

## Study of Child Pornography and Electronic Solicitation of Minors Crimes in Virginia – Progress Report

## Request by Attorney General

---

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

# Scope of Study

---

- Federal cases from Virginia
- Virginia circuit court cases

---

## Federal Cases from Virginia



# Federal Cases from Virginia

---

- US Sentencing Commission data
  - Virginia cases involving sexual abuse, exploitation, prostitution or pornography offenses
  - FY1999-2003
- Total of 128 cases identified

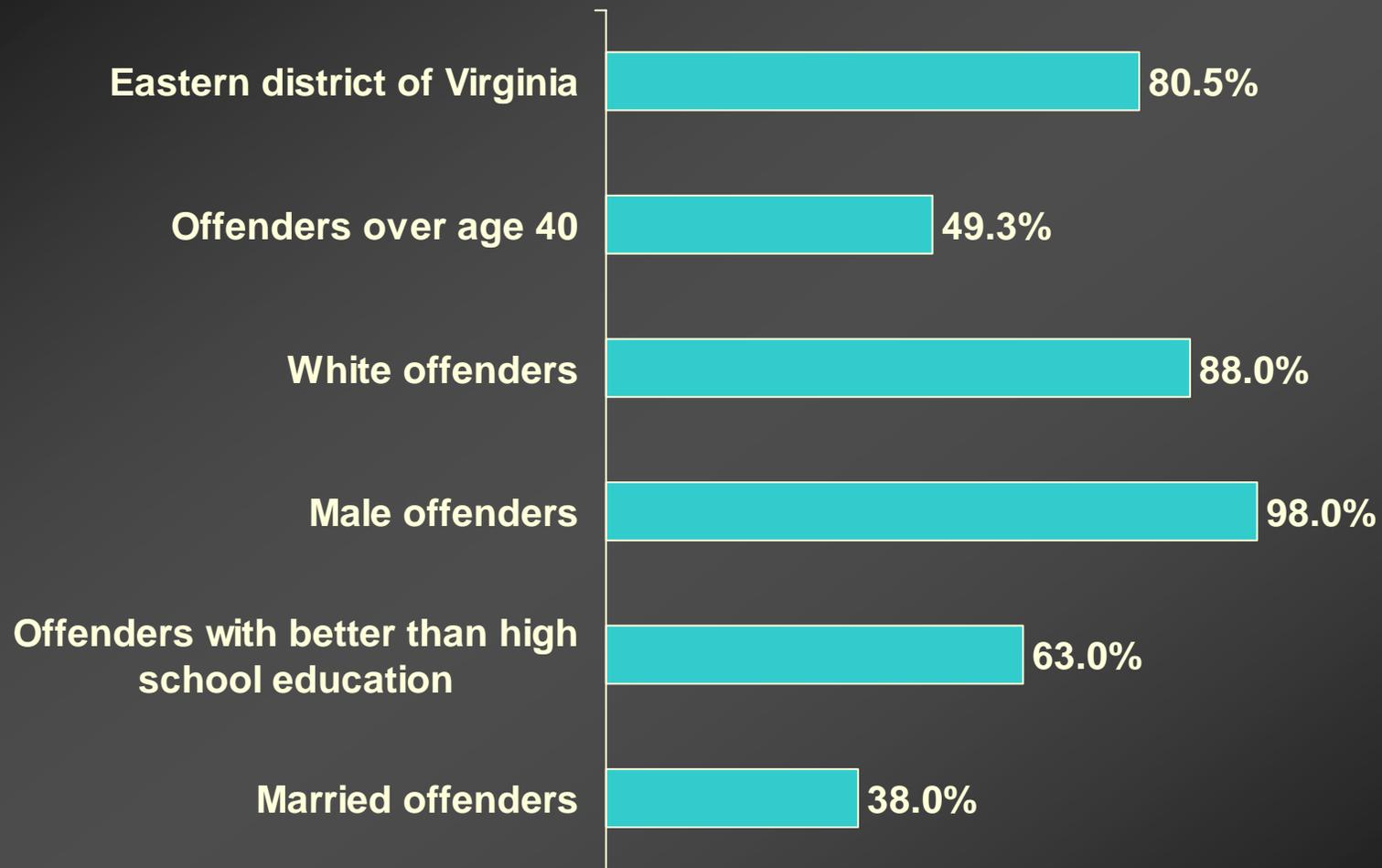
# Federal Cases from Virginia

---

- Total of 128 cases identified
  - Sexual abuse (19%)
    - Several federal code sections apply, however, 8 of 25 cases involve transportation with intent to engage in illicit sexual conduct (US Code 2423B)
  - Pornography or prostitution (81%)
    - Several federal code sections apply
    - 27 cases involve possessing child pornography that has been mailed or transported in interstate/foreign commerce, including via computer (US Code 18-2252A(a)(5)(B))
    - 17 cases involve other child pornography offenses (US Code 18-2252A)
    - 28 cases related to material involving sexual exploitation of minors (US Code 18-2252)
    - 6 cases based on sexual exploitation of children (US Code 18-2251)

# Profile of Federal Cases

---



# Victims in Federal Cases

---

- Little or no victim information available
- Victim data limited to victim adjustment factors from the Federal sentencing guidelines.
  - Was victim an official? (LEO or corrections officer)
  - Was victim physically restrained during the offense?
  - Was victim vulnerable or the victim of a hate crime?
  - Do any victim-related adjustments apply? (Official, restrained, or vulnerable)
- Very few victim-related adjustments were observed in these cases.

# Sentencing in Federal Cases

---

- Disposition
  - 97% prison only (no alternatives)
  - 2% prison + alternatives
  - 1% probation only
- Most sentences were between 1 and 4 years
  - Overall, median sentence was 30.5 months
  - Maximum sentence was 58 years
- In sexual abuse cases, the median sentence was 36 months
- In pornography/prostitution cases, the median sentence was 30 months

# Factors Affecting Length of Sentence in Federal Cases

---

- Criminal history
- Multiple counts of offense
- (Lack of) acceptance of responsibility

# Federal Data and Virginia's Sentencing Guidelines

---

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

---

## Virginia Circuit Court Cases



# Cases Examined

---

- Convictions for child pornography
  - Possession of child pornography (§ 18.2-374.1:1)
    - Class 6 felony – first offense
    - Class 5 felony – second or subsequent offense
  - Enticement of minor to perform – Class 5 felony (§ 18.2-374.1)
  - Production/participation in filming – Class 5 felony (§ 18.2-374.1)
  - Sale or distribution – Class 5 felony (§ 18.2-374.1)
  - Finance – Class 4 felony (§ 18.2-374.1)
  - Permitting minors in obscene performances, subsequent offense – Class 6 felony (§ 18.2-374.1)

## Cases Examined

---

- Convictions for electronic/online solicitation of minors
  - Electronic means for procuring minors for obscene material, etc. – Class 6 felony (§ 18.2-374.3)
  - Electronic means to solicit minors for prostitution, sodomy, etc. – Class 5 felony (§ 18.2-374.3)
  - Unlawful computer trespass with intent to cause physical injury to individual – Class 6 felony (§ 18.2-152.7)
  - Malicious computer trespass with intent to cause physical injury to individual – Class 3 felony (§ 18.2-152.7)

Only 2 convictions - could not determine if involved a minor

## Cases Examined

---

- Convictions for offenses other than child pornography or online solicitation were also examined.
- Staff accessed pre-post-sentence investigation (PSI) data and searched offense narratives to identify offenders who engaged in online solicitation of minors but were convicted under other statutes, such as Indecent liberties.
  - New technique was used to perform search of narratives electronically.
    - Cases identified based on key words such as “chat room,” “internet,” and “instant messaging”
    - Cases identified through this method are being reviewed by staff

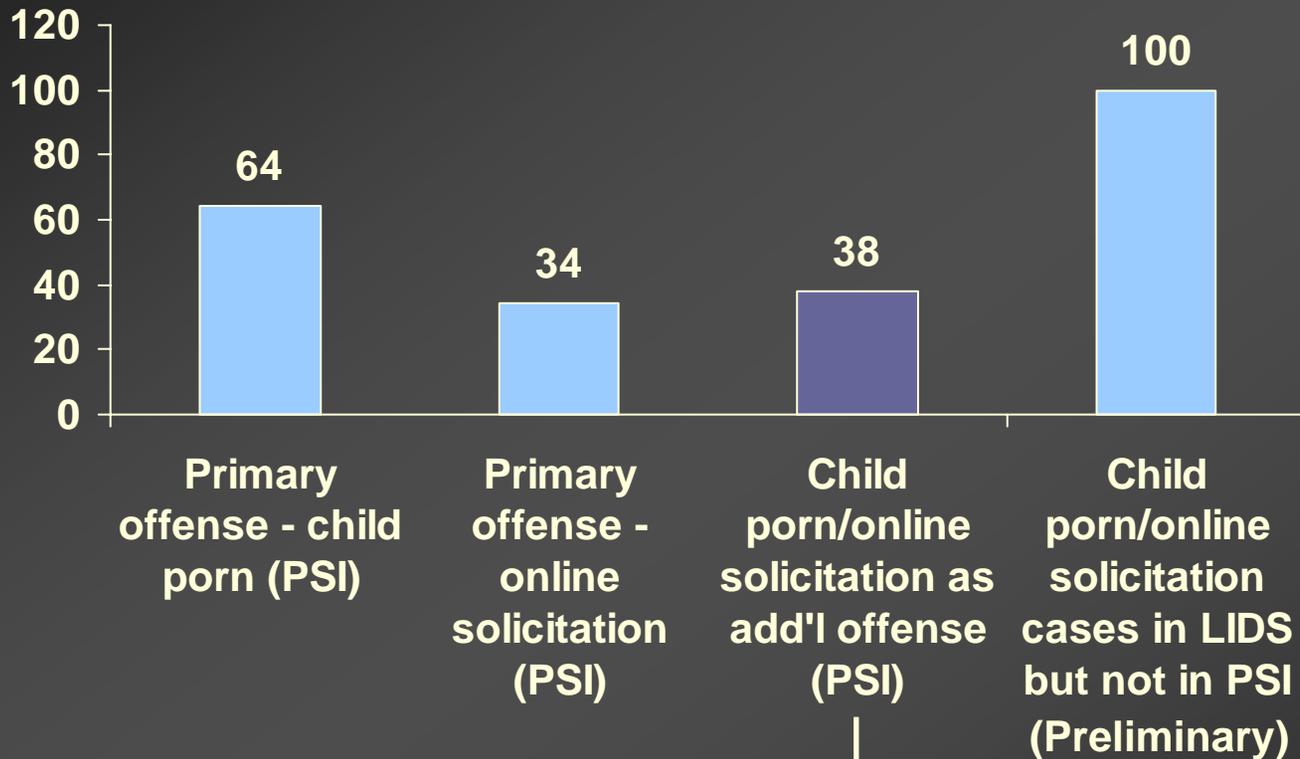
# Data Sources

---

- Pre/Post-Sentencing Investigation (PSI) report database
  - Reports are available for most offenders sentenced in circuit courts
  - Reports contain detail on offense, offender and victim
  - FY2002 – FY2006 (incomplete)
  
- Local Inmate Data System (LIDS) database
  - Database of prisoners entering and exiting all local and regional jails in Virginia
  - No victim information
  - FY2002 – FY2006

# Cases Identified

---



↓

In the large majority of these cases, the primary (most serious) offense was a rape, forcible sodomy or other sexual assault

## Child Pornography/Online Solicitation (PSI Primary Offense)

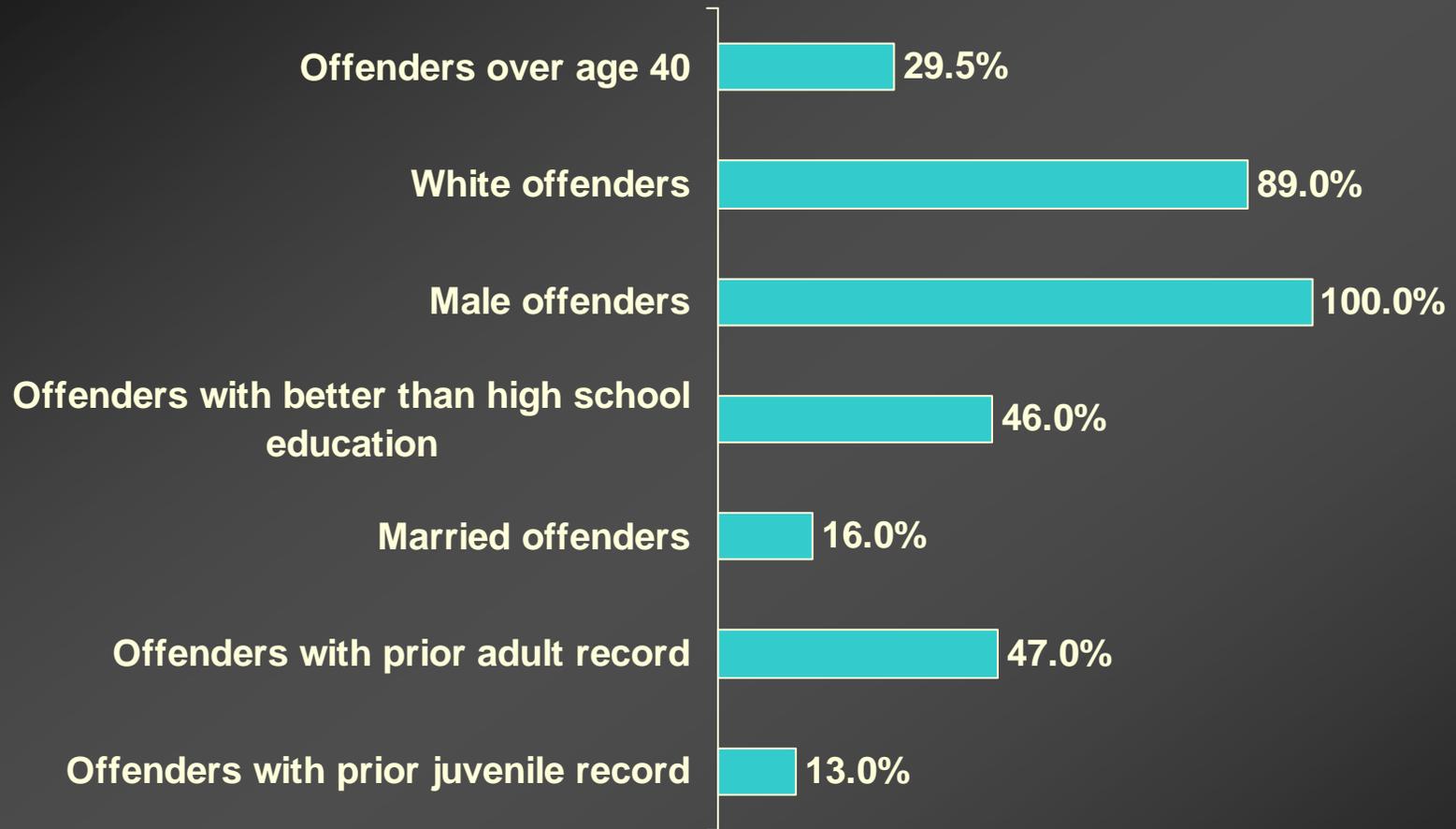
---

Primary Offense	Number	Percent
<b>Electronic means to solicit minor for prostitution, sodomy, etc.</b>	<b>25</b>	<b>25.5</b>
Production of obscene material involving minor	23	23.5
Possession of child pornography (1 <sup>st</sup> off)	10	10.2
Possession of child pornography (2 <sup>nd</sup> or subsequent off)	10	10.2
Sale or distribution of child pornography	10	10.2
<b>Electronic means for procuring minor for obscene material</b>	<b>9</b>	<b>9.2</b>
Participation in filming of minor in sexually explicit material	9	9.2
Enticement of minor to perform in sexually explicit material	2	2.0
<b>Total</b>	<b>98</b>	<b>100.0</b>

Data include PSI cases in which child pornography or online solicitation of minor was the primary (most serious) offense.

# Child Pornography/Online Solicitation (PSI Primary Offense)

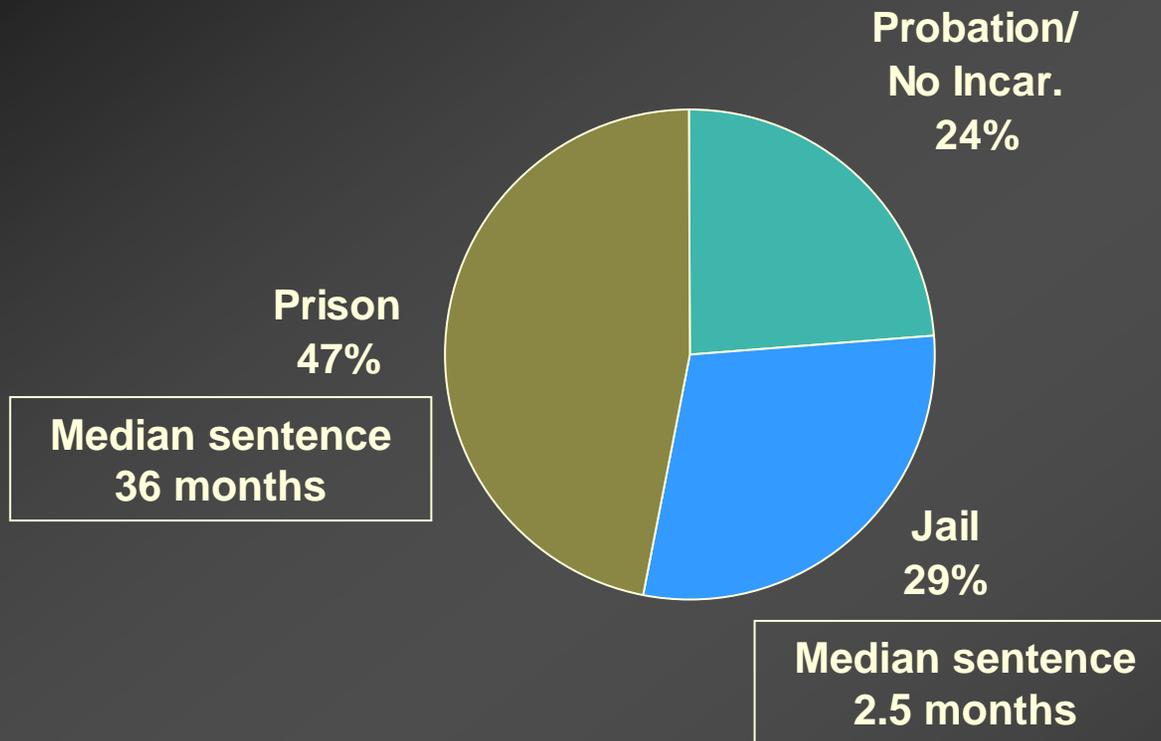
---



Number of cases = 98

# Child Pornography/Online Solicitation (PSI Primary Offense)

---



Number of cases = 98

One in five offenders given a prison term received a sentence of 10 years or more.

---

# Special Data Collection Underway

---

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

**General**

1. PSI Number \_\_\_\_\_ or CA Case Number \_\_\_\_\_
2. Is the Event Currently Covered by Guidelines?  Yes  No
3. A Conviction was the Result of Police Sting?  Yes  No
4. Other Charges pending at time of sentencing?  Yes  No  
A. Same Jurisdiction B. State C. Federal
5. Registered Sex offender (at time of offense)  Yes  No
6. Victim Type: A. Undercover Officer B. Identified Victim C. No Identifiable Victim

*Circle all answers that apply***Juvenile Victimization (Solicitation)**

- A. Did defendant meet victim/police?  Yes  No
- B. Did defendant travel to meet victim?
1. No
  2. Within County/Metro Area
  3. Another City/County in VA
  4. Another State
- C. Location of Solicitation:
1. Internet
  2. Outdoors
  3. Offender's Home (Not Internet)
  4. Victim's Home (Not Internet)
  5. Shared Residence (Not Internet)
  6. School
  7. Store
  8. Other
- D. Age of Victim/Portrayed age \_\_\_\_\_
- E. Age Group: \_\_\_\_\_
- F. Gender of Victim: M F Both
- G. Number of Different Victims/Screen Names \_\_\_\_\_
- H. Relationship to victim/subject
1. Known
  2. Babysitter
  3. Parent
  4. Step-parent
  5. Relative
  6. Stranger
  7. Internet
  8. Image Only (None)
- I. Type of Sexual Conduct Completed
1. Penetration/Attempted Penetration
  2. Touching
  3. Exposure
  4. Verbal
  5. Written (Text Msg, IMs)
  6. None
- J. Drug/Alcohol Use (At Time of Offense)
1. Defendant Used
  2. Victim Used
  3. Defendant Provided Victim
- K. Type of Substance Used By Victim: \_\_\_\_\_
- L. Type of Substance Used By Def.: \_\_\_\_\_

**Child Exploitation (Pornography)**

- A. When/how was child porn discovered?
1. During Sting
  2. Reported
  3. Computer Repair
  4. Sex Abuse Case
  5. Developing Picture
  6. Sent E-mail/Web
  7. Other
- B. Youngest Age of porn subject \_\_\_\_\_
- C. Age Group: \_\_\_\_\_
- D. Gender of Subject(s): M F Both
- E. Images Depicted (All that Apply):
1. Genitals/Exposure
  2. Penetration (Oral, Anal, Sexual)
  3. Contact between adult and minor
  4. Violence, bondage
  5. Defendant Appeared in porn picture
- F. Defendant Produced Child Porn?  
 Yes  No
- G. Defendant Distributed Child Porn?  
 Yes  No
- H. Relationship to victim/subject
1. Known
  2. Babysitter
  3. Parent
  4. Step-parent
  5. Relative
  6. Stranger
  7. Internet
  8. Image Only (None)
- I. Possession of child porn conviction occurred(Current)
1. After conviction for sex offense
  2. Before conviction for sex offense
  3. At the same time as a sex offense
  4. Only known charge(s)
  5. Not Charged/Con
- J. Drug/Alcohol Use (At Time of Offense)
1. Defendant Used
  2. Victim Used
  3. Defendant Provided Victim
- K. Type of Substance Used By Victim: \_\_\_\_\_
- L. Type of Substance Used By Def: \_\_\_\_\_

## Information from Law Enforcement

---

- Staff has contacted Blue Ridge Thunder Task Force in the Bedford County Sheriff's Office.
  - Developed in 1998 to investigate child exploitation on the internet
  - In cooperation with Bedford County Commonwealth's Attorney

# Information from Law Enforcement – Blue Ridge Thunder

---

- Investigation of online solicitation:
  - May result in lower sentence when law enforcement is posing as minor online
  - Often results in charges of attempted indecent liberties when the defendant attempts to meet up with the officer posing as minor
  - Usually results in a warrant to seize the defendant's computer
    - State Police forensic unit conducts search of the computer, which can take 12-18 months
    - Search typically results in subsequent charges for child pornography for images found on computer
      - Conviction for online solicitation will appear as prior record

# What's Next

---

- Staff will complete the special data collection.
- Analysis will be performed to determine the feasibility of developing guidelines for child pornography and online solicitation offenses.
  - Analysis will include only cases in which one of these offenses is the primary (most serious) offense.
- Recommendations will be presented to the Commission at its November 6 meeting.