

SAMPLE — ILLUSTRATIVE FACT PATTERN

The accused, command, and case facts below are fictitious and are supplied only to show how the argument is assembled. Counsel must verify every legal authority against the current Manual for Courts-Martial and service rules of practice, confirm the applicable sentencing parameter, and substitute the facts of the actual case.

UNITED STATES	)
	) DEFENSE SENTENCING
v.	) MEMORANDUM
	)
SMITH, John A.	) General Court-Martial
Sergeant (E-5)	)
U.S. Marine Corps	) 18 September 2026

TO: Military Judge, [Judicial Circuit]

1. Relief Requested.

The defense respectfully requests that the court sentence Sergeant John A. Smith to confinement for 18 months, reduction to E-1, and a bad-conduct discharge. The defense does not contest that a punitive separation is within the range of appropriate punishment. It asks the court not to impose confinement beyond the period that the sentencing criteria of R.C.M. 1002 can be shown to require, and it submits that the evidence bearing on Sergeant Smith's risk of further offending is the factor most likely to be misjudged in a case of this kind.

2. Procedural Posture.

1. Sergeant Smith was convicted, in accordance with his pleas and pursuant to a plea agreement, of two specifications of violating Article 134, UCMJ — receipt and possession of child sexual abuse material.
2. He was not charged with, and the investigation developed no evidence of, production, solicitation, communication with a minor, or any contact sexual offense.
3. The maximum punishment and the applicable sentencing parameter are set out at paragraph 9. [Drafting note: insert the maximum authorized punishment and the offense category and confinement range from the applicable parameter, Appendix 12C, MCM. Confirm whether the offenses of conviction are parameter offenses or criteria offenses, and confirm the parameter in effect for offenses committed on the date alleged.]

3. Summary of Argument.

The government will ask the court to sentence Sergeant Smith as though the images in his possession were a proxy for what he would do to a child. The empirical record does not support that inference, and the two federal agencies that have studied the question say so in their own publications. Among men whose sexual offending is confined to exploitation material, the observed rate of subsequent contact sexual offending is below one percent — at or beneath the rate at which men with no sexual offense history at all commit a first sexual offense. Sergeant Smith is squarely within that subgroup, and an individualized assessment conducted by a forensic psychologist places him at the bottom of it.

That evidence does not answer every sentencing criterion, and the defense does not pretend otherwise. It does not diminish the seriousness of the offense, the harm to the children depicted, or the government's interest in general deterrence. What it answers is the criterion under which confinement is usually justified in these cases: the need to protect others from further crimes by the accused. On that criterion the evidence is specific, it is the government's own, and it points to a sentence materially shorter than the one the government will seek.

4. The Accused.

1. Sergeant Smith is 29 years old. He enlisted at 20 and has served nine years, including two deployments. His evaluations are uniformly above average. He has no prior nonjudicial punishment, no adverse counseling, and no prior involvement of any kind with civilian or military authorities.
2. He is married and has two children, ages 4 and 7. His wife remains in the marriage and intends to remain in it. [Enclosure 2, letters of support.]
3. When NCIS agents contacted him, Sergeant Smith admitted the conduct in his first interview, consented to the search of his devices, provided his passwords, and identified files the examiners had not yet located. He has made no attempt to minimize the offense at any point in this case.
4. He self-referred to outpatient treatment four months before trial, at his own expense, and has attended without interruption. [Enclosure 3, treatment records and provider letter.]

5. The Offense in Context.

Sentencing requires the court to distinguish this offense from others carrying the same label, and the research literature draws the distinctions that the charge sheet does not. Along the continuum of culpability recognized in this field — possession and receipt, distribution, production — Sergeant Smith sits at the first position. Within distribution, the meaningful line is between passive availability through peer-to-peer software and active trading with other users; Sergeant Smith was never charged with distribution, and the forensic examination found no trading, no forum participation, and no contact with other collectors.

The specific findings of the forensic examination, each of which the government has stipulated to, are these:

- Approximately 420 files, acquired over roughly fourteen months through a peer-to-peer client.
- No evidence of sorting, cataloguing, or organization of the collection.
- No participation in any forum, chat, or community organized around the material.
- No communication with any minor, and none with any person purporting to be a minor or acting in an undercover capacity.
- No attempt to arrange, discuss, or contemplate physical contact with any child.
- No production, no covert recording, and no images of any identifiable person known to the accused.

These are not mitigating details offered in place of an argument. They are the variables the research identifies as separating the higher-risk offender from the lower-risk one, and each of them falls on the favorable side.

6. The Empirical Record on Risk of Further Offending.

a. The federal authorities.

Two agencies of the United States government have studied recidivism in this offense category and published their findings.

The United States Sentencing Commission, in *Federal Sentencing of Child Pornography: Non-Production Offenses* (June 2021), tracked 1,093 federal non-production offenders released or placed on probation in 2015. Within three years, 4.3 percent were rearrested for a sex offense of any kind. Seventy-two and four-tenths percent had no rearrest of any kind. [Enclosure 4.]

The Commission's earlier Report to the Congress: *Federal Child Pornography Offenses* (December 2012) followed 610 offenders for an average of 8.5 years — a follow-up period nearly three times longer. Known sexual recidivism was 7.4 percent. Of the 610, 22 offenders, or 3.6 percent, were arrested for or convicted of a contact sexual offense. [Enclosure 5.]

The Department of Justice, through the SMART Office's Sex Offender Management Assessment and Planning Initiative, published a chapter on internet-facilitated sexual offending reporting a meta-analysis of nine studies comprising 2,630 offenders: 4.6 percent committed a new sexual offense of any kind, 2.0 percent a contact sexual offense, and 3.4 percent a new child pornography offense. The Department's own characterization is that online-only offenders "have a relatively low risk for sexual recidivism compared to offline contact sexual offenders," and that these rates "believe the idea that all internet offenders pose a high risk." [Enclosure 6.]

b. The current state of the evidence.

The most recent synthesis is larger than all of the above combined. Baskurt, Babchishin, Hilkes, and Seto (2025) aggregated 30 non-overlapping samples comprising 25,978 individuals, followed a mean of 4.72 years. The pooled rates from official records were 5.93 percent for any sexual recidivism, 1.53 percent for contact sexual recidivism, 4.08 percent for a further exploitation-material offense, and 12.01 percent for recidivism of any kind whatever. [Enclosure 7.]

These figures are consistent across two decades and five countries. Endrass and colleagues (2009) followed 231 men for six years and found hands-on recidivism of 0.8 percent. Osborn and colleagues (2010) followed a United Kingdom community sample for up to four years and recorded no sexual reconvictions at all. Eke, Seto, and Williams (2011), following 541 men, found contact sexual recidivism of 1.9 percent within the subgroup having no violence in their histories. Faust and colleagues (2015), comparing 428 non-contact offenders with 210 contact offenders, found the non-contact group reoffending at materially lower rates on nearly every measure. The convergence of independent samples, using different definitions and different registries, is itself the argument.

c. The distinction that decides this case.

The single most important finding in this literature is not the overall rate but the separation within it. In Baskurt and colleagues (2025), individuals whose offending was confined to exploitation material were subsequently convicted of a contact sexual offense at a rate of 0.56

percent. Individuals with mixed histories — those with a known prior or concurrent contact offense — did so at 8.80 percent. That is a difference of roughly sixteen-fold, and it reproduces, in a sample of nearly 26,000, the same split that Seto and Eke first reported in 2005.

The relevant question at sentencing is therefore not whether Sergeant Smith is an “internet offender” in the abstract. It is whether the record establishes any contact offending. A complete forensic examination of every device, covering fourteen months of activity, found none, together with no solicitation and no communication with any minor. The applicable figure is the lower one.

Two comparisons place that figure in perspective. Research on long-term follow-up establishes the rate at which men with no sexual offense history commit a sexual offense at approximately one to two percent over five years — a rate used in the desistance literature as the threshold at which a person with a prior offense is treated as presenting no elevated risk at all. The measured contact reoffense rate for the subgroup to which Sergeant Smith belongs sits below that threshold. And the same body of research establishes that risk declines by roughly half for every five years lived offense-free in the community, which bears directly on how long any period of supervision needs to run.

d. What this evidence does not establish.

The defense states the limits of its own argument, because the court is entitled to have them stated rather than to extract them.

1. Group data do not establish that Sergeant Smith will not reoffend. No evidence available to any court could establish that.
2. Recidivism figures are derived from detected offending, and some offenses are never detected. That is true of every recidivism figure in criminal justice, for every offense, including those the government will rely upon.
3. Some men convicted of these offenses have committed contact offenses that were never charged. The defense does not dispute it. The point is prospective: what the evidence addresses is the likelihood of future offending, which is the question the court must answer.
4. None of this evidence touches the seriousness of the offense, the harm to the children depicted, or the government’s interest in general deterrence. Those criteria are argued at paragraph 8 on their own terms.

7. The Individualized Assessment.

Group data do not decide an individual case, and the defense does not ask the court to sentence from a base rate. Sergeant Smith was evaluated by [Evaluator], a licensed forensic psychologist, whose report is submitted as Enclosure 1. The relevant findings are summarized here; the report states the methodology, the records reviewed, and the limitations in full.

- a. Instruments were selected for this population rather than borrowed from contact-offender samples. The evaluator scored the Child Pornography Offender Risk Tool, Version 2 — the only validated static instrument developed for offending confined to

- exploitation material — together with the CASIC companion scale, the STABLE-2007 for dynamic risk, and the SAPROF for protective factors.
- b. Sergeant Smith scored 1 on the CPORT-V2 and 1 on the CASIC, placing him in the lowest range of an already low-rate population.
 - c. The evaluator reports the result as a group rate over a defined follow-up period, with the reference sample named, and expressly declines to state a probability that this individual will reoffend. The defense asks the court to hold the government's evidence to the same standard.
 - d. Elevated dynamic items on the STABLE-2007 were sexual preoccupation and the use of sex as a coping strategy. Those two items are the treatment targets identified in paragraph 10, and they are addressable in the community.
 - e. Protective factors identified include stable employment history, an intact intimate relationship, demonstrated treatment motivation evidenced by self-referral before trial, and available external control through supervision.
 - f. The evaluator found no basis for a paraphilic diagnosis on the full diagnostic criterion set, and says so expressly rather than by omission. Possession of material alone does not establish one.

[Drafting note: if the government has obtained its own evaluation, address it here rather than in rebuttal. The recurring defects worth examining are a group rate presented as this individual's probability, no reference group named for an absolute estimate, and a contact-offender instrument applied to a non-contact examinee without acknowledging the population mismatch.]

8. Application of the Sentencing Criteria, R.C.M. 1002.

[Drafting note: quote the criteria verbatim from the current version of R.C.M. 1002 before filing. The headings below track them in substance.]

a. Nature and circumstances of the offense; history and characteristics of the accused.

The offense is serious and the defense does not argue otherwise. The circumstances, set out at paragraph 5, place it at the least aggravated position on every variable the research treats as relevant. The accused's history is set out at paragraph 4: nine years of honorable service, two deployments, no prior misconduct of any kind, immediate admission, and treatment entered voluntarily before he was required to.

b. Impact on the victims.

The children depicted in this material were harmed in its making, and their harm is renewed by its continued circulation. The defense does not minimize this and does not ask the court to. It asks only that the court distinguish between the gravity of the harm, which is real, and the likelihood that this accused will cause further harm, which is a separate question governed by separate evidence.

c. Seriousness of the offense; respect for the law; just punishment.

These criteria are answered by conviction, by a federal sex offense registration obligation that will follow Sergeant Smith for the remainder of his life, by reduction to the lowest enlisted grade, by a punitive discharge, and by a substantial term of confinement. The defense requests 18

months. It does not request a sentence without confinement, and it does not suggest that these criteria are satisfied by a token punishment.

d. Deterrence.

General and specific deterrence should be separated, because the evidence speaks to one and not the other. Specific deterrence is addressed by everything in paragraphs 6 and 7. General deterrence is the government's strongest argument in this category, and the defense meets it directly: general deterrence is served by conviction, by lifetime registration, by a punitive discharge, and by confinement. What is not established by any evidence before this court is the marginal deterrent value of each additional year beyond that. The government will not be able to point to a study showing it, because none exists.

e. Protection of others from further crimes by the accused.

This is the criterion the evidence in paragraphs 6 and 7 addresses directly, and it is ordinarily the criterion that drives confinement in these cases. Where the empirical estimate of further contact sexual offending for a man in Sergeant Smith's position is on the order of one-half of one percent, and where an individualized assessment places him at the bottom of that distribution, incapacitation has very little additional work to do beyond a comparatively short term. The protective interest that does remain — the risk of a further offense involving the material itself — is addressed by monitoring, treatment, and supervision rather than by years of confinement.

f. Rehabilitation and return to duty.

The defense does not seek retention. It does ask the court to weigh the fact that the treatment targets identified in the evaluation are specific, are already being addressed, and are addressed more effectively in the community than in confinement. A sentence long enough to interrupt employment, housing, and the marital relationship removes the protective factors the evaluator identified, and the desistance literature indicates that those factors do more to reduce risk over time than additional custody does.

9. The Applicable Parameter.

1. The offenses of conviction fall within [offense category], carrying a confinement range of [___] to [___] months. [Drafting note: insert from Appendix 12C, MCM, for the parameter in effect on the date of the offense. Confirm whether the offense is a parameter offense or a criteria offense before drafting this paragraph.]
2. The requested sentence of 18 months is [within / below] that range. [If within: the defense asks the court to sentence at the lower boundary for the reasons stated above. If below: the remainder of this paragraph supplies the specific facts on which a sentence outside the parameter may be based.]
3. R.C.M. 1002 permits a sentence outside the applicable parameter where the military judge finds specific facts warranting it, and requires a written statement of the factual basis. The defense submits that the following facts are specific, are supported by the record, and are of a kind the parameter cannot account for:
 - a. A complete forensic examination covering fourteen months of device activity established the absence of solicitation, of communication with any minor, and of any evidence of contact offending — placing the accused in the subgroup for which the measured contact reoffense rate is 0.56 percent rather than 8.80 percent.

- b. An individualized risk assessment using the only instrument validated for this population placed the accused at the bottom of that subgroup.
 - c. The accused admitted the offense at first contact, consented to search, identified files the examiners had not located, and entered treatment before trial at his own expense.
 - d. The accused has nine years of service without a single disciplinary entry, which is a fact about this man rather than about the offense category.
4. Counsel notes for the court's consideration that the parameters were developed with reference to, among other things, the sentencing guidelines applicable in the United States district courts. To the extent the applicable parameter reflects U.S.S.G. § 2G2.2, the court should be aware that the United States Sentencing Commission has itself concluded that § 2G2.2 is "outdated and disproportionate" and produces "overly severe" ranges for some offenders; that in fiscal year 2019 more than 95 percent of federal defendants received the computer-use and victim-age enhancements, 84.0 percent the sadistic-material enhancement, and 77.2 percent the 600-image enhancement, so that those enhancements no longer distinguish among defendants; and that in fiscal year 2025 only 38 percent of federal child pornography offenders were sentenced within the guideline range, while 54 percent received downward variances averaging a 37 percent reduction. [Drafting note: verify the derivation of the applicable parameter before advancing this paragraph; frame it as context for the court rather than as a challenge to the parameter itself.]

10. Post-Confinement Management.

The protective interest in this case is best served by conditions rather than by duration, and the defense proposes the following so that the court has a concrete alternative before it rather than an abstraction:

- Continued participation in sex-offense-specific outpatient treatment, with the two dynamic targets identified in the evaluation — sexual preoccupation and sex as coping — named as treatment goals.
- Internet monitoring, with device restrictions and periodic examination.
- Compliance with all registration obligations, which will attach for life.
- Maintenance of employment and of the family relationships that the evaluator identified as protective.

11. Conclusion.

Sergeant Smith committed a serious offense and will be punished for it. The question before the court is how much confinement the sentencing criteria actually require. On the criterion most often invoked to justify a long term in cases of this kind — the need to protect others from further crimes by the accused — the evidence is unusually specific, it comes from the government's own agencies, and it points in one direction. The defense respectfully requests confinement for 18 months, reduction to E-1, and a bad-conduct discharge.

[NAME]

[Rank], JAGC, [Service]

Detailed Defense Counsel

Enclosures:

1. Psychosexual Risk Assessment of Sergeant John A. Smith, [Evaluator], [date].
2. Letters of support.
3. Treatment records and provider letter.
4. U.S. Sentencing Commission, Federal Sentencing of Child Pornography: Non-Production Offenses (June 2021) (excerpt).
5. U.S. Sentencing Commission, Report to the Congress: Federal Child Pornography Offenses (December 2012) (excerpt).
6. U.S. Department of Justice, SMART Office, SOMAPI, ch. 4, Internet-Facilitated Sexual Offending (excerpt).
7. Baskurt, S., Babchishin, K. M., Hilkes, G., & Seto, M. C. (2025). A meta-analysis of recidivism rates among individuals who commit child sexual exploitation material (CSEM) offending. *Aggression and Violent Behavior*, 85, 102080.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the trial counsel on [date].

[NAME]
[Rank], JAGC, [Service]
Detailed Defense Counsel