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## Making time fit the crime for predators

Authorities are trying to toughen the penalties for crimes involving sexual exploitation of children. But some in the legal community wonder whether stricter punishments will solve the problem.

By Mike Allen and Reed Williams

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John Beckner purchased five years in a federal penitentiary with a \$10 money order.

Beckner had visited an Internet site featuring child pornography. Over the next six months, the Roanoke man received e-mails hawking the site's wares. Though he made efforts to avoid the Internet, reminders from HotPop.com kept arriving. Finally, Beckner ordered a \$10 "preview" video.

But HotPop.com was a front for a federal sting. As soon as Beckner picked up the tape, black government sport utility vehicles were following him.

Beckner cooperated with investigators and had no criminal record. Yet a federal judge in Roanoke had no choice but to sentence him to five years in prison, the mandatory minimum.

Paul Dull, Beckner's attorney, noted that his client never laid a finger on a child, and his only illegal purchase was from the federal sting. "So how, exactly, is he contributing to this mass problem?" Dull asked.

Beckner's case could become typical as national and state authorities campaign to toughen the penalties for crimes involving sexual exploitation of children, with a definite emphasis on punishment over treatment. Virginia Attorney General Bob McDonnell wants to look into creating state mandatory sentencing minimums for child pornography possession, akin to the federal law that sent Beckner to prison.

"It all has to do with the word 'potential,' " said Roanoke defense attorney Gary Lumsden. These cases become a balancing act between protecting society from potential molesters "and on the other end of the spectrum, a witch hunt," he said.

Bedford County Commonwealth's Attorney Randy Krantz said the public clearly wants law enforcement to catch potential predators before they commit a crime against a real victim. "We have to do that protection within the confines of the Constitution," he said.

Though there's little sympathy to be found for defendants in Internet sex cases, some in the legal community question whether stricter punishments solve the problem.

"I don't know that increased punishment is the answer," said Steven Benjamin, a Richmond lawyer on the board of the National Association of Defense Attorneys. "The sheer exposure and the conviction are life-ruining events. Careers are ended. Licenses are lost. Families are lost."

Mandatory minimums prevent judges from keeping the punishment proportional to the crime, Benjamin said.

Short track record

Sentencing guidelines are in place for federal Internet sex cases, but not yet for cases prosecuted by the state of Virginia. Complaining of inconsistencies statewide, McDonnell asked the Virginia State Sentencing Commission to create sentencing guidelines.

As an example of disparity statewide, McDonnell spokesman Tucker Martin compared two cases prosecuted this year by the attorney general's office. In Campbell County Circuit Court, a Lynchburg man was sentenced to 17 years for 26 counts of child pornography possession and 11 distribution charges, which carried a maximum of 375 years.

In a Sussex County case, a defendant who pleaded guilty to 10 counts of reproducing child pornography and 15 possession charges, carrying a maximum prison term of 245 years, will serve only one year in jail.

In answer to McDonnell's request, the commission conducted the first statewide study of punishments levied by judges in computer sex cases and released their recommendation Nov. 13.

Even though the number of cases has increased, child pornography and Internet sex solicitation crimes still make up a tiny portion of criminal cases.

Looking at a period spanning 2002 to 2006, the commission found 161 sentencings it could use for its study.

Up to about 24,000 criminal sentences are levied each year in Virginia, said Meredith Farrar-Owens, the commission's deputy director.

The study found that less than half of Internet sex crimes result in a prison sentence, and the median range of those sentences is less than five years.

The suggested sentencing guidelines derived from the study are based on a point system that takes into account a variety of factors, including a defendant's criminal history, a victim's age and whether a victim suffered emotional injury.

For example, the guidelines would recommend probation and no jail time for someone who is convicted of possession of child pornography but had no prior criminal record, said Farrar-Owens. If that offender

were convicted a second time of possession of child pornography, the guidelines would recommend a minimum two-year sentence and a maximum term of six years and four months.

Someone with no prior record who is convicted of soliciting sex online from a child between ages 13 and 17 would be recommended only for probation. But if the same offender were convicted of the same charge and the victim was younger than 13, the guidelines would recommend a minimum prison term of seven months and a maximum punishment of two years and four months.

The commission's recommended sentencing guidelines will pass if no objections are raised in the next General Assembly session.

#### Treatment options

Generally, lawmakers have embraced the conventional wisdom that treatment for sex offenders doesn't work.

Legislators and state officials are expanding a controversial civil commitment program for sex offenders who are deemed by judges or juries to suffer from a mental abnormality that makes them likely to rape or molest again.

There are 32 patients at the Virginia Center for Behavioral Rehabilitation in Petersburg. Considered some of the state's most dangerous sex offenders, they were committed after their release from prison and are being held indefinitely.

To be eligible for civil commitment, an offender must have been convicted of rape, forcible sodomy, object sexual penetration or aggravated sexual battery. A law that will take effect Jan. 1 expands the list to include 20 other crimes.

No Internet sex crimes are on the expanded list of those for which someone can be committed.

"I don't know why it's not one of the predicate crimes," said Steven Wolf, director of the state's Office of Sexually Violent Predator Services. He speculated that it could be because Internet predators are a relatively new phenomenon and fewer studies have been done on them.

As for sex offenders in general, some studies demonstrate that those who receive treatment are less likely to offend again.

In a 1999 study referenced by the Center for Sex Offender Management, part of the U.S. Department of Justice, Dr. Margaret Alexander analyzed 79 sex offender treatment studies published from 1943 to 1996 and encompassing nearly 11,000 offenders.

Of those who underwent treatment, 13.2 percent were charged again with sex crimes, compared with 17.6 percent of offenders who failed to get treatment.

"The public thinks that most offenders re-offend," said Alexander, clinical director of the Sex Offender Treatment Program at Oshkosh Correctional Institution in Oshkosh, Wis. "It's not true."

Many politicians and others, it seems, would disagree.

"Unlike so many other things that we deal with, nobody has a good way to treat these people,"

Branscom said. "There's a higher recidivism rate than for other crimes."

The Sex Offender Residential Treatment Program at Brunswick Correctional Center in Lawrenceville is the only intensive residential sex offender treatment program at any state prison, although 13 other facilities offer "much less intensive" weekly education and counseling groups, said Larry Traylor, spokesman for the Virginia Department of Corrections.

"Weekly programs alone have not been demonstrated through research to reduce recidivism of participants," Traylor wrote in an e-mail.

Sixty-four inmates were participating in SORT as of Oct. 9, Traylor said.

He said that the state corrections system offers no treatment programs focusing specifically on Internet sex offenders.

The only specific funding appropriated for sex offender treatment in prisons is an annual \$500,000 for the SORT program, Traylor said. The probation and parole system has an annual budget of another \$500,000 for a pilot project called the Sex Offender Containment Model.

"The state of Virginia, the legislators have not recognized the need for sex offender treatment," said Rudy Flora, owner of Flora Counseling Services Corp. "You can't lock all these people up. It's not cost-effective."

Many of Virginia's sex offenders must attend treatment while on probation or parole. In the Roanoke area, it consists of weekly, 90-minute group meetings and heavy supervision, and participants must take polygraph tests.

Flora Counseling provides sex offender treatment for much of Southwest Virginia from its Roanoke and Abingdon offices. The company is treating nearly 100 adult sex offenders, including seven Internet offenders, at its Roanoke facility and 67 adults, including four Internet offenders, in Abingdon.

Most were ordered by a judge or probation officer to participate, Flora said.

Flora said he is aware of only four people who have been arrested on additional sex charges after participating in Flora Counseling's program. None was an Internet offender.

Flora said Internet offenders are extremely addictive and see their potential victims as objects.

"Internet offending is the cocaine of sexual offending," Flora said. "You can get addicted very quickly."

### Seeking guidelines

Hopewell resident George Porter says he fell prey to that addiction. "I have been a law-abiding, contributing member of society all my adult life up until the time I became obsessed with pornography," he wrote in a letter to The Roanoke Times.

Caught in a sting in which a police officer posed as a 13-year-old girl, Porter, 46 at the time, pleaded guilty to five felonies, understanding that state guidelines called for a maximum punishment of three months in jail.

Porter was never accused of doing physical harm to an actual child.

But Roanoke Circuit Court Judge Charlie Dorsey sentenced Porter to serve 10 years of a 25-year sentence, which is comparable statewide to a typical first-time conviction for rape or forcible sodomy.

"I expected to be punished for what I did. I did not expect to be punished for what I may do!" Porter wrote. "Many child molesters, rapists and murderers have been treated much more leniently than I have been, even though I have never been accused of molesting any child."

Porter's case is actually an exception to the rule. Officers with Operation Blue Ridge Thunder, the federally funded Internet crimes task force in Bedford County, have told the state sentencing commission that cases involving police stings tend to result in lighter sentences. The commission has consulted with Bedford County Commonwealth's Attorney Randy Krantz and with Blue Ridge Thunder officials in the course of its guideline study.

Krantz is among those lobbying state lawmakers for tougher punishments. He went to the General Assembly pushing for first-time possession of child pornography to be made a felony. That law passed in 2003.

Krantz has adamantly asserted that Virginia needed to establish sentencing guidelines for these crimes. Such guidelines, generally speaking, can be beneficial because they provide consistency in sentencing and create a starting point for prosecutors and defense lawyers in negotiating plea agreements, Krantz said.

The guidelines recommended by the sentencing commission don't call for long prison terms for first-time offenders. That's to be expected, Krantz said.

The punishment will likely be less in solicitation cases than for cases in which a real child was harmed, Krantz said.

Catching a potential predator early means police and prosecutors might not have the kind of evidence that results in a long prison sentence. But the predator still gets identified and assessed, which helps protect the public, the prosecutor said.

In some Blue Ridge Thunder cases, Krantz has found unconventional ways to charge felonies where other prosecutors might have charged misdemeanors. In an instance where two different men arranged rendezvous for sex with the same 17-year-old girl, Krantz invoked Virginia's controversial sodomy law to keep the threat of a felony conviction in play.

Krantz has some reservations about the effectiveness of guidelines. He notes, for example, that in involuntary manslaughter cases the guidelines don't change if more than one person is killed. In his opinion the state doesn't provide guidelines for judges that adequately deal with sex crimes against children.

"We're consistently trying to educate our judges through argument in court."

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