysis of contextual and case-level factors. *The Prison Journal,* 84, 184-207.

Weidner, R., Frase, R. & Schultz, J. (2005). The impact of contextual factors on the decision to imprison in large urban jurisdictions: A multilevel analysis. *Crime and Delinquency*, 51, 400-424.

Weintraub, B. (1987). The role of defense counsel at sentencing. *Federal Probation*, 51, 25-29.

Welch, K. (2007). Black criminal stereotypes and racial profiling. *Journal of Contemporary Criminal Justice*, 23, 276-288.

Williams, K. S. (2004). Child Pornography Law: Does it Protect Children? *Journal of Social Welfare & Family Law*, *26*, 245-261.

Williams, M. (2003). The effect of pretrial detention on imprisonment decisions. *Criminal Justice Review,* 28, 299-316.

Wolak, J., Finkelhor, D., & Mitchell, K. (2011). Child pornography possessors: Trends in offender and case characteristics. *Sexual Abuse: A Journal of Research and Treatment*, 23: 22–42.

Wolfe, S., Pyrooz, D., & Spohn, C. (2011). Unraveling the effects of offender citizenship status on federal sentencing outcomes. *Social Science Research*, 40, 349-362.

Wortley, R. & Smallbone, S. (2012). *Internet child pornography: Causes, investigation and prevention.* Praeger Publishing.

Wu, J. & Spohn, C. (2009). Does an offender's age have an effect on sentencing length?: A meta-analytic review. *Criminal Justice Policy*, 20, 379-413.

Wu, J. & Spohn, C. (2010). Interdistrict disparity in sentencing in three U.S. district courts. *Crime and Delinquency,* 56, 290-322.

Wu, J. (2011). *Citizenship status, race, ethnicity, and their effects on sentencing.* El Paso, TX: LFB Scholarly Publishing.

Wu, J. & D'Angelo, J. (2014). Unwarranted disparity in federal sentencing: Noncitizen crime as a social/group threat. *Criminal Justice Review*, 39, 58-80.

APPENDIX A: SUPPLEMENTAL DATA ANALYSES

In this appendix I present the results of supplemental analyses that assess the robustness of my results. Specifically, I estimate ordinary least squares regression (OLS), logistic regression, and ordinal regression models to determine if the correlates of supervised release sentences differ by offense type. Recall from Chapter Four that I had to use offense seriousness as a proxy for offense type to examine the effects of individual-level legal, extralegal, and district-level contextual factors because the collinearity between offense seriousness and offense type prohibited me from putting both variables in the model at the same time. Here, I use OLS logistic regression, and ordinal regression as a robustness check to confirm consistency of results.

Robustness checks: Use of OLS, Logistic Regression, and Ordinal Regression to Further Compare Production and Non-Production Offenses

To begin, I conducted an independent samples t-test to compare the average sentence length for those offenders convicted of non-production compared to those offenders who were convicted of production of child pornography. The average sentence length for non-producers (M=229.09, SD=167.35) is less than the mean average sentence length for producers (M=332.79; 167.39) and this difference is statistically significant t(1898) = -103.69403, p=.000, two-tailed. The magnitude of the differences in the means (mean difference = 103.7, 95% CI: -126.48 to 80.90492) was small to moderate (eta squared =.04). I also conducted a chi-square analysis to compare the decision to impose lifetime supervised release as well as the four-category ordinal measure of sentence length for non-production compared to production cases. A chi-square test for independence indicated a significant association between lifetime supervised release and offense type, x^2 (1, n=1900) =70.46, p=.000, phi = - .194. The effect size for the correlation coefficient is very small using Cohen's (1988) criteria of .10 for small effect, .30 for medium

effect, and .50 for large effect. Likewise, there was a significant association between the four-category ordinal measure of supervised release length and offense type, x^2 (1, n=1900) = 76.59, p=.000, Cramer's V =.201. The effect size for the correlation coefficient is medium to large.

OLS Regression

I first started with production cases using OLS regression to assess the impact of legal and extralegal factors on supervised release length (log). First, legal factors were added to the model. Quadratic terms for number of counts and offense severity were included in the model because exploratory analyses (described in Chapter 5), indicated the relationship between these variables and supervised release length (log) is non-linear. A significant regression equation was found (F(2,225)=5.711, p <.001). The model explained 20.2% of the variance in supervised release sentence length. Few of the legal variables are statistically significant in predicting supervised release length. Offenders who are detained receive sentences of supervised release that are 55.2% longer than those received by offenders who were released, controlling for all other factors in the model. Downward departure/variance, upward departure/variance and plea are marginally significant (alpha=.10). These effects indicate that an upward departure/variance increases length of supervised release by 40.7% while a downward departure/variance decreases it by 17.1%. Offenders who plead guilty receive supervised release sentences that are 27.3% longer than those who went to trial, controlling for all other factors in the model. Surprisingly, legal factors such as criminal history, offense severity, and number of counts were not statistically significant predictors of supervised release length (log).

Turing to non-production cases, a significant regression equation was found (F(10,1646)=32.731, p <.001). This model explained 16.6% of the variance in supervised release sentence length compared to the 20.2% of the variance in production cases. In contrast to the

production model, several of the legal variables are statistically significant in predicting supervised release length including number of counts, criminal history, plea, detention, downward departure/variance, offense severity squared, and number of counts squared. Specifically, non-producers who accept a guilty plea receive a 35.4% increase in months of supervised release than those who went to trial. Non-producers who receive a downward departure/variance receive a 26.3% decrease in months of supervised release compared to those sentenced within the guidelines range. There is a non-linear relationship between offense severity and supervised release length (log) as well as number of counts and supervised release length (log) indicated by significant quadratic terms for these variables.

Next, extralegal factors were added to both the production and non-production models to see if they explain supervised release sentence length above and beyond the effect of the legally relevant variables. Significant regression equations were found for both models, ($F(18,212)=3.577$, $p < .001$) and ($F(18,1579)=18.462$, $p < .001$), respectively. The models explained 23.3% and 17.4% of the variance of supervised release sentence length, respectively.[92] None of the extralegal factors added to the production model were significant predictors of supervised release length, but several of the extralegal factors for the non-production model were including citizenship, less than high school, college graduates, and race (white). Specifically, U.S. citizens receive a 22.5% increase in months of supervised release compared to non-citizens, controlling for all other factors. Compared to high school graduates, offenders with less than a high school education receive a 14.4% increase in months of supervised release. College graduates similarly faced an increase of 10.8% in months of supervised release compared to high school graduates. Whites receive a 15.4% decrease in months of supervised release compared to

[92] The amount of variance explained when adding extralegal factors to the production model only accounts for an additional 3% and less than 1% (.8%) for non-production model. This indicates that legal factors are stronger at predicting supervised release length (log) than extralegal factors.

non-whites, controlling for all other factors. Having dependents was significant using a less restrictive alpha of p=.10. All the legal factors for both production and non-production remained statistically significant. In summary, compared to the production model, there were more significant predictors in the non-production model. It is possible the difference is due to the increase sample size in non-production.

Following model estimates, I used the Clogg equation to test the equality of all coefficients across the two offense types. In other words, I tested the null hypothesis that the difference between the coefficients for the legal and extralegal factors for production and non-production were equal. Using the *z* table to determine if differences was significant (i.e., alpha = .05 (two-tailed test), if $z > 1.96$), I failed to reject the null hypotheses for all of the variables. This means that the effects of the legal and extralegal variables do not differ by offense type.

Logistic Regression

Next, logistic regression was used to assess the impact of legal and extralegal factors on the likelihood of an imposition of lifetime supervised release for production and non-production cases.[93] First, legal factors were included in both the production and non-production models. Starting with production, the full model containing all the predictors was statistically significant, $x^2(10,N=236) = 47.341$, $p<.001$. The model explained 24.4% of the variance in imposition of lifetime supervised release, and correctly classified 69.5 percent of cases. The full model containing all the predictors for non-production offenses was statistically significant, $x^2(10,N=1657) = 238.055$, $p<.001$. The model explained 19% of the variance in imposition of lifetime supervised release, and correctly classified 75 percent of cases

[93] Quadratic terms for number of counts and offense severity squared were include in the model because exploratory analyses (described in Chapter 5), indicated the relationship between the variables and the decision to impose lifetime supervised release is non-linear.

For both the production and non-production models, several of the legal factors made a statistically significant contribution including detention, plea, and downward departure/variance. For detained offenders, the odds of receiving lifetime supervised release increase by a factor of 5.3 and 1.4, respectively, controlling for all other variables in the model. Surprisingly, for offenders who pled guilty, the odds of receiving lifetime supervised release was greater by a factor of 2.8 and 3.1, respectively compared to those offenders who had a trial. As anticipated, receiving a downward departure/variance decreased the odds of receiving lifetime supervised release by a factor of .564 and .440 respectively.[94] Upward departure/variance (which is expected to increase punishment) was not statistically significant for either model. There is a non-linear relationship between offense severity and the decision to impose lifetime supervised release for the non-production model as indicated by the significant quadratic term for this variable. There is also a non-linear relationship for the number of counts for the non-production model as indicated by the significant quadratic term.

Next, extralegal variables were added to both the production and non-production models to see if they explain lifetime supervision above and beyond the effect of the legally relevant variables. The production model explained 30.2% of the variance of the imposition of lifetime supervised release, and correctly classified 72.7 percent of cases. Similarly, the non-production model explained 19.9% of the variance of the imposition of lifetime supervised release, and correctly classified 74.2 percent of cases.

None of the extralegal factors added to the models were significant predictors of the decision to impose lifetime supervised release except the variable for age (offenders age 50).[95] This effect indicates that the odds of receiving lifetime supervised release is two times greater for

[94] The coefficient for the production mode was only marginally significant (p=.06).
[95] For the production model, the effect of age was marginally significant (p=.07).

producers age 50 and older and 1.4 times greater for non-producers as compared to younger offenders, controlling for all other factors. Being white decreased the log odds of non-producers being sentenced to lifetime supervised release by a factor of .736. This variable was significant at p=.09. The only legal factors that remained statistically significant is detention, plea, and downward departure/variance.

I also used the Clogg equation to test the equality of coefficients for the logistic regression coefficients on the decision to impose lifetime supervised release for both offense types. I failed to reject the null hypotheses and can conclude that the effects of the legal and extralegal variables do not differ by offense type.

Ordinal Regression

Finally, I examined the ordinal outcome of supervised release for both offense types to assess the legal and extralegal factors that affect whether an offender would receive a short-term, intermediate, long-term, or life sentence.[96] First, legal factors were included in both the models for production and non-production. The full model for producers containing all the predictors was statistically significant, $x^2(10,N=236) = 54.430$, $p<.001$. Likewise, the full model for non-producers containing all the predictors was statistically significant, $x^2(10,N=1657) = 295.062$, $p<.001$. The models explained 23% and 17.4%, respectively of the variance in the categories of supervised release. For the production model, the three statistically significant predictors of the odds of being sentenced to the higher supervised release term category were plea, detained and downward departure/variance. Detained offenders are 1.5 times more likely to receive a sentence in the higher supervised release category than offenders on bond, controlling for all other factors. Likewise, downward departure/variance recorded an odds ratio of .556, indicating that those who received a downward departure are .556 times less likely to be sentenced to the

higher supervised release category, compared to those who are sentenced within the guidelines range, controlling for all other factors. Those offenders that pled guilty are .948 times more likely to be sentenced to the higher supervised release category, than those who go to trial, controlling for all other factors.

For the non-production model, all the legal factors were statistically significant predictors except sex offender enhancement and upward departure/variance. Pleading guilty recorded an odds ratio of .935, indicating that those who pled guilty were .935 times more likely to be sentenced to the higher supervised release category than those who went to trial, controlling for all other factors. Downward departure/variance recorded and odds ratio of .654, indicating that receiving a downward departure/variance resulted in a .654 decrease in the log odds of being sentenced to the higher supervised release category compared to those who were sentenced within the guidelines range. Detention recorded an odds ratio of .387, indicating that those who are detained were .387 times more likely to sentenced to the higher supervised release category than those who were on bond, controlling for all other factors.

Next, extralegal factors were added to the models. The full model for producers containing all the predictors was statistically significant, $x^2(18, N=236) = 63.645$, $p<.001$. Similarly, the full model for non-production containing all the predictors was statistically significant, $x^2(18,N=1598) = 299.230$, $p<.001$. The models explained 27% and 18.3%, respectively of the variance in the categories of supervised release. None of the extralegal factors for the production model are significantly associated with the ordinal measure of supervised release at alpha level p=.05; however, citizenship was statistically significant at alpha level p=.08. U.S. citizens had a 20% greater likelihood of being sentenced to a higher supervised release category than non-citizens, controlling for all other factors. For the non-production

model, only white was statistically significant at alpha level p=.05. Being white decreases the odds of being sentenced to a higher supervised release category by a factor of .380. Using a less restrictive alpha level (p=.10) for the non-production model showed that citizenship, having dependents, having less than a high school education, and being a college graduate was statistically significant. Accordingly, being a U.S. citizen increased the likelihood of being in a higher supervised release category by a factor of .511 compared to non-citizens, controlling for all other factors. Likewise, having less than a high school education and being a college graduate increased the likelihood of being in higher supervised release category by a factor of .294 and .244, respectively compared to those with a high school diploma.

I used the Clogg equation to test the equality of coefficients for the ordinal regression coefficients for both offense types. I failed to reject the null hypotheses and can conclude that the effects of the coefficients for these variables do not differ by offense type.

Summary

In conclusion, the supplemental analyses shown here confirm to an extent, the earlier results of my multilevel models that the effects of individual-level legal and extralegal factors do not differ by offense type. In addition, these analyses show that legal factors are the primary determinants of supervised release sentences, but extralegal factors play a role but to a lesser extent.

APPENDIX B: CONTENT OF THE STANDARD PRESENTENCE REPORT

The Face Sheet

The face sheet contains significant court-related information provided for ease of reference. It also contains demographic data provided for the use of the sentencing judge, probation officer, U.S. Sentencing Commission, U.S. Parole Commission, and the U.S. Bureau of Prisons.

Part A: The Offense

Charges and Conviction(s)

This section provided a brief chronological history of the prosecution of the case from the filing of the initial charges to the referral to the probation office for a presentence report.

The Offense Conduct

The Offense Conduct section provides all pertinent information regarding the offense to assist the court in understanding the facts of the offense and the elements relevant to application of the sentencing guidelines in accordance with the provisions of Chapter Two of the guidelines.

This section may also include information indicating whether the offense of conviction was part of a larger scheme or plan that included other criminal conduct which may be relevant to the determination of the appropriate guideline, the selection of a sentence within the guideline range, and the decision to depart from the guidelines. It further describes the role of the defendant and the conduct of codefendants and other participants during the offense, including planning, preparation for the offense, and the circumstances leading to the arrest or summons of the defendant. The objective of this section is to report what happened as established by the probation officer's investigation, using the officer's best judgment to resolve factual discrepancies among sources.

Custody Status

This section provides relevant details of the defendant's custody status. The following should be included at the very minimum: date of arrest; by whom and where; brief history of appearances before judicial officers and decisions which have been reached; amount of bail and whether made or not; conditions of release and degree to which the defendant has complied.

Victim Impact

While the Victim Impact section is actually part of the offense conduct for which the defendant is responsible, this information is presented under a separate heading to emphasize its importance and the fact that this section includes the impact on all victims of the offense, regardless of whether the information affects guideline application. An assessment of the financial, social, psychological, and medical impact upon any individual victim of the offense is presented, and any financial losses caused by the conduct in the offense are reported.

Adjustment for Obstruction of Justice

This section describes any efforts made by the defendant to impede the investigation or prosecution of this case.

Adjustment for Acceptance of Responsibility

This section contains an assessment of the defendant's acceptance of responsibility for the offense of conviction.

Offense Level Computation

This section presents the application and calculation of the sentencing guidelines and includes a short synopsis of facts underlying each application, providing tentative findings for the court. For each count, it identifies the applicable guideline and shows the base offense level and any specific offense characteristics or adjustments that modify the base offense level. An explanation indicating the reason for grouping or not grouping counts when a case involves multiple counts. In all cases, the guideline application is displayed, resulting in the total offense level for the case.

The guidelines contain enhancements in Chapter IV of the Guidelines Manual that may override the initial guideline calculation. For example, if the defendant is a career criminal or committed the instant offense as part of a pattern of criminal conduct form which he derived a substantial portion of his income, the defendant's total offense level may be increased. Any such increase is set forth in this section, following the total offense level computation.

Offense Behavior Not Part of Relevant Conduct

This section describes criminal behavior that has not been reported in The Offense Conduct section because it is not considered relevant conduct by the guidelines. This section may include offense behavior described in dismissed counts that is not part of relevant conduct for guideline calculations.

Part B: The Defendant's Criminal History

Juvenile Adjudications

This section contains a report of the defendant's record of juvenile adjudications of crime or delinquency and diversionary dispositions based on a finding or admission of guilt. Adjudications are included in chronological other, whether or not they are used in calculating the criminal history category under the Guidelines. The value assigned to each sentence under Chapter IV of the guidelines is also shown.

Criminal Convictions

This section contains a report of the defendant's adult criminal convictions and those diversions resulting from a guilty plea in a judicial proceeding. It includes a description of the defendant's

prior criminal convictions and dispositions in each case as well as the defendant's adjustment while incarcerated or under supervision.

Adult criminal convictions are included in chronological order, whether or not they are used in calculating the criminal history score under the guidelines. The value assigned to each sentence pursuant to Chapter IV of the guidelines is also shown.

Criminal History Computation

This section displays the calculation of the criminal history category and the basis for the calculation.

Pending Charges

This section lists any pending charges against the defendant. This section is omitted if there are no charges.

Other Criminal Conduct

This section reports reliable information regarding other past criminal conduct which may indicate the criminal history category does not adequately reflect the seriousness of the defendant's past criminal conduct, or the defendant's likelihood to commit future crimes. The information is relevant in determining the adequacy of the defendant's criminal history category.

Other Arrests

All other arrests of the defendant are reported in this section in order to provide information to the court regarding the defendant's contact with law enforcement authorities.

Part C: Offender Characteristics

This part sets forth information relative to the defendant's personal background. Included is information concerning: (1) personal and family data; (2) physical condition; (3) mental and emotional health; (4) substance abuse; (5) education and vocational skills; (6) employment and (7) financial condition, including an assessment of the defendant's ability to make restitution or pay a fine.

Part D: Sentencing Options

This part sets forth penalties authorized by statute along with the kinds of sentences available under the guidelines. Included are the statutory and guideline provisions for custody, impact of the plea agreement, supervised release, probation, fines, restitution, forfeitures, and for drug

offenses, denial of benefits. By presenting the statutory and guideline provisions, the parameters of each may be compared. Guideline sentencing options are found in Chapter V of the Guideline Manual.

Impact of the Plea Agreement

This part is included in presentence reports that are prepared when a plea agreement has been tendered to the court. The probation officer assesses the impact of the plea agreement on the guideline sentence by comparing the guidelines applicable under the plea agreement with the guidelines that would apply if the defendant were to plead to all counts.

Part E: Factors That May Warrant Departure

This part contains the probation officer's statement of "any factors that may indicate that a sentence of a different kind or of a different length from the one within the applicable guideline would be more appropriate under all the circumstances." Fed. R. Crim. P. 32(c) (2) (B). Inclusion of information in this section does not necessarily constitute a recommendation by the probation officer for a departure.

Part F: Factors That May Warrant a Sentence Outside of the Advisory Guideline System

As a result of the Supreme Court's ruling in U.S. v. Booker, 125 S.Ct. 738 (2005), a system was developed in which the sentencing courts are required to consider the sentencing options recommended by the sentencing guidelines, but the judges are free to impose any sentence authorized by Congress. This part contains information identified by the officer as any fact or circumstance addressed in the report that may be relevant to sentencing that was not otherwise considered in the guideline calculations or departure analysis. Since most grounds will have already been considered by the guidelines or policy statements, officers are cautious when identifying these factors.