

DANGEROUS STATE OF JUSTICE

PROTECT's Criminal
Justice Reform Report on

Minnesota's Failing
Response to Sexual Violence
and its Decriminalization
of Child Sexual Exploitation



National Association
to Protect Children
November 2016

Foreword

I'm honored to have personally worked alongside the authors of this research report: Camille Cooper, JonAnn Gledhill, Grier Weeks, and those within the organization that they are affiliated with, the National Association to Protect Children or "PROTECT".

In 2008, I along with PROTECT, as well as other parents of missing, murdered, abducted, and sexually abused children, helped to lobby our federal government to secure dollars for law enforcement agencies across the nation. These dollars are to help fund their battle against child exploitation and trafficking cases within their jurisdictions.

As a mother, grandmother, and advocate for our nation's children—and as a Minnesota citizen—I'm grateful that PROTECT is bringing its research to our state. This will help us in "our" effort to ensure every Minnesota child has a fighting chance to break free from sexual abuse. We know we can all use any tools available in this fight to stay ahead of those who choose to abuse our children.

I would be so grateful to see that PROTECT's research is not just reviewed and shared, but put into action!

Sincerely,

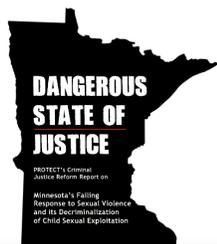
Linda Walker

Mother of Dru Sjodin

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1. Executive Summary

The recent arrest of a sexual predator for one of the most infamous “stranger-danger” cases in America put Minnesota in the national news. Yet, Minnesota has long been a state of great interest to PROTECT for its outrageous laws that allow probation for criminals who rape *their own* children. In this first Minnesota Sunlight Report, we took a closer look at the state’s criminal sentencing and child protection system, and what we found was more shocking than we expected. At a time when Americans from across the political spectrum are calling for criminal justice reform, Minnesota’s dangerous state of justice cries out for action.

In a 2015 report, the Minnesota Sentencing Guidelines Commission conducted an analysis of sentencing in cases of *criminal sexual conduct* (CSC) during 2014. It found that of all victims of these crimes, **80% are minors**. It also revealed that prosecutions for all CSC crimes have decreased 44% over the past two decades.

We reviewed 6,231 cases of CSC 1-4 from 2001-2014, where the victim was a minor and the perpetrator was an adult. We found that 90% of victims were female and 40% were under the age of 13. Only 4% of perpetrators were strangers, with nearly one quarter identified as parents or guardians.

An alarming 65% of adults convicted of sexually assaulting children in Minnesota are sentenced to no prison time at all. Most are sentenced to probation, typically with short visits to the local jail, which the sentencing commission includes in its “incarceration rates.” After a review of how this came to be, we conclude that judges who routinely give child predators probation have not “gone rogue,” they are usually following the spirit and letter of Minnesota law.

At the root of Minnesota’s weak sentencing for sexual violence are three factors. First, the legislature established statutory penalties of up to 30 years for rape and sexual assault, but declined to establish any minimum prison terms. The legislature then delegated power to determine sentencing to an 11-member, appointed commission, with disastrous results. Finally, the legislature enacted a shocking and unique “stay” (which we term the Minnesota Incest Loophole) that allows judges to give preferential sentencing to adults who rape their own family members, if it is deemed to be in the “best interest” of the child or the “family unit.”

We discuss the Minnesota Sentencing Guidelines Commission, originally created by the legislature to develop “advisory” guidelines for judges. Higher courts have ruled that it is the Commission’s guidelines—rather than the statutory penalties themselves—that largely bind judges in their sentencing. Those guidelines call for probation for child sexual exploitation and many sexual assault crimes and are at the very heart of Minnesota’s outrageously weak sentencing.

This report contains tables showing sentencing patterns of specific judges on CSC and child sexual exploitation crimes. We explain the care that should be taken in drawing conclusions

from data like this, but discuss the fact that “all accountability is local.” When citizens hear that their child protection or criminal justice systems as a whole are failing, they tend to grow cynical. Only when performance is *localized and specific* do citizens have the impetus and information they need to take action.

Perhaps the most shocking and unexpected revelation in this report is that Minnesota — traditionally thought of as a progressive state—has essentially **decriminalized** trafficking in video and images of children being raped, tortured and sexually abused (“child pornography”).

Despite a decade of work on the issue of child exploitation—including authoring numerous pieces of federal and state legislation and working closely with law enforcement and prosecutors across the United States—we know of **no other state in the union** with sentencing as weak as Minnesota’s for child sexual exploitation.

Minnesota judges impose sentences of probation for possession and distribution of child abuse imagery in a stunning **90% of all cases**, rendering efforts by the state’s heroic Internet Crimes Against Children Task Force almost useless unless prosecutions can be referred federally. Even when an offender is classified as a “registered predatory offender,” there is only a 62% chance he will do prison time for possession of child rape images.

This report also takes a brief look at Minnesota’s child protection system, pointing to several issues deserving of legislative scrutiny. According to the Minnesota Department of Human Services (DHS), over 70% of all reports from the public of child abuse and neglect are screened-out and never investigated. We found that 53% of sexual abuse reports are similarly screened-out.

We examine low substantiation rates of child abuse reports and discuss how a lack of law enforcement collaboration and proper tracking of cases can contribute to problems gathering evidence for action by both child protective services and prosecutors. We also look at potentially harmful DHS abuse classification regarding “mental injury” in the context of divorce and custody battles. We applaud DHS for creating an innovative Internet “dashboard” for citizens, and we recommend improvements to the information collected and published.

This report makes 19 recommendations for action by the Minnesota legislature.

We hope that this report arms Minnesota citizens with the information they need to understand serious criminal justice reform issues affecting children and to advocate for protection of the state’s most vulnerable children.

2. Methodology and Note of Thanks

The majority of information in this report was derived from a review of criminal cases by adults against children in Minnesota from 2001-2014.

We requested criminal case data from the Minnesota Sentencing Guidelines Commission (MSGC) under the state's version of the Freedom of Information Act. Commission staff was very responsive and professional at every stage, and although they might not be happy with some of the conclusions in this report, we would like to thank them.

The original data file received from MSGC contained well over 200,000 cases. We chose to focus on two specific crime groups: criminal sexual conduct (CSC) crimes and child abuse imagery (child pornography) crimes. In Minnesota, the CSC crimes are used to prosecute most child sexual abuse. Child abuse imagery crimes are important not only because child sexual exploitation has become a human rights crisis in Minnesota and throughout the U.S., but because these crimes typically have few of the evidentiary difficulties found in contact abuse cases, and thus sentencing provides a unique window into the actual attitudes and desires of professionals in the criminal justice system.

We began by removing all juvenile offenders and adult victims from the cases reviewed. A small number of cases contained conflicting data as to victim age and were removed. We then isolated 6,321 cases of criminal sexual conduct 1-4 (see report for rationale for excluding CSC 5) and 909 cases of child sexual abuse imagery (child pornography), including possession, dissemination and production.

As is clear in this report, we focused primarily on about a dozen data fields. These included first the charge (and sometimes subsection), whether an active prison sentence was given, and whether a stay of imposition or stay of execution was given. With rare exceptions, there was a perfect correlation in the data file between whether an offender got prison or a stay.

We decided not to analyze local jail time served because we believe giving much weight to gradations of trivial sentencing would be wrong and misleading. It's also worth noting that even when offenders are sentenced to serve short, local jail sentences, they might be "furloughed for treatment," which would not show up in the MSGC's data.

We also decided not to examine how often a judge was in compliance with Minnesota sentencing guidelines, or how often he or she was departing upwards or downwards from the sentencing grid when issuing a sentence. This data would be valuable for citizens to know. Some judges no doubt do their best to find aggravating factors and depart upwards, while others make a practice of finding mitigating factors and departing downwards. However, we believed that within the scope of this report, it was more important to give Minnesota citizens a clear picture of just how bad sentencing for child sexual assault really is—even when judges depart upward from presumed probation—than to grade judges on their own dangerous curve.

We also looked at the victim's age and sex, the relationship between victim and offender and

the offender's age and race. These are all distinct fields in the database maintained by the MSGC, and we found few "unknowns" in the database. We utilized MSGC's "MOC" lookup codes to translate this information for analysis.

In some instances, we spot-checked and researched case information further to increase confidence in accuracy. The MSGC's data includes the names, dates of birth, date of crime, date of conviction, county, judge and case number, making it possible for researchers to dig much deeper.

Other information in this report comes from public sources, which we have identified in the footnotes. To get data from the Minnesota Department of Human Services, we made a formal request under the public information access law.

We provided a copy of this report to the Minnesota Sentencing Guidelines Commission for review and comment prior to publication. They responded by pointing out that the Sex Offender Grid (see page 17) "applies only to offenses committed after July 31, 2006. Therefore, the presumptive sentences displayed on that grid do not apply to all the cases in the data set. That grid has higher presumptive sentences for repeat sex offenders."

3. Introduction

Minnesota ended up in the national news recently with the conviction of Danny Heinrich for the abduction, assault and murder of Jacob Wetterling, an 11-year-old boy whose disappearance in 1989 led to Congressional action to create internet registries for convicted sex offenders.

Heinrich had been a suspect in the abduction since the beginning, but authorities said they lacked enough evidence to charge him. In 2015, Minnesota authorities used DNA evidence to connect Heinrich to another 1989 child abduction in the area, but could not arrest him because Minnesota's criminal statute of limitations had run out.¹

The statute of limitations was not Minnesota's only conspicuously weak law in the Heinrich case. It took federal charges of child sexual exploitation, or "child pornography," to finally give police leverage to get their suspect to cooperate. Had Heinrich been charged under state law with the same crime, he would have been presumed eligible for *probation* in Minnesota—not much of a threat.

The National Association to PROTECT Children has fought for over 15 years to strengthen state laws for children. From Arkansas to Illinois and Virginia to California, we've won legislative reform, increased resources for child protection and secured greater transparency in the criminal justice and child protection systems. We know our way around prosecution practices, law enforcement and sentencing reform. We've been called on by Congress for the past decade to provide our expertise on all those issues and we're proud to have co-authored and passed five Acts of Congress, as well as legislation in nearly two dozen states.

This year, we have elected to turn our attention to Minnesota and cast some sunlight on the state's laws and sentencing practices with our Sunlight Project. We have released similar reports in past years for Virginia, where judges are reappointed in what can only be described as a collegial process by legislators. We hope that transparency will have an even greater impact in Minnesota, where judges are elected by the people.

Minnesota is both a progressive state—with an admirable interest in alternatives to incarceration where appropriate—and a surprisingly regressive state, where sentencing practices for those who prey on innocent children seem stuck in the 19th century. We hope that voters, activists and the criminal justice system itself will read this report and find inspiration for action.

4. Probation for the Sexual Assault of Children

The New York Times

U.S.

Outrage Follows 60-Day Sentence in Incest Case Against Father of Girl, 12

By NIRAJ CHOKSHI OCT. 21, 2016



Montana Judge Sparks Outrage With No Prison Time for Incest



Montana Judge Faces Call For Impeachment After Incest Sentencing

4.1 Introduction

In October 2016, reports of a Montana judge's lenient sentence for child rape caused national outrage. The case involved a 40-year-old man found guilty of repeatedly sexually assaulting his 12-year-old stepdaughter. His sentence? Two months.

Most Minnesota citizens would be shocked to hear of sentences like this one being handed down in their state. But the truth is that sentences of probation or months in the county jail are *common* in Minnesota for rape and sexual violence against children, as this report shows in detail.

A 2015 study by the Minnesota Sentencing Guidelines Commission (MSGC) found that, while criminal sexual conduct crimes carry statutory penalties ranging from 10-30 years, **just 39% of all convicted offenders (CSC 1-5) were sent to state prison.**ⁱⁱ

Even when the judge's own guidelines recommended prison sentences, the Commission reported, only 69% of offenders received them.ⁱⁱⁱ

In the section below, we show that these practices are used not only in the 20% of cases where the victim is an adult, but also in the 80% of cases involving *child victims*. We conclude that judges who grant probation for sexual assault and child rape have not gone rogue: they are often following the spirit and letter of Minnesota law.

4.2 Who are the Victims of Sexual Violence?

The 2015 MSGC study reported some sad statistics on who the victims of rape and sexual assault in Minnesota really are.

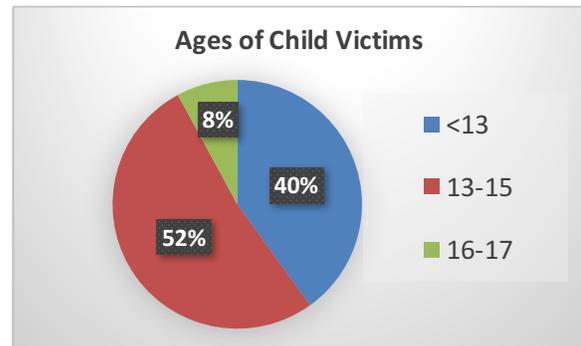
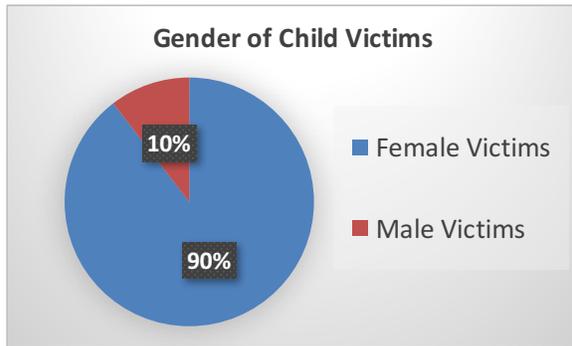
The Commission looked at all convictions for rape and sexual assault—regardless of the age of victim—under the *criminal sexual conduct* laws and found:

Judges who grant probation for sexual assault and child rape have not gone rogue: they are often following the spirit and letter of Minnesota law.

“In 80 percent of the cases sentenced, the victims were minors: 35 percent involved victims under the age of 13; and 45 percent involved victims who were between the ages of 13 and 17. Nineteen percent involved victims who were adults. Ninety-two percent of the victims were female ...” [emphasis ours] ^{iv}

In our review of Minnesota cases from 2001-2014, we removed all juvenile offenders, focusing only on 6,231 criminal sexual conduct crimes (CSC 1-4) against children committed by adults. We found:

- 90% of victims were female
- 10% of victims were male
- 40% of victims were under age 13
- 52% of victims were 13-15
- 8% of victims were 16-17

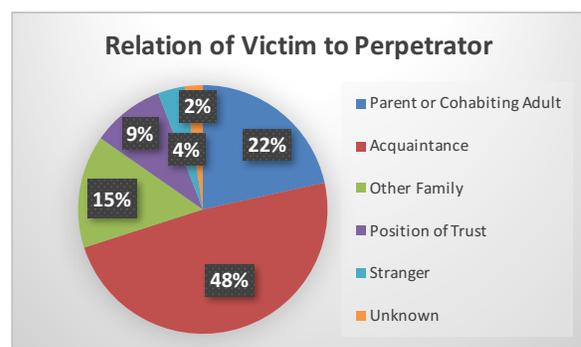


4.3 Who are the Perpetrators of Sexual Violence?

The MSGC’s 2015 report found that “Ninety-seven percent of CSC offenders were male.” “Sex offenders also slightly more likely to be white or Hispanic and less likely to be black than other offenders,” the Commission found.

In our review of cases against children, we found the following about perpetrators:

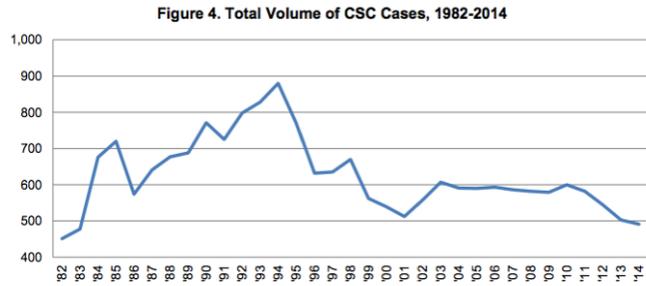
- 22% were natural parents, step-parents, guardians, spouses or cohabiting adults
- 15% were other family
- 48% were acquaintances
- 9% were other adults in position of trust or authority
- 4% were strangers
- 2% were of unknown relationship



4.4 Prosecutions Have Dramatically Declined

Before delving deeper into Minnesota sentencing practices for sexual violence, it’s important to stop and note what is perhaps the most important revelation in the MSGC’s

2015 study: prosecutions for criminal sexual conduct (regardless of the age of victim) **decreased 44%** over the 20 years from 1994-2014 (see MSGC chart at right). Since 80% of CSC crimes are committed against minors, we think it is safe to assume that prosecutions for child sexual abuse have also declined dramatically along this trend line.



MSCG Report, p. 7

The report states:

There were 491 offenders sentenced for CSC in 2014, which was down 2.4 percent from 2013 (503 offenders sentenced) and is the lowest number of CSC offenders sentenced since 1983. The number has fluctuated since 1981, peaking at 880 offenders in 1994 (44% greater than the number sentenced in 2014). Almost all of the growth since 1981 has been in the CSC child provisions (Intra-Familial Sex Abuse (IFSA) and provisions specifying the age of the victim).^y

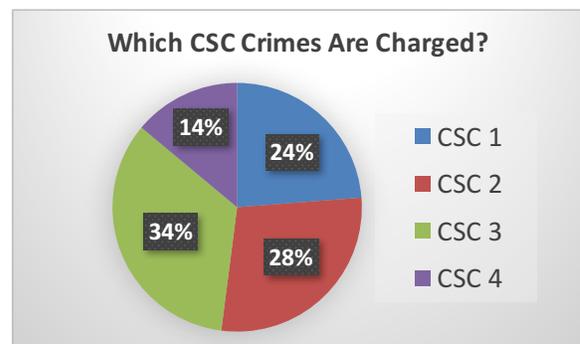
How could prosecutions for rape and sexual abuse decline so severely? There will be some who maintain that the large decline in prosecution reflects a corresponding decline in sexual assaults against children. However, we believe no such thing is true, nor could it ever be proven without more complete data from the child protection system—which is not *investigating* most reports of abuse (see discussion in Section 5)—and the justice system, which is not *prosecuting* most reported abuse.

Increased investigative and prosecutorial resources would greatly improve Minnesota’s ability to prosecute sex crimes. However, we believe that Minnesota’s extreme legal culture of tolerance for sexual violence contributes heavily to the state’s lack of material support for the fight, making these crimes a lesser priority.

4.5 How Crimes Against Children Are Charged (CSC 1-4)

Under Minnesota law, contact sex crimes against children are generally charged under the criminal sexual conduct statutes. These statutes range from first degree (CSC 1) to fifth degree (CSC 5), “with first-degree being the most serious.”^{vi}

Fifth degree CSC is a gross misdemeanor, unless the defendant has prior convictions, and can include exhibitionism crimes. While these might be serious offenses against a child, and while more serious acts might be *charged* sometimes as CSC 5, we restricted our analysis to CSC 1-4, to avoid straw-man claims that we were including prosecutions of public urination or “flashing.” The chart

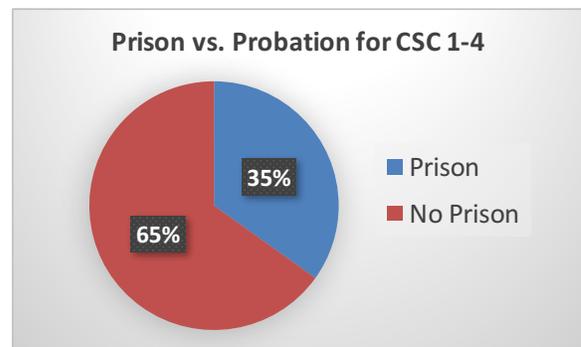


above shows how the CSC 1-4 cases reviewed broke down by type of CSC charge in our review.

CSC 1 may be charged when an assault on any victim involves sexual penetration and/or when a victim under the age of 13 is sexually abused in any way. The rationale for this is that any form of sexual assault against children at an early stage of development is as serious as the traditional definition of rape. Young children are incapable of fighting off an adult, making physical force usually unnecessary, and they are often so physically undeveloped that sexual penetration would be risky for an assailant. However, it should not be assumed that non-sexual penetration crimes are always less psychologically damaging to victims, or that prosecutors even know what acts were committed. First and foremost, child sexual abuse is a devastating abuse of trust and innocence.

4.6 Most Child Predators Get Probation

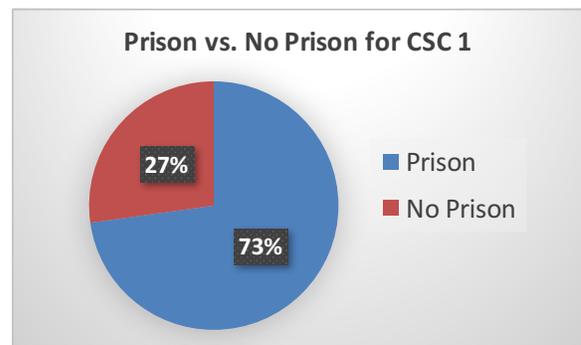
Our review of Minnesota criminal sexual assault cases by adults against children found a shocking statewide trend: Most sexual predators get no prison time at all. Minnesota courts award predators probation, often with brief time in local jails, **65% of the time.**



When Minnesota judges want to divert a sexual predator from prison, they grant three types of stays—stays of imposition, stays of execution and stays of adjudication. These are explained below.

4.7 Over One Quarter of First Degree CSC Offenders Get Probation

Even by Minnesota’s incredibly weak sentencing guidelines, the presumptive sentence for CSC 1 is prison.



Minnesota law considers CSC 1, or criminal sexual conduct in the first degree, the most serious sex offense. The legal definition for this crime is either sexual penetration of the victim or sexual contact with a victim under 13. The statutory penalty for this offense is up to 30 years in prison. Nevertheless, we found that Minnesota judges were staying sentences and handing down **probation for CSC 1 in 27% of all cases.**

4.8 Turning Felonies into Misdemeanors: Stays of Imposition

The Minnesota Sentencing Guidelines Commission (MSGC) defines a stay of imposition as follows:

A “stay of imposition” occurs when the court accepts and records a finding or plea of guilty, but does not impose (or pronounce) a prison sentence. If the

offender successfully completes the stay, **the case is discharged, and the conviction is deemed a misdemeanor**... [emphasis ours]^{vii}

Stays of imposition clearly represent a serious concern when it comes to crimes against children, because they give sexual predators an opportunity to mask very serious criminal histories as misdemeanors, depriving potential employers and the larger community of crucial, accurate public information. In our review of CSC cases by adults against minors, we found that **Minnesota judges grant stays of imposition 30% of the time.**^{viii}



4.9 Probation, Not Prison: Stays of Execution

Minnesota judges also set aside prison time by granting stays of execution, which the MSGC defines as follows:

A “stay of execution” occurs when the court accepts and records a finding or plea of guilty, and a prison sentence is pronounced, **but it is not executed.** If the offender successfully completes the stay, the case is discharged, but the offender continues to have a record of a felony conviction ... [emphasis ours]^{ix}

Our review of CSC 1-4 crimes by adults against minors found that **Minnesota judges grant stays of execution 35% of the time** (see chart above, right).

4.10 Making Predators Disappear: Stays of Adjudication

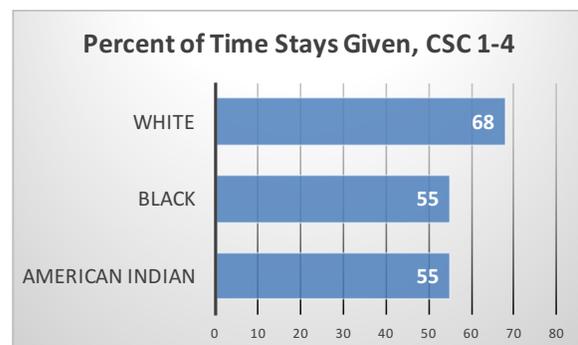
Minnesota judges also impose stays of adjudication, where a case is dismissed *without any conviction at all* once probation is completed. The data reviewed in this report did not indicate how often stays of adjudication are used, however given the state’s heavy reliance on other forms of stays, we believe it is a dangerous practice that should be looked at closely by the legislature.

4.11 Racial Disparities

The Minnesota Sentencing Guidelines Commission states that a major purpose of its guidelines for judges is to ensure equal sentencing, without regard to factors such as race or ethnic background. Yet, we found some variance when it comes to race.

Our review of Criminal Sexual Conduct 1-4 cases looked at how often perpetrators were given stays for CSC 1-4 crimes against children:

- Whites: 68% of cases
- Blacks: 55% of cases
- Native Americans: 55% of cases



These disparities might be due to bias on the part of judges regarding which offenders “can respond to a treatment program” and which “family units” are good candidates for *family reunification*. Other factors might include which defendants have the best access to defense lawyers who are adept at getting their clients expert and character witnesses or entry into treatment programs.

4.12 Ground Zero: No Minimums

To understand how child rapists could be getting probation in Minnesota, it’s necessary to start at ground zero: the lack of any minimum prison sentence for sexual assault or child rape.

It might have sounded tough to voters when elected officials were putting maximum penalties of 30 years on the books for criminal sexual conduct in the first degree. However, the Minnesota legislature created no minimum prison sentences for the crime. Thirty years is a very wide range of discretion to give the courts for violent crimes against innocent victims. The penalty for raping an eight-year-old is not 30 years, it’s 0-30 years. When writing these laws, the legislature made a decision to give nearly unlimited discretion to an appointed commission on whether to impose any prison sentence at all.

So-called “mandatory-minimums” have become very unpopular over the last decade, due in large part to punitive drug sentencing that forced judges to send offenders to prison against the judge’s wishes, and often counter to any rationale strategy for community safety. PROTECT has never supported mandatory minimums for juvenile offenders, however, few people would maintain that probation is appropriate for sexual assault crimes against children by adult offenders.

The vast majority of citizens, regardless of their general philosophy about criminal justice reform, can agree on some conduct for which there should be a mandatory minimum prison sentence. Yet, in Minnesota, lawmakers ducked this great ethical issue, turning the whole question of rational sentencing over to the Minnesota Sentencing Commission.

4.13 The Commission

While Minnesota citizens might understandably think that the punishments for rape and sexual assault are decided by their 201 elected lawmakers, it’s actually an 11-member appointed body that wields most of the power to determine punishments for crimes. The legislature decided that first degree rape would be punishable by 0-30 years, then delegated the specifics to the Minnesota Sentencing Guidelines Commission.

The 11-member Commission was created in 1978 by the state legislature, with three members appointed by the Chief Justice of the Supreme Court and five by the Governor.^x Its statutory purpose is to:

... promulgate Sentencing Guidelines for the district court. The guidelines shall be based on reasonable offense and offender characteristics. The guidelines promulgated by the commission shall be advisory to the district court ...^{xi}

While the legislature specified that the Commission's "guidelines" would be "advisory" for judges, the passage of time and higher court rulings appear to have determined otherwise. When PROTECT asked the Commission whether its guidelines are, in fact, "advisory," the Commission referred us to *State v. Shattuck*, an appeals ruling on the case of a man who raped a 17-year-old girl.^{xii}

In the Shattuck decision, the appeals court writes:

The state argues that the Sentencing Guidelines as written are advisory to the district court and therefore do not implicate Sixth Amendment concerns Citing remarks made by the first director of the Sentencing Guidelines Commission in 1979, the state contends that the guidelines have been advisory since their inception The state further argues that the Minnesota Sentencing Guidelines are less mandatory than the "reformed" Federal Sentencing Guidelines following the *Booker* decision, and that boundaries on the sentencing discretion of Minnesota judges are practically nonexistent. **We disagree with the state's position.** [emphasis ours].

The appeals court went on to say:

... [W]e have placed limitations on the length of durational sentencing departures. As a general rule, the maximum upward durational departure that can be justified by aggravating circumstances is double the presumptive sentence. *State v. Evans*, 311 N.W.2d 481, 483 (Minn.1981). Only in cases of "severe aggravating circumstances" may the district court impose a greater-than-double departure from the presumptive sentence; in such cases the only absolute limit on duration is the maximum provided in the statute defining the offense. *State v. Mortland*, 399 N.W.2d 92, 94 & n. 1 (Minn.1987). Such cases, we have stated, are "**extremely rare.**" *State v. Spain*, 590 N.W.2d 85, 89 (Minn.1999). [emphasis ours]

It appears, therefore, that regardless of the original intent of the Minnesota legislature when it established "advisory" guidelines, Minnesota judges are now bound by their own sentencing grid, with only modest upward departures allowed.

Crime victims and other citizens wishing to understand the *actual* sanctions for sexual assault and child rape in Minnesota should look not to the criminal code, but to the MSGC's Sex Offender Grid, created by 11 unelected citizens and approved by the Minnesota legislature.

4.14 The Sex Offender Guidelines Grid

In the section below, we summarize the statutory penalties for criminal sexual conduct in the first through fourth degrees and compare them to the Minnesota Sentencing Commission's Sex Offender Grid.

The **statutory penalties** for criminal sexual conduct crimes in Minnesota are as follows:

Crime	Summary*	Penalty
CSC 1	A person who engages in sexual penetration with another person, or in sexual contact with a person under 13 years of age	0-30 Years
CSC 2	A person who engages in sexual contact with another person... (a) the complainant is under 13 years of age and the actor is more than 36 months older ... (b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older ...	0-25 Years
CSC 3	A person who engages in sexual penetration with another person... (b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older... (e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older... (f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age...	0-15 Years 0-5 Years if victim is 13-15 and offender is 2-4 years older
CSC 4	A person who engages in sexual contact with another person... (b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older... (g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age... [and force, injury or repeated acts]	0-10 Years

* For complete language, see Minnesota Statutes 609.341-344.

Below is the Sentencing Guidelines Commission's Sex Offender Grid, which shows judges

how they should sentence these crimes. The numbers in each box show the recommended months they should sentence. **Shaded areas are a “presumptive stayed sentence,”** directing judges to impose a sentence of probation (typically with short jail time) instead of prison.

Sex Offender Grid

Presumptive sentence lengths are in months. *Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure.* Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or More
<i>CSC 1st Degree</i>	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360²</i>
<i>CSC 2nd Degree—(c)(d)(e)(f)(h) Prostitution; Sex Trafficking³ 1st Degree—1(a)</i>	B	90 <i>90³-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300²</i>
<i>CSC 3rd Degree—(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) Prostitution; Sex Trafficking 2nd Degree—1a</i>	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180</i>	180 <i>153-180²</i>
<i>CSC 2nd Degree—(a)(b)(g) CSC 3rd Degree—(a)(e)(f) or(b)with ref. to subd. 2(1) Dissemination of Child Pornography (Subsequent or by Predatory Offender)</i>	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4th Degree—(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography²</i>	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120²</i>
<i>CSC 4th Degree—(a)(b)(e)(f); CSC 5th Degree; Possession of Child Pornography (Subsequent or by Predatory Offender)</i>	F	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 3rd Degree—(b) with subd. 2(2); Indecent Exposure Possession of Child Pornography; Solicit Child for Sexual Conduct²</i>	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60²</i>
<i>Registration Of Predatory Offenders</i>	H	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

¹ 12¹=One year and one day.

When using this grid, judges find the appropriate box for sentencing by matching the “severity level,” seen down lefthand column (A-H) with the “criminal history score,” seen across the top row (0-6 or More). The Sentencing Commission provides the following table for calculating an offenders “criminal history score”:

Current Offense on Sex Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D7	1 ½
	9 – 11, D8 – D9	2
	Murder 1 st Degree	2
	A	3
	B – C	2
	D – E	1 ½
	F – G	1
	H	½ (for first offense); 1 (for subsequent offenses)

Sentencing guidelines might reflect the *historical* values of Minnesota judges. But when it comes to crimes against children, they certainly do not reflect the modern values of Minnesota citizens. Encouraging conformity to weak sentencing practices creates a race to the bottom in the courts, with dangerous results for children.

4.15 The Minnesota Incest Loophole

As discussed above, the Minnesota legislature created statutory penalties for sexual assault and child rape without any minimum prison time, delegating that discretion to an appointed sentencing commission. The tables above show the Commission’s guidelines and scoring system, which the higher courts have said they are bound to follow with minimal leeway to impose longer prison sentences.

However, the legislature did grant judges the ability to **waive prison sentences altogether** for sexual violence against children. An outrageous, intentional loophole in the state’s legal code allows judges to “stay,” or set aside, a lengthy prison sentence for even the most serious rapes and assaults if it is deemed to be in the interest of “the family unit.” This loophole (see graphic on next page) can be found within each of the criminal sexual assault statutes in the Minnesota criminal code.

Since adult victims of sexual assault typically want nothing to do with their rapists, the Minnesota Loophole is clearly intended to be applied when there are *child victims*, who have no choice.

When it comes to concern for the family unit, it is worth nothing that parents are taken from their families and locked behind bars for committing crimes every day in Minnesota. Many are loving parents, whose children and spouses suffer greatly from their loss. Most are never offered probation on the grounds that being incarcerated would hurt their “family unit.” Nor are bank robbers or drug dealers offered probation on the grounds

Parents are taken from their families and locked behind bars for committing crimes every day in Minnesota. Most are never offered probation on the grounds that being incarcerated would hurt their “family unit.”

that they might “respond to a treatment program” (see provision below), although they certainly might.

Yet, when a sexual assault victim is a child, assailants are provided the special option of probation. The Minnesota Stay is available to individuals who commit the entire spectrum of sexual crimes, including sexual penetration of a child under the age of 13 (CSC 1):

Subd. 3. Stay. Except when imprisonment is required under section [609.3455](#); or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

On its face, this policy is based on the belief that intra-familial sex offenders belong in “treatment,” not prison, and that successful treatment will eventually lead to family reunification in some form, which is in the child’s and family unit’s best interest.

Supervised contact between child rape victim and rapist is permitted. Unsupervised contact is also allowed, as long as a supervising correctional agent authorizes it or once “treatment” is complete. It is important to note that over half of all child sexual assaults prosecuted under the Minnesota CSC laws *are* intra-familial.

At its root, however, the Minnesota Incest Loophole is based on the idea that children are not full persons entitled to absolute dignity and protection under the law, but rather vassals of the “family unit,” for whom safety and justice is *relative and negotiable by adults*. That negotiation can be heavily influenced by the very adults who hurt or failed to protect them. Inevitably, this process is likely to involve manipulation of the child victim.

Today, if an adult woman is assaulted by her husband, it is widely understood that defense of the “family unit” is no longer an excuse for deferred action.

This dynamic stands in stark contrast to more evolved ideas about domestic violence against women. Today, if an adult woman is assaulted by her husband, it is widely understood that defense of the “family unit” is no longer an excuse for lesser punishment or deferred action. Although adult victims of domestic violence might be motivated by fear, economic dependency or conflicted feelings and wish to “drop charges,” authorities have a duty to proceed with full prosecution when there is evidence. The crime is generally understood to be a matter between the defendant and the State.

When the victim is a child—whose shame, confusion, conflicted feelings and fear can barely be comprehended by most adults—time and energy that should be devoted to witness support and aggressive prosecution too often is directed towards an expedient settlement with defense attorneys and their treatment partners.

Survivors and child trauma experts universally understand that betrayal of trust at the hands of a sexually predatory parent or caregiver is usually **far more damaging** to a child than abuse by a stranger, with catastrophic long-term consequences. Yet, Minnesota law affords these children less justice and protection.

4.16 Judicial Performance

Without detailed knowledge of individual cases, it is not a good idea to evaluate judges based on a handful of cases.

In some cases, probation might be the only obtainable option. Physical evidence might be lacking or victims reluctant to testify. Non-protective spouses might pressure young victims and encourage diversion from prison. A plea agreement that at least ensures a conviction—with lengthy prison time hanging over the perpetrator’s head if he violates the conditions of that probation—is sometimes the best prosecutors and judges can do.

Nevertheless, our findings show some Minnesota judges are doing far better at sending sexual predators to prison than their colleagues are. Others are awarding sexual predators with probation and returning them to communities as a routine practice.

Some Minnesota judges are doing far better at sending sexual predators to prison than their colleagues are.

PROTECT has long held the view that “all accountability is local.” When citizens hear only that their state child protection system has gotten a failing grade or that “the criminal justice system” needs reform, they are deprived of the specific information that will allow them to transcend cynicism and take constructive action where they live. The data here can provide meaningful insight into a judge’s **overall pattern of sentencing**. It can also be used by citizens to inquire about a judge’s general attitudes and practices.

For example, is a judge repeatedly giving adults sentences of a year or less for child sexual abuse? Does a judge seem to be giving predators less time for rape of a child in the family?

With details in hand, citizens can press for specific examples that might reveal how well their judge is protecting children.

Note: The data in the following tables span 2001-2014. Some judges might no longer be on the bench.

How Often Did Judges Sentence Assailants to Prison Instead of Probation for First Degree Criminal Sexual Conduct?

Judge	# Cases	% Prison	% No Prison
Rysavy, Donald E.	9	100%	0%
Ackerson, David E.	8	100%	0%
Bush, Leland O.	8	100%	0%
Smith, Norbert P.	8	100%	0%
Borgen, Lisa N.	7	100%	0%
Hanson, Barbara R.	7	100%	0%
Remick, Jeffrey S.	7	100%	0%
Warner, Teresa R.	7	100%	0%
Carter, Joseph T.	6	100%	0%
Halsey, Stephen M.	6	100%	0%
Johnson, William A.	6	100%	0%
Kraker, Michael J.	6	100%	0%
Litynski, Warren E.	6	100%	0%
Vaa, Galen	6	100%	0%
Wellmann, Fred W.	6	100%	0%
Clifford, James	5	100%	0%
Marek, Lezlie Ott	5	100%	0%
Spilseth, Donald M.	5	100%	0%
Kirk, Michael L.	12	92%	8%
Stacey, Rex D.	11	91%	9%
Flynn, Paulette K.	10	90%	10%
Clark, Jr., James H.	9	89%	11%
Rosas, Salvador M.	9	89%	11%
Chase, Joseph F.	8	88%	13%
Gross, Bruce F.	8	88%	13%
Munger, Mark A.	8	88%	13%
Ruble, Steven	8	88%	13%
Scherer, John H.	8	88%	13%
Smith, Joanne M.	15	87%	13%
Scherer, Richard S.	7	86%	14%
Johnson, Gregg E.	12	83%	17%
Senyk, Waldemar B.	12	83%	17%
Dempsey, Terence M.	6	83%	17%
Hayes, Thomas	6	83%	17%
Hoolihan, James W.	6	83%	17%
Kanning, Philip T.	6	83%	17%
Mennis, David L.	6	83%	17%
Perkins, Richard C.	6	83%	17%
Quaintance, Kathryn	6	83%	17%

Judge	# Cases	% Prison	% No Prison
Rosenbaum, Marilyn B.	6	83%	17%
Simonett, Martha M.	6	83%	17%
Small, Robert M.	6	83%	17%
Sullivan, David P.	6	83%	17%
Wilson, Edward S.	6	83%	17%
Zimmerman, Lloyd B.	6	83%	17%
Brandt, Gina M.	5	80%	20%
Carlson, Jay D.	5	80%	20%
Duffy, David M.	5	80%	20%
Eide, Kevin W.	5	80%	20%
Lange, Steven Z.	5	80%	20%
LeDuc, II, Charles H.	5	80%	20%
Nathanson, Rosanne	5	80%	20%
Slieter, Randall J.	5	80%	20%
Thompson, Michael J.	5	80%	20%
Walker, Robert D.	5	80%	20%
Wheeler, Steven D.	5	80%	20%
Yunker, Mary	5	80%	20%
Bastian, Gary W.	9	78%	22%
Baxter, M. Michael	9	78%	22%
Jesse, Michael S.	9	78%	22%
Moreno, Daniel C.	9	78%	22%
Stephenson, George T.	9	78%	22%
Dixon, Donna K.	8	75%	25%
Mott, J. Thomas	8	75%	25%
Tilsen, Judith M.	8	75%	25%
Jacobson, Debra A.	7	71%	29%
Seibel, Gerald J.	7	71%	29%
Knutson, David L.	10	70%	30%
Landwehr, Vicki E.	10	70%	30%
Bibus, Thomas	13	69%	31%
Cahill, Peter A.	9	67%	33%
Smith, John P.	9	67%	33%
Christopherson, Bruce W.	6	67%	33%
Dickinson, A. James	6	67%	33%
Fetsch, Michael F.	6	67%	33%
Karasov, Patricia Kerr	6	67%	33%
Koch, William H.	6	67%	33%
Widick, Paul E.	6	67%	33%

Judge	# Cases	% Prison	% No Prison
Mabley, Daniel H.	14	64%	36%
Bloomquist, Timothy R.	11	64%	36%
Wernick, Mark S.	35	63%	37%
Birnbaum, Robert	8	63%	38%
Macklin, William E.	8	63%	38%
Robertson, Sally Ireland	8	63%	38%
Schurrer, Gary R.	8	63%	38%
Swanson, Stephen D.	10	60%	40%
Bush, Philip D.	5	60%	40%
Holahan, Jr., John L.	5	60%	40%
Kaman, Marilyn J.	5	60%	40%
Rancourt, Robert G.	5	60%	40%
Sovis, Michael V.	5	60%	40%
Sweetland, Heather L.	5	60%	40%
Thompson, Jeffrey D.	5	60%	40%
Wieners, Joseph	5	60%	40%
TenEyck, David	7	57%	43%
Nord, Beryl A.	16	50%	50%
Williamson, Jodi	12	50%	50%
Oleisky, Allen	10	50%	50%
Johnson, Kim R.	8	50%	50%

Judge	# Cases	% Prison	% No Prison
Martin, Elizabeth H.	6	50%	50%
Meslow, Douglas B.	6	50%	50%
Rantala, Jeffry S.	6	50%	50%
Johnson, Lawrence R.	9	44%	56%
Davies, Jean A.	7	43%	57%
Maas, Ellen L.	7	43%	57%
Olson, Lynn C.	7	43%	57%
Fabian, James	10	40%	60%
Pendleton, Alan	5	40%	60%
Venne, Donald J.	5	40%	60%
Hoffman, John C.	7	29%	71%
Theisen, Mary	7	29%	71%
Jasper, Jenny Walker	11	27%	73%
Spicer, Richard G.	9	22%	78%
Burke, Kevin S.	5	20%	80%
Mark, Kevin F.	5	20%	80%
McKinsey, E. Anne	5	20%	80%
Sutherland, Patrice K.	5	20%	80%
Conkel, Terrence E.	8	13%	88%
Hawkinson, John	8	13%	88%
Maturi, Jon	8	13%	88%

** Judges with 5 or more cases. Some judges may no longer be on the bench.*

How Often Did Judges Sentence Assaults to Prison Instead of Probation for Criminal Sexual Conduct (CSC 1-4) When the Victim Was Under 13?

Judge	# Cases	% Prison	% No Prison
Ackerson, David E.	10	90%	10%
Litynski, Warren E.	9	89%	11%
Vaa, Galen	9	89%	11%
Remick, Jeffrey S.	8	88%	13%
Smith, Norbert P.	8	88%	13%
Warner, Teresa R.	8	88%	13%
Anderson, Douglas P.	7	86%	14%
Clark, Jr., James H.	7	86%	14%
Godzala, Thomas A.	7	86%	14%
Irvine, Peter	7	86%	14%
Mennis, David L.	7	86%	14%
Kirk, Michael L.	12	83%	17%
Stephenson, George T.	6	83%	17%
Bueltel, Joseph A.	9	78%	22%
Johnson, Gregg E.	9	78%	22%
Christian, Casey J.	8	75%	25%
Rysavy, Donald E.	19	74%	26%
Scherer, Richard S.	11	73%	27%
Carter, Joseph T.	7	71%	29%
Marben, Kurt J.	7	71%	29%
Starr, Mark M.	7	71%	29%
Bush, Leland O.	10	70%	30%
Cahill, Peter A.	10	70%	30%
Thompson, Jeffrey D.	12	67%	33%
Hansen, Mark F.	9	67%	33%
Leahy, Mary C.	9	67%	33%
Wilson, Edward S.	9	67%	33%
Brandt, Gina M.	6	67%	33%
DeCourcy, Michael T.	6	67%	33%
Gearin, Kathleen R.	6	67%	33%
Hoff, Peter A.	6	67%	33%
Holter, Terrance C.	6	67%	33%
Lang, Lois J.	6	67%	33%
Martin, Krista K.	6	67%	33%
McShane, John Q.	6	67%	33%
Nelson, Paul A.	6	67%	33%
Swenson, Douglas G.	6	67%	33%
Wellmann, Fred W.	20	65%	35%
Hoolihan, James W.	14	64%	36%

Judge	# Cases	% Prison	% No Prison
Scherer, John H.	11	64%	36%
Wernick, Mark S.	35	63%	37%
Bibus, Thomas	16	63%	38%
Tilsen, Judith M.	8	63%	38%
Benshoof, Paul T.	13	62%	38%
Kraker, Michael J.	13	62%	38%
Spilseth, Donald M.	13	62%	38%
Barnette, Toddrick S.	10	60%	40%
Melbye, John G.	10	60%	40%
Schurrer, Gary R.	10	60%	40%
TenEyck, David	10	60%	40%
Flynn, Paulette K.	12	58%	42%
Gross, Bruce F.	12	58%	42%
Chase, Joseph F.	19	58%	42%
Senyk, Waldemar B.	14	57%	43%
Stacey, Rex D.	14	57%	43%
Davick-Halfen, Kris	7	57%	43%
Lange, Steven Z.	7	57%	43%
Reuter, James	7	57%	43%
Walker, Bradley C.	7	57%	43%
Yunker, Mary	7	57%	43%
Thompson, Michael J.	16	56%	44%
Johnson, William A.	9	56%	44%
Mossey, Dale E.	9	56%	44%
Carlson, Jay D.	11	55%	45%
Moreno, Daniel C.	11	55%	45%
Smith, Joanne M.	11	55%	45%
Mabley, Daniel H.	19	53%	47%
Bastian, Gary W.	16	50%	50%
Hanson, Barbara R.	14	50%	50%
Titus, Linda S.	12	50%	50%
Bush, Philip D.	10	50%	50%
Fetsch, Michael F.	8	50%	50%
Stringer, Thomas M.	8	50%	50%
Varco, Robert B.	8	50%	50%
Anderson, Steven A.	6	50%	50%
Baland, Timothy J.	6	50%	50%
Dempsey, Terence M.	6	50%	50%
Drange, Steven E.	6	50%	50%

Judge	# Cases	% Prison	% No Prison
Eide, Kevin W.	6	50%	50%
Mott, J. Thomas	6	50%	50%
Roith, Michael J.	6	50%	50%
VanDeNorth, Jr., John B.	6	50%	50%
Wolf, Dale A.	6	50%	50%
Rosas, Salvador M.	17	47%	53%
Halsey, Stephen M.	15	47%	53%
Johnson, Lawrence R.	13	46%	54%
Munger, Mark A.	13	46%	54%
Sullivan, David P.	13	46%	54%
Zimmerman, Richard A.	13	46%	54%
Duffy, David M.	11	45%	55%
Kanning, Philip T.	11	45%	55%
Perkins, Richard C.	11	45%	55%
Ruble, Steven	11	45%	55%
Small, Robert M.	18	44%	56%
Baxter, M. Michael	9	44%	56%
Oleisky, Allen	9	44%	56%
Pearson, John E.	9	44%	56%
Peterson, David W.	9	44%	56%
Rantala, Jeffry S.	9	44%	56%
Landwehr, Vicki E.	16	44%	56%
Aandal, Donald J.	7	43%	57%
Christensen, David E.	7	43%	57%
Harrington, David F.	7	43%	57%
Koch, William H.	7	43%	57%
Leitner, John R.	7	43%	57%
McKinsey, E. Anne	7	43%	57%
Meslow, Douglas B.	7	43%	57%
Roue, John M.	7	43%	57%
Smith, John P.	7	43%	57%
Thuet, William F.	7	43%	57%
Zimmerman, Lloyd B.	7	43%	57%
Hayes, Thomas	12	42%	58%
Wieners, Joseph	12	42%	58%
Knutson, David L.	17	41%	59%
Jesse, Michael S.	20	40%	60%
Robertson, Sally Ireland	15	40%	60%
Florey, James B.	10	40%	60%
Hoffman, John C.	10	40%	60%
Sovis, Michael V.	10	40%	60%
Bloomquist, Timothy R.	18	39%	61%

Judge	# Cases	% Prison	% No Prison
Dixon, Donna K.	13	38%	62%
LeDuc, II, Charles H.	13	38%	62%
King, Jr., Robert R.	8	38%	63%
McBride, John R.	8	38%	63%
Olson, Lynn C.	8	38%	63%
Slieter, Randall J.	8	38%	63%
Wolf, Gerald J.	8	38%	63%
Christopherson, Bruce W.	11	36%	64%
Fabian, James	11	36%	64%
Lund, Kevin	11	36%	64%
Richards, Douglas L.	11	36%	64%
Conkel, Terrence E.	15	33%	67%
Rasmussen, Paul E.	12	33%	67%
Birnbaum, Robert	9	33%	67%
Norris, Lyonel	9	33%	67%
Chesterman, John A.	6	33%	67%
Davies, Jean A.	6	33%	67%
Flynn, Jeffrey L.	6	33%	67%
Harrelson, George I.	6	33%	67%
Metzen, Leslie M.	6	33%	67%
Mottl, Kathleen A.	6	33%	67%
Wieland, Lucy Ann	6	33%	67%
Swanson, Stephen D.	16	31%	69%
Quaintance, Kathryn	13	31%	69%
Walker, Robert D.	13	31%	69%
Burke, Kevin S.	10	30%	70%
McManus, Timothy J.	10	30%	70%
Pendleton, Alan	10	30%	70%
Pagliaccetti, Gary J.	14	29%	71%
Anderson, Gregory J.	7	29%	71%
Kaman, Marilyn J.	7	29%	71%
Karasov, Patricia Kerr	7	29%	71%
Rodenberg, John R.	7	29%	71%
Simonett, Martha M.	7	29%	71%
Smith, Kathryn N.	7	29%	71%
Theisen, Mary	7	29%	71%
Johnson, Kim R.	15	27%	73%
Jasper, Jenny Walker	19	26%	74%
Nord, Beryl A.	36	25%	75%
Widick, Paul E.	12	25%	75%
Sullivan, Barry A.	8	25%	75%
Venne, Donald J.	8	25%	75%

Judge	# Cases	% Prison	% No Prison
Walters, Terrence M.	8	25%	75%
Seibel, Gerald J.	13	23%	77%
Galler, Gregory G.	9	22%	78%
Williamson, Jodi	20	20%	80%
Morrow, James A.	10	20%	80%
Maas, Ellen L.	11	18%	82%
Hawkinson, John	12	17%	83%
Dehn, James E.	6	17%	83%
Oswald, John T.	6	17%	83%

Judge	# Cases	% Prison	% No Prison
Cass, John E.	7	14%	86%
Sweetland, Heather L.	16	13%	88%
Armstrong, Thomas G.	8	13%	88%
Connell, Timothy K.	8	13%	88%
Hall, Sharon L.	8	13%	88%
Solien, John R.	8	13%	88%
Maturi, Jon	9	0%	100%
Spicer, Richard G.	7	0%	100%
Lynch, Edward I.	6	0%	100%

** Judges with 6 or more cases. Some judges may no longer be on the bench.*

How Often Did Judges Sentence Assaults to Prison Instead of Probation for Criminal Sexual Conduct (CSC 1-4) When the Victim Was a Teen?

Judge	# Cases	% Prison	% No Prison
Moreno, Daniel C.	10	70%	30%
Christopherson, Bruce W.	10	60%	40%
Johnson, Gregg E.	10	60%	40%
Monahan, M. Michael	10	60%	40%
Thompson, Jeffrey D.	15	53%	47%
Wernick, Mark S.	20	50%	50%
Tilsen, Judith M.	14	50%	50%
Bueltel, Joseph A.	12	50%	50%
Irvine, Peter	12	50%	50%
Mott, J. Thomas	12	50%	50%
Nathanson, Rosanne	12	50%	50%
Hall, Sharon L.	10	50%	50%
Kirk, Michael L.	10	50%	50%
Quaintance, Kathryn	10	50%	50%
Slieter, Randall J.	10	50%	50%
Borene, Bernard E.	15	47%	53%
Ekstrum, B. William	15	47%	53%
Stephenson, George T.	15	47%	53%
Flynn, Paulette K.	13	46%	54%
Johnson, William A.	13	46%	54%
Vaa, Galen	11	45%	55%
Remick, Jeffrey S.	20	45%	55%
Kraker, Michael J.	23	43%	57%
Clark, Jr., James H.	14	43%	57%
Jacobson, Debra A.	12	42%	58%
Benson, Robert R.	17	41%	59%
Perkins, Richard C.	22	41%	59%
Chase, Joseph F.	25	40%	60%
TenEyck, David	20	40%	60%
Bastian, Gary W.	10	40%	60%
Drange, Steven E.	10	40%	60%
Larson, Gary R.	10	40%	60%
Pearson, John E.	10	40%	60%
Hayes, Thomas	23	39%	61%
Smith, Joanne M.	23	39%	61%
Smith, John P.	23	39%	61%
Rysavy, Donald E.	29	38%	62%
Smith, Norbert P.	16	38%	63%
McKinsey, E. Anne	11	36%	64%

Judge	# Cases	% Prison	% No Prison
Pendleton, Alan	11	36%	64%
Bloomquist, Timothy R.	17	35%	65%
Anderson, Steven A.	12	33%	67%
Hanson, Barbara R.	12	33%	67%
Nelson, Paul A.	12	33%	67%
Seibel, Gerald J.	12	33%	67%
Wellmann, Fred W.	12	33%	67%
Varco, Robert B.	25	32%	68%
Aandal, Donald J.	22	32%	68%
Macklin, William E.	19	32%	68%
Bush, Philip D.	16	31%	69%
Birnbaum, Robert	13	31%	69%
Connell, Timothy K.	13	31%	69%
Fabian, James	13	31%	69%
Johnson, Kurt D.	13	31%	69%
Mennis, David L.	13	31%	69%
Munger, Mark A.	13	31%	69%
Baxter, M. Michael	23	30%	70%
Williamson, Jodi	23	30%	70%
Eide, Kevin W.	10	30%	70%
Lynch, Edward I.	10	30%	70%
Mabley, Daniel H.	34	29%	71%
Agerter, Lawrence E.	17	29%	71%
Benshoof, Paul T.	17	29%	71%
Rosas, Salvador M.	24	29%	71%
Dixon, Donna K.	28	29%	71%
King, Jr., Robert R.	14	29%	71%
Scherer, John H.	22	27%	73%
Harrelson, George I.	11	27%	73%
Knutson, David L.	11	27%	73%
Lang, Lois J.	11	27%	73%
Starr, Mark M.	11	27%	73%
Widick, Paul E.	11	27%	73%
Yon, Tamara L.	11	27%	73%
McManus, Timothy J.	15	27%	73%
Spilseth, Donald M.	15	27%	73%
Sutherland, Patrice K.	15	27%	73%
Theisen, Mary	15	27%	73%
Small, Robert M.	19	26%	74%

Judge	# Cases	% Prison	% No Prison
LeDuc, II, Charles H.	23	26%	74%
Conkel, Terrence E.	27	26%	74%
Senyk, Waldemar B.	24	25%	75%
Ackerson, David E.	16	25%	75%
Karasov, Patricia Kerr	12	25%	75%
Lund, Kevin	12	25%	75%
Reuter, James	12	25%	75%
Sagstuen, Warren R.	12	25%	75%
Solien, John R.	12	25%	75%
Walker, Robert D.	33	24%	76%
Jesse, Michael S.	21	24%	76%
Ruble, Steven	21	24%	76%
Spicer, Richard G.	21	24%	76%
Halsey, Stephen M.	26	23%	77%
Christian, Casey J.	13	23%	77%
Simonett, Martha M.	13	23%	77%
Sovis, Michael V.	13	23%	77%
Wolf, Gerald J.	18	22%	78%
Asphaug, Karen	14	21%	79%
Burke, Kevin S.	14	21%	79%
Mossey, Dale E.	14	21%	79%
Savre, Michael R.	14	21%	79%
Tenney, Geoffrey W.	14	21%	79%
Bibus, Thomas	19	21%	79%
Kanning, Philip T.	19	21%	79%
Hawkinson, John	20	20%	80%
Landwehr, Vicki E.	20	20%	80%
Richards, Douglas L.	20	20%	80%
Scherer, Richard S.	15	20%	80%
Wieners, Joseph	15	20%	80%
Wilson, Edward S.	15	20%	80%
Hoff, Peter A.	10	20%	80%
Hoffman, John C.	10	20%	80%
Sullivan, Barry A.	10	20%	80%
Stacey, Rex D.	31	19%	81%
Swanson, Stephen D.	26	19%	81%
Hoolihan, James W.	21	19%	81%
Metzen, Leslie M.	16	19%	81%
Titus, Linda S.	16	19%	81%
Walker, Bradley C.	16	19%	81%
Blakely, Timothy L.	11	18%	82%
Dempsey, Terence M.	11	18%	82%

Judge	# Cases	% Prison	% No Prison
Wermager, Tim D.	11	18%	82%
Battey, David R.	17	18%	82%
Gross, Bruce F.	17	18%	82%
McCarthy, Thomas G.	17	18%	82%
Venne, Donald J.	17	18%	82%
Johnson, Kim R.	23	17%	83%
Nord, Beryl A.	36	17%	83%
Pagliaccetti, Gary J.	18	17%	83%
Carlson, Jay D.	12	17%	83%
Grunke, Frederick L.	12	17%	83%
Martin, Elizabeth H.	12	17%	83%
McBride, John R.	12	17%	83%
Mottl, Kathleen A.	19	16%	84%
Yunker, Mary	19	16%	84%
Johnson, Lawrence R.	21	14%	86%
Sandvik, Kenneth A.	14	14%	86%
Harrington, David F.	15	13%	87%
Rasmussen, Paul E.	24	13%	88%
Rodenberg, John R.	16	13%	88%
Hancock, Karla	17	12%	88%
Maturi, Jon	26	12%	88%
Robertson, Sally Ireland	18	11%	89%
Walters, Terrence M.	19	11%	89%
Florey, James B.	10	10%	90%
Knapp, Thomas	10	10%	90%
Miles, Susan R.	10	10%	90%
Pearson, Skipper J.	10	10%	90%
Schurrer, Gary R.	10	10%	90%
Albrecht, H. Peter	11	9%	91%
Christensen, David E.	11	9%	91%
Zimmerman, Richard A.	11	9%	91%
Freeberg, Conrad I.	12	8%	92%
Macaulay, Robert E.	12	8%	92%
Meslow, Douglas B.	12	8%	92%
Jasper, Jenny Walker	25	8%	92%
Cuzzo, Michael J.	13	8%	92%
Fetsch, Michael F.	13	8%	92%
Thuett, William F.	13	8%	92%
Dehn, James E.	15	7%	93%
Marben, Kurt J.	15	7%	93%
Mark, Kevin F.	19	5%	95%
Wieland, Lucy Ann	21	5%	95%

Judge	# Cases	% Prison	% No Prison
Anderson, Gregory J.	15	0%	100%
Flynn, Jeffrey L.	11	0%	100%
Leahy, Mary C.	11	0%	100%

Judge	# Cases	% Prison	% No Prison
Leitner, John R.	10	0%	100%
Rantala, Jeffry S.	10	0%	100%
Sommerville, John J.	10	0%	100%

** Judges with 10 or more cases. Some judges may no longer be on the bench.*

4.17 Interpreting the Sentencing Data

Behind these numbers are several important factors. Chief among these are charging decisions and plea bargaining practices of prosecutors.

A judge who looks stronger on sentencing, for example, might be the beneficiary of a strong prosecutor, who charges aggressively and negotiates strong plea agreements.

A judge who looks weaker on sentencing might preside over cases where a prosecutor routinely under-charges or brings weak, expedient plea agreements to court. In these instances, a poor outcome is exacerbated further by weak sentencing guidelines.

The proverbial buck stops with the judge, however. Judges should not conduct themselves as glorified clerks in robes, rubber-stamping expedient plea bargains or blindly following advisory guidelines.

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4.18 A Note on Prosecutor Accountability

Prosecutors have enormous power in the child protection and justice systems, deciding what crimes are charged, negotiating plea agreements and often heavily influencing police, child protective services and judicial behavior. Their exact impact and performance is very challenging to isolate and measure, especially without good data on child abuse referrals coming in from CPS and police agencies. PROTECT is committed, however, to continuing to piece together a more complete picture of what is happening system-wide in Minnesota, and prosecutor metrics are at the very heart of that challenge.

5. Minnesota’s Decriminalization of Child Sexual Exploitation

Note: This section was previously released in a slightly different form as a criminal justice reform brief, “Children Betrayed.”

5.1 Innocence Trafficked

In decades past, child sexual abuse imagery was often viewed as a minor crime, even a victimless crime. Images of children being sexually displayed and abused were often trivialized as “kiddie porn,” and those who trafficked in it were caricatured as little more than sad figures, living in their parents’ basements and looking at pictures. Prosecution was rare and criminal penalties weak.

The truth is, child sexual exploitation has become one of the greatest human rights crises of our time. A flourishing, online black market for video and imagery of children being raped has turned children into sexual commodities on a scale not seen before in modern society. This crushing demand can only be met one way: through the rape and torture of more children. Minnesota is turning its back on these children.

A flourishing black market has turned children into sexual commodities on a scale not seen in modern society. Minnesota is turning its back on these children.

5.2 What “Child Pornography” Really Is

Child rape images are commonly referred to as “child pornography,” but this description is outdated and misleading. This misunderstanding allows people to conflate the actual **crime scene image** of children being assaulted with other types of obscenity and adult pornography.

Minnesota judges and prosecutors know very well what child abuse imagery actually is, although many citizens still might not. The video and images being produced and shared via the internet today are not images of “babies in bathtubs,” “barely legal” teens, or “sexting” images between adolescents. They are horrific recordings of children—often babies, toddlers, and very young children—being victimized.

5.3 Child Sexual Exploitation in Minnesota

When Minnesota Internet Crimes Against Children (ICAC) task force officers execute a search warrant for an offender they have seen trading images online, in the vast majority of cases they have observed the suspect traffic images of *very young* children—under twelve and often including infants and toddlers—being sexually assaulted, penetrated, sodomized, tortured, subjected to bestiality, or bound and gagged.

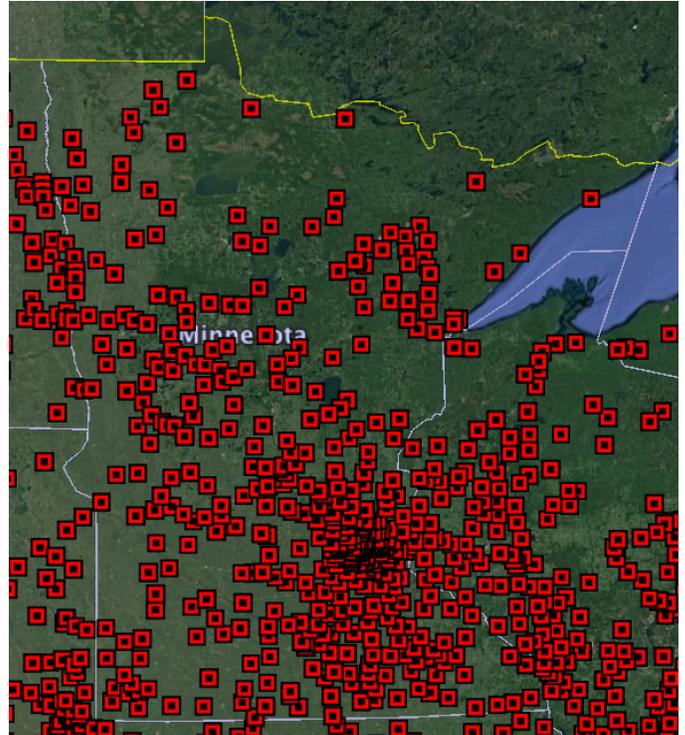
As discussed above, this criminal activity in Minnesota is part of a flourishing global market for child abuse imagery. Consumers in this marketplace upload, download, buy, sell, and trade child abuse imagery every minute of every day. The U.S. is believed to be the largest producer of this material, and production remains largely a home-based, cottage industry. In the U.S. alone, law enforcement estimates that there are *hundreds of thousands* of individuals producing, sharing and downloading these images.

In 2008, *USA Today* published the number of computers state-by-state seen by law enforcement trafficking in sadistic images of young children being sexually assaulted and tortured. Law enforcement reported 7,688 individual computers (as identified by software serial numbers, not IP addresses) in Minnesota alone.¹³

5.4 Danger of Possessors to Children in Local Communities

The issue of how much threat child sexual abuse image possessors pose to children in their own, local communities has been extensively studied. Studies over 10 years place rates of contact offending by possessors between 55% and 85%.

A 2010 meta-analysis of recent research studies found “approximately one in two (55%) online offenders admitted to a contact sexual offense in the six studies that had self-report data.”¹⁴



Minnesota trafficking in the worst types of child abuse imagery. Source: ICAC Data Network.

This estimate is also consistent with a recent study deploying tactical polygraphs at the time of a search of an offender’s home or work. The 2014 study utilized polygraph examinations to question suspects in child abuse imagery cases with no known history of offending. The study found:

“Professionals who work with sexual abusers often are faced with a significant obstacle: offenders’ failure to accurately report their histories of undetected offenses, particularly hands-on crimes against children. The implications are significant and include poor risk assessment, misguided treatment planning, inadequate sentences, and insufficient supervision conditions. This problem is particularly important with so called child pornographers—offenders whose known criminality is limited to the Internet, and who may be reluctant to admit they have engaged in the hands-on abuse of children. The current study examines an investigative method that we refer to as tactical polygraph and describes its effectiveness in identifying previously undetected sexual offending within this population. In our sample of 127 suspects with no known history of hands-on offending, **only 4.7% admitted to sexually abusing at least one child. During polygraph procedures, an additional 52.8% of the study sample provided disclosures about hands-on abuse they perpetrated.**” [emphasis ours]¹⁵

The authors also reported that nearly half of those who reported no contact offenses

showed signs of deception or admitted to behaviors indicating an intent to offend.

A 2012 report by the U.S. Sentencing Commission examined the pre-sentencing reports of non-producing offenders and found evidence in 35.1% of the cases of “criminally dangerous sexual behavior (CSDB),” which it noted, “**should be regarded as a conservative estimate of the actual rate of CSDB among offenders ...**” [emphasis ours] ¹⁶

The Commission added that “it is widely accepted that the actual rate of criminal CSDB among child pornography offenders is higher than the “known” or “official” rate for the simple reason that sexual offenses, particularly against children, are systematically underreported to law enforcement.”

5.5 Minnesota Decriminalization

Since 2006, PROTECT has been recognized for our subject matter expertise on child sexual exploitation in the states and federally. PROTECT has testified before Congress on the issue numerous times, authoring major federal legislation three times. The PROTECT Our Children Act of 2008 (Biden, Hatch, Wasserman Schultz, Barton) provided legal authorization and funding for the Internet Crimes Against Children (ICAC) task force program, a national network that includes Minnesota’s ICAC. Our “Alicia’s Law” campaign has secured state funding for ICACs in 12 states. In addition, we have won stronger criminal penalties for child exploitation in several states.

PROTECT also works closely with federal and state law enforcement agencies across the United States on a variety of child exploitation policy issues, and has a detailed understanding of charging and sentencing practices for these crimes.

We found Minnesota’s sentencing on child sexual exploitation crimes shocking and dramatically out of step with state and national trends.

Despite this broad experience in the field, our review of 909 cases of production, dissemination and possession of child exploitation cases for the years 2001-2014 showed Minnesota’s sentencing practices to be shocking and dramatically out of step with national and state trends. It is fair to say that Minnesota—through the use and abuse of sentencing guidelines—has essentially **decriminalized child sexual exploitation**.

5.6 Possession Sentencing

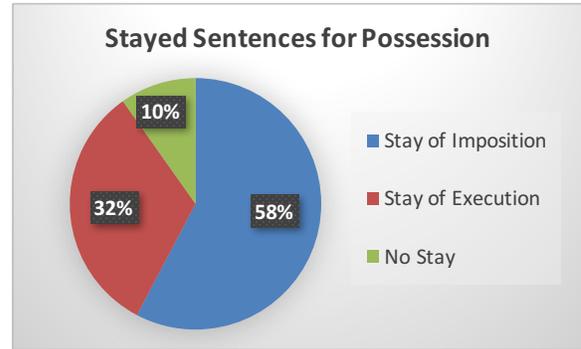
Our review found 745 cases of possession of child abuse imagery. As with all cases reviewed in this report, we excluded those involving juvenile offenders. **In 90% of all cases, offenders were granted stays, resulting in no state prison sentences.**

It is important for Minnesota citizens and lawmakers to understand the tremendous waste of precious law enforcement resources created by these judicial practices. Minnesota law enforcement is overwhelmed and terribly under-resourced in the fight against child exploitation.

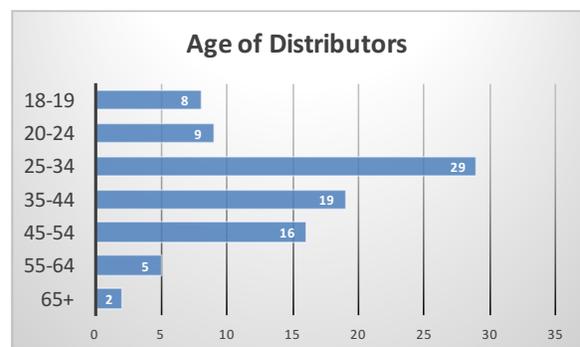
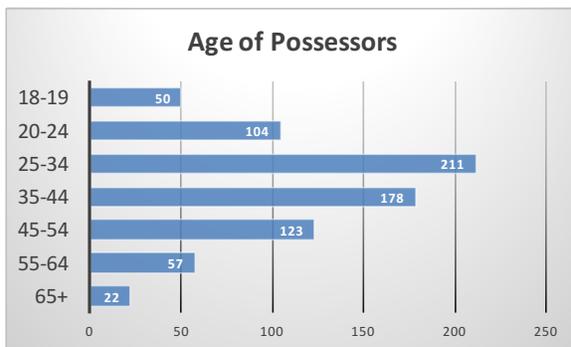
The Minnesota ICAC task force, like every ICAC in the nation, is forced daily to triage an ocean of criminal leads (see map and estimates of magnitude, p. 26), focusing on only a

token number for prosecution. Prosecutors must then devote their limited time to reviewing seized material and bringing these cases to court.

Investigators, forensic analysts and child exploitation prosecutors have some of the most difficult jobs in America, viewing horrific video and imagery every day of children—often infants and toddlers—being raped, tortured and sexually abused. They go home each night knowing that the vast majority of suspects will remain at large, due to sheer lack of resources. Over half of those suspects are hands-on predators, with local victims who could be rescued. Yet, at the conclusion of 90% of these cases, these front-line heroes know the demoralizing and dangerous truth: Minnesota judges will award these perpetrators with probation.



We analyzed possessors and distributors by age and found the following:

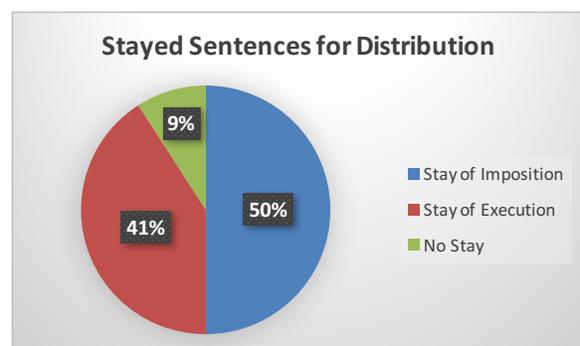


5.7 Distribution Sentencing

Whether child abuse imagery is commissioned, sold, bartered, or shared freely, experts in the field agree that every individual who participates in this market contributes directly to the suffering and exploitation of children. Even so-called “simple possessors” normalize and encourage further sexual assaults against children. Those who distribute (on websites, “file-sharing” networks, or other means) propel a criminal culture that demands and facilitates production of new material constantly.

Moreover, victims of child exploitation have testified in court and before legislative bodies that they suffer greatly knowing that while their rape might have ended, their degradation at the hands of new observers and participants never will.

Our review of 88 dissemination cases found that Minnesota judges are diverting



offenders from prison **91% of the time**.

Minnesota judges grant stays of *imposition* in 50% of all cases (resulting ultimately in a misdemeanor criminal record) and stays of *execution* in an additional 41% of cases.

5.8 Production Sentencing

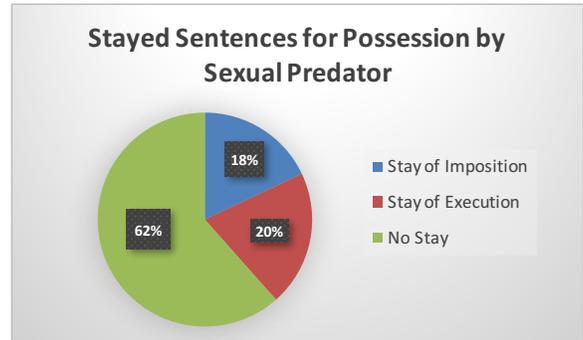
Our review of child abuse imagery production cases in Minnesota found only 37 cases. Production is the most serious child exploitation offense, involving, by definition, actual sexual contact. We found that Minnesota judges are granting stays in almost 87% of all cases.

However, a review of recent news accounts of production cases in Minnesota (“Use of a Minor in Sexual Performance”) showed that this crime is very often charged in “sexting” type cases, where the perpetrator and victim are close in age. Our conclusion is that, *given Minnesota’s outrageously weak sentencing for child sexual exploitation crimes in general, few law enforcement agencies or prosecutors would bring typical production cases to court under state law*, opting instead to “go federal.” (Virtually all child exploitation cases are also federal crimes, under the Constitution’s commerce clause.)

State prosecutions for more serious production crimes should also involve a prosecution for criminal sexual conduct at the state level, which would be the more serious offense and not show up in *Use of a Minor* data.

5.9 Possession by a “Registered Predatory Offender”

Even in cases of possession by a “registered predatory offender,” Minnesota judges are granting probation instead of jail time **38% of the time**. Out of 39 such cases reviewed, we found that judges granted stays of imposition 18% of the time and stays of execution an additional 20% of the time.



5.10 Dangerous Sentencing Guidelines

Despite an utter lack of mandatory minimums, *maximum* statutory criminal penalties for child sexual exploitation crimes in Minnesota are comparable to those in many other states. Possession carries a maximum penalty of five years; dissemination seven years; and production ten years. Yet, as with criminal sexual conduct crimes, the devil is in the sentencing guidelines, as the state’s outrageous sentences ultimately show:

Minnesota Sentencing for Child Sexual Exploitation Crimes, 2001-2014*

Judge Name		Prison	No Prison	% Prison	Total Cases
Smith	Joanne M.	7	3	70%	10
Burke	Kevin S.	3	4	43%	7
Rosas	Salvador M.	4	7	36%	11
Nathanson	Rosanne	2	4	33%	6
Olson	Lynn C.	2	4	33%	6
Wilson	Edward S.	2	4	33%	6
Jasper	Jenny Walker	2	5	29%	7
Wermager	Tim D.	2	7	22%	9
Stacey	Rex D.	2	8	20%	10
Chase	Joseph F.	1	5	17%	6
Conkel	Terrence E.	1	5	17%	6
Knapp	Thomas	1	5	17%	6
Tilsen	Judith M.	1	5	17%	6
Brandt	Gina M.	1	7	13%	8
Koch	William H.	1	7	13%	8
Hayes	Thomas	1	8	11%	9
Small	Robert M.	2	17	11%	19
Barnette	Toddrick S.	1	10	9%	11
Nord	Beryl A.	0	17	0%	17
Bush	Philip D.	0	9	0%	9
Duffy	David M.	0	9	0%	9
Kanning	Philip T.	0	9	0%	9
Garcia	Tamara G.	0	8	0%	8
Maturi	Jon	0	8	0%	8
Scherer	Richard S.	0	8	0%	8
Hoffman	John C.	0	7	0%	7
Maas	Ellen L.	0	7	0%	7
McKinsey	E. Anne	0	7	0%	7
Rysavy	Donald E.	0	7	0%	7
Lang	Lois J.	0	6	0%	6
Pagliaccetti	Gary J.	0	6	0%	6
Schluchter	Shari R.	0	6	0%	6
Spicer	Richard G.	0	6	0%	6
Theisen	Mary	0	6	0%	6

* Six or more cases. Judge might no longer be on bench.

6. Failure to Investigate Child Abuse Reports

6.1 Introduction

When someone cares about something they pay attention to it. Walmart can track a pair of sneakers from the manufacturer to the cash register. We should do no less for vulnerable children who face daunting life changes once they enter the bureaucracy of the child protection system.

Before sex crimes against children can be prosecuted and sentenced, they often must make it through a difficult process involving the child protection system. Children can languish for years in this system or be ignored entirely and sent away. PROTECT used published reports and data requested and obtained through the Minnesota Data Practices Act to examine both of these problems.

6.2 Child Abuse and Neglect Reports in Minnesota

According to a 2015 Minnesota Department of Human Services report to the legislature, there were **72,022** total child maltreatment reports made in 2014.¹⁷ Most reports accepted for investigation were made by *state-mandated* reporters, who include law enforcement, medical professionals and school personnel. The table below, from that report, shows where the reports *that were accepted* came from:

Table 2. Sources of accepted maltreatment reports

Report source	Reports	Percent of reports
Law enforcement or courts	5,013	24.9
School personnel	4,876	24.2
Social worker or counselor	2,985	14.8
Health practitioner	2,181	10.8
Parent or relative out of the home	1,312	6.5
Friend, acquaintance or neighbor	677	3.4
Parent or relative in the home	568	2.8
Non-relative caregiver	369	1.8
Other	1,607	8.0
Anonymous	579	2.9
Total reports	20,167	100.0

Table 2 identifies the sources of all maltreatment reports accepted for a child protection response. About 84 percent of reports were from those mandated by law to report suspected child maltreatment. Mandated reporters include those in law enforcement, health care, mental health, social services, education and child care, among others who work with children.

6.3 When Reports Fall On Deaf Ears

For many Minnesota citizens and mandated reporters, reporting suspected abuse and neglect must often seem futile. According to the Minnesota Department of Human Services (DHS), “county and tribal agencies received 72,022 reports of child maltreatment in 2014,” **yet accepted only 20,167** for further investigation.¹⁸

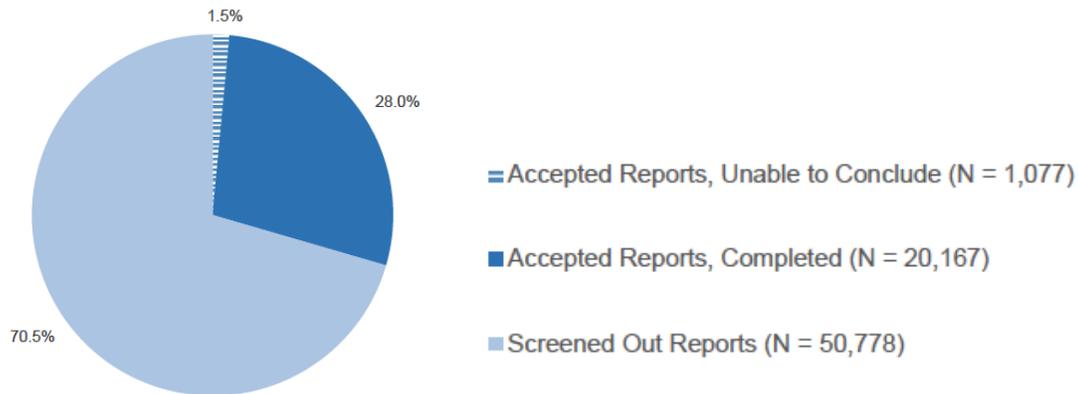
Over 70% of the reports of abuse and neglect made by citizens in Minnesota are never investigated at all.

In other words, over 70% of the reports of abuse and neglect made by citizens in Minnesota

are screened-out by intake workers and *never investigated at all*.

Over 70% of All Child Abuse and Neglect Reports in Minnesota are Screened-Out

Figure 1. Child maltreatment reports



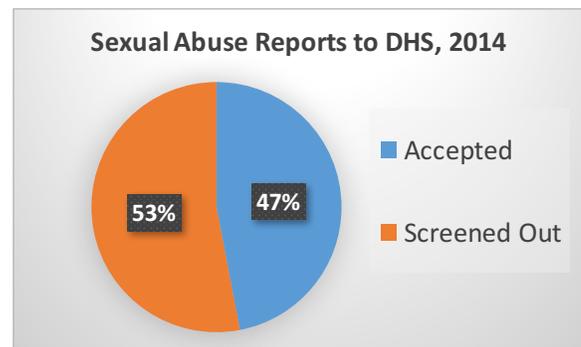
Source: Minnesota Department of Human Services

6.4 Most Sexual Abuse Reports Rejected

Of the 72,022 reports for child maltreatment, **4,984** included allegations of child sexual abuse.¹⁹

The number of rejected sexual abuse reports was not included anywhere in the DHS report to the legislature, nor is it available on the agency's public website. PROTECT obtained this data through a Minnesota Data Practices Act request.

While sexual abuse reports received a higher acceptance rate than other types of abuse, DHS accepted only *2,334 out of 4,984 reports*, or 47%. **Over half (53%) were screened out and never investigated.**²⁰ Perhaps because Minnesota DHS does not publicly report this performance factor, we found no evidence that the agency has provided any explanation for this low response rate.



PROTECT does not have data on the rate of acceptance of child abuse reports *by county or tribal jurisdiction*, but we believe such data would show substantial variances in response rate by locality. As with criminal sentencing, a wide spectrum of response rates will show not only who is performing best and worst, but point to public servants who might be sources of solutions and best practices.

6.5 Screening Out Repeated Reports of Abuse

Minnesota uses detailed criteria to determine if it will accept a report of suspected child maltreatment and assign it for an investigation or assessment. PROTECT was provided the

guiding document for CPS workers and what we found raises serious concerns.²¹ In order to be *screened-in*, intake workers are instructed, a report must meet three criteria. It must meet the legal definition of child maltreatment, contain enough detail to allow investigators to locate the child or family member, and it must “**contain ... allegations that have *not* been previously assessed or investigated by the local child welfare agency or another child welfare agency.**”

Screened in report of alleged child maltreatment

A screened in report of alleged child maltreatment is an oral or written communication that must contain the following three elements:

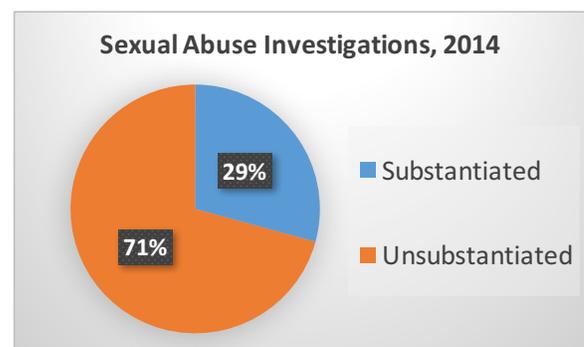
- The allegation meets the statutory definition of child maltreatment (see Screening guidelines section)
 - There is sufficient identifying information to attempt to locate the child, or at least one member of the family
 - The report contains maltreatment allegations that have not been previously assessed or investigated by the local child welfare agency or another child welfare agency.
-

This policy implemented precisely—specifying, for example a reasonable window of time before identical allegations are reinvestigated—might produce different outcomes for children. As written or summarized for intake workers, however, it raises questions about how this policy is being implemented, and whether the most vulnerable children are being responded to properly.

Children who disclose abuse have to overcome huge obstacles including shame, guilt, self-blame, intimidation, and violence. If a child’s maltreatment report had previously been assessed or investigated and determined to be unfounded, then a second report should increase, not eliminate, child protective service concern.

6.6 Poor Investigations Lead to Low Substantiation Rates

The quality of child abuse investigations determines nearly every outcome that follows for children. When child protective services agencies are deprived of adequate training and resources—including cooperation and assistance from local law enforcement (see 6.7, below)—investigations will suffer. In correspondence with PROTECT, DHS reports that **only 683 of the 2,334 cases accepted for investigation—or 29%—resulted in a substantiated finding.**



What happened to those children? Were they left in, or placed back into, homes with people who allegedly sexually abused them?

There is absolutely no way to determine the quality of the overall local response to sex abuse reports from the way Minnesota tracks its data. However, low acceptance and uncertain substantiation rates should concern lawmakers across the state and is a good indication that an aggressive law enforcement response to intra-familial and caretaker sex abuse cases might be lacking.

6.7 Lack of CPS Coordination with Law Enforcement

Minnesota DHS' "Child Maltreatment Intake, Screening and Response Path Guidelines" point out that state law requires child protective services to "cross-notify" law enforcement about abuse reports:

Law enforcement and local child welfare agencies are required to cross-notify immediately, or within 24 hours, both orally and in writing, when reports of child maltreatment are received. [Minn. Stat. 626.556, subd. 7(c)] This includes both screened in and screened out reports. The timing of cross-notification of law enforcement should correspond with the screening decision.²²

Despite this critical requirement, however, Minnesota does not track which cases *received* a **concurrent** law enforcement investigation, which ones did not, and what the outcomes were. PROTECT requested data on the number of arrests resulting from total reports of sexual abuse and the Department's response was: "The Minnesota Department of Human Services does not have data on arrests."

In 2012, the University of Illinois published a research brief on the rates of CPS investigations with concurrent law enforcement investigations and the results nationally were startling. The majority of communities had a concurrent law enforcement investigation just over one-fifth of the time. Sexual abuse allegations received a concurrent criminal investigation about half the time.²³

Poor evidence collection is one of the main reasons given by prosecutors for declining to prosecute child sexual assaults or settling for weak plea bargains.

If law enforcement is not investigating (to include search warrants to collect evidence and a professional criminal investigation), then Minnesota's CPS investigations are likely to include only civilian "interviews" by social workers to meet their burden of proof. Lack of aggressive evidence collection by law enforcement to support children's disclosures of abuse is a strong predictor of whether a child abuse case will be substantiated or not and prosecuted or not, and as a result, repeatedly come into the system. Poor evidence collection is also one of the main reasons given by prosecutors for declining to prosecute child sexual assaults or settling for weak plea bargains.

Arrests (and prosecutions) by locality of child sex offenders would be a valuable indicator or performance measure on sexual abuse reports. It would indicate levels of coordination between law enforcement and social service agencies and increase protection for children from re-abuse. As discussed above, the Minnesota Sentencing Guideline Commission reports

that criminal sexual conduct crime prosecutions in 2014 were down 44% from what they were in 1994. It's safe to assume that if prosecutions dropped by nearly half, investigations were following the same trend.

6.8 Are Children Being “Reunified” With Predatory Parents?

When asked by PROTECT about reunification rates between offenders and victims with substantiated reports of sex abuse, DHS responded:

We aren't able to query from the data system whether the reunification was with the offending parent. We are able to report how many times a parent was the offender in the sexual abuse reports, and how many times the child was removed when the offender was the parent, and then how many times children were reunified to the home from which they were removed. However, because there are often two parents involved, what we can't say from the data system is how often the offending parent is still in the home—it may be that the child was returned to their home and the offending parent had since left the home. The amount of time it would take to review individual case files to obtain the information you've requested is prohibitive for our agency at this point.²⁴

The only appropriate response to the question of in how many cases a child victim was reunified with an offending parent with a finding of sex abuse would be “never”.

6.9 Sex Abuse in the Context of Child Custody Disputes

CPS agencies in general tend to be skeptical of child sexual abuse when it arises in divorce cases. This can create a systemic investigative bias that works to the detriment of children who are abused in this context because their disclosures may be discredited from the outset. Defense lawyers and “expert witnesses” who fight back aggressively in the evidentiary vacuums discussed above exacerbate this danger.

We reviewed Minnesota DHS’ “Child Maltreatment Intake, Screening and Response Path Guidelines” and were concerned about indications of this bias.²⁵ DHS lists and discusses seven different “child maltreatment allegation types,” including sexual abuse, physical abuse, neglect, and domestic violence. However, DHS’ definition of “mental injury,” a very serious type of abuse, focuses on behaviors that might indicate sexual abuse, while pointing to marital dynamics. Among the enumerated examples of “mental injury” are:

- a child showing extreme regressive behavior or psychosomatic symptoms related to high conflict custody situations...
- Signs a child is exhibiting symptoms similar to post-traumatic stress disorder, such as hyper-arousal (hypervigilance), dissociation, re-experiencing, avoidance, no affect, self-harm...
- Child uses abnormal or graphic sexual behavior in an effort to build relationships...

Many of these symptoms are classic indicators of a child who has been sexually abused. While sexual abuse is always mental injury, conflating these symptoms with “high conflict

custody situations” or **mental injury by a caregiver** *per se* creates a likelihood that a case is shunted away by intake or social workers from a legitimate sex abuse report to a mental injury report that focuses on a non-offending parent. In 2014 there were 196 cases of mental injury opened by DHS.

When PROTECT queried DHS on the number of “mental injury cases ... [that] involved high conflict custody cases or were opened in response to this criteria,” DHS responded “We do not have data at that level of detail.”

6.10 Tracking and Reporting What Matters Most

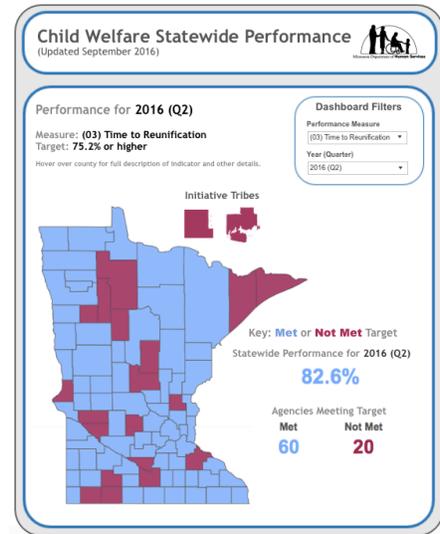
Minnesota has faced tremendous scrutiny for how it triages and responds to child abuse and neglect reports in recent years, leading the Governor to establish a task force to study needed reforms.

While we applaud Minnesota for establishing a user-friendly interactive website dashboard to report data to the public, including simple mapping by locality (see image at right), this effort falls far short of giving citizens and lawmakers the information they truly need to hold the child protection system accountable.

Moreover, DHS’ emphasis on reunification factors (influenced heavily by federal policies and reporting requirements) will likely have the unintended effect of driving policies that put children in greater long-term harm.

Minnesota looks at traditional performance measures such as foster care and reunification rates. At the heart of these metrics is the underlying belief that children should be reunited with their families whenever possible. This is a noble goal when talking about lower level abuse and neglect, where families might benefit from short term intervention and services. It is dangerous when dealing with sexual and other serious abuse.

The recommendations in this report lay out numerous performance indicators that should be added to this public dashboard and reported by locality. Only then will citizens and lawmakers have the objective, comparative data they need to ensure that reports of abuse are being responded to and investigated appropriately. When they are not, Minnesota’s best child protection professionals will also have the data they need to demonstrate a need for increased resources.



7. Recommendations for Legislative Action

Criminal Sexual Conduct Laws

1. Minnesota's statutes on criminal sexual conduct should be updated, clarified and strengthened. The state's front-line sex crimes prosecutors should be consulted extensively by drafters (not simply represented by one or two appointees to a study group).
2. Statutory mandatory minimum prison sentences should be established for adult offenders. If legislator objections to mandatory minimums cannot be overcome, certain thresholds should be agreed upon that trigger statutory mandatory prison terms.
3. Minnesota's intra-familial stay for criminal sexual conduct should be abolished.
4. The Minnesota legislature should mandate and oversee a top-to-bottom overhaul of Minnesota's sentencing guidelines for all sexual offenses, with a goal of ensuring that sentencing reflects the values of Minnesota citizens and the needs of community safety.
5. Minnesota sentencing guidelines policies that state "sanctions used in sentencing convicted felons should be the least restrictive necessary" should be eliminated for individuals convicted of sexual offenses, and clarifying language to this effect should be added throughout the Sentencing Commission's publications.

Child Sexual Abuse Imagery Crimes

6. All child sexual abuse imagery crimes should be removed from the Chapter 617, "Abortion, Obscenity, Nuisance," and classified instead under the Criminal Code (Chapter 609), where they belong.
7. The Minnesota legislature should modernize and strengthen all child sexual exploitation laws, utilizing an extensive review of federal standards and best practices in other states.
8. Statutory mandatory prison terms should be established for adults convicted of dissemination and production of child abuse imagery, with narrow exceptions for crimes commonly known as "sexting."
9. Statutory mandatory prison terms should be established for adults convicted of possession of child abuse imagery when certain aggravating factors are present, such as possession of images depicting prepubescent children, bondage and torture or a large numbers of images.
10. The Minnesota legislature should mandate and oversee a top-to-bottom overhaul of Minnesota's sentencing guidelines for child sexual exploitation crimes, with a goal of ensuring that active prison sentences are the norm and probationary sentences for possession are the rare exception.

11. The Minnesota legislature should enact legislation that allows prosecutors to charge a 2nd and subsequent offense and consecutive sentences for distinct, separate child abuse imagery crimes.

Child Rescue and Counter-Child-Exploitation Resources

12. Minnesota should make a meaningful investment in its Internet Crimes Against Children (ICAC) task force by establishing a dedicated ICAC Fund in the state budget and providing a dedicated revenue stream to guarantee sustainability. This would include a one-time infrastructure cost to establish a Project VIC-compliant dedicated child abuse image registry modeled after Virginia's to enable ICAC detectives to efficiently process burdensome volumes of data and rescue children.

Child Abuse Investigations and Reporting

13. The Minnesota legislature should mandate and oversee a study of the Department of Human Services' practices in the following areas:

- Intake and screening policies and procedures for all reports of child abuse and neglect. An analysis of disparate rates of acceptance ("screening-in"), by locality, should be included, to identify best and worst practices and develop goals and benchmarks for improving outcomes.
- Cross-referrals to law enforcement, concurrent investigations with law enforcement and how effectively DSH tracks both. Legislative recommendations should be included.
- DHS practices regarding the frequency and nature of reunification of children with parents in cases of sexual and other serious abuse. This analysis should include examination of how DHS interprets federal incentives and disincentives for "family preservation." Front-line social workers should be consulted extensively and confidentially about their experiences and viewpoints.
- Screening and triage of alleged sexual abuse reports, with particular emphasis on whether marital or legal custody factors are being weighed improperly in screening and investigating, and whether sexual abuse allegations are being improperly categorized as "mental injury."

14. The Minnesota Department of Human Services' laudable work to create a public "dashboard" should be expanded to include additional metrics of greater use to the public (current data categories are designed for federal agency reporting). These should include, *by locality*:

- Number of reports, by maltreatment type, received
- Number of reports, by maltreatment type, screened-in
- Number of reports, by maltreatment type, substantiated
- Number of reports, by maltreatment type, referred to law enforcement and whether

a concurrent law enforcement investigation was initiated.
(Requiring this of child protective services agencies is the only feasible way to create transparency on the critical issue of DHS-police cooperation, including whether criminal allegations are being appropriately investigated.)

- Number of reports, by maltreatment type, resulting in a protective order and the removal of a child or adult from the home

15. The Minnesota Department of Human Services should be required by statute to track and report outcomes in cases of substantiated child abuse, by maltreatment type, including whether the victim was reunified with the offender.

Child Welfare Tracking and Transparency

16. The Minnesota legislature should mandate a “universal tracking” number to be used by all child protection and law enforcement agencies for all children in cases reviewed and investigated for abuse and neglect. (This is the only way to create transparency and accountability across agencies whose computer systems do not share case information, improving communication and coordination for vulnerable children.)

Transparency for Law Enforcement Agencies and Prosecutors

17. Minnesota law enforcement agencies should be required by statute to track and report all reports of child abuse and neglect received, by maltreatment type and source of referral. Law enforcement agencies should also be required to track and report whether an investigation was conducted and whether the case was referred for prosecution.

18. Minnesota prosecutors should be required by statute to track and report all referrals of child abuse and neglect, by maltreatment type and source of referral. Prosecutorial agencies should also be required to track and report the number and type of cases accepted and declined for prosecution.

Other

19. The Minnesota legislature should eliminate both the criminal and civil statutes of limitation for child sexual abuse.

FOOTNOTES

- ⁱ “Heinrich as Suspect: A Timeline,” KARE, September 14, 2016.
- ⁱⁱ Criminal Sexual Conduct Offenses Sentenced in 2014, Minnesota Sentencing Guidelines Commission, December 2015, p. 10.
- ⁱⁱⁱ *Ibid.*, p. 10.
- ^{iv} *Ibid.* p. 7.
- ^v *Ibid.*, p. 1.
- ^{vi} *Ibid.*, p. 1.
- ^{vii} Minnesota Sentencing Guidelines and Commentary, August 1, 2016.
- ^{viii} *Ibid.*
- ^{ix} *Ibid.*
- ^x The Commission is composed of three judges; a public defender; a prosecutor; a law enforcement officer; the commissioner of corrections; a probation or parole officer; and three citizens, one of whom must be a crime victim.
- ^{xi} Minnesota Statutes, 244.09.
- ^{xii} *State v. Shattuck*, August 18, 2005.
- ¹³ “Software Track Child Porn Traffickers Online,” USA Today, April 16, 2008.
- ¹⁴ Contact Sexual Offending by Men with Online Sexual Offenses. Seto, Hanson, Babchisin. *Sexual Abuse: A Journal of Research and Treatment*. December 2010.
- ¹⁵ Use of the Tactical Polygraph with Sex Offenders, *Journal of Sexual Aggression*, February 2014.
- ¹⁶ 2012 Report to the Congress: Federal Child Pornography Offenses, United States Sentencing Commission, p. 179.
- ¹⁷ Minnesota’s Child Welfare Report 2014: Report to the 2015 Minnesota Legislature. Minnesota Department of Human Services, p. 6.
- ¹⁸ Minnesota’s Child Welfare Report 2014: Report to the 2015 Minnesota Legislature. Minnesota Department of Human Services, p. 4.
- ¹⁹ Correspondence between PROTECT and Minnesota Department of Human Services.
- ²⁰ *Ibid.*
- ²¹ Minnesota Department of Human Services.
- ²² Minnesota Child Maltreatment Intake, Screening and Response Path Guidelines. Minnesota Department of Human Services, December 2015, p. 11.
- ²³ Concurrent Criminal and Child Protective Services Investigations. University of Illinois at Urbana-Champaign, Children and Family Research Center. June, 2012.
- ²⁴ Correspondence between PROTECT and Minnesota Department of Human Services.
- ²⁵ Minnesota Child Maltreatment Intake, Screening and Response Path Guidelines. Minnesota Department of Human Services, December 2015, p. 49.