



CANADIAN CENTRE *for* CHILD PROTECTION®
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EXECUTIVE SUMMARY

PRODUCTION OF CHILD SEXUAL ABUSE MATERIAL (CSAM) IN CANADA

A Study of Legal Decisions from 2001 to 2019

where “make child pornography” was charged and the offending occurred in-person



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Acknowledgments

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Sensitive content warning

Due to the nature of the subject matter, some of the content in this paper is graphic and may be difficult or triggering for some individuals. We encourage anyone who is distressed to seek supports, including through your local crisis helpline. It is critically important to appreciate the realities of what children have endured in order to advocate for change and foster meaningful investment in solutions that will help to prevent this crime and provide protection and support to victims.

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About C3P and this research into the production of child sexual abuse material within Canada

Recording the sexual abuse of a child means creating an image or video that never before existed. It is the making of the image that starts the chain of re-victimization and allows for an online community of offenders to access, possess, and distribute child sexual abuse material (“CSAM”)¹ in an endless cycle of abuse. CSAM is both a crime, and a record of a crime that has occurred. Each act of production — and the subsequent sharing production enables — is a violation of that child’s right to dignity, privacy, and protection from harm.² In Canada, and most other countries, it is a criminal offence to create CSAM.³ Canada’s law criminalizes a wide range of material, from images and recordings depicting sexual posing to those with a focus on sexual organs or depicting hands-on abuse by an offender.

Every survivor of this crime has a story, yet the vast majority of victims of this horrific crime have been seen, not heard. In recent years, our organization has observed a notable increase in the number of criminal charges of CSAM production in Canada.⁴ With so little information available about the experiences of child victims in this country, the ways in which the Canadian legal system has responded, and the nature and scope of this crime,⁵ the Canadian Centre for Child Protection (“C3P”) set out to learn more through this study.

The study involved a detailed review of publicly available Canadian legal decisions issued between January 1, 2001, and July 31, 2019, involving the production of CSAM that occurred in-person. Legal decisions were reviewed because they are a rich source of data about the way in which this offence is perpetrated and about the victim experience — information that may be difficult to ascertain directly from a child. The cases told us a lot about ways in which child protection and supports for survivors and their families can be improved, informing our discussion at the end of this report. It is clear the survivors of this abuse and exploitation — invisible for too long — must be at the centre of decisions that engage their interests.

1 We use the term “child sexual abuse material” to refer to what s. 163.1 of the *Criminal Code* defines as “child pornography.” The latter term has fallen out of favour internationally, minimizes the crime’s sexual violence against children, and wrongly implies consent, whereas the former accurately acknowledges the sexual assault and exploitation.

2 Office of the High Commissioner for Human Rights. (1989). Convention on the Rights of the Child. General Assembly Resolution 44/25.

United Nations. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>. See also Office of the High Commissioner for Human Rights. (2021). General comment No. 25 (2021) on children’s rights in relation to the digital environment. United Nations. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation>.

3 *Criminal Code*, RSC 1985, c C-46, s 163.1.

4 See also *R v Friesen*, 2020 SCC 9 at para 46.

5 Statistics Canada tracks the offences of production and distribution of CSAM together, so it is not possible to narrow in on production as a distinct offence.

Certain commonalities between the data revealed through this study and C3P's prior research, namely *Child Sexual Abuse Images on the Internet: A Cybertip.ca Analysis* (the "Cybertip.ca Report")⁶ and the *International Survivors' Survey* ("Survivors' Survey"),⁷ are striking and help point towards a consistent understanding of this crime, its impacts, and what needs to be done to address this still growing problem. The differences, too, are important and help to reveal specific themes present in the unique data sources.

Child sexual abuse is a difficult subject to discuss, but if children are forced to endure this abuse, we must listen and do everything we can to address it. It is our duty to shed light on this form of exploitation to transform misconceptions and illuminate the realities of this crime.



About C3P: C3P is a global leader in the fight against online child sexual abuse and exploitation. It provides programs and services to Canadians that are aimed at reducing the sexual abuse of children and the public availability of CSAM. C3P operates Cybertip.ca, Canada's tipline to report the online sexual exploitation of children, and Project Arachnid, a survivor-centred technology-based platform used to detect where CSAM is being made publicly available and initiate removal requests. C3P is a registered charity based in Winnipeg, Manitoba, Canada.

About this Executive Summary: This Executive Summary is an overview of *Full Report: Production of Child Sexual Abuse Material (CSAM) in Canada* (the "Full Report"). This summary and the *Full Report* will be available on C3P's website (protectchildren.ca), and it is recommended to refer to the *Full Report* for more context for the information in this summary.

6 Canadian Centre for Child Protection Inc., *Child Sexual Abuse Images on the Internet: A Cybertip.ca Analysis* (2016), available online: <https://protectchildren.ca/en/resources-research/child-sexual-abuse-images-report/>.

7 Canadian Centre for Child Protection Inc., *Survivors' Survey Full Report and Executive Summary* (2017), available online at: <https://protectchildren.ca/en/resources-research/survivors-survey-results/>.

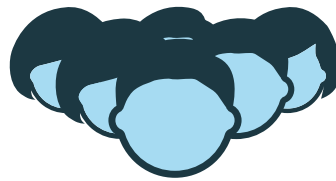
Introduction to the Data

We utilized Canadian legal decisions and media reports issued between **January 1, 2001, and July 31, 2019**, to locate information about hundreds of potentially relevant cases. Cases involving other modes of production (e.g., online luring, livestreaming, and voyeurism) were also located, but as those cases present differently, the decision was made to focus on only in-person situations for this report.

This executive summary is about:



150 offenders



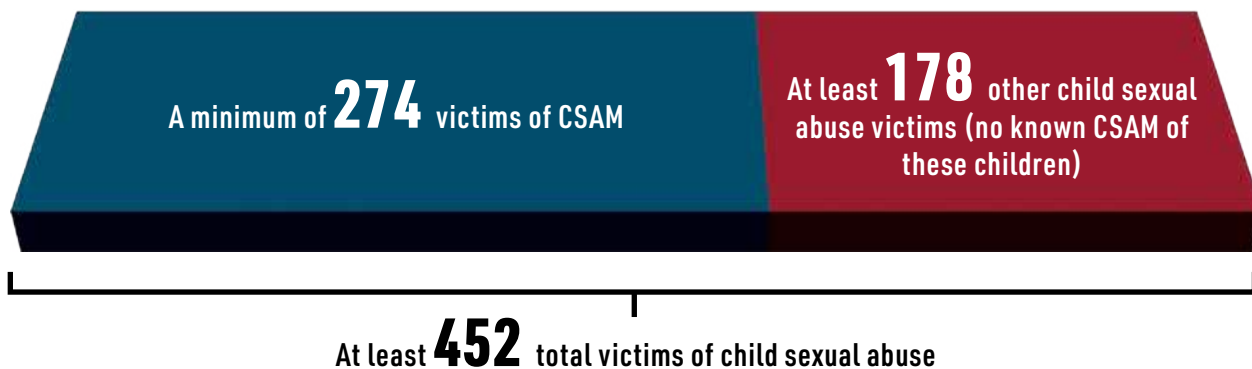
a minimum of 274 CSAM victims



documented in 287 reported legal decisions

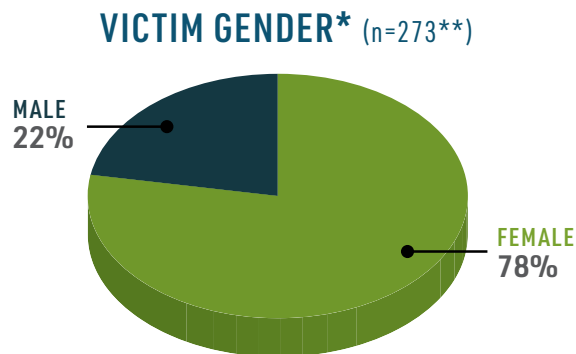
where the production of CSAM occurred **in person**, involved primarily **one offender**, and where that offender was **criminally charged for the production of the CSAM** (section 163.1(2) of the *Criminal Code*).

The **150 offenders** in our data made CSAM involving a minimum of **274 victims**, meaning many offenders had more than one victim. In fact, 65 offenders made CSAM of multiple victims (43% of offenders). Some offenders also sexually abused other children but were not known to have produced child sexual abuse material of these children; **55% of offenders had more than one victim** (when considering CSAM production and other child sexual abuse).



Victims of CSAM (n=274)

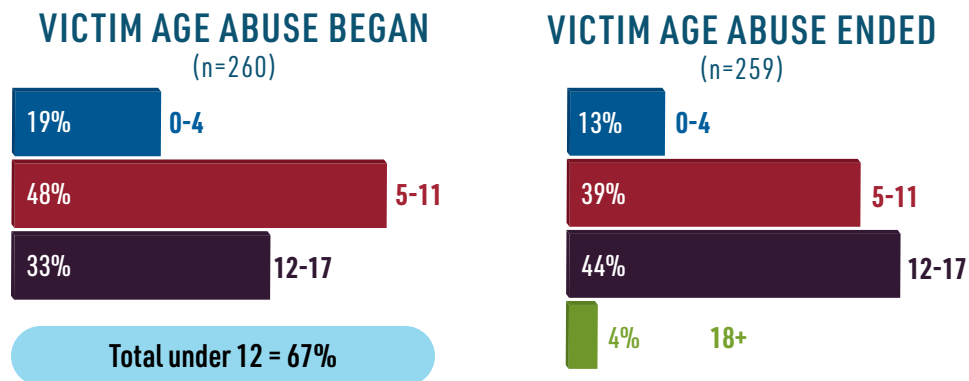
The victims' gender and age information within this study is broadly consistent with the information gathered through the *Survivors' Survey* and *Cybertip.ca Report*. There was a lack of reliable information on victim race and cultural background in the vast majority of the cases.



*Based on gender identifiers provided in the legal decisions and may not reflect the actual prevalence of gender diversity among victims.

**Gender was unknown for one victim.

The charts below on victim age are based on available information in the cases. Criminal law is exacting in its process and only those facts that can be proven beyond a reasonable doubt end up in the facts of the case. **Unless the offender voluntarily reveals information, it is very difficult to know when the offending began and ended.**

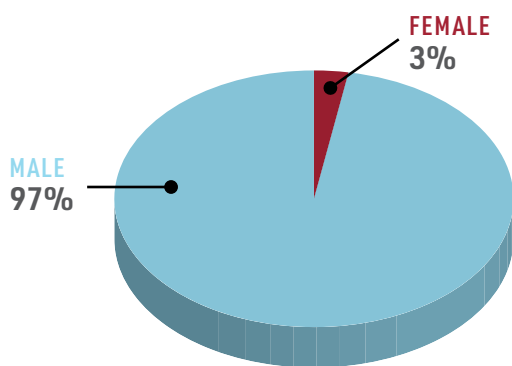


Male children were more concentrated in the **5-11** group (64% of male children compared to 44% of female children); **female** children were **more evenly distributed** among the age groupings.

Offenders (n=150)

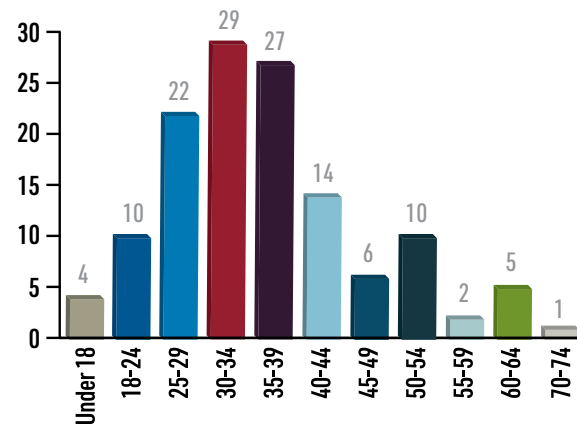
Case law, the data source relied upon for this report, tends to contain rich detail about the offender's personal circumstances, increasing our understanding of who has committed the offence of producing CSAM. Overall, many offenders in this project were middle-aged, employed, did not have a criminal record, and were currently or formerly in a romantic relationship with an adult.

OFFENDER GENDER* (n=150)



*Based on gender identifiers provided in the legal decisions and may not reflect the actual prevalence of gender diversity among offenders.

OFFENDER AGE WHEN OFFENDING BEGAN (n=130)



Key takeaways:

- The oldest offender was approximately 73 when he produced CSAM.
- Most offenders did **not** have a **criminal record** (60% or 79 out of 131 offenders where known).
- Most offenders were employed at the time of offence (78% or 69 out of 88 offenders where known).
- **Sixty-nine offenders** were in a **long-term or dating relationship**; **47 offenders** were **single** at the time of the offence and some had never been in a romantic relationship.
- Those in relationships tended to offend against children in the home (47 out of 69 partnered offenders offended against their partner's child or the child they shared with their partner).
- Very few women offended alone, but there were a number of females in the multiple offender cases (not reflected in this Executive Summary).

Relationship of offender to victim (n=274)

Most offenders were in a position involving a high degree of inherent and actual trust, had built trust with the child, and/or used grooming tactics to gain their acquiescence (e.g., offering money or drugs).

	Number of victims	Percentage of victims
Parents/parental figures (all)	84	31%
→ Father (includes 1 adoptive father)	39	14%
→ Stepfather/boyfriend of victim's mother	36	13%
→ De facto guardian/foster parent	6	2%
→ Biological mother	3	1%
Circle of trust (family friend, parent/guardian/relative of child's friend)	65	24%
Other known person (e.g., neighbour, acquaintance, friend)	47	17%
Relatives (uncle, grandfather, other relative)	26	9%
Position of trust (child care provider, employee or volunteer with child-serving organization, coach, employer, former teacher)	24	9%
Exploitation for prostitution	16	6%
Victim led to believe there is a romantic relationship	8	3%
Unknown	4	1%
Total	274	100%

Consistent with the *Survivors' Survey*, in-person CSAM production tended to be perpetrated mainly by family members or others within the child's circle of contact. None of the victims of offenders who offended on their own were abused by a stranger.⁸ The high percentage of family members is troubling because there is "comparatively little risk of detection for the offender" and because parental offenders in particular can exert control and have broad access to their victims.⁹



For **girls**, the abuser was most commonly a **parent/parent figure** (35% of girls).

For **boys**, the abuser was commonly within the child's **circle of trust** (40% of boys) or **known to them in some other way** (30% of boys).



⁸ This is not the situation in the multiple offender cases — in those cases, there were examples of an offender who knew and had access to the child and granted access to the child to another person who was otherwise a stranger to the child. For example, see *R v DaSilva*, 2017 ONCJ 595 and *R v Lucas*, 2017 CarswellOnt 21774 (ONCJ).

⁹ Michael Salter et al, "Production and distribution of child sexual abuse material by parental figures" (2021) 616 *Trends & issues in crime and criminal justice* at 2.

Circumstances of sexual abuse/recording

VICTIM LIVING ARRANGEMENTS AND OFFENDER ACCESS TO VICTIM (n=249)

A relatively high percentage of victims **lived with their offender** (37% of victims), and even for those who did not, it was common for the offender to either have access to the victim's home or to have reason to be in the victim's home or invite the victim to their home (e.g., as a babysitter or member of the victim's extended family).

KNOWN LOCATION OF CSAM PRODUCTION (multiple responses permitted, n=204)

The vast majority of imagery was produced in a **residence** (residences comprised 86% of known locations).

- Total number of children abused in the **offender's home: 149**
- Total number of children abused in their **own home: 79**

NUMBER OF INCIDENTS OF ABUSE (n=211)

Most victims were subjected to **more than one incident** of abuse (80% or 169 out of 211 victims where known).

DURATION OF OVERALL ABUSE (n=211)

47% of victims were abused for longer than a year, with 7% of victims experiencing more than five years of abuse. When the abuse lasted longer than five years, the offender was usually a family member (parent, stepparent, or other relative).



CSAM characteristics

NUMBER OF IMAGES AND VIDEOS PRODUCED (n=150)

Images were more common than videos — 135 offenders made at least one image and 76 made at least one video. The cases did not always detail the exact number of images and videos produced, but it was abundantly clear that most offenders made at least several, and many offenders made tens or hundreds of CSAM images/videos.

Number of images/videos	Number of offenders who made images	Number of offenders who made videos
At least one and up to 10	17	24
At least 10 and up to 100	29	12
At least 100 and up to 1,000	22	1
Over 1,000	4	2
Some (Unclear how many)	63	39
Total*	135	76

*The combined total for these data points exceeds 150 because some offenders made both images and videos.

WHAT THE CSAM DEPICTED (multiple responses permitted, n=259)

These categories below were developed to reflect the abusive acts depicted in the CSAM produced in the cases reviewed. The categories are presented in order from most common to least common.

Abuse depicted in CSAM	Number of victims	Percentage of victims where known (n=259)
Posing/no specific sexual act	201	78%
Offender sexual assault of child	160	63%
Sexual act – offender not shown – multiple children	30	12%
Sexual act – offender not shown – child alone (or no other child mentioned)	27	10%
Sadism, bestiality, or bondage	12	5%
Other (Other includes images of urination, defecation, the use of blindfolds, and cases in which the offender also produced writings about the victim)	7	2%

Categorizing imagery that is illegal into types or levels is somewhat artificial, as the harm that each individual child suffers through the production of a particular piece of imagery cannot be known just from looking at the imagery. While it was necessary to complete this assessment, in part to combat myths about the nature of CSAM, the above data also serves as a starting point to consider what the image categories do not tell us. For example, the sexual abuse of many victims involved the production of two or more of the types of CSAM referred to in the table above, something not fully reflected when looking at the numbers in isolation.

OTHER IMAGERY OF CHILDREN AND ITS USE BY OFFENDERS ON THE INTERNET

Child sexual abuse material is defined in s. 163.1(1) of the *Criminal Code*, **but not all imagery that is harmful to children is illegal**. The focus of the criminal justice system has been focused on that which is illegal, however legal imagery of children can play an important role in the offending cycle, particularly for online offenders. This assertion is expanded upon in C3P's child rights and protection framework, *How We Are Failing Children: Changing the Paradigm*.¹⁰

Many of the offenders included in this study made not only illegal material, but also material that in some contexts would be considered “legal”. For example:

- In one of the cases reviewed for this project, the offender uploaded photos of a child in underwear to a website. The images were uploaded with a message indicating the offender also had nude photos of the boy. **Essentially, the underwear photos were used to “advertise” to other offenders that other content was available**.¹¹
- In another case, the offender was found with surreptitious footage of neighbourhood children at splash pads and parks.¹² Such footage may, viewed on its own and without knowledge of the context, seem innocuous. However, during the same period as he was creating this footage, he produced CSAM of four other children, aged seven and under, all of whom were in his care at the time the images were taken.

Harmful/abusive material may be an early warning of the danger an individual poses to the child or to children generally. When discovered, it offers an opportunity for intervention. Moreover, due to the role such imagery can play in online offending communities, we must collectively pay more attention to the circumstances of its creation and subsequent use.

10 Canadian Centre for Child Protection Inc., “How We Are Failing Children: Changing the Paradigm” (2019) at pages 11-13. Available online: https://protectchildren.ca/pdfs/C3P_ChildRightsFramework_en.pdf.

11 *R v V*, 2017 BCPC 347.

12 *R v SP*, 2018 ONCJ 621.

Distribution (n=274)

Distribution is a distinct offence in section 163.1(3) of the *Criminal Code*. Distribution compounds the harm to the child, but the making of the material is the starting point of victimization. Any production of CSAM creates a *risk* of distribution and there is not always evidence available at the time of arrest to definitively “prove” if distribution occurred. The following table reflects the findings gleaned from the cases examined:

Distribution	Number of victims	Percentage
Yes	55	20%
No evidence of distribution	95	35%
Unknown/not mentioned	124	45%
Total	274	100%

Websites were the most common (23 victims) method of distribution, but when different direct distribution methods (email, messaging services, livestream) were combined, 27 victims had their CSAM distributed that way.

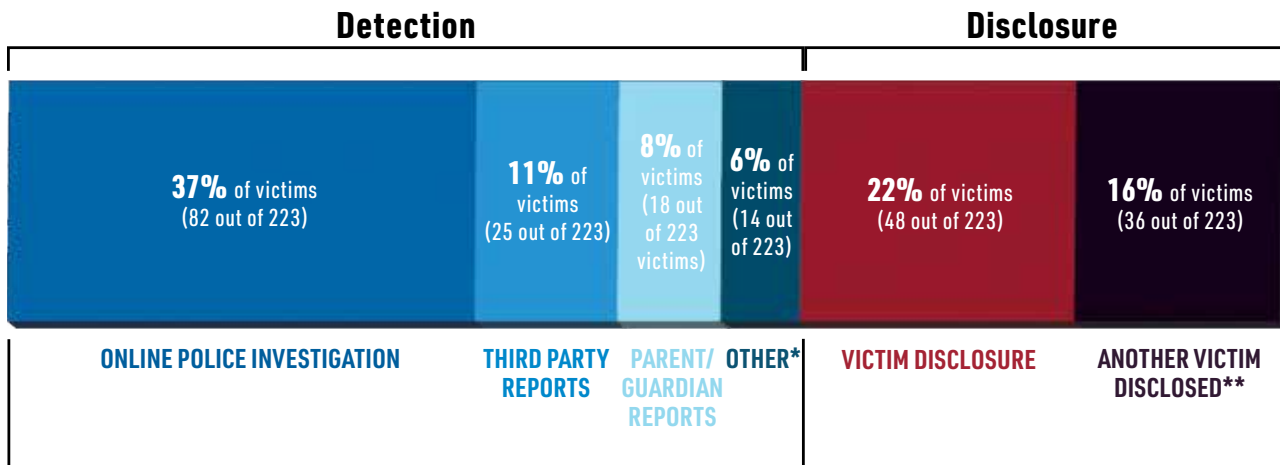
Barriers to detecting distribution include: end-to-end encrypted messaging services, cloud storage, the presence of websites on the clear and open web to which imagery can simply be anonymously posted, and the near absolute anonymity afforded in what is generically referred to as “the dark web.”¹³

¹³ The dark web is a part of the internet made up of hidden sites that cannot be found through conventional web browsers. Instead, users must rely on a third-party browser, which is often the Tor browser — a web browser that anonymizes web traffic within its internal network. That browser enables access to search engines designed specifically to direct users to hidden sites. Dark web sites use encryption software so visitors and owners can remain anonymous.



Uncovering abuse and identifying victims (n=223)

As indicated in the chart below, this study revealed that victim disclosure was not the way most abuse was uncovered. The single largest way in which victims of CSAM production came to the attention of police was through online investigative work by police, illustrating the importance of this work to the protection of children.



**Total victims rescued as a result of detection:
62% of victims (132 out of 223 victims)**

*Other detection consists of other police investigation (for example, an offline investigation into commercial sexual exploitation) (5% or 12 out of 223) and two incidents that were so unique they were coded as “other.”¹⁴

**The other victim was also sexually abused by the same offender; that abuse may have been recorded, but not necessarily.

BARRIERS TO DISCLOSURE

In this study, we noted a number of potential barriers to victim disclosure including:

- 18% of victims in our data were age **four or younger** when the abuse started, and 12% were four or younger when it ended
- 31% of victims were abused by a **parent/parental figure**
- Offenders used a variety of **tactics** keep victims from speaking out (e.g., threats of harm, telling the child no one will believe them)¹⁵

¹⁴ Includes one instance in which the offender had a car accident and the CSAM was found on DVDs and other storage devices he had in his possession (*R v DF*, 2017 ONSC 7785 at para 12) and another instance in which the offender had lied to the school that the victim was sick (*R v Fulton*, 2005 ABCA 423). The victim’s mother called the school on an unrelated matter and learned about the fraudulent message, which led to her discovering that the offender had taken the victim out of school and brought her to a hotel room which he took 41 sexual photos of her (*R v Fulton*, 2005 ABCA 423 at para 5).

¹⁵ For example, *R v JA*, 2019 MBQB 112 at para 18; *R v BEP*, 2014 MBQB 79 at para 9; *R v RWE*, 2007 ONCA 461 at para 6.

Other CSAM possessed by offender

Most offenders had a collection of CSAM in addition to the imagery they created of the victim(s) they abused in person (91 out of 150, 61%). Often, the collections of CSAM were very large and depraved, and the offender's level of engagement with CSAM, both existing and newly created, was high. We documented numerous examples of other CSAM being shown to the victim as part of the grooming process. In some instances, the offender used other CSAM specifically to show the child how they wanted the child to act when the camera was on.



Legal Outcomes

78% of offenders pleaded guilty. Of the 32 not-guilty pleas observed, at least 30 resulted in a conviction and are not known to have been appealed (two offenders were convicted, but an appeal court ordered a new trial and the outcome of that trial is unknown).

We located only **six acquittals** compared to the nearly 150 cases involving guilty pleas or convictions at trial. In some of the acquittals, it was clear CSAM had been recovered, but the issue was the identity of its creator.



Sentences (n=114)

“No legal sentence will ever be enough, the pain and regret will remain with me and the other victims for the rest of our lives.”

– Excerpt from victim impact statement in *R v MS*, 2010 ONCJ 600 at para 33

R v Friesen, 2020 SCC 9 (“*Friesen*”) sets out the approach to sentencing for sexual offences against children. In the words of the Supreme Court of Canada, “the production of child pornography traumatizes children and violates their autonomy and dignity by treating them as sexual objects, causing harm that may stay with them for their entire lifetime.”¹⁶ According to *Friesen*, the focus of any sentence must not only be on the physical harm to the victim, but also the emotional and psychological harm,¹⁷ not just that which is known at the time of sentencing but also the “long-term harm that only becomes evident during adulthood.”¹⁸ Succinctly put, “The sentence imposed must reflect the normative character of the offender’s actions and the consequential harm to children and their families, caregivers, and communities.”¹⁹ The chart below summarizes the sentence lengths noted in this study for production offence and overall when the offender’s other crimes (for example, sexual interference of the victim) were also considered.

	Offences against <u>one victim</u>	Offences against <u>more than one victim</u>
Sentence for the production of CSAM (section 163.2(1))	One year was the most common sentence (27% of offenders received this sentence). Very few sentences exceeded three years (5%).	Two to three years was the most common sentence (31% of offences received this sentence). 25% of sentences exceeded three years.
Overall sentence (production of CSAM and any other crimes committed)	Overall sentences in the five to 10 year range were the most common for cases involving both single and multiple victims (39% of sentences in both scenarios). 12% of offenders who victimized one child received an overall sentence of more than 10 years, compared to 31% of offenders who had multiple victims.	

¹⁶ *R v Friesen*, 2020 SCC 9 at para 51.

¹⁷ *R v Friesen*, 2020 SCC 9 at para 56.

¹⁸ *R v Friesen*, 2020 SCC 9 at para 80.

¹⁹ *R v Friesen*, 2020 SCC 9 at para 76.

Victim Impact

Victim impact is a statutory consideration at sentencing²⁰ and under the *Canadian Victims Bill of Rights (CVBR)* enacted in 2015, every victim has the right to present a victim impact statement and have it considered by the court at sentencing.²¹ What cannot be known from victim impact statements completed at the time of sentencing are the long term, post-sentencing impacts. The ongoing victimization associated with the existence of the imagery and the revictimization that occurs if the imagery has been shared with others cannot possibly be known at that time, especially to the victim. However, the *Friesen* decision calls on sentencing judges to “take into account forms of potential harm that have yet to materialize at the time of sentencing but that are a reasonably foreseeable consequence of the offence and may in fact materialize later in childhood or in adulthood.”²² These forms of potential harm can be understood with reference to what survivors have said through research like the *Survivors’ Survey*, the advocacy efforts of groups like the Phoenix 11,²³ and reported cases that have featured victim impact statements from identified survivors of CSAM whose imagery was found within the offender’s collection. These types of statements have now been submitted in over 100 cases in most Canadian provinces and two out of three territories.

VICTIM AGES AT TIME VICTIM IMPACT INFORMATION PROVIDED (n=258)

Where the victim’s precise age at the time of sentencing could be determined, **most were still under 18 (58%, 150 out of 258) and over half of those children were under 12 (54%, 81 out of 150)**. For those who were 18 or older, their ages were concentrated in the 18 to 21 range (81%, 45 out of 55).

20 *Criminal Code*, RSC 1985, c C-46, s 718.2(iii.1).

21 *Canadian Victims Bill of Rights*, SC 2015, c 13, s 15.

22 *R v Friesen*, 2020 SCC 9 at para 84.

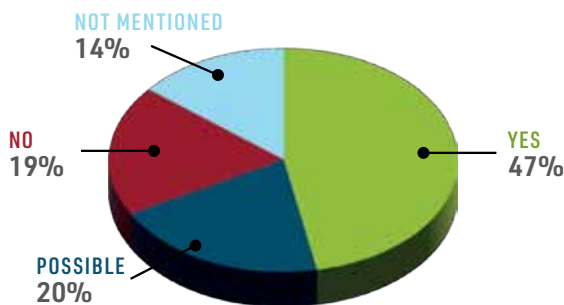
23 The Phoenix 11 are a group of survivors whose child sexual abuse was recorded, and in the majority of cases, distributed online. This group has banded together as a powerful force to challenge the inadequate responses to the prevalence of CSAM online. <https://thephoenix11.com>.



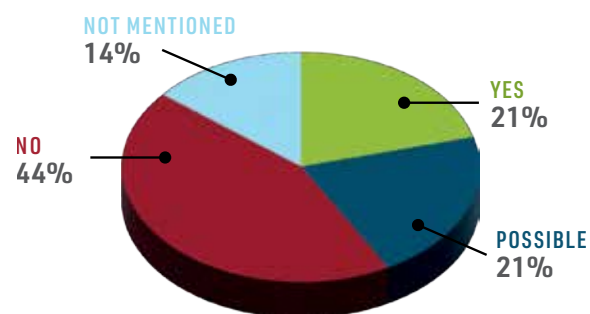
PRESENCE OF VICTIM IMPACT STATEMENTS (n=258)

At least **121** victims (or approximately 47%) either filed a victim impact statement of their own or someone connected to them filed such a statement. In some cases, statements were filed by both the victim and someone connected to them. There were **51** victims (approximately 20%) for whom it was clear that **no one filed** a statement representing the victim. The table below shows the distribution of victims who had **any** statement connected to them. The “possible” category was selected in two scenarios: (1) in multi-victim cases where the court simply indicated that multiple statements were filed without clarifying who filed the statements; and (2) in cases where the judge referred to information that could have come from a victim impact statement but the court did not expressly say that such a statement was filed. “Not mentioned” means the judge made no mention of any victim impact statement filed by the victim or anyone connected to the victim. This means either no such statement was filed, or a statement was filed but not mentioned in the reported decision.

**VICTIM IMPACT STATEMENTS
(FROM ANYONE)**



**VICTIM IMPACT STATEMENTS
(FROM VICTIM)**



We focused on whether anyone filed a statement because it was quite common for a family member to file a statement, especially if the victim was under 12 at the time of sentencing — this happened for at least **91 victims**. When the Supreme Court of Canada addressed the issue of victim impact in *Friesen*, its reference to multiple potential information sources for victim harm shows an awareness of the challenges of obtaining victim impact statements in cases involving young victims. No victims in the zero to four age group filed their own statement (n=6), and only 17% of victims aged five to 11 did (n=75). The rate was somewhat higher for the 12-17 age group (n=69), and highest for victims who were over 18 years of age at the time of sentencing (n=55).

NOTABLE OBSERVATIONS

- Relatively similar proportions of male and female victims filed victim impact statements; 21% for both.
- On a year over year basis, the rates of victims with a victim impact statement were stable over the timeframe for this project. Comparing two five-year periods, the rate of victims represented by a victim impact statement was stable: 52.91% in 2009-2013 and 52.05% in 2014-2018. Earlier years tended to have few cases, and so the pool from which the percentage was calculated was too low to permit meaningful analysis.
- Victims who were exploited for prostitution rarely filed victim impact statements. Sixteen victims were exploited in this manner. In only one case was it clear that one of the three victims had provided a victim impact statement (see *R v KOM*, 2017 ONCA 106).

“[The victim] describes herself as broken. She says that during and since the offences she finds herself overwhelmed, and cries uncontrollably. Friends, teachers, and counsellors are often unable to assist her. [The victim] says her experiences have affected her deeply, ‘... on a scale of 1-10 it would be a 10.’ She is afraid this could happen to her again.”

– Judge’s summary of information contained in a victim impact statement²⁴

²⁴ *R v KDH*, 2012 ABQB 471 at para 114.



IMPACTS EXPRESSED IN CASE LAW

“The man I placed in her life to love and protect her hurt and abused her. Now thousands of strangers will continue to do the same. She will live her life knowing that her naked body, the sexual abuse she endured, will be watched every single day. She will be revictimized every time someone looks at those pictures and videos of her sexual abuse. [The victim] has been sentenced to live with this trauma every day for the rest of her life. There is no way she will ever be done with this. Any sentence [the offender] receives will never compare to the sentence faced by [the victim]. Hers is a life sentence. She won’t know who will invade her privacy, who will look at her naked body being sexually abused, but she will always know that the pornographic images of her abuse will last forever.”

– Victim impact statement from a victim’s mother²⁵

Summary of emotional impacts expressed in the legal decisions²⁶

Emotional impacts	<ul style="list-style-type: none"> • Anger • Grief • Sadness • Irritability 	<ul style="list-style-type: none"> • Sense of betrayal • Self-blame • Lowered self-esteem 	<ul style="list-style-type: none"> • Shame • Inability to concentrate • Loneliness/isolation
Psychological harms	<ul style="list-style-type: none"> • Depression • Anxiety 	<ul style="list-style-type: none"> • Suicidal ideation 	<ul style="list-style-type: none"> • Post-traumatic stress disorder
Life impacts	<ul style="list-style-type: none"> • Disruption of their peer/friend relationships • Delaying dating or romantic relationships • Negative changes in the victim’s performance at school • Employment impacts (keep in mind that many victims were well below the age where employment would be factor) 		

²⁵ R v JA, 2019 MBQB 112 at para 23.

²⁶ Case references have not been provided due to the volume of applicable cases but are available upon request.

PHYSICAL IMPACT

“... the [victim impact statement] highlights trauma being experienced by [the victim] despite having a positive bond with her foster mother. The child is resistant to bathing, is fearful of people, suffers from nightmares and has had soiling and incontinence issues. In addition, she has had to and continues to be subjected to medical examinations and blood tests to insure she has not been infected by any form of sexually transmitted disease.”

– Judge’s summary of information contained in a victim impact statement submitted by the victim’s social worker²⁷

Summary of physical impacts expressed in the legal decisions

Physical impacts tied to emotional harm	Examples <ul style="list-style-type: none"> • Insomnia/difficulty sleeping²⁸ • Headaches²⁹ 	<ul style="list-style-type: none"> • Self-harm (i.e., cutting)³⁰ • Addiction/substance abuse³¹ 	<ul style="list-style-type: none"> • Stomach aches/upset³² • Eating disorders³³
Physical impacts tied to the sexual abuse	Examples <ul style="list-style-type: none"> • Soiling and/or incontinence issues³⁴ • Pain during the assault³⁵ 	<ul style="list-style-type: none"> • Lacerations/tearing of the vagina or anus³⁶ • Sexually transmitted infections – victim contracted³⁷ 	<ul style="list-style-type: none"> • Sexually transmitted infections – victim tested for possibility³⁸

27 *R v AV*, 2016 ONCJ 827 at para 38.

28 For example: *R c Jaramillo*, 2018 QCCQ 4647 at para 72; *R v Gerrits*, [2018] OJ No 3401 (ONSC) at para 42; *R v PMV*, 2010 BCCA 34 at para 52; *R v DLW*, 2014 BCSC 43 at para 15; *R v MG*, 2011 NBPC 10 at para 89; *R v RJC*, 2015 NLTD(G) 154 at para 17; *R v SLL*, 2013 NBPC 6 at para 41; *R v JVS*, 2015 NSPC 73 at para 10; *R v AM*, 2013 ONSC 6174 at para 25.

29 For example: *R v Cardno*, [2013] BCJ No 889 (BCPC) at para 13.

30 For example: *R v RJ*, 2016 MBPC 25 at para 39; *R v WD*, 2008 ABPC 209 at para 53; *R v Kristian*, 2016 ABPC 158 at para 58; *R v Knowlton*, 2014 BCPC 163 at para 46; *R c Savard*, 2016 QCCQ 4714 at para 62.

31 For example: *R v SH*, 2015 ABPC 95 at para 34; *R v MG*, 2011 NBPC 10 at para 87; *R c ÉT*, 2004 CanLII 13517 at para 31.

32 For example: *R c Savard*, 2016 QCCQ 4714 at para 155; *R v CB*, 2016 ONCJ 209 at para 100.

33 For example: *R v JS*, 2018 ONCA 675 at para 27; *R v RBJ*, 2006 ABPC 173 at para 29.

34 For example: *R v AV*, 2016 ONCJ 827 at para 38; *R v MS*, 2017 ONCJ 479 at para 27.

35 For example: *R v P (BE)*, 2014 MBQB 79 at para 18; *R v Knowlton*, 2014 BCPC 163 at para 55.

36 For example: *R v AS*, 2016 ONSC 3032 at para 26. *R c Savard*, 2016 QCCQ 13872 at para 131 — the victim’s mother noticed redness and bleeding from the victim’s vagina at age eight (based on a translation of the decision via DeepL.com).

37 For example: *R v SK*, 2017 BCSC 1243 at para 6 (MCP element case — this case related to the victim’s mother who knew about the abuse and failed to stop it). The young victim in the case had “a genital wart likely caused by sexual contact with K.C.” (para 6). See also the trial decision *R v SK*, 2017 BCSC 366 at para 9 which states the injury would have been “a raw open area with a tendency to bleed” and notes that “Urination would have been painful and diaper-changing uncomfortable.”

38 For example: *R v AV*, 2016 ONCJ 827 at para 38; *R v NKP*, 2010 ABPC 341 at para 24; *R v CB*, 2016 ONCJ 209 at para 99.

ECONOMIC IMPACT

“In addition, the Victim Impact Statement refers to financial costs which have resulted from this incident when [the victim’s family] moved from the apartment where these incidents occurred, but they left behind all of their belongings which may have reminded them of those events. They have had to rely on donations for furniture, food, clothing and toys to essentially start their life over without [the offender]. [The mother] left her job ... to care for the children ... which has resulted in a very significant drop in the family’s income.”

– Judge’s summary of victim impact statement submitted by the stepmother of the victim with assistance from the victim’s mother³⁹

Information about the financial impact was primarily found in statements from the victim’s caregiver.

The full extent of financial harm or loss to a victim is unlikely to be known at sentencing, the time at which a victim or their family member must prepare their victim impact statement. Financial issues may not be top of mind for victims when writing a statement.

Summary of economic impacts expressed in the legal decisions

Sources of economic impact	<ul style="list-style-type: none"> • Reduced ability or complete inability to work on part of victim’s caregiver due to stress and/ or increased caregiving responsibilities (e.g., taking victim to counselling, loss of childcare support if the abuser was the other parent)⁴⁰ • Impact on family finances if abuser was an income earner in the home⁴¹ • Negative impacts on the victim’s education and employment (described more under “Emotional Impacts” above)⁴² • Specific costs incurred to support the victim’s recovery (below)
Potential costs noted in the cases reviewed⁴³	<ul style="list-style-type: none"> • Counselling⁴⁴ • Moving costs (e.g., to leave the home where the abuse occurred)⁴⁵ • Medications to address emotional and physical impacts noted above⁴⁶ • New clothes/undergarments (tied to soiling and/or incontinence issues)⁴⁷

39 *R v JVS*, 2015 NSPC 73 at para 11.

40 For example: *R v JVS*, 2015 NSPC 73 at para 11; *R v CB*, 2016 ONCJ 209 at para 100; *R v Piche*, 2015 ONCJ 529 at para 23.

41 For example: *R v GM*, 2014 MBPC 57 at para 71; *R v JVS*, 2015 NSPC 73 at para 11; *R v BCM*, 2008 BCCA 365 at para 16.

42 Consider Carmela Fragomeni, “Hamilton man gets two years for sex attacks on girls lured to modelling shoots”, TheIFP.ca (20 September 2019) online: <<https://www.theifp.ca/news-story/9606378-hamilton-man-gets-two-years-for-sex-attacks-on-girls-lured-to-modelling-shoots/>>.

43 The extent to which costs may have been covered by insurance, victim compensation programs, or another funding sources was not usually clear from the decisions.

44 For example: *R v CB*, 2016 ONCJ 209 at para 100; *R v P (BE)*, 2014 MBQB 79 at para 34.

45 For example: *R v GM*, 2014 MBPC 57 at para 71; *R v JVS*, 2015 NSPC 73 at para 11.

46 For example: *R v MS*, 2017 ONCJ 479 at para 29; *R v DLW*, 2014 BCSC 43 at para 17; *R v NIC*, 2017 CanLII 25 (NL PC) at para 8; *R v BD*, 2008 ONCJ 21 at para 40.

47 *R v MS*, 2017 ONCJ 479 at para 29.

Family Impacts

IMPACT ON ADULT FAMILY MEMBERS (PARENTS/GUARDIANS)

“Finding out about this was like a bomb going off — blowing our normal happy family to pieces.”

– Victim impact statement from victim’s mother⁴⁸

After the *Survivors’ Survey*, our agency began to intersect not only with CSAM survivors, but also their family members. It was clear that the production of CSAM has a tremendous impact on the victim’s caregiver(s) and the entire household. This “relational harm” was a key aspect of the *Friesen* decision, which contains multiple references to harm to families, caregivers, and communities, and recognizes that child sexual abuse can “tear apart families or render them dysfunctional.”⁴⁹

Summary of parent/guardian impacts expressed in the legal decisions

Emotional impacts observed	Many family members experienced the same impacts the victims did, such as stress, depression, anxiety, and trouble sleeping. ⁵⁰ Feelings of guilt, self-blame, and worry over the victim’s future were also common. ⁵¹ For some family members, the offender was their romantic partner, and the feelings of loss, betrayal, confusion, and inability to trust were especially strong. ⁵²
Physical impacts observed	Some family members suffered physical ailments (e.g., headaches, sleeping disturbances) due to the stress placed on them. ⁵³
Economic impacts observed	The financial losses, described under “Economic impact” above, were often felt by the whole family.

48 *R v JJP*, 2018 YKSC 30 at para 139.

49 *R v Friesen*, 2020 SCC 9 at paras 60-64.

50 For example: *R v Kristian*, 2016 ABPC 158 at para 59; *R v CB*, 2016 ONCJ 209 at para 99; *R v NM*, 2014 CarswellSask 780 at para 15.

51 For example: *R v CCE*, 2015 MBPC 66 at para 1; *R v JVH*, 2010 BCPC 253 at para 38; *R v CB*, 2016 ONCJ 209 at para 98; *R v DLW*, 2014 BCSC 43 at para 14.

52 For example: *R v JA*, 2019 MBQB 112 at para 23; *R v GM*, 2014 MBPC 57 at para 71.

53 *R v Piche*, 2015 ONCJ 529 at para 24. The victim’s grandmother told the court through her victim impact statement that she had lost twenty pounds and has been having heart palpitations since the offences came to light.

IMPACTS ON SIBLINGS

Our data included many victims who had siblings, some of whom were also victims and some of whom were not abused. Sibling impacts were not always addressed in the cases reviewed. However, some themes were identified from the available information.

Summary of sibling impacts expressed in the legal decisions

Impacts on abused siblings

The most common impact was for one sibling, usually the older sibling, to feel guilty about somehow not preventing the abuse of the other sibling.⁵⁴

Impacts on non-abused siblings

There was very limited information about non-abused siblings. Based on the circumstances of many cases and the impacts on adult family members outlined above, other children in the family may have experienced confusion over what happened,⁵⁵ less time and attention from their parent/guardian,⁵⁶ or more distrust in the household.⁵⁷ In some cases, the sibling was the first one to learn about the abuse.⁵⁸

⁵⁴ For example: *R v JJP*, 2018 YKSC 30 at para 142; *R v CB*, 2016 ONCJ 209 at para 100; *R v BCM*, 2007 BCPC 448 at para 37, (affirmed in 2008).

⁵⁵ Some situations present within the cases would have been especially complicated to explain and for the non-abused sibling(s) to understand. For example, *R v JVS*, 2015 NSPC 73, the offender was married to the victim's mother. They also had a son together, the victim's half-brother. When the abuse was uncovered, the mother moved both children to a new home. Prior to this, the offender was the primary caregiver to both children, so his absence would have been a drastic change and it is not clear what the victim's half-brother would know or understand about this change while it was taking place.

⁵⁶ For example: *R v CB*, 2016 ONCJ 209 at paras 99 and 100. These paragraphs contain the victim impact statements of a father and mother of three children, all of whom were sexually abused by the same offender. The statements indicate the family has been completely changed and the youngest child, who was under two years of age at the time of the offences, will be raised differently as a result (para 100 – statement of the mother of the victims). They also speak to the additional demands on the parents, including driving more than 100 kilometres roundtrip each week so the older children can get the therapeutic resources they need (also para 100).

⁵⁷ *R v CB*, 2016 ONCJ 209 at para 100.

⁵⁸ For example: *R v GKS*, 2019 ABPC 75 at para 2(b); *R v Debidin*, [2007] CanLII 37468 (ONSC) at para 10; *R v DL*, 2009 BCPC 267 at para 21.

Counselling/therapy

There was information for 61 victims indicating that they had attended or were in counselling at the time of sentencing. This represents half of the victims for whom victim impact statements were supplied (50%, 61 out of 121).⁵⁹ There were also examples of family members who had also sought out this type of support.

When respondents to the *Survivors' Survey* were asked about therapy, 87% indicated that they had received or were receiving therapy.⁶⁰ For the victims included in this study, it is unknown how effective the counselling was, and whether the therapist was trained in treating the complex trauma involved when imagery of the sexual abuse has been created. However, studies indicate that many practitioners are not well-versed in the unique traumas associated with victimization involving CSAM.⁶¹

To illustrate the level of counselling that may be required, a report filed in one of the sentencing proceedings indicated there was a “need to carefully dismantle [the child’s] belief structures, her behavioural and relational patterns, and the established biological responses to stimuli associated with attachment and intimacy.”⁶² Some survivors also require treatment to deal with any substance abuse that has developed or was pre-existing and exploited by the offender.⁶³

Efforts must be made to educate professionals about this complex trauma, and to ensure that access to trained professions is available for CSAM survivors and their families.

59 It is also important to keep in mind that 61 only represents the victims who mentioned counselling and where that mention made it into the sentencing judgment.

60 *Survivors' Survey: Executive Summary*, page 33, graph 56.

61 Jennifer Martin, “It’s Just an Image, Right?: Practitioner’s Understanding of Child Sexual Abuse Images Online and Effects on Victims” (2014) 35(2) *Child & Youth Services* 96-115; Ateret Gewirtz-Meydan, et al., “The complex experience of child pornography survivors” (2018) 80(3) *Child Abuse & Neglect* 238-248. See also Andrea Slane, et al., “Views and Attitudes about Youth Self-Produced Sexual Images among Professionals with Expertise in Child Sexual Abuse” (2021) 30(2) *Journal of Child Sexual Abuse*, 207-229.

62 *R v DC*, 2015 MBPC 16 at para 83.

63 For example: *R v CN*, 2006 CarswellOnt 1592 (ONSC) at para 169; *R v Rose*, 2019 MBCA 40 at para 6; *R v Barabash*, 2015 SCC 29 at paras 4-5; *R v Ackman*, 2017 MBCA 78 at para 13. Respondents to the *Survivors' Survey* were not specifically asked about drug or alcohol misuse, but 22% said they misused drugs and 35% said they misused alcohol; they connect these substance use problems to the abuse they suffered.



Words in image. Interject as illustrative.

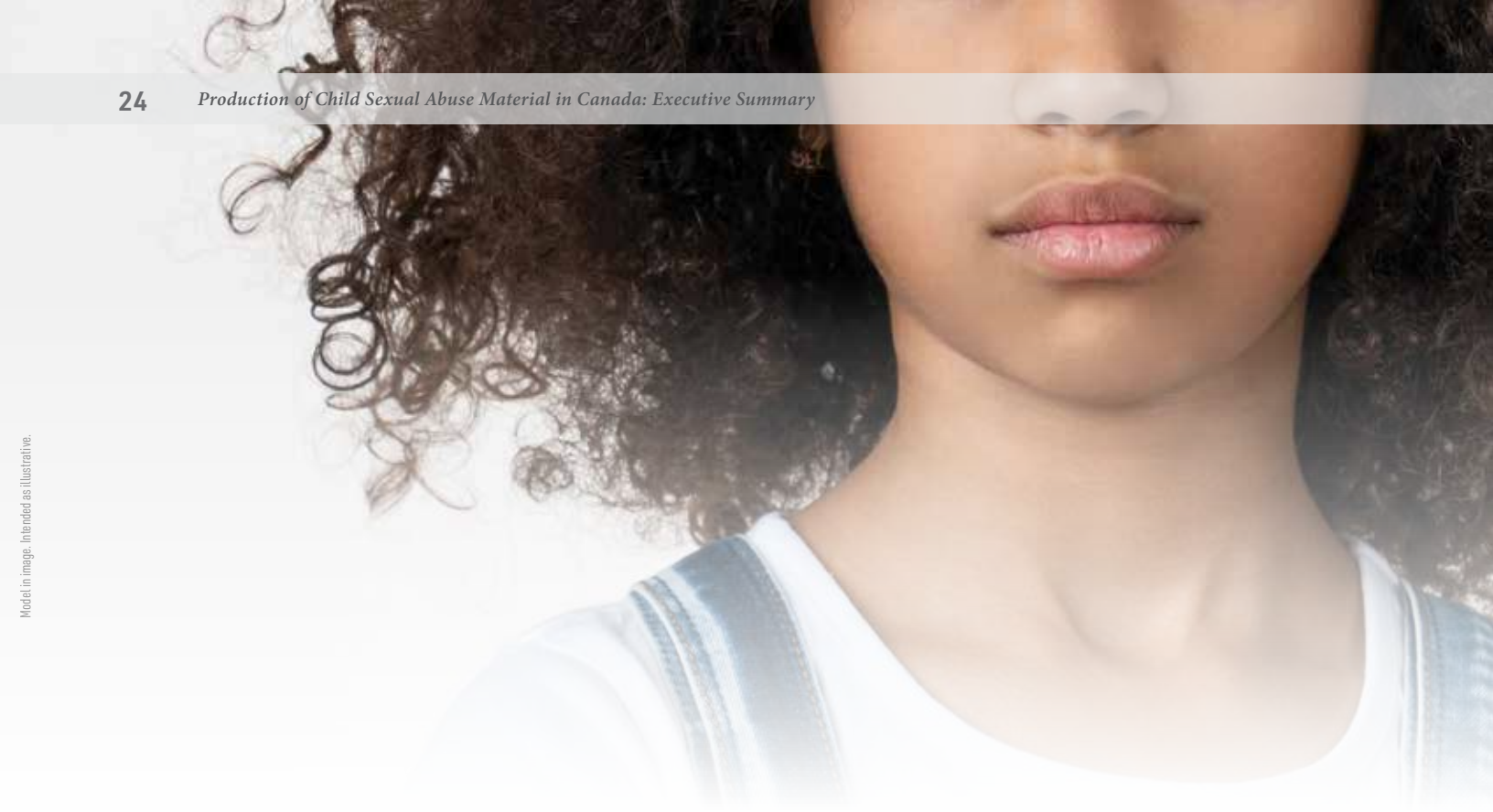
Discussion and Conclusion

This study is the result of a concerted effort by our agency to learn as much as we can about the experiences of Canadian children who have been victimized by the production of CSAM. Each case we reviewed provided us with a lens into the various ways in which this crime has been committed and uncovered, the tactics and demographics of the offenders, and its impact on survivors and their families. The stories of the children in this project, together with all we have learned as an agency through operating Cybertip.ca and Project Arachnid, offer a critical lens into this complex crime and underscore why more must be done to support children and intervene as early as possible moving forward.

There were many important findings in this study, including that 55% of offenders harmed more than one child, 85% of victims were girls, victims spanned all age ranges, and, most often, the offender was someone the victim knew and trusted. The cases also revealed a number of offenders who made a wide range of abusive material of their victims, not all of which was considered “illegal” under our law but was undeniably harmful to the child. The absence of meaningful consequences for the production of content that is not “illegal” is of serious concern to our organization. We understand that criminal law has limitations; however, child protection laws are focused on an entirely different objective and are well-suited to tackling some of the nuances that criminal law cannot.

Certain information about the offenders in our study — such as the data point that 61% also possessed CSAM they did not produce — helps enhance our understanding of the connection between CSAM possession and production. The fact that most offenders in the study had no prior criminal record and had pre-existing familial or trust relationships with their victims reinforces why a multi-pronged approach to child protection and intervention is so critical.





The devastating impacts of this crime on victims and families were seen in the analysis of victim impact statements, which made it clear that the offender's actions had significantly affected victims and their families emotionally, physically, and economically. There is an urgent need for long-term support, not only for the child, but also for the non-offending parents and caregivers around the child who must continue to care for all children in their life while undergoing their own healing process. Moreover, victim support and compensation systems must account for the fact that, for many victims, this crime is ongoing — once the CSAM production case is over there may be many future offenders accessing, possessing, and sharing the material.

The impacts seen in the cases, combined with the information about what the imagery depicted, underscore the need for appropriate handling of CSAM throughout the justice system, from the beginning of the investigation to sentencing and any appeals. It is also critical to safeguard information about the victim from future misuse by fully respecting publication bans and ensuring details are not included within decisions or as part of the public record that can be misused. It is undeniable that victims depicted in CSAM have no choice but to place a significant amount of trust in those in the justice system to uphold their rights, and it is imperative that the system responds with the implementation of trauma-informed and meaningful protocols for the handling of this type of information.



The lessons drawn from the cases also illustrate the value of reported legal decisions both as a legal precedent and as a means of learning more about a particular crime, how it is perpetrated, and its impacts. In our review of 287 legal decisions, most judges provided sufficient, concise written judgments; however, the level of information was not always consistent, especially for cases involving more than one victim. We recognize that cases involving CSAM production are some of the most difficult for all those involved. We also recognize the pressure on all those in the justice system to achieve timely resolutions. However, detailed written decisions help readers understand the totality of the circumstances; this not only enables studies like ours, but also provides a means through which everyone can become better informed about the nature of these crimes. We urge judges to consider the range of different audiences for legal decisions as the case proceeds and as the decision is written.

The numbers and experiences conveyed in this Executive Summary are the tip of the iceberg. This is a crime that has only continued to grow and its long-term impact on victims, their families, and our society as a whole is long lasting. We have always viewed this study as deeply connected to the Survivors' Survey, our direct intersections with survivors and their families, and our work operating Cybertip.ca and Project Arachnid. Drawing on all these sources, we will also be releasing a companion report on how Canadian laws, policies, and systems can be improved to better reflect the unique realities of CSAM, promote the long-term safety and healing of survivors of this crime, and fully recognize their rights in the future.

We conclude with the words of one member of the Phoenix 11:

“No child should have to endure the pain, the hardships, the loss of innocence, or a normal life at the hands of an abuser and those who want take pleasure from the suffering of children.”




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