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Scoring of Child Pornography Cases Position Statement 6/1/12

Case law (*People v. Johnson*, 11 N.Y. 3d 416, 420-421 (2008) & *People v. Poole*, 90 A.D.3d 1550 (2011)) has held that child pornography offenders properly have points assessed on Factors 3 (Number of Victims) and 7 (Stranger Relationship). However, as the Court in *Johnson* notes, scoring all child pornography cases for stranger relationship (and similarly in *Poole* scoring for three or more victims) produces an unintended, anomalous result as the majority of offenders convicted of child pornography offenses will be scored the same when there are clearly vast differences amongst these types of offenders. To address the Court's concern and to more accurately reflect the risk of a repeat offense and threat posed to public safety, the Board:

- Will continue to score either 20 or 30 points for the youngest age depicted in the images under the "Current Offense" category, and will depart from the presumptive level when appropriate based upon factors including but not limited to:
 - the number of images possessed (10,000 is more concerning than <100)
 - the length of time the offender has been collecting/viewing child porn (i.e. > 6 months)
 - paid subscriptions to access child pornography
 - categorized/organized material in their child pornography collection
 - absence of adult sexual relationships
 - emotional identification with children
 - allegations regarding sexual contact with children
 - nature of images (i.e. sadomasochistic)
 - reinforcement of deviant sexual arousal to children by masturbating to these images

These factors are clearly articulated in the departure within the case summary and are empirically driven¹.
- Will recommend an automatic override to Level 3 in cases where clinical documentation exists detailing a mental abnormality that decreases the ability to control impulsive sexual behavior, such as Pedophilia or Hebephilia, as provided for on page 22 of the Guidelines.

The Board remains concerned about child pornography offenders, and in the majority of cases, believes that they have a sexually deviant interest in children which poses a significant risk to public safety; however, recognizes that each person convicted of a child pornography offense poses risks that are unique to that individual. These images are in essence crime scene photos of children being sexually abused, and the increased demand for these images results in further sexual victimization of children.

¹ See for example, Tanner, J. (2010). Digital Technology Use Factors Which Indicate Increased Sex Offender Investment in Digital Sexual Content. Retrieved on June 1, 2012 from Internet site <http://www.kbsolutions.com/KBS14Factors.pdf>; Hanson, and Morton-Bourgon (2004). Predictors of Sexual Recidivism: An Updated Meta-Analysis 2004-02. Retrieved from Canadian government Internet site http://www.publicsafety.gc.ca/res/cor/rep/_f1/2004-02-pred-se-eng.pdf; Seto, M. C., Hanson, R. K., & Babchishin, K. M. (2011). Contact sexual offending by men arrested for child pornography offenses. *Sexual Abuse: A Journal of Research and Treatment*, 23, 124-145.