



[Home](#) [About Us](#) [Supporters](#) [Training](#) [Site Search](#) [News & Events](#)

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Select a State (USA only)

Female  Male

Missing within  Year(s) [>>](#)

[More search options](#)

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[CyberTipline](#)  
[Get Involved](#)  
[AMBER Alert](#)  
[Donate](#)  
[Stay Informed](#)

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[Parents & Guardians](#)  
[Law Enforcement](#)  
[Childcare Providers](#)  
[Attorneys](#)  
[Media](#)

### Topics of Focus

[If Your Child Is Missing](#)  
[Sexual Exploitation](#)  
[Child Safety](#)  
[Sex Offenders](#)  
[Success Stories](#)  
[Natural Disasters](#)

### Global Network

[Learn More](#)

### Language

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## What is Child Pornography?

Under federal law, child pornography<sup>1</sup> is defined as a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, photograph, film, video, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where it

- depicts a minor engaging in sexually explicit conduct and is obscene, or
- depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, and such depiction lacks serious literary, artistic, political, or scientific value.<sup>2</sup>

Sexually explicit conduct includes various forms of sexual activity such as intercourse, bestiality, masturbation, sadistic or masochistic abuse, and lascivious exhibition of the genitals.<sup>3</sup> It is illegal to possess, distribute, or manufacture these images.

These illegal images can be presented in various forms including print media; videotape; film; compact disc, read-only memory (CD-ROM); or digital versatile technology (DVD)<sup>4</sup> and can be transmitted through computer bulletin-board systems (BBS), USENET Newsgroups, Internet Relay Chat, web-based groups, peer-to-peer technology, and an array of constantly changing world wide web sites.<sup>5</sup>

All states and the District of Columbia have laws concerning child pornography. As a result a person who violates federal laws concerning these images may also face additional state charges.

### Who Is a Minor?

Federal statute defines "minor" as any person younger than 18.<sup>6</sup> "While a majority of states follow the federal statute, some state laws define 'minor' or 'child' as a youth younger than 14, 16, or 17.<sup>7</sup> Delaware law includes any person 18 years of age and younger in its definition of a 'child.'"<sup>8</sup>

### Is Child Pornography a Crime?

Yes, the possession or distribution of child pornography is illegal under federal laws and laws in all 50 states; however, researchers and law-enforcement officials believe this crime is increasing and the increase is related to growing Internet use.<sup>9</sup>

In response to this growing crime, the U.S. Department of Justice (USDoJ) has responded in several ways including funding the National Center for Missing & Exploited Children's CyberTipline, [www.cybertipline.com](http://www.cybertipline.com), acting as the national clearinghouse for reports of Internet-related child pornography and other Internet-related sex crimes committed against children. The USDoJ also created regional Internet Crimes Against Children (ICAC) Task Forces to assist state and local law enforcement in handling these crimes and funded specialized Internet child exploitation units in federal law-enforcement agencies.<sup>10</sup>

### Where is Child Pornography Predominately Found?

The Internet has created an exciting new world of information and communication for anyone with access to online services. While this technology offers unparalleled opportunities for children and adults to learn about the universe we live in, it has also had an immeasurable impact on the sexual exploitation of children, specifically the distribution of sexually exploitive images of children.

The development, increasing accessibility, and use of home-computer technology has revolutionized the distribution of these images by increasing the ease and decreasing the cost of production and distribution especially across international

borders. Computer technology is transforming the production of these images into a "sophisticated global cottage industry."<sup>11</sup>

While the activities of most pornographers are rather covert, it is not unusual for adults and children to encounter illegal images while exploring legitimate areas of the Internet. A current study has estimated that "as much as 20 percent of all pornographic activity on the Internet may involve children";<sup>12</sup> however, accurate estimates are difficult to produce since a reliable methodology to measure the actual extent of these images online has yet to be devised.<sup>13</sup> Nonetheless parents and guardians should closely monitor the online activities of their children and always maintain access to their children's online accounts.

### **What Motivates People Who Possess Child Pornography?**

There is not much research about the motivations of people who possess child pornography. But, from the little information that exists, it suggests these people are a diverse group using this form of pornography for a variety of reasons.<sup>14</sup> Those who possess child pornography include people who are

- sexually interested in prepubescent children (pedophiles) or young adolescents (hebephiles), who use child pornography for sexual fantasy and gratification
- sexually "indiscriminate," meaning they are constantly looking for new and different sexual stimuli
- sexually curious, downloading a few images to satisfy that curiosity
- interested in profiting financially by selling images or setting up web sites requiring payment for access<sup>15</sup>

### **Who Possesses Child Pornography?**

The diversity of these possessors is exemplified by many factors including wide age ranges; incomes ranging from poverty to wealth; levels of education running the gamut from some not finishing high school to others having post college degrees; and those who come from cities, suburbs, small towns, and rural areas. Some are well known, well thought of in their communities, and/or have high-profile jobs. Others seem isolated, seem to be obsessed with the Internet, and/or have long criminal histories.<sup>16</sup>

Almost all child-pornography possessors (estimated 1,713) arrested between July 1, 2000, and June 30, 2001, were male, 91% were white, and 86% were older than 25. Only 3% were younger than 18. Most were unmarried at the time of their crime, either because they had never married (41%) or because they were separated, divorced, or widowed (21%). Thirty-eight (38%) percent were either married or living with partners.<sup>17</sup>

Of those estimated arrestees, most had pornographic images of prepubescent children (83%) and images graphically depicting sexual penetration (80%). Approximately 1 in 5 people arrested (21%) had images depicting sexual violence to children such as bondage, rape, and torture. More than 1 in 3 (39%) had child-pornography videos with motion and sound.<sup>18</sup>

Of those estimated arrestees, law enforcement found about half (48%) had more than 100 graphic still images, and 14% had 1,000 or more graphic images.<sup>19</sup>

Forty percent (40%) of those estimated arrestees were "dual offenders," who sexually victimized children and possessed child pornography, with both crimes discovered in the same investigation. An additional 15% were dual offenders who **attempted** to sexually victimize children by soliciting undercover investigators who posed online as minors.<sup>20</sup>

### **How Old Are the Children Found in These Images?**

According to investigators who handled the cases of estimated arrestees, most had images of children who had not yet reached puberty. Specifically 83% had images of children between ages 6 and 12; 39% had images of 3 to 5 year old children; and 19% had images of toddlers or infants younger than age 3.<sup>21</sup>

### **Are the Children in the Images Boys or Girls?**

According to investigators who handled the cases of estimated arrestees, 62% had pictures of mostly girls. Fourteen (14%) had pictures of mostly boys. Fifteen

percent (15%) had pictures showing boys and girls in about equal numbers.<sup>22</sup>

### **How Graphic Are the Images?**

According to investigators who handled the cases of estimated arrestees, most had graphic images explicitly showing sexual acts by or on children. Specifically 92% had images of minors focusing on genitals or showing explicit sexual activity; 80% had pictures showing the sexual penetration of a child, including oral sex; 71% possessed images showing sexual contact between an adult and a minor, defined as an adult touching the genitals or breasts of a minor or vice-versa; 21% had child pornography depicting violence such as bondage, rape, or torture and most of those involved images of children who were gagged, bound, blindfolded, or otherwise enduring sadistic sex; and 79% also had what might be termed "softcore" images of nude or semi-nude minors, but only 1% possesses such images alone.<sup>23</sup>

### **What Are the Effects of Child Pornography?**

It is important to realize these images can have a devastating and lasting effect on children. In addition to any physical injuries they can suffer in the course of their molestation, such as genital bruising, lacerations, or exposure to sexually transmitted diseases, child victims can also experience depression, withdrawal, anger, and other psychological disorders.<sup>24</sup> Such effects may continue into adulthood. For instance women abused as children have statistically significant higher rates of nightmares, back pain, headaches, pelvic pain, eating binges, and other similar symptoms.<sup>25</sup> Child victims also frequently experience feelings of guilt and responsibility for the abuse and betrayal, a sense of powerlessness, and feelings of worthlessness and low self-esteem.<sup>26</sup> These feelings are often expressed through increased fearfulness and changes in sleep patterns including re-occurring memories, flashbacks, dreams, and nightmares associated with posttraumatic stress.<sup>27</sup> Younger children tend to externalize stress by re-enacting sexual activities through play, while adolescents may experience negative effects on their growing sexuality as a result of inappropriate early sexual experiences.<sup>28</sup>

The lives of children featured in these illegal images are forever altered, not only by the molestation but by the permanent record of the exploitation. Once sexual exploitation takes place, the molester may document these encounters on film or video. This documentation can then become the "ammunition" needed to blackmail the child into further submission, which is necessary to continue the relationship and maintain its secrecy. In addition these documented images allow molesters to "relive" their sexual fantasies with children long after the exploitation has stopped.

A greater number of child molesters are now using computer technology to organize and maintain their collections of these illegal images. In addition they are also using the Internet to increase the size of these collections. Personally manufactured illegal images of children are especially valuable on the Internet, which provides the molester with a respected status among fellow exploiters and traders of this material. Once this status is achieved, molesters will often begin to trade images of their own sexual exploits with children among themselves.

**When these images reach cyberspace, they are irretrievable and can continue to circulate forever. Thus the child is revictimized as the images are viewed again and again.**

### **How Do Online Predators Find Children?**

Individuals looking for potential child victims online have no difficulty finding them. It is quite common for these offenders to frequent "kids only" chat rooms and communicate with children who unwittingly divulge personal information about themselves. A more recent phenomenon is the solicitation of sex over the Internet. A survey conducted by the Crimes against Children Research Center at the University of New Hampshire found that one in five youth who regularly use the Internet received a sexual solicitation or approach over the Internet in 1999.<sup>29</sup>

After this initial meeting, child predators will often continue to communicate with the child electronically or through other means. Some of these individuals may then attempt to lower the child's inhibitions by gradually introducing sexual content into their online conversations and even send pornographic images to the child. When children are shown images of peers engaged in sexual activities, they

are led to believe that this behavior is acceptable. This lowers their inhibitions and makes it easier for the molester to take advantage of the child sexually.

Parents and guardians are strongly encouraged to speak openly with their children about online dangers and monitor their online activities.

#### End Notes

<sup>1</sup>As stated by Janis Wolak, Kimberly Mitchell, and David Finkelhor in *Internet Sex Crimes Against Minors: The Response of Law Enforcement* (Alexandria, Virginia: National Center for Missing & Exploited Children, November 2003, page vii). "The term 'child pornography,' because it implies simply conventional pornography with child subjects, is an inappropriate term to describe the true nature and extent of sexually exploitive images of child victims. Use of this term should not be taken to imply that children 'consented' to the sexual acts depicted in these photographs; however, it is the term most readily recognized by the public, at this point in time, to describe this form of child sexual exploitation. It is used in this [document] to refer to illegal pictorial material involving children under the standards developed by statute, case law, and law-enforcement-agency protocols. It is hoped that a more accurate term will be recognized, understood, and accepted for use in the near future."

<sup>2</sup>18 U.S.C. § 1466A and 18 U.S.C. § 2256.

<sup>3</sup>*Id.*

<sup>4</sup>Eva J. Klain, Heather J. Davies, Molly A. Hicks. *Child Pornography: The Criminal-Justice-System Response* (Alexandria, Virginia: National Center for Missing & Exploited Children, March 2001, page 1) [hereinafter *Response*], citing Daniel S. Armagh, Nick L. Battaglia, and Kenneth V. Lanning, *Use of Computers in the Sexual Exploitation of Children, Office of Juvenile Justice and Delinquency Prevention, Portable Guides to Investigating Child Abuse*. Washington, D.C.: U.S. Department of Justice, 1999, page 6.

<sup>5</sup>*Response*, supra note 4, page 1.

<sup>6</sup>Janis Wolak, David Finkelhor, and Kimberly Mitchell. *Child-Pornography Possessors Arrested in Internet-Related Crimes: Findings From the National Juvenile Online Victimization Study* (Alexandria, Virginia: National Center for Missing & Exploited Children, 2005, page ix) [hereinafter *Possessors*] citing 18 U.S.C. § 2256(1.)

<sup>7</sup>*Possessors*, page ix-x citing research conducted by the National Center for Missing & Exploited Children in December 2004 which found, in regard to state statutes criminalizing **possession** of child pornography, 37 states define "minor" or "child" as a youth younger than the age of 18 (Alaska, ALASKA STAT. § 11.61.127(a); Arizona, ARIZ. REV. STAT. § 13-3551(5); California, CAL. PENAL CODE § 311.11(a); Colorado, COLO. REV. STAT. § 18-6-403(2)(a); Connecticut, CONN. GEN. STAT. § 1-1d; Florida, FLA. STAT. ch. 827.01(2); Georgia, GA. CODE ANN. § 16-12-100(a)(1); Hawaii, HAW. REV. STAT. § 707-752(2); Idaho, IDAHO CODE § 8-1507(2)(b); Illinois, 720 ILL. COMP. STAT. 5/11-20.1(6); Iowa, IOWA CODE § 728.1(4); Kansas, KAN. STAT. ANN. § 21-3516(a)(2); Kentucky, KY. REV. STAT. ANN. § 2.015, 500.080(9); Massachusetts, MASS. GEN. LAWS ch. 272, § 29C; Michigan, MICH. COMP. LAWS § 750.145c(b); Minnesota, MINN. STAT. § 617.246(1)(b); Mississippi, MISS. CODE ANN. § 97-5-31(a); Missouri, MO. REV. STAT. § 573.010(2); Montana, MONT. CODE ANN. §§ 45-5-625, 45-8-205; New Mexico, N.M. STAT. ANN. § 30-6A-3(A); North Carolina, N.C. GEN. STAT. § 14-190.13(3); North Dakota, N.D. CENT. CODE § 12.1-27.2-05(1); Ohio, OHIO REV. CODE ANN. § 2907.01(M); Oklahoma, OKLA. STAT. tit. 21, § 1024.1(A); Oregon, OR. REV. STAT. § 163.665(1); Pennsylvania, 18 PA. CONS. STAT. § 6312(d)(1); Rhode Island, R.I. GEN. LAWS § 11-9-1.3(c)(3); South Carolina, S.C. CODE ANN. § 16-15-375(3); South Dakota, S.D. CODIFIED LAWS § 22-22-24.1(3); Tennessee, TENN. CODE ANN. § 39-17-1002(3); Texas, TEX. PENAL CODE ANN. § 43.26(a); Utah, UTAH CODE ANN. § 76-5a-2(5); Virginia, VA. CODE ANN. § 18.2-374.1:1(A); Washington, WASH. REV. CODE § 9.68A.011(4); West Virginia, W. VA. CODE § 61-8C-1(a); Wisconsin, WIS. STAT. § 948.01(1); Wyoming, WYO. STAT. ANN. § 6-4-303(a)(i)); 3 define "minor" or "child" as a youth younger than the age of 17 (Alabama, ALA. CODE § 13A-12-192; Arkansas, ARK. CODE ANN. § 5-27-302(1); and Louisiana, LA. REV. STAT. ANN. § 14:81.1(A)(3)); 7 define "minor" or "child" as a youth younger than the age of 16 (Indiana, IND. CODE § 35-42-4-4(c); Maryland, MD. CODE ANN., Crim. Law § 11-208(a); Nevada, NEV. REV. STAT. 200.730; New Hampshire, N.H. REV. STAT. ANN. § 649-A:2(I); New Jersey, N.J. STAT. ANN. § 2C:24-4(b)(1); New York, N.Y. PENAL LAW § 263.16; and Vermont, VT. STAT. ANN. tit. 13, § 2821(1)); and 1 defines "minor" or "child" as a youth younger than the age of 14 (Maine, ME. REV. STAT. ANN. tit. 17, § 2924(2-A)).

The age of a "child" in Nebraska depends on whether the child is a participant (younger than 18 years of age) or a portrayed observer (younger than 16 years of age). NEB. REV. STAT. § 28-1463.02(1).

In the District of Columbia, possession of child pornography with the intent to disseminate may be prosecuted under the general obscenity statute; however, mere possession is not mentioned. D.C. CODE ANN. § 22-2201(a)(1)(E). There are two criminal offenses that address "sexual performances using minors": "using a minor in a sexual performance" and "promoting a sexual performance by a minor." D.C. CODE ANN. § 22-3102. For these offenses, "minor" is defined as any person younger than

16 years of age. D.C. CODE ANN. §§ 22-3101(2), 22-3102.

<sup>8</sup>*Possessors, supra* note 6, page x citing DEL. CODE ANN. tit. 11, § 1103(e).

<sup>9</sup>*Possessors, supra* note 6, page ix.

<sup>10</sup>*Id.*

<sup>11</sup>*Response, supra* note 4, page 3, citing *Child Pornography: An International Perspective*, World Congress Against the Commercial Sexual Exploitation of Children, Stockholm, Sweden, August 27-31, 1996, page 9.

<sup>12</sup>*Response, supra* note 4, page 3, citing *Allotted Day on Child Pornography*, 36th Parliament, 1st Session, Edited Hansard 1, No. 172, February 2, 1999, page 12.

<sup>13</sup>*Response, supra* note 4, page 3.

<sup>14</sup>*Possessors, supra* note 6, page x citing *Response, supra* note 4 and M. Taylor and E. Quayle. *Child pornography: An Internet crime*. Hove: Brunner-Routledge, 2003.

<sup>15</sup>*Possessors, supra* note 6, page x.

<sup>16</sup>*Id.*, page 2-3.

<sup>17</sup>*Id.*, page 1-2.

<sup>18</sup>*Id.*, page vii.

<sup>19</sup>*Id.*, page 7.

<sup>20</sup>*Id.*, page viii.

<sup>21</sup>*Id.*, page 4.

<sup>22</sup>*Id.*, page 5.

<sup>23</sup>*Id.*

<sup>24</sup>*Response, supra* note 4, page 10, citing Bentovim and Bentovim, "The Effects on Children and Their Families" in *Organized Abuse: The Current Debate*, page 60-62 [hereinafter *Effects on Children*].

<sup>25</sup>*Response, supra* note 4, page 10, citing Jeanne McCauley, David E. Kern, Ken Kolodner, et al., *Clinical Characteristics of Women with a History of Childhood Abuse: Unhealed Wounds*, 277 JAMA 1197, page 1362.

<sup>26</sup>*Response, supra* note 4, page 10, citing Heather Y. Swanston, Jennifer S. Tebbutt, Brian I. O'Toole, and R. Kim Oates, *Sexually Abused Children 5 Years After Presentation: A Case-Control Study*, 100 Pediatrics, 1997, page 600, 603.

<sup>27</sup>*Response, supra* note 4, page 10, citing *Effects on Children, supra* note 24, page 60-62.

<sup>28</sup>*Id.*

<sup>29</sup>*Response, supra* note 4, page 7, citing David Finkelhor, Kimberly Mitchell, and Janis Wolak, *Online Victimization: A Report on the Nation's Youth*. Alexandria, Virginia: National Center for Missing & Exploited Children, page ix.

[Back to Child Pornography](#)