

## TEMPLATE — DEFENSE SENTENCING MEMORANDUM

*Non-production child sexual abuse material offense, court-martial. Bracketed text is to be replaced. Italicized drafting notes are to be deleted before filing. The research paragraphs in section 6 are fixed and may be used as written; everything else is case-specific. Counsel must verify all authority against the current Manual for Courts-Martial and the applicable service rules of practice before filing.*

*Fillable drafting instructions: replace bracketed text in the bordered boxes. Paragraph text remains editable in context. Keep entries fully visible at 11-point size; use the labeled continuation pages for longer drafting. Save a local copy and check print preview. This drafting copy retains instructions; prepare the filing copy separately.*

UNITED STATES

)

) DEFENSE SENTENCING

v.

) MEMORANDUM

)

[LAST, First M.]

) [General / Special] Court-Martial

[Rank (E-\_\_)]

)

[U.S. Service]

)

[Date]

TO: Military Judge, [Judicial Circuit]

### 1. Relief Requested.

The defense respectfully requests that the court sentence [Rank Name] to [confinement for \_\_ months], [reduction to E-\_\_], and [punitive discharge / no punitive discharge].

*[Drafting note: State the ask in the first sentence. If a punitive discharge is realistically unavoidable, concede it here — the concession buys credibility for the confinement argument, which is where this memorandum does its work.]*

## 2. Procedural Posture.

1. [Rank Name] was convicted, [in accordance with his pleas and pursuant to a plea agreement / contrary to his pleas], of [number] specifications of violating Article [134/other], UCMJ — [offenses].
2. He was not charged with, and the investigation developed no evidence of, [production / solicitation / communication with a minor / contact offending — list only what is true].
3. The maximum punishment is [ ]. The applicable sentencing parameter is [offense category], carrying a confinement range of [ ] to [ ] months.

*[Drafting note: Confirm whether the offenses of conviction are parameter offenses (Appendix 12C, MCM) or criteria offenses (Appendix 12D). Confirm the parameter in effect for offenses committed on the date alleged. Sentencing parameters apply to offenses committed on or after 27 December 2023; for earlier offenses this section changes substantially and section 9 should be rewritten.]*

### 3. Summary of Argument.

The government will ask the court to sentence [Rank Name] as though the material 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. [Rank Name] is within that subgroup, and an individualized assessment places him [at the bottom of it / where the evaluation places him].

That evidence does not answer every sentencing criterion, and the defense does not pretend otherwise. 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.

### 4. The Accused.

*[Drafting note: Four to six numbered paragraphs. Service record, family, conduct at the time of investigation, treatment entered before trial. Keep each to concrete fact; the court will discount adjectives. Cite the enclosure supporting each.]*

1. [Age, years of service, deployments, evaluations, absence of prior discipline.]

2.

[Family circumstances. Enclosure \_\_\_\_.]

3.

[Conduct at first contact with investigators — admission, consent to search, cooperation.]

4.

[Treatment entered before trial, at whose expense, attendance record. Enclosure \_\_\_\_.]

#### **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 — [Rank Name] sits at [position]. Within distribution, the meaningful line is between passive availability through peer-to-peer software and active trading with other users; [state what the forensic examination found].

The specific findings of the forensic examination are these:

- [Volume of material and the period over which it was acquired.]

- [Whether the collection was sorted, catalogued, or organized.]

- [Whether there was participation in any forum, chat, or trading community.]

- [Whether there was communication with any minor or any person purporting to be one.]

- [Whether there was any attempt to arrange or discuss physical contact.]

- [Whether there was production, covert recording, or any identifiable local victim.]

*[Drafting note: Include only findings that are favorable or neutral and that the government will not contest. If a finding is unfavorable — sadistic content, predominant boy content, sorting, long duration of interest — address it in section 8.a rather than omitting it. An omitted aggravator that trial counsel supplies costs more than a conceded one.]*

## **6. The Empirical Record on Risk of Further Offending.**

*[Drafting note: This section is fixed. It does not change from case to case and may be used as written. Attach the underlying sources as enclosures rather than relying on the summary alone.]*

### **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.

The Commission’s earlier Report to the Congress: *Federal Child Pornography Offenses* (December 2012) followed 610 offenders for an average of 8.5 years. Known sexual recidivism was 7.4 percent; 22 offenders, or 3.6 percent, were arrested for or convicted of a contact sexual offense.

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.”

**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.

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.

**c. The distinction that decides this case.**

The 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, a difference of roughly sixteen-fold.

The relevant question at sentencing is therefore not whether [Rank Name] is an “internet offender” in the abstract. It is whether the record establishes any contact offending. [State what the forensic examination covered and what it did not find.] 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. 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 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.
2. Recidivism figures are derived from detected offending. That is true of every recidivism figure in criminal justice, 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 question before the court is prospective.
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.

*[Drafting note: Do not delete this subsection to save space. It is what keeps the rest of the section from reading as advocacy, and a court that sees the defense state its own limits will credit the parts that remain.]*

#### **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. [Rank Name] was evaluated by [Evaluator], a licensed forensic psychologist, whose report is submitted as Enclosure 1.

- a. 

[Instruments used, and why they fit this population. The CPORT-V2 is the only validated static instrument developed for offending confined to exploitation material; note any contact-sample instrument used and the limitation stated.]

- b. [Scores, reported as the evaluator reported them.]
- c. [Confirm the evaluator reported risk as a group rate over a defined follow-up with the reference sample named, and did not state an individual probability.]
- d. [Elevated dynamic items, which become the treatment targets in section 10.]
- e. [Protective factors identified.]
- f. [Diagnostic conclusions, including the express absence of a paraphilic diagnosis where that is the finding.]

*[Drafting note: If the government has 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; a contact-offender instrument applied to a non-contact examinee with no acknowledgment of the population mismatch; charges conflated with convictions; and denial treated as a risk factor without acknowledging that denial has not shown a consistent relationship to recidivism.]*

## 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. Address every criterion, including the ones that cut against the accused — a memorandum that argues only the favorable criteria invites the court to supply the rest.]*

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

[Concede the seriousness. Then place the circumstances from section 5 against the variables the research treats as relevant, and carry over the history from section 4. Address here any aggravating feature of the collection or conduct, and say what weight it should carry.]

### 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. 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.

[List what the sentence already accomplishes: conviction, lifetime registration, reduction in grade, punitive discharge, and the confinement requested. Do not argue that these criteria are satisfied by a token punishment — they are not, and the argument costs credibility.]

**d. Deterrence.**

General and specific deterrence should be separated, because the evidence speaks to one and not the other. Specific deterrence is addressed by sections 6 and 7. 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.

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

This is the criterion the evidence in sections 6 and 7 addresses directly, and it is ordinarily the criterion that drives confinement in these cases. [Apply the subgroup figure and the individualized assessment. Then identify the protective interest that does remain — the risk of a further offense involving the material itself — and show that it is addressed by the conditions proposed in section 10 rather than by years of confinement.]

**f. Rehabilitation and return to duty.**

[Whether retention is sought. The treatment targets from the evaluation, and why they are addressed more effectively in the community. The protective factors that a long term of confinement removes.]

**9. The Applicable Parameter.**

1. 

The offenses of conviction fall within [offense category], carrying a confinement range of [ ] to [ ] months.
2. 

The requested sentence of [ ] months is [within / below] that range.
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. 

[The forensic examination's scope and its negative findings, placing the accused in the 0.56 percent subgroup rather than the 8.80 percent subgroup.]
- b. 

[The individualized risk assessment result.]

c.

[Conduct at first contact with investigators; treatment entered before trial.]

d.

[Service record, as a fact about this man rather than about the offense category.]

*[Drafting note: A departure request lives or dies on specificity. Facts that could be said about any defendant in this offense category will not support one. Each lettered item should be something a court could write down as a finding.]*

*[Drafting note: Optional paragraph, to be used with care: 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 Sentencing Commission has itself concluded that § 2G2.2 is "outdated and disproportionate" and produces "overly severe" ranges for some offenders; 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; and 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. Verify the derivation of the applicable parameter before advancing this, and 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:

- [Sex-offense-specific outpatient treatment, naming the dynamic targets identified in the evaluation as treatment goals.]

- [Internet monitoring, device restrictions, periodic examination.]

- [Registration compliance.]

- [Employment and family relationships identified as protective in the evaluation.]

## 11. Conclusion.

[Rank Name] 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 [sentence].

[NAME]

[Rank], JAGC, [Service]

Detailed Defense Counsel

### Enclosures:

1. Psychosexual Risk Assessment of [Rank Name], [Evaluator], [date].

2. [Letters of support.]

Enclosures:

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

## CONTINUATION DRAFTING PAGE

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