



Child Pornography: The Criminal-Justice-System Response



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**Child Pornography:
The Criminal-Justice-System Response**

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Child sexual exploitation can take several forms including prostitution of children, child sex tourism, or the use of children in pornography. As awareness and reporting of such crimes increase, law-enforcement agencies nationwide are struggling to identify, investigate, and prosecute individuals involved in child sexual exploitation—from producers, distributors, and collectors of child pornography to sexual offenders who entice and engage young children in sexual activity. Often law enforcement must also identify and locate the child victims themselves.

Over the past decade countries and international organizations around the world have also focused substantial attention on child pornography especially since the advent of computer-based production, distribution, and storage capabilities. In recent years the growth of the Internet¹ has created a new series of challenges to law-enforcement agencies targeting child sexual exploitation by allowing perpetrators greater, easier, and much faster access to child pornography and child victims.

This monograph focuses on the criminal-justice system's responses to child pornography production, distribution, and possession within the United States and in other countries. The first section describes the nature and scope of the problem of child pornography including the effects on the child victims. The next section describes state and federal statutes, investigative approaches, and selected law-enforcement initiatives combating this form of child sexual exploitation. Finally the monograph highlights policy and best-practice issues surrounding legal and law-enforcement responses to child victims.

The Scope and Nature of Child Pornography

Understanding the scope of sexual exploitation through child pornography—its incidence, dynamics, and consequences for children—is vital to establishing an effective response. What actually constitutes child pornography varies by statute or other usage.² For instance the United Nations (UN) defines child pornography as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child, the dominant characteristic of which is depiction for a sexual purpose.”³

United States federal law defines child pornography as “any visual depiction, including any photograph, film, video, picture[,] or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct” when a minor was used in its production; the visual depiction is or appears to be of a minor; the visual depiction is made to appear to be an identifiable minor; or the material is advertised or promoted as depicting a minor.⁴ Individual states also have their own statutory definitions.

Child pornography can take various forms including print media; videotape; film; compact disc, read-only memory (CD-ROM); or digital video technology (DVD)⁵ and can be transmitted through computer bulletin-board systems (BBS), USENET Newsgroups, Internet Relay Chat channels, Internet clubs, and an array of constantly changing world-wide-web sites.

New computer technology allows for manipulation (or “morphing”) of real photographs, as well as creation of “virtual child pornography” through digital images in which no human

being is the subject. With the help of relatively inexpensive graphics software, child pornographers can now superimpose a known child's face on a sexually explicit image or wholly create a pornographic image of a "virtual" child who does not actually exist. The technology has become sophisticated enough that in the future "virtual" child pornography could conceivably become indistinguishable from "real" child pornography. A high level of technology, however, is required to create either manipulated or entirely "virtual" images, and experts can currently distinguish between virtual and real child pornography. Nonetheless, this development presents important legal issues, including how child pornography is defined by statute, which are addressed in the legal analysis section of this monograph.

The production, distribution, and possession of child pornography can be divided into several categories. One category includes child sex offenders who memorialize their molestation of children for later personal use and sexual gratification. They may collect vast amounts of child pornography documenting personal "conquests." In addition to collecting their own pornography, many offenders trade or swap pornography with other offenders or distribute it on a more organized basis. Another category involves commercial child pornography which can include

- possession of child pornography by an adult who was not found to be abusing the children depicted in the materials
- distribution, sale, or production of child pornography
- allowing a child to participate in pornography or
- viewing or producing live pornographic performances involving children⁶

Despite toughened laws, increased crackdowns by law enforcement and community efforts at awareness, child pornography continues to be an area of substantial concern for criminal-justice professionals. With the emergence of the Internet, "child pornography is more readily available in the United States now than it has been since the late 1970s."⁷ Yet the production, distribution, and possession of child pornography are largely hidden crimes. While self-reports by convicted offenders, testimony of child victims, and the volume of child pornography seizures help measure the amount of child pornography available, such measurement is an inexact science.⁸

Use of the mail system to traffic child pornography continues to be a significant problem because child pornographers believe the mail is a secure and anonymous means of transmitting videotapes, photographs, computer disks, and other media. Furthermore there is an increase in the number of unlawful computer transmissions and ads for child pornography on the Internet. The US Postal Inspection Service, the federal law-enforcement arm of the US Postal Service, investigates crimes involving the US Mail including offenses of child pornography and child sexual exploitation.⁹ During 1999, 81 percent of child-exploitation cases investigated by postal inspectors involved computers compared to 43 percent in 1998 and 33 percent in 1997.¹⁰

The increasing availability of and access to child pornography over the Internet makes measurement of its production and distribution more difficult. One study has estimated that as

much as 20 percent of all pornographic activity on the Internet may involve children;¹¹ however, even the authors of this study admit to a high margin of error.¹² Accurate estimates are difficult because no valid and reliable methodology has been devised to measure the amount of child pornography especially on the Internet. Attempts to quantify the problem are hindered by the difficulty of discerning the ages of those featured in pornographic images.¹³ For example, while certain web sites may mislabel their adult models as children, others proclaim minors to be of legal age.¹⁴ The duplication of material in Internet search results creates an additional problem. A single keyword search, for example, may list multiple links that simply lead to the same pornographic image of a child.

The development, increasing accessibility, and use of home-computer technology has revolutionized child pornography by increasing the ease and decreasing the cost of production and distribution especially across international borders. Computer technology is transforming the production of child pornography into a “sophisticated global cottage industry.”¹⁵ Use of computers to further illegal sexual activity includes producing or possessing child pornography or uploading or downloading child pornography.¹⁶ The computer can also be a valuable tool in identifying individuals using the mail to traffic child pornography specifically because an offender may use his or her computer to maintain mailing lists or other contact information.¹⁷

Use of computers in child pornography may include¹⁸

- a computer-database management system for cataloging a pornographer’s activities, usually in precise detail, for commercial or personal purposes.¹⁹
- desktop publishing software, scanners, and quality printers that allow the commercial pornographer affordable publishing capability.²⁰ Child pornography and other records can be generated and copied onto floppy disks or CD-ROMs at almost no cost.
- computer bulletin boards, video conferencing, and the Internet and world wide web, along with communication software, modems, and facsimile machines, which offer new mediums for pornographers to communicate with one another or with a potential child victim.²¹
- encryption software that is commonly used to provide anonymity and reduce the risk of discovery.²² Such software makes it difficult for law-enforcement officials to decode files, intercept messages or pictures, and detect the whereabouts of the originators and receivers of the images.²³
- virtual child pornography created without the use of actual children or manipulation of images (“morphing”) and other techniques. The degree to which newer technology, such as graphics software and virtual reality, is used in the production of child pornography is presently uncertain.²⁴ Historically child pornographers use new technology as it develops to evade detection, and investigators should be mindful of such new capabilities.

Inexperience with computers, indifference to or self-interest in child pornography, or fear of exposing the offender may lead suspecting neighbors, family members, or others to overlook the misuse of technology for producing and distributing child pornography.²⁵

The Child Pornographer: Consumer, Collector, Producer

Preferential sex offenders, who are currently the primary exploiters of children,²⁶ often take pictures, films, and videotapes of the children they molest. Such offenders may maintain homemade child-pornography collections documenting the children with whom they are involved, and they may also sell or trade such images.²⁷ Their collections may include videotapes, regular and instant photographs, or even clippings from department-store catalogs (*e.g.*, children modeling underwear) that serve as child erotica.²⁸ Homemade child-pornography collections may not require outside developing but can be produced and reproduced in high quality and quantity.²⁹

A US Postal Inspection Service anti-child pornography program reports that at least 35 percent of cases involving 595 individuals arrested since 1997 for using the mail to sexually exploit children were active abusers.³⁰ Many such child sex offenders collect child pornography falling into the five basic types noted below.³¹

- a **closet collector** denies any sexual involvement with children and conceals any child-pornographic materials.³² There is no acknowledged communication with other collectors, and the material is usually purchased discreetly through commercial channels.³³
- “**traders**,” as identified by some law-enforcement officials, do communicate with other collectors and trade child pornography but there is no indication of actual victims.³⁴
- an **isolated collector** sexually abuses children in addition to collecting child pornography.³⁵ An isolated collector conceals his or her activities to avoid detection by law enforcement.³⁶ Such a collector compiles his materials by either purchasing child pornography commercially or producing his own by sexually abusing children.³⁷
- a **cottage collector** sexually exploits children and shares his or her child-pornography collection with other collectors.³⁸ A cottage collector does not necessarily have an interest in gaining financially from the collection.³⁹
- a **commercial collector** produces, copies, and profits through sales of a collection.⁴⁰

Regardless of the type of collector, the possibility that a child-pornography collector is sexually abusing children, or that a child sex offender is also collecting child pornography, should be seriously investigated.⁴¹

Collections maintained by preferential sex offenders generally have the common characteristics noted below.⁴²

- a collection is highly important to an offender.⁴³ The offender will spend a significant amount of time and money on maintaining the collection.⁴⁴
- an offender’s collection is constantly growing because he feels the collection is not sufficient and that there is always more child pornography to collect.⁴⁵
- an offender maintains the collection in a neat and orderly manner.⁴⁶ Collectors increasingly use computers to assist with the organization.⁴⁷
- a collection is a permanent fixture in an offender’s life and will be moved or hidden if he believes he is under investigation.⁴⁸
- an offender almost never destroys a collection.⁴⁹

- offenders conceal their collections in a controlled space so that they have ready and secured access to them.⁵⁰
- offenders often share their collections with others to validate their activities and brag about the ability and effort required in building a collection.⁵¹ They look for other individuals who support their thinking.

Offenders Who Use Computers

A greater number of offenders now use computers to maintain, organize, or increase their collections. Those who pursue their interest in child pornography with computers fall into the three general categories of⁵²

- **situational offenders**, who may be
 - a **“normal” adolescent/adult**. This is a typical adolescent searching for pornography or a curious adult with newly found access to pornography.
 - **morally indiscriminate**. This is a power/anger-motivated sex offender with a history of violent offenses.
 - **profiteers**. These are profit-motivated criminals trying to make easy money.
 Situational offenders’ behavior tends to be less long-term, persistent, or predictable than that of the preferential offender.⁵³
- **preferential offenders**, who may be
 - a **pedophile**. This is an offender with a preference for young children.
 - **sexually indiscriminate**. This is an offender with a wide variety of deviant sexual interests.
 - **latent**. These are individuals with potentially illegal but latent sexual preferences who have been emboldened by online technology.

The pornography collection of a sexually indiscriminate preferential offender will be more varied, usually with a focus on the offender’s sexual preferences. In contrast a pedophile’s collection will focus primarily on children.⁵⁴

- **miscellaneous “offenders,”** who may be
 - **media reporters** or individuals/journalists with a misguided belief that they can lawfully obtain or transmit child pornography as part of a news investigation⁵⁵
 - **pranksters** or individuals who disseminate false or incriminating information to embarrass their targets
 - **older “boyfriends”** or individuals in their late teens or early twenties who attempt to sexually interact with adolescents or
 - **overzealous or concerned individuals** who conduct their own investigations⁵⁶

Organizations Condoning Child Pornography

Groups seeking the abolishment of laws prohibiting sex between adults and children often condone child pornography as an expression of children’s sexual liberty.⁵⁷ Such groups do not condemn child pornography because, as one North American Man-Boy Love Association (NAMBLA) spokesman stated, “We do not believe that [adult-child] sex is a bad thing, therefore we don’t believe the visual depictions of [adult-child] sex are a bad thing.”⁵⁸

The mandate of such organizations is to legalize adult-child sexual relations and break down the social condemnation pedophiles face. Members may include individuals from all

professions and social classes. Despite the threat to child safety, constitutional guarantees of free speech often prevent law enforcement from conducting an investigation of these groups' activities without a specific allegation of wrongdoing.⁵⁹ Regardless of free-speech protections, however, there is presently no case or statute that provides a constitutional protection for possession of child pornography.⁶⁰

Offenders' Use of Child Pornography

Offenders use child pornography for many purposes. Five of the most common include to

- **create a permanent record for arousal and gratification.** Child pornography serves as a permanent record of the abuse of a child.⁶¹ It freezes in time the offender's preferred age of the victim and child's reaction.⁶² Offenders use child pornography to aid in sexual arousal and gratification and fulfill their fantasies.⁶³ Such pornography can provide pedophiles with ideas for replicating other sexual activities and may broaden their sexual interest to children in other age brackets.⁶⁴ Child pornography also may be used to justify or promote further child sex abuse, which may result in the creation of more child pornography⁶⁵ and abuse of additional victims.
- **lower children's inhibitions.** Sex offenders use child pornography to lower children's inhibitions to engage in sexual behavior.⁶⁶ Offenders often show pornography to children, especially adult-child sexual depictions, to make adult-child sexual activity appear "normal."⁶⁷ In this way child pornography helps child sex offenders groom children and persuade them that they would enjoy certain sexual acts. Sex offenders also use pornography to instruct children how to behave, pose, or re-enact scenes.⁶⁸
- **validate and confirm the child sex offender's belief systems.** Offenders use pornographic materials to legitimize abusive behaviors and reassure themselves that their behavior is common and not abnormal.⁶⁹ Such validation may be the most important reason preferential sex offenders are drawn to an Internet-connected computer.⁷⁰ They produce and exchange child pornography to validate and confirm their belief systems.⁷¹ For instance the smile of a child in pornography is often cited as evidence of consent⁷² or used to suggest that the child was seductive.⁷³
- **blackmail victims and other co-offenders.** Offenders use pornography to blackmail child victims by threatening to show the photographs, videos, or other depictions to others including parents, friends, or teachers.⁷⁴ Offenders use the threat of such exposure to prevent the child victim from disclosing the abuse.⁷⁵ Cases in which usually older victims recruit or have sex with other children also highlight the special dynamics of sexual victimization when the child may be both victim and offender. The threat of blackmail thus becomes more potent because the child may fear punishment by the criminal-justice system as well. Offenders also encourage other adults involved in their network to participate in child sexual abuse and pornography.⁷⁶ By making others complicit in the abuse, or by creating and holding evidence of their involvement, offenders generate a fear of legal consequences that ensures co-offenders will not report the abuse.⁷⁷
- **sell for profit or trade.** To establish trust and camaraderie among collectors, child pornography is sold, bartered, or exchanged between individuals or within a tight-knit group.⁷⁸ Such exchange of child pornography helps offenders form underground

networks to locate and access new children and pornography.⁷⁹ The trades or sales can be accomplished through the mail, by courier service, or through electronic means. The Internet has enabled an increasing amount of trade and sale of child pornography among strangers, opening new markets to established collectors. The Internet's anonymity, enhanced by increasingly sophisticated encryption technology, also facilitates increased demand for child pornography among individuals who may not have acted on their interest before it became more easily accessible.⁸⁰

How Child Pornographers Involve Children

Many child sex offenders target and "seduce" vulnerable children. Some have contact with children through their immediate or extended families, friends, neighbors, jobs, or hobbies while others use children or adults to assist in recruitment.⁸¹ For example some children are photographed by a parent as part of intrafamilial child sexual abuse. Or a child sex offender from outside the child's family may establish a rapport with the child by making toys, computer games, alcohol and drugs, cigarettes, money, pornography,⁸² or a "place to hang out" readily available.⁸³ During this grooming the offender assumes a role of confidant who often provides the child with love and affection to eventually encourage the child's participation in sexual activity.⁸⁴ The offender, whether within the child's family or not, may also use adult or child pornography to desensitize the child by normalizing the sexual nature of their activities. Videotapes, for example, can be used to show "what Mommy and Daddy do for fun." Adult pornography, furthermore, is often used in the production of child pornography as a means of sexual stimulation particularly when the pornography is autoerotic in nature (*e.g.*, showing the child masturbating).⁸⁵

In sexually abusing the child the offender frequently photographs or videotapes the abuse for his own collection and to create a fear of disclosure to peers or other adults.⁸⁶ To silence children and ensure their continued compliance in sexual exploitation, the offender may use a variety of tactics including violence, threats, bribery, rewards (such as love, affection, and/or attention) or punishment, coercion, peer pressure, and fear.⁸⁷

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 by a stranger who wanted "cybersex" within the past year.⁸⁸ One in four were exposed to unwanted sexual material, with 6 percent of regular Internet users reporting an exposure to unwanted sexual pictures that distressed them within the last year.⁸⁹ The report, however, makes no findings relevant to child pornography on the Internet.⁹⁰

Child Pornography and Sex Rings

Child pornography is a central part of most sex rings,⁹¹ in which an individual or group of offenders abuses one or more children.⁹² Child pornography produced in sex rings is used for the collections of the offenders in the ring and often for publication, sale[,] or exchange.⁹³ Within such rings child victims are often forced to perform sexual activities, participate in the production of pornography, or recruit other children.⁹⁴

The dynamics of child sex rings have been described as a pipeline in which offenders control the victims through bonding, competition, and peer pressure.⁹⁵ At any given time

victims are being recruited, seduced, molested, and let go (“dumped”).⁹⁶ Offenders are most likely to use blackmail, including sexually explicit notes, audio- or videotapes, or photographs, when a victim is trying to leave the group or the offender is trying to push a victim out.⁹⁷ Child pornography that depicts acts the victims are most concerned about—such as bizarre sex acts, homosexual acts in which they were active participants, or sex with other victims—is most likely to ensure a victim’s silence through blackmail.⁹⁸

Child pornography may also play a different role in different types of sex rings.⁹⁹ In a ring in which one offender consecutively abuses one child or a small group of children at a time, the offender does not usually exchange or sell the pornography to others but uses it for his own personal gratification.¹⁰⁰ In rings involving one or more offenders who are sexually involved with several children at one time, the offenders may exchange or sell the child pornography they produce.¹⁰¹ Child victims may also be pressured and recruited to participate in more structured rings consisting of several offenders and numerous sexually abused children.¹⁰² Large amounts of child pornography are produced, sold, or exchanged within such rings,¹⁰³ although they are exceptionally rare.

The Victims of Child Pornography

Because the children depicted in child pornography are often shown while engaged in sexual activity with adults or other children,¹⁰⁴ they are first and foremost victims of child sexual abuse. Children who appear in pornography generally fall into several categories including

- older children who are involved in prostitution and photographed or filmed by their customers or become involved in commercial pornography
- younger children, usually prepubescent, who are coerced or manipulated into posing for pornographic videotapes or photographs often in conjunction with actual molestation¹⁰⁵
- children of any age who are molested by acquaintances or family members and are photographed or videotaped¹⁰⁶

Research indicates that children used in pornography are generally younger than those exploited in other ways (*e.g.*, through prostitution). One study of law-enforcement responses to child-sexual-exploitation cases revealed no prostitution cases involving victims younger than 11 in the sample, while approximately 20 percent of the pornography cases involved children between 6 and 10 years of age.¹⁰⁷ In the same study the median age of child pornography victims was 13 years old with a range from 6 1/2 to 17 years of age. Nearly half the cases involved only girls and about one-half involved at least one boy victim. Fourteen percent involved both boys and girls. Unlike prostitution cases, pornography cases tended to involve multiple victims.¹⁰⁸

Law enforcement may learn of a child’s involvement in pornography in various ways as officers seek either to substantiate charges of sexual abuse or identify all depicted victims. Evidence of pornography may surface in the course of a child-sexual-abuse investigation, or, alternatively, children may be brought to the attention of law-enforcement officials as additional victims in a child-pornography investigation.¹⁰⁹

The identification of child victims and/or establishment of their age in visual depictions are also important when cases are presented in court.¹¹⁰ Successful prosecution may often

depend on the ability of medical professionals to confirm or offer an expert opinion that a depicted child is less than the applicable age of consent especially in cases involving materials seized by law enforcement including videos, photographs, or downloaded computer graphics. Such expert opinions should be based on the medical expert's clinical experience without relying solely on the Tanner puberty stages, which were designed for estimating development or physiological age (*i.e.*, early or late maturers) provided the chronological age is known, not for estimating the chronological age itself.¹¹¹ In fact lay persons, including those on jury panels, can make age determinations without expert testimony, although an experienced pediatrician will have a "professional perspective" on what is normal development for a particular age.¹¹²

Precipitating Factors

Because all children depicted in child pornography are victims of sexual abuse or other exploitation, many experience similar events or conditions that lead to their exploitation.¹¹³ For instance some children run away from homes marked by emotional, physical, and sexual abuse or neglect¹¹⁴ or regular violence between the parents. The *National Incidence Studies on Missing, Runaway, and Thrownaway Children in America (NISMART)* estimated that 446,700 children left home without permission and stayed away at least overnight. An additional 127,100 children, identified as "throwaways," were either told directly to leave home, were away and the caretaker refused to allow them to return or made no effort to find the child, or were deserted or abandoned.¹¹⁵ A follow-up study—*NISMART 2*—is currently underway and should soon provide updated statistics on the incidence of each category of missing children.¹¹⁶

The number of children living on the streets poses significant safety issues because runaways are considered the largest group of children at risk of exploitation in the United States.¹¹⁷ Runaways often arrive in new places without money or shelter and are vulnerable to adult exploiters who search bus stations, fast-food restaurants, and street corners for children, offering money, shelter, gifts, alcohol, or drugs for sexual favors. The children may become involved in "survival sex"—the exchange of sex for food, money, shelter¹¹⁸—which places them at greater risk of other exploitation including involvement in pornography.

It is important to note, however, that while prostitution cases predominantly involve runaways, nearly three-quarters of pornography victims live at home at the time of their exploitation. This is probably related to the younger age of the victims involved¹¹⁹ and to the fact that many are the victims of abuse within their families. Despite this difference the relationship between child pornography and prostitution of children is significant.

Child Pornography and the Prostitution of Children

Once children find themselves on the street and involved in prostitution, they become more vulnerable to exploitation through pornography. Exposure to pornography is often used as a technique to normalize the practice of prostitution during a pimp's "seasoning" process.¹²⁰ Pimps may take photographs of children who are nude in the context of a caring relationship but then threaten to send the images to the child's family or school.¹²¹ Pimps also may force a child into performing in pornography as a means to achieve and maintain control over the children they prostitute by humiliating them and breaking their resistance.¹²² Exploitation,

coupled with extortion, can make rehabilitation or separation from the pimp extremely difficult.¹²³ Furthermore pimps may use pornographic pictures to advertise the children they prostitute or sell within a child pornography distribution ring. Patrons of prostituted children also may take pictures for their own later gratification.

In one study of adult female prostitutes, 38 percent of the women reported that they had sexually explicit photographs taken of them, while they were children, for commercial purposes or the personal gratification of the photographer.¹²⁴ Ten percent had been used as children in pornographic films and magazines, and all were younger than the age of 13 when victimized.¹²⁵ In 22 percent of those cases the offender reportedly used pornography, including both adult and child subjects, prior to the sexual act for sexual arousal, to legitimize his actions or to persuade the child to participate.¹²⁶ Another study conducted by a Jefferson County, Kentucky, Task Force in the early 1980s found similar statistics. Of 239 juveniles, of whom 36 percent self-reported involvement in prostitution, 18 percent of the nonprostituted group reported involvement in pornography while 37 percent of the prostituted youth admitted to involvement.¹²⁷

Other factors increasing the vulnerability of children to commercial sexual exploitation worldwide include inequitable socioeconomic structures, lack of economic or educational opportunities, dysfunctional families, and urban-rural migration.¹²⁸ Growing consumerism and the concept of sex as a commodity for sale may also be contributing to an increase in the sexual exploitation of children.¹²⁹

Effects of Child Pornography on the Child Victim

While little is known about the specific long-term effects of use in child pornography, the immediate trauma and effects of sexual abuse on children is well documented.¹³⁰ Because child pornography is a clear record of child sex abuse, its victims would therefore experience the same emotional and physical consequences in addition to any harm resulting from the pornography.

Child-sex-abuse victims experience symptoms of distress during the period of sexual exploitation, at the time of disclosure, and in the post-traumatic phase.¹³¹ In addition to any physical injuries they suffer in the course of their molestation, such as genital bruising, lacerations, or exposure to sexually transmitted diseases, child victims experience depression, withdrawal, anger, and other psychological disorders.¹³² Such effects may continue into adulthood. For instance women abused as children have statistically significantly higher rates of nightmares, back pain, headaches, pelvic pain, eating binges, and other similar symptoms.¹³³

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.¹³⁴ These feelings are often expressed through increased fearfulness and changes in sleep patterns including re-occurring memories, flashbacks, dreams, and nightmares associated with post-traumatic stress.¹³⁵ 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.¹³⁶

Many psychological and emotional effects manifest themselves through self-destructive and socially aberrant behavior.¹³⁷ Psychological scarring and emotional stress of child-sexual

victimization often lead to or continue a cycle of destructive behaviors such as substance abuse, involvement in prostitution,¹³⁸ and depression or suicide. Children often abuse substances in an attempt to numb the memories of their abuse and desensitize their present pain.¹³⁹

Children involved in sex rings suffer from additional psychological and emotional effects. A child's involvement in a sex ring may provide a sense of identity, belonging, intense loyalty to the group, and a fear of losing what is perceived as emotional support.¹⁴⁰ After the child victim is no longer involved in the sex ring, he or she may experience difficulty trusting others or relating to the opposite sex, or may prematurely cling to unsuitable partners.¹⁴¹

Child victims of sex rings demonstrate alterations in behavior such as sudden changes in school behavior; withdrawal from peer activities into solitary isolation; arguments with siblings, parents, and peers; mood swings; or refusal to participate in usual activities (*e.g.*, attending religious, social, and school functions).¹⁴² Such children often increase the time they spend with ring peers.¹⁴³ Children may also act out through sexually focused language, dress, or mannerisms.¹⁴⁴

All these effects may be exacerbated when pornography is involved. Child victims of pornography face the possibility of a lifetime of victimization because the pornography can be distributed indefinitely.¹⁴⁵ Physical, psychological, and emotional effects of child sexual abuse are coupled with the possibility of the pornography resurfacing.¹⁴⁶ Being photographed during sexual abuse intensifies the child's shame, humiliation, and powerlessness.¹⁴⁷ In addition children tend to blame themselves for their involvement in pornography, and this makes the experience that much more painful.¹⁴⁸ Clearly sexual abuse and use in pornography can frequently hinder a child's healthy, normal development.

Effects on the Child's Family

Child pornography also affects the child victim's family. If the offender is within the family, the victimization has obvious implications such as the immediate safety of the child and support of the child by nonoffending family members. The child and family also need support when the offender is someone outside the family. Parents respond to the victimization of their children in a variety of ways ranging from denial of clear evidence¹⁴⁹ to anger and rage.¹⁵⁰ Parents may minimize, de-emphasize, or desexualize the involvement of their child.¹⁵¹ One of the family's greatest concerns may be publicity about their child's experience.¹⁵² Parents often feel stressed and embarrassed by media reports and may fear neighbors or even strangers will stigmatize them.¹⁵³ Some parents of victimized children have urged that investigators minimize any potential damaging effects by preserving, to the best of their abilities, the anonymity of the children involved.¹⁵⁴

In addition a family's embarrassment may prevent them from disclosing their child's victimization or seeking any professional counseling they or their child may need. In responding to parents' concerns, investigators should alleviate some of the family's anxieties by providing crisis intervention¹⁵⁵ including mental-health counseling. A full explanation of the pending criminal process¹⁵⁶ may also help the family prepare for what lies ahead. A clear understanding of the criminal process will create realistic expectations without causing additional trauma from what the family may otherwise view as an insensitive or unresponsive system.

Legal Analysis

How does the legal system address the problem of child pornography? The following section discusses the various federal and state statutes designed to combat this challenging problem. Because many of the state-statutory schemes are based on federal statutes and case law, federal laws are addressed first. The section also describes promising law-enforcement approaches and sets forth some general principles of successful programs.

Federal Law

Several federal statutes address child sexual exploitation and specific child-pornography offenses. For these statutes to apply the conduct must fall under federal jurisdiction.¹⁵⁷ Federal crimes may carry greater penalties, and law-enforcement agencies should work collaboratively when charges under both state and federal statutes may be possible. Whether federal, state, or both federal and state crimes are charged, law enforcement should collaborate to ensure offenders are charged with those offenses that appropriately represent the crimes committed with penalties that best serve the interest of justice.

Evolution of Federal Child Pornography Law

An understanding of the evolution of federal child-pornography law helps clarify its current application. The first federal law to specifically prohibit the pornographic exploitation of children was the Protection of Children Against Sexual Exploitation Act of 1977.¹⁵⁸ It prohibited use of a minor, at the time defined as a child younger than 16 years of age, to engage in sexually explicit conduct for the purpose of producing any visual or print medium of such conduct with the knowledge it was or would be transported in interstate or foreign commerce. This first prohibition applied only to child pornography that satisfied the definition of obscenity set forth in *Miller v. California*.¹⁵⁹

History of Federal Child Pornography Legislation

- Protection of Children Against Sexual Exploitation Act of 1977
- Child Protection Act of 1984
- Child Sexual Abuse and Pornography Act of 1986
- Child Abuse Victims' Rights Act of 1986
- Child Protection and Obscenity Enforcement Act of 1988
- Child Protection Restoration and Penalties Enhancement Act of 1990
- Communications Decency Act of 1996
- Child Pornography Prevention Act of 1996
- Child Online Protection Act of 1998
- Protection of Children from Sexual Predators Act of 1998
- Children's Internet Protection Act of 2000

Some states such as New York, however, took a more aggressive approach than the federal statute and prohibited the production and distribution of nonobscene child pornography. The New York statute was soon challenged under the First Amendment. Although the New York Court of Appeals¹⁶⁰ found the statute unconstitutional, the United States Supreme Court

in *New York v. Ferber*¹⁶¹ reversed. The *Ferber* Court found that nonobscene visual depictions of children engaging in sexual conduct had no First Amendment protection because the state had a compelling interest in protecting children from the harm caused by the use of children in the creation of pornography.¹⁶²

The *Ferber* decision led to federal legislative amendments. The Child Protection Act of 1984 disposed of the requirement that child pornography be considered obscene under *Miller v. California*¹⁶³ before its production, dissemination, or receipt could be considered criminal. The Child Protection Act also extended the law's protection to more children by raising its coverage to children up to 18 years of age. In addition, because Congress recognized that much of the trafficking in child pornography was not-for-profit, the Act disposed of the requirement that the production or distribution of the material be for commercial sale.

Furthermore the Act changed the phrase "visual or print medium" to "visual depiction"¹⁶⁴ and substituted the word "lascivious" for "lewd" in the definition of sexually explicit conduct to clarify that the depiction of children engaged in sexual activity was unlawful even if it did not meet the adult obscenity standard. A test to determine whether a visual depiction is lascivious and merits prosecution was set forth in *United States v. Dost*¹⁶⁵ and further developed in *United States v. Knox*.¹⁶⁶ Under *Dost* the determination of whether a visual depiction of a minor constitutes "sexually explicit conduct" through "lascivious exhibition of the genitals or pubic area," is based on whether the

- focal point of the visual depiction is on the child's genitalia or pubic area
- setting of the visual depiction is sexually suggestive (*i.e.*, in a place or pose generally associated with sexual activity)
- child is depicted in an unnatural pose, or in inappropriate attire, considering the age of the child
- child is fully or partially clothed or nude
- visual depiction suggests sexual coyness or a willingness to engage in sexual activity
- visual depiction is intended or designed to elicit a sexual response in the viewer¹⁶⁷

The visual depiction need not involve all of these factors, and a determination should be made on the overall content of the depiction, taking into account the age of the child.¹⁶⁸ In *Knox*, the court found that the statute does not require full or partial nudity but rather requires only that the material depict some sexually explicit conduct by the minor that appeals to the lascivious interest of the intended audience.¹⁶⁹

Several additional changes to federal statutes followed the 1984 amendments. In 1986 Congress banned the production and use of advertisements for child pornography through the Child Sexual Abuse and Pornography Act.¹⁷⁰ In 1988 the Child Protection and Obscenity Enforcement Act made it unlawful to use a computer to transport, distribute, or receive child pornography. To address parental or caretaker responsibility and involvement in providing children for use in pornography, the Act also added a new section that prohibited buying, selling, or otherwise obtaining temporary custody or control of children for the purpose of producing child pornography.¹⁷¹

The Child Protection and Obscenity Enforcement Act also imposed requirements on the producers of certain sexually explicit material to ascertain and record each performer's name and date of birth in an effort to prevent the use of children in such materials.¹⁷² This requirement withstood constitutional challenge in *American Library Association v. Reno*, in which

the court ruled that the requirement was sufficiently narrowly tailored and sufficiently furthered a governmental interest in abating child pornography to withstand scrutiny.¹⁷³

Until 1990 federal law addressed only the production, sale, and distribution of child pornography. Under the Supreme Court's decision in *Stanley v. Georgia*,¹⁷⁴ the government could prohibit the sale and distribution of obscene material but the prohibition on private possession of such material violated the First Amendment's guarantee of "free thought and expression" and the Fourth Amendment's guarantee of privacy rights.¹⁷⁵

In the late 1980s, however, states started passing statutes prohibiting the mere possession of child pornography. These statutes were immediately challenged under *Stanley* and eventually led to the 1990 Supreme Court decision in *Osborne v. Ohio*.¹⁷⁶ In *Osborne* the Supreme Court held that the state's interest in preventing the sexual abuse of children justified a limitation on the right to possess and view obscene materials in the privacy of a person's own home under the First Amendment as set forth in *Stanley*. The state could prohibit the mere possession of child pornography as long as its goal was to protect children and not to regulate people's thoughts and expressions.¹⁷⁷ Following the *Osborne* decision Congress criminalized the possession of three or more pieces of child pornography through the Child Protection Restoration and Penalties Enhancement Act of 1990.¹⁷⁸

In 1996 Congress passed two additional pieces of legislation aimed at protecting children from computer-based exploitation. They are the Child Pornography Prevention Act (CPPA) and Communications Decency Act (CDA). Both engendered constitutional challenges.

The Child Pornography Prevention Act of 1996¹⁷⁹ responded to the increase in technological capabilities to produce images that look like children by amending the definition of child pornography to include any visual depiction that "is, or appears-to-be, of a minor engaging in sexually explicit conduct."¹⁸⁰ It also banned visual depictions that are "advertised, promoted, presented, described[,] or distributed in such a manner that conveys the impression" that they contain sexually explicit depictions of minors.¹⁸¹

Among Congress' findings accompanying the CPPA was the recognition that new photographic and computer imaging technologies make it possible to produce visual depictions of what appear to be children engaging in sexual conduct that are virtually indistinguishable from photographic images of actual children engaging in sexually explicit conduct. Congress noted that this technology could be used to alter innocent pictures of children to create visual depictions of those children engaging in sexual conduct.¹⁸²

Several cases have challenged the CPPA on constitutional grounds. In *United States v. Hilton* the First Circuit Court of Appeals overturned a lower court ruling that the statute was impermissibly vague and overbroad. The First Circuit found that the CPPA "neither impinges substantially on protected expression nor is so vague as to offend due process."¹⁸³

More recently the Ninth Circuit Court of Appeals in *The Free Speech Coalition v. Reno*¹⁸⁴ overturned a lower-court ruling upholding the CPPA and found that the provisions criminalizing all visual depictions that "appear-to-be" or "convey-the-impression" of child pornography violate First Amendment free-speech protections.

At issue in *The Free Speech Coalition v. Reno* were the CPPA's amendments to the definition of child pornography under Title 18 of the United States Code: Section 2256(8)(B) which includes sexually explicit depictions that appear to be minors, and Section 2256(8)(D) which includes visual depictions that are "advertised, promoted, presented, described[,] or distributed in such a manner that conveys the impression" that they contain sexually explicit depictions of minors.¹⁸⁵

Finding that the prohibition on child pornography is content-based, the court applied the strict scrutiny standard. Any restriction on speech, therefore, had to be based on a compelling governmental interest and narrowly tailored to promote that interest. Although the court looked to legislative history to determine compelling reasons, it found that “any victimization that may arise from pedophiles’ sexual responses to pornography apparently depicting children engaging in explicit sexual activity is not a sufficiently compelling justification for CPPA’s speech restrictions.”¹⁸⁶ The court reasoned that “to hold otherwise enables the criminalization of foul figments of creative technology that do not involve any human victim in their creation” or presentation.¹⁸⁷ Finding insufficient compelling interests, the court did not address the “narrowly tailored” requirement.¹⁸⁸

The dissenting opinion in *The Free Speech Coalition v. Reno*, however, argued that the government did present compelling evidence that virtual child pornography causes “real harm to real children.”¹⁸⁹ The dissent cited to the 13 detailed legislative findings provided by Congress to explain why virtual pornography must be prohibited.¹⁹⁰ The dissent then provided five reasons for disagreeing with the majority’s findings.

First the dissent looked to *Osborne v. Ohio*¹⁹¹ in which the Court relied not only on the harm caused to children in the production of child pornography but also on the harm caused when child pornography is used to seduce or coerce them into sexual activity. The dissent argued that the *Osborne* Court recognized that protecting children who are not actually pictured in the pornography is a legitimate and compelling state interest. Thus virtual child pornography could legitimately be prohibited.

Second the dissent noted that the Supreme Court had already endorsed many of Congress’ other justifications such as the state’s legitimate interest in destroying the child-pornography market.¹⁹² In passing the CPPA Congress reasoned that the statute would encourage people to destroy all forms of child pornography and thereby reduce the market for such material.

Third the dissent argued that the majority did not address other justifications advanced by Congress, regardless of whether the Supreme Court has specifically endorsed them. The dissent cited both *Ferber* and *Osborne* in which the Supreme Court stated, “[I]t is evident beyond the need for elaboration that a State’s interest in ‘safeguarding the physical and psychological well-being of a minor’ is ‘compelling.’”¹⁹³

Fourth the dissent argued that child pornography is speech without redeeming social value. Relying on a series of cases holding that the First Amendment does not protect certain categories of speech that are “utterly without redeeming social importance,” the dissent placed child pornography among them.¹⁹⁴ Stating that the only distinction between real and virtual child pornography is whether actual children are used in the production of the visual depictions, the dissent argued that using virtual children in its production “does not somehow transform virtual child pornography into meaningful speech.”¹⁹⁵

And fifth the dissent argued that the proper analysis of the CPPA is not a strict scrutiny approach but rather a balancing of the government’s interest in regulating child pornography against the material’s limited social value. It stated, “Since the balance of competing interests tips in favor of the government, virtual child pornography should join the ranks of real child pornography as a class of speech outside the protection of the First Amendment.”¹⁹⁶

In addition the dissent disagreed with the majority’s finding that the CPPA is overbroad, rejecting the argument that the “appears-to-be” language would capture artistic expressions

such as paintings, drawings, and sculptures. Relying again on the legislative history, the dissent stated that the CPPA clearly only extends the existing prohibitions on real child pornography to a “narrow class of computer-generated pictures easily mistaken for real photographs of real children”¹⁹⁷—those that are virtually indistinguishable from real child pornography.

In addition to the First Circuit’s decision in *Hilton*, the Eleventh Circuit and United States District Court for the Eastern District of Texas have both rejected challenges to the CPPA.¹⁹⁸ In *Reno v. Free Speech Coalition*¹⁹⁹ the Supreme Court recently granted certiorari and agreed to hear an appeal of the case to address the constitutionality of the CPPA’s amendments to federal child-pornography law. The Court’s ruling in that case should eventually resolve the conflicting lower-court decisions.

After the CPPA, Congress passed the Protection of Children from Sexual Predators Act of 1998 (PCSPA),²⁰⁰ which comprehensively addressed many child-sexual-abuse issues in addition to child pornography. The Act prohibited use of interstate facilities to transmit identifying information about a child for criminal sexual purposes²⁰¹ and increased penalties for many offenses against children and for repeat offenders,²⁰² among other provisions.

Protection of Children from Sexual Predators Act of 1998 (references to Title 18 of United States Code unless specified otherwise)				
Protection of Children from Predators	Protection of Children from Child Pornography	Sexual Abuse Prevention	Prohibition on Transfer of Obscene Material to Minors	Increased Penalties for Offenses Against Children and Repeat Offenders
§ 2425 prohibiting use of interstate facilities to transmit information about a minor	§ 2251(a) adding jurisdictional base for prosecution of production of child pornography	§§ 2241, 2243, 2246 eliminating redundancy and ambiguities	§ 1470 prohibiting transfer of obscene materials to minors	§ 3559 setting death or life in prison for certain crimes against children
§ 2422 amending coercion and enticement provisions and increasing penalties	§§ 2252, 2252A increasing penalties for child-pornography offenses	§ 2244 increasing penalties for abusive sexual contact		28 U.S.C. § 994 Note: Enhancing sentences for chapter 117 offenses
§ 2423 increasing penalties for transportation of minors for illegal sexual activity and related offenses	§§ 2252, 2252A creating “zero tolerance” for possession of child pornography	§ 2247 increasing penalties for repeat offenders in sexual-abuse cases		28 U.S.C. § 994 Note: Increasing penalties for use of computer in the sexual abuse/exploitation of a child
§ 2426 imposing penalties for repeat offenses				28 U.S.C. § 994 Note: Increasing penalties for known misrepresentation in sexual abuse/exploitation of a child
§ 2427 including child-pornography offenses in definition of sexual activity for which any person can be charged with criminal offense				28 U.S.C. § 994 Note: Increasing penalties for pattern of activity of sexual exploitation of children
§ 2421 adding attempt-to-transportation offense and increasing penalties				28 U.S.C. § 994 Note: Clarifying the definition of distribution of pornography

Specifically related to child-pornography offenses, the PCSPA included child pornography in the definition of sexual activity for which a person can be charged with a criminal offense;²⁰³ added a jurisdictional basis for prosecution if child pornography was produced using materials that were mailed, shipped, or transported in interstate or foreign commerce including by computer;²⁰⁴ increased penalties for child pornography offenses including for use of a computer in the sexual exploitation of a child;²⁰⁵ and created a “zero-tolerance” policy for possession of child pornography.²⁰⁶ The “zero-tolerance” provision makes possession of even one piece of child pornography illegal.²⁰⁷

Furthermore the PCSPA included child-pornography offenses in the civil and criminal forfeiture statutes as well as the civil-remedy provisions.²⁰⁸ The Act also amended the statute calling for reporting of child pornography by electronic communication providers such as Internet service providers.²⁰⁹ The providers must report any known or apparent child-pornography violations to the CyberTipline at the National Center for Missing & Exploited Children.²¹⁰ The report, once made to the CyberTipline, is immediately available for viewing and investigation by key law-enforcement agencies.

Criminal, Procedural, and Administrative Reforms	Murder and Kidnapping Investigations	Restricted Access to Interactive Computer Services	Studies
§ 3156(a)(4) regarding pretrial detention of sexual predators	28 U.S.C. § 540B regarding investigation of serial killings	Limiting prisoner access to electronic communication or remote computing service	§ 1470 Note: Providing for study on limiting availability of pornography on Internet
§ 2253 providing criminal forfeiture for offenses against minors	§ 1201 clarification of kidnapping offense	Congressional findings and sense of Congress regarding prisoner access	
§ 2254(a) providing civil forfeiture for offenses against minors	28 U.S.C. § 531 Note: Establishing Morgan P. Hardiman Child Abduction and Serial Murder Investigative Resources Center	Survey of states regarding prisoner access	§ 14071 Note: Providing for study of sex-offender hotlines
42 U.S.C. § 13032 requiring reporting of child pornography by electronic communication service providers		§ 2255 providing civil remedy for child victims of certain sex crimes	
42 U.S.C. § 14071 providing grants to states to offset cost of violent offender registration			

Another area of legislative action related to child sexual exploitation has been the transmission of material that is harmful to minors. While not specifically focused on child pornography the Communications Decency Act of 1996²¹¹ (CDA) prohibited the knowing transmission of “obscene or indecent” messages via a telecommunications device to a minor. It also prohibited the knowing use of an interactive computer service to send any communications that depict or describe in “patently-offensive” terms, as measured by contemporary community standards, sexual or excretory activities or organs to a specific minor.²¹² The CDA was challenged in *Reno v. American Civil Liberties Union*.²¹³ In that case the Supreme Court ruled that notwithstanding the importance of the government’s goal of protecting children from harmful materials on the Internet, the CDA’s “indecent-transmission” and “patently-offensive-display” provisions violated the First Amendment’s right to free speech.²¹⁴ The Court, however, expressly preserved the government’s right to pursue related obscenity or child-pornography charges.²¹⁵

To remedy the constitutional deficiencies of the CDA, Congress passed the Child Online Protection Act of 1998 (COPA).²¹⁶ COPA requires those who commercially distribute materials through the world wide web to restrict access by children younger than 17 to materials that are harmful to minors.²¹⁷ COPA has been challenged as presumptively invalid and subject to strict scrutiny analysis under the First Amendment as a content-based regulation of nonobscene sexual expression.²¹⁸ The court hearing that challenge has issued a preliminary injunction against enforcement of COPA until the case has been decided on its merits.²¹⁹

The Children’s Internet Protection Act, which became law in December 2000,²²⁰ is a further development in the protection of children from harmful materials on the Internet. This Act limits the availability of certain federal funds and service discounts for schools unless they implement a policy of Internet safety for children that uses technology-protection measures such as filters to block access to visual depictions that are obscene, child pornography, or harmful to minors.²²¹ They must also have a policy for other (*i.e.*, adult) users prohibiting access to visual depictions that are obscene or child pornography.²²² The Act contains similar limitations on funds for libraries.

In addition neighborhood schools and libraries that receive service discounts from telecommunications carriers must have an Internet safety policy that addresses access by children to inappropriate material on the Internet and world wide web; the safety and security of children when using E-mail, chat rooms, or other direct electronic communication; unlawful activities by minors online including unauthorized access such as hacking; unauthorized disclosure, use, or dissemination of personal, identifying information about children; and measures designed to restrict children’s access to materials harmful to minors.²²³

Based on this evolution of federal child-pornography legislation and the case law interpreting its provisions, the section below describes federal criminal-child-pornography statutes as they currently exist.

Federal Child Pornography Statutes

The federal statutes that address criminal child sexual exploitation and child pornography fall under Title 18, Sections 2251 through 2260 of the United States Code.

The definitions applying to federal child-pornography charges are found in Section 2256. Most important to the interpretation of the federal statutes, as evidenced by the court challenges discussed above, are the definitions of

- **child pornography** which is defined as “any visual depiction...including any photograph, film, video, picture[,] or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where
 - the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct
 - such visual depiction is, or appears-to-be, of a minor engaging in sexually explicit conduct
 - such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct or
 - such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct”²²⁴
- **visual depiction** which includes undeveloped film and videotape and data stored on computer disk or by electronic means which is capable of conversion into a visual image²²⁵ and
- **sexually explicit conduct** which means actual or simulated
 - sexual intercourse including genital-genital, oral-genital, anal-genital, or oral-anal whether between persons of the same or opposite sex
 - bestiality
 - masturbation
 - sadistic or masochistic abuse or
 - lascivious exhibition of the genitals or pubic area of any person²²⁶

Applying these definitions, Sections 2251, 2251A, 2252, 2252A, and 2260 contain the bulk of the criminal prohibitions. Section 2251’s prohibitions against the sexual exploitation of children include employing, using, persuading, inducing, enticing, or coercing a child younger than 18 to engage in or transport the minor in interstate or foreign commerce with the intent the child engage in sexually explicit acts for the purpose of producing a visual depiction of such acts.²²⁷

Title 18, United States Code	
Section 2251.	Sexual Exploitation of Children
Section 2251A.	Selling or Buying of Children
Section 2252.	Certain Activities Relating to Material Involving the Sexual Exploitation of Minors
Section 2252A.	Certain Activities Relating to Material Constituting or Containing Child Pornography
Section 2253.	Criminal Forfeiture
Section 2254.	Civil Forfeiture
Section 2255.	Civil Remedy for Personal Injuries
Section 2256.	Definition for Chapter
Section 2257.	Record-Keeping Requirements
Section 2258.	Failure to Report Child Abuse
Section 2259.	Mandatory Restitution
Section 2260.	Production of Sexually Explicit Depictions of a Minor for Importation into the United States

For instance Section 2251 may apply when an offender transports a minor across state lines with the intent the child engage in any sexually explicit conduct for the purpose of producing child pornography.²²⁸ The statute would apply if the person knew or had reason to know the visual depiction or materials used to produce it would be transported in interstate or foreign commerce or mailed; the visual depiction was produced using materials that were mailed, shipped, or transported in interstate or foreign commerce including by computer; or such visual depiction has actually been transported in interstate or foreign commerce or mailed.

Section 2251 also prohibits knowingly advertising visual depictions that were produced by using a minor engaging in sexually explicit conduct through interstate or foreign commerce including by computer or mail. Violation of Section 2251 carries a penalty of between 10 and 20 years in prison, a fine, or both. Subsequent offenses increase the applicable penalties.²²⁹ Organizations that violate 2251 are also subject to a fine.²³⁰

Sections 2252, addressing certain activities relating to material involving the sexual exploitation of minors, and 2252A, addressing certain activities relating to material constituting or containing child pornography, prohibit transporting or shipping child pornography in interstate or foreign commerce by any means—including mail and computer—or receiving or distributing child pornography. The prohibitions include selling or possessing with intent to sell any child pornography and visual depictions produced through the sexual exploitation of a minor.

Section 2252(a)(4) also prohibits knowing possession of one or more books, magazines, periodicals, films, videotapes, or other matter that contain any visual depiction of a minor engaging in sexually explicit conduct. Section 2252A(a)(5) contains a similar provision prohibiting knowing possession of “any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography.”

Prior to the “zero-tolerance” amendment changing the number of items under the possession provisions from three to one, Section 2252(a)(4)(B) was challenged in *United States v. Dauray*.²³¹ Dauray argued that the 13 individual, unbound pictures of which he was found in possession were themselves visual depictions and therefore not “matter which contain any visual depiction.” The Second Circuit Court of Appeals found ambiguity in the meanings of “contain” and “matter,” holding that the rule of lenity must be applied to resolve the ambiguity in Dauray’s favor.²³² The court found the language to be ambiguous because “contain” could mean both “comprise” and “hold,” and “matter” could apply to both the container in which the images are kept and the images themselves. The dissent, however, argued that any ambiguity that might exist did not rise to a “grievous ambiguity or uncertainty” requiring application of the rule of lenity.²³³

Both Section 2252 and 2252A provide an affirmative defense to possession charges if the defendant possessed fewer than three images of child pornography and promptly, without allowing anyone else access to the images, took steps to destroy each image and reported the incident to law enforcement.²³⁴ Section 2252A includes an additional affirmative defense that the visual depiction was produced using actual people who were adults at the time of production and the defendant did not advertise or promote the materials as child pornography.²³⁵

Section 2260 addresses the production of sexually explicit depictions of a minor for importation into the United States.²³⁶ The section applies to individuals outside the United States who knowingly use or transport a minor with the intent the minor engage in sexually explicit conduct for the production of child pornography with the intent that the pornography

be imported into the United States. It also prohibits individuals outside of the United States from knowingly receiving, transporting, distributing, selling, or possessing with the intent to distribute child pornography if the production of the visual depiction involved use of a minor, again with the intent that the visual depiction be imported into the United States. Penalties for violation of Section 2260 include a fine, imprisonment for up to 10 years, or both with increases for subsequent violations.

Criminal Liability of Parents and Other Caretakers

While all the statutes prohibiting production, distribution, or possession of child pornography also apply to parents, both Section 2251(b) and Section 2251A specifically address parents, legal guardians, or other caretakers who permit a minor to engage, or assist others in engaging a minor, in sexually explicit conduct to produce child pornography.²³⁷

Section 2251A, subsection (a), targets any parent, legal guardian, or other person having custody or control of a minor who sells or offers to sell or transfer the custody or control of the minor knowing that the child will be portrayed in pornography or with the intent to promote the child's participation in pornography. Subsection (b) targets those who would buy children for the same purposes. For either prohibition to apply the offender or child must have traveled or been transported, or the offer must have been communicated or transported, in interstate or foreign commerce or the violation must have occurred on federal land.²³⁸ Violation of 2251A carries a penalty of 20 years to life and fine.

Reporting by Internet Service Providers

Under Title 42, Section 13032, electronic communications service providers including Internet service providers such as America Online[®] and remote computing services must report as soon as reasonably possible any known or apparent child pornography violation under Sections 2251, 2251A, 2252, 2252A, or 2260. The report must be made to the CyberTipline at the National Center for Missing & Exploited Children, which shall then forward the report to the appropriate law-enforcement agency.²³⁹ Knowingly or willfully failing to report can result in a fine of up to \$50,000 for the first failure and \$100,000 for subsequent failures.²⁴⁰ The service providers cannot be held civilly liable for complying with this requirement in good faith, and they are not required to monitor their customers or the content of any communications by their users for possible violations.²⁴¹

Age-Related Defenses

The affirmative defense provided in Section 2252A—that the visual depiction was produced using actual people who were adults at the time of production and the defendant did not advertise or promote the materials as child pornography²⁴²—provides one type of defense to child-pornography charges.

Defendants have also asserted that they did not know or have reason to know the child used in the production of or pictured in the pornography was a minor. Statutes prohibiting the production, distribution, receipt, and possession of visual depictions of minors engaging in sexually explicit conduct must have a knowledge requirement. The Supreme Court in *United States v. X-Citement Video*²⁴³ found a presumption that a criminal statute requires some form of scienter or a defendant's guilty knowledge. The Court interpreted Section 2252 to require the prosecution to prove the defendant knew the material was produced using a minor.

Other Applicable Federal Statutes

Charges under other federal statutes not specifically addressing pornography offenses are also available to prosecutors when the offenses occur under federal jurisdiction. In fact many offenders face multiple charges in both state and federal courts because the child pornography itself provides evidence of sexual abuse or molestation when the defendant is depicted. Some prosecutors charge child sex abuse because they feel the evidence supporting that charge is stronger or the charge carries a higher penalty.²⁴⁴ Additional statutes that federal prosecutors can consider include the Mann Act, use of interstate facilities to transmit information about a minor, aggravated abuse or sexual abuse of a minor or ward, and the Racketeer Influenced and Corrupt Organizations Act.

The Mann Act

While the statutes under the Mann Act primarily target prostitution and other criminal sexual activity in interstate and foreign commerce,²⁴⁵ it is likely, given the connection between prostitution and pornography, that additional charges under the Act's provisions may be available in many child-pornography cases. Originally the Mann Act made transportation of any girl or woman across state lines for prostitution or "any immoral practice" a federal crime. In 1986 Congress amended the Act by making it gender-neutral and changing "immoral practice" to "any sexual activity for which any person can be charged with a criminal offense."²⁴⁶ Child pornography was included in this definition by the Protection of Children from Sexual Predators Act in 1998.²⁴⁷ The 1986 revisions also removed the requirement that transportation of a minor be for a "commercial" motive, which allows for prosecution of those who take minors across state lines for noncommercial but illegal sexual activity including production of child pornography.

Section 2421 of the Mann Act prohibits transportation of an individual in interstate or foreign commerce, or an attempt to do so, with the intent such individual engage in prostitution or in any sexual activity for which any person can be charged with a criminal offense.²⁴⁸ While this section can be invoked in cases involving minors, the more specific provision, Section 2423, carries greater penalties. Section 2423 prohibits transportation of a minor in interstate or foreign commerce with the intent the minor engage in prostitution or other criminal sexual activity.²⁴⁹ Thus the federal government could bring an action under this section when the offender knowingly transports a minor across state lines with the intent that the minor participate in the production of pornography.

Finally the "coercion and enticement" section of the Mann Act, Section 2422, prohibits the inducement, enticement, or coercion of any individual, or attempt to do so, to engage in prostitution or any criminal sexual activity, and carries a penalty of up to 10 years. More specifically, Section 2422(b) prohibits the persuasion, inducement, enticement, or coercion of a minor to engage in prostitution or criminal sexual activity, or any attempt to do so, and carries a penalty of up to 15 years.²⁵⁰

Use of Interstate Facilities to Transmit Information About a Minor

In 1998 the PCSPA added Section 2425 to Title 18 of the United States Code.²⁵¹ Section 2425 prohibits the use of interstate facilities, including mail or interstate or foreign commerce, to transmit certain information about a person younger than 16 years of age with the intent to

entice, encourage, offer, or solicit any person to engage in criminal-sexual activity (*i.e.*, any sexual activity for which a person can be charged with a criminal offense). A violation of this section carries a penalty of five years in prison, a fine, or both. While still untested, Section 2425 may prove useful in addressing some of the activities involved in the production of child pornography especially enticement over the Internet to involve minors in such production.

Aggravated Sexual Abuse or Sexual Abuse of a Minor or Ward

Federal prosecutors can consider charges under the “aggravated-sexual-abuse” statute—Title 18, Section 2241(c)—which prohibits crossing a state line with the intent to engage in a sexual act with a person younger than 12 years of age, as well as knowingly engaging in a sexual act with another person younger than 12 or knowingly engaging in a sexual act by force, threat, or other means with someone between 12 to 16 years of age with at least a 4-year age difference.²⁵² Charges under Section 2243, “sexual abuse of a minor or ward,” can also be brought if the defendant knowingly engaged in a sexual act with a person not yet 12 years of age or knowingly engaged in a sexual act with a minor older than 12 but not yet 16 years of age with at least a 4-year difference in age.²⁵³

The aggravated-sexual-abuse statute may be especially relevant in cases in which violence is used against the child. The court in *United States v. Fulton*²⁵⁴ found that the statute’s required showing of actual force can be satisfied by a showing of such physical force as is sufficient to overcome, restrain, or injure a person.

In addition the mistake-of-age defense is a specified defense only for Section 2243 (sexual abuse of a minor or ward)²⁵⁵ and is not necessarily permissible with other federal sexual offenses. Furthermore the court may not be required to allow such a defense.²⁵⁶ Under neither Section 2241 nor Section 2243 is the prosecution required to prove that the defendant knew the age of the minor.²⁵⁷

Racketeer Influenced and Corrupt Organizations Act

The Racketeer Influenced and Corrupt Organizations Act (RICO) makes it a federal crime to participate in an “enterprise” that “affects” interstate commerce and involves a “pattern” of “racketeering activity.”²⁵⁸ Child-sexual-exploitation offenses under Sections 2251, 2251A, 2252, and 2260 are listed among the crimes defined as “racketeering activity” under the statute.²⁵⁹ RICO provides for strict penalties, allows federal prosecutors to seek injunctive relief against violators, and allows victims to sue in federal court for treble damages.²⁶⁰

For a prosecution to succeed under the RICO statute, there must be proof of two or more violations constituting a “pattern” of such activity and that the activity is part of an ongoing enterprise either legal or illegal.²⁶¹ The statute allows prosecutors to bring actions against those who only indirectly control or participate in an interstate pornography ring and provides some relief to victims through its civil-remedy provisions.²⁶²

Sentencing

Because laws banning the production, possession, or trafficking of child pornography are generally read to emphasize the victimization of the children depicted in pornographic materials,²⁶³ courts have some discretion to adjust sentences in furtherance of this legislative intent.

For example federal sentencing guidelines usually allow for heightened punishments in child-pornography cases when the victim is prepubescent or younger than the age of 12²⁶⁴ or when an offense involves multiple visual depictions of children.²⁶⁵ For the production of child pornography a sentence may be increased if the victim is younger than 16 years of age and then increased even more when the victim is younger than the age of 12.²⁶⁶ Sentences for production can be further increased when the offender is the parent, relative, or legal guardian or when the child was in the custody, care, or supervisory control of the offender (*e.g.*, teachers, daycare providers, or babysitters).²⁶⁷ Trafficking offenses for child pornography are punishable by increased sentences when the defendant has engaged in a pattern of activity involving the sexual exploitation of a minor.²⁶⁸ This activity may include two or more instances of abuse or exploitation by the defendant whether or not it occurred as part of the offense, involved the same or different victims, or resulted in a conviction. Increased sentences are also available when the offensive material portrays sadistic or masochistic conduct or other depictions of violence.²⁶⁹

The distribution of child pornography is recognized as a particularly serious crime that “can have devastating effects upon society and, most importantly, upon children who are sexually abused.”²⁷⁰ Sentencing guidelines therefore allow for heightened punishments when a defendant is shown to have distributed child pornography.²⁷¹

The federal sentencing guidelines were amended in 2000 to allow for increases in sentencing based on distribution of child pornography for pecuniary gain as well as for the receipt or expectation of a thing for value but not monetary gain.²⁷² Even prior to this amendment, many courts allowed enhanced sentences when defendants profited from the exchange of pornography in nonmonetary ways such as swaps, barter, in-kind transactions, and other valuable consideration.²⁷³ This change is particularly important in the prosecution of Internet cases in which defendants may download, post, or trade material although no actual “sale” takes place.²⁷⁴

Legislative attempts to crack down on Internet child pornography have prompted guidelines allowing for sentence increases when computers are used to solicit a child’s participation in the production of child pornography²⁷⁵ or when a computer is used to advertise pornographic material or transmit the material itself.²⁷⁶ Courts have noted that, “the Internet has become a common means of transmitting obscene and illicit material. In addition it is difficult to detect and prevent this traffic in cyberspace. [Laws allowing for heightened sentences] provide an extra deterrent to those inclined to pursue illicit pictures in the anonymity of the computer world.”²⁷⁷

Criminal and Civil Forfeiture

Defendants may also be subject to civil or criminal forfeiture of proceeds from or property used to commit or promote commission of a child-pornography offense. Title 18, Section 2253, provides for criminal forfeiture for such offenses against minors,²⁷⁸ and Section 2254 provides for civil forfeiture.²⁷⁹ Forfeiture may include loss of any interest in any visual depiction prohibited by the federal statutes or any book, magazine, film, videotape, or other matter containing such a depiction. It may also include loss of property or businesses used as fronts for pornography production or distribution, or any property traceable to gross profits or other proceeds from the enterprise. Such property may include cameras, photography-developing equipment, or computers.

Restitution and Civil Remedies

Victims of federal child-pornography statutes are entitled, under Title 18, Section 2259, to mandatory restitution regardless of the defendant's economic circumstances or victim's right to any other compensation such as insurance.²⁸⁰ The court must direct the defendant to pay the full amount of the victim's losses. These losses may include physical or mental-health services, lost income, transportation or temporary housing, attorneys' fees, and any other losses suffered as a proximate result of the criminal offense.²⁸¹ The court can include in this order restitution for future psychological or other counseling that is ascertainable at the time of sentencing.²⁸²

The sentencing court can also order restitution for victims under the Victim and Witness Protection Act.²⁸³ When a defendant is convicted of a crime that includes scheme, conspiracy, or pattern of criminal activity as an element of the offense, the court can order restitution for losses resulting from any conduct that was part of that scheme, conspiracy, or pattern of criminal activity.²⁸⁴ This provision may be especially applicable to commercial child-pornography rings.

Furthermore a victim of a federal child-pornography offense who suffers personal injury as a result of the offense may also sue in an appropriate federal court to recover actual damages of no less than \$50,000 and the cost of the suit including reasonable attorneys' fees.²⁸⁵

Uniform Code of Military Justice

Some child-pornography cases are also prosecuted in military court-martial proceedings. If the perpetrator is active-duty military, the Uniform Code of Military Justice (UCMJ) applies.²⁸⁶ The UCMJ may also apply to other individuals such as cadets or midshipmen, members of reserve units while on inactive-duty training, or retired members who are entitled to pay or are receiving hospitalization from an armed force.²⁸⁷ While the UCMJ does not specify a separate offense addressing child pornography, such federal and state crimes committed in areas of exclusive or concurrent federal jurisdiction can be assimilated and charged under the UCMJ's General Article, Article 134.²⁸⁸

The child-pornography offenses prosecuted by the military generally involve a military member who uses a government-owned computer on a military installation in violation of military regulations regarding the use of government property and in violation of federal or state child-pornography laws. The individual armed services (*i.e.*, Air Force, Army, Coast Guard, Marine Corps, Navy) investigate any complaints regarding child pornography and refer the results of the investigation to the individual's unit commander for further legal or administrative action.²⁸⁹ When the suspect is a civilian employee of the armed services and engages in the illegal activity on an installation, the case is referred to the appropriate US Attorney's Office. If the perpetrator is a military dependent and the crime occurs on a military installation, federal charges can be brought in US District Court.

Each branch of the armed services maintains its own criminal-investigation unit. Child-pornography investigations may involve plainclothes officers who engage in undercover stings and pursue child-pornography possession and transmission offenses. It is not uncommon for military investigators to conduct an investigation jointly with other federal or state law-enforcement agencies. They collaborate with the FBI and US Postal Service when appropriate.²⁹⁰

State Law

Every state and the District of Columbia has criminal statutes addressing the production, distribution, or possession of child pornography.²⁹¹ Some states have more inclusive definitions of child pornography and impose greater penalties. Many states model their statutes after federal law, and US Supreme Court decisions also shape and guide the language and content of these statutes. In addition states have greater jurisdiction under the civil child-welfare system in the juvenile or family court.

The Juvenile Court's Response to Child Pornography

Although federal law also requires reporting of child abuse and provides penalties for failure to report,²⁹² it is more often state agencies that respond to reports of child abuse involving sexual exploitation.²⁹³ In California, for instance, as in many states, the definition of sexual exploitation under the mandatory child-abuse reporting law includes both prostitution and pornography.²⁹⁴

By including pornography in their mandatory child-abuse-reporting definitions, states can also respond to the sexual exploitation of children through the civil child-protection system. In Rhode Island, for instance, local law enforcement or the family- and child-services director may enter any place where a child may be being exploited and detain and hold the child victim as a witness. If no one comes forward to claim custody of the child, the officer may bring neglect proceedings on behalf of the child.²⁹⁵ For a pornography case to enter the child-protection system, however, the alleged offender must be a parent, legal guardian, custodian, or a member of the household, or the parent or legal guardian must have somehow contributed to the child's exploitation.

The jurisdiction of the juvenile or family court is often invoked to facilitate the provision of services or remove children from the streets. Few placement alternatives exist, however, for adolescents who may be at risk of sexual exploitation or are already involved in pornography, and even fewer viable placements or intervention strategies exist for runaway youth.²⁹⁶ Thus the ability of the child-protection system to respond comprehensively to protect victimized youth may be limited.

Another challenge facing the juvenile court is the recent increase in the number of juvenile offenders. In a study of the justice system's response to child sexual exploitation, 10 percent of the exploited youth who were interviewed reported being depicted in pornography made by peers.²⁹⁷ Force was used or threatened in one-half of these peer pornography incidents. Three-quarters of the peers who made the pornography were younger than 18 years of age, while 88 percent of the youth photographed were between the ages of 14 and 17 at the time. One-half of the reported peer offenders were girls.²⁹⁸

Youth exploited through pornography by their peers were more likely to be living on the street or with friends than at home or in a shelter. Significantly, three-quarters of the peer offenders were described as friends or lovers.²⁹⁹ The recent online victimization study by the University of New Hampshire's Crimes Against Children Research Center also raises concerns about the number of online sexual solicitations and approaches initiated by youth. Almost half of the overall solicitations and approaches were reportedly committed by juveniles who also reportedly committed almost half of the aggressive episodes.³⁰⁰ The study is clear, however, that in almost all of the cases, the youth never met the perpetrator, and there-

fore the accuracy of the age identification is in serious doubt.³⁰¹ Nonetheless the report raises a potential question of peer solicitation that needs further study.

These findings have important implications for the juvenile court's response to child-pornography offenses committed by youth against their peers. For instance they emphasize the importance of early intervention for juvenile sex offenders with the goal of "pre-empting" escalation of their offenses as they become adults.

State Criminal Laws

State criminal laws addressing child pornography can be divided into the three general categories of

- promoting or producing child pornography, both commercial and noncommercial, including live performances and visual representations of children engaged in obscene or sexually explicit conduct
- distribution of child pornography
- possession of child pornography including possession with intent to distribute

Other offenses include distributing materials harmful to minors and allowing a child under a person's custody or control (*e.g.*, parents or caretakers) to be sexually exploited or used in pornography. Each of these offenses is discussed in turn below.

Production or Promotion of Child Pornography

State statutes generally include promoting and producing both visual representations of pornographic materials involving minors and live performances by minors including promoting minors in sexually explicit performances.³⁰² Surprisingly, despite the Supreme Court's decision in *New York v. Ferber*³⁰³ that even nonobscene child pornography can be prohibited, many states only outlaw production of obscene materials. Others, however, criminalize the production of any visual depiction of the sexual exploitation of a minor. Alaska's statute, paraphrased below, provides a typical example.

A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio recording, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed below, the person knowingly induces or employs a child younger than 18 years of age to engage in, or photographs, films, records, or televises a child younger than 18 years of age engaged in, the actual or simulated conduct noted below.

- sexual penetration
- the lewd touching of another person's genitals, anus, or breast
- the lewd touching by another person of the child's genitals, anus, or breast
- masturbation
- bestiality
- the lewd exhibition of the child's genitals or
- sexual masochism or sadism³⁰⁴

As demonstrated by Alaska's statute, many states include both visual representations and live performance by a minor. In the Texas "sexual-performance-by-a-child" statute, performance means "any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons."³⁰⁵ Texas also includes prohibitions against promoting child pornography, and its definition of "promote" is comprehensive including to "procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any" of these.³⁰⁶

South Carolina, among other states, not only prohibits the production of child pornography but also prohibits the transportation or financing of the transportation of a child through or across the state with the intent the child participate in production of child pornography.³⁰⁷

Several states have also responded to the proliferation of child pornography generated and distributed over the computer. Many now include prohibitions against using a computer to compile, transmit, make, print, publish, reproduce, buy, sell, exchange, or disseminate child pornography.³⁰⁸ Florida, for example, punishes any person who

- knowingly compiles, enters into, or transmits by means of computer
- makes, prints, publishes, or reproduces by other computerized means
- knowingly causes or allows to be entered into or transmitted by means of computer or
- buys, sells, receives, exchanges, or disseminates

any information about a minor for the purpose of encouraging or soliciting sexual conduct with a minor or the visual depiction of such conduct.³⁰⁹ The statute also provides that the defendant cannot use as a defense that a law-enforcement officer was involved in the detection or investigation of the crime.³¹⁰ Furthermore Florida makes it unlawful for an owner or operator of a computer online, Internet, or local bulletin-board service to knowingly permit a subscriber to use the service to commit child-pornography offenses.³¹¹

Distribution of Child Pornography

There are three types of state distribution statutes. They are distribution, possession with intent to distribute, and distribution to a minor. Some states include distribution with either their production or possession provisions. In addition distribution statutes can be distinguished by whether they require that the dissemination or distribution be for a commercial purpose. Minnesota, for instance, only prohibits dissemination of child pornography for profit.³¹² Oklahoma, in contrast, prohibits both commercial and noncommercial distribution as well as providing information on how child pornography can be obtained.

Every person who, with knowledge of its contents, sends, brings, or causes to be sent or brought into this state for sale or commercial distribution, or in this state prepares, sells, exhibits, commercially distributes, gives away, offers to give away, or has in his possession with intent to sell, commercially distribute, exhibit, give away, or offer to give away any...child pornography or gives information stating when, where, how, or from whom, or by what means...child pornography can be purchased or obtained...shall be [imprisoned, fined, or both].

With the increased use of computers to distribute child pornography, much of the traffic crosses state lines. While federal laws cover interstate transmission of child pornography, several states have enacted statutes to address material that is illegally brought into their state. Washington is an example—its statute prohibits sending or bringing child pornography into the state for sale or distribution.³¹³ As mentioned earlier, some states have also enacted specific provisions to address child pornography distributed by computer or over the Internet. For instance Georgia’s computer pornography statute also prohibits electronically furnishing child pornography by computer.³¹⁴

Possession of Child Pornography

Possession of child pornography is illegal in the vast majority of states, and the prohibitions can include both simple possession (for personal use) or possession with intent to distribute. Minnesota has included in its possession statute the policy, as noted below, behind its prohibition.

It is the policy of the legislature in enacting this section to protect minors from the physical and psychological damage caused by their being used in pornographic work depicting sexual conduct [that] involves minors. It is therefore the intent of this legislature to penalize possession of pornographic work depicting sexual conduct [that] involves minors or appears to involve minors in order to protect the identity of minors who are victimized...and to protect minors from future involvement...³¹⁵

Minnesota’s statutory definition of “pornographic work” closely tracks the language of the federal Child Pornography Prevention Act.³¹⁶ As a result, application of Minnesota’s prohibition on possession of such virtual child pornography is subject to any court decisions concerning the constitutionality of the “appears-to-be” language as challenged in *The Free Speech Coalition v. Reno*.³¹⁷

Minnesota specifically prohibits possession of a “pornographic work or a computer disk or computer or other electronic, magnetic, or optical storage system or a storage system of any other type, containing a pornographic work, knowing or with reason to know its content and character.”³¹⁸

Texas also prohibits knowingly or intentionally possessing visual depictions of a child engaging in sexual conduct who is younger than 18 at the time the image was made.³¹⁹ The statute carries a presumption that a person who possesses six or more identical visual depictions possesses the material with the intent to promote it.³²⁰

Alabama, likewise, includes both a prohibition against possession of any obscene material containing a visual reproduction of a child and provision that possession of three or more copies of the same obscene material is prima-facie evidence of possession with intent to disseminate.³²¹ The number of copies required to show an intent to distribute varies among the states. Possession of more than three identical copies of material creates a presumption of commercial purpose in Colorado³²² while Maine requires at least 10 copies.³²³ Alaska requires 100, but they do not need to be identical images.³²⁴

The number of copies may also determine the number of charges depending on whether simple possession or possession-with-intent-to-distribute statutes apply. For instance, in Florida, a defendant in possession of three or more copies of the same article of child pornography

may only be prosecuted for a single count of possession with intent to promote,³²⁵ but a defendant in possession of several copies of the same photograph could be convicted for simple possession of each article.³²⁶

Massachusetts prohibits not only possession but also the knowing purchase of child pornography,³²⁷ while New Jersey also prohibits knowingly viewing child pornography on the Internet.³²⁸ In addition Nebraska has a unique provision that includes children as portrayed observers in its possession statute, making it “unlawful for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct [that] has a child as one of its participants or portrayed observers.”

Distribution of Material Harmful to Minors

Thirty states prohibit the distribution or display of materials that are either obscene or harmful to minors.³²⁹ The material distributed to the minor need not be child pornography. South Carolina defines “harmful-to-minors” as “that quality of any materials or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the...characteristics [noted below.]

- the average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex
- the average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors
- to a reasonable person the material or performances taken as a whole lacks serious literary, artistic, political, or scientific value for minors³³⁰

Distributing or displaying obscene or harmful materials to a minor can include displaying pornographic magazines without a “blinder rack” or wrapper over the lower two-thirds of the magazine cover³³¹ or admitting minors to public displays of sexual conduct such as obscene films in an outdoor theater.³³² Wisconsin also prohibits intentionally causing a child to view or listen to sexually explicit conduct if the viewing or listening is for the person’s own sexual arousal or gratification or humiliation or degradation of the child.³³³ Kentucky further prohibits using minors to distribute child pornography.³³⁴

Statutes prohibiting distribution of material harmful to minors, however, have received increased scrutiny when states have amended their statutes to include images sent over the Internet. A US District Court judge in Virginia recently blocked a state law designed to protect children from viewing harmful material on the Internet ruling that the statute violates the First Amendment rights of Internet users and providers.³³⁵ An Oregon Court of Appeals made a similar ruling based on the state constitution’s free-speech protections. It suggested the legislature could remedy the statutory defect because, under a separate state Supreme Court ruling on child pornography, it was permissible to regulate such “speech” as long as the law focused on its harmful effects rather than its offensive content.³³⁶ California has narrowly tailored its statute, which makes it unlawful to send sexual messages electronically to seduce a minor, to overcome such challenges. The statute requires proof that the transmission was intended to seduce someone the sender knew, or should have known, was a minor.³³⁷

Involvement of Parents

At least 44 states have some version of a parental knowledge or consent statute. Alabama's statute provides a typical example. Any parent who knowingly permits or allows their child, ward, or minor dependent to engage in the production of obscene material containing a visual reproduction of the child engaging in sexual conduct is guilty of a felony.³³⁸

Vermont's statute reads, "No person who is the parent, legal guardian, or custodian of a child may, with knowledge of the character and content, consent to the participation of that child in a sexual performance or a performance including a lewd exhibition of the genitals by that child."³³⁹ Furthermore in Vermont, as well as in several other states, consent of the minor's parent or guardian cannot constitute a defense in another person's prosecution.³⁴⁰

While these states choose to specifically assert the criminal liability of parents for involving or allowing their children to be used in child pornography, there is nothing in the other states' statutes to prevent enforcement of child-pornography laws against parents.

Reporting by Processing Labs

A number of states have provisions in their statutes requiring processing labs to report child pornography. In general, failure to report violations are misdemeanor offenses. For example Iowa requires

A commercial film and photographic print processor who has knowledge of or observes, within the scope of the processor's professional capacity or employment, a film, photograph, [videotape], negative, or slide which depicts a minor whom the processor knows or reasonably should know to be [younger than the age of 18], engaged in a prohibited sexual act or in the simulation of a prohibited sexual act, shall report the depiction to the county attorney immediately or as soon as possible.... The processor shall not report...depictions involving mere nudity of the minor, but shall report depictions involving a prohibited sexual act. This section shall not be construed to require a processor to review all films, photographs, [videotapes], negatives, or slides delivered to the processor within the processor's professional capacity or employment.³⁴¹

Oregon makes failure to report a misdemeanor.

A person commits the crime of failure to report child pornography if the person, in the course of processing or producing a photograph, motion picture, videotape[,] or other visual recording, either commercially or privately, has reasonable cause to believe that the visual recording being processed or produced, or submitted for processing or production, depicts sexually explicit conduct involving a child and fails to report that fact to the appropriate law[-]enforcement agency.³⁴²

Violation of Arizona's duty to report, however, is a felony.³⁴³ Oklahoma imposes a duty on commercial film and photographic print processors to report by telephone but also requires a written report within 36 hours of receiving information concerning the incident.³⁴⁴

Affirmative Defenses

A number of states provide affirmative defenses to child-pornography charges. An affirmative defense requires the defendant to assert the defense in pleadings.³⁴⁵ For instance the defendant can claim that the person depicted was not a minor at the time the image was produced and the visual image is therefore not child pornography. As an example Minnesota provides an affirmative defense that the pornographic work was produced using only persons who were 18 years of age or older.³⁴⁶

Alternatively the defendant can claim he or she reasonably believed the child was older than the age prescribed in the statute (*i.e.*, a mistake-of-age defense). For example Arkansas provides an affirmative good-faith defense that the defendant reasonably believed the person depicted engaging in the sexual conduct was 17 years of age or older.³⁴⁷ Vermont requires that the defendant not only reasonably believed and had a factual basis to conclude that the child was of age, but he or she also did not rely solely on any oral representation made by the child as to his or her age.³⁴⁸ Hawaii, furthermore, provides that the fact a person who appears in the pornographic material was a minor when it was produced is prima-facie evidence that the defendant knew the person was a minor.³⁴⁹

The prosecution must prove the defendant knew the child's age when the modifier "knowingly" is included in the statute and refers to all elements of the offense. If a statute does not include knowledge of the child's age as an element of the offense, a reasonable mistake-of-age defense could be available unless the state explicitly prohibits it.³⁵⁰ While 16 states provide a mistake-of-age defense, several including Minnesota and South Carolina expressly preclude it. Minnesota simply states that mistake as to the minor's age is not a defense to a charge of use of minors in a sexual performance.³⁵¹ South Carolina rules out a mistake-of-age defense to charges of sexual exploitation or employing a minor to appear in a state of sexually explicit nudity.³⁵² South Carolina does, however, provide a mistake-of-age defense to charges of disseminating harmful material to minors if the defendant requested and received some form of identification verifying proof of age and the defendant reasonably believed the minor was of age.³⁵³

Many states provide presumptions or inferences as to age. Alabama, for instance, does not require the prosecution to introduce into evidence a birth certificate or testimony as to the depicted person's age but permits the jury to infer the age from the factors noted below.

- general body growth and bone structure of the person
- development of pubic hair or body hair on the person
- development of the person's sexual organs
- context in which the person is placed by any accompanying printed or text material
- any expert testimony as to the degree of maturity of the person³⁵⁴

Another approach, used by Rhode Island, creates a rebuttable presumption of minority upon the testimony of a physician. The prosecution can present testimony by a duly authorized physician that he or she is of the opinion, based on the physician's examination of the child pornography, that the depicted person is younger than 18 years of age to a reasonable medical certainty.³⁵⁵ The correct use of such expert testimony, including a physician's knowledge of sexual maturation, may have important implications in the application of these statutory provisions.³⁵⁶

North Dakota provides two additional defenses. They are the

- materials or performance involved was disseminated or presented for a bona-fide medical, scientific, educational, religious, governmental, judicial, or other appropriate purpose by or to a physician, psychologist, scientist, teacher, person pursuing bona-fide studies for research, librarian, member of the clergy, prosecutor, judge, or other person having a similar interest in the material or performance³⁵⁷ or
- defendant had no financial interest in promoting a sexual performance by a minor, other than employment in a theater, which employment does not include compensation based upon any proportion of the receipts arising from promotion of the sexual performance, and that person was in no way responsible for acquiring the material for sale, rental, or exhibition³⁵⁸

Texas also provides two additional defenses to charges involving sexual performance of a child. They are that the defendant was the spouse of the child at the time of the offense,³⁵⁹ or the defendant is not more than two years older than the child.³⁶⁰ Several states also provide additional affirmative defenses to distribution of harmful materials to a minor. They are that the sale, distribution, or exhibition was for a scientific or education purpose or a consenting parent or guardian accompanied the minor.³⁶¹ Some also provide a defense if the defendant took some action to prevent access by the minor such as requiring a credit card or access code.³⁶²

Sentencing

Defendants are subject to higher penalties based on the degree of the crime charged. For instance possession of child pornography with the intent to distribute is often a higher-grade felony than simple possession.³⁶³ Some states increase the grade or degree of the offense for younger children (*i.e.*, the younger the child, the greater the offense).³⁶⁴ In addition grades often increase for subsequent offenses.³⁶⁵ Charging higher-grade offenses increases the available sentence.

Sentencing issues that arise after conviction include calculating offender scores under state-sentencing guidelines and whether separate offenses were part of the same criminal conduct. The court also needs to determine whether aggravating factors such as multiple victims or the young age and vulnerability of the victims apply. Defendants convicted of child pornography offenses also may be subject to sex-offender registration or community-notification laws.³⁶⁶

Forfeiture Prosecutors should look at state-forfeiture statutes allowing seizure of property—such as photographic developing or copying equipment—used in criminal activities especially for cases involving production or distribution of child pornography. For example Alabama’s statute states that “any article, equipment, machine, materials, matter, vehicle, or other thing whatsoever used in the commercial production, transportation, dissemination, display[,] or storage of any obscene matter displaying or depicting a person [younger than] the age of 17...shall be contraband and...forfeited to the state of Alabama.”³⁶⁷

Virginia also allows for seizure and forfeiture of all property used in connection with production, distribution, publication, sale, possession with intent to distribute or to make child pornography.³⁶⁸ Convicted Illinois offenders forfeit any profits as well as property.³⁶⁹ In Texas

the state Court of Appeals has found that forfeitable “criminal instruments” are not limited to objects that could be used only for criminal purposes. In that case a computer had been specially adapted with programs and image files to facilitate promotion of child pornography. The computer and accessories were all subject to forfeiture even though the obscene data could be easily deleted from the hard drive and other storage media.³⁷⁰

At least 13 states have forfeiture provisions under their child-pornography statutes;³⁷¹ however, general forfeiture statutes may also apply.

Restitution and Civil Causes of Action Restitution to the victim is often part of sentencing. When a child victim has been identified and located, prosecutors can recommend that the defendant, as part of the sentence, pay the victim’s medical or counseling expenses.³⁷² Victims also should be encouraged to take advantage of victim-assistance services available through the court. And, where applicable, they should be made aware of civil causes of action they can file to recover for damages suffered as a result of their victimization.

Minnesota, for instance, has a cause of action for injury caused by the use of a minor in a sexual performance.³⁷³ The cause of action can be brought against a person who promotes, employs, uses, or permits a child to be used, posed, or modeled alone or with others in a sexual performance. New Jersey also has civil cause of action for victims of child pornography.³⁷⁴ The statute allows recovery of three times the financial gain of the defendant from the child-pornography activities as well as full costs and reasonable attorneys’ fees.

National Laws and International Treaties, Conventions, and Programs

While state and federal laws prohibit certain child-pornography-related activities in the United States, the production and distribution of child pornography is a global danger to children. Major child pornography markets exist throughout North America and Western Europe, Eastern Europe has emerged as a new market, and Asia is an area of great concern regarding transnational trafficking of children for sexual purposes.³⁷⁵

Most countries already have laws against the sexual abuse of children, including child pornography, although these national laws vary considerably.³⁷⁶ Child pornographers increasingly use advanced technologies such as the Internet; however, most countries have not yet addressed computer transmission of child pornography in their laws. Child pornography therefore continues to be a significant problem.

National Laws

Often the countries where laws against child pornography are weak or not strictly enforced become “source countries.” These are countries in which large amounts of child pornography are produced to supply the demand from abroad. Other countries must address the larger number of recipients and distributors of child pornography within their borders. In the wake of the United Nations Convention on the Rights of the Child, discussed below, many countries recognized that weak child-pornography laws and lax enforcement do not adequately protect children and have strengthened their responses in recent years.³⁷⁷ Mexico, for instance, now categorizes crimes related to child pornography as “grievous.”³⁷⁸ Yet not every country outlaws all three offenses of production, distribution, and possession.

Japan, as an example, enacted the Law for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children in 1999³⁷⁹ in response to reports that 80 percent of the child pornography distributed worldwide is made in that country.³⁸⁰ The new law makes it illegal to produce, distribute, or sell child pornography, yet it does not make possession a crime. Those who display child pornography on the Internet also face imprisonment of up to three years.³⁸¹ In the first three months after the law went into effect, 22 Japanese men were arrested for violations of the pornography prohibitions.³⁸² In addition a trade organization of Internet providers developed guidelines to curb child pornography under which the providers can warn, delete materials, or suspend service to those who put illegal materials on the Internet.³⁸³

Even when statutes prohibit all three offenses, certain provisions may be open to challenge. Ruling on a case that challenged Canada's 1993 federal law banning possession of child pornography, the Supreme Court of Canada recently upheld the constitutionality of the ban on possession but carved out two exceptions for expressive material privately created and kept by the accused.³⁸⁴ The law's bans on production and distribution of child pornography were upheld by lower courts and not challenged in the Supreme Court case.³⁸⁵

The defendant challenged the possession prohibition on constitutional grounds of freedom of expression and liberty. While he conceded that the prevention of harm to children might justify limitations on these freedoms, he argued that the statute in question is too broad because it catches material that poses no risk of harm to children.

After a detailed review of the constitutional questions raised by the appeal, the Canadian Supreme Court found the law "substantially constitutional and peripherally problematic."³⁸⁶ It ruled that the appropriate remedy would be to read into the law two exceptions for the possession of

- self-created expressive material (any written material or visual representation created by the accused alone and held by the accused alone exclusively for his or her own personal use)
- private recordings of lawful sexual activity (any visual recording, created by or depicting the accused, provided it does not depict unlawful sexual activity and is held by the accused exclusively for private use)³⁸⁷

The Canadian Supreme Court stressed that courts should make these determinations objectively on a case-by-case basis. Were a defendant to hold such materials for any purpose other than personal use, their possession would fall outside the exceptions and fully within the prohibition of the statute including possibly manufacturing and distribution offenses.³⁸⁸

The European Union

Progress and increased attention to child pornography is also evident in the European Union. The European Parliament recently voted 453 to 1 in favor of proposals to create a pan-European register of child sex offenders; introduce laws in each member state for prohibitions against participation in or the production, sale, distribution, or trafficking of pornographic images of children; and increase coordination of laws and sharing of information and law-enforcement expertise through the international law-enforcement service Europol.³⁸⁹ The report, containing the proposals noted below, stresses that

- member states must encourage users of the Internet to inform relevant authorities (*i.e.*, law enforcement when they find child pornography)
- member states should facilitate the detection and investigation of offenses by establishing specialized law-enforcement units staffed around the clock by qualified persons
- member states should ensure that law-enforcement authorities intervene quickly and cooperate fully among themselves
- member states should make necessary changes to and regularly reassess their penal codes based on technological developments
- Europol must be informed of all reported cases³⁹⁰

In addition to increased scrutiny of national laws, numerous treaties, United Nations (UN) conventions and programs, and other international initiatives address the commercial sexual exploitation of children. All attest to the importance placed on eradication of child pornography by the international community. Unfortunately the international instruments have varying degrees of enforceability and often rely entirely on the voluntary cooperation of nations.

United Nations Charter-Based Mechanisms

United Nations charter-based mechanisms, which bind all UN members,³⁹¹ include the UN Commission on Human Rights, its Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the Working Group on Contemporary Forms of Slavery.

In 1989 the Working Group began an investigation into the sale of children, child prostitution, and child pornography. In 1990 the Commission on Human Rights appointed a Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography to monitor and assess the current status of nations regarding these matters worldwide and make specific recommendations for action. The Special Rapporteur receives information from member countries and submits annual reports to the Commission on Human Rights containing general and specific recommendations for consideration by UN bodies, states, and national organizations.

These efforts culminated in the Programme for Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, adopted by the UN Commission on Human Rights in 1992.³⁹² The Programme calls for better cooperation among law-enforcement agencies including INTERPOL, information and education about child pornography, increased penalties for offenders, and increased international cooperation on all levels.³⁹³ In addition the Commission on Human Rights in 1994 set up a special session of the Working Group to examine drafting a convention specifically on the sale of children, child prostitution, and child pornography.³⁹⁴

International Conventions and Covenants

The International Labor Organization (ILO) has several conventions addressing forced labor including the sexual exploitation of children. These include the Forced Labor Convention (No. 29) of 1930, later reinforced by the Abolition of Forced Labor Convention (No. 105) of 1957,³⁹⁵ and the International Program on the Elimination of Child Labour (IPEC), a group whose mandate includes efforts to end child pornography.³⁹⁶

In June 1999, in conjunction with the IPEC, the ILO General Assembly unanimously approved a Convention Concerning the Worst Forms of Child Labor (No. 182) designed to prevent work which, by its nature or circumstances, is likely to harm the health, safety, or morals of children.³⁹⁷ Convention 182 specifically deplores the involvement of children in the production of pornography and pornographic performances. The United States was active in supporting its development³⁹⁸ and one of the first countries to ratify the Convention.

The UN Convention on the Rights of the Child

A significant international instrument is the 1989 United Nations Convention on the Rights of the Child (UNCRC). The Convention expressly condemns the sexual exploitation of minors in prostitution, pornography, and illegal sexual practices.³⁹⁹ Despite the United States' failure to ratify the Convention (it became a signatory in 1995), the UNCRC enjoys universal support around the world—191 nations are parties to its terms.⁴⁰⁰

Under Article 1 of the UNCRC, a child is defined as every person younger than 18 unless majority is obtained earlier under national law. Article 19 protects children from all forms of abuse, neglect, and exploitation by parents and others and obligates states to undertake prevention and treatment programs to this end. Most importantly Article 34 specifically requires states to protect children from sexual exploitation and abuse including involvement in pornography.

The UNCRC established a Committee on the Rights of the Child for the purpose of monitoring the progress of the parties who must make periodic reports to the Committee. The Committee, however, lacks authority to receive petitions from states or individuals alleging violations of the Convention, and the Convention offers no remedies.⁴⁰¹ Despite these limitations, the Committee is useful to nongovernmental children's rights organizations as an international framework through which they can more effectively pursue their agenda, and the Convention helps establish a uniform international standard.⁴⁰²

In addition to the UNCRC, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography draws special attention to sexual-exploitation issues. Adopted through the UN Economic & Social Council on March 26, 2000,⁴⁰³ the Optional Protocol calls on party states to cooperate with other states to further the prevention, detection, prosecution, and punishment for crimes of sexual exploitation of children.⁴⁰⁴ As adopted the Optional Protocol is open for signature and subject to ratification or accession by any state that is either a party to the Convention or has signed it. Thus, as a UNCRC signatory, the United States may sign and ratify the Protocol even though it has not ratified the Convention itself.⁴⁰⁵

Article 3(1) of the Protocol provides that states agree to pass national legislation making certain offenses illegal regardless of whether they are committed domestically or transnationally or on an individual or organized basis. Included among these offenses are specific provisions for the production, distribution, dissemination, import, export, offer, sale, or possession of child pornography.⁴⁰⁶

First World Congress Against Commercial Sexual Exploitation of Children

Programs and initiatives under the auspices of international organizations help raise the level of awareness regarding child sexual exploitation worldwide and promote action on both national and international levels. In 1996 the First World Congress Against Commercial Sexual Exploitation of Children was convened in Stockholm, Sweden, as a forum to develop strategies for an international response. The Congress was organized by End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes International (ECPAT International) and hosted by the government of Sweden in collaboration with the United Nations Children's Fund (UNICEF) and the Group for the Convention on the Rights of the Child, a nongovernmental organization (NGO).

The World Congress adopted a Declaration and Agenda for Action that calls upon states to

- accord high priority to action against the commercial sexual exploitation of children and allocate adequate resources to the effort
- promote stronger cooperation between states and all sectors of society and strengthen the role of families
- criminalize the commercial sexual exploitation of children
- condemn and penalize the offenders while ensuring the child victims are not penalized
- review and revise laws, policies, programs, and practices
- enforce laws, policies, and programs
- promote adoption, implementation, and dissemination of laws, policies, and programs against the sexual exploitation of children
- develop and implement comprehensive, gender-sensitive programs to protect and assist child victims and facilitate their recovery and reintegration into society
- create a climate to ensure parents and others protect children
- mobilize political and other partners, national and international communities including NGOs and intergovernmental organizations (IGOs) to assist other countries in elimination of commercial sexual exploitation of children
- enhance popular participation including that of children⁴⁰⁷

The Agenda for Action highlights existing international commitments, identifies priorities for action, and assists in the implementation of relevant international instruments. It calls for action from governments; all sectors of society; and national, regional, and international organizations against the commercial sexual exploitation of children. As a follow-up to the First World Congress, the Japanese government, in collaboration with UNICEF, ECPAT, and the NGO Group for the Convention on the Rights of the Child, will host the Second World Congress in Yokohama, Japan, in December 2001.

The combination of these various international efforts aimed at eradicating the commercial sexual exploitation of children brings increased attention to the issues, heightens public awareness, and places greater international pressure on governments to take definitive action.

Investigating Child Pornography Cases: Policy and Practice Issues

Conducting Proactive Investigations

The law-enforcement response to child pornography must reflect the realities of its evolving character. The production, dissemination, and possession of child pornography has changed dramatically over the past several years especially with the increased accessibility created by the Internet, world wide web, and other technologies.

Investigators must know not only their own state laws but also be familiar with federal statutes and the possibility of dual prosecution. In fact some state laws may be more restrictive than the federal law, and in other states federal charges will carry a greater penalty. Investigators must be aware of the different statutory definitions and how they apply. In Texas, for instance, the age of consent for sexual conduct is 16 while the child pornography law covers visual depictions of children younger than 18. Thus an adult offender may not be criminally prosecuted for sexual conduct with a 16-year-old, but if he took photographs or videotape of the sexual conduct, he may possibly be charged under the possession statute.⁴⁰⁸ Similar nuances may exist in other states.

Investigators should understand that child pornography does not exist “in a vacuum.”⁴⁰⁹ There are real victims involved even though not all collectors of child pornography molest children and not all children in child pornography have been sexually abused. That is, some children are photographed without their knowledge while dressing, undressing, or engaged in normal activities. Yet depending on how the offender uses the material, all these children can be considered exploited.⁴¹⁰

Investigators must therefore be knowledgeable about the dynamics of exploitation. Specialized training of individual officers or, to the extent resources allow, specialized units within a department to investigate child-pornography cases can help accomplish this goal. In addition multidisciplinary, multijurisdictional teams are essential to a coordinated, informed response.⁴¹¹

Furthermore investigators may come across child pornography in the investigation of another crime such as sexual abuse. When this occurs it is important to identify any additional victims and examine the child pornography to determine whether it corroborates the victim’s account in any way. Officers should also investigate thoroughly when pornography, alcohol, or drugs are made available to children.⁴¹² Again, understanding the dynamics of sexual exploitation can aid such an investigation. For instance adolescent boys are likely to deny certain types of sexual activity, and, even when they do disclose, the information may be incomplete or minimize their involvement.⁴¹³ In fact some children may never disclose or their disclosures may be delayed, partial, accidental, or initiated by someone else.⁴¹⁴

The criminal-justice system should support the children who testify against offenders in court. Staff members should be specially trained in interview techniques with child victims and implement interview protocols. Investigative interviews are critical to case success. Not only do they require specialized training, but they must also be legally defensible (*e.g.*, no leading questions) and developmentally appropriate for that child.⁴¹⁵ Child interviews is another area in which a multidisciplinary approach can produce a more effective response.

Seized child pornography may help guide the forensic interview of a child or serve to bolster his or her testimony about other sexual offenses. Even if no known pornography exists, investigators should routinely ask children they interview whether anyone took their picture.⁴¹⁶ Investigators should also ask when the photographs or videotapes were made, when the victim last saw them, where exactly the victim saw them, and how they were marked or packaged.⁴¹⁷

Well-trained staff members can employ additional proactive investigative techniques. For instance officers can contact photolabs or computer repair shops that may encounter child pornography in the course of their business.⁴¹⁸ Such businesses should be encouraged to comply with any laws requiring them to report child pornography to local law enforcement or voluntarily establish a reporting policy. On a more general level law enforcement should proactively seek increased training, funding, and legislative change.⁴¹⁹

Obtaining and Executing Search Warrants

Before any of the federal or state child-pornography statutes can be applied, the criminal investigation must identify the evidence to support the charges. Such evidence can also corroborate the victim's account, identify other victims or offenders, uncover other crimes, or provide additional information about the offender.⁴²⁰ Investigators should therefore obtain the offender's consent to search his premises and belongings whenever possible and obtain a search warrant.⁴²¹ In addition a noncustodial, nonconfrontational interview of the subject during execution of the warrant may lead to additional valuable information.⁴²² Through skilled interrogations most offenders will confess.⁴²³

Knowledge of the laws governing search and seizure of evidence is essential in child-pornography investigations. Probable cause to search a suspect's home or office may often exist long before probable cause to arrest, and any delay in obtaining evidence may result in its destruction.⁴²⁴ Legal requirements and procedures for preparing search warrants may vary among jurisdictions, so investigators and prosecutors should work together to ensure their legal sufficiency.⁴²⁵ Furthermore certain federal statutes that apply to investigators' conduct, especially those related to search and seizure of computers, may impose civil liability on the officers or their agency if mistakes are made.⁴²⁶

Investigators also need specialized training on the use of computers in child-pornography cases especially legal considerations in obtaining search warrants, the proper handling of computer equipment and stored communications, and the use of privileged and confidential communications.⁴²⁷ Investigators should identify experts and other resources to assist them in cases involving computers. While child-pornography cases involving computers present many challenges, they also present an opportunity to uncover important corroborative and other evidence.⁴²⁸

A search warrant may be used to obtain photographs, negatives, undeveloped film, videotapes, or movies as well as cameras, developing and printing equipment, or computers. If the child victim has been identified, a search warrant may also cover personal items the child left with the suspect, weapons or other implements used to threaten the child into participating, or toys or other items the child saw or played with while with the suspect.⁴²⁹ Any evidence may be a proper target of a search warrant if it corroborates the criminal conduct of the suspect.

Legal staleness of probable cause should also be addressed.⁴³⁰ Depending on the circumstances of the case, and the known characteristics of technology and human behavior, probable cause about information on a computer may not be considered stale for over a year.⁴³¹ People do not delete information from computers on a regular basis and may not even effectively delete it when they do.⁴³² When investigators do need to address staleness, additional investigation and information may suffice to “freshen” the probable cause.⁴³³

Specific items to consider in child-pornography searches include

- any correspondence concerning either adult or child pornography including E-mails, Internet chats, and similar communications
- telephone listings, address books, mailing lists, or other records of communications concerning adult or child pornography
- books, magazines, photographs, slides, negatives, films, videotapes, and similar items of adult or child pornography
- video and all other equipment used to view, duplicate, or produce obscene material or pornography
- photographs, albums, or drawings of children whether clothed or unclothed
- computer data including floppy diskettes, fixed hard drives, tapes, modems, laser disks, CDs, zip drives, and other media that can store magnetic coding or data
- computer hardware including computer components, computer peripherals, word-processing equipment, and other electronic devices
- computer software including operating systems, application software, utility programs, and other programs used to communicate via telephone lines, radio, or other means of transmission
- instructional manuals including any written materials for operation of computer systems, computer software, or related devices
- any keys or access mechanisms for safe-deposit boxes, storage units, or utility sheds⁴³⁴

In executing a warrant, investigators should keep careful records of where specific materials were found, perhaps even videotaping or photographing the search.⁴³⁵

Officers also should be aware of variations in technology and identifying markers that may affect their ability to identify evidence. For instance some offenders, especially those who may have lived overseas, save video child pornography in Phase Alternation Line (PAL) format not Vertical Helix Scan (VHS). A PAL VCR would therefore be required to view it.⁴³⁶ Child pornography also may be found within commercial adult pornographic or nonpornographic videotapes,⁴³⁷ or the offender may have reversed the reels of the videotape.⁴³⁸

In addition photographs or film may have identifying markers that assist the investigation. The production code number on the back of an instant photograph can establish when the film was produced. This may be helpful in determining the age of a child at the time the photograph was taken or in applying the statute of limitations. For instance if the defendant claims that the statute of limitations has run on the offense, a recent production code can establish that the film was produced within the time limit.⁴³⁹

One type of search warrant that may be helpful in cases involving child pornography is the “expert search warrant.” Such warrants use an expert’s opinion on behaviors in which child sex offenders repeatedly engage and apply the information to the targeted individual.⁴⁴⁰

When the warrant is based on the suspect being a certain type of preferential sex offender, the affidavit for the warrant must set forth the probable cause for believing the suspect is that particular type.⁴⁴¹

Expert search warrants are particularly helpful when investigators are faced with problems of “staleness” of the information supporting probable cause to search as described above. The affidavit from the expert can convey the knowledge that certain types of offenders treat their materials as valuable commodities and keep their child pornography in secure but accessible places for long periods of time.⁴⁴² Court decisions on expert search warrants are inconsistent, however, and they should be used only when absolutely necessary.⁴⁴³ The warrants should be factually specific and directly relevant to the suspect and his behavior.⁴⁴⁴

There are some circumstances, however, in which a search warrant is not necessary. The exceptions to search warrant requirements include⁴⁴⁵

- **exigent circumstances.** Exigent circumstances may justify a warrantless search when the law-enforcement officer reasonably believes evidence is about to be destroyed. For instance if a suspect’s computer screen is displaying incriminating evidence, the officer may seize the computer and then obtain a search warrant. If, however, there is sufficient time to obtain a warrant and the officer fails to do so, the evidence may be suppressed. In determining whether exigent circumstances exist, law enforcement should consider the degree of urgency; the amount of time necessary to obtain a warrant; the possibility of danger at the site to law enforcement, individuals, or suspects; whether evidence is about to be removed or destroyed and its destructibility; and information indicating the suspects know a search is imminent.⁴⁴⁶
- **plain-view exception.** A search warrant is not necessary if a law-enforcement officer is in a lawful position to observe the evidence and its criminal nature is immediately apparent.
- **consent exception.** Law enforcement may conduct a warrantless search, even without probable cause, if a person with appropriate authority gives either implied or expressed consent. The voluntariness of the consent may hinge on the age of the person consenting; his or her intelligence, educational level, and mental and physical condition; and whether the person has been advised of his or her right to withhold consent.⁴⁴⁷
- **border exception.** This exception stems from the government’s authority to prohibit illegal contraband from entering the country across international borders. A search may be conducted at the border when people or property cross the border or its “functional equivalent;”⁴⁴⁸ however, this exception does not apply once the contraband is in the country and probably would not apply to electronic data transmitted via the Internet or other electronic communication. As a result law enforcement could not search, without a warrant, the computer of an individual in the United States who downloads child pornography from a foreign bulletin-board service under the border exception.⁴⁴⁹

Model Law-Enforcement Responses to Child Pornography

Child sexual exploitation, and especially the trafficking of child pornography, requires specialized investigative responses. Several national and state law-enforcement agencies and programs are dedicated to the full-time receipt of reports or investigation of child sexual exploitation.

NCMEC's CyberTipline

One national resource is the National Center for Missing & Exploited Children's CyberTipline (www.cybertipline.com). NCMEC serves as a national clearinghouse and resource center for law-enforcement agencies investigating child sexual exploitation. NCMEC maintains a 24-hour Child Pornography Tipline (1-800-843-5678) as well as the extensive online reporting service through its CyberTipline. Both are staffed full-time by NCMEC's Exploited Child Unit (ECU).⁴⁵⁰ Created by congressional mandate the CyberTipline handles leads from individuals reporting the sexual exploitation of children. As of December 1999 electronic communication service providers, such as Internet service provider America Online, must also report all child pornography to the CyberTipline which then forwards such information to the designated law-enforcement agencies.⁴⁵¹ Through February 2001 the CyberTipline has received more than 37,000 child-pornography leads.⁴⁵²

The CyberTipline receives leads in the five basic areas of child sexual exploitation noted below.

- the possession, manufacture, and distribution of child pornography
- online enticement of children for sexual acts
- child prostitution
- child sex tourism
- child sexual molestation outside the family⁴⁵³

Each lead submitted to the CyberTipline is initially prioritized based on degree of danger. It is then referred to an ECU analyst for further review. The ECU analyst assesses the information provided and adds value to the lead by performing such work as electronically visiting the site of the incident or conducting searches on the subject in question. Once this preliminary review is complete the ECU analyst prepares a report that may be accessed by several law-enforcement groups including the FBI, US Customs Service, US Postal Inspection Service, and local law-enforcement agencies nationwide when applicable.⁴⁵⁴

NCMEC's ECU also offers technical assistance and consultation to law-enforcement agencies working on child-sexual-exploitation cases. It has developed specialized training programs, materials, and curricula designed for law-enforcement personnel. It also provides extensive referrals serving as a source of contacts for statewide, national, and global investigations. Additionally the ECU has produced general educational material on Internet-related child sexual exploitation including guidelines for parents and young children, tips for teenagers, and information on prevention resources.⁴⁵⁵

United States Customs Service United States Department of Treasury

The United States Customs Service targets the illegal importation and trafficking of child pornography and combats child sex tourism.⁴⁵⁶ Through the Customs CyberSmuggling Center (C3), the Customs Service acts as a front line of defense against smuggling over “traditional” borders as well as smuggling facilitated over the Internet. The new C3, housed in northern Virginia, aggressively targets importers, distributors, and purveyors of child pornography to prevent sexual exploitation of children in the US and abroad.⁴⁵⁷ It maintains a reporting link to NCMEC on the US Customs web page (www.customs.treas.gov), a telephone reporting line, and also acts on tips from callers reporting web sites, individuals, servers, or chat rooms trafficking in suspected child pornography as well as instances of child sex tourism.

The C3 Child Exploitation Unit (CEU) combats the illegal importation and proliferation of international child pornography and sex tourism. The Office of Investigations established the C3 to more effectively focus Customs resources on Internet crimes. The C3 brings together all Customs Service resources dedicated to the investigation of international criminal activity conducted on or facilitated by the Internet. C3 combats the diverse ways in which offenders download, possess, and distribute child pornography by continually training personnel and upgrading their law-enforcement techniques. C3 acts as a clearinghouse and directs investigations to applicable areas within the US and internationally. It further coordinates and spearheads larger, more complex investigations.

Established in 1997, C3 facilitated a renewed collaboration on child sexual exploitation over the Internet with the National Center for Missing & Exploited Children through the CyberTipline. US Customs, in conjunction with the C3, links NCMEC’s CyberTipline reporting mechanism onto the US Customs web site. C3’s CEU reviews appropriate tips from NCMEC and further investigates those under Customs jurisdiction relating to child pornography and sex tourism.

United States Postal Inspection Service

The United States Postal Inspection Service is the federal law-enforcement arm of the US Postal Service with responsibility for investigating crimes involving the US Mail including all child pornography and child-sexual-exploitation offenses. It gives priority attention to the mailing of child pornography and serves as a lead agency in the federal government’s effort to eliminate the production and distribution of such material. It also works with local law enforcement nationwide to assist their efforts to investigate and prosecute individuals who are sexually exploiting children.

Since enactment of the federal Child Protection Act of 1984, postal inspectors have conducted more than 3,500 child-exploitation investigations resulting in the arrest of more than 3,000 child molesters and pornographers. Internationally the Postal Inspection Service plays an important role in INTERPOL’s Standing Working Party on Offenses Against Minors⁴⁵⁸ by providing training on child sexual exploitation to delegates from other countries.

The Postal Inspection Service works closely with the US Department of Justice, the FBI, the US Customs Service, NCMEC, and other national and international law-enforcement agencies.

Internet Crimes Against Children Program United States Department of Justice

The Internet Crimes Against Children (ICAC) program, administered by the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP), encourages communities nationwide to develop regional, multijurisdictional, and multiagency responses to Internet crime against children. The ICAC task-force program seeks to enhance the national response by developing a state and local law-enforcement network composed of regional task forces. ICAC grants are used to ensure that investigators receive specialized training and sufficient technological resources to effectively combat Internet crime.

Additionally ICAC task forces have been established to serve as sources of prevention, education, investigative experience, and technical assistance for parents, teachers, law-enforcement agencies, and other professionals.

The objectives of the ICAC program include

- developing or expanding multiagency, multijurisdictional task forces that include representatives from law enforcement, prosecution, victim services, and child protective services among others
- ensuring investigative capacity by properly equipping and training ICAC task-force investigators
- developing and maintaining case-management systems to document reported offenses and investigative results
- developing response protocols or memoranda of understanding to foster collaboration, information sharing, and service integration among public and private organizations to protect sexually exploited children⁴⁵⁹

In the two years since their inception the ICAC task forces have made more than 425 arrests and identified another 2,800 individuals needing investigation.⁴⁶⁰ Establishing a baseline to determine whether investigations have increased over the years is difficult, however, because the task forces started at different times. In approximately 50 percent of the cases task-force members respond to a complaint from an individual or other law-enforcement agency.⁴⁶¹ There is a constantly growing demand that limits the task forces' ability to conduct proactive investigations such as undercover stings. In fact the task forces have examined more than 90 individual computers for evidence of crime, yet the demand for forensic examination is now so high and the capacity so limited that the average delay is between six weeks and six months.⁴⁶² The Department of Justice recently awarded 10 additional cities ICAC grants to create new task forces raising the total number of task forces nationwide to 30.⁴⁶³

Federal Bureau of Investigation: Crimes Against Children Unit, National Center for the Analysis of Violent Crime, and Innocent Images

The FBI has several programs and initiatives that address child sexual exploitation. For instance the National Center for the Analysis of Violent Crime (NCAVC) provides advice and support in cases of crimes against children and reviews crime from both behavioral and investigative perspectives. NCAVC also conducts research from a law-enforcement perspective to gain insight into criminal thought processes, motivations, and behavior.⁴⁶⁴ Sex-offender typologies and behavioral characteristics are a result of this research.

The mission of the FBI's Crimes Against Children (CAC) Unit is to provide quick and effective responses to all incidents of sexual exploitation of children. The CAC program strategy focuses on multidisciplinary and multiagency resource teams to investigate and prosecute crimes against children; enhanced interagency sharing of intelligence information, specialized skills, and services; and increased provision of victim/witness assistance.

Operation Innocent Images is another FBI initiative focusing on child sexual exploitation. Specifically Innocent Images targets individuals traveling across state lines to engage in sexual activity with children, produce or distribute child pornography online, or who post illegal images on the Internet and other online services.⁴⁶⁵ Working at regional offices nationwide, task-force agents pose online as either children or other sexual predators to identify and gather information on individuals victimizing children.⁴⁶⁶ Task-force agents enter Internet chat rooms frequented by children when they have reason to believe adults may be attempting to meet children for illegal sexual activity. They also look for child pornography on the web and respond to parental complaints.⁴⁶⁷

Innocent Images staff members represent a variety of specially trained federal and local law-enforcement units. Approximately two-thirds of the agents are assigned from the FBI while the other one-third are agents assigned to the task force from their local law-enforcement agencies. These locally assigned agents are not FBI employees; however, their salaries are paid with Innocent Images funds.⁴⁶⁸ The task force also works closely with the National Center for Missing & Exploited Children and the Child Sexual Exploitation Unit of the US Postal Inspection Service.

In addition to its investigative work, Operation Innocent Images sponsors training and education programs for law-enforcement agencies at the national, state, and local levels. For example, in recent years, the task force has led such programs as regional conferences on online child pornography, national symposiums on Internet and online crime, and outreach to state and local prosecutors. It also maintains an active public-awareness campaign, talking to children and their parents about the dangers of the Internet.

Online child pornography and sexual exploitation continue to be significant crimes confronting the FBI throughout the country and in other countries. From 1996 to 1999 the Innocent Images initiative caseload increased from 113 to 1,497 opened cases.⁴⁶⁹ In the past three years the number of field offices and staff involved in pursuing child pornography offenses has grown tenfold. The FBI anticipates continued increases in case numbers and resources devoted to address them.⁴⁷⁰

Child Exploitation and Obscenity Section United States Department of Justice

Another federal program specifically dedicated to combating the sexual exploitation of children is the Child Exploitation and Obscenity Section (CEOS) of the US Department of Justice. Established in 1987 to assist in prosecuting those who sexually exploit children, CEOS focuses on individuals who

- possess, manufacture, or distribute child pornography
- travel interstate or internationally to sexually abuse children
- abuse children on federal and Indian lands
- transport obscene materials in interstate or foreign commerce⁴⁷¹

Model Approaches

Recently three key law-enforcement approaches have emerged as models to combat child sexual exploitation. They are the special task force, strike force, and law-enforcement network.⁴⁷² These three models offer law-enforcement agencies a range of investigative tools and case-management techniques. The apparent success of individual programs that have embraced these model approaches, or modified aspects of these model approaches to meet their local needs, to increase their prosecution and conviction rates demonstrates that the criminal-justice system can do more to effectively respond to child sexual exploitation.

Special Task Forces

One model approach adopted by law-enforcement agencies nationwide is the formation and maintenance of special task forces dedicated to the investigation and prosecution of all forms of child sexual exploitation including child pornography. These special task forces are composed of a standing team of experts working at a centralized location or facility.⁴⁷³ Each agent specializes in some aspect of the child-sexual-exploitation case, and this specialization includes victim services.⁴⁷⁴ This model is most likely to develop and succeed in jurisdictions with a steady load of child-sexual-exploitation cases—an environment that permits agencies to support the significant personnel and equipment requirements needed to maintain a dedicated unit.⁴⁷⁵

Characteristics of Special Task Forces

Centralized Location
Standing Team of Experts
Specialized Staffing
Steady Caseload
Victim Services
Multijurisdictional (federal, state, and municipal)

Sexual Assault Felony Enforcement Team Federal Bureau of Investigation

Launched in 1995 the Sexual Assault Felony Enforcement (SAFE) Team is a multiagency task force assembled to address crimes against children. The Team is composed of federal, state, and local investigators who pose as minors in Internet chat rooms and engage in electronic conversations with potential sexual predators. Team members include representatives from numerous law-enforcement agencies such as the US Attorney's Office, FBI, US Customs Service, US Postal Inspection Service, California Departments of Correction and Justice, Los Angeles County Sheriff's Office, and the Los Angeles Police Department. All are deputized US Marshals to enable them to serve federal warrants among other things.⁴⁷⁶

Operating under a Memorandum of Understanding the SAFE Team is organized on the three guiding principles noted below. These principles are reflective of the model special task-force approach.

- criminal-justice agencies must overcome turf issues and work together as a true multidisciplinary task force
- criminal-justice agencies and victim services providers must recognize and attend to the needs of sexually exploited children
- effective intervention requires proactive identification of suspects and vulnerable children⁴⁷⁷

The Team is governed by an Executive Committee that includes senior officials from each participating agency. Team efforts are reviewed quarterly by the Committee, and the Committee also sets future Team goals and plans. In addition to staffing the Executive Committee, each participating agency is responsible for recruiting and providing experienced staff for the SAFE Team. Once onboard, the work of SAFE agents is carefully documented through such management tools as biweekly meetings, monthly summaries, extensive case tracking, and a series of administrative forms to help structure the Team's day-to-day operations.⁴⁷⁸

The SAFE Team does not directly provide victim services but it does work closely with child-protection agencies and advocates throughout its jurisdiction.⁴⁷⁹ SAFE agents also routinely notify service providers of the Team's work and involve providers when child victims are identified and located. In return providers have arranged to lead victim services training for the SAFE Team on issues such as child development and children's perspectives on testifying.

Child Exploitation Unit Dallas Police Department

The Child Exploitation Unit (CEU) of the Dallas (Texas) Police Department is a nationally recognized law-enforcement unit responding to child pornography. The Unit is part of the Youth and Family Crimes Bureau. It uses six detectives to investigate out-of-family pornography and other offenses and two detectives to manage covert and sting operations.⁴⁸⁰ It also works closely with the Dallas County District Attorney's Office and Dallas Children's Advocacy Center.

Much of the Unit's work is self-generated through sting operations and extensive monitoring. Once a lead is produced the Unit works to investigate child-sexual-exploitation cases as thoroughly as possible. Unit officers work to gather evidence of pornography in sexual-

abuse cases, identify children who are depicted in pornography, and aggressively investigate sexual predators.⁴⁸¹ It also charges perpetrators with a separate crime for each child victim, arguing that pornography is evidence of child molestation—a more serious offense under Texas law. This approach often results in much lengthier sentences. For example, in a case involving 15 identified victims photographed at a nudist colony, the perpetrator received 7 consecutive life sentences.⁴⁸²

Federal Agency Task Force on Missing and Exploited Children

Created to improve the federal response to missing and exploited children, the Federal Agency Task Force on Missing and Exploited Children serves as an advocate for child victims and their families, coordinates federal resources and services, and fosters increased cooperation and communication among federal agencies. The Task Force includes representatives from the National Center for Missing & Exploited Children; the US Postal Service; and the Departments of Defense, Education, Health and Human Services, Justice, State, and Treasury.⁴⁸³

Benefits of Special Task Forces

The SAFE Team, the Dallas CEU, the Federal Agency Task Force, and other task forces are examples of effective programs used by law-enforcement agencies to combat child sexual exploitation. These special task forces offer federal, state, and local law-enforcement agencies many advantages including

- the explicit dedication of manpower and resources
- a formalized structure for sharing expertise and equipment
- an extensive communications network to prevent duplicative efforts and maximize impact
- an increased esprit de corps among task force members and the community⁴⁸⁴

As noted, special task forces may be most effective in jurisdictions with significant child-sexual-abuse caseloads and available resources; however, the structure, principles, and success of these groups offer valuable insight to law-enforcement agencies at any level.

Strike Forces

Under the strike-force model of law enforcement no core staff is dedicated exclusively to the team as there is under the special-task-force model. Rather team members come together from individual agencies only in response to a particular case.⁴⁸⁵ Consequently strike forces do not operate from a central location nor do they have a dedicated pool of equipment or resources. Strike-force members are likely to have significant experience and expertise in the area of child sexual exploitation.⁴⁸⁶ The strike-force model is most often found in jurisdictions where child-sexual-exploitation cases are less common or where resources are more limited.⁴⁸⁷

Characteristics of Strike Forces

No Central Location
Few Dedicated Resources
Mobilize Efforts as Needed
Limited Caseloads
Victim Services

Child Sexual Exploitation Strike Force

One nationally recognized model strike force is the Child Sexual Exploitation Strike Force of the US Postal Inspection Service, Northern Illinois Division. This Strike Force was established in the late 1980s when law-enforcement agents from several organizations in Illinois discovered that they often investigated the same cases resulting in duplicated efforts and wasted resources.⁴⁸⁸ The group includes a US Postal Inspector, four investigators from the Cook County Sheriff's Police Department, three investigators from the Chicago Police Department, and a Cook County State's Attorney's Office investigator. It maintains strong ties with numerous federal, state, and local law-enforcement units including the FBI and Illinois State Police.⁴⁸⁹ These ties allow the Strike Force to call on individual agents with specialized expertise as needed on a case-by-case basis.

Since its inception the Strike Force has focused much of its work on fighting online solicitation and pornography. Strike-Force investigators, who have been deputized as US Marshals, use covert mail and electronic correspondence to apprehend those seeking to send or receive child pornography.⁴⁹⁰ The investigators also arrange to meet with individuals seeking children to include in pornography productions.⁴⁹¹ When child victims are identified the Strike Force works with local advocacy centers to obtain interviews and provide services. As with many of its other resources these services are arranged on a case-by-case basis.

Law Enforcement Effort Against Child Harm

A second highly regarded strike force is the Law Enforcement Effort Against Child Harm (LEACH). Working in southern Florida, LEACH is a voluntary collaboration among law-enforcement agencies to address cases of child sexual exploitation. It operates under a Memorandum of Understanding (MOU) drafted by the Broward County Sheriff's Office that seeks to combine the missions of several law-enforcement agencies in southern Florida.⁴⁹² The MOU encompasses a wide range of state, local, and federal offices including US Customs, the Florida Department of Law Enforcement, and several local law-enforcement agencies. It covers such issues as LEACH's purpose, mission, and jurisdiction; goals, objectives, and chain-of-command; equipment, record-keeping, and asset-sharing requirements; procedures, deadlines, and communications with the press.⁴⁹³

Using its network of experts LEACH conducts covert operations on computer bulletin-board systems to identify, apprehend, and assist in the prosecution of child sex offenders and child pornographers involved in computer-related child pornography.⁴⁹⁴ One member of the team is dedicated to work on these cases full-time actively monitoring cyberspace for evidence of child sexual exploitation.⁴⁹⁵ In the roughly 20 percent of cases where a child victim is identifiable, LEACH works with experienced child-abuse investigators from the Florida Department of Law Enforcement, their state police, or local jurisdictions to conduct interviews and provide referrals for victim services.⁴⁹⁶ LEACH also eases the burden on its resources by pursuing federal action against perpetrators whenever possible.⁴⁹⁷

In addition LEACH promotes the need for education within the community to reduce the risk of youth involvement in sexual exploitation.⁴⁹⁸ Strike-force members routinely conduct public-awareness presentations using a short video.⁴⁹⁹ They also actively participate in community-education programs sponsored by such organizations as local parent-teacher associations, homeowners' associations, city commissioners, and court officers.⁵⁰⁰

Benefits of Strike Forces

The strike-force model pursued in Illinois and by LEACH is a valuable option for many communities battling child sexual exploitation. Its minimal overhead costs make the strike-force model achievable in many jurisdictions that cannot afford to establish dedicated task forces. Its reliance on resource mobilization permits quick responses to child-sexual-exploitation cases. And its use of consultants allows strike forces to tailor services as needed in each investigation.⁵⁰¹

The strike-force model, however, also faces limitations that may challenge its overall effectiveness. Without a central location to house strike-force operations, workflow may become disorganized and case progress slowed. Strike-force members may not receive adequate financial support for their work on child-sexual-exploitation cases or may have to balance their home-agency assignments with the work of the strike force. And limited resources may prevent the strike force from pursuing cases that a dedicated task force might examine.⁵⁰²

Law-Enforcement Networks

The model law-enforcement approach that is most loosely configured is the law-enforcement network. Under this model law-enforcement officers, prosecutors, victim service providers, social-service agents, and others come together to work on child-sexual-exploitation cases on a case-by-case basis.⁵⁰³ There are no resources dedicated to the network's structure. Rather network efforts are driven exclusively by volunteers.⁵⁰⁴ Although law-enforcement networks provide valuable assistance on individual cases, their primary focus is building resources, facilitating personal contacts, recruiting new volunteers, and providing educational programs.⁵⁰⁵

Characteristics of Law-Enforcement Networks

Loosely Configured
No Dedicated Resources
Mobilize Efforts as Needed
Education and Recruitment

Massachusetts Child Exploitation Network

One nationally recognized law-enforcement network is the Massachusetts Child Exploitation Network. This statewide network of investigators and victim-assistance professionals shares an interest in crimes against children and particularly child sexual exploitation.⁵⁰⁶ The group, which has more than 200 members, raises awareness and enhances expertise among law-enforcement and victim-serving professionals regarding child sexual exploitation. It also plans to establish a seven-state interagency training program that will instruct experienced sexual-assault investigators about child sexual exploitation.⁵⁰⁷

In addition to serving as a coalition builder and educator the Network is working with the Massachusetts State Police to develop regional task forces coordinated by each district attorney's office to investigate child-sexual-exploitation cases.⁵⁰⁸ Using critical data elements identified by Network members this database is accessible by selected law-enforcement officers around the state through the district attorney's office.⁵⁰⁹

Benefits of Law-Enforcement Networks

One of the key benefits of a law-enforcement network is the immediate and comprehensive effort to increase awareness about the issue of child sexual exploitation. Using its extensive community ties, a law-enforcement network often can reach out to audiences that might otherwise not be contacted. The law-enforcement network model also embraces extensive recruitment efforts thereby increasing the number of child-welfare and law-enforcement professionals working on child-sexual-exploitation cases. These two elements—education and recruitment—are especially beneficial when cases have statewide implications.⁵¹⁰

The law-enforcement-network model, however, also has significant drawbacks. Most significantly the absence of resources may hinder communication and collaboration between network members making it difficult to sustain an effective initiative. Furthermore, without dedicated resources or staff, the importance of a network's efforts may go unrecognized and therefore underused.⁵¹¹

Internet Crime Units

With the growth of the Internet several jurisdictions have established units dedicated to the full-time investigation of web-based child sexual exploitation. In Illinois, for example, the Attorney General's Internet Criminal Activity Unit and Child Sexual Exploitation Task Force established a special unit to fight online solicitation and child pornography. Composed of staff from state and local law-enforcement agencies, county-attorney offices, and the US Postal Inspection Service, the Special Unit pools each agency's expertise on Internet-based child sexual exploitation in order to facilitate the investigation and prosecution of these kinds of crimes. The Unit works largely on tips from parents and other adults as well as leads and complaints received by private Internet service providers such as America Online. It also works to educate children and parents about the potential for online danger and exploitation.⁵¹²

International Initiatives

Efforts are also underway at an international level to combat child sexual exploitation.

In 1992 the international law-enforcement organization INTERPOL established a Standing Working Party (SWP) on Offenses Against Minors that aims to improve transnational cooperation in preventing and combating child pornography and other forms of child sexual exploitation.⁵¹³ The SWP meets biannually and has produced best-practices manuals and recommendations for investigations of child exploitation. It is also looking at legislation on child pornography; international cooperation efforts; development of a liaison network; and other general measures on victim assistance, law-enforcement structure, missing children, free telephone helplines, prevention models, training, research, and statistics.⁵¹⁴

In addition countries worldwide are developing their own responses to the crisis of child sexual exploitation. For example a coalition of government agencies, law-enforcement officers, child-protection groups, and others in New Zealand have developed and distributed an Internet safety kit that alerts children to the threat posed by child sex offenders online.⁵¹⁵ Similarly several ISPs in Ireland recently launched a hotline for reporting child pornography.⁵¹⁶

Countries are also partnering with international nongovernmental organizations such as INHOPE, Innocence in Danger!, and ECPAT International—key groups targeting child sexual exploitation including child pornography worldwide.

INHOPE (Internet Hotline Providers in Europe Association) is an organization supported by the European Commission whose members are providers of Internet hotline services dealing with illegal content on the Internet including child pornography. Its purpose is to facilitate cooperation among these European providers to eliminate child pornography from the Internet and protect youth from harmful and illegal uses of the Internet. Its goals include establishing and supporting effective national hotlines, training and supporting new hotlines, fostering ongoing Internet safety awareness and education, and establishing effective common procedures for receiving and processing reports.⁵¹⁷ The Association's web site lists its members including organizations from countries such as Austria, France, Germany, the Irish Republic, the Netherlands, and the United Kingdom. It also offers information and links to facilitate reporting of illegal materials.

Launched in 1999 by the United Nations Educational, Scientific and Cultural Organization (UNESCO), Innocence in Danger! seeks to

- group together Internet professionals and jurists, child-protection specialists, celebrities, and political leaders in national action groups
- sensitize world opinion on the need to actively combat child pornography and pedophilia on the Internet as well as all kinds of sexual abuse of children
- mobilize human, technical, and financial resources to support professionals and NGOs in their work of protecting children and safeguarding their rights⁵¹⁸

To achieve these goals, Innocence in Danger! produces publications on child sexual exploitation; designs handbooks and teaching kits for parents, teachers, and others working with children; and sponsors international forums and workshops on child sexual exploitation.⁵¹⁹ To date Innocence in Danger! action groups have been established in 19 countries including Brazil, Cameroon, Canada, the United Kingdom, and the United States.⁵²⁰

End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes (ECPAT) originally was established in 1990 as a campaign to end child prostitution in Asian tourism. In 1996, however, the organization expanded the scope of its work to include the issues of child pornography and trafficking of children for sexual purposes. At that time the group also broadened its focus beyond Asia and rededicated its efforts on an international scale.⁵²¹

Today ECPAT International serves as a global network of organizations and professionals working together to eliminate child pornography, child prostitution, and the trafficking of children for sexual purposes. It works to develop partnerships with broad networks of NGOs, IGOs, governmental departments, law-enforcement officials, and others who share the common goal of child safety. It also works to avoid duplicating efforts already undertaken by others and strengthen or complement existing programs.⁵²²

Specifically ECPAT International advises governments on legal changes needed to better protect children from sexual exploitation. It works closely with INTERPOL and local law-enforcement agencies worldwide to help ensure that current laws are implemented. It provides training for professionals working to rehabilitate child victims of sexual crimes. And

it seeks new ways to control the flow of child pornography online.⁵²³ ECPAT International also produces numerous publications on child sexual exploitation including various books, articles, and a quarterly newsletter.

Barriers to Effective Intervention

Despite the establishment of model law-enforcement approaches and collaboration by other groups across the country and worldwide, significant barriers to the effective intervention, investigation, and prosecution of child sexual exploitation crimes still remain.

Child sexual exploitation is not a priority in many jurisdictions especially when competing for attention with street violence, gang activity, and drug trafficking.⁵²⁴ A 1998 study found that only 14 of the nation's 50 largest police departments had arrested more than 5 adults in the previous year for any of the various child-sexual-exploitation offenses.⁵²⁵

In addition child pornography is often a hidden crime. Many children will not volunteer their involvement in child pornography, often from fear or shame, yet many investigators report they are reluctant to ask children involved in sexual-abuse cases if pictures or videos were taken. Such reluctance to raise the possibility of child pornography without other existing evidence may stem from adverse and often misguided or incorrect publicity associated with "leading questions" or "tainted interviews."⁵²⁶ In addition children who do speak up may not reveal the full extent of their involvement—making identification of offenders more difficult⁵²⁷—or may disclose only those experiences clearly documented by the pornography.⁵²⁸

In jurisdictions where child-sexual-exploitation cases do receive high priority, limited resources may hinder law-enforcement efforts.⁵²⁹ Without significant institutional and financial support, law-enforcement agencies may be unable to establish or sustain an effective, concentrated effort to combat child sexual exploitation. Staff members may be unable to dedicate sufficient time to investigation and prosecution efforts; communication may become difficult between members operating at their home agencies rather than a centralized site; and case-based specialization may be more difficult as agents work to balance numerous issues competing for time and expertise.

Many child-pornography cases not only originate outside local jurisdictions, they may also cross international borders complicating the investigative process even further. Often the other countries may not have sufficient laws to cover the production, distribution, or possession of child pornography. Some law-enforcement officials may be reluctant to commit resources to cases such as child pornography that originate outside their jurisdiction.⁵³⁰

Fragmentation of responsibility for child-sexual-exploitation cases also exists in many law-enforcement agencies.⁵³¹ In some large jurisdictions misdemeanor cases may be handled by a different division than felony cases. In cities with no centralized unit with responsibility for child-exploitation cases they are generally handled by patrol officers assigned to that geographic district. Even when children are identified as victims the child-abuse unit may not handle the case because cases involving victims who are older than 13 may go to the sexual-assault unit.⁵³² While this division of labor may not in itself prevent an effective response, departments without effective cross-training and collaboration may face a diffusion of resources and knowledge.

Inadequate training and education for law-enforcement agents and supervisors, as well as others who may work with sexually exploited children, also pose significant barriers to effective intervention.⁵³³ The unique nature of child-sexual-exploitation crimes necessitates specialized training and education programs for law-enforcement agents and others working to investigate and prosecute perpetrators.

Child pornography investigations generally tend to be labor-intensive and require proactive approaches.⁵³⁴ The growth of the Internet has also generated new challenges for the law-enforcement community.⁵³⁵ New technology has dramatically increased the potential for children to be sexually exploited by adults and child pornography to be instantly produced and distributed around the world.⁵³⁶ The speed and global nature of the Internet compounds the problems, making investigation and prosecution more difficult and driving up the cost of identification and prevention efforts.

Finally a perception of judicial leniency for perpetrators of child sexual exploitation also serves to discourage law-enforcement agencies from comprehensively targeting these crimes. Despite extensive investigations, significant evidence, and even admissions of guilt, many defendants convicted of child sexual exploitation serve little or no jail time.⁵³⁷ In fact average sentences for the FBI's Innocent Images cases average between 18 to 24 months.⁵³⁸ Defense attorneys argue that the meager sentences reflect judicial discomfort with child-sexual-exploitation-investigation practices including having adults pose as children online.⁵³⁹ Whatever the reason, judicial reluctance to impose stiff sentences may be undermining law-enforcement efforts in this area.⁵⁴⁰

General Principles for Effective Intervention

While individual states and the federal government have taken strong positions in passing laws to prohibit the sexual exploitation of children, there is considerable room for improvement in many areas including enforcement, prosecution, and the provision of services to child victims.⁵⁴¹ Based on the model law-enforcement approaches profiled above and other information about best-practices in child-sexual-exploitation cases, the general principles described below can help guide a more proactive and comprehensive approach to child pornography.⁵⁴²

Enact New Legislation

Not all states have enacted comprehensive child-pornography legislation. In several states possession of child pornography is not illegal, and in others the age of consent for sexual activity is as young as 13.⁵⁴³ Many model law-enforcement programs have been active in drafting and supporting legislation that would enhance their ability to investigate and prosecute child-sexual-exploitation cases.⁵⁴⁴ Public awareness of and institutional support for such legislative changes may facilitate needed reforms.

Promote Multijurisdictional and Multidisciplinary Approaches

The increase in prosecution and conviction of offenders in model programs around the country suggests that the most effective means of identifying, investigating, and pros-

ecuting child-sexual-exploitation cases is to adopt a multijurisdictional and multidisciplinary approach. By enabling the law-enforcement, child-welfare, and service-provider communities to combine expertise, manpower, and other institutional resources on these complex cases, investigations can be more thorough, prosecutions more numerous, and services more complete. Successful work in the area of child sexual exploitation requires a formidable array of resources, information, and expertise that can be realized only by tapping the capacity of numerous agencies.⁵⁴⁵ Perhaps, more importantly, it requires a community-wide commitment to collaborate and coordinate on the shared goal of protecting children.⁵⁴⁶

In addition multidisciplinary approaches can enhance investigations by bringing different professional perspectives and additional knowledge to the case. For instance known victims of child pornography should regularly receive medical evaluations as in routine child-sex-abuse cases. Such evaluations can help ensure a safer environment for the child, assess long-term physical trauma, document and treat sexually transmitted diseases, diagnose and treat mental-health conditions that are evident in the victims, and provide medical advice and support to nonoffending family members. Valuable information can be uncovered in the context of a medical history, and medical professionals should be included in the multidisciplinary response.⁵⁴⁷

Conduct Proactive Investigations

Law enforcement should proactively work to arrest and prosecute producers, distributors, and those who possess and collect child pornography by using all available investigative techniques, including covert and sting operations, to build strong cases. An increase in arrests is usually attributable to increased enforcement.⁵⁴⁸

Recognizing the personal toll on investigators of investigating such graphic and often gruesome crimes against children, law-enforcement agencies should also, as resources allow, provide psychological support for professionals responding to child-sexual-exploitation cases.

Likewise prosecutors should develop policies that clearly set forth when they will or will not pursue a case in court to guide investigative efforts. Some suggested criteria for this determination, when the case does not involve production of child pornography, include the time and energy put into a collection; its size, format, and sexual themes; the age of the children portrayed; receipt and/or distribution; any profit; the offender's access to children; and any past or present molestation.⁵⁴⁹ When such policies are consistently applied, law-enforcement officers know what evidence to pursue and that their efforts will not be futile.⁵⁵⁰

Improve Education and Training

Evidence suggests a compelling need for increased education and training among law enforcement, criminal-justice programs, child-welfare agencies, and service providers about child sexual exploitation.⁵⁵¹

Law enforcement should provide adequate training for all investigators and officers who might come in contact with victims of child pornography and their families including personnel in child abuse, sex crimes, vice, juvenile, and other units. Investigators should do their best to protect the identities of child victims as they investigate cases. They should also provide a full explanation of the pending criminal process to the child victims and their families. Investigators also need specialized training on the use of computers in child-pornography cases

especially legal considerations in obtaining search warrants, the proper handling of computer equipment and stored communications, and the use of privileged and confidential communications.⁵⁵²

The unique nature of these crimes raises special challenges including identifying perpetrators who rarely commit offenses in public; completing the proactive, often undercover, work needed to successfully investigate child-pornography cases; and ensuring child victims receive timely and comprehensive services.⁵⁵³

In addition educating the general public or those with influence on public opinion can also improve the prevention of and response to child pornography. For instance media portrayal of children is possibly contributing to the problem of child sexual abuse by condoning the use of children in inappropriate sexual contexts.⁵⁵⁴ The depiction of children as sexual objects in advertising and the popular press desensitizes the public by subtly confirming and setting new standards for what is acceptable.⁵⁵⁵

Expand Prevention and Victim-Services Programs

Law enforcement should work diligently to identify all child victims and provide them with services and other assistance. While investigators frequently identify children who are depicted in child pornography or are otherwise sexually exploited, not all law-enforcement agencies have in-house or referral-based, victim-services programs. Furthermore few jurisdictions have programs in place to provide specialized services to these young victims.⁵⁵⁶

Multidisciplinary efforts should include collaboration with treatment providers. Children and families affected by child pornography should be encouraged to receive professional counseling especially those who do not have effective support networks through family, friends, and/or other activities. The individual needs of sexually exploited children will vary case-by-case. Nevertheless such victim services as forensically sound and child-friendly interviews, emergency placement, crisis intervention, and medical attention are offered by selected model programs including the FBI's SAFE team.⁵⁵⁷ Specialized treatment and opportunities to redirect sexually exploited youth should also be pursued.⁵⁵⁸

In addition many exploited youth are still somehow involved in school although not always full-time or in traditional settings. School may therefore be an effective place to reach at-risk youth with prevention programs⁵⁵⁹ to deter children from becoming involved in sexual exploitation. Parents, teachers, and professionals who come into contact with children at risk of exploitation should receive training to recognize their potential for involvement in pornography. Teachers, counselors, and other staff members in school settings should also receive comprehensive training on prevention strategies and appropriate responses to suspected cases of sexual exploitation. Youth education programs such as DARE should incorporate Internet awareness training for students and parents. It may also be effective to include messages about sexual exploitation as part of larger public-health initiatives targeting other risky behaviors such as smoking, drinking, or unprotected sex.⁵⁶⁰

Conduct Additional Research

While a good deal is known about the impact of child sexual abuse on children, little is known about the specific long-term impact of sexual exploitation especially child pornography.⁵⁶¹ Research is also scarce on treatment programs specific to the needs of sexually exploited children.⁵⁶² Without thorough examination and evaluation of law-enforcement, child-welfare, and service-provision efforts, the justice system cannot accurately understand the scope, effects, or causes of child sexual exploitation. Consequently extensive research should be conducted on the number of children victimized annually by sexual exploitation; the knowledge and attitude of criminal-justice staff members and other professionals serving sexually exploited children; and the characteristics of adults and others perpetrating the crimes.⁵⁶³ Longitudinal studies and evaluations tracking responses from law-enforcement and service communities should also be pursued.

Conclusion

Sexual exploitation can result in numerous physical and psychological consequences for children that may be multiplied for victims of child pornography because they face a lifetime of possible revictimization through the continued distribution of videos, photographs, or computer images depicting their exploitation. With today's advanced computer technology the victimization of children can be continuously repeated as visual depictions of their exploitation are sent through cyberspace. Those images, furthermore, can be used to lower other children's inhibitions by "normalizing" adult-child sexual behavior.

A comprehensive response by the criminal-justice system is required to stop the continued victimization of children through child pornography. National and state legislatures should examine current laws and strengthen any deficiencies by outlawing all aspects of child pornography including production, distribution, and possession offenses. Conduct violating current prohibitions should be vigorously investigated and prosecuted.

Law-enforcement agencies and prosecutors must work collaboratively across multiple jurisdictions and with numerous disciplines. Many successful programs—including NCMEC's CyberTipline, the FBI's Innocent Images and other initiatives, the US Customs CyberSmuggling Center, the US Postal Inspection Service, the Internet Crimes Against Children task-force program, and many state-based investigative teams—are combining forces to combat child pornography and sexual exploitation. As these professionals handle more cases they should share their combined expertise with other jurisdictions through cross-training and education efforts.

The criminal-justice system should also pursue greater community involvement in developing prevention efforts. It should support the development of or increase in available treatment for victims and services for at-risk youth including prevention and early intervention. The progress of law enforcement and service providers should be examined and studied so that successful programs can be replicated nationally and in other countries.

The combination of international efforts, heightened public awareness, stronger laws, and stricter enforcement of those laws can help halt the proliferation of child pornography and use of computers to sexually exploit children.

Criminal Statutes Within the United States Addressing Child Pornography

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSION
ALABAMA						
§ 13A-12-190						
§ 13A-12-191			X			
§ 13A-12-192					X	
§ 13A-12-193						
§ 13A-12-194		X				
§ 13A-12-196						
§ 13A-12-197		X				
§ 13A-12-198						
§ 13A-12-200.1						
§ 13A-12-200.5				X		
ALASKA						
§ 11.41.455	X	X				
§ 11.61.123		X				
§ 11.61.125			X		X	
§ 11.61.127						X
ARIZONA*						
§ 13-3501						
§ 13-3506				X		
§ 13-3507						
§ 13-3509						

*as amended by legislation enacted in 2000

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
					definitions
class B felony		<17			
class B felony with intent; class C felony mere possession		<17			
		<17			proof of age of person contained in visual reproduction; inference as to age permitted to jury or court
					identity of person engaged in obscene act not required
class A felony	x	<17			
class A felony		<17			
		<17		x	
		<18			definitions including material harmful to minors
misdemeanor		<18			material harmful to minors – distribution, possession with intent to distribute, display, for sale
class B felony	x	<18			
class C felony if person shown or viewed is a minor; class A misdemeanor if person shown or viewed is an adult	x	<16; <13			producing or viewing picture of private exposure of anus, genitals, or female breast without parent or guardian consent if minor <16 and without person shown in picture if person at least 13
class B felony		<18			possession of >100 items is prima-facie evidence of distribution and intent to distribute
class C felony		<18			
					definitions
class 4 felony		<18			furnish to minor with knowledge of character of item (i.e., obscenity); see §§ 13-3502 to 13-3505
class 6 felony		<18			public display of explicit sexual material
class 6 felony		<18			a person who is asked to record, film, photograph, develop, or duplicate material has duty to report

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 13-3512						
§ 13-3513				x		
§ 13-3551						
§ 13-3552	x	x				
§ 13-3553		x	x			x
§ 13-3554						
§ 13-3555		x	x			
§ 13-3556						
§ 13-3558				x		
§ 13-604.01						
ARKANSAS						
§ 5-27-302						
§ 5-27-303		x				
§ 5-27-304			x		x	x

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class 4 felony		<18			obscene or indecent telephone communications to minors for commercial purposes
class 6 felony		<18			selling or distributing through vending machines
					definitions, sexual exploitation of children
class 2 felony	x	<18			for commercial gain
class 2 felony if minor <15, presumptive term of imprisonment for 17 years first offense; 28 years second offense		<18; <15			if minor <15 § 13-604.1
class 3 felony; if minor <15, presumptive term of imprisonment for 17 years first offense; 28 years second offense		<18; <15			luring a minor for sexual exploitation; not a defense if other person was peace officer posing as minor; if minor <15 § 13-604.1
class 1 misdemeanor					material depicting or masquerading adult participant as minor
					permissible inference that participant is minor if visual representation or live act depicts participant as minor
class 6 felony		<18			admitting minors to public displays of sexual conduct
felony in first degree		<15			dangerous crimes against children including sexual exploitation of a minor and commercial sexual exploitation of a minor; sentences; definitions
					definitions
class C felony first offense; class B felony subsequent offenses	x	<17			
class C felony first offense; class B felony subsequent offenses		<17			

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 5-27-305						
§ 5-27-401						
§ 5-27-402	x					
§ 5-27-403	x					
§ 5-27-404	x					
§ 5-27-405						
CALIFORNIA						
Title 9, § 288.2				x		
Title 9, § 311						
Title 9, § 311.1			x		x	
Title 9, § 311.2(a)			x		x	

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class C felony		<18			transporting, financing in whole or part the transport, or otherwise causing or facilitating the transport of minor if person knows or has reason to know that prohibited sexual conduct will be commercially exploited or if person intends that the minor engage in prostitution or prohibited sexual conduct
					definitions
class C felony first offense; class B felony subsequent offenses	x	<17	x		employing, authorizing, inducing, or providing parental consent; mistake of age § 5-27-404
class B felony		<17	x		producing, directing, or promoting; mistake of age § 5-27-404
			x		good faith belief person >17 is affirmative defense
		<17			methods of determining age of child
imprisonment in county jail <1 year and/or <\$1,000 fine; subsequent conviction of this offense is a felony					includes transmission by the Internet
					definitions
imprisonment in county jail <1 year and/or <\$1,000 fine; or imprisonment in state prison and/or <\$10,000 fine		<18			material containing or incorporating any film or filmstrip; does not apply to matter depicting legally emancipated child <18 or lawful conduct between spouses <18
misdemeanor; court may impose fine <\$50,000 if subsequent offense		<18			

**STATE CODE
(1999)**

OFFENSE

	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
Title 9, § 311.2(b)			x		x	
Title 9, § 311.2(c)		x	x		x	
Title 9, § 311.2(d)		x	x		x	
Title 9, § 311.3		x				
Title 9, § 311.4(b)	x					
Title 9, § 311.4(c)	x					
Title 9, § 311.5						
Title 9, § 311.6	x					
Title 9, § 311.8						
Title 9, § 311.9						

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
felony with 2, 3, or 6 years in state prison and/or fine <\$100,000		<18			material containing or incorporating any film or filmstrip; for commercial consideration; does not apply to matter depicting legally emancipated child <18 or lawful conduct between spouses <18
misdemeanor with imprisonment in county jail <1 year and/or fine <\$2,000		<18			distribution to person <18; not necessary to prove commercial consideration; does not apply to matter depicting legally emancipated child <18 or lawful conduct between spouses <18
felony		<18			distribution to person <18; not necessary to prove commercial consideration; does not apply to matter depicting legally emancipated child <18 or lawful conduct between spouses <18
imprisonment in county jail <1 year and/or fine <\$2,000		<18			
felony; imprisonment in state prison 3, 6, or 8 years	x	<18			for commercial purposes; does not apply to legally emancipated minor or lawful conduct between spouses <18
felony	x	<18			not necessary to prove commercial purposes; does not apply to legally emancipated minor or lawful conduct between spouses <18
misdemeanor					advertising or promoting sale or distribution of obscene material
misdemeanor					participating in or producing or presenting obscene live conduct
		<18	x		
					punishment

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
COLORADO						
§ 18-6-403	x	x			x	x
§ 18-6-404						
CONNECTICUT						
§ 53a-193						
§ 53a-196				x		
§ 53a-196a	x	x				
§ 53a-196b	x	x				
§ 53a-196c						
§ 53a-196d						x
§ 53a-199	x	x			x	
DELAWARE						
Title 11, § 1106				x		
Title 11, § 1108	x	x				
Title 11, § 1109			x		x	
Title 11, § 1111						x

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class 3 felony; except mere possession which is class 1 misdemeanor first offense; class 4 felony subsequent offenses		<18			possession of >3 identical copies of material is presumption of commercial purpose
class 3 felony		<18			intentionally giving, transporting, providing, or making available, or offering to give, transport, provide, or make available to another person or child for the purpose of sexual exploitation
					definitions
class D felony		<17	x		
class A felony		<16			employing minor for the purposes of promoting material
class B felony		<16			promoting minor in obscene performance
class C felony		<16			importing with intent to promote; importation of >2 copies is prima-facie evidence of intent to promote
class D felony		<16			
					injunction may be granted against promotion of material or performance that is obscene as to minors
class B misdemeanor		<18			permitting a minor to remain in a place where unlawful sexual activity is conducted
class B felony first offense; life imprisonment second offense		<18			subsequent offenses § 1110
class D felony first offense; class B felony subsequent offense		<18			subsequent offenses § 1110
class G felony		<18			

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
DISTRICT OF COLUMBIA						
§ 22-2001	x	x	x	x	x	
§ 22-2011						
§ 22-2012	x	x	x	x		
§ 22-2013						
§ 22-2014						
FLORIDA						
§ 827.071	x				x	x
§ 847.001						
§ 847.012				x		
§ 847.0125				x		
§ 847.013				x		
§ 847.0133				x		

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
fine <\$1,000 and/or imprisonment <180 days first offense; fine \$1,000-\$5,000 and/or imprisonment 6 months-3 years subsequent offense		<17			general obscenity statute includes admitting to premises whereon exhibition or display occurs; includes advertising; possession of >3 copies of material is prima-facie evidence of intent to distribute definitions
	x	<16	x		minor in sexual performance statute
fine <\$5,000 and/or imprisonment <10 years first offense; fine <\$15,000 and/or imprisonment <20 years subsequent offenses			x		affirmative defense does not apply if person has financial interest (other than his or her employment) in the promotion, direction, or acquisition for sale, retail, or exhibition of any sexual performance
2 nd degree felony; except mere possession which is a 3 rd degree felony	x	<18			possession of >3 copies is prima-facie evidence of intent to promote definitions
3 rd degree felony		<18			for monetary consideration
1 st degree misdemeanor		<18			retail display to minors
1 st degree misdemeanor		<18			exposing minors to harmful motion pictures, exhibitions, shows, presentation, or representations
3 rd degree felony		<18			

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 847.0135	x	x	x		x	x
§ 847.0135(3)						
§ 847.0135(4)						
§ 847.0145		x				
§ 847.02						
§ 847.06			x			
§ 847.07			x			
GEORGIA						
§ 16-12-100	x	x	x		x	x
§ 16-12-100.1					x	

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
3 rd degree felony		<18			using computer to compile, transmit, make, print, publish, reproduce, buy, sell, receive, exchange, or disseminate specific information for the purpose of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor or the visual depiction of such conduct
3 rd degree felony		<18			using computer online service, Internet service, or local bulletin-board service to or attempt to seduce, solicit, lure, or entice a child or another person believed to be a child to commit specified illegal act
1 st degree misdemeanor punishable by fine <\$2,000					owners or operators of computer online service, Internet service, or local bulletin-board service who knowingly permit a subscriber to commit a violation of this section
felony	x				
				x	
1 st degree misdemeanor					includes interstate transport for the purposes of distribution
3 rd degree felony					
felony punishable by imprisonment of 5-20 years and fine <\$100,000 (no fine to be imposed if convicted person is member of immediate family); except mere possession which is a misdemeanor	x	<18	x	x	
misdemeanor of high and aggravated nature		<18			furnishing electronically

**STATE CODE
(1999)**

OFFENSE

	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 16-12-100.2	x	x	x		x	x
§ 16-12-100.2(d)						
§ 16-12-100.2(e)						
§ 16-12-102						
§ 16-12-103				x	x	
HAWAII*						
§ 707-750	x					

*as amended by legislation enacted in 2000

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
fine <\$10,000 and/or imprisonment 1-20 years					using computer to compile, transmit, make, print, publish, reproduce, buy, sell, receive, exchange, or disseminate specific information for the purpose of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor or the visual depiction of such conduct
misdemeanor of high and aggravated nature		<18			using computer online service, Internet service, or local bulletin-board service to or attempt to seduce, solicit, lure, or entice a child or another person believed to be a child to commit specified illegal act
misdemeanor of high and aggravated nature		<18			owners or operators of computer online service, Internet service, or local bulletin-board service who intentionally and willfully permit a subscriber to commit a violation of this section
			x		definitions; "harmful to minors"
misdemeanor of high and aggravated nature					distribution of material harmful to minors
class A felony		<16			fact that person engaged in conduct specified in this section is prima-facie evidence that person engaged in such conduct with knowledge of the character and content of the material or performance; fact that person in material was at that time a minor is prima-facie evidence that defendant knew the person to be a minor

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 707-751			x			x
§ 712-1210						
§ 712-1215				x		
IDAHO						
§ 18-1506	x	x				
§ 18-1507	x	x	x		x	x
§ 18-1507A						x
§ 18-1513				x		
§ 18-1514						
§ 18-1515				x		
§ 18-1517				x		

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class C felony		<16			fact that person engaged in conduct specified in this section is prima-facie evidence that person engaged in such conduct with knowledge of the character and content of the material or performance; fact that person in material was at that time a minor is prima-facie evidence that defendant knew the person to be a minor
class C felony		<16			definitions fact that person engaged in conduct specified in this section is prima-facie evidence that person engaged in such conduct with knowledge of the character and content of the material or performance § 712-1216
felony punishable by imprisonment <15 years		<16			includes solicitation to participate in sexual act or cause or have sexual conduct
felony punishable by imprisonment <15 years and/or fine <\$25,000	x	<18			for commercial purposes; possession of >3 identical copies creates presumption that possession is for commercial purposes
felony punishable by imprisonment <5 years and/or fine <\$5,000		<18			
					legislative policy
					definitions
misdemeanor punishable by confinement in county jail <1 year and/or fine <\$1,000		<18	x		mistake-of-age defense § 18-1517
	x	<18	x		defenses

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 18-1517A						
§ 18-1519			x			
§ 44-1306	x					
ILLINOIS						
720 ILCS § 5/11-20.1(a)(1)		x				
720 ILCS § 5/11-20.1(a)(2)			x		x	

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
misdemeanor; second offense is felony					hiring, employing minor to engage in certain acts – penalty; hiring a minor to do or assist in doing any of the acts listed in § 18-4103
					if more than 1 article or item of material prohibited under this statute is sold, given, or advertised for sale, distributed commercially, or promoted in violation of the provisions of this act by the same person, this sale, gift, advertisement, distribution, or promotion shall constitute a separate offense
misdemeanor punishable by confinement in county jail <6 months and/or fine \$50-\$250	x	<16			live performance for any obscene, indecent, or immoral purpose
class 1 felony with fine \$2,000-\$100,000 presentence psych exam required if subsequent offense within 10 years		<18	x		“minor” includes any institutionalized severely or profoundly mentally retarded person; mistake of age 720 ILCS § 5/11-20.1(b)(1)
class 1 felony with fine \$1,000-\$100,000 presentence psych exam required if subsequent offense within 10 years		<18	x		distributing with knowledge of the nature or content thereof; “minor” includes any institutionalized severely or profoundly mentally retarded person; possession of >1 copy of same item shall raise a rebuttable presumption of intent to distribute; mistake of age 720 ILCS § 5/11-20.1(b)(1)

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
720 ILCS § 5/11-20.1(a)(3)	x	x				
720 ILCS § 5/11-20.1(a)(4)						
720 ILCS § 5/11-20.1(a)(5)						
720 ILCS § 5/11-20.1(a)(6)						x
720 ILCS § 5/11-20.1A						
INDIANA						
§ 35-42-4-4(a)						
§ 35-42-4-4(b)	x	x	x			
§ 35-42-4-4(c)						x
IOWA						
§ 728.1						
§ 728.2					x	
§ 728.3					x	

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class 1 felony with fine \$1,500-\$100,000 presentence psych exam required if subsequent offense within 10 years		<18	x		producing with knowledge of the nature or content thereof; "minor" includes any institutionalized severely or profoundly mentally retarded person mistake of age 720 ILCS § 5/11-20.1(b)(1)
class 1 felony with fine \$2,000-\$100,000 presentence psych exam required if subsequent offense within 10 years		<18	x		soliciting, using, persuading, inducing, enticing, or coercing any child <18 to appear; mistake of age 720 ILCS § 5/11-20.1(b)(1)
class 1 felony with fine \$2,000-\$100,000 presentence psych exam required if subsequent offense within 10 years	x	<18			knowingly permitting child to appear in any stage play, live performance, film, videotape, photograph, or other similar visual representation, portrayal, or simulation or depiction
class 3 felony with fine \$1,000-\$100,000 presentence psych exam required if subsequent offense within 10 years		<18	x		with knowledge of the nature or content thereof; mistake of age 720 ILCS § 5/11-20.1(b)(1)
				x	any person who keeps a place of juvenile prostitution, exploitation of a child, or child pornography to forfeit profits, interest, security, or property
					definitions
class D felony except if committed by using a computer network which is a class C felony		<18			includes bringing or sending material to state for distribution
class A misdemeanor		<16			
					definitions
serious misdemeanor		<18			
serious/aggravated misdemeanor					admitting minors to premises where obscene material is exhibited

STATE CODE (1999)		OFFENSE				
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 728.10				x		
§ 728.12(1)	x					
§ 728.12(2)		x	x			
§ 728.12(3)						x
§ 728.14						
§ 728.15				x		
KANSAS						
§ 21-3516	x	x	x			x
§ 21-4301a				x		
§ 21-4301c				x		
KENTUCKY						
§ 531.300						
§ 531.310	x					

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
	x		x		it is an affirmative defense that the defendant had reason to believe the minor was 18 years of age or older and the minor exhibited to the defendant a draft card, driver's license, birth certificate...or was accompanied by a parent or a spouse 18 years of age or older
class C felony court may assess fine <\$50,000	x	<18			
class D felony court may assess fine <\$25,000		<18			
serious misdemeanor		<18			includes purchasing
simple misdemeanor		<18			commercial film and photographic print processors required to report
aggravated misdemeanor first offense; class D felony subsequent offenses		<18			telephone dissemination; defense in any prosecution if action taken to restrict access including requiring credit card or use of access code
severity level 5 person felony	x	<18			
class A nonperson misdemeanor first offense; severity level 8 person felony subsequent offenses		<18			
class B nonperson misdemeanor		<18			person having custody, control, or supervision of commercial establishment
class C felony if child <18; class B felony if child <16; class A felony if minor incurs physical injury	x	<18; <16	x		definitions use of a minor

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 531.320	x					
§ 531.330						
§ 531.335						x
§ 531.340			x		x	
§ 531.350		x				
§ 531.360						
§ 531.370						
LOUISIANA						
Title 14, § 81.1	x	x	x		x	x
MAINE						
Title 17, § 2911				x		
Title 17, § 2912				x		
Title 17, § 2913				x		
Title 17, § 2921						
Title 17, § 2922	x	x				

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class C felony if child <18; class B felony if child <16; class A felony if minor incurs physical injury		<18; <16	x		promoting a sexual performance by minor
		<16 or <18	x		presumption as to minority § 531.330(1); mistake of age § 531.330(2)
class A misdemeanor first offense; class D felony subsequent offenses		<18			
class D felony		<18	x		possession of >1 unit of material shall be rebuttably presumed as intent
class A misdemeanor first offense; class D felony second offense; class C felony subsequent offenses		<18	x		
class A misdemeanor		<18	x		advertising material portraying a sexual performance by a minor
class D felony first offense; class C felony subsequent offenses		<18	x		using minors to distribute material portraying sexual performance by a minor
fine <\$10,000 and imprisonment at hard labor 2-10 years without benefit of parole, probation, or suspension of sentence	x	<17		x	possession of 3 or more of same item is prima-facie evidence of intent to sell or distribute
class C crime		<18			
civil violation with forfeiture of <\$50		<18		x	displaying obscene material to minors
class D crime		<18			exhibiting obscene motion picture to minors at an outdoor theater
					definitions
class B crime with imprisonment at least 5 years first offense; and at least 10 years subsequent offense	x	<18			

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
Title 17, § 2923			x		x	
Title 17, § 2924						x
Title 17, § 2925						
MARYLAND						
Art. 27, § 417						
Art. 27, § 419				x		
Art. 27, § 419A	x	x	x		x	
Art. 27, § 419B						x
Art. 27, § 420						
MASSACHUSETTS						
Chp. 272, § 29A	x	x				
Chp. 272, § 29B			x		x	
Chp. 272, § 29C						x

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE- OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class C crime first offense; class B crime subsequent offenses		<18			possession of >10 copies of same item gives rise to presumption of intent to disseminate
class D crime first offense; class C crime subsequent offenses		<14		x	it is a defense under this section that person depicted was spouse of person possessing material
				x	
					definitions
misdemeanor		<18			
felony with fine <\$25,000 and/or imprisonment for 10 years first offense; fine <\$50,000 and/or imprisonment <20 years subsequent offenses	x	<18			includes computer transmissions; state's attorney not required to identify or produce testimony from minor where minor's identity is unknown or minor is outside jurisdiction
misdemeanor with fine <\$2,500 and/or imprisonment <1 year first offense; fine <\$5,000 and/or imprisonment <2 years subsequent offenses		<16			
misdemeanor		<18			hiring, employing, or using minor to do or assist in doing prohibited acts
imprisonment in state prison 10-20 years and/or fine \$10,000-\$50,000	x	<18			
imprisonment in state prison 10-20 years and/or fine \$10,000-\$50,000 or 3 times the monetary value of any economic gain derived from such dissemination whichever is greater		<18			
imprisonment in state prison <5 years or jail or house of corrections <2.5 years and/or fine \$1,000-\$10,000 first offenses; <5 years in state prison and/or fine \$5,000-\$20,000 second offense; <10 years in state prison and/or fine \$10,000-\$30,000 subsequent offenses		<18			purchase or possession

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
Chp. 272, § 30D		x	x			
Chp. 272, § 31						
MICHIGAN						
§ 750.142				x		
§ 750.143				x		
§ 750.145c(2)	x					
§ 750.145c(3)		x	x		x	
§ 750.145c(4)						x
§ 750.145d						
MINNESOTA						
§ 617.245						

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
					distribution of visual material of child in state of nudity or sexual conduct, injunction, jurisdiction definitions
misdemeanor		<18			distributing to minors
misdemeanor		<18			displaying to minors
felony punishable by imprisonment <20 years and/or fine <\$100,000	x	<18			not apply to emancipated minors
felony punishable by imprisonment <7 years and/or fine <\$50,000		<18			not apply to emancipated minors
misdemeanor punishable by imprisonment <1 year and/or fine <\$10,000		<18			not apply to emancipated minors
felony punishable by imprisonment <2 years and/or fine <\$2,000 first offense; imprisonment <5 years and/or fine <\$5,000 subsequent offenses		<18			using Internet or computer, computer program, computer network, or computer system to communicate with any person for the purposes of committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct
		<16	x		cause of action exists for injury caused by the use of a minor in a sexual performance; a person found liable for injuries is liable to the minor for damages; neither minor's consent nor minor's parent's, guardian's, or custodian's consent, nor mistake of age is defense to action; action must be commenced within 6 years of time plaintiff knew or should have known of injury

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 617.246	x	x	x	x		
§ 617.247			x			x
§ 617.292						
§ 617.293				x		
§ 617.294				x		
MISSISSIPPI						
§ 97-5-27				x		
§ 97-5-29				x		
§ 97-5-31						
§ 97-5-33		x	x		x	x
§ 97-5-35						
MISSOURI						
§ 568.060		x				

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
felony may be imprisoned <10 years and fined <\$20,000 first offense; <\$40,000 subsequent offenses		<18	x		disseminating for profit includes operation or ownership of business in which pornographic material is knowingly disseminated or reproduced; neither minor's consent nor minor's parent's, guardian's, or custodian's consent, nor mistake of age is defense to action
felony may be imprisoned <5 years and fined <\$10,000 first offense; <\$20,000 subsequent offenses; mental examination required if convicted of subsequent offense within 15 years		<18	x		pictorial representations; neither minor's consent nor minor's parent's, guardian's, or custodian's consent, nor mistake of age is defense to action
gross misdemeanor		<18			definitions
					dissemination or display
					exhibition or sale of admission ticket to film, show, play, dance of material harmful to minors
misdemeanor with fine \$500-\$5,000 and/or imprisonment in county jail <1 year		<18			dissemination of sexual material to minor
misdemeanor with fine \$500-\$5,000 and/or imprisonment in county jail <1 year		<18			display of sexually oriented material
					definitions
	x	<18			
felony with fine \$25,000-\$100,000 and/or imprisonment 2-20 years first offense; fine >\$75,000 and imprisonment 10-30 years subsequent offenses					punishment for violations of § 97-5-33
class C felony unless serious emotional injury is inflicted class B felony or death results from sustained injuries class A felony	x	<18			abuse of child

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIC
§ 568.080	x					
§ 568.090	x					
§ 568.100						
§ 568.110						
§ 568.120						
§ 573.010						
§ 573.020				x		
§ 573.025		x				
§ 573.030				x		
§ 573.035			x		x	
§ 573.037						x
§ 573.040				x		
§ 573.050						

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class C felony unless serious emotional injury is inflicted class B felony class C felony	x	<17			using child in performance
class C felony		<17			promoting performance
					factors to consider when establishing age of child participating in sexual performances; testimony may be videotaped
class B misdemeanor		<17			processors duty to report on films, photographs, videotapes, failure to report, penalty
treatment required after first offense; no suspended sentence or probation for subsequent offenses					applies to §§ 568.060, 568.080, 568.090
class D felony					definitions promoting obscenity to minors; first degree
class B felony, fine \$5,000-\$500,000 may be added		<18			
class A misdemeanor first offense class D felony subsequent offense					promoting obscenity to minors second degree; see also § 573.090
class D felony, fine \$5,000-\$500,000 may be added		<18			
class A misdemeanor first offense; class D felony subsequent offenses		<18			
class A misdemeanor first offense; class D felony subsequent offenses		<18			includes producing, presenting, directing, or participating in any performance pornographic for minors that is knowingly furnished to minors
					evidence in obscenity and child-pornography cases; evidence and inference as to age of child § 568.100

STATE CODE (1999)		OFFENSE				
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
MONTANA						
§ 45-4-625	x	x	x		x	x
NEBRASKA						
§ 28-807						
§ 28-808				x		
§ 28-809				x		
§ 28-810						
§ 28-813.02						
§ 28-1463.02						
§ 28-1463.03		x	x			
§ 28-1463.05					x	
NEVADA						
§ 200.700						
§ 200.710	x					

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
life imprisonment or imprisonment in state prison <100 years and fine <\$10,000; except if child <16 life imprisonment or imprisonment in state prison 4-100 years and fine <\$10,000 or mere possession fine <\$10,000 and/or imprisonment in state prison <10 years	x	<18; <16			includes knowingly persuading, enticing, counseling, or procuring a child to engage in sexual activity and financing prohibited activities
					definitions
class I misdemeanor		<18	x		selling, delivering, distributing, displaying for sale or providing to minors obscene literature or materials
class I misdemeanor		<18	x		providing or permitting admission to motion picture, show, or other presentation
	x	<18	x		defenses
					commercial film and photographic print processor immune from liability when participating in child pornography investigation
					definitions
class III felony first offense; class II felony subsequent offenses	x	<18			includes child as portrayed observer if child <16; penalties § 28-1463.04
class IV felony		<18			includes child as portrayed observer
					definitions
category A felony with imprisonment in state prison for life with parole possible >5 years or for a definite term of 15 years with parole possible >5 years and fine \$100,000 if child >14; imprisonment in state prison for life with parole possible >10 years and fine <\$10,000 if child <14	x	<18			producing performance; not necessary that minor be aware that sexual portrayal is part of performance; penalties § 200.750

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 200.720	x					
§ 200.725		x	x			
§ 200.730						x
§ 200.760						
§§ 201.256-201.264				x		
§ 201.265				x		
NEW HAMPSHIRE						
§ 649-A:2						
§ 649-A:3		x	x		x	x
NEW JERSEY						
§ 2A:30B-2						
§ 2A:30B-3						
§ 2C:24-4	x	x	x			x
NEW MEXICO						
§ 30-6A-2						
§ 30-6A-3(A)			x		x	
§ 30-6A-3(B)	x	x				
§ 30-6A-3(C)		x				
§ 30-6A-4(C)						

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE- OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
category A felony with imprisonment in state prison for life with parole possible >5 years or for a definite term of 15 years with parole possible >5 years and fine \$100,000 if child >14; imprisonment in state prison for life with parole possible >10 years and fine <\$10,000 if child <14		<18			promoting performance; penalties § 200.750
category B felony with imprisonment in state prison 1-15 years and fine <\$15,000		<18			includes advertising
category B felony with imprisonment in state prison 1-6 years and fine <\$5,000 first offense; imprisonment in state prison 1-10 years and fine <\$5,000 subsequent offenses		<18			
				x	
misdemeanor		<18			definitions
		<18			
class B felony first offense; class C felony subsequent offenses		<16			definitions includes bringing or causing to bring material into state; includes convictions in this and any other state; see also § 649-A:4 exemptions and § 649-A:5 justifiable dissemination
		<18			definitions
		<18			child's civil cause of action; award recovery to total 3 times financial gain of defendant
2 nd degree crime, except parental consent which is a 1 st degree crime and mere possession which is a 4 th degree crime	x	<16			includes use of computer to simulate prohibited act
		<18			definitions
3 rd degree felony		<18			
3 rd degree felony unless child <13, 2 nd degree felony	x	<18; <13			
2 nd degree felony		<18			
3 rd degree felony	x	<16			knowingly permit child to engage in or assist any other person to engage in prohibited sexual act or simulation

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
NEW YORK						
§ 235.15					x	
§ 235.20						
§ 235.21				x		
§ 235.22				x		
§ 235.23						
§ 235.24				x		
§ 263.00						
§ 263.05	x					
§ 263.10	x					
§ 263.11						x
§ 263.15	x					
§ 263.16						x
§ 263.25						
NORTH CAROLINA						
§ 14-190.1 (d)				x		
§ 14-190.7				x		
§ 14-190.8				x		
§ 14-190.13						
§ 14-190.14				x		

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
					defenses to violation of subdivision 3 of § 235.21
					disseminating indecent material to minors; definitions of terms
class E felony second degree		<17	x		video representations
class D felony first degree		<17	x		communications depicting act
		<17	x		affirmative defense to §§ 235.21 and 235.22
					limitations
					definitions
class C felony	x	<16	x		employing, authorizing, or inducing child to engage in obscene sexual performance; mistake of age § 263.20
class D felony		<16	x		obscene sexual performance; mistake of age § 263.20
class E felony		<16	x		obscene sexual performance; mistake of age § 263.20
class D felony		<16	x		sexual performance; mistake of age § 263.20
class E felony		<16	x		sexual performance; mistake of age § 263.20
					proof of age of child
					obscenity judged with reference to children if it appears from the character of the material or the circumstances of its dissemination to be especially designed for or directed to children
class I felony		<16			disseminating to minors
class I felony		<13			disseminating to minors
					definitions
class 2 misdemeanor		<18			displaying to minors

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 14-190.15				x		
§ 14-190.16	x	x				
§ 14-190.17		x	x			
§ 14-190.17A						x
§ 14-202.3						
NORTH DAKOTA						
§ 12.1-27.1-01						
§ 12.1-27.1-02	x	x		x		
§ 12.1-27.1-03				x		
§ 12.1-27.1-03.1				x		
§ 12.1-27.1-03.2						
§ 12.1-27.2-01						

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class 1 misdemeanor		<18			disseminating to minors; mistake of age not defense unless defendant shown official ID by minor indicating minor >18 and reasonably believed >18
class D felony	x	<18			includes transporting or financing the transport of minor through or across state; production of visual representation for pecuniary gain
class F felony		<18			
class I felony		<18			
class I felony		<16			knowingly, with intent to commit an unlawful sex act, enticing, advising, coercing, ordering, or commanding by means of computer a child <16 and at least 3 years younger than defendant to meet for the purpose of committing an unlawful sex act
					definitions - obscenity; dissemination - classification of offenses
					definitions - promoting obscenity to minors
class C felony		<18	x		promoting to minors; permitting minors to participate in performance; mistake of age § 12.1-27.2-05
class B misdemeanor		<18	x		display to minors; mistake of age § 12.1-27.2-05
		<18			exhibiting X-rated motion picture in unscreened outdoor theater
					definitions

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 12.1-27.2-02	x	x				
§ 12.1-27.2-03	x	x	x			
§ 12.1-27.2-04	x		x			
§ 12.1-27.2-04.1						x
§ 12.1-27.2-04.2						
OHIO						
§ 2907.31				x		
§ 2907.311				x		
§ 2907.321	x	x	x			x
§ 2907.322	x	x	x			x
§ 2907.323	x	x	x			x
OKLAHOMA*						
Title 21, § 1021(A)	x	x	x			

*as amended by legislation enacted in 2000

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class B felony	x	<18	x		use of minor in sexual performance; mistake of age § 12.1-27.2-05
class B felony		<18	x		promoting or directing minor in obscene sexual performance; mistake of age § 12.1-27.2-05
class C felony		<18	x		promoting or directing minor in sexual performance; mistake of age § 12.1-27.2-05
class A misdemeanor first offense; class C felony subsequent offenses		<18	x		
fine <\$10,000 first offense, individual; fine <\$25,000 first offense, corporation; fine <\$50,000 subsequent offenses, individual; fine <\$100,000 subsequent offenses, corporation			x		person who commits crime under this section and who acts in the course of commercial or for-profit activity; mistake of age § 12.1-27.2-05
4 th degree felony		<18			disseminating to minors
1 st degree misdemeanor		<18			displaying to minors
2 nd degree felony except mere possession which is 4 th degree felony first offense; 3 rd degree felony subsequent offenses		<18			obscene material includes bringing or causing to be brought into state and advertising
2 nd degree felony except mere possession which is 5 th degree felony first offense; 4 th degree felony subsequent offenses		<18			sexually oriented material includes bringing or causing to be brought into state and advertising
2 nd degree felony except mere possession which is 5 th degree felony first offense; 4 th degree felony subsequent offenses	x	<18			nudity-oriented material; possession of 5 or more identical copies is presumption of having intent to distribute § 2907.35
felony punishable by fine \$500-\$20,000 and/or imprisonment 30 days-10 years; not all convicted persons eligible for deferred sentences		<18			

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSION
Title 21, § 1021(B)	x			x		
Title 21, § 1021.1						
Title 21, § 1021.2	x	x	x			x
Title 21, § 1021.3						
Title 21, § 1021.4						
Title 21, § 1024.1						
Title 21, § 1024.2		x				x
Title 21, § 1040.12						
Title 21, § 1040.13		x	x		x	

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
		<18			willfully soliciting or aiding minor to perform; showing, exhibiting, loaning, or distributing obscene material or child pornography to minor for purpose of inducing said minor to participate
					does not apply when possession, distribution, or conduct occurs in course of law-enforcement activities
felony punishable by imprisonment <20 years without possibility of deferred sentence and/or fine <\$25,000	x	<18			consent of minor or minor's parents, guardians, or custodians does not constitute a defense
felony punishable by imprisonment <20 years without possibility of deferred sentence and/or fine <\$25,000	x	<18			consent of minor does not constitute a defense
misdemeanor punishable by fine <\$5,000 and/or imprisonment in county jail <1 year					commercial film and photographic print processors required to report definitions
felony punishable by imprisonment <5 years and/or fine <\$5,000					definitions
felony punishable by imprisonment <10 years and/or fine <\$10,000		<18			for commercial distribution includes sending, bringing, or causing to be sent or brought into state with knowledge of content; possession of 2 or more copies of any single article, or possession of a combined total of 5 articles, creates presumption of intent to distribute § 1040.24

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
Title 21, § 1040.13A						
Title 21, § 1040.24					x	
Title 21, § 1040.51			x		x	x
Title 21, § 1040.52				x		
Title 21, § 1040.54						
Title 21, § 1040.75						
Title 21, § 1040.76				x		
OREGON						
§ 163.665						
§ 163.670		x				
§ 163.684		x	x		x	
§ 163.686						x

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE- OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
misdemeanor punishable by fine <\$1,000 and/or imprisonment in county jail <1 year		<18			using computer to transmit, print, publish, or reproduce or buying, selling, receiving, exchanging, or disseminating information on minor for use in facilitating, encouraging, offering, or soliciting sexual conduct with minor
					possession of 2 or more copies of any single article, or possession of a combined total of 5 articles, creates presumption of intent to distribute
felony punishable by fine <\$25,000 and/or imprisonment <15 years					picture, moving picture, drawing, electronic video game, diagram, or photograph of person, animal, or caricature engaging in sexual intercourse or unnatural copulation; includes causing to be delivered or transported into state
imprisonment in county jail <1 year and/or fine <\$1,000		<18			showing actual or simulated sexual act at outdoor theater in view of minors
				x	
					definitions
misdemeanor punishable by fine <\$100 each day violation occurs shall be punishable as separate offense					displaying to minors; penalties Title 21, § 1040.77
					definitions
class A felony	x	<18			
class B felony		<18	x		including bringing or causing to be brought into state
class C felony		<18	x		knows or is aware of and consciously disregards fact that depicted conduct constitutes child abuse

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 163.687						x
§ 163.688						x
§ 163.689						x
§ 163.690						
§ 163.693						
§ 163.695						
§ 167.065**				x		
PENNSYLVANIA*						
Title 18, § 5903	x	x	x	x		x

*as amended by legislation enacted in 2000

**The Oregon Court of Appeals found this statute to be "unconstitutionally overbroad" on May 31, 2000. See State v. Maynard, 5 P.3d. 1142 (Or. App. 2000).

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class A misdemeanor		<18	x		knows or fails to be aware of substantial and unjustifiable risk that depicted conduct constitutes child abuse
class B felony		<18	x		possession and use to induce a child to participate or engage in sexually explicit conduct
class C felony		<18	x		possession with intent to use to induce a child to participate or engage in sexually explicit conduct
			x		applies to §§ 163.684, 163.686, 163.687, 163.688, 163.689
class A misdemeanor					photograph, motion picture, videotape, or other visual recording processor or producer required to report
				x	
class A misdemeanor fine <\$10,000		<18			
1 st degree misdemeanor; 3 rd degree felony selected second offenses	x	<18			includes designing, copying, and drawing obscene materials; displaying and knowingly advertising such material; and admitting minor to show exhibiting obscene behavior; includes hiring, employing, using, or permitting minor to perform; mere possession applies only to inmates of correctional facilities; includes dissemination of material and advertisements via electronic communication; injunctions §§ g

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
Title 18, § 6312(a)						
Title 18, § 6312(b)		x				
Title 18, § 6312(c)			x		x	
Title 18, § 6312(d)						x
Title 18, § 6318						
RHODE ISLAND						
§ 11-9-1(a)	x	x				
§ 11-9-1(b)		x	x			
§ 11-9-1(c)	x					
§ 11-9-1.1		x	x			
§ 11-9-2	x	x	x			
SOUTH CAROLINA						
§ 16-15-335	x	x	x		x	
§ 16-15-345				x		
§ 16-15-355				x		
§ 16-15-375						

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
					definitions
2 nd degree felony	x	<18			
3 rd degree felony		<18			
3 rd degree felony		<18			
offense of same grade/degree as most serious underlying offense or 1 st degree misdemeanor whichever is greater		<18			communicating with minor for purpose of engaging in prohibited activity
misdemeanor with imprisonment <1 year and/or fine <\$250 and forfeit any right to custody	x	<16			
imprisonment <10 years and/or fine <\$10,000 first offense; imprisonment <15 years and/or fine <\$15,000 subsequent offenses	x	<18			
imprisonment <20 years and/or fine <\$20,000		<18			
imprisonment <10 years and/or fine <\$10,000 first offense; imprisonment <15 years and/or fine <\$15,000 subsequent offenses		<18			child nudity
misdemeanor		<16			taking, receiving, hiring, employing, exhibiting, or having in custody or causing to take, hire, employ, exhibit, or hold in custody child for purposes prohibited under § 11-9-1
felony with imprisonment <5 years		<18			permitting minor to engage in any act constituting violation of obscenity statute § 16-15-305; penalties
felony with imprisonment <5 years		<18			obscene material
felony with imprisonment <10 years		<12			obscene material
					definitions applicable to §§ 16-15-385 through 16-15-425

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 16-15-385				X		
§ 16-15-387	X	.				
§ 16-15-395	X	X	X			
§ 16-15-405		X	X			
§ 16-15-410						X
SOUTH DAKOTA						
§ 22-22-23		X				
§ 22-22-23.1						X
§ 22-22-24			X			
TENNESSEE						
§ 39-17-901						
§ 39-17-902(b)				X		

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
felony with imprisonment <5 years and/or fine <\$5,000		<18	x		material that is harmful to minors; affirmative defense if defendant parent or legal guardian unless shown for sexual gratification of parent or legal guardian; affirmative defense if defendant shown official ID card by minor indicating minor >18 and reasonably believed >18
felony with imprisonment <5 years and/or fine <\$5,000		<18			employing minor to appear in public place in state of sexually explicit nudity
felony with imprisonment 3-10 years; no part of minimum sentence shall be suspended, and parole not possible until minimum sentence served	x	<18		x	includes transporting, or financing the transport of, minor through or across state; production of visual representation and distribution for pecuniary gain; forfeiture § 16-15-445
felony with imprisonment 2-5 years; no part of minimum sentence shall be suspended, and parole not possible until minimum sentence served		<18		x	forfeiture § 16-15-445
felony with imprisonment <5 years		<18			
class 4 felony	x	<16			
class 6 felony		<18			
class 6 felony		<16			
class E felony					definitions producing, importing, preparing, distributing, processing, or appearing in obscene material or exhibition - distribution to or employment of minors

**STATE CODE
(1999)**

OFFENSE

	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSION
§ 39-17-911				x		
§ 39-17-914				x		
§ 39-17-1002						
§ 39-17-1003						x
§ 39-17-1004		x	x		x	
§ 39-17-1005	x	x				
TEXAS						
Title 9, § 43.21						
Title 9, § 43.24				x		
Title 9, § 43.25(a)						
Title 9, § 43.25(b)	x					
Title 9, § 43.25(d)	x		x			
Title 9, § 43.25(f)						
Title 9, § 43.251						
Title 9, § 43.26					x	x

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class A misdemeanor		<18			distribution to minors; affirmative defense that minor accompanied by parent or legal guardian or by an adult with written permission from minor's parent or legal guardian; injunctions § 39-17-919
class C misdemeanor		<18			displaying to minors for sale or rental; injunctions § 39-17-919
class E felony		<18			definitions injunctions § 39-17-1006
class C felony except if material is obscene class B felony		<18			injunctions § 39-17-1006
class B felony		<18			injunctions § 39-17-1006
class A misdemeanor except if minor used to distribute 3 rd degree felony		<18			definitions affirmative defense if minor accompanied by parent, guardian, or spouse
2 nd degree felony	x	<18	x		definitions employing, authorizing, or inducing minor to engage in act or consenting if parent or legal guardian
3 rd degree felony		<18	x		producing, directing, or promoting
class A misdemeanor	x	<18 <18	x		employing, authorizing, or inducing child to work in sexually oriented commercial activity or business where child nude or topless
2 nd degree felony except mere possession which is a 3 rd degree felony		<18	x		possession of 6 or more identical copies is presumption of intent to promote

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
UTAH						
§ 76-5a-2						
§ 76-5a-3	x	x	x		x	x
VERMONT						
Title 13, § 2821						
Title 13, § 2822	x		x			
Title 13, § 2823						
Title 13, § 2824		x	x			
VIRGINIA						
§ 18.2-372						
§ 18.2-373						
§ 18.2-374.1	x	x	x		x	
§ 18.2-374.1:1						x
§ 18.2-374.2						

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
					definitions
2 nd degree felony	x	<18			see also § 76-5a-4 determination whether material violates statute
					definitions
imprisonment <10 years and fine <\$20,000 first offense; imprisonment 1-15 years and fine <\$50,000 subsequent offenses		<16	x		penalties Title 13, § 2825
imprisonment <10 years and fine <\$20,000 first offense; imprisonment 1-15 years and fine <\$50,000 subsequent offenses	x	<16			with knowledge of character and content, consenting to child's participation in sexual performance or performance including a lewd exhibition of child's genitals; penalties Title 13, § 2825
imprisonment <10 years and fine <\$20,000 first offense; imprisonment 1-15 years and fine <\$50,000 subsequent offenses		<16	x		does not apply to paintings, drawings, or nonvisual or written descriptions of sexual conduct; penalties; Title 13, § 2825
					"obscene" defined
					obscene items enumerated
class 5 felony		<18		x	financing or attempting or preparing to finance, class 4 felony; person depicted or presented as <18 is prima-facie presumed to be <18
class 1 misdemeanor first offense; class 6 felony subsequent offenses		<18		x	
		<18		x	seizure and forfeiture of all property used in connection with production

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 18.2-374.3(A)						
§ 18.2-374.3(B)						
WASHINGTON						
§ 9.68A.011						
§ 9.68A.040	x	x				
§ 9.68A.050		x	x		x	
§ 9.68A.060						
§ 9.68A.070						x
§ 9.68A.080						
§ 9.68A.090						
§ 9.68A.110						
§ 9.68A.120						
§ 9.68A.130						
§ 9.68A.140						
§ 9.68A.150	x			x		
WEST VIRGINIA						
§ 61-8C-1						

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
class 6 felony		<18			using communications systems for procuring or promoting use of minor
class 5 felony		<18			using communications systems to solicit minor
class B felony	x	<18			definitions compels or causes minor to engage in conduct
class C felony		<18			
class C felony		<18			knowingly sending or causing to be sent or bringing or causing to be brought into state for sale or distribution
class C felony		<18			
gross misdemeanor					commercial processors or producers required to report
gross misdemeanor first offense; class C felony subsequent offenses		<18			communicating with minor for immoral purposes
			x		certain defenses barred, permitted
				x	
					a minor prevailing in a civil action under this section may recover costs of suit including reasonable attorney fees
					definitions for §§ 9.68A.150 and 9.68A.160
gross misdemeanor					allowing minor to be on premises of commercial establishment open to the public where there is live performance containing erotic matter; penalties § 9.68A.160
					definitions

STATE CODE (1999)	OFFENSE					
	PROMOTING/PRODUCING		DISTRIBUTION	DISTRIBUTION TO A MINOR	POSSESSION	
	LIVE PERFORMANCE	VISUAL REPRESENTATION			WITH INTENT TO DISTRIBUTE	MERE POSSESSIO
§ 61-8C-2	x	x				
§ 61-8C-3			x			x
§ 61-8D-1						
§ 61-8D-6			x		x	x
WISCONSIN						
§ 948.01						
§ 948.05	x	x	x		x	
§ 948.055				x		
§ 948.07						
§ 948.11				x		
§ 948.12						x
WYOMING						
§ 6-4-301						
§ 6-4-302				x		
§ 6-4-303	x	x	x		x	x

OFFENSE LEVEL	PARENTAL KNOWLEDGE/ CONSENT	AGE OF CHILD	MISTAKE-OF-AGE DEFENSE	FORFEITURE PROVISION	MISCELLANEOUS
felony with fine <\$10,000 and/or imprisonment <10 years	x	<18			person convicted may be ordered by court to pay all or any portion of cost of medical, psychological, or psychiatric treatment of minor resulting from act(s) § 61-8C-4
felony with imprisonment <2 years and/or fine <\$2,000		<18			person convicted may be ordered by court to pay all or any portion of cost of medical, psychological, or psychiatric treatment of minor resulting from act(s) § 61-8C-4
felony with imprisonment <2 years and fine \$400-\$4,000	x	<18			parent sending, distributing, exhibiting, possessing, displaying, or transmitting material depicting child under his or her care
					definitions
class C felony	x	<18	x		
class C felony if child <13; class D felony if child 13-18		<13; <18			causing child to view or listen to sexually explicit conduct
class BC felony		<18			causing or attempting to cause any child to enter vehicle, building, room, or selected place with intent to commit prohibited act
class E felony		<18			
class E felony		<18			
					definitions
fine <\$6,000 and/or imprisonment <1 year		<18			
felony with imprisonment <12 years and/or fine <\$10,000, except mere possession which is imprisonment <10 years and/or fine <\$10,000 first offense; imprisonment <12 years and/or fine <\$10,000 subsequent offenses	x	<18		x	

Endnotes

1. The Internet is a global network of computers that joins more than 30 million people by computer, allows communication in “cyberspace,” and provides access to the world wide web. ECPAT, *Child Pornography: An International Perspective*, World Congress Against the Commercial Sexual Exploitation of Children, Stockholm, Sweden at 9 (August 27-31, 1996).
2. Child pornography is also commonly referred to as “kiddie porn” or “chicken porn.” R. BARRI FLOWERS, *THE VICTIMIZATION AND EXPLOITATION OF WOMEN AND CHILDREN: A STUDY OF PHYSICAL, MENTAL AND SEXUAL MALTREATMENT IN THE UNITED STATES* 90 (McFarland & Company, Inc. 1994).
3. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, E/CN.4/2000/75 [hereinafter *Optional Protocol*].
4. 18 U.S.C. § 2256(8) (1999). See the legal analysis section for more detailed information on current case law addressing the federal definition of child pornography.
5. Daniel S. Armagh, Nick L. Battaglia & 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* at 6 (US Department of Justice 1999).
6. *Program to Increase Understanding of Child Sexual Exploitation, Assessment Report, Volume II* at 132-33 (American Bar Association Center on Children and the Law 1994) [hereinafter *Assessment Report*].
7. Kenneth V. Lanning, *Cyber “Pedophiles”: A Behavioral Perspective*, in *PROSECUTING INTERNET CHILD EXPLOITATION CRIMES* ¶ 4.20 (James M. Peters ed., US Department of Justice, USABook in press) [hereinafter *Lanning, Cyber “Pedophiles”*].
8. Mike Hames, *A Police View of Pornographic Links*, in *ORGANIZED ABUSE: THE CURRENT DEBATE* 200 (Peter C. Bibby, ed., Brookfield, Vt.: Ashgate 1996). Small sample sizes of some studies cannot be generalized to a larger population, and no reliable estimates of the number of children affected exist. See Debra Whitcomb, Edward De Vos & Barbara E. Smith, *Program to Increase Understanding of Child Sexual Exploitation: Final Report* at 3 (Education Development Center, Inc. & ABA Center on Children and the Law 1998). Because much of the literature is “based on the same (or related) research efforts by the same (or collaborating) authors, the actual research base is even smaller. Many of these studies lack scientific rigor and are based on extremely small sample sizes.” *Id.*
9. For more information on the US Postal Inspection Service, see *infra* text accompanying note 458.
10. Child Exploitation Program Overview, United States Postal Inspection Service, Ray Smith, Postal Inspector, July 20, 2000.
11. Excerpt from Canadian Parliament: House Debates, Government Order: *Allotted Day on Child Pornography*, 36th Parliament, 1st Session, Edited Hansard 1, No. 172, Feb. 2, 1999 (citing Mehta study, *infra* note 12).
12. Michael D. Mehta & Dwaine E. Plaza, *Content Analysis of Pornographic Images Available on the Internet*, 13 *THE INFORMATION SOCIETY* 153-62 (1997) (original study presented October 1994) (web source: www.queensu.ca/epu).
13. See *infra* text accompanying notes 110-12, discussing estimation by medical experts of a subject’s age in a visual depiction.
14. Mehta & Plaza, *supra* note 12.
15. World Congress, *supra* note 1, at 9.
16. Lanning, *Cyber “Pedophiles,” supra* note 7.
17. Child Exploitation Program Overview, United States Postal Inspection Service, Ray Smith, Postal Inspector, July 20, 2000.
18. Armagh, Battaglia & Lanning, *supra* note 5.

19. Lanning, *Cyber "Pedophiles," supra* note 7, ¶4.16 (Organization of Materials) & ¶4.18 (Maintenance of Financial Records); Armagh, Battaglia & Lanning, *supra* note 5, at 4-5; Donna Andrea Rosenberg, *Unusual Forms of Child Abuse, in THE BATTERED CHILD* at 432 (Mary Edna Helfer, Ruth S. Kempe & Richard D. Krugman eds., 5th ed., The University of Chicago Press 1997).
20. Armagh, Battaglia & Lanning, *supra* note 5, at 4-5; Rosenberg, *supra* note 19, at 432.
21. *Id.*
22. *Id.*
23. Rosenberg, *supra* note 19, at 432.
24. *Id.*
25. *Id.*
26. Armagh, Battaglia & Lanning, *supra* note 5, at 2-3. Using a computer in child-pornography offenses requires above-average intelligence and economic means. Preferential sex offenders can be identified by certain interrelated behaviors including long-term and persistent patterns; specific sexual interests and defined victim characteristics with the ability to rationalize their sexual preferences and build their lives around those preferences; well-developed techniques including skill manipulation, access to victims, and use of modern technology for sexual needs; and fantasy-driven behavior (*i.e.*, turning fantasy into reality). *Id. See also* Lanning, *Cyber "Pedophiles," supra* note 7, ¶4.8 (Typology of Sex Offenders). Lanning's latest typology establishes a motivational continuum along which sex offenders fall, with situational offenders at one end and preferential at the other. Each also includes 11 characteristics.
27. Whitcomb, De Vos & Smith, *supra* note 8, at 4.
28. *See* Lanning, *Cyber "Pedophiles," supra* note 7, ¶4.23.
29. Rosenberg, *supra* note 19, at 441.
30. Child Exploitation Program Overview, United States Postal Inspection Service, Ray Smith, Postal Inspector, July 20, 2000.
31. Hartman, Burgess & Lanning, *Typology of Collectors, in CHILD PORNOGRAPHY AND SEX RINGS* (A. W. Burgess, ed., Lexington, MA: DC Health 1984)); Kenneth Lanning, *CHILD MOLESTERS: A BEHAVIORAL ANALYSIS* (National Center for Missing & Exploited Children, 3d ed. 1992).
32. *Id.*
33. *Id.*
34. Personal communication from Lieutenant William Walsh, Dallas (Texas) Police Department (December 10, 2000). *See also* Lanning, *Cyber "Pedophiles," supra* note 7, ¶4.24 (citing anecdotal evidence that suggests the majority of child-pornography collectors are not active molesters).
35. Hartman, Burgess & Lanning, *supra* note 31; Lanning, *CHILD MOLESTERS, supra* note 31.
36. *Id.*
37. Hartman, Burgess & Lanning, *supra* note 31.
38. *Id.*
39. *Id.*
40. *Id.*
41. Lanning, *Cyber "Pedophiles," supra* note 7, ¶4.24.
42. Lanning, *CHILD MOLESTERS, supra* note 31, at 29; *see also* Tim Tate, *The Child Pornography Industry: International Trade in Child Sexual Abuse, in PORNOGRAPHY: WOMEN, VIOLENCE & CIVIL LIBERTIES* at 212 (Catherine Itzin ed., Oxford University Press 1992).
43. Lanning, *CHILD MOLESTERS, supra* note 31, at 29.
44. *Id.*
45. *Id.*
46. *Id.*
47. Armagh, Battaglia & Lanning, *supra* note 5, at 6; Rosenberg, *supra* note 19, at 432.

48. Lanning, *CHILD MOLESTERS*, *supra* note 31, at 29.
49. *Id.* at 30.
50. *Id.*
51. Armagh, Battaglia & Lanning, *supra* note 5, at 7; Tate, *supra* note 42, at 212.
52. Lanning, *Cyber "Pedophiles," supra* note 7, ¶ 4.10; *see also* Armagh, Battaglia & Lanning, *supra* note 5, at 7.
53. *Id.*
54. *Id.*
55. *See* *United States v. Matthews*, 209 F.3d 338 (4th Cir. 2000), *cert. denied*, 121 S.Ct. 260 (2000) (holding First Amendment does not provide defense against criminal conviction for sending and receiving child pornography over the Internet for journalistic purpose). *See also* *State v. Williams*, 93 Wash. App. 1013, 1998 WL 8080007 (November 1998) (finding statute constitutional and not overbroad, refusing to require instruction regarding affirmative defense to possession for journalistic purpose).
56. Lanning, *Cyber "Pedophiles," supra* note 7, ¶ 4.10; Armagh, Battaglia & Lanning, *supra* note 5, at 7-8.
57. These groups "condone child sexual abuse under the guise of promoting children's sexual liberty." Rosenberg, *supra* note 19, at 441; *see also* DAVID HECHLER, *THE BATTLE AND BACKLASH: THE CHILD SEXUAL ABUSE WAR* (Lexington, MA: Lexington Books 1988).
58. *Id.*
59. FLOWERS, *supra* note 2, at 92 (citing "Child Pornography on the Rise Despite Tougher Laws," Sacramento Union at E6 (April 7, 1984)).
60. *See infra* text accompanying notes 180-199.
61. *Final Report*, Attorney General's Commission on Child Pornography, US Department of Justice, July 1986, at 411 (Meese Commission) [hereinafter *Attorney General's Final Report*].
62. Kenneth V. Lanning, *Collectors*, in *CHILD PORNOGRAPHY AND SEX RINGS* at 86-87 (Ann Wolbert Burgess & Marianne Lindeqvist Clark, eds., Lexington Books 1984); Hames, *supra* note 8, at 197.
63. Lanning, *Collectors*, *supra* note 62, at 86; Hames, *supra* note 8, at 197; ROGER J.R. LEVESQUE, *SEXUAL ABUSE OF CHILDREN: A HUMAN RIGHTS PERSPECTIVE* 64 (Indiana University Press 1999).
64. LEVESQUE, *supra* note 63, at 64.
65. Liz Kelly, *Pornography and Child Sexual Abuse*, in *PORNOGRAPHY: WOMEN, VIOLENCE, & CIVIL LIBERTIES* at 121 (Catherine Itzin ed., Oxford University Press 1992).
66. Lanning, *Collectors*, *supra* note 62, at 86-87.
67. Dennis Howitt, *Pornography and the Paedophile: Is it Criminogenic?*, 68 *BRIT. J. OF MED. PSYCH.* 15-27 (1995).
68. LEVESQUE, *supra* note 63, at 64.
69. LEVESQUE, *supra* note 63, at 64-65.
70. Lanning, *Cyber "Pedophiles," supra* note 7, ¶ 4.17.
71. Lanning, *Collectors*, *supra* note 62, at 86-87; *see also* Hames, *supra* note 8, at 197.
72. Catherine Itzin, *Pornography and the Organization of Child Sexual Abuse*, in *ORGANIZED ABUSE: THE CURRENT DEBATE* 185 (Peter C. Bibby ed., Brookfield, Vt.: Ashgate 1996).
73. Ray Wyer, *Pornography and Sexual Violence: Working with Sex Offenders*, in *PORNOGRAPHY: WOMEN, VIOLENCE AND CIVIL LIBERTIES* 236 (Catherine Itzin ed., Oxford University Press 1992); *see also* LEVESQUE, *supra* note 63, at 64.
74. Lanning, *Collectors*, *supra* note 62, at 86; *see also* Hames, *supra* note 8, at 197.
75. Ann W. Burgess & C.R. Hartman, *Child Abuse Aspects of Child Pornography*, 7 *PSYCHIATRIC ANNALS* 248-53 (1987).

76. Gaspar & Bibby, *How Rings Work*, in ORGANIZED ABUSE: THE CURRENT DEBATE 56-57 (Peter C. Bibby ed., Brookfield, Vt.: Ashgate 1996).
77. Kenneth Lanning, CHILD SEX RINGS: A BEHAVIORAL ANALYSIS (National Center for Missing & Exploited Children, 2d ed. 1992); Gaspar & Bibby, *supra* note 76, at 56-57.
78. Tate, *supra* note 42, at 208.
79. LEVESQUE, *supra* note 63, at 64.
80. Former Federal Bureau of Investigation Supervisory Special Agent Kenneth V. Lanning, an expert on offender profiling, has been quoted as saying, "For a lot of these people, it's like a smoldering fire they are able to keep under control—they haven't acted out their urges. But now, going online and looking at these images of child pornography arouses those urges. It's like throwing gasoline on glowing embers." M.J. Zuckerman, *Net Entices, Then Traps Pedophiles*, USA Today, April 19, 2000. See Lanning, *Cyber "Pedophiles," supra* note 7, at ¶ 4.17.
81. Rosenberg, *supra* note 19 at 440; J.R. Conte, S. Wolf & T. Smith, *What Sexual Offenders Tell Us About Prevention Strategies*, 13 CHILD ABUSE AND NEGLECT: INTERNATIONAL J. 293-301 (1989).
82. Lanning, CHILD SEX RINGS, *supra* note 77; see also Gaspar & Bibby, *supra* note 76, at 56-57.
83. FLOWERS, *supra* note 2, at 91.
84. Lanning, CHILD SEX RINGS, *supra* note 77; see also Gaspar & Bibby, *supra* note 76, at 56-57.
85. Personal communication from Sharon Cooper, MD, Developmental & Forensic Pediatrics, P.A., Fayetteville, North Carolina (December 2000).
86. Lanning, CHILD SEX RINGS, *supra* note 77; see also Gaspar & Bibby, *supra* note 76, at 56-57.
87. *Id.*
88. David Finkelhor, Kimberly Mitchell & Janis Wolak, Crimes Against Children Research Center, University of New Hampshire, *Online Victimization: A Report on the Nation's Youth* at 1 (National Center for Missing & Exploited Children 2000). The report estimates that out of the 23.81 million youth between the ages of 10 and 17 who regularly use the Internet in the United States, approximately 4.52 million youth encountered a sexual solicitation or approach in the past year.
89. *Id.* at 13.
90. *Id.* at 35.
91. Ann Burgess et al., *Response Patterns in Children and Adolescents Exploited through Sex Rings and Pornography*, 141(5) AM. J. OF PSYCH. 656-62 (1984) [hereinafter Burgess, *Response Patterns*]; Whitcomb, De Vos & Smith, *supra* note 8, at 4. From July 1980 to February 1984 the Louisville-Jefferson County (Kentucky) Exploited and Missing Child Unit (EMCU) investigated approximately 1,400 suspected cases of child sexual exploitation. The EMCU prosecuted hundreds of adults, resulting in 40 cases that involved 12 children in each case. All the adult offenders were found to possess adult pornography and most also had child nudes and/or child pornography. Testimony of John B. Rabun, Jr., Deputy Director, National Center for Missing & Exploited Children, Washington, DC, before the Subcommittee of Juvenile Justice, Committee of the Judiciary, United States Senate, September 12, 1984.
92. Burgess, *Response Patterns*, *supra* note 91, at 656-62.
93. Itzin, *supra* note 72, at 174.
94. David Gough, *The Current Literature About Organized Abuse of Children*, 2 CHILD ABUSE REV. 281, 283 (1993).
95. Kenneth Lanning & Robert Hugh Farley, *Understanding and Investigating Child Sexual Exploitation, Office of Juvenile Justice and Delinquency Prevention, Portable Guides to Investigating Child Abuse* at 8 (US Department of Justice 1997).
96. *Id.* at 8.
97. *Id.* at 9.
98. *Id.*

99. Belanger, Albert J. et al., *Typology of Sex Rings Exploiting Children*, in *CHILD PORNOGRAPHY AND SEX RINGS* 51-81 (Ann Wolbert Burgess & Marieanne Lindeqvist Clark eds., Lexington Books 1984); Burgess & Hartman, *supra* note 75, at 248.
100. Belanger, *supra* note 99, at 51-81; Burgess & Hartman, *supra* note 75; Lanning, *CHILD SEX RINGS*, *supra* note 77.
101. *Id.*
102. *Id.*
103. *Id.*
104. *Attorney General's Final Report*, *supra* note 61, at 405.
105. Whitcomb, De Vos & Smith, *supra* note 8, at 4.
106. Personal communication from Lieutenant William Walsh, Dallas (Texas) Police Department (December 10, 2000).
107. *Assessment Report*, *supra* note 6, at 141.
108. *Id.*
109. *Id.* at 139.
110. *See infra* text accompanying notes 354-56 (discussing statutory provisions allowing expert testimony to determine age of subject in visual depictions).
111. Arlan L. Rosenbloom, MD & James Tanner, MD, Ph.D., *Letter to the Editor, Misuse of Tanner Puberty Stages to Estimate Chronological Age*, 102(6) *PEDIATRICS* 1494 (1998); Tanner Staging and Pornography, Letters to the Editor from Timothy J. Kutz, MD and Angela P. Giardino, with a response by Arlan L. Rosenbloom, MD, 104(4) *PEDIATRICS* 996 (1999); Correspondence between James F. McLaughlin, Detective, Keene (New Hampshire) Police Department, and Dr. Rosenbloom, Regional Task Force on Internet Crimes Against Children for Northern New England (visited October 25, 2000) <<http://www.ci.keene/nh/us/police/tannerscale.html>>. *See also* Marcia E. Herman-Giddens, et al., *Secondary Sexual Characteristics and Menses in Young Girls Seen in Office Practice: A Study from the Pediatric Research in Office Settings Network*, 99(4) *PEDIATRICS* 505 (1997); W.R. Harlan, G.P. Grillo, et al., *Secondary Sex Characteristics of Boys 12 to 17 Years of Age: The U.S. Health Examination Survey*, 95(2) *J. PEDIATRICS* 293 (1979).
112. *Misuse of Tanner Puberty Stages*, *supra* note 111.
113. *See* Eva J. Klain, *Prostitution of Children and Child-Sex Tourism: An Analysis of Domestic and International Responses* (National Center for Missing & Exploited Children 1999).
114. Seventy percent of prostitutes in the Silbert and Pines study reported emotional abuse, 62 percent physical abuse, and 60 percent sexual abuse. Mimi H. Silbert & Ayala M. Pines, *Entrance into Prostitution*, 13 *Youth & Society* 471, 479-80 (1982). Victimization occurred between the ages of 3 to 16, with the average age of victimization at 10. *Id.* at 478-79.
115. Finkelhor et al., *National Incidence Studies on Missing, Abducted, Runaway, and Thrownaway Children in America* (Office of Juvenile Justice and Delinquency Prevention 1990). Previous studies by the US Department of Health and Human Services estimated that 730,000 to 1.3 million youth ran away in 1984 and projected that 500,000 of these were homeless. Les B. Whitbeck & Ronald L. Simons, *Life on the Streets: The Victimization of Runaway and Homeless Adolescents*, 22 *YOUTH & SOCIETY* 108, 108 (1990).
116. *National Incidence Studies on Missing, Abducted, Runaway, and Thrownaway Children in America II* (Office of Juvenile Justice and Delinquency Prevention forthcoming) (cited in *Second Comprehensive Study of Missing Children*, Office of Juvenile Delinquency and Prevention Bulletin, 2000).
117. R.L. Pierce, *Child Pornography: A Hidden Dimension of Child Abuse*, 8 *CHILD ABUSE AND NEGLECT* 483-93 (1984).
118. *See* Klain, *supra* note 113, at 2 (discussing how at-risk youth may become involved in prostitution).
119. *Assessment Report*, *supra* note 6, at 142.

120. "Pornography was our textbook." IN HARM'S WAY: THE PORNOGRAPHY CIVIL RIGHTS HEARINGS 114 (Catharine A. MacKinnon & Andrea Dworkin eds., Harvard University Press 1997). Margaret A. Baldwin, *Pornography and the Traffic in Women: Brief on Behalf of Trudee Able-Peterson, et al. Amici Curiae in Support of Defendant and Intervenor-Defendants, Village Books v. City of Bellingham*, 1 YALE J.L. & FEMINISM 111, 140 (1989).
121. Evelina Giobbe, *An Analysis of Individual, Institutional and Cultural Pimping*, 1 MICH. J. GENDER & L. 33, 48 (1993). See also Evelina Giobbe, *Juvenile Prostitution; Profile of Recruitment*, in CHILD TRAUMA I: ISSUES AND RESEARCH at 124 (Ann Wolbert Burgess ed., New York: Garland Publishing, Inc. 1992).
122. Baldwin, *supra* note 120, at 128. See also Annette U. Rickel & Marie C. Hendren, *Aberrant Sexual Experiences*, in ADOLESCENT SEXUALITY at 151 (Gullatta, Adams & Montemayor eds., Newbury Park, CA: Sage Publications 1993).
123. Personal communication from Sharon Cooper, MD, Developmental & Forensic Pediatrics, P.A., Fayetteville, North Carolina (December 2000).
124. M. Silbert & A. Pines, *Pornography and Sexual Abuse of Women*, 11/12 SEX ROLES 866 (1984).
125. *Id.*
126. *Id.*
127. John B. Rabun, Jr., *Combating Child Pornography and Prostitution: One County's Approach*, in CHILD PORNOGRAPHY AND SEX RINGS at 196 (Ann Wolbert Burgess & Marieanne Lindeqvist Clark, eds., Lexington Books 1984). The Task Force on Child Prostitution and Pornography was established in Jefferson County, Kentucky, to identify hidden victims, learn about the process of child exploitation, and develop a database for further program efforts.
128. *Draft Declaration and Agenda for Action*, World Congress Against Commercial Exploitation of Children at 2 Stockholm, Sweden (August 27-31, 1996) [hereinafter *Draft Declaration*].
129. *Id.* ¶ 6.
130. Whitcomb, De Vos & Smith, *supra* note 8, at 4.
131. CHILD PORNOGRAPHY AND SEX RINGS (Ann Wolbert Burgess & Marieanne Lindeqvist Clark eds., Lexington Books 1984).
132. Bentovim & Bentovim, *The Effects on Children and Their Families*, in ORGANIZED ABUSE: THE CURRENT DEBATE 60-62 (Peter C. Bibby ed., Brookfield, Vt.: Ashgate 1996).
133. Jeanne McCauley, David E. Kern, Ken Kolodner, et al., *Clinical Characteristics of Women with a History of Childhood Abuse: Unhealed Wounds*, 277 J.A.M.A. 1362 (1997).
134. Heather Y. Swanston, Jennifer S. Tebbutt, Brian I. O'Toole & R. Kim Oates, *Sexually Abused Children 5 Years After Presentation: A Case-Control Study*, 100 PEDIATRICS 600, 603 (1997) (mean standardized self-esteem score for abused children was markedly lower than for the controls); Bentovim & Bentovim, *supra* note 132, at 60-62.
135. Bentovim & Bentovim, *supra* note 132, at 60-62; Burgess & Clark, *supra* note 131. See also Allison E. Dubner & Robert W. Motta, *Sexually and Physically Abused Foster Care Children and Post-traumatic Stress Disorder*, 67 J. CONSULTING & CLINICAL PSYCHOLOGY 367 (1999); Susan V. McLeer et al., *Psychopathology in Non-Clinically Referred Sexually Abused Children*, 37 J. AM. ACAD. CHILD & ADOLESC. PSYCHIATRY 1326 (1998).
136. Bentovim & Bentovim, *supra* note 132, at 60-61; W. Watkins & A. Bentovim, *The Sexual Abuse of Male Children and Adolescents: A Review of Recent Research*, 33 J. CHILD PSYCHOLOGY & PSYCHIATRY 197 (1992).
137. FLOWERS, *supra* note 2, at 59.
138. Augustine Brannigan & Erin Gibbs Van Brunschot, *Youthful Prostitution and Child Sexual Trauma*, 20 INT'L J. L. & PSYCHIATRY 337 (1997); David M. Fergusson, L. John Horwood & Michael T. Lynskey, *Childhood Sexual Abuse, Adolescent Sexual Behaviors and Sexual Revictimization*, 21 CHILD ABUSE & NEGLECT 789, 800 (1997) ("those reporting severe [child sexual abuse] were characterized by significantly higher rates of early onset (consensual) sexual activity, higher rates of teenage pregnancy, increased rates of sexually transmitted diseases, higher rates of multiple sexual partnerships, and unprotected intercourse and also appeared to be more vulnerable to further sexual assault and rape"). See also FLOWERS, *supra* note 2, at 59.

139. RONALD B. FLOWERS, *CHILDREN AND CRIMINALITY: THE CHILD AS VICTIM AND PERPETRATOR* 97 (Westport, CT: Greenwood Press 1986).
140. Bentovim & Bentovim, *supra* note 132, at 60-62.
141. *Id.*
142. Burgess & Clark, *supra* note 131.
143. *Id.*
144. *Id.*
145. Lanning, *Collectors*, *supra* note 62, at 85.
146. *Id.*
147. P. Hunt & M. Baird, *Children of Sex Rings*, *CHILD WELFARE* 195, 202 (May-June 1990).
148. Whitcomb, De Vos & Smith, *supra* note 8, at 16.
149. Ann W. Burgess, Carol R. Hartman, Maureen P. McCausland & Patricia Powers, *Impact of Child Pornography and Sex Rings on Child Victims and Their Families*, in *CHILD PORNOGRAPHY AND SEX RINGS* at 120-26 (Ann Wolbert Burgess & Marieanne Lindeqvist Clark eds., Lexington Books 1984).
150. *Id.*
151. *Id.*
152. *Id.* at 120-24.
153. Carl Goran Svedin & Kristina Back, *Children Who Don't Speak Out* at 40-41 (Radda Barnen (Swedish Save the Children) 1996).
154. Burgess, Hartman, McCausland & Powers, *supra* note 149, at 120-26.
155. *Id.*
156. *Id.*
157. Federal jurisdiction includes interstate or foreign commerce, conduct in any territory or possession of the United States with a nexus to interstate or foreign commerce, and other categories such as the special maritime jurisdiction of the United States.
158. Pub. L. No. 95-225, 92 Stat. 7 (1977) (codified as amended at 18 U.S.C. §§ 2251-2253).
159. *See Miller v. California*, 413 U.S. 15 (1973).
160. *People v. Ferber*, 422 N.E.2d 523 (1981), *rev'd*, 458 U.S. 747 (1982).
161. 458 U.S. 747 (1982).
162. 458 U.S. at 764.
163. *See Miller v. California*, 413 U.S. 15 (1973).
164. Pub. L. No. 98-292, §§ 3 & 4, 98 Stat. 204 (1984).
165. 636 F. Supp. 828 (S.D. Cal. 1986), *aff'd sub. nom. United States v. Weigand*, 812 F.2d 1239 (9th Cir.), *cert. denied*, 484 U.S. 856 (1987).
166. 32 F.3d 733 (3d Cir. 1994), *cert. denied*, 513 U.S. 1109 (1995).
167. 32 F.3d at 832.
168. *Id.*
169. 32 F.3d 733 (3d Cir. 1994), *cert. denied*, 513 U.S. 1109 (1995).
170. Pub. L. No. 99-628, § 2, 100 Stat. 3510 (1986) (codified as amended at 18 U.S.C. § 2251).
171. Pub. L. No. 100-690, § 7512, 102 Stat. 4181 (1988) (codified as amended at 18 U.S.C. §§ 2251A-2252).
172. Pub. L. No. 100-690, § 7513, 102 Stat. 4181 (1988) (codified as amended at 18 U.S.C. § 2257).
173. 33 F.3d 78 (D.C.C. 1994), *rehearing denied*, 47 F.3d 1215 (1995), *cert. denied*, 515 U.S. 1158 (1995). *See also* *Connection Distributing Co. v. Reno*, 154 F.3d 281 (6th Cir. 1998) (Child Protection Restoration and Penalties Enhancement Act was narrowly tailored and did not violate First Amendment, did not act as unconstitutional prior restraint, and did not violate readers' free association rights).

174. 394 U.S. 557 (1969).
175. 394 U.S. at 568.
176. 495 U.S. 103 (1990).
177. 495 U.S. at 109.
178. Pub. L. No. 101-647, § 301, 104 Stat. 4789 (1990) (codified as amended at 18 U.S.C. § 2252(a)(4)).
179. Pub. L. No. 104-208, § 121, 110 Stat. 3009, 3009-26 (1996).
180. 18 U.S.C. § 2256(8)(B) (1999).
181. 18 U.S.C. § 2256(8)(D) (1999).
182. *See* Child Pornography Prevention Act of 1995, S. 1237, 104th Cong. 2d Sess. (1996).
183. *United States v. Hilton*, 167 F.3d 61 (1st Cir. 1999).
184. 198 F.3d 1083 (9th Cir. 1999), *pet. for reh'g denied*, 220 F.3d 1113 (9th Cir. 2000), *cert. granted*, – S.Ct. –, 2001 WL 46070 (U.S.).
185. 198 F.3d at 1089-90.
186. 198 F.3d 1093. *See also* Burke, Debra D., *The Criminalization of Virtual Child Pornography: A Constitutional Question*, 34 HARV. J. ON LEGIS. 439 (1997).
187. 198 F.3d 1093.
188. 198 F.3d at 1096-97. In addition the court rejected a prior restraint on speech claim made by the Free Speech Coalition because the CPPA only penalizes speech after it occurs.
189. 198 F.3d at 1098.
190. 198 F.3d at 1098 (citing 18 U.S.C.A. § 2251 (West Supp. 1999), Historical and Statutory Notes, Congressional Findings). *See also* Child Pornography Prevention Act of 1995, S. 1237, 104th Cong. 2d Sess. (1996).
191. 495 U.S. 103 (1990).
192. 198 F.3d 1099 (citing Osborne, 495 U.S. at 110).
193. 198 F.3d 1099 (citing Osborne, 495 U.S. at 109, quoting Ferber, 458 U.S. at 756-57).
194. 198 F.3d at 1100.
195. 198 F.3d 1100-1101.
196. 198 F.3d at 1101.
197. 198 F.3d at 1102.
198. *See* *United States v. Acheson*, 195 F.3d 645 (11th Cir. 1999) (holding CPPA not facially invalid and its “appears-to-be-a-minor” language not overbroad or void for vagueness); *United States v. Fox*, 74 F.Supp.2d 696 (E.D. Texas 1999) (holding CPPA neither constitutionally overbroad nor vague; although defendant claimed CPPA banned permitted depictions of adults who only appeared-to-be minors, court felt defendant’s argument ignored affirmative defense that alleged child pornography was actually depiction of adult). *See also* *United States v. Mento*, 231 F.3d 912 (4th Cir. 2000); *United States v. James*, 53 M.J. 612 (N-M. Ct. Crim. App. 2000). *Accord* *United States v. Fiscus*, 105 F.Supp.2d 1219 (D. Utah 2000); *United States v. Pearl*, 89 F.Supp.2d 1237 (D. Utah 2000).
199. – S.Ct. –, 2001 WL 46070 (U.S.).
200. Pub. L. No. 105-314, 112 Stat. 2974 (1998) (as codified in various sections of Title 18 of the United States Code).
201. 18 U.S.C. § 2425, as amended by Protection of Children from Sexual Predators Act, § 101.
202. Pub. L. No. 105-314, Title V, 112 Stat. 2974 (1998).
203. 18 U.S.C. § 2427, as amended by Protection of Children from Sexual Predators Act, § 105.
204. 18 U.S.C. § 2251(a), as amended by Protection of Children from Sexual Predators Act, § 201.
205. Pub. L. No. 105-314, § 202, 112 Stat. 2974 (1998).
206. Pub. L. No. 105-314, § 203, 112 Stat. 2974 (1998).

207. See 18 U.S.C. § 2252(a)(4) (1998). See also *United States v. Dauray*, 215 F.3d 257C.A.2 (Conn. 2000), discussed *infra* text accompanying notes 231-33.

208. Pub. L. No. 105-314, §§ 602, 603, 605, 112 Stat. 2974 (1998).

209. Pub. L. No. 105-314, § 604, 112 Stat. 2974 (1998).

210. 42 U.S.C. § 13032 (1999). For more information on NCMEC's CyberTipline, see *infra*, text accompanying notes 450-55.

211. 47 U.S.C. § 223(a) - (h) (1996).

212. The CDA provides two affirmative defenses. One is that the person posting the indecency, as opposed to obscenity, made a good-faith reasonable effort under the circumstances to restrict access by minors. The second is that the person has restricted access by requiring use of a verified credit card, debit account, or other adult identification.

213. 521 U.S. 844 (1997).

214. 521 U.S. at 849.

215. See 47 U.S.C. § 223 (2000).

216. Pub. L. No. 105-277, § 1403, 112 Stat. 2681 (1998) (codified as amended at 18 U.S.C § 201 et seq.).

217. 47 U.S.C. § 231(a)(1) (2000). Material that is harmful to minors is defined as "any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that—

(A) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

(B) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and

(C) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors."

47 U.S.C. § 231(e) (2000).

218. *American Civil Liberties Union v. Reno*, 31 F.Supp.2d 473 (1999).

219. *Id.* at 499.

220. Pub. L. No. 106-554, 114 Stat. 2763 (2000).

221. H.R. CONF. REP. No. 106-1033, 106th Cong., 2d Sess. (2000). A minor as defined in the Act is any child "who has not attained the age of 17." Material "harmful to minors" is "any picture, image, graphic image file, or other visual depictions that (i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion; (ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or other exhibition of the genitals; and (iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors."

222. *Id.*

223. *Id.*

224. 18 U.S.C. § 2256(8) (1999).

225. 18 U.S.C. § 2256(5) (1999). See also *United States v. Smith*, 795 F.2d 841 (9th Cir. 1986), *cert. denied*, 481 U.S. 1032 (1987) (unprocessed film constitutes a "visual depiction" for the purposes of 18 U.S.C. § 2252(a)).

226. 18 U.S.C. § 2256(2) (1999). Additional definitions under this section include

(1) "minor" means any person [younger than] the age of [18] years;

(3) "producing" means producing, directing, manufacturing, issuing, publishing, or advertising;

(4) "organization" means a person other than an individual;

(6) “computer” has the meaning given that term in section 1030 of this title;

(7) “custody or control” includes temporary supervision over or responsibility for a minor whether legally or illegally obtained;

(9) “identifiable minor”—

(A) means a person—

(i)(I) who was a minor at the time the visual depiction was created, adapted, or modified; or

(II) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(ii) who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) shall not be construed to require proof of the actual identity of the identifiable minor.

227. The full text of Title 18, Section 2251 of the US Code, sexual exploitation of children, reads

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (d), if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished as provided under subsection (d) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(c)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering—

(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct:
shall be punished as provided under subsection (d).

(2) The circumstance referred to in paragraph (1) is that—

(A) such person knows or has reason to know that such notice or advertisement will be transported in interstate or foreign commerce by any means including by computer or mailed; or

(B) such notice or advertisement is transported in interstate or foreign commerce by any means including by computer or mailed.

(d) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title or imprisoned not less than 10 years nor more than 20 years, and both, but if such person has one prior conviction under this chapter [18 U.S.C. § 2251 et seq.], chapter 109A [18 U.S.C. § 2141 et seq. of Title 18], or chapter 117 [18 U.S.C. § 2421 et seq.], or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 30 years, but if such person has 2 or more prior convictions under this chapter, chapter 109A, or chapter

117, or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 30 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.

228. *See also* United States v. Carroll, 227 F.3d 486 (5th Cir. 2000). This case applied Section 2251 and the definition of sexually explicit conduct under Section 2256(2) to a defendant who superimposed the face of an identifiable boy on an image of an unknown nude boy's body. The court found that this conduct fell within the statutory prohibition. On remand, however, the government conceded that defendant's action did not fall under Section 2251(a) and remand for sentencing was appropriate. United States v. Reinhart, 226 F.3d 651 (5th Cir. 2000).

229. 18 U.S.C. § 2251(d) (1994).

230. 18 U.S.C. § 2251(d) (1994).

231. 215 F.3d 257 (2nd Cir. 2000).

232. *Id.*

233. *Id.* (dissenting opinion, citing *Muscarello v. United States*, 524 U.S. 125 (1998) and *United States v. Wells*, 519 U.S. 482 (1997).

234. 18 U.S.C. §§ 2252(c) & 2252A(d) (2000).

235. 18 U.S.C. § 2252A(c) (2000).

236. 18 U.S.C. § 2260 (2000).

237. 18 U.S.C. § 2251(b) provides that "any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished as provided under subsection (d) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed."

18 U.S.C. § 2251A reads

(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either—

(1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) with intent to promote either—

(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either—

(1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) with intent to promote either—

(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(c) The circumstances referred to in subsections (a) and (b) are that—

(1) in the course of the conduct described in such subsections the minor or the actor traveled in or was transported in interstate or foreign commerce;

(2) any offer described in such subsections was communicated or transported in interstate or foreign commerce by any means including by computer or mail; or

(3) the conduct described in such subsections took place in any territory or possession of the United States.

238. 18 U.S.C. § 2251A(c).

239. See section accompanying endnotes 450-55, *infra*.

240. 42 U.S.C. § 13032(b)(3) (1999).

241. 42 U.S.C. § 13032(c) & (e) (1999).

242. 18 U.S.C. § 2252A(c) (2000).

243. 513 U.S. 64 (1994).

244. Whitcomb, De Vos & Smith, *supra* note 8, at 47.

245. Act of June 25, 1910, ch. 395, 36 Stat. 825 (codified as amended at 18 U.S.C. §§ 2421-2424 (1998)).

246. Pub. L. No. 99-628, § 5 (1986) (repealing and recodifying 18 U.S.C. §§ 2421-2423).

247. 18 U.S.C. § 2427, as amended by Protection of Children from Sexual Predators Act, § 105.

248. The full text of Title 18, Section 2421, as amended by Section 106 of the Protection of Children from Sexual Predators Act, Pub. L. No. 105-314, 112 Stat. 2974 (1998), reads

Whoever knowingly transports any individual in interstate or foreign commerce, or in any territory or possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

249. (a) Transportation with intent to engage in criminal sexual activity.—A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory[,] or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both. 18 U.S.C. § 2423(a), as amended by the Protection of Children from Sexual Predators Act, § 103, Pub. L. No. 105-314, 112 Stat. 2974 (1998).

‘Sexual act’ is defined as (A) contact between the penis and the vulva or the penis and the anus, and for purposes of the subparagraph contact involving the penis occurs upon penetration, however slight; (B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (C) the penetration, however, slight, of the anal or genital opening of another by a hand or finger or object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (D) the intentional touching, not through clothing, of the genitalia of another person who has not attained the age of 16 years with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. ‘Sexual contact’ means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. 18 U.S.C. § 2246 (West 1998). The PCSPA also adds offenses relating to child pornography in the definition of sexual activity for which a person can be charged with a criminal offense. Pub. L. No. 105-314, § 105, 112 Stat. 2974 (1998).

250. The full text of 18 U.S.C. § 2422, as amended by Section 102 of the Protection of Children from Sexual Predators Act, Pub. L. No. 105-314, 112 Stat. 2974 (1998), states

(a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

(b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

See also United States v. Kufrovich, 997 F. Supp. 246 (D. Conn. 1997) (because it is use of the means of interstate commerce to persuade or attempt to persuade a minor to engage in criminal sexual activity that is the crime, the sexual act need never actually have occurred).

251. Protection of Children from Sexual Predators Act of 1998, Pub. L. No. 105-314, § 101, 112 Stat. 2974 (1998)

§ 2425. Use of interstate facilities to transmit information about a minor. Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, knowingly initiates the transmission of the name, address, telephone number, social security number[,] or electronic mail address of another individual, knowing that such other individual has not attained the age of 16 years, with the intent to entice, encourage, offer, or solicit any person to engage in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title, imprisoned not more than 5 years, or both.

252. 18 U.S.C. § 2241, as amended by Protection of Children from Sexual Predators Act, Pub. L. No. 105-314, § 301(a), 112 Stat. 2974 (1998), reads

(a) By force or threat. —Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly causes another person to engage in a sexual act—

(1) by using force against the other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) By other means. —Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly—

(1) renders another person unconscious and thereby engages in a sexual act with that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—

(A) substantially impairs the ability of that other person to appraise or control conduct; and

(B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(c) With children. —Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstance described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

(d) State of mind proof requirement. —In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

253. 18 U.S.C. § 2243, as amended by Protection of Children from Sexual Predators Act, Pub. L. No. 105-314, § 301(b), 112 Stat. 2974 (1998) reads

(a) Of a minor. —Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who—

(1) has attained the age of 12 years but has not attained the age of 16 years; and

(2) is at least four years younger than the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

(b) Of a ward. —Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who is—

(1) in official detention; and

(2) under the custodial, supervisory, or disciplinary authority of the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than one year, or both.

(c) Defenses. —(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years.

(2) In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

(d) State of mind proof requirement. —In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew—

(1) the age of the other person engaging in the sexual act; or

(2) that the requisite age difference existed between the persons so engaging.

See also 18 U.S.C. § 2244(c), as amended by Protection of Children from Sexual Predators Act, Pub. L. No. 105-314, § 302, 112 Stat. 2974 (1998) (abusive sexual contact offenses involving young children).

254. 987 F.2d 631 (9th Cir. 1993).

255. *See* United States v. Yazzie, 976 F.2d 1252 (9th Cir. 1992) (finding reversible error in trial court's exclusion of lay witnesses supporting defendant's assertion he reasonably believed 15 ½-year-old victim was older than 16).

256. United States v. Ransom, 942 F.2d 775 (10th Cir. 1991), *cert. denied*, 502 U.S. 1042 (1992). *But see* Arcoren v. United States, 929 F.2d 1235 (8th Cir.), *cert. denied*, 502 U.S. 913 (1991) (reversible error to preclude defendant from introducing mistake-of-age evidence under §§ 2242 and 2244).

257. 18 U.S.C. § 2241(d) (2000); 18 U.S.C. § 2243(d) (2000).

258. 18 U.S.C. § 1961 *et seq.* (1982).

259. 18 U.S.C. § 1961 (1982).

260. Gregory Loken, *Child Prostitution*, in CHILD PORNOGRAPHY AND PROSTITUTION: BACKGROUND AND LEGAL ANALYSIS at 68 (National Center for Missing & Exploited Children 1987).

261. *Id.*

262. *Id.*

263. United States v. Surratt, 87 F.3d 814 (6th Cir. 1996) (citing United States v. Rugh, 968 F.2d 750, 756 (8th Cir. 1992)).

264. U.S.S.G. §§ 2G2.1 (b)(1); 2G2.2 (b)(1); 2G2.4 (b)(1) (2000). *See also* United States v. Kimbrough, 69 F.3d 723 (5th Cir. 1995).

265. U.S.S.G. § 2G2.4.

266. U.S.S.G. § 2G2.1.

267. *Id.*
268. U.S.S.G. § 2G2.2 (b)(4) (2000). The application notes to the guideline define “pattern of activity involving the sexual abuse or exploitation of a minor” as “any combination of two or more separate instances of the sexual abuse or exploitation of a minor by the defendant, whether or not the abuse or exploitation (A) occurred during the course of the offense; (B) involved the same or different victims; or (C) resulted in a conviction for such conduct.”
269. U.S.S.G. § 2G2.2 (b)(3) (1988). *See also* United States v. Canada, 110 F.3d 260 (5th Cir. 1997); United States v. Kimbrough, 69 F.3d 723 (5th Cir. 1995).
270. United States v. Hodge, 80 F.Supp.2d 1207, 1208 (D. Kan. 1999) (citing United States v. Anderson, 154 F.3d 1225, 1233 (10th Cir. 1998) and quoting United States v. Moore, 916 F.2d 1131, 1139 (6th Cir. 1990), *cert. denied*, 119 S.Ct. 2048, 119 S.Ct. 2048, 144 L.Ed.2d 215 (1999)).
271. U.S.S.G. § 2G2.2 (b)(2) (2000).
272. U.S.S.G. § 2G2.2 (b)(2) (A) & (B) (2000).
273. *See* United States v. Hodge, 80 F.Supp.2d 1207, 1210 (D. Kan. 1999) (citing United States v. Black, 116 F.3d 198, 202-03 (7th Cir. 1997)); United States v. Hibbler, 159 F.3d 233, 237 (6th Cir. 1998) (citing United States v. Canada, 110 F.3d 260, 263 (5th Cir. 1997)); United States v. Lorge, 166 F.3d 516 (2nd Cir. 1999); United States v. Probel, 214 F.3d 1285 (11th Cir. 1999); United States v. Horn, 187 F.3d 781 (8th Cir. 1999); *but see* United States v. Laney, 189 F.3d 954 (9th Cir. 1999).
274. *See* United States v. Hibbler, 159 F.3d 233, 238 (6th Cir. 1998).
275. U.S.S.G. § 2G2.1 (b)(3) (1988). *See generally* United States v. Vincent, 167 F.3d 428, 432 (8th Cir. 1999); United States v. Johnson, 183 F.3d 1175, 1178 (10th Cir. 1999); United States v. Hibbler 159 F.3d 233 (6th Cir. 1998).
276. U.S.S.G. § 2G2.2 (b)(5) (1988).
277. United States v. Johnson, 183 F.3d 1175, 1178 (10th Cir. 1999) (citing United States v. Vincent, 167 F.3d 428, 432 (8th Cir. 1999)).
278. Pub. L. No. 105-314, § 602, 112 Stat. 2974 (1998).
279. Pub. L. No. 105-314, § 603, 112 Stat. 2974 (1998).
280. 18 U.S.C. § 2259(b)(4) (2000).
281. 18 U.S.C. § 2259(b)(3) (2000).
282. United States v. Laney, 189 F.3d 954, 966-67 (9th Cir. 1999).
283. 18 U.S.C. § 3663(a)(2), *amended by* Pub. L. No. 106-310, 114 Stat. 1101 (October 17, 2000).
284. United States v. Johnson, 132 F.3d 1279 (9th Cir. 1997).
285. 18 U.S.C. § 2255 (2000).
286. 10 U.S.C. § 801 et seq.
287. *Id.* § 802.
288. 10 U.S.C. § 934.
289. Personal communication from the Army’s Criminal Investigation Command (January 30, 2001). *See* the military contacts listed on pages 153 and 154.
290. *Id.*
291. *See* the chart titled “Criminal Statutes Within the United States Addressing Child Pornography” beginning on page 59 which sets out the various state child-pornography statutes. The dates of statutes are not included in the endnotes accompanying the text. They can be referenced in that chart.
292. 18 U.S.C. §§ 1169 & 2258; 42 U.S.C. § 13031.
293. For a listing of each state’s child-abuse reporting laws, see <<http://www.calib.com/nccanch/>>.
294. Whitcomb, De Vos & Smith, *supra* note 8, at 34 (referring to Cal. Penal Code § 11165.1(c)).
295. R.I. GEN. LAWS § 11-9-3 (1999).

296. Whitcomb, De Vos & Smith, *supra* note 8, at 36.
297. *Id.* at 80.
298. *Id.*
299. *Id.*
300. Finkelhor, Mitchell & Wolak, *supra* note 88, at 1. Aggressive episodes included those solicitations that included a request to meet the youth or the youth received regular mail, a telephone call, money, or gifts from the person soliciting sexual contact.
301. *Id.* at 3.
302. See, e.g., ALASKA STAT. § 11.41.455; MASS. GEN. LAWS ch. 272, § 29A; MONT. CODE § 45-5-625; N.M. STAT. § 30-6A-3(B). See also *People v. Riggs*, 604 N.W.2d 68 (Mich. 1999) (use of otherwise benign image of child exhibiting ordinary nudity to create what could fall within definition of erotic nudity is conduct prohibited by statute criminalizing child sexually abusive activity).
303. 458 U.S. 747 (1982).
304. ALASKA STAT. § 11.41.455.
305. TEX. PENAL CODE § 43.25.
306. TEX. PENAL CODE § 43.25(5). In New York, “promoting a sexual performance by a child” is construed to include “to purchase, acquire..., obtain..., [or] to get possession of,” which enables the court to sentence a purchaser under a higher degree felony as opposed to charges for mere possession. *People v. Keyes*, A.D.2d 227 (N.Y. 1988).
307. S.C. CODE § 16-15-395(A)(3).
308. FLA. STAT. § 847.0135. See also *Rutledge v. State*, 745 So.2d 912 (Ala. 1999) (statute prohibiting possession and dissemination of child pornography by any means also applies to production of child pornography by use of computer).
309. FLA. STAT. § 847.0135(2).
310. FLA. STAT. § 847.0135(2). In contrast Virginia specifically states that there can be no prosecution under its possession statute if the prohibited material came into the person’s possession from a law-enforcement officer or agency. VA. CODE § 18.2-374.1:1(A).
311. FLA. STAT. § 847.0135(4); see also GA. CODE ANN. § 16-12-100.2(e).
312. MINN. STAT. § 617.246 (subd. 4).
313. WASH. REV. CODE § 9.68A.060.
314. GA. CODE § 16-12-100.1.
315. MINN. STAT. § 617.247(1).
316. See MINN. STAT. § 617.246(1)(f).
317. See the discussion of the federal CPPA *supra*, text accompanying endnotes 179-99. See also *State v. Cobb*, 732 A.2d 425 (N.H. 1999) (reach of child pornography statute not limited to photographs involving use of actual child).
318. MINN. STAT. § 617.247(4). See also *R.K.D. v. State*, 712 So.2d 754 (Ala. 1997) (hand-drawn pictures depicting naked girls and adult men not “obscene matter” within meaning of statute prohibiting knowing possession of obscene material containing a visual reproduction of a person younger than 17 years of age); *People v. Fraser*, 264 A.D.2d 105 (N.Y. 2000) (computer graphic file was “photograph” within statute prohibiting possession of sexual performance by child; legislative purpose is to prohibit possession in every form as a means of eradicating market for the material); *Rutledge v. State*, 745 So.2d 912 (Ala. 1999) (as used in child-pornography statute, language “electrical or electronic reproduction of a photographic or other reproduction” includes computer images depicting child pornography); *State v. Rosul*, 974 P.2d 916 (Wash. 1999) (statute applies to digitized materials that contain reproductions of child pornography). *But see* *Porter v. State*, 1999 WL 644712 (Tex. 1999) (images stored in digital form in digital camera would not involve “film image” for there to be reproduction under statute, unless used to create visual image, for example on screen or in a hard copy); *Greer v. State*, 999 S.W.2d 484 (Tex. 1999) (possession of child

pornography via Internet did not violate prohibition against possession of “film image” of child engaging in sexual conduct).

319. TEX. PENAL CODE § 43.26(a).
320. TEX. PENAL CODE § 43.26(f).
321. ALA. CODE § 13A-12-192(a).
322. COLO. REV. STAT. § 18-6-403.
323. ME. REV. STAT. tit. 17, § 2923.
324. ALASKA STAT. § 11.61.125 (c).
325. *Hudson v. State*, 2000 WL 678999 (Fla. 2000). *See also* *Wade v. State*, 751 So.2d 669 (Fla. 2000) (defendant only convicted of one count of possession with intent to promote based on multiple copies of three different photographs during one search); *State v. Parrella*, 736 So.2d 94 (Fla. 1999) (defendant in possession of four videotapes can only be prosecuted for one count of possession with intent to promote because statute specifies “any” violative material rather than “a piece”; several items treated as one offense).
326. *Crosby v. State*, 575 So.2d 584 (Fla. 2000).
327. MASS. GEN. LAWS ch. 272, § 29C.
328. N.J. STAT. § 2C:24-4(b)(4)(b).
329. See the statutory chart beginning on page 59 for states with statutes prohibiting the “distribution of material harmful to minors.”
330. S.C. CODE § 16-15-385.
331. OHIO REV. CODE § 2907.311(B).
332. ME. REV. STAT. tit. 17, § 2913.
333. WIS. STAT. § 948.055.
334. KY. REV. STAT. § 531.370.
335. *PSINet, Inc. v. Chapman*, 109 F.Supp.2d 6111 (2000).
336. *State v. Maynard*, 5 P.3d. 1142 (Or. App. 2000).
337. CAL. PENAL CODE § 288.2 (1999). *See* *People v. Hsu*, 99 Cal.Rptr.2d 184, 82 Cal. App.4th 976 (2000). *See also* *State v. Weidner*, 611 N.W.2d 684 (Wis. 2000) (statute prohibiting dissemination of harmful materials to minors, without imposing burden on state to prove scienter, but in which scienter was made an affirmative defense, found unconstitutional in regard to Internet and other non-face-to-face contact between defendant and victim because would impose strict liability; would be virtually impossible for Internet users to meet burden of proof of age); *State v. Zarnke*, 589 N.W.2d 370 (Wis. 1999) (statute placing burden of proving lack of knowledge of child victim’s age on defendant through affirmative defense is unconstitutional as applied to activities that do not include some interaction between defendant and victim).
338. ALA. CODE § 13A-12-196. *See* *Cole v. State*, 721 So.2d 912 (Ala. 1999) (parent who produced pornographic images of acts involving his minor son and two minor friends was properly charged with production of obscene material containing visual depiction of a person younger than 17 years of age and permitting a minor child to engage in production of obscene matter involving that child). *See also* chart beginning on page 59 (statutory chart identifying states with some version of a parental knowledge or consent statute).
339. VT. STAT. § 2823.
340. OKLA. STAT. tit. 21, § 1021.2.
341. IOWA CODE § 728.14.
342. OR. REV. STAT. § 163.693.
343. ARIZ. REV. STAT. § 13-3509.
344. OKLA. STAT. tit. 21, § 1021.4.
345. *See generally* National Center for Prosecution of Child Abuse, INVESTIGATION AND PROSECUTION OF CHILD ABUSE (Susan Perlis Marx & Patricia Toth eds., 2d ed., American Prosecutors Research Institute 1993).
346. MINN. STAT. § 617.246 (6).

347. ARK. CODE § 5-27-404; *see also* Neb. § 28-810.
348. VT. STAT. § 2822.
349. HAW. REV. STAT. § 707-750(3).
350. *Outmezguine v. State*, 641 A.2d 870 (Md. 1994). *See also* *State v. Peterson*, 535 N.W.2d 689 (Minn. 1995) (statute prohibiting production does not violate First Amendment even though mistake of age is not available as a defense); *State v. Rosul*, 974 P.2d 916 (Wash. 1999) (although Washington statute does not require knowledge of age of minor depicted, it does require knowledge of possession and knowledge of general nature of material possessed and therefore contains sufficient scienter requirement to survive constitutional challenge); *People v. Gilmour*, 678 N.Y.S.2d 436 (1998) (slip. op. 98355) (statute criminalizing possession of child pornography “knowing the character and content thereof” incorporates sufficient scienter requirement to survive constitutional challenge).
351. MINN. STAT. § 617.246 (5).
352. S.C. CODE §§ 16-15-387, 16-15-395.
353. S.C. CODE § 16-15-385 (C)(3). South Carolina identifies two additional affirmative defenses to disseminating harmful material to a minor. They are that the defendant is a parent or caretaker and he or she did not disseminate the materials to the child for his or her own sexual gratification or defendant was a school, museum, church, college, governmental agency, or an employ of such organization acting in that capacity and carrying out a legitimate duty of his or her employment. *Id.* at (C)(1) & (2).
354. ALA. CODE § 13A-12-193; *see also* ARK. CODE § 5-27-405.
355. R.I. GEN. LAWS § 11-9-1.2.
356. *See infra* text accompanying notes 111-12 (discussing proper use of the Tanner sexual maturation scale).
357. N.D. CENT. CODE § 12.1-27.2-05(2). Virginia provides a similar defense to charges of possession of child pornography. VA. CODE § 18.2-374.1:1.
358. N.D. CENT. CODE § 12.1-27.2-05(3).
359. TEX. PENAL CODE § 43.25(f)(2).
360. TEX. PENAL CODE § 43.25(f)(4).
361. TEX. PENAL CODE § 43.24(c).
362. IND. CODE § 728.15 (telephone dissemination).
363. *See, e.g.*, ALA. CODE § 13A-12-192.
364. *See, e.g.*, N.M. STAT. § 30-6A-3(B).
365. *Id.*
366. *See* Child Abuse and Neglect State Statutes Series <<http://www.calib.com/nccanch/>>.
367. ALA. CODE § 13A-12-198.
368. VA. CODE § 18.2-374.2.
369. ILL. STAT. ch. 720, para. 5/11-20.1A.
370. *Janjua v. State*, 991 S.W.2d 419 (Tex. 1999).
371. ALA. CODE § 13A-12-198; FLA. STAT. ANN. § 847.02; GA. CODE ANN. § 16-12-100; 720 ILL. COMP. STAT. § 5/11-20.1A; LA. REV. STAT. tit. 14, § 81.1; ME. REV. STAT. tit. 17, §§ 2912, 2924, 2925; NEV. REV. STAT. § 200.760; OKLA. STAT. tit. 21, § 1040.54; OR. REV. STAT. § 163.695; S.C. CODE §§ 16-15-395, -405; VA. CODE §§ 18.2-374.1, -374.1:1, -374.2; WASH. REV. CODE § 9.68A.120; WYO. STAT. § 6-4-303.
372. *See* INVESTIGATION AND PROSECUTION OF CHILD ABUSE, *supra* note 345, at 233.
373. MINN. STAT. § 617.245.
374. N.J. STAT. § 2A:30B-3.
375. Itzin, *supra* note 72, at 172; Vitit Muntarhorn, *Violence Against Children: The Sale of Children, Child Prostitution, and Child Pornography*, in CHILDREN IN TROUBLE, PROCEEDINGS OF THE UNITED NATIONS EXPERT GROUP MEETING ON CHILDREN AND JUVENILES IN DETENTION: APPLICATION OF HUMAN RIGHTS STANDARDS 60-61 (Vienna: Austrian Federal Ministry for Youth and Family 1995).

376. Sexual Abuse of Children, Child Pornography and Paedophilia on the Internet: An International Challenge, Expert Meeting, UNESCO, Paris, 18-19 January 2000 <http://www.unesco.org/webworld/child_screen/conf_index_2.html>.

377. *Id.*

378. Report of the Special Rapporteur of the Commission on Human Rights on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. A/55/297, August 10, 2000, ¶ 7.

379. Ofelia Calcetas-Santos, Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Commission on Human Rights, 56th Sess., U.N. Doc. E/CN.4/2000/73, January 14, 2000, ¶ 48. [hereinafter Special Rapporteur].

380. Doug Struck, *Image-Conscious Japan Targets Child Sex Trade: Law Seeks Change in Public's Actions, Attitude*, The Washington Post, January 27, 2000 (comment of Mayumi Moriyama, chief sponsor of the legislation in the Japanese parliament, the Diet).

381. Special Rapporteur, *supra* note 379, ¶ 49 (measures introduced through amendment to Law on Control and Improvement of Amusement Business, October 1998).

382. Struck, *supra* note 380 (comments of Toshinori Kanemoto, head of the international criminal affairs division of the National Police Agency).

383. Special Rapporteur, *supra* note 379, ¶ 50.

384. *R. v. Sharpe*, 2001 CarswellBC 82 (Supreme Court of Canada).

385. *R. v. Sharpe*, 1999 CarswellBC 2504 (B.C. Court of Appeal); *R. v. Sharpe*, 1999 CarswellBC 1491 (B.C. Court of Appeal); *R. v. Sharpe*, 1999 CarswellBC 39 (B.C. Supreme Court).

386. *R. v. Sharpe*, 2001 CarswellBC 82 ¶ 111 (Supreme Court of Canada).

387. *Id.* ¶ 115-16, 118, 129. Under Canadian law, peripherally unconstitutional provisions or applications of a law may be addressed by striking down the law, severing the offending sections, reading down, or reading in based on the “twin guiding principles” of respect for the role of Parliament and respect for the purposes of the Charter. *Id.* ¶ 114.

388. *Id.* ¶ 118.

389. Jane MacDonald, *Internet Child Porn Faces EU Blitz*, Yorkshire Post, April 14, 2000, at 4.

390. Agence Europe, Kirkhope Report Calls for Establishing, in Each Member State, Specialized Units for Searching on Internet for Pornographic Materials Involving Children, Brussels, April 8, 2000.

391. Stephanie Fariior, *The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to its Potential*, 10 HARV. HUM. RTS. J. 213 (1997).

392. *Id.* at 251 (citing Commission on Human Rights, Report on the Forty-Eighth Session (27 January-6 March 1992), C.H.R. Res. 1992/74, U.N. ESCOR, 48th Sess., Annex, Supp. No. 2, at 174-85, U.N. Doc. E/CN.4/1992/84); Margaret A. Healy, Note, *Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of Children as Mandated by International Law?*, 18 FORDHAM INT'L L.J. 1852, 1882 (1995) (citing Programme for Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography: Report of the Working Group on Contemporary Forms of Slavery Pursuant to Paragraph 6 of Sub-Commission Resolution 1992/2, U.N. Commission on Human Rights, 45th Sess. Prov. Agenda Item 15, U.N. Doc E/CN.4/Sub.2/1993/31 (1993)).

393. Vitit Muntarbhorn, *International Perspectives and Child Prostitution in Asia*, in FORCED LABOR: THE PROSTITUTION OF CHILDREN at 16 (Jaffee & Rosen eds., US Department of Labor 1996).

394. Fariior, *supra* note 391, at 244 (citing Annotations to the Provisional Agenda, U.N. ESCOR, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 19th Sess., at 6, U.N. Doc. E/CN.4/Sub.2/AC.2/1994/1/Add.1 (1994)).

395. Muntarbhorn, *supra* note 393, at 14.

396. Panudda Boonpala, *The Role of the International Labor Organization*, in FORCED LABOR: THE PROSTITUTION OF CHILDREN at 56 (Jaffee & Rosen eds., US Department of Labor 1996).

397. International Labour Organization, *Press Release: New ILO Convention on Child Labour Could Boost Efforts to Stop Internet Child Pornography* (last updated February 19, 1999) <<http://www.ilo.org/public/english/bureau/inf/pr/1999/1.htm>>.
398. International Labour Organization, *Convention on the Worst Forms of Child Labour* <<http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm>>.
399. Convention on the Rights of the Child, Nov. 20, 1989. G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 1, U.N. Doc. A/44/736 (1989), 28 I.L.M. 1448 (1989).
400. Oneworld, *The Rights of a Child* (last modified September 27, 1998) <http://www.oneworld.org/child_rights/child_rights.html>.
401. Healy, *supra* note 392, at 1877.
402. Eric T. Berkman, Note, *Responses to the International Child Sex Tourism Trade*, 19 B.C. INT'L & COMP. L. REV. 397, 408 (1996).
403. United Nations High Commissioner for Human Rights, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* <<http://www.unhchr.ch/html/menu2/dopchild.htm>>.
404. Healy, *supra* note 392, at 1879; Douglas Hodgson, *Sex Tourism and Child Prostitution in Asia: Legal Responses and Strategies*, 19 MELB. U. L. REV. 512, 526 (1994).
405. United Nations High Commissioner for Human Rights, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography: Discussion on the Optional Protocol* <[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2000.75.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2000.75.En?OpenDocument)>.
406. United Nations High Commissioner for Human Rights, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* <[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2000.75.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2000.75.En?OpenDocument)>.
407. *Draft Declaration*, *supra* note 128, at 3.
408. Personal communication with Lieutenant William Walsh, Dallas (Texas) Police Department (January 18, 2001).
409. *Id.*
410. Lanning & Farley, *supra* note 95, at 4.
411. *Id.* at 10.
412. William Walsh, *The Law Enforcement Response to the Sexual Victimization of Children, Child Sexual Exploitation Investigations: Managing the Child Exploitation Problem, in CHILD SEXUAL EXPLOITATION INVESTIGATIONS (TRAINING MANUAL) at CSE-Walsh-21 (Office of Juvenile Justice and Delinquency Prevention & Fox Valley Technical College 2000)*.
413. *See* Lanning & Farley, *supra* note 95, at 12.
414. Walsh, *supra* note 412, at CSE-Walsh-11.
415. Walsh, *supra* note 412, at CSE-Walsh-14.
416. Personal communication from Lieutenant William Walsh, Dallas (Texas) Police Department (December 10, 2000).
417. *See* Lanning & Farley, *supra* note 95, at 15.
418. Walsh, *supra* note 412, at CSE-Walsh-32.
419. Walsh, *supra* note 412, at 10-6.
420. Walsh, *supra* note 412, at 10-5.
421. Lanning & Farley, *supra* note 95, at 17.
422. *Id.*
423. Walsh, *supra* note 412, at CSE-Walsh-38.

424. INVESTIGATION AND PROSECUTION OF CHILD ABUSE, *supra* note 345, at 106.
425. *Id.*
426. See Privacy Protection Act, 42 U.S.C. § 2000aa et seq.; Electronics Communications Privacy Act, 42 U.S.C. §§ 2510 et seq. & 2701 et seq.; Cable Communications Policy Act, 47 U.S.C. § 251 et seq. See also Armagh, Battaglia & Lanning, *supra* note 5, at 20-22.
427. For a comprehensive guide on these issues, see the Department of Justice's portable guide *Use of Computers in the Sexual Exploitation of Children*. Armagh, Battaglia & Lanning, *supra* note 5.
428. Lanning & Farley, *supra* note 95, at 21.
429. INVESTIGATION AND PROSECUTION OF CHILD ABUSE, *supra* note 345, at 106.
430. Lanning, *Cyber "Pedophiles," supra* note 7, ¶ 4.13.
431. *Id.*
432. *Id.*
433. See *Id.*
434. PROSECUTING INTERNET CHILD EXPLOITATION CRIMES (James M. Peters ed., US Department of Justice, USABook in press). For sample search warrants, see INVESTIGATION AND PROSECUTION OF CHILD ABUSE, *supra* note 345; PROSECUTING INTERNET CHILD EXPLOITATION CRIMES, *supra* this note; CHILD SEXUAL EXPLOITATION INVESTIGATIONS (TRAINING MANUAL) (Office of Juvenile Justice and Delinquency Prevention & Fox Valley Technical College 2000).
435. Walsh, *supra* note 412, at 10-5.
436. Personal communication from Lieutenant William Walsh, Dallas (Texas) Police Department (December 10, 2000).
437. Lanning & Farley, *supra* note 95, at 19.
438. Personal communication from Lieutenant William Walsh, Dallas (Texas) Police Department (January 18, 2001).
439. Personal communication from Lieutenant William Walsh, Dallas (Texas) Police Department (December 10, 2000).
440. Armagh, Battaglia & Lanning, *supra* note 5, at 14.
441. *Id.*
442. See Armagh, Battaglia & Lanning, *supra* note 5; Janet E. Kosid, *Considerations in Obtaining and Using Expertise Search Warrants in Cases of Preferential Child Molesters*, see Lanning, CHILD MOLESTERS, *supra* note 31; Lanning & Farley, *supra* note 95, at 17, 19.
443. *Id.* See *United States v. Rabe*, 848 F.2d 994 (9th Cir. 1988) (search warrant executed in 1986 based in part on 1984 seizure of obscene materials mailed to defendant upheld); *State v. Batchelder*, 824 F.2d 563 (7th Circuit 1988) upholding warrant issued on nine-month-old information).
444. Armagh, Battaglia & Lanning, *supra* note 5, at 15. See also *State v. Smith*, 805 P.2d (Wash. Ct. App. 1991) (law-enforcement expert's opinion that defendant fit "pedophile profile" did not create probable cause to search when affidavit failed to set forth description of recent criminal conduct); *Hightower v. State*, 736 S.W.2d 949 (Tex. Ct. App. 1987), *aff'd*, 822 S.W.2d 48 (Tex. Crim. App. 1991) (photographs of children, pedophilic literature, and pornographic materials reasonably included in warrant because officer testified child molesters often possess such materials); *In re Duncan*, 234 Cal. Rptr. 877 (Ct. App.), *cert. denied*, 484 U.S. 985 (1987) (expert's assertions that defendant fit characteristics of pedophile and likely retained materials for personal gratification, along with copy of letter to undercover agent with sexually explicit photographs of children sufficient to constitute probable cause); *People v. Frank*, 700 P.2d 415 (Cal. 1985), *cert. denied*, 111 S. Ct. 2816 (1991); *People v. Holmsen*, 219 Cal. Rptr. 598 (Ct. App. 1985). See also Kosid, in Lanning, CHILD MOLESTERS, *supra* note 31, Lanning, CHILD SEX RINGS, *supra* note 77.
445. For a more detailed analysis of these exceptions, especially as they relate to computers used in the sexual exploitation of children, see Armagh, Battaglia & Lanning, *supra* note 5, at 15-23.
446. *United States v. Reed*, 935 F.2d 641 (4th Cir.), *cert. denied*, 1125 S.Ct. 923 (1991).

447. *Schnecklath v. Bustamonte*, 412 U.S. 28 (1973).
448. *See, e.g., United States v. Roberts*, 86 F.Supp.2d 678 (S.D. Texas 2000) (border exception properly applied to importation/exportation of child pornography).
449. Armagh, Battaglia & Lanning, *supra* note 5, at 18.
450. National Center for Missing & Exploited Children (visited October 24, 2000) <<http://www.missingkids.com>>.
451. 42 U.S.C. § 13032 (1999).
452. John B. Rabun, Jr., CyberTipline Weekly Activity Report # 155 (February 26, 2001 – March 4, 2001) (National Center for Missing & Exploited Children) (“project to date” total for child pornography reports is 37,126).
453. National Center for Missing & Exploited Children (visited January 24, 2001) <http://www.missingkids.com/cybertip/ncmec_default_cybertipline.htm>.
454. National Center for Missing & Exploited Children (visited October 24, 2000) <<http://www.missingkids.com>>.
455. *Id.*
456. Child sex tourism is travel to regions where child-abuse laws are weak or poorly enforced in an attempt to circumvent domestic prohibitions, or the opportunistic use of prostituted children while traveling in such regions. *See Klain, supra* note 113, at 1, 32-50.
457. Office of Juvenile Justice and Delinquency Prevention & National Center for Missing & Exploited Children, *Federal Agency Task Force for Missing and Exploited Children* at 20 (US Department of Justice 1997).
458. For more information on INTERPOL’s Standing Working Party on Offenses Against Minors, see *infra* text accompanying notes 512-13.
459. 64 Fed. Reg. 88 (1999).
460. Personal communication from Michael Medaris, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice (January 30, 2001). The individual ICAC task forces do not collect conviction rates.
461. *Id.*
462. *Id.*
463. *Deputy Attorney General Announces New Grants To Combat Internet Crimes Against Children*, US Department of Justice Press Release (Washington, DC, May 10, 2000). For a complete list of ICAC Task Force sites, see the resource list on page 156.
464. National Center for the Analysis of Violent Crime (last visited January 9, 2001) <<http://www.fbi.gov/programs/ncavc/ncavc.htm>>.
465. Louis Freeh, *Child Pornography on the Internet and the Sexual Exploitation of Children*, Statement for the Record before the Senate Appropriations Subcommittee for the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies (March 10, 1998).
466. *Id.*
467. Jennifer Coleman, *Internet Police Patrol Cyberspace*, AP OnLine (March 14, 2000).
468. *Id.*
469. *Id.*
470. Federal Bureau of Investigation, Prosecutor Course Information, NCMEC 2000.
471. US Department of Justice, Child Exploitation and Obscenity Section, *What We Do* (last visited June 21, 2000) <<http://www.usdoj.gov/criminal/ceos/wwd.htm>>.
472. *Child Sexual Exploitation: Improving Investigations and Protecting Victims, A Blueprint for Action* (Washington, DC: US Department of Justice, Office of Justice Programs, Office for Victims of Crime January 1995) [hereinafter *Blueprint for Action*].

473. *Id.* at 31.
474. *Id.*
475. *Id.*
476. Debra Whitcomb & Julie Eastin, *Joining Forces Against Child Sexual Exploitation: Models for a Multijurisdictional Team Approach* at 11 (Washington, DC: US Department of Justice, Office of Justice Programs, Office for Victims of Crime January 1998).
477. *Id.* at 9-10.
478. *Id.* at 14.
479. *Id.*
480. Whitcomb, De Vos & Smith, *supra* note 8, at 19.
481. *Id.*
482. *Id.* at 22.
483. *Federal Agency Task Force*, *supra* note 457.
484. Whitcomb & Eastin, *supra* note 476, at 23.
485. *Id.*
486. *Id.*
487. *Blueprint for Action*, *supra* note 472, at 32.
488. Whitcomb & Eastin, *supra* note 476, at 15.
489. Personal communication with Inspector Robert Williams, US Postal Inspection Service, Chicago, Illinois (January 23, 2001).
490. Whitcomb & Eastin, *supra* note 476, at 16.
491. *Id.*
492. *Id.* at 18.
493. *Id.* at 18-19.
494. *Id.* at 19.
495. *Id.*
496. *Id.*
497. *Id.*
498. *Id.* at 20.
499. *Id.*
500. *Id.*
501. *Id.* at 23.
502. *Id.*
503. *Blueprint for Action*, *supra* note 472, at 31.
504. *Id.*
505. *Id.*
506. Whitcomb & Eastin, *supra* note 476, at 18.
507. *Id.*
508. *Id.* Personal communication from Susan Cronin, State Police Detective Unit, Massachusetts State Police (January 31, 2001).
509. Personal communication from Susan Cronin, State Police Detective Unit, Massachusetts State Police (January 31, 2001).
510. Whitcomb & Eastin, *supra* note 476, at 24.
511. *Id.*

512. *Spotlight On: Fighting Child Pornography and Exploitation on the Internet*, CHILDREN'S LEGAL RIGHTS JOURNAL 74-76 (Buffalo, NY: ABA Center on Children and the Law and Loyola University Chicago School of Law, in cooperation with the National Association of Counsel for Children, Summer 1999) [hereinafter *Spotlight On*].
513. FORCED LABOR: THE PROSTITUTION OF CHILDREN, Appendix A: The International Law Enforcement Response Against Child Sexual Exploitation at 87 (Jaffee & Rosen, eds., US Department of Labor 1996).
514. *Rights of the Child*, *supra* note 406, ¶ 141.
515. Catherine Masters, *New Zealand: Kit to Protect Children From Net Abusers*, The New Zealand Herald (March 7, 2000).
516. Mark Henry, *Hotline Addresses Concerns on Net's Downside*, The Irish Times on the Web (December 17, 1999) <<http://www.ireland.com/newspaper/finance/1999/1217/tech3.htm>>.
517. INHOPE Association (visited September 29, 2000) <<http://www.inhope.org/uk/mission/mission.html>>.
518. United Nations Educational, Scientific and Cultural Organization (UNESCO), *Innocence in Danger! About Us* (modified May 30, 2000) <<http://www.unesco.org/webworld/innocence/about.html>>.
519. *Id.*
520. *Id.* Corporate partners in the United States include America Online, AT&T®, Lycos®, and Microsoft®. Government agencies in the United States supporting the group include the FBI, US Department of Justice, and Federal Trade Commission. Paul Festa, *UN Group to Combat Online Child Porn*, CNETNews.com (February 25, 2000) <<http://news.cnet.com/news/0-1005-200-1557782.html?tag+st.ne.1002.tgif?st.ne.fd.gif.f>>.
521. ECPAT International, *What is ECPAT?* (visited May 30, 2000) <<http://www.ecpat.net/ecpat1/whatisep.htm>>.
522. *Id.*
523. *Id.*
524. Whitcomb, De Vos & Smith, *supra* note 8, at 97.
525. *Id.*
526. *Id.*
527. *Id.* at 16, 40.
528. *See* Walsh, *supra* note 412, at CSE-Walsh-11 to -13. The process of disclosure may be slow or partial. Many victims may fear the offender's threats, fear that they will be punished for their conduct, or not want to see the offender punished. They may not want their contact with the offender to end because it might mean the end of the love, attention, gifts, financial support, or other privileges they have received. *Id.* *See also* Lanning & Farley, *supra* note 95, at 8-13; Svedin & Back, *supra* note 153, at 39.
529. Whitcomb & Eastin, *supra* note 476, at 24.
530. Whitcomb, De Vos & Smith, *supra* note 8, at 42.
531. *Assessment Report*, *supra* note 6.
532. *Id.*
533. Whitcomb, De Vos & Smith, *supra* note 8, at 101.
534. *Id.* at 4.
535. *See* Armagh, Battaglia & Lanning, *supra* note 5.
536. *Spotlight On*, *supra* note 512, at 74.
537. Debra Baker, *When Cyber Stalkers Walk*, AMERICAN BAR ASSOCIATION (ABA) JOURNAL 50-54, 51 (December 1999).
538. M.J. Zuckerman, *Crackdown Stung by Short Sentences*, USA Today, April 19, 2000 <<http://usatoday.com/life/cyber/tech/cth750.htm>>.
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540. *Id.* at 51.

541. Whitcomb & Eastin, *supra* note 476, at 4.
542. Armagh, Battaglia & Lanning, *supra* note 5; Whitcomb & Eastin, *supra* note 476, at 38; *Assessment Report*, *supra* note 6; Whitcomb, De Vos & Smith, *supra* note 8; Burgess, Hartman, McCausland & Powers, *supra* note 149, at 120-26.
543. Whitcomb & Eastin, *supra* note 476, at 46.
544. *Id.*
545. *Id.*
546. *Id.*
547. Personal communication from Sharon Cooper, MD, Developmental & Forensic Pediatrics, P.A., Fayetteville, North Carolina (December 2000).
548. *Assessment Report*, *supra* note 6.
549. Lanning, *Cyber "Pedophiles," supra* note 7, ¶ 4.25.
550. *Id.*
551. Whitcomb, De Vos & Smith, *supra* note 8, at 101.
552. For a comprehensive guide on these issues, see the Department of Justice's portable guide *Use of Computers in the Sexual Exploitation of Children*. Armagh, Battaglia & Lanning, *supra* note 5.
553. Whitcomb & Eastin, *supra* note 476, at 3-4.
554. Michelle Elliot, *Images of Children in the Media: "Soft Kiddie Porn"*, in *PORNOGRAPHY: WOMEN, VIOLENCE, & CIVIL LIBERTIES* at 219 (Catherine Itzin ed., Oxford University Press 1992).
555. *Id.*
556. Whitcomb, De Vos & Smith, *supra* note 8, at 102.
557. Whitcomb & Eastin, *supra* note 476, at 13.
558. Whitcomb, De Vos & Smith, *supra* note 8, at 100.
559. *Id.* at 94.
560. *Id.* at 100.
561. *Assessment Report*, *supra* note 6, at 30.
562. Whitcomb, De Vos & Smith, *supra* note 8, at 102.
563. *Id.* at 102-03.

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Whitcomb, Debra, *When the Victim is a Child* (2d ed. National Institute of Justice 1992).

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Resources on the Topic of Child Pornography

Law-Enforcement Resources

Major Crimes Investigations
Air Force Investigative Operations Center
Bolling Air Force Base
Washington, DC 20332-5113
202.767.7760

Army Criminal Investigation Command
CIOP-CO
6110 Sixth Street
Fort Belvoir, VA 22060-5506
703.806.0305

Youth and Family Crimes Division
Dallas Police Department
2014 Main Street
Dallas, TX 75201
214.670.4982

Innocent Images Initiative
Baltimore Division
Federal Bureau of Investigation
11700 Beltsville Drive
Calverton, MD 20705
301.586.4519
www.fbi.gov

National Center for Analysis of Violent Crime
Federal Bureau of Investigation
FBI Academy
Quantico, VA 22135
703.632.4333

Office of Crimes Against Children
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535
202.324.2726

Federal Child Exploitation Strike Force
Chicago Postal Inspector
433 West Harrison Street, 5th Floor
Chicago, IL 60669-2231
312.983.7900

Law Enforcement Effort Against Child Harm (LEACH) Task Force, Southern Florida
Attention: Paul O'Connell
Broward County Sheriff's Office
PO Box 9507
Fort Lauderdale, FL 33310
954.321.4558 *or*
LEACH
Suite B100
7900 Peters Road
Plantation, FL 33324
954.370.3778

Massachusetts Child Exploitation Network
Massachusetts State Police
470 Worcester Road
Framingham, MA 01702
508.820.2300

National Center for Missing & Exploited Children
699 Prince Street
Alexandria, VA 22314-3175
1.800.THE.LOST (1.800.843.5678)
www.missingkids.com

National Center for Prosecution of Child Abuse
99 Canal Center Plaza, Suite 510
Alexandria, VA 22314
703.739.0321

National Clearinghouse on Child Abuse and Neglect Information
330 C Street, SW
Washington, DC 20447
1.800.FYI.3366

National Children's Advocacy Center
200 Westside Square, Suite 700
Huntsville, AL 35801
205.533.0531
www.ncac-hsv.org

Naval Criminal Investigative Service HQ

Washington Navy Yard
Building 111 (Code 0023B)
901 M Street, SE
Washington, DC 20388-5383
202.433.9234

Sexual Assault Felony Enforcement (SAFE) Team

Federal Bureau of Investigation, Los Angeles
11000 Wilshire Boulevard
Los Angeles, CA 90024
310.477.6565

United States Customs CyberSmuggling Center

11320 Random Hills Road, Suite 400
Fairfax, VA 22030
703.293.8005
1.800.BE.ALERT
www.customs.treas.gov/enforcem/enforcem.htm

Child Exploitation and Obscenity Section

United States Department of Justice

1331 F Street, NW, 6th Floor
Washington, DC 20530-0001
202.514.5780

Office of Juvenile Justice & Delinquency
Prevention, Child Protection Division

United States Department of Justice

810 - 7th Street, NW
Washington, DC 20530
202.616.3637

Office of Victims of Crime

United States Department of Justice

810 - 7th Street, NW
Washington, DC 20531
202.307.5983

INTERPOL

United States National Central Bureau

1301 New York Avenue, NW
Washington, DC 20530
202.616.9000

Nonprofit/Nongovernmental Resources***

Center for Media Education
2120 L Street, NW, Suite 200
Washington, DC 20037
202.331.7833
cme@cme.org
www.kidsprivacy.org

Childnet International
Studio 14
Brockley Cross Business Centre
96 Endwell Road
London SE4 2PD
44.020.7639.6967
info@childnet-int.org
www.childnet-int.org

Coalition Against Trafficking of Women
PO Box 9338
North Amherst, MA 01059
www.uri.edu/artsci/wms/hughes/catw

End Child Prostitution, Child Pornography
and Trafficking of Children for Sexual Purposes
ECPAT-USA
475 Riverside Drive
New York, NY 10115
212.870.2427

ECPAT International
328, Phayathai Road
Bangkok 10400
Thailand
662.215.3388
662.611.0972
662.215.8272
ecpatbkk@ksc15.th.com
www.ecpat.net

***The groups noted in this section are provided for information purposes only. Their inclusion in this list does not imply endorsement, sponsorship, or recommendation by the National Center for Missing & Exploited Children.

Enough is Enough
(888) 2Enough
(1.888.236.6844)
eieca@enough.org
www.enough.org

Focal Point on Sexual Exploitation of Children
Defense for Children International
PO Box 88
1211 Geneva 20, Switzerland
41.22.740.4711
info@focalpointngo.com
www.focalpointngo.org/focalpoint.html

Internet Alliance
1111 - 19th Street, NW, Suite 1180
PO Box 65782
Washington, DC 20035-5782
202.955.8091
ia@internetalliance.org
www.internetalliance.org
www.getnetwise.org

National Law Center for Children and Families
3819 Plaza Drive
Fairfax, VA 22030-2512
703.691.4626
NLC@NationalLawCenter.org
www.nationallawcenter.org

National Obscenity Law Center
Morality in Media, Inc.
475 Riverside Drive, Suite 239
New York, NY 10015
212.870.3222
www.moralityinmedia.org/nolc

Radda Barnen
Swedish Save the Children
S-107 88 Stockholm, Sweden
46.8.698.9000
ulla.army@rb.se
www.rb.se

Redd Barna
Save the Children, Norway
PO Box 6902 St. Olavspl.
0130 Oslo, Norway
47.22.99.0900
library@reddbarna.no
www.reddbarna.no

Save the Children, UK
17 Grove Lane
London SE5 8RD, United Kingdom
44.020.7703.5400
www.oneworld.org/scf

UNICEF
Child Protection Section
UNICEF House
3 United Nations Plaza
United Nations
New York, NY 10017
212.824.6633

US Fund for UNICEF
333 East 38th Street
New York, NY 10016
1.800.FOR.KIDS

Youth Advocate Program International
4545 - 42nd Street, NW, Suite 209
Washington, DC 20016
202.244.1986
yapi@igc.org
www.yapi.org

Internet Crimes Against Children Task-Force Program

Office of Juvenile Justice and Delinquency Prevention Office of Justice Programs US Department of Justice

Alabama

Department of Public Safety
Alabama Bureau of Investigation
Attention: Corporal Karl L. Youngblood
2720A Gunter Park Drive, West
Montgomery, AL 36109
334.260.1158
334.260.1155

Arizona

Phoenix Police Department
Attention: Lieutenant Larry T. Jacobs
620 West Washington
Phoenix, AZ 85003
602.261.8502
602.495.0483

California

Sacramento County Sheriff's Office
Attention: Captain Jan Hoganson
6622 Folsom Boulevard
Sacramento, CA 95814
916.874.3007

San Diego Police Department
Attention: Detective Sergeant David H. Jones
1401 Broadway
San Diego, CA 92101
619.531.2221
619.531.2509

Colorado

Colorado Springs Police Department
Attention: Detective Richard Hunt
705 South Nevada Avenue
Colorado Springs, CO 80903
719.444.7562

Connecticut

Connecticut State Police
Attention: Sergeant Andrew Russell
294 Colony Road
Meriden, CT 06451
203.694.6572

Florida

Broward County Sheriff's Office
Attention: Lieutenant Paul O'Connell
2601 West Broward Boulevard
Fort Lauderdale, FL 33312
www.leachtaskforce@sheriff.org
954.321.4558

Hawaii

Hawaii Department of the Attorney General
Attention: Donald K. L. Wong
425 Queen Street
Honolulu, HI 96813
808.586.8197
808.586.1240

Illinois

Illinois State Police
Attention: Master Sergeant Al Manint
500 Iles Park Place
Springfield, IL 62718-1002
217.785.0631

Kansas

Wichita Police Department
Attention: Lieutenant Paul Moser
130 South Market
Wichita, KS 67202
316.337.6562
316.337.6562

Maryland

Maryland State Police
Attention: Detective Sergeant Barry Leese
7155-C Columbia Gateway Drive
Columbia, MD 21046
410.290.1620

Massachusetts

Massachusetts Executive Office
of Public Safety Programs
Attention: Lieutenant Tom Kerle
470 Worcester Road
Framingham, MA 01702
508.820.2287

Michigan

Michigan State Police
Attention: Peter L. Plummer
714 South Harrison Road
East Lansing, MI 48823
734.525.4151

Minnesota

Saint Paul Police Department
Attention: Rick Anderson
100 East 11th Street
Saint Paul, MN 55101
651.292.3680
651.265.3882

Nebraska

Nebraska State Police
Attention: Investigator Scott Christensen
4411 South 108th Street
Omaha, NE 68137
402.595.2410

Nevada

Las Vegas Metropolitan Police Department
Attention: Lieutenant Tom Monahan
3010 West Charleston, Suite 120
Las Vegas, NV 89102
702.229.3599

New Hampshire

Portsmouth Police Department
Attention: Lieutenant Bob Carbone
3 Junkins Avenue
Portsmouth, NH 03801
603.436.1231

New York

Missing & Exploited Children Clearinghouse
New York State Division
of Criminal Justice Services
Attention: Inspector Lloyd R. Wilson
4 Tower Place
Albany, NY 12203
missingchildren@dcjs.state.ny.us
www.criminaljustice.state.ny.us/missing/i_safety
518.485.1981

North Carolina

North Carolina Bureau of Investigation
Attention: J. Melinda Collins
PO Box 11308
Raleigh, NC 27604
919.733.3793
919.716.0000

Ohio

Cuyahoga County Office
of the Prosecuting Attorney
Attention: Michael A. Sullivan
1200 Ontario Street, 9th Floor
Cleveland, OH 44120
216.443.7747
216.443.7853

Oklahoma

Oklahoma State Bureau of Investigation
Attention: David Page
6600 North Harvey
Oklahoma City, OK 73116
405.848.6724

Pennsylvania

Investigation Division
Delaware County Office
of the District Attorney
Attention: Lieutenant David C. Peifer
Media Courthouse
Media, PA 19063
610.891.4709

South Carolina

South Carolina Office
of the Attorney General
Attention: Max Cauthen
620 North Main Street, Suite 201
Greenville, SC 29601
864.241.1168

Tennessee

Knoxville Police Department
Attention: Lieutenant Gracie Jones
PO Box 3610
Knoxville, TN 37927
865.215.7300

Texas

Dallas Police Department
Attention: Sergeant Byron Fassett
106 South Harwood Street
Dallas, TX 75201
214.670.4978

Utah

Utah Office of the Attorney General
Attention: Lieutenant Ken Hansen
236 State Capitol Building
Salt Lake City, UT 84114
801.579.4530

Virginia

Bedford County Sheriff's Office
Attention: Sergeant Michael Harmony
1345 Falling Creek Road
Bedford, VA 24523
www.blueridgethunder.com
804.534.9521

Washington

Seattle Police Department
Attention: Captain Greg Ayco
1512 - 12th Avenue
Seattle, WA 98122
206.684.4351

Wisconsin

Wisconsin Department of Justice
Attention: Mike Myszewski
114 East State Capitol
Madison, WI 53702
608.266.1671

Wyoming

Wyoming Division of Criminal Investigation
Attention: Stephen J. Miller
316 West 22nd Street
Cheyenne, WY 82002
307.777.7181

National Center for Missing & Exploited Children

The National Center for Missing & Exploited Children (NCMEC), established in 1984 as a private, nonprofit organization, serves as a clearinghouse of information on missing and exploited children; provides technical assistance to individuals and law-enforcement agencies; offers training programs to law-enforcement and social-service professionals; distributes photographs and descriptions of missing children worldwide; coordinates child-protection efforts with the private sector; networks with nonprofit service providers and state clearinghouses on missing-person cases; and provides information on effective state legislation to help ensure the protection of children per 42 USC §§ 5771 and 5780. NCMEC, in conjunction with the US Postal Inspection Service, US Customs Service, and US Department of Justice, serves as the **National Child Pornography Tipline (1-800-843-5678)**.

A 24-hour, toll-free telephone line is open for those who have information on missing and exploited children

1-800-THE-LOST/1-800-843-5678

This toll-free number is available throughout the United States and Canada. The toll-free number when dialing from Mexico is 001-800-843-5678, and the “phone free” number when dialing from Europe is 00-800-0843-5678. The CyberTipline is available for online reporting of these crimes at www.cybertipline.com. The TDD line is 1-800-826-7653. The NCMEC business number is 703-274-3900. The NCMEC facsimile number is 703-274-2222.

For information on the services offered by our NCMEC branches, please call them in California at 714-508-0150, Florida at 561-848-1900, Kansas City at 816-756-5422, New York at 716-242-0900, and South Carolina at 803-254-2326.

A number of publications addressing various aspects of the missing- and exploited-child issue are available free-of-charge in single copies by contacting

Publications Department
National Center for Missing & Exploited Children
Charles B. Wang International Children’s Building
699 Prince Street
Alexandria, Virginia 22314-3175
ORI VA007019W



The Scope and Nature of Child Pornography

The Child Pornographer: Consumer, Collector, Producer

The Victims of Child Pornography

Legal Analysis

National Laws and International Treaties, Conventions, and Programs

Investigating Child Pornography Cases: Policy and Practice Issues

Model Law-Enforcement Responses to Child Pornography

General Principles for Effective Intervention

Conclusion

Criminal Statutes Within the United States Addressing Child Pornography

Endnotes

References on the Topic of Child Pornography

Resources on the Topic of Child Pornography

Internet Crimes Against Children Task-Force Program