

# **Cyberpredator**

s 204B *Criminal Code*

**From 1 January 2021**

**Transitional Sentencing Provisions:** Each of the two tables is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

agg	aggravated
att	attempted
CEM	child exploitation material
conc	concurrent
cum	cumulative
ct	count
EFP	eligible for parole
imp	imprisonment
PG	plead guilty
PNG	plead not guilty
susp	suspended
TES	total effective sentence

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No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<i>Hinton v The State of Western Australia</i>  [2023] WASCA 35  Delivered on 22/02/2023	23-24 yrs at time offending. 26 yrs at time sentencing.  Convicted after PG.  Raised close-knit loving family; family; family remain very supportive.  Positive character references.  Bisexual; struggled with his sexuality; fearful of being ostracised.  Completed yr 12; university studies physical education and teaching.  Single.  Life revolved around playing and coaching football and cricket; socially isolated since charges came to light.  As a consequence of the offending unable to secure employment as a teacher; unable to coach junior sport.	Cts 1, 2 & 4: Using elec comm to expose a person U16 yrs to indec matter. Cts 3 & 5: Distributing CEM.  The victim, JD, was aged 15 yrs. Over a period of 12 mths Hinton engaged in online conversations with JD over Snapchat.  During the online conversation Hinton requested they exchange nude images of each other. Hinton sent several nude images and a video of himself to JD. The victim did not send any nude images of himself (ct 1).  On another date in the same time span, Hinton engaged in further online conversations with JD. During these conversations he sent JD a nude image and video of another teenager, SV, masturbating. JD and SV were known to each other (ct 2). Hinton distributed the image without SV's consent (ct 3).  On another date Hinton had further online conversations with JD. During those conversations he sent to JD a nude image and video of another teenager, BH, masturbating. Again, BH and JD knew each other (ct 4). The image was distributed without BH's consent (ct 5).  It is not known how Hinton obtained the images and videos of SV and BH.	Ct 1: 18 mths imp (cum). Cts 2 & 4: 18 mths imp (conc). Ct 3: 10 mths imp (cum). Ct 5: 10 mths imp (conc).  TES 28 mths imp.  EFP.  The sentencing judge found the offending serious; there was a nine yr age difference between the appellant and the victim JD; the offending involved three separate teenage victims; it could not be seen as a one-off isolated incident; it occurred over a period of time; was deliberate and persistent in nature and he offended for the purpose of sexual gratification.  The sentencing judge found it was not appropriate to susp the term of imp.  Genuinely remorseful; cooperative; low risk of reoffending; despite lack of candidness shown in relation to the circumstances of the offence and limited insight and victim empathy.	Allowed.  Appeal concerned length of individual sentences and totality principle.  Ct 1: 15 mths imp (cum). Ct 2: 15 mths imp. (conc). Ct 3: 6 mths imp (cum). Ct 4: 15 mths imp (conc). Ct 5: 8 mths imp (conc).  At [70] The appellant's offending had a number of serious features, including that the appellant knew that he was conversing with a 15-yr-old. ... While [he] did not directly use his position as a relief teacher and sports coach ... he should have well known the inappropriateness of communicating in this vein with a 15-yr-old.  At [72] ... the appellant ... committed these offences for the purpose of sexual gratification. ... [he] sent the images of himself in the hope of inducing the victim JD to produce nude images of himself and send them to the appellant.  At [73] Another aspect of the seriousness of the appellant's offending is that, in sending to JD the nude image and videos ... the appellant offended against both the receipt – JD – and the subject of the videos, respectively, SV and BH. The fact that JD and SV were known to each other, as were BH and JD, was liable to magnify the embarrassment and other harm to the boys .... the very act of transmitting an intimate image of the person without the persons' consent is liable to, and does, create the risk of republication. The existence of that risk, ..., is liable to cause considerable stress for a victim of this kind of offending.  At [79] ... the presence or absence of an att to meet the victim and the extent of the risk of the commission of contact offending are of central significance to the assessment of the seriousness of offending against s 204B. ...  At [87] ... the appellant's aggregate sentence infringed the totality principle. In our view, the sentence exceeded the bounds of a sentence bearing a proper relationship to the overall criminality involved in the appellant's offending, ...
1.	<i>Siriphanuruk v The State of Western Australia</i>  [2021] WASCA 221	38 yrs at time offending. 41 yrs at time sentencing.  Convicted after trial.  No prior criminal history.	Cts 1 & 2: Stalking. Cts 3-5: Producing CEM. Ct 6: Using elec comm to expose a person U13 yrs to indec matter. Ct 7, 9-12: Distributing CEM. Ct 8: Extortion.	Ct 1: 2 yrs imp (cum). Ct 2: 2 yrs imp (conc). Ct 3: 6 mths imp (cum). Ct 4: 6 mths imp (conc). Ct 5: 6 mths imp (conc). Ct 6: 6 mths imp (cum).	Dismissed – leave refused - on papers.  Appeal concerns length of sentence and totality principle.  At [88] ... Individually and collectively, the offending was patently very serious. ...

<p>Delivered on 23/12/2021</p>	<p>Born Thailand; resident of Singapore; not an Australian citizen; good command of English.</p> <p>Mother; two young children in Singapore; not seen children since her arrest.</p> <p>Claims to have a number of university degrees; including in medicine; at time offending making a living from online trading.</p> <p>Diagnosed with and treated for breast cancer on remand; in remission, requires periodic review.</p> <p>Pre-existing cardiac arrhythmia; not requiring treatment.</p>	<p>Siriphanuruk engaged in a sustained campaign of intimidation and harassment upon three victims, RJ and his wife A and their daughter R, aged 12-13 yrs.</p> <p>Siriphanuruk lived in Singapore and met RJ on an internet dating site. She and JR communicated for some time before she flew to Perth to meet him. A romantic relationship developed and they frequently spent time together in Perth or Singapore.</p> <p><u>Cts 1 and 2</u> Over a period of about 8 mths Siriphanuruk subjected RJ and A to a series of email barrages. Disguising her identity using multiple personae and email addresses she sent them hundreds of emails using various invented narratives, frequently using highly obscene language. The emails included threats of sexual violence, death threats and details about their daily lives, leading them to believe they were being watched and that their daughter, R, was at real risk of serious physical harm.</p> <p><u>Cts 3, 4 &amp; 5</u> Siriphanuruk obtained digital images of R and superimposed R's face onto the images of a female engaged in sexual activity, creating composite pornographic images.</p> <p><u>Ct 6</u> Siriphanuruk sent R an email attaching three pornographic videos depicting sexual activity among adults.</p> <p><u>Cts 7, 9-12</u> On five occasions Siriphanuruk emailed the composite pornographic images of R to various recipients.</p> <p>She also sent a number of emails that included links to websites to which she had uploaded the composite</p>	<p>Ct 7: 12 mths imp (cum). Ct 8: 12 mths imp (cum). Ct 9: 12 mths imp (conc). Ct 10: 12 mths imp (conc). Ct 11: 12 mths imp (conc). Ct 12: 12 mths imp (conc).</p> <p>All cum sentences cum with ct 1.</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant committed the offences very purposefully with the clear and unequivocal intention of manipulating, harassing and intimidating the victims; her actions cruel and depraved; premeditated; sustained; particularly harmful and she effectively terrorised the victims.</p> <p>The sentencing judge found cts 1 and 2 'grave offences that fell at the top end of the range of seriousness of offences of their kind; the offending was prolonged; extremely distressing to the victims and involved threats of sexual and other violence; some of the emails were the 'most offensive kind' and the appellant went to extraordinary lengths to create in RJ and A sense of helplessness.</p> <p>The sentencing judge described ct 6 as a particularly 'nasty' and 'depraved' offence; cts 7 – 12 were agg by the breadth of the distribution of the composite images of CEM and it was difficult 'to image a more vicious attempt to harm RJ's family'.</p> <p>High degree of psychological distress suffered by victims.</p> <p>No remorse or acceptance of responsibility.</p>	<p>At [92] ... the offences were very serious – indeed, close to being characterised as falling within the worst category. ...</p> <p>At [95] ... Given the seriousness of her conduct in committing cts 1 and 2, it is unthinkable that it could have attracted anything but a term of imp to be served immediately.</p> <p>At [105] ... none of the individual sentences imposed ... could reasonably be said to have been manifestly excessive.</p> <p>At [106]-[107] The appellant's overall offending involved a high level of criminality. ... the offending occurred over an extended period of time and involved the terrorisation of three member of one family, including a child.</p> <p>At [112] ... There is nothing in the appellant's conduct or in her personal circumstances, including her ill health and the fact that she must serve the terms of imp away from her children, which would justify any moderation of general deterrence. The appellant's conduct was sustained over a long period, motivated by greed and revenge, and marked by a cruel and callous disregard of the rights and interests of her victims. Such calculated offending must be denounced by an appropriately lengthy sentence, and those who choose to engage in it must expect substantial punishment.</p>
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