Judicial Conceptualisations of Online Child Grooming, Capping, and Sextortion: A Thematic Analysis of Sentencing Remarks

Problem:
Online child sexual exploitation (OCSE), specifically the behaviours of online grooming, capping, and sextortion are inherently linked and involve manipulation, blackmail, coercion, and the non-consensual capturing of child exploitation material. Current judicial sentencing processes for these offences are inconsistent and judges' interpretation and understanding is varied.

Aim:
The aim was to explore judicial understandings and conceptualisations of OCSE, and online grooming, capping, and sextortion, by analysing sentencing decisions in criminal court cases from across Australia.

Methodology:
This study thematically analysed 30 criminal court cases that referenced grooming, capping, and/or sextortion. These cases were retrieved from the "Lexis Advance Research" criminal law database.

Key Findings:
- There were inconsistencies across terminology used in criminal court cases discussing OCSE, and 24 out of the 30 cases used the term "*child pornography material*".
- Though grooming was referred to in all the analysed cases, **the criminal behaviours of sextortion and capping were absent**, despite the increase in reference to these terms by law enforcement agencies.
- The analysed cases primarily **relied on legal precedents** and prior cases in decision-making, reflecting the importance of consistency and fairness in sentencing processes.
- Though many judges highlight the profound suffering experienced by OCSE victims, judges also **placed partial blame on the child victim**, condemning their immaturity, trust in the anonymous online environment, and the fact they were given unsupervised access to the internet.
- In instances where physical harm to a victim was not committed, a judge may discuss **leniency in their decision-making when sentencing an offender**, highlighting misconceptions of the harm of OCSE.
- Mandatory instances of counselling and treatment, while crucial for rehabilitation, can be **perceived as an additional factor** downplaying the severity of the criminal behaviours.

Implications:
> The persistent reference to the exploitation material as "*child pornography*" contributes to minimising the severity of OCSE, and negatively effects the conceptualisations of the sentencing judges by associating it with consensual adult pornography.
> The absence of capping and sextortion in legislation poses a risk to the accurate identification and prosecution of offenders who engage in such behaviours.
> Comments made by judges placing partial blame on child victims may prevent them from coming forward about their exploitation.
> Instances of leniency may inadvertently undermine the deterrence factor, and convey a message of reduced accountability, diminishing the gravity of OCSE offences and weakening the deterrent impact on potential offenders.

Recommendations:
→ The specific criminal behaviours of capping and sextortion **should be referenced** in legislation and policies.

→ There is a **need for commonly agreed upon definitions and classifications of OCSE terminology**, and acknowledgment that "*child pornography*" should be omitted from legislation.

→ **New legislative frameworks must have the ability to quickly adapt** to emerging digital platforms, communication methods, and tactics employed by offenders to exploit their child victims.

→ The **judiciary should be informed of emerging trends and legislation should be amended** to be brought up to date with recent and relevant terminology.