

SB 65 - FAV - SUPPORT.pdf

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Position: FAV



**OFFICE OF THE
STATE'S ATTORNEY**
CECIL COUNTY, MARYLAND

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State's Attorney for Cecil County, Maryland

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DATE: **January 25, 2024**

BILL NUMBER: **SB 65**

POSITION: **Support**

The Office of the State's Attorney for Cecil County supports SB 65.

SB 65 enhances the charging capability of prosecutors in child pornography possession crimes in two significant ways: 1) it permits the combination of 100 images into one felony count; and 2) creates a charge that is specific to images that contain children under the age of 13. For either theory, the bill enhances the sentence to 10 years that is consecutive to any separate sentence imposed for a violation of Criminal Law § 11-207 or § 11-208.

This bill contemplates the reality of modern child pornography possession. Current trends include the downloading and retention of a significant number of images, videos, and other material. At times the amount of material downloaded and retained have exceeded 1000 or more separate images. This trend is the consequence of increasingly available digital pathways to seek, download, and retain through sophisticated and hidden means. Recently, offenders have been utilizing a variety of cell phone apps and social media outlets to reach like-minded consumers and trade material. Law enforcement is in a constant battle to identify and understand emerging technology used in this manner.

Further, these images and videos have become increasingly graphic and lengthy as download speeds and storage capacity have also exponentially improved. Downloading excessive volumes of child pornographic materials creates an enhanced market that drives disturbing individuals to flood this industry with more victims. Photographic and video evidence of child pornography often exists in perpetuity, and the victims of these crimes suffer lasting psychological consequences and are revictimized every time an image is viewed, possessed, or distributed and is precisely why in 2021 the Maryland Sentencing Guidelines Commission enhanced criminal sentencing guidelines for this type of criminal conduct.

Current law requires investigators, prosecutors, and fact finders to review each image separately which does not contemplate the full extent of the criminal conduct or trauma to victims. Further, each charge necessitates the inclusion of the particular image, video file name or hash value which may produce charging documents or indictments that involve hundreds of individual

counts. Such a charging methodology is unwieldy and ineffectual. By pooling batches of pornographic material into a singular 10-year charge, offenders are held accountable for the possession and proliferation of the child pornographic industry in a reasonable way. Further, although ALL child pornographic images are extremely harmful and reprehensible, there exists a particular market that caters to the exploitation of very young children who are often displayed in extremely graphic sadomasochistic material that includes torture. This bill confronts the retention of that material in a similar manner by specifically addressing images that contain this population.

The idea of batch image charging and sentencing enhancements for voluminous age-based or disturbing image retention is not new and is codified in a similar manner in California¹, Colorado², West Virginia³, Pennsylvania⁴ and the United States Criminal Code⁵. This straightforward and common-sense legislation will immediately hold offenders accountable in line with current trends and protect future victims from this extremely harmful and offensive conduct.

The Office of the State's Attorney for Cecil County seek a favorable report on SB 65.

¹ California Penal Code § 311.11

² Colorado Statute § 18-6-403 and § 18-1.3-401

³ West Virginia Statute § 61-8C-3

⁴ Pennsylvania Statute 18 PA.C.S.A. § 6312, §3101, §106

⁵ Sentencing enhancements for violation of the federal child pornography statutes under 18 U.S.C. §§ 1466A, 2252, 2252A(a)–(b), 2260(b) are not codified in the criminal statute, however, the United States Sentencing Commission has expressly provided for enhancing sentencing score based on quantity of images possessed.

(A) at least 10 images, but fewer than 150, increase by 2 levels;

(B) at least 150 images, but fewer than 300, increase by 3 levels;

(C) at least 300 images, but fewer than 600, increase by 4 levels; and

(D) 600 or more images, increase by 5 levels.

In determining the number of images, the Sentencing Commission decided each individual image shall be considered to be one image, while “each video, video-clip, movie, or similar visual depiction shall be considered to have 75 images.”

Porn - child - number of images, age of child - se

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 65
Lisae C. Jordan, Executive Director & Counsel
January 25, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 65.

Senate Bill 65 -- Child Pornography – Images of Younger Children

This bill increases the penalties for possession of child pornography where the image depicts a child under or indistinguishable from a child under the age of 13. It also clarifies how to calculate the number of images in a video and increases penalties for possession of large numbers of images (over 100 images).

Victims of child pornography suffer long lasting a repeated harm. They initiating are sexual abused during the creation of the images, but then experience repeated harm as the pictures of their abuse are circulated. Child pornography, now often referred to as images of child sexual abuse, are typically shared electronically. The material travels the web, around the world, and shared by the sex offenders interested in exploiting children by viewing their sexual abuse.

In Maryland, possession of child pornography requires that the child depicted be under the age of 16 and the crime is a is a misdemeanor with a penalty with up to 5 years and a \$2,500 fine or both for a first offense, and up to 10 years and a \$10,000 fine or both for subsequent offenses. SB65 proposes that the penalty for possessing an image of child under 13 or more than 100 images have a potential penalty of up to 10 years.

These cases include horrific and vile depictions of sexual abuse of children. Without providing unnecessary detail, consider cases involving children and bodily fluids, or with animals, or violence. Remember that the very definition of child pornography includes children who are a “subject of sadomasochistic abuse”. Maryland law already recognizes

that children under the age of 13 are particularly vulnerable through its “tender years” statute, Criminal Law §11-304. Age 13 is also recognized in juvenile law as a relevant demarcation line. Senate Bill 65 is consistent with these approaches. MCASA condemns pornographic images of any child. SB65 creates a reasonable and appropriate recognition of the need additional sentencing options for those who help create and sustain a market for images of younger children.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 65**

Meyers Senate Bill 65 Write Up.pdf

Uploaded by: Monica Meyers

Position: FAV

AISHA N. BRAVEBOY
STATE'S ATTORNEY



JASON B. ABBOTT
PRINCIPAL DEPUTY STATE'S ATTORNEY

State's Attorney for Prince George's County
14735 Main Street, Suite M3403
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January 24, 2024

Testimony in **Support** of

SB0065 – Criminal Law – Child Pornography – Prohibitions and Penalties

Re: Senate Bill - 65 – Judicial Proceedings Committee - Child Pornography – Prohibitions and Penalties

Chairman, Members of the Committee, and Senator James,

My name is Monica Meyers and I am a prosecutor from Prince George's County. I am responsible for the prosecution of individuals who use the internet to criminally exploit children. Although there are many ways that predators use the internet to exploit children, the most common is through the possession, distribution or solicitation of child pornography. These videos often involve elementary school aged children, toddlers, and even infants who are sexually exploited, often through rape. At times those children are bound and tied up, other times they are screaming for help as they are sexually assaulted.

Our office has recently taken the position that a Defendant should plea to every count for which they've been charged when it comes to having possessed, distributed, or solicited child pornography. That is not to be vindictive or draconian, but rather that is because as prosecutors we are not going to choose that only a handful of those children, whose rapes will live on the internet and be circulated for longer than they will be alive, will get justice, while the others do not. We recently prosecuted a man whose collection of child pornography contained some of the most horrific videos I have ever seen. After seeing those videos I knew our typical indictment charging 20-30 videos would not be sufficient. Therefore, he was indicted on 140 counts.

When word got around that we had charged 140 individual counts, I was approached by many members of the bar who questioned if I had charged the Defendant for every single video he possessed and distributed. I had not. Most Defendants possess thousands of files. The most I have seen in my career thus far was 20,000. While it was great that we are able to get justice for 140 victims, if we had a law, like the one contemplated in Senate Bill 65, we would have been able to get justice for so many more children whose rapes were hidden in secret folders contained on the Defendant's phone. Also from a practical position, not many judges are eager to take a plea of 140 counts.

This bill would allow us to seek justice for so many more children whose rapes are forever memorialized on the internet. These children, are deserving of justice, and unfortunately with the volume of videos most Defendants possess it is almost impossible for us to bring justice to a even a majority of these victims. Passing this bill would help us ensure justice for a greater number of victims and I urge a favorable report on Senate Bill 65. Thank you for your consideration.

Respectfully,

Monica Meyers, Assistant State's Attorney For Prince George's County

2022 One-Pager (NCMEC).pdf

Uploaded by: Cody Arigo

Position: FWA



The National Center for Missing and Exploited Children Maryland Data

The National Center for Missing and Exploited Children (NCMEC) serves as the congressionally designated national clearinghouse for issues relating to missing and exploited children. NCMEC provides assistance to families, law enforcement, and members of the public to fulfill our mission to help find missing children, combat child sexual exploitation, and reduce child victimization.

Listed below are Maryland specific statistics relating to NCMEC's work. For nationwide information on all of NCMEC's programs, please visit: missingkids.org/ourwork/impact.

NCMEC's Work to Combat Child Sexual Exploitation

NCMEC operates the CyberTipline, the national mechanism for members of the public and online companies to report suspected child sexual exploitation. In 2022, the CyberTipline received **32.1 million reports** related to suspected child sexual exploitation, containing more than **88 million pieces of reported content** categorized as follows:

Videos: 37,775,034 Images: 49,404,779 Other Content: 1,197,394

In 2022, **10,009 CyberTipline reports** were made available to law enforcement in Maryland relating to the following case types:

Reports Related to Apparent Child Pornography:	9,497
Reports Related to Online Enticement/Sextortion:	358
Reports Related to Other Forms of Child Sexual Exploitation:	154

NCMEC also operates the Child Victim Identification Program (CVIP) that helps identify children depicted in images and videos seized by law enforcement during the course of child sexual exploitation investigations. Since its inception in 2002, NCMEC's CVIP has enrolled **25,140 identified children** in the program. In 2022, NCMEC worked to help identify children seen in **70 submissions** of child sexual exploitation material received from Maryland law enforcement.

NCMEC's Work to Help Locate and Recover Missing Children

In 2022, NCMEC assisted law enforcement, families, and child welfare agencies on **27,644** missing child cases. The majority of these cases involved children who have run away from home or a social services facility and are vulnerable to endangerments such as homelessness, gang involvement, and child sex trafficking. In 2022, NCMEC handled **21,494 cases of children missing from social services care** and based on NCMEC's analysis, **18%** of these missing children were likely victims of child sex trafficking.

In 2022, NCMEC handled **602** cases of missing children from Maryland as follows:

Children Missing From Social Services Facility	261
Other Missing Children Cases	257
Children Reported Missing by Office of Refugee Resettlement (HHS-ORR) :	84

NCMEC's Work to Combat Child Sex Trafficking

In 2022, NCMEC received more than **19,000 reports** of possible child sex trafficking. NCMEC has a Child Recovery Services Team that provides the following assistance for cases involving child sex trafficking, including:

- Case-based assistance in developing trauma-informed, victim-centered recovery plans
- Resources and support on developing effective strategies for youth engagement, trauma responses, and addressing running behavior
- Training and assistance with protocol development
- Development of multidisciplinary efforts to prevent re-victimization

NCMEC's Child Recovery Services Team had **53 engagements** with Maryland social service agencies in 2022.

NCMEC's Work to Support Families Impacted by a Missing or Exploited Child Case

NCMEC supports a volunteer-based, peer-support network consisting of family members who have experienced having a child who has been missing or exploited. In 2022, Team HOPE supported **5,570** families with peer support, including **274 families** in Maryland. To further help individuals in need, NCMEC facilitates the Family Advocacy Outreach Network. This is a membership-based network of experienced mental health treatment professionals and organizations who are willing to provide therapeutic services pro bono or at a low fee. In 2022, NCMEC successfully connected **109 survivors and/or families** to mental health or victim advocacy services in Maryland.

NCMEC's Education Resources for Law Enforcement and Child-Serving Professionals

NCMEC is committed to providing educational opportunities and resources to law enforcement and child-serving professionals. NCMEC hosts in-person education sessions across the country and also online through our NCMEC CONNECT program. In 2022, NCMEC CONNECT had more than **29,000 registered users**, including **238 new law enforcement and child-serving professionals** in Maryland.

2024 SB 65 Written Testimony.pdf

Uploaded by: Cody Arigo

Position: FWA

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Judicial Proceedings Committee
Executive Nominations Committee

Senate Chair

Joint Committee on
Children, Youth, and Families

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 25th, 2024

The Maryland State Senate Judicial Proceedings Committee

The Honorable William C. Smith, Jr.

2 East Miller Senate Building

Annapolis, Maryland 21401

Testimony of Senator Mary-Dulany James
In Favor of SB 65 Criminal Law - Child Pornography - Prohibitions and Penalties

Dear Chairman Smith, Vice Chair Waldstreicher, and Members of the Committee,

Over the past fifteen years or so three major trends have occurred and converged to justify and indeed necessitate that Maryland pass **SB 65**.

First, the victims of child pornography are getting younger, much younger: prepubescent, toddlers, and infants.

Second, because of how young those victims are, the hideous acts against them are all violent and probably beyond a normal person's comprehension.

Third, advances in technology, computers, internet, and data storage means perpetrators receive and store hundreds, but often thousands of images, and, more often, these images are actually videos and films as captured in the new section **11-208.2**.

To begin to address these issues, SB 65 does three things:

1. Increases the penalty for possession of 100 or more images.
2. Increases the penalty for child pornography when the child victim is under the age of 13.
3. Treats each video, film, or other similar moving depictions as equaling 20 images.

There is now a constant escalation of these negative trends because a tipping point has been reached. Demand is fueling supply, and more supply is desensitizing the perpetrators who internalize what they are seeing as normal and thus they demand more shocking and more craven images.

The following highlights further demonstrate the need for this legislation. From 2007 to 2011 alone, the total images and videos reviewed by law enforcement went from 5 million to 22 million. Eighty-five (85%) of men arrested for possession and/or distribution of child pornography also committed a hands-on offense against a child.

At the same time, the consumers of child pornography now possess ever increasing numbers of images. According to federal authorities in 2019, the median number of images was 4,265, but with many offenders possessing millions. In cases across the country, state law

enforcement officials repeatedly see the typical case involving 20,000 to 50,000 images, but plenty of cases involve over 100,000.

According to the Federal Sentencing of Child Pornography Report for 2019, over half (52.2%) of child pornography offenses included images or videos of infants and toddlers, and nearly every offense (99.4%) included prepubescent children. That the incredibly young are an ever-increasing and often dominant part of today's child pornography is evident in every state for which I could find reporting. A list of some of my sources are at the end of my testimony.

Currently at the federal level, there can be sentence enhancements based on the age of the victim (under 14 years old), the brutality of the image (sadistic and masochistic), and the number of images. Additionally, a number of states have increased penalties for the number of images and the age of the victim. To keep up with the technological capabilities of ever-increasing storage capacity, these same states allow initial criminal complaints to describe the vast number of images in batches to make the early process more efficient and less unwieldy.

Maryland's child pornography statute has not been updated in this area since at least 2014, but possibly as far back as 2009. In either event, Maryland has not caught up with realities on the ground and our child pornography laws are not aligned with our recognition and significant policy improvements in protecting children from abuse, assaults, and trafficking, all of which are the essential crimes behind the explosion in numbers of the ever more hideously, perverted, and brutal images that have taken hold in the modern world of child pornography. As one expert with the "We Need To Do Better" organization, the country's leader in fighting

sex trafficking, stated, “We don’t say the words ‘child pornography’ because the accurate description is images of sexual assault on a child.”

SB 65 is a first step in acknowledging this truth.

Citations for SB 65 - Criminal Law - Child Pornography - Prohibitions

1. "A Depraved World: FBI Agents Wage a Stressful Battle Against Child Pornography." Dec. 28, 2012. https://www.nj.com/news/2012/12/a_depraved_world_fbi_agents_wa.html

2. Testimony of Jame M. Fottrel, Steve Debrotta, and Francey Hakes. Department of Justice Child Pornography Guidelines. https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20120215/Testimony_15_Hakes_DeBrotta_Fottrell.pdf

3. "Internet Pornography and Child Exploitation." DOJ. November 2006. Volume 54 Number 7'. <https://www.justice.gov/sites/default/files/usao/legacy/2006/12/18/usab5407.pdf>

4. "Former HHS Cyber Security Director Timothy DeFoggi Sentenced for Child Porn." *ABC News*. January 5, 2015. <https://abcnews.go.com/US/hhs-cyber-security-director-timothy-defoggi-sentenced-child/story?id=28016875>

"...expressed interest and wanted to meet a member of his child porn network to violently rape and murder children"

5. "More Than 70 Arrested in New York Child Porn Bust." *Washington Post*. May 22, 2014. <https://www.washingtonpost.com/news/morning-mix/wp/2014/05/22/more-than-70-arrested-in-new-york-child-pornography-bust/>

"Searches online included 'real child rape' and tens of thousands of images were involved."

6. The Innocent Images National Initiative

"The most insidious use of internet is for child sexual exploitation, taking place in the dark shadows of the web, on websites, message boards, through file sharing and emails and in real time with web cams and streaming videos."

7. The High Tech Crimes Task Force

"In 2015, the FBI worked with San Diego to target an international ring of child molesters who distributed photos and videos over the internet. These individuals victimized at least 45 children from ages 2-14, 37 of which were in the US."

8. "15,000 Cases of Arizona Child Porn, Most Uninvestigated." January 23, 2015. <https://www.azcentral.com/story/opinion/op-ed/2015/01/23/arizona-child-porn-uninvestigated/22189005/>

"Investigators say child-pornography victims are getting younger, and the abuse is becoming more violent... A significant number of these videos and images consist of infants and young children being raped, tortured and sexually abused. Some even include "how to" instructions on how **a grown man can rape a 3-year-old** and groom him or her for years of abuse... Fifty to 70 percent of perpetrators who download and trade child pornography are considered "hands on" offenders who actively molest and abuse children... Sixty to 65 percent of the images intercepted in Arizona are of prepubescent children, and 9 percent of all victims are infants."

9a. "Butler County Child Porn Case: Infants, Toddlers Among Victims, Sheriff Says." November 19, 2019.

<https://www.whio.com/news/local/butler-county-child-porn-case-infants-toddlers-among-victims-sheriff-says/q13fUuENBYktI9stDYOTNM/>

"...Images included children and babies, including some in diapers"

9b. "No Bond for Suspect in One of the Worst Cases of Child Porn Butler County Has Ever Seen." November 20, 2019. <https://www.fox19.com/2019/11/19/butler-sheriff-man-charged-one-worst-cases-child-porn/>

10. "I-TEAM INVESTIGATES: Our I-team Finds Child Pornography Arrests are on the Rise, Victims Getting Younger." May 8, 2019. <https://www.wrdw.com/content/news/I-TEAM-INVESTIGATES-Our-I-team-finds-child-pornography-victims-are-getting-younger-Much-younger-509656791.html>

"'When you take a child's innocence, that's a part of their soul... It can't be replaced and it can't be returned.' The videos... he found on their computers -- involving infants -- are the worst he's seen in his 30-year career..."

"The children are younger. Pre-pubescent. Toddler, infant,' Kicklighter said. 'The guys and women changing and exchanging child pornography, the children have gotten younger as to what they desire, what they want.'

"Two of the videos I would not even show to the prosecutor because they were that bad,' Kicklighter said. 'With a child being sexually abused, physically abused, bondage -- basically tortured.' "

11. “Cops and Volunteers Helping Rescue Children from Pornography.” *News Center Maine*. February 2, 2015.

“86% of the pornographic images confiscated in Maine are young children.”

12. California Penal Code Section 311.11

13. Colorado Statute Sections 18-6-403, 18-1, 3-401

14. West Virginia Statute Section 61-8C-3

15. Pennsylvania Statute 18 PA CSA Sections 6312, 3101, 106

16. 18 U.S.C. Sections 1466A, 2252, 2252A (a)-(b), 2260 (b)

17. ECPAT (End Child Prostitution and Trafficking) – USA Report “We Need to Do Better.” August 12, 2019.

<https://static1.squarespace.com/static/594970e91b631b3571be12e2/t/5d516a24dd94dd0001bc6e5b/1565616783919/CSAM+Report-v4.pdf>

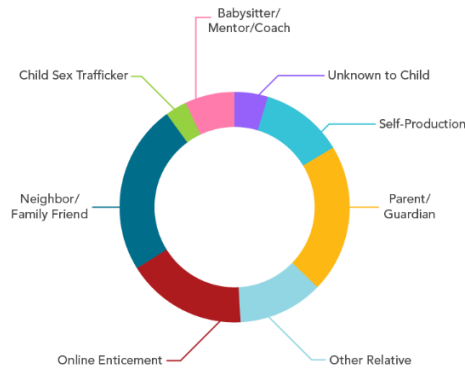
Data from the National Center for Missing and Exploited Children (NCMEC)

Actively traded images and videos

NCMEC's Child Victim Identification Program serves as the U.S. clearinghouse for information on CSAM and is aware of more than **25,140** child victims identified by law enforcement.

Of those, **2,734** children are depicted in imagery considered "actively traded," meaning the images or videos have been seen in multiple reports to NCMEC.

Relationship of offender to child in actively traded images and videos



Gender

Male
37%

Female
63%

Age

Infant/Toddler
9%

Prepubescent
58%

Pubescent
33%

Data: Relationship of offender to child in actively traded images and videos

Type of Relationship	# of Known Relationships	% of Total Victim Relationships
Parent/Guardian	590	20.93%
Other Relative	335	11.88%
Babysitter/Mentor/Coach/Teacher	193	6.85%
Neighbor/Family friend	675	23.94%
Self-Production	328	11.64%
Online Enticement/Youth Produced	480	17.03%
Child Sex Trafficker	82	2.91%
Unknown to Child	136	4.82%

This is Senator James' testimony from the 2023 bill hearing and is meant to supplement the testimony above.

Over the past fifteen years or so three major trends have occurred and converged to justify and indeed necessitate that Maryland pass **SB 899**.

First, the victims of child pornography are getting younger, much younger: prepubescent, toddlers, and infants.

Second, because of how young those victims are, the hideous acts against them are all violent and probably beyond a normal person's comprehension.

Third, advances in technology, computers, internet, and data storage means perpetrators receive and store hundreds, but often thousands of images.

To begin to address these issues, SB 899 does three things:

1. Allows for the combination of 100 images into a single count during the initial phase of the criminal case.
2. Increases the penalty for child pornography when the child victim is under the age of five.
3. Increases the penalty for possession of 100 or more images.

There is now a constant escalation of these negative trends because a tipping point has been reached. Demand is fueling supply and more supply is desensitizing the perpetrators who internalize what they are seeing as normal and thus they demand more shocking and more craven images.

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Citations for SB 899 - Criminal Law - Child Pornography - Prohibitions

1. "A Depraved World: FBI Agents Wage a Stressful Battle Against Child Pornography." Dec. 28, 2012. https://www.nj.com/news/2012/12/a_depraved_world_fbi_agents_wa.html

2. Testimony of Jame M. Fottrel, Steve Debrotta, and Francey Hakes. Department of Justice Child Pornography Guidelines. https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20120215/Testimony_15_Hakes_DeBrotta_Fottrell.pdf

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"...Images included children and babies, including some in diapers"

9b. "No Bond for Suspect in One of the Worst Cases of Child Porn Butler County Has Ever Seen." November 20, 2019. <https://www.fox19.com/2019/11/19/butler-sheriff-man-charged-one-worst-cases-child-porn/>

10. "I-TEAM INVESTIGATES: Our I-team Finds Child Pornography Arrests are on the Rise, Victims Getting Younger." May 8, 2019. <https://www.wrdw.com/content/news/I-TEAM-INVESTIGATES-Our-I-team-finds-child-pornography-victims-are-getting-younger-Much-younger-509656791.html>

" 'When you take a child's innocence, that's a part of their soul... It can't be replaced and it can't be returned.' The videos... he found on their computers -- involving infants -- are the worst he's seen in his 30-year career..."

"The children are younger. Pre-pubescent. Toddler, infant,' Kicklighter said. 'The guys and women changing and exchanging child pornography, the children have gotten younger as to what they desire, what they want.'

"Two of the videos I would not even show to the prosecutor because they were that bad,' Kicklighter said. 'With a child being sexually abused, physically abused, bondage -- basically tortured.' "

11. “Cops and Volunteers Helping Rescue Children from Pornography.” *News Center Maine*. February 2, 2015.

“86% of the pornographic images confiscated in Maine are young children.”

12. California Penal Code Section 311.11

13. Colorado Statute Sections 18-6-403, 18-1, 3-401

14. West Virginia Statute Section 61-8C-3

15. Pennsylvania Statute 18 PA CSA Sections 6312, 3101, 106

16. 18 U.S.C. Sections 1466A, 2252, 2252A (a)-(b), 2260 (b)

17. ECPAT (End Child Prostitution and Trafficking) – USA Report “We Need to Do Better.” August 12, 2019.

<https://static1.squarespace.com/static/594970e91b631b3571be12e2/t/5d516a24dd94dd0001bc6e5b/1565616783919/CSAM+Report-v4.pdf>

Memo Review of Offenses Involving Child Pornograph

Uploaded by: Cody Arigo

Position: FWA



MEMORANDUM

DATE: May 11, 2021

TO: MSCCSP

FROM: Guidelines Subcommittee

RE: Review of Offenses Involving Child Pornography or Sexual Solicitation of a Minor

Background

At the Commission's December 8, 2020, Public Comments Hearing, Joyce King, an assistant state's attorney in the Frederick County State's Attorney's Office, provided testimony, on behalf of the Frederick County Cyber Crimes Task Force and the Maryland State's Attorney's Association, to request an increase in the guidelines for online child sex abuse and exploitation offenses in Maryland, specifically possession and distribution of child pornography and sexual solicitation of a minor. Ms. King noted the increased prevalence of internet crimes against children, particularly during the COVID-19 pandemic, and provided three additional reasons for her request to increase the offenses' guidelines severity.

First, the Maryland General Assembly, in recent years, has expanded Maryland statutes related to the online sexual abuse and exploitation of children to bring them in line with Federal standards, thereby recognizing the severity of these crimes.¹ While the State's statutes have been expanded, Ms. King suggested that sentencing has been left behind. Though the Legislature generally did not increase penalties for internet crimes against children, Ms. King suggested that the expansion of crimes covered by Maryland laws warrants an increase in the guidelines.

Second, Ms. King noted that the guidelines do not currently consider the evolving and permanent nature of the internet. Images placed on the Internet and disseminated online exist in perpetuity. The victims of these crimes suffer lasting psychological consequences and are revictimized every time an image is viewed, possessed, or distributed.

¹ In 2019, the General Assembly voted unanimously to pass House Bill 1027/Senate Bill 736 (Chapters 25 and 26 of the Laws of Maryland), which added key language—"lascivious exhibition"—to the definition of "sexual conduct" contained in Maryland's child pornography statutes (CR, § 11-101). This change expanded Maryland's child pornography law and brought the State statute in line with federal laws and definition of child pornography. The same bills also added language that allows for the prosecution of pornographic content featuring computer-generated images that are indistinguishable from an actual child (CR, § 11-208).

In 2020, the General Assembly again took action to expand Maryland's internet crimes against children statutes and make them consistent with federal laws. House Bill 246/Senate Bill 231 (Chapters 128 and 129 of the Laws of Maryland) expanded the current Sexual Solicitation of a Minor law (CR, § 3-324) to include the prohibition of the sexual solicitation of a minor through their parent, guardian, or custodian. The bill also added an enhanced 20-year penalty for a second or subsequent offender. In response, the MSCCSP classified a subsequent sexual solicitation of a minor offense as a seriousness category III, one seriousness category more serious than a first-time offense.



Third, Ms. King noted that offenders who commit internet crimes against children may be distinguished from other offenders. Ms. King noted that research has found a correlation between online sex offenses and hands-on sex offenses. Research has also noted the progressive nature of online sex offenses and high rates of recidivism among its offenders.

In response to Ms. King's testimony, the Commission agreed to review the current classification of possession and distribution of child pornography and sexual solicitation of a minor.² The Guidelines Subcommittee reviewed the topic at its April 27, 2021, meeting. Specifically, the Guidelines Subcommittee reviewed two proposed revisions to the sentencing guidelines. One, the Guidelines Subcommittee reviewed increases to the seriousness categories for these offenses. Two, the Subcommittee reviewed revised language for the Maryland Sentencing Guidelines Manual (MSGM) and COMAR that would award permanent victim injury points to offenses involving evidence of child pornography. The Subcommittee ultimately decided against increasing the seriousness categories for offenses involving child pornography or sexual solicitation of a minor. The Subcommittee unanimously agreed to recommend to the Commission revisions to the MSGM and COMAR to instruct that permanent victim injury points shall be assigned in cases involving evidence of child pornography.

This memo provides a summary of how child pornography offenses and sexual solicitation of a minor are treated in the sentencing guidelines of other jurisdictions. Additionally, this memo provides a review of child pornography offenses and sexual solicitation of a minor sentenced in Maryland circuit courts in fiscal years 2016 through 2020. Finally, the memo provides recommended revisions to the MSGM and COMAR to instruct that permanent victim injury points shall be assigned in cases involving evidence of child pornography.

State and Federal Treatment of Child Pornography Offenses and Sexual Solicitation of a Minor

Presently, the District of Columbia, the Federal system, and 15 states maintain sentencing guidelines for use at criminal sentencings.³ Of the 17 jurisdictions that maintain sentencing guidelines, MSCCSP staff identified three jurisdictions that provide for sentence enhancements when calculating the sentencing guidelines for offenses involving child pornography or sexual solicitation of a minor. The United States' sentencing guidelines provide enhancements for offenses involving child pornography or sexual exploitation of minors based on the number of images involved in the offense, the number of victims, the victim's age, and the defendant's relationship to the victim.⁴ Pennsylvania's sentencing guidelines provide enhancements to

² The definition of and penalties for offenses involving distribution and production of child pornography are provided in Criminal Law Article (CR), § 11-207. The definition of and penalties for offenses involving the possession of child pornography are provided in CR, § 11-208. The definition of and penalties for sexual solicitation of a minor are provided in CR, § 3-324.

³ These states include: Alabama, Arkansas, Delaware, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, Oregon, Pennsylvania, Utah, Virginia, and Washington.

⁴ § 2G1.3 of the United States' 2018 Guidelines Manual provides instructions for determining the offense severity level for *Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor*; *Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct*; *Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor*; *Sex Trafficking of Children*; and *Use of Interstate Facilities to Transport*



offenses involving child pornography based on the number of images and nature of the abuse involved in the offense.⁵ Virginia's sentencing guidelines provide for enhancements to offenses

Information about a Minor. Enhancements to the base offense severity level are provided in the following scenarios: if the defendant was a parent, relative, or legal guardian of the minor involved in the offense, or if the minor was otherwise in the custody, care, or supervisory control of the defendant; if the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prohibited sexual conduct; if a participant otherwise unduly influenced a minor to engage in prohibited sexual conduct; if the offense involved the use of a computer or an interactive computer service to (a) persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct; or (b) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with the minor; if (a) the offense involved the commission of a sex act or sexual contact; if the offense involved a commercial sex act; or if the offense involved a minor who had not attained the age of 12 years.

§ 2G2.1 of the United States' 2018 Guidelines Manual provides instructions for determining the offense severity level for *Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material*; *Custodian Permitting Minor to Engage in Sexually Explicit Conduct*; and *Advertisement for Minors to Engage in Production*. Enhancements to the base offense severity level are provided in the following scenarios: if the offense involved a minor who had not yet attained the age of 12 years; if the offense involved a minor who had attained the age of 12 years but not attained the age of 16 years; if the offense involved a sexual act or sexual contact; if the defendant knowingly engaged in distribution; if the offense involved (a) material that portrays sadistic or masochistic conduct or other depictions of violence, or (b) an infant or toddler; if the defendant was a parent, relative, or legal guardian of the minor involved in the offense, or if the minor was otherwise in the custody, care, or supervisory control of the defendant; if, for the purpose of producing sexually explicit material or for the purpose of transmitting such material live, the offense involved (a) the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage sexually explicit conduct; or (b) the use of a computer or an interactive computer service to (i) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct, or to otherwise solicit participation by a minor in such conduct; or (ii) solicit participation with a minor in sexually explicit conduct; or if the offense involved the exploitation of more than one minor.

§ 2G2.2 of the United States' 2018 Guidelines Manual provides instructions for determining the offense severity level for *Trafficking in Material Involving the Sexual Exploitation of a Minor*; *Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor*; *Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic*; and *Possessing Material Involving the Sexual Exploitation of a Minor*. Enhancements to the base offense severity level are provided in the following scenarios: If the material involved a prepubescent minor or a minor who had not attained the age of 12 years; if the offense involved distribution for pecuniary gain; if the defendant distributed in exchange for any valuable consideration, but not for pecuniary gain; if the offense involved distribution to a minor; if the offense involved distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity; if the offense involved distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct; if the defendant otherwise knowingly engaged in distribution; if the offense involved material that portrays (A) sadistic or masochistic conduct or other depictions of violence; or (B) sexual abuse or exploitation of an infant or toddler; if the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor; if the offense involved the use of a computer or an interactive computer service for the possession, transmission, receipt, or distribution of the material, or for accessing with intent to view the material; if the offense involved at least 10 images but less than 150 images; if the offense involved at least 150 images but less than 300 images; if the offense involved at least 300 images but less than 600 images; or if the offense involved 600 or more images.

⁵ In 2013, House Bill 321 (Pennsylvania State Legislature) mandated that the Pennsylvania Commission on Sentencing shall provide for a sentence enhancement within its guidelines for certain offenses relating to the sexual abuse of children. The sexual abuse of children enhancement, effective September 26, 2014, provides for sentence enhancements for violations of 18 Pa.C.S. §6312 (relating to the production, distribution, and possession of child pornography) based on the number of images possessed by the offender (50 to 200 images, more than 200 images but less than or equal to 500 images, and more than 500 images) and/or whether the abuse depicted in the images



involving child pornography offenses or sexual solicitation of a minor based on the age of the victim and victim injury, including both physical and emotional injury.⁶ The Virginia Sentencing Guidelines Manual (p.18) specifically provides that, for possession of child pornography, victim injury is scored only if the defendant or co-defendant inflicted the documented injury.

Summary of Sentencing Guidelines Data Pertaining to Child Pornography Offenses and Sexual Solicitation of a Minor

MSCCSP staff conducted an analysis of sentences for and characteristics of offenses involving child pornography and sexual solicitation of a minor, sentenced in Maryland circuit courts in calendar years 2016 through 2020, for which a sentencing guidelines worksheet was received. Below is a summary of the main findings. More detailed findings can be found in Appendix A, at the end of the memo.

- The MSCCSP received sentencing guidelines worksheets for 605 sentencing events involving 1,039 counts of offenses involving child pornography or sexual solicitation of a minor, sentenced in 2016 through 2020. The majority of sentencing events occurred in the Third Circuit (29.4%, Baltimore and Harford Counties), followed by the 5th Circuit (18.8%, Anne Arundel, Carroll, and Howard Counties) and the 6th Circuit (17.4%, Frederick and Montgomery Counties). The smallest percentage (2.3%) of sentencing events occurred in the 8th Circuit (Baltimore City).
- The most common of these offenses was possession of child pornography, followed by manufacture, distribution, etc. child pornography, and sexual solicitation of a minor. The MSCCSP received few worksheets for defendants sentenced pursuant to subsequent offender statutes.
- The mean age of defendants sentenced for offenses involving child pornography or sexual solicitation of a minor was 37.8 years, slightly older than the average age of all defendants (31.4 years). Nearly all defendants were male (99.0%), and the majority of defendants were white (72.5%) and had no prior adult criminal record (77.8%).⁷

possessed by the offender portrays or contains any of the following: (i) the bondage of a child; (ii) a weapon used in a sexual context; (iii) penetration or attempted penetration of a child; or (iv) an act which would constitute a crime under 18 Pa.C.S. § 25 (relating to criminal homicide), 18 Pa.C.S. § 27 (relating to assault), or 18 Pa.C.S. § 31 (relating to sexual offenses). For the purposes of this enhancement, the number of images is defined as follows: (i) Each photograph, picture, computer generated image, or any similar visual depiction shall be considered to be one image. (ii) Each video, video-clip, movie, or similar visual depiction shall be considered to have 50 images. (Pennsylvania Commission on Sentencing, *Sentencing Guidelines Manual: 7th Edition, 2012, Amendment 2*, also located at 204 Pa.C.S. § 303.9(l) and 204 Pa.C.S. § 303.10(e)).

⁶ Virginia's sentencing guidelines provide for enhancements to offenses involving child pornography or the solicitation of a minor based on the age of the victim (less than 13 years) and victim injury (threatened or emotional; or physical, serious, or life-threatening). (Virginia Criminal Sentencing Commission. *Virginia Sentencing Guidelines Manual*. (2014); Other Sexual Assault/Obscenity Worksheet. (2020)).

⁷ When looking at all defendants for which the MSCCSP received a worksheet in 2016 through 2020, 82.1% are male, 30.5% are white, 62.0% are black, 6.2% are Hispanic, and 1.3% are another race; and 33.8% have no prior criminal record.



- Approximately, 61.1% of defendants convicted of offenses involving child pornography or sexual solicitation of a minor received a sentence that included incarceration. Just over half (50.5%) of defendants received a period of post-sentence incarceration.
- The majority (88.3%) of sentences for offenses involving child pornography or sexual solicitation of a minor were guidelines-compliant. When a departure from the guidelines occurred, it was more likely to be above versus below the guidelines (7.8% versus 3.9%, respectively).⁸
- Victim injury points were rarely assigned to offenses involving child pornography or sexual solicitation of a minor. Approximately 86.3% of these offenses were awarded no points for victim injury; 13.2% were awarded one point for a non-permanent injury; and 0.5% were awarded two points for permanent injury or death.
- Special victim vulnerability points were assigned in 54.1% of offenses involving child pornography or sexual solicitation of a minor, though the percentage varies by offense. More than half of offenses involving the manufacture, distribution, etc. of child pornography or the possession of child pornography (51.2% and 66.0%, respectively) were assigned points for special victim vulnerability, whereas the majority (86.3%) of offenses involving the sexual solicitation of a minor were not assigned points for special victim vulnerability. These findings suggest that the majority of victims of sexual solicitation of a minor are over the age of 11 years.⁹

Recommended Revisions to Part B of the Offense Score (Victim Injury)

The Guidelines Subcommittee recommends the Commission adopt the following revisions to the MSGM and COMAR to instruct that permanent victim injury points shall be awarded in cases involving evidence of child pornography.¹⁰ For an illustration of how the guidelines would increase with the application of permanent victim injury points, see Table #1 through Table #6, beginning on page 7 of the memo.

⁸ For the purpose of this analysis, guidelines-compliance is calculated at the offense-level. A sentence is defined as guidelines-compliant if it meets at least one of the following conditions: the guidelines-applicable sentence (defined as the sum of incarceration, credit for time served, and home detention) is within the guidelines range; the guidelines-applicable sentence exceeds the upper guidelines limit but includes only credit for time served; the sentencing event was disposed of by an ABA plea agreement; or the sentencing event involved the imposition of one or more correction options and the total sentence falls within or above the recommended guidelines range (excluding sentencing events that contain a crime of violence, child sexual abuse, or escape).

When looking at all offenses, 80.0% of sentences fall within the recommended guidelines range (i.e., are guidelines-compliant). When looking at just person offenses, 80.7% of sentences fall within the recommended guidelines range. Departures below the guidelines are much more common than departures above the guidelines when looking at all offenses (14.5% versus 5.3%, respectively) or just person offenses (12.6% versus 6.4%, respectively).

⁹ The MSCCSP does not collect data pertaining to the age of the victim.

¹⁰ This language is intended to apply permanent victim injury points to *any* offense involving photographic or video evidence of child pornography and is not limited to convictions for the possession, manufacture, or distribution of child pornography. For instance, this rule may apply in cases involving the following types of offenses, if evidence of child pornography is present: sexual solicitation of a minor, sextortion, visual and camera surveillance of a private place, obscene matter, prostitution, human trafficking, or electronic harassment.



MSGM, Chapter 6.1

B. Victim Injury

Victim injury means physical or psychological injury to the crime victim, the cause of which is directly linked to the conduct of the defendant in the commission of the convicted offense. **The individual completing the worksheet shall apply the following rules regarding victim injury.**

- a.** Victim injury, whether physical or psychological, shall be based on reasonable proof.
- b.** Psychological injury shall be based on confirmed medical diagnosis or psychological counseling or treatment. Rape crisis hotlines, clergy conferences, and other similar services are considered psychological counseling or treatment, but the contact with a counselor must be confirmed in writing or otherwise by the counseling or treatment provider. Psychological injury is presumed not permanent unless otherwise demonstrated.
- c.** Physical injury shall be more than minimal. Physical injuries such as lasting muscle damage or amputation are permanent.
- d. Offenses involving photographic or video evidence of child pornography shall be scored as permanent victim injury.**

The individual completing the worksheet shall assign a score of 0 if there was no victim injury. The individual completing the worksheet shall assign a score of 1 if victim injury occurred and the injury was not permanent. The individual completing the worksheet shall assign a score of 2 if victim injury occurred and the injury was permanent or resulted in the death of the victim.

COMAR

14.22.01.09

.09 Offense Score.

...

(3) Victim Injury.

(a) Victim injury, whether physical or psychological, shall be based on reasonable proof. Psychological injury shall be based on confirmed medical diagnosis or psychological counseling or treatment. Rape crisis hotlines, clergy conferences, and other similar services are considered psychological counseling or treatment, but the contact with a counselor must be confirmed in writing or otherwise by the counseling or treatment provider. Psychological injury is presumed not permanent unless otherwise demonstrated. Physical injury shall be more than minimal. Physical injuries such as lasting muscle damage or amputation are permanent. **Offenses involving photographic or video evidence of child pornography shall be scored as permanent victim injury.**



Sample Scenarios

The following tables illustrate how the guidelines for a typical offender, with no prior adult criminal record, would increase with the application of permanent victim injury points to offenses involving evidence of child pornography.

Table 1. Sample Scenario #1

Child Pornography (Manufacture, Distribution, Etc.), 1 st Offense		
	No Injury	Permanent Injury
Offender Score	0 points	0 points
Offense Score		
Part A (Seriousness Category)	3 points	3 points
Part B (Victim Injury)	0 points	2 points
Part C (Weapon Presence)	0 points	0 points
Part D (Special Victim Vulnerability)	1 point	1 point
Total Offense Score	4 points	6 points
Guidelines	P-3Y	1Y-6Y

Table 2. Sample Scenario #2

Child Pornography (Manufacture, Distribution, Etc.), Subsequent Offense		
	No Injury	Permanent Injury
Offender Score	0 points	0 points
Offense Score		
Part A (Seriousness Category)	5 points	5 points
Part B (Victim Injury)	0 points	2 points
Part C (Weapon Presence)	0 points	0 points
Part D (Special Victim Vulnerability)	1 point	1 point
Total Offense Score	6 points	8 points
Guidelines	1Y-6Y	4Y-9Y

**Table 3. Sample Scenario #3**

Child Pornography (Possession), 1 st Offense		
	No Injury	Permanent Injury
Offender Score	0 points	0 points
Offense Score		
Part A (Seriousness Category)	1 point	1 point
Part B (Victim Injury)	0 points	2 points
Part C (Weapon Presence)	0 points	0 points
Part D (Special Victim Vulnerability)	1 point	1 point
Total Offense Score	2 points	4 points
Guidelines	P-6M	P-3Y

Table 4. Sample Scenario #4

Child Pornography (Possession), Subsequent Offense		
	No Injury	Permanent Injury
Offender Score	0 points	0 points
Offense Score		
Part A (Seriousness Category)	3 points	3 points
Part B (Victim Injury)	0 points	2 points
Part C (Weapon Presence)	0 points	0 points
Part D (Special Victim Vulnerability)	1 point	1 point
Total Offense Score	4 points	6 points
Guidelines	P-3Y	1Y-6Y

**Table 5. Sample Scenario #5**

Sexual Solicitation of a Minor, 1 st Offense		
	No Injury	Permanent Injury
Offender Score	0 points	0 points
Offense Score		
Part A (Seriousness Category)	3 points	3 points
Part B (Victim Injury)	0 points	2 points
Part C (Weapon Presence)	0 points	0 points
Part D (Special Victim Vulnerability)	0 points	0 points
Total Offense Score	3 points	5 points
Guidelines	P-2Y	3M-4Y

Table 6. Sample Scenario #6

Sexual Solicitation of a Minor, Subsequent Offense		
	No Injury	Permanent Injury
Offender Score	0 points	0 points
Offense Score		
Part A (Seriousness Category)	5 points	5 points
Part B (Victim Injury)	0 points	2 points
Part C (Weapon Presence)	0 points	0 points
Part D (Special Victim Vulnerability)	0 points	0 points
Total Offense Score	5 points	7 points
Guidelines	3M-4Y	3Y-8Y



Appendix A

The following provides a detailed analysis of sentences for and characteristics of offenses involving child pornography and sexual solicitation of a minor, sentenced in Maryland circuit courts in calendar years 2016 through 2020, for which a sentencing guidelines worksheet was received.

Table 1 provides a list of the six reviewed offenses, their statutory sources, and their maximum penalties.

Appendix Table 1. Maryland Offenses Involving Child Pornography or Sexual Solicitation of a Minor.

Offense	Source	Statutory Maximum	Fine	Seriousness Category	Classification
Child pornography (Manufacture, distribution, etc.)- 1 st offense	CR, § 11-207(b)(1)	10Y	\$25,000	IV	Felony
Child pornography (Manufacture, distribution, etc.)- subsequent offense	CR, § 11-207(b)(2)	20Y	\$50,000	III	Felony
Child pornography (Possession)- 1 st offense	CR, § 11-208(b)(1)	5Y	\$2,500	V	Misdemeanor
Child pornography (Possession)- subsequent offense	CR, § 11-208(b)(2)	10Y	\$10,000	IV	Felony
Sexual solicitation of a minor or law enforcement officer posing as a minor- 1 st offense ¹	CR, § 3-324(d)(1)	10Y	\$25,000	IV	Felony
Sexual solicitation of a minor or law enforcement officer posing as a minor- subsequent offense ^{1, 2}	CR, § 3-324(d)(2)	20Y	\$50,000	III	Felony

¹ Per Chapters 128/129 of the 2020 Laws of Maryland (House Bill 246/Senate Bill 231), effective October 1, 2020, CR, § 3-324 provides that a person may not, with the intent to commit a violation of CR, §3-304, CR, §3-307, CR, §11-303, CR, §11-304, CR, §11-305, CR, §11-306, or CR, §11-30, knowingly solicit the consent of a parent, guardian, or custodian of a minor, or a law enforcement officer posing as a parent, guardian, or custodian of a minor, to engage in activities with the minor that would be unlawful for the person to engage in under CR, §3-304, CR §3-307, CR, §11-303, CR, §11-304, CR, §11-305, CR, §11-306, or CR, §11-307 of this article.

² Per Chapters 128/129 of the 2020 Laws of Maryland (House Bill 246/Senate Bill 231), effective October 1, 2020, a subsequent violation of CR, § 3-324 is subject to a maximum penalty of 20 years incarceration, a \$50,000 fine, or both. Prior to October 1, 2020, both first and subsequent offenses were subject to a maximum penalty of 10 years, a \$25,000 fine, or both.



Table 2 provides a breakdown, by type of offense, for each of the offenses and sentencing events involving child pornography or the sexual solicitation of a minor. The MSCCSP received sentencing guidelines worksheets for 605 sentencing events and 1,039 offenses involving child pornography or the sexual solicitation of a minor in calendar years 2016 through 2020. The most common of these offenses was the possession of child pornography, followed by the manufacture, distribution, etc. of child pornography, and sexual solicitation of a minor. Maryland Law provides for subsequent offender penalties for each of the offenses involving child pornography or sexual solicitation of a minor. As Table 2 illustrates, the MSCCSP received few worksheets for defendants sentenced pursuant to subsequent offender statutes in 2016 through 2020.

Appendix Table 2. Maryland Sentencing Guidelines Worksheets Received for Offenses Involving Child Pornography or Sexual Solicitation of a Minor, Calendar Years 2016 through 2020.

	Offenses	Sentencing Events
Child pornography- Manufacture, distribution, etc., 1 st offense	333	234
Child pornography- Manufacture, distribution, etc., subsequent offense	3	2
Child pornography- Possession, 1 st offense	564	277
Child pornography- Possession, subsequent offense	8	7
Sexual solicitation of a minor, 1 st offense	131	119
Sexual solicitation of a minor, subsequent offense	0	0
Total	1,039	605

Table 3 provides a breakdown of offenses by judicial circuit. The largest percentage of sentencing events involving child pornography or sexual solicitation of a minor came from the 3rd Circuit (29.4%), followed by the 5th Circuit (18.8%) and the 6th Circuit (17.4%). The 8th Circuit, which sentences the largest overall percentage of cases in the State, sentenced the smallest percentage (2.3%) of sentencing events involving child pornography or sexual solicitation of a minor.



Appendix Table 3. Total Offenses and Sentencing Events Involving Child Pornography or the Sexual Solicitation of a Minor, by Judicial Circuit, Calendar Years 2016 through 2020

	Total				Offense Involving Child Pornography or Sexual Solicitation of a Minor			
	Offenses		Sentencing Events		Offenses		Sentencing Events	
	#	% State	#	% State	#	% State	#	% State
1st Circuit (Dorchester, Somerset, Wicomico, Worcester)	4,847	7.3%	3,333	7.0%	72	6.9%	48	7.9%
2nd Circuit (Caroline, Cecil, Kent, Queen Anne's, Talbot)	3,916	5.9%	2,728	5.7%	84	8.1%	36	6.0%
3rd Circuit (Baltimore, Harford)	11,925	18.0%	9,606	20.1%	224	21.6%	178	29.4%
4th Circuit (Allegany, Garrett, Washington)	3,497	5.3%	2,662	5.6%	117	11.3%	44	7.3%
5th Circuit (Anne Arundel, Carroll, Howard)	8,226	12.4%	6,100	12.8%	156	15.0%	114	18.8%
6th Circuit (Frederick, Montgomery)	9,370	14.1%	6,375	13.4%	223	21.5%	105	17.4%
7th Circuit (Calvert, Charles, Prince George's, St. Mary's)	11,316	17.1%	7,694	16.1%	135	13.0%	66	10.9%
8th Circuit (Baltimore City)	13,266	20.0%	9,238	19.4%	28	2.7%	14	2.3%
Total	66,363	100.0%	47,736	100.0%	1,039	100.0%	605	100.0%

Table 4 provides the mean age, gender, race, prior adult criminal record, and multiple offense sentencing event distributions for defendants convicted of one or more offenses involving child pornography or sexual solicitation of a minor in 2016 through 2020. The mean age of defendants convicted of one or more of these offenses was 37.8 years, slightly older than the average of all defendants (31.4 years). The majority were male (99%), white (72.5%), and had no prior adult criminal record (77.8%).¹¹ Approximately, 41.2% of sentencing events involving child pornography or sexual solicitation of a minor involved multiple offenses, most often multiple offenses involving the online sexual abuse or exploitation of children. Sentencing events involving the possession of child pornography were most likely to involve multiple offenses. The multiple victim stacking rule was applied in 4.3% of all sentencing events (or 10.4% of multiple offense sentencing events) involving at least one count of child pornography or sexual solicitation of a minor.

¹¹ When looking at all defendants for which the MSCCSP received a worksheet in 2016 through 2020, 82.1% are male, 30.5% are white, 62.0% are black, 6.2% are Hispanic, and 1.3% are another race; and 33.8% have no prior criminal record.



Appendix Table 4. Characteristics of Sentencing Events Involving Child Pornography or the Sexual Solicitation of a Minor, Calendar Years 2016 through 2020

	All Offenses Involving Child Pornography or Sexual Solicitation of a Minor		Child Pornography- Manufacture, Distribute, Etc.		Child Pornography- Possession		Sexual Solicitation of a Minor	
	#	Valid %	#	Valid %	#	Valid %	#	Valid %
Mean age	37.8 years		37.5 years		37.7 years		38.0 years	
Gender								
Male	586	99.0%	232	99.1%	271	99.3%	114	97.4%
Female	6	1.0%	2	0.9%	2	0.7%	3	2.6%
Missing	13		2		10		2	
Race								
Black	89	15.9%	37	17.0%	33	12.7%	24	21.4%
White	405	72.5%	151	69.3%	210	80.8%	68	60.7%
Hispanic	51	9.1%	24	11.0%	11	4.2%	18	16.1%
Other	14	2.5%	6	2.8%	6	2.3%	2	1.8%
Missing	46		18		23		7	
Prior record								
None	469	77.8%	188	79.7%	226	80.1%	82	69.5%
Minor	81	13.4%	30	12.7%	31	11.0%	23	19.5%
Moderate	37	6.1%	13	5.5%	20	7.1%	7	5.9%
Major	16	2.7%	5	2.1%	5	1.8%	6	5.1%
Missing	2		0		1		1	
Additional offenses								
No additional offenses	356	58.8%	146	61.9%	125	44.2%	85	71.4%
Multiple offenses	249	41.2%	90	38.1%	158	55.8%	34	28.6%
Multiple child pornography or sexual solicitation of a minor offenses	193	31.9%	66	28.0%	146	51.6%	14	11.8%
Crime of violence	28	4.6%	21	8.9%	7	2.5%	4	3.4%
Other person offense	21	3.5%	7	3.0%	8	2.8%	10	8.4%
Multiple victim stacking rule imposed	26	4.3%	13	5.5%	19	6.7%	1	0.8%
Total sentencing events	605		236		283		119	

Note. Valid percentages are based on non-missing data. First and subsequent offenses are combined into one offense category.



Table 5 provides the average total sentence, the average guidelines applicable sentence, and incarceration rates for offenses involving child pornography or sexual solicitation of a minor, sentenced in 2016 through 2020. Approximately 61.1% of these offenses received a sentence with some period of incarceration. Just over half (50.5%) of offenses received incarceration time beyond credit for time served.

Appendix Table 5. Average Sentences and Incarceration Rates for Offenses Involving Child Pornography or the Sexual Solicitation of a Minor, Calendar Years 2016 through 2020

	All Offenses Involving Child Pornography or Sexual Solicitation of a Minor		Child Pornography-Manufacture, Distribute, Etc., 1 st Offense		Child Pornography-Manufacture, Distribute, Etc., Subsequent		Child Pornography-Possession, 1 st Offense		Child Pornography-Possession, Subsequent		Sexual Solicitation of a Minor, 1 st Offense ¹	
	#	%	#	%	#	%	#	%	#	%	#	%
Mean total sentence	-		7.0 years		15.0 years		4 years		5.6 years		7.4 years	
Mean guidelines-applicable sentence ²	-		1.5 years		6.7 years		0.6 years (7.1 months)		1.5 years		1.6 years	
Incarceration												
Yes	635	61.1%	246	73.9%	2	66.7%	281	49.8%	4	50%	102	77.9%
No	404	38.9%	87	26.1%	1	33.3%	283	50.2%	4	50%	29	22.1%
Post-Sentence Incarceration												
Yes	525	50.5%	216	64.9%	2	66.7%	223	39.5%	2	25.0%	82	62.6%
No	514	49.5%	117	35.1%	1	33.3%	341	60.5%	6	75.0%	49	37.4%
Probation Only ³	55	5.3%	4	1.2%	0	0.0%	46	8.2%	1	12.5%	4	3.1%
Probation Before Judgement ³	66	6.4%	9	2.7%	0	0.0%	48	8.5%	0	0.0%	9	6.9%
Total offenses	1,039		333		3		564		8		131	

¹ Prior to October 1, 2020, there was no subsequent offender penalty for sexual solicitation of a minor.

² The guidelines-applicable sentence is defined as the sum of jail/prison time, home detention, and credit for time served. The guidelines-applicable sentence does not include suspended time. The guidelines-applicable sentence is used to determine guidelines compliance.

³ When looking at all offenses, 7.2% of offenses received a sentence of probation only; 7.8% of offenses received a probation before judgement (PBJ) disposition. When looking at just person offenses, 4.9% of offenses received a sentence of probation only; 5.4% of offenses received a PBJ. The percentage of offenses that receive a PBJ is higher than the percentage of offenses that receive probation only as defendants who receive a PBJ may still serve a brief period of incarceration or receive credit for time served.



Table 6 provides offense-level compliance rates for offenses involving child pornography or sexual solicitation of a minor, sentenced in 2016 through 2020.¹² Approximately, 88.3% of sentences for offenses involving child pornography or sexual solicitation of a minor were guidelines-compliant; approximately 3.9% of sentences fell below the guidelines; and approximately 7.8% of sentences percent fell above the guidelines. When looking at strict compliance, approximately 80.3% of sentences for offenses involving child pornography or sexual solicitation of a minor fell within the guidelines range; 5.9% fell below the guidelines; and approximately 13.8% percent fell above the guidelines. Looking at regular compliance, when a departure from the guidelines occurred, it was more likely to be above versus below the guidelines for first-time offenses involving child pornography.¹³ When looking at strict compliance, when a departure from the guidelines occurred, it was more likely to be above versus below the guidelines for first-time offenses involving child pornography or the sexual solicitation of a minor.

¹² A sentence is defined as guidelines-compliant if it meets at least one of the following conditions: the guidelines-applicable sentence (defined as the sum of incarceration, credit for time served, and home detention) is within the guidelines range; the guidelines-applicable sentence exceeds the upper guidelines limit but includes only credit for time served; the sentencing event was disposed of by an ABA plea agreement; or the sentencing event involved the imposition of one or more correction options and the total sentence falls within or above the recommended guidelines range (excluding sentencing events that contain a crime of violence, child sexual abuse, or escape).

A sentence is defined as compliant based on strict compliance if the guidelines-applicable sentence (defined as the sum of incarceration, credit for time served, and home detention) is within the guidelines range. Per this definition, sentencing events disposed of via ABA pleas are not automatically considered guidelines-compliant. Approximately, 36.2% of sentencing events involving child pornography or sexual solicitation of a minor were disposed of via an ABA plea.

¹³ When looking at all offenses, 80.0% of sentences fall within the recommended guidelines range (i.e., are guidelines-compliant). When looking at just person offenses, 80.7% of sentences fall within the recommended guidelines range. Departures below the guidelines are much more common than departures above the guidelines when looking at all offenses (14.5% versus 5.3%, respectively) or just person offenses (12.6% versus 6.4%, respectively). Several other person offenses, however, display a similar pattern to offenses involving child pornography, in that above departures are more common than below departures, most notably false imprisonment (30.4% above versus 19.6% below), accessory after the fact to first degree murder (25.8% above versus 12.9% below), and sexual abuse, third degree, with age based elements (CR, § 3-307(a)(3)-(a)(5), 25.6% above versus 2.5% below).



Appendix Table 6. Compliance Rates for Offenses Involving Child Pornography or the Sexual Solicitation of a Minor, Calendar Years 2016 through 2020

	All Offenses Involving Child Pornography or Sexual Solicitation of a Minor		Child Pornography-Manufacture, Distribute, Etc., 1 st offense		Child Pornography-Manufacture, Distribute, Etc., Subsequent		Child Pornography-Possession, 1 st Offense		Child Pornography-Possession, Subsequent		Sexual Solicitation of a Minor, 1 st Offense ¹	
	#	Valid %	#	Valid %	#	Valid %	#	Valid %	#	Valid %	#	Valid %
Compliance												
Within	917	88.3%	301	90.4%	3	100.0%	488	86.7%	7	87.5%	118	90.1%
Below	40	3.9%	5	1.5%	0	0.0%	27	4.8%	1	12.5%	7	5.3%
Above	81	7.8%	27	8.1%	0	0.0%	48	8.5%	0	0.0%	6	4.6%
Strict Compliance												
Within	796	76.7%	276	82.9%	0	0.0%	400	71.0%	6	75.0%	114	87.0%
Below	67	6.5%	14	4.2%	2	66.7%	42	7.5%	1	12.5%	8	6.1%
Above	175	16.9%	43	12.9%	1	33.3%	121	21.5%	1	12.5%	9	6.9%
Total offenses	1,039		333		3		564		8		131	

Note. For definitions of guidelines compliance, see Footnote 8 (bottom of page 11). Valid percentages are based on non-missing data. One count of child pornography-possession, 1st offense was missing compliance.

¹ Prior to October 1, 2020, there was no subsequent offender penalty for sexual solicitation of a minor.

Table 7 displays the percentage of offenses involving child pornography or sexual solicitation of a minor in which victim injury or special victim vulnerability points were assigned.¹⁴ The majority (86.3%) of offenses involving child pornography or the sexual solicitation of a minor were not assigned victim injury points. Approximately 13.2% of offenses involving child pornography or sexual solicitation of a minor were assigned points for a non-permanent injury. Very few cases (0.5%) were assigned points for permanent injury or death.

The assignment of special victim vulnerability points varies by offense. More than half of offenses involving the manufacture, distribution, etc. of child pornography or the possession of child pornography (51.2% and 66.0%, respectively) were assigned points for special victim vulnerability, whereas the majority (89.3%) of offenses involving the sexual solicitation of minor were not assigned points for special victim vulnerability. These findings suggest that the majority of victims of sexual solicitation of a minor are over the age of 11 years.¹⁵

¹⁴ Victim injury is defined in the Maryland Sentencing Guidelines Manual (MSGM, Version 13.0, Chapter 6.3.B) as “physical or psychological injury to the crime victim, the cause of which is directly linked to the conduct of the defendant in the commission of the convicted offense.”

Special victim vulnerability is defined in the MSGM (Version 13.0, Chapter 6.3.C) and “refers to cases in which the relative status of the victim tends to render the actions of the perpetrator more serious.” Per the MSGM, “[a] vulnerable victim is anyone: a. Younger than 11 years old; b. 65 years old or older; or c. Having a temporary or permanent physical or mental disability, including an individual who is physically or mentally limited in a material way. Examples of a temporary physical or mental limitation include, but are not limited to, instances when the offender knew or should have known the victim was pregnant, unconscious, asleep, or intoxicated.”

¹⁵ The MSCCSP does not collect data pertaining to the age of the victim.



Appendix Table 7. Victim Injury and Special Victim Vulnerability Among Offenses Involving Child Pornography or the Sexual Solicitation of a Minor, Calendar Years 2016 through 2020

	All Offenses Involving Child Pornography or Sexual Solicitation of a Minor		Child Pornography-Manufacture, Distribute, Etc.		Child Pornography-Possession		Sexual Solicitation of a Minor	
	#	Valid %	#	Valid %	#	Valid %	#	Valid %
Victim Injury								
No injury	888	86.3%	283	84.7%	492	87.2%	113	86.3%
Injury, non-permanent	136	13.2%	51	15.3%	68	12.1%	17	13.0%
Permanent injury or death	5	0.5%	0	0.0%	4	0.7%	1	0.8%
Missing	10		2		8		0	
Special Victim Vulnerability								
Yes	557	54.1%	171	51.2%	372	66.0%	14	10.7%
No	472	45.9%	163	48.8%	192	34.0%	117	89.3%
Missing	10		2		8		0	
Total offenses	1,039		336		572		131	

Note. Valid percentages are based on non-missing data. First and subsequent offenses are combined into one offense category.

Sentencing Enhancements for all 50 State.pdf

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Position: FWA

CSAM Sentencing Enhancements 50-State Comparison

Executive Summary

This report is an analysis of the differences in CSAM legislation between states. Data has been compiled in the following charts.

State	Enhancements for				
	Quantity	Age	Violence	Bestiality	Other
Alabama	<input checked="" type="checkbox"/>				
Alaska	<input checked="" type="checkbox"/>				
Arizona		<input checked="" type="checkbox"/>			
Arkansas					
California	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Colorado		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Connecticut	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		
Delaware					
Florida	<input checked="" type="checkbox"/>				
Georgia	<input checked="" type="checkbox"/>				
Hawaii	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Idaho					
Illinois	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Indiana		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Iowa	<input checked="" type="checkbox"/>				
Kansas					
Kentucky		<input checked="" type="checkbox"/>			
Louisiana	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Maine		<input checked="" type="checkbox"/>			
Maryland					
Massachusetts					
Michigan	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Minnesota		<input checked="" type="checkbox"/>			
Mississippi					
Missouri	<input checked="" type="checkbox"/>				
Montana					
Nebraska					
Nevada					
N Hampshire					
New Jersey	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>
New Mexico		<input checked="" type="checkbox"/>			
New York					
North Carolina					
North Dakota					
Ohio					
Oklahoma					
Oregon					
Pennsylvania		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>

Rhode Island					
South Carolina					
South Dakota					
Tennessee	<input checked="" type="checkbox"/>				
Texas					
Utah	<input checked="" type="checkbox"/>				
Vermont					<input checked="" type="checkbox"/>
Virginia					
Washington					
West Virginia	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Wisconsin	<input checked="" type="checkbox"/>				
Wyoming					
Federal Code	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			

Problem/Solution Relationship

See Mississippi, Louisiana

50 State Statues

Alabama: Code of Alabama § 13A-12-192 Possession and Possession With Intent to Disseminate Obscene Matter Containing Visual Depiction of Persons Under 17 Years of Age Involved in Obscene Acts.

-Enhancement by quantity; no enhancements for age or violence-
 Possession of CSAM is a Class C felony, subject to a prison sentence of between 1 and 10 years. Possessing 3 or more images is prima facie evidence of possession with intent to disseminate. Having the intent to disseminate is a Class B felony, subject to up to 10 years in prison and up to \$100,000 in fines. When being charged for possession, each image can be charged separately.

Alaska: Alaska Statutes § 11.61.125 Distribution of Child Pornography; § 11.61.127 Possession of Child Pornography.

-Enhancements for quantity; no enhancements for age or violence-
 Possession of CSAM is a Class C felony, subject to a prison sentence of up to five years and a fine of up to \$50,000. Possessing 100 images or more is prima facie evidence of intent to distribute; distribution is a Class B felony, subject to up to 10 years in prison and up to \$100,000 in fines. When being charged for possession, each image can be charged separately.

Arizona: Arizona Revised Statues § 13-3553 Sexual Exploitation of a Minor; Evidence; Classification

-Enhancements for age; no enhancements for quantity or violence-
 Possessing CSAM is a Class 2 felony, subject to no less than 3 to 12½ years in prison or a fine of up to \$150,000. If the minor depicted is under 15, the crime is punishable pursuant to §13-705 (about 10 to 24 years imprisonment).

Arkansas: Arkansas Code § 5-27-304 Pandering or Possessing Visual or Print Medium Depicting Sexually Explicit Conduct Involving a Child

-No enhancements for quantity, age, or violence-

Possessing CSAM is a Class C felony, punishable by 3 to 10 years in prison and a fine of up to \$10,000. Repeat offenses are Class B felonies, subject to 5 to 20 years in prison and fines of up to \$15,000.

California: California Penal Code § 311.11 Possession or Control of Matter Depicting Minor Engaging in or Simulating Sexual Conduct; Punishment; Previous Conviction

-Enhancements for quantity and violence; no enhancements for age-

The California statute enhances the penalty for possession of child pornography from 1 year or a \$2500 fine to possible imprisonment of 16 months, or 2 or 5 years in a state facility for possession of child sexual abuse material (CSAM), or child pornography, in circumstances in which:

1. The materials possessed constitute “600 or more images that violate [the general possession prohibition] and the matter contains 10 or more images involving a prepubescent minor or a minor who has not attained 12 years of age”
2. The materials possessed portrays sexual sadism or sexual masochism involving a person under 18 years of age.

See Appendix A.

Colorado: Colorado Statute § 18-6-403 Sexual Exploitation of a Child and § 18-1.3-401 Felonies Classified- Presumptive Penalties

-Enhancements for violence and age; no enhancements for quantity-

The Colorado statute enhances the penalty for commission of sexual exploitation of a child, including possession of child pornography in circumstances in which the material depicts:

1. “a child under 12 years of age”
2. A child is “subjected to actual application of physical force or violence”
3. A child is “subjected to sexual intercourse, sexual intrusion, or sadomasochism.”

Colorado statute gives a sentencing range depending on the class of crime committed. Sexual exploitation is typically a Class 3 felony, requiring a 4 to 12 year range of imprisonment, with parole after 3 years. The sentencing enhancement in situations discussed above increases the maximum sentence in the presumptive range by 4 years.

See Appendix B.

Connecticut: Connecticut Code § 53a-196d; § 53a-196e; § 53a-196f Possessing Child Pornography in the First, Second, and Third Degree (Respectively)

-Enhancements for quantity, violence, and number of children; no enhancements for age-

Connecticut’s Possession of CSAM charge is divided into three degrees:

1. First degree (196d) is a Class B felony, subject to a prison sentence of 1 to 40 years and a fine of up to \$15,000. A person is guilty of first-degree Possession if they:
 - a. Knowingly possess fifty or more CSAM images;
 - b. One or more image shows the infliction (or threatened infliction) of serious physical injury; or

- c. Possesses a CSAM video of more than two frames that features more than one child, more than one sexual act, or a collection of videos depicting a child engaged in a sexual act.
See Appendix C.
2. Second degree (196e) is a Class C felony, subject to one to ten years in prison and a fine of up to \$10,000. A person is guilty of second-degree Possession if they:
 - a. Knowingly possess 20 or more CSAM images, up to fifty; or
 - b. Knowingly possess a CSAM video of 20 or more frames.
3. Third degree (196f) is a Class D felony, subject to a prison sentence between one and five years and a fine of up to \$5,000. A person is guilty of third-degree Possession if they:
 - a. Knowingly possess fewer than 20 CSAM images; or
 - b. Knowingly possess a CSAM video of fewer than 20 frames.

Delaware: Delaware Code Title 11 § 1111 Possession of Child Pornography

-No enhancements for quantity, violence, or age-

Possessing child pornography is a Class F felony, which is subject to up to three years in prison and a fine of up to \$500,000.

Florida: Florida Statutes § 827.071 Sexual Performance by a Child; Child Pornography; Penalties

-Enhancement by quantity; no enhancements for age or violence-

Possession of CSAM is a third-degree felony, subject to a prison sentence of up to 5 years and up to \$5,000 in fines. Possessing 3 or more images is prima facie evidence of possession with intent to promote—a second-degree felony, subject to between 1 and 10 years in prison and up to \$10,000 in fines. The possession, control, and intentional viewing of CSAM can be charged as separate offenses, as well as any CSAM that features more than one child (one offense per child).

Georgia: Georgia Code § 16-12-100 Sexual Exploitation of Children; Reporting Violation; Civil Forfeiture; Penalties

-Enhancement for quantity; no enhancements for age or violence-

Possessing or controlling CSAM (as well as creating it) is charged as a felony, subject to between 5 and 20 years in prison and a fine of up to \$100,000. Fines are not applicable if the abuser was a member of the immediate family. Further sentence guidelines are imposed pursuant to GA Code 17-10-6.2, which outlines the probation guidelines for sex offenders. During charging, each piece of CSAM constitutes a separate offense.

Hawaii: Hawaii Revised Statutes § 707-750; § 707-751; § 707-752 Promoting Child Abuse in the First, Second, and Third Degree (Respectively)

- Enhancement for quantity of images, age, violence, and bestiality-

Hawaii's CSAM charges is divided into three degrees:

1. First degree Promotion of Child Abuse (750) is a Class A felony, subject to a prison sentence of 1 to 20 years (sometimes life) and a fine of up to \$50,000. A person is guilty of first-degree abuse if they:
 - a. Produce in the preparation of pornographic material that contains a minor engaging in sexual conduct; or
 - b. Participate in a pornographic performance that contains a minor engaging in sexual conduct.

See Appendix D.

2. Second degree Promotion of Child Abuse (751) is a Class B felony, subject to a prison sentence of up to 10 years and a fine of up to \$25,000. A person is guilty of second-degree abuse if they:
 - a. Disseminate CSAM images;
 - b. Reproduce CSAM images with the intent to disseminate; or
 - c. Possess 30 or more CSAM images with at least one image containing one of the following:
 - i. A minor younger than the age of twelve;
 - ii. Sadomasochistic abuse of a minor; or
 - iii. Bestiality involving a minor.
3. Third degree Promotion of Child Abuse (752) is a Class C felony, subject to a prison sentence of up to 5 years and a fine of up to \$10,000. A person is guilty of third-degree abuse if they possess CSAM.

Idaho: Idaho Code § 18-1507 Definitions—Sexual Exploitation of a Child—Penalties

-No enhancements for image quantity, violence, or age-

A person commits sexual exploitation of a minor if they:

1. Possess or access CSAM;
2. Causes or permits a child to engage in (or be used for) any sexual conduct for the purpose of making CSAM;
3. Promotes, finances, or publishes CSAM; or
4. Distributes CSAM.

Possessing CSAM (#1) is considered a lower-grade violation and sentenced as a felony, subject to up to 10 years in prison and a fine up to \$10,000.

Illinois: 720 ILCS 5/11-20.1 Child Pornography

-Enhancements for quantity, film, and age and violence in production-

Possession of CSAM is a Class 3 felony, subject to 2 to 5 years in prison, 1 year of supervised release, and a fine of between \$1,000 and \$100,000.

- a) If a CSAM video is possessed, the offense gets upgraded to a Class 2 felony, subject to 3 to 7 years in prison, up to 2 years of supervised release, and a fine of between \$1,000 and \$100,000.

Disseminating or having the intent to disseminate CSAM is a Class 1 felony that also incurs a fine of between \$1,000 and \$100,000.

- a) If a CSAM video is disseminated, then the offense gets upgraded to a Class X felony, keeping the same fine of \$1,000 to \$100,000.

Producing or creating CSAM is an offense of further varying severity.

1. If the CSAM is only a photograph, the offense is a Class 1 felony also subject to a fine of between \$2,000 and \$100,000.
 - a. If the CSAM image was computer generated, the fine range is between \$1,500 and \$100,000.
2. If a CSAM video was created, the offense gets upgraded to a Class X felony, with a fine of between \$2,000 and \$100,000.
 - a. If this video was computer generated, the fine range is between \$1,500 and \$100,000.

If the CSAM in question depicts a child under the age of 13:

1. Producing or dissemination will upgrade the sentence to a Class X felony, subject to a fine of between \$1,000 and \$100,000.
 - a. If this is a repeat offense (of any sex crime) then the minimum sentence is 9 years, with a mandatory minimum fine of \$2,000.
2. Possessing CSAM of a child under 13, if previously convicted of another sex crime, will upgrade the sentence to a Class 1 felony with a fine of between \$1,000 and \$100,000.

Each individual piece of CSAM is an individual charge, but extra copies are not counted. Instead, multiple copies of CSAM may be used as evidence that an offender had an intent to distribute. Producing or disseminating CSAM with any sort of sadistic abuse is considered a crime of violence. Victims and their families are thus entitled to expanded rights under the Illinois Crime Victims' Bill of Rights (consideration in fixing bail, sentencing updates, etc.).

In Illinois, a Class X felony is subject to 6 to 30 years in prison (no probation), 3 years supervised release, and a varying fine. A Class 1 felony is subject to 4 to 15 years in prison, a mandatory 2-year supervised release, and a varying fine.

See Appendix E.

Indiana: Indiana Code § 35-42-4-4 Child Exploitation; Possession of Child Pornography; Exemptions; Defenses

-Enhancements by age, violence, and all-around depravity; no enhancements for quantity-

Distributing or producing CSAM is a Level 5 felony, subject to 1 to 6 years in prison, and a fine of up to \$10,000. However, the offense is upgraded to a Level 4 felony—subject to 2 to 12 years in prison and a fine of up to \$10,000—if:

1. The CSAM depicts bestiality;
2. depicts a minor who is mentally disabled;
3. depicts a minor being forced (or threatened with force);
4. depicts a minor physically or verbally resisting;
5. the minor receives bodily injury; or
6. the minor is less than 12 years of age.

Simple possession of CSAM is a Level 6 felony, subject to a prison sentence between 6 months and 2½ years, and a fine of up to \$10,000. Like when distributing or producing CSAM, these

charges are upgraded to a Level 5 felony if CSAM is found containing any of the content above (1-6).

Iowa: Iowa Code § 728.12 Sexual Exploitation of a Minor

- Enhancements for quantity; no enhancements for age or violence -

Possessing CSAM is an aggravated misdemeanor, subject to up to 2 years in jail and a fine between \$625 and \$6,250. Subsequent offenses are treated as Class D felonies, subject to up to 5 years in prison and a fine between \$750 and \$7,500. Offenses will be charged separately for each different minor in the visual depictions.

Multiple minors depicted in a piece of CSAM are to be filed as multiple charges; multiple pictures of the same (one) minor would be filed as one charge.

Kansas: Kansas Statutes § 21-5510 Sexual Exploitation of a Child

-No enhancements for quantity, age, or violence-

Possessing CSAM is a “severity level 5, person felony,” subject to between about 2.8 to 11.3 years (31 and 136 months) in prison, and a fine of up to \$300,000. Like most states, additional charges exist for promotion or production.

Kentucky: Kentucky Revised Statutes § 531.335 Possession or Viewing of Matter Portraying Sexual Performance by a Minor

-Enhancement for age; no enhancements for quantity or violence-

Possessing CSAM where the offender knew the minor was under 18 is a Class D felony, subject to 1 to 5 years in prison, and a fine between \$1,000 and \$10,000. If the offender knew the minor was under 12, then the offense is upgraded to a Class C felony, subject to 5 to 10 years in prison, and a fine between \$1,000 and \$10,000. Kentucky Statute § 531.330 explains that age may be presumed, but also that the defendant believing in good faith that the person is over 18 can qualify as a defense.

Louisiana: Louisiana Laws Revised Statutes § 14:81.1 Pornography Involving Juveniles

-Enhancements for quantity and age; no enhancements for violence-

Possession of CSAM is a crime that carries a sentence of 5 to 20 years of hard labor without parole, as well as a fine of up to \$50,000. Distribution of CSAM carries the same sentence. The “intent to distribute” can be proven through:

1. Possessing three or more copies of a piece of CSAM; or
2. Possessing three or more pieces of CSAM, and any type of file sharing technology.

If a child is under 13, possessing or distributing CSAM carries a sentence of 10 to 40 years of hard labor with no parole. Producing or promoting CSAM of a child under 13 carries a sentence of 25 to 99 years of hard labor—at least 25 of which must be served without parole. Repeat offenders face higher sentences.

Maine: 17A Maine Revised Statutes § 284 Possession of Sexually Explicit Material

-Enhancements for age; no enhancements for quantity or violence-

Possession of CSAM in which the depicted minor has not reached the age of 16—and the offender has reason to know that they are under 16—is charged as a Class D crime. This is

subject to up to a year in prison and a fine of up to \$2,000. If the depicted minor is younger than 12 (and the offender has reason to know this is the case) then the offense is charged as a Class C crime, subject to up to 5 years in prison and a fine of up to \$5,000. Repeat offenses carry larger sentences.

Maryland: Maryland Criminal Law Code § 11-207 Child Pornography

-No enhancements for quantity, age, or violence-

Possession of CSAM is a crime subject to a prison sentence of up to 10 years and a fine of up to \$25,000. Subsequent offenses will be subject to imprisonment for up to 20 years and a fine of not exceed \$50,000. In Maryland, there is no differentiation made between child pornography or sadomasochistic abuse material—they are charged as the same.

Massachusetts: Massachusetts General Laws ch 272 § 29c

-No enhancements for quantity, age, or violence-

Possession of CSAM in Massachusetts is a crime which's sentencing depends on how many previous offenses have occurred. For the first offense, the punishment is imprisonment for up to 5 years or up to 2½ years in a jail or corrections house, as well as a fine between \$1,000 and \$10,000. A second offense is subject to not less than 5 years in a state prison and a fine of \$5,000 to \$20,000; all subsequent offenses are subject to not less than 10 years in prison and a fine of between \$10,000 and \$30,000.

Michigan: Michigan Compiled Laws § 750.145c Child Sexually Abusive Activity or Material

-Enhancements for quantity, age, violence, and bestiality-

Possession of CSAM is a felony subject to up to 4 years in prison and a fine of up to \$10,000. If the CSAM involves a prepubescent child, sadomasochistic abuse, bestiality, or contains a video or more than 100 images, the offense is a felony subject to up to 10 years in prison and a fine of up to \$50,000.

Minnesota: Minnesota Statute § 617.247 Possession of Pornographic Work Involving Minors

-Enhancements for age; no enhancements for quantity or violence-

Possession of CSAM in Minnesota is a felony subject to imprisonment for up to 5 years and a fine of up to \$5,000. If the CSAM involved a minor under the age of 14, or the offender is a repeat offender, then the sentence gets increased to imprisonment of up to 10 years and a fine of up to \$10,000.

Mississippi: Mississippi Code § 97-5-33 Exploitation of Children; Prohibitions

-No enhancements quantity, age, or violence-

Possession of CSAM is a felony subject to 5 to 40 years in prison and a fine of between \$50,000 and \$500,000 (as outlined in § 97-5-35). Subsequent offenses are subject to imprisonment of 20 years to life, and a fine of \$100,000 to \$1,000,000.

Missouri: Missouri Revised Statutes § 573.037 Possession of Child Pornography

-Enhancements for quantity; no enhancements for age or violence-

Possession of CSAM is a Class D felony, subject to either 5 years in a state prison or 1 year in a county jail, as well as a fine of up to \$10,000. This penalty is upgraded to a Class B felony, subject to between 5 and 15 years in prison (plus the same \$10,000 maximum fine), if:

1. The offender is in possession of more than 20 pieces of CSAM;
2. The offender is in possession of a CSAM video; or
3. The offender has been previously found guilty of this offense.

Note, sentencing enhancements for age exist for *producing* CSAM of a child under 14, but not for possessing it.

Montana: Montana Code § 45-5-625 Sexual Abuse of Children

-No enhancements for quantity, age, or violence-

Possession of CSAM in Montana is considered sexual abuse and subject to a punishment of up to 10 years in prison and up to \$10,000 in fines. The punishment is upgraded to life in prison for repeat offenses.

Nebraska: Nebraska Code § 28-813.01 Sexually Explicit Conduct; Visual Depiction

-No enhancements for quantity, age, or violence-

Possession of CSAM by an offender 19 years of age or older is a Class IIA felony, subject to up to 20 years in prison. If the offender is under 19, the offense is a Class I misdemeanor, subject to up to 1 year in jail and a fine of up to \$1,000. Subsequent offenses for the offender under 19 are Class IV felonies, subject to up to 2 years in prison, up to 12 months of post-release supervision, and a fine of up to \$10,000.

For repeat offenders, who are already Sex Offenders or who have already violated this section, each offense is considered a Class IC felony, subject to 5 to 50 years in prison.

Nevada: Nevada Revised Statutes § 200.730 Possession of Visual Presentation Depicting Sexual Conduct of Person Under 16 Years of Age Unlawful; Penalties

-No enhancements for quantity, age, or violence-

Possession of CSAM depicting a child under the age of 16 is a category B felony and subject to 1 to 6 years in prison and a fine of up to \$5,000. Subsequent offenses are considered category A felonies and are subject to 1 year to life in prison, as well as the same fine of up to \$5,000.

Notably, it does not appear that any laws exist regarding possession of CSAM of 16- and 17-year-olds. While production and distribution of CSAM applies to all “minors,” possession crime seems to be limited to just the younger age range.

New Hampshire: New Hampshire Revised Statutes § 649 -A:3 Possession of Child Sexual Abuse Images

-No enhancements for quantity, age, or violence-

Possession of CSAM is a Class A felony, subject to between 7½ to 15 years in prison, and up to \$4,000 in fines. Subsequent offenses are subject to a sentence of between 10 to 20 years in prison.

New Jersey: New Jersey Revised Statutes § 2C:24-4 Endangering Welfare of Children

-Enhancements for quantity; no enhancements for age or violence-

The New Jersey statute increases penalties by quantity, dividing Possession offenses into three degrees:

1. Possession or viewing of 100,000 or more items of CSAM constitutes a crime of the first degree, subject to 10 to 20 years in prison and a fine of up to \$200,000.
2. Possession or viewing of 1,000 to 100,000 items of CSAM constitutes a crime of the second degree, subject to 5 to 10 years in prison and a fine of up to \$150,000.
3. Possession or viewing of less than 1,000 items of CSAM constitutes a crime of the third degree, subject to 3 to 5 years in prison, and a fine of up to \$15,000.

For any offender in possession of 100 or more images, the court is advised to impose a sentence of imprisonment unless “it is of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others.”

Note, in New Jersey it is also a crime to *distribute* CSAM, as it is in many states. Unlike other states, New Jersey refers to file sharing programs directly, placing the burden on preventing distribution on the offender themselves:

In a prosecution under sub-subparagraph (iii) of this subparagraph, the State shall not be required to offer proof that an item depicting the sexual exploitation or abuse of a child had actually been searched, copied, transmitted or viewed by another user of the file-sharing program, or by any other person, and it shall be no defense that the defendant did not intend to distribute the item to another user of the file-sharing program or to any other person. Nor shall the State be required to prove that the defendant was aware that the item depicting the sexual exploitation or abuse of a child was available for searching or copying to one or more other computers, and **the defendant shall be strictly liable for failing to designate the item as not available for searching** or copying by one or more other computers.

Like Possession, Distribution is a crime that has three degrees of sentencing severity. For all offenses, subsequent offenses are subject to extended imprisonment pursuant to N.J.S. § 2C:43-7.

New Mexico: New Mexico Statutes § 30-6A-3 Sexual Exploitation of Children

-Enhancements for age; no enhancements for quantity or violence-

Possession of CSAM is considered a fourth-degree felony and subject to 18 months imprisonment and a fine of up to \$5,000. If it can be proven beyond a reasonable doubt that the minor depicted is under the age of 13, the sentence will be increased by 1 year.

New York: New York Penal Law § 263.16 Possessing a Sexual Performance by a Child

-No enhancements for quantity, age, or violence-

New York’s law against possessing CSAM is one paragraph. Simply put, Possessing is a Class E felony, subject to 1 to 5 years in prison, and a fine of up to \$5,000.

North Carolina: North Carolina General Statutes § 14-190.17A Third Degree Sexual Exploitation of a Minor

-No enhancements for quantity, age, or violence-

In North Carolina, possession of CSAM is considered (3rd Degree) sexual exploitation of a minor—a Class H felony. Offenders will be subject to 4 to 25 months in prison and a varying fine.

North Dakota: North Dakota Century Code § 12.-27.2-04.1 Possession of Certain Materials Prohibited

-No enhancements for quantity, age, or violence-

Possession of CSAM is a Class C felony, subject to up to 5 years in prison and a fine of up to \$10,000. If a person or company possesses, produces, or promotes CSAM for profit, they are subject to a fine enhancement of up to \$10,000 for an individual and up to \$25,000 for a company. Subsequent offenders are subject to up to \$50,000 for an individual and \$100,000 for a company.

Ohio: Ohio Revised Code § 2907.322 Pandering Sexually Oriented Matter Involving a Minor or Impaired Person

-No enhancements for quantity, age, or violence-

Possession of CSAM is a felony of the fourth degree, subject to probation or imprisonment of 6 to 18 months and a fine of up to \$5,000. Subsequent offenses are felonies in the third degree, subject to probation or imprisonment of 9 to 60 months and a fine of up to \$10,000.

Oklahoma: Oklahoma Statute § 21-1024.2 Obscene Material or Child Pornography

-No enhancements for quantity, age, or violence-

Possession of CSAM is a felony, subject to a sentence of up to 20 years in prison and a fine of up to \$25,000.

Oregon: Oregon Revised Statistics § 163.665 to § 163.693 Visual Recording of Sexual Conduct of Children

-No enhancements for quantity, age, or violence-

Oregon is unique in that they do not have any blanket CSAM legislation. Instead, child pornography charges are divided into three sets of laws.

1. **§ 163.670, Using Child in Display of Sexually Explicit Conduct:** Anyone who compels or permits a child to engage in a CSAM performance is guilty of a Class A felony.
2. **§ 163.684, .686, .687, Encouraging Child Abuse in the First, Second, and Third Degree**
 - a. First Degree: Producing or disseminating CSAM is a Class B felony.
 - b. Second Degree: Possessing CSAM, or buying or trading to view CSAM, when the offender consciously disregards the fact that creation of the visual recording of CSAM involved child abuse is a Class C felony.
 - c. Third Degree: Possessing or trading to view CSAM (as in a second-degree offense), when the offender knows or fails to be aware that the creation of the recording involved child abuse is a Class A misdemeanor.
3. **§ 163.688, .689, Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First and Second Degree**
 - a. First Degree: Possessing CSAM and using it to induce a child to participate in sexual activity is a Class B felony.

- b. Second Degree: Possessing CSAM and having the intent to use it to induce a child to participate in sexual activity is a Class C felony.

In Oregon, a Class A felony is punishable by up to 20 years in prison and a fine of up to \$375,000. A Class B felony is punishable by up to 10 years in prison and a fine of up to \$250,000. A Class C felony is punishable by up to 5 years in prison and a fine of up to \$125,000. Class A misdemeanors are punished by up to a year in prison and a maximum fine of \$6,250. It appears that a loophole in this legislation exists when prosecuting computer-generated images of CSAM. Would that be illegal if no actual child abuse was ever involved?

Pennsylvania: Statute 18 PA.C.S.A. § 6312 Sexual Abuse of Children

-Enhancements for age and sexual content; no enhancements for quantity or violence-
The Pennsylvania statute enhances the penalties for possession and distribution of child pornography in the following circumstances:

1. Material depicting “Any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in any person.”
2. Material depicting a child under 10 years of age or that is prepubescent.

Possession of child pornography is designated as a third-degree felony, punishable by no more than 7 years. The enhancing factors increase the felony to a second-degree felony punishable by no more than 10 years.

See Appendix F.

Rhode Island: Rhode Island General Law § 11-9-1.3 Child Pornography Prohibited

-No enhancements for quantity, age, or violence-
Possessing CSAM is a crime punishable by up to 5 years imprisonment and a fine of up to \$5,000.

South Carolina: South Carolina Code § 16-15-410 Third Degree Sexual Exploitation of a Minor Defined; Penalties; Exception

-No enhancements for quantity, age, or violence-
Possession of CSAM is considered an exempt felony, subject to imprisonment for up to 10 years. South Carolina uses a Class A-F system to categorize felonies, but some crimes, (like child exploitation) fall in their own category, where a punishment is explicitly stated in the statute.

South Dakota: South Dakota Codified Law § 22-24A-3 Possessing, Manufacturing, or Distributing Child Pornography—Felonies—Assessment

-No enhancements for quantity, age, or violence-
Possession of CSAM is considered a Class 4 felony, subject to up to 10 years in prison and up to \$20,000 in fines. Any subsequent violations that occur within a 15-year period are considered Class 3 felonies, subject to up to life in prison and fines of up to \$50,000.

Tennessee: Tennessee Code § 39-17-1003 Offense of Sexual Exploitation of a Minor

-Enhancements for quantity; no enhancements for age, or violence-

Possession of CSAM is a Class D felony, subject to 2 to 12 years in prison and fines of up to \$5,000. Each piece of CSAM constitutes a separate offense, up to 50, at which point the felony is enhanced:

1. If the individual possesses more than 50 images, the offense is a Class C felony, subject to 3 to 15 years in prison, and fines of up to \$10,000.
2. If the individual possesses more than 100 images, the offense is a Class B felony, subject to 8 to 30 years in prison and fines of up to \$30,000.

Texas: Texas Penal Code § 43.26 Possession or Promotion of Child Pornography

-No enhancements for quantity, age, or violence-

Possession of CSAM is considered a third-degree felony, subject to 2 to 10 years in prison and a fine of up to \$10,000. On a second conviction, it becomes a felony of the second degree, subject to 2 to 20 years in prison and a fine of up to \$10,000. All subsequent convictions are charged as felonies of the first degree, subject to 5 years to life in prison and a fine of up to \$10,000. Notably, if an offender possesses 6 or more identical pieces of CSAM, it is considered possession with the intent to promote, and enhanced to a second-degree felony.

Utah: Utah Code § 76-5b-201 Sexual Exploitation of a Minor—Offenses

-Enhancements for quantity; no enhancements for age or violence-

Possession of CSAM is considered a second-degree felony, subject to 1 to 15 years in prison and a fine of up to \$10,000. Separate offenses can be charged for each individual minor depicted and each time a minor appears in a different piece of CSAM.

Vermont: Vermont Statutes Annotated 13 § 2827 Possession of Child Sexual Abuse Material

-Enhancements for sexual content; no enhancements for quantity, age, or violence-

In Vermont, a “child” for the purposes of defining CSAM, is anyone 15 or younger. 16- and 17-year-olds would not be considered children, and therefore not be considered child pornography (§ 2821). The penalties for possessing are:

1. If an obscene depiction of a child, but without showing sexual conduct, the offense is subject to up to 2 years in prison and a fine of up to \$5,000; or
2. If a depiction of sexual conduct, the offense is subject to up to 5 years in prison and up to \$10,000.

Any subsequent violations of either of these sections are subject to up to 10 years in prison and a fine of up to \$50,000.

Virginia: Virginia Code § 18.2-374.1:1 Possession, Reproduction, Distribution, Solicitation, and Facilitation of Child Pornography; Penalty

-No enhancements for quantity, age, violence-

Possession of CSAM is considered a Class 6 felony, subject to 1 to 5 years in prison and a fine of up to \$2,500. Repeated offenses are Class 5 felonies, subject to 1 to 10 years in prison and the same fine of up to \$2,500.

Washington: Washington Revised Code § 9.68A.075 Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct

-Enhancements for sexual content; no enhancements for quantity, age, or violence-
Viewing CSAM is a felony which's severity is dependent on the type of content viewed. The penalty for CSAM is a Class B felony, subject to up to 10 years in prison and a fine of up to \$20,000, if the content depicts:

1. Sexual intercourse;
2. Penetration by any object;
3. Masturbation;
4. Sadomasochistic abuse; or
5. Defecation or urination for the purpose of sexual stimulation.

If the CSAM only depicts nudity, or there is touching but without penetration, then the offense is a Class C felony. An offender of the latter would be subject to up to 5 years in prison and a fine of up to \$10,000.

West Virginia: West Virginia Statute § 61-8C-3 Distribution and Exhibiting of Material Depicting Minors Engaged in Sexually Explicit Conduct Prohibited; Penalty

-Enhancements for quantity, violence, and bestiality; no enhancements for age-
West Virginia bases its sentencing scheme on the number of images possessed. Possession of under 50 images imposes a penalty of no more than 2 years; possession of 50 to 600 images imposes a penalty of no less than 2 to 10 years; possession of 600 or more images or images depicting violence against a child or a child engaging in bestiality imposes a sentence of no less than 5 years to 15 years. The defines each video file under 5 minutes as constituting 75 images. For any video exceeding five minutes constitutes 75 images per every 2 minutes that exceeds 5 minutes.

See Appendix G.

Wisconsin: Wisconsin Statutes § 948.12 Possession of Child Pornography

-Enhancements for quantity; no enhancements for age or violence-
Possession or viewing of CSAM is a Class D felony, subject to 3 to 25 years in prison and a fine of up to \$100,000. As established in *State v. Multaler* (2002 WI 35, 252 Wis. 2d 54, 643 N.W.2d 437, 00-1846), each piece of CSAM can be charged separately.

Wyoming: Wyoming Statutes § 6-4-303 Sexual Exploitation of Children; Penalties; Definitions

-No enhancements for quantity, age, or violence-
Possession of CSAM is a felony subject to up to 10 years in prison and a fine of up to \$10,000. Subsequent offenses are punished by a sentence of 7 to 12 years and a fine of up to \$10,000.

Federal Scheme

-Enhancements for quantity and age; no enhancements for violence-
Sentencing enhancements for violation of the federal child pornography statutes under 18 U.S.C. §§ 1466A, 2252, 2252A(a)-(b), 2260(b) are not codified in the criminal statute, however, the United States Sentencing Commission has expressly provided for enhancing sentencing score based on quantity of images possessed.

“(A) at least 10 images, but fewer than 150, increase by 2 levels;

(B) at least 150 images, but fewer than 300, increase by 3 levels;

(C) at least 300 images, but fewer than 600, increase by 4 levels; and
(D) 600 or more images, increase by 5 levels.

In determining the number of images, the Sentencing Commission decided each individual image shall be considered to be one image, while “each video, video-clip, movie, or similar visual depiction shall be considered to have 75 images.”

For production of child pornography under 18 U.S.C. §§ 1591, 2251(a)–(c), 2251(d)(1)(B), 2260(a), the sentencing guidelines also allow for an increased score “if the offense involved a minor who had (A) not attained the age of twelve years...; or (B) attained the age of twelve years but not attained the age of sixteen years....”

Appendices

Appendix A

California Penal Code § 311.11 Possession or control of matter depicting minor engaging in or simulating sexual conduct; Punishment; Previous conviction

(a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under 18 years of age, knowing that the matter depicts a person under 18 years of age personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison, or a county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the fine and imprisonment.

(b) Every person who commits a violation of subdivision (a), and who has been previously convicted of a violation of this section, an offense requiring registration under the Sex Offender Registration Act, or an attempt to commit any of the above-mentioned offenses, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

(c) Each person who commits a violation of subdivision (a) shall be punished by imprisonment in the state prison for 16 months, or two or five years, or shall be punished by imprisonment in a county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the fine and imprisonment, if one of the following factors exists:

(1) The matter contains more than 600 images that violate subdivision (a), and the matter contains 10 or more images involving a prepubescent minor or a minor who has not attained 12 years of age.

(2) The matter portrays sexual sadism or sexual masochism involving a person under 18 years of age. For purposes of this section, “sexual sadism” means the intentional infliction of pain for purposes of sexual gratification or stimulation. For purposes of this section, “sexual masochism” means intentionally experiencing pain for purposes of sexual gratification or stimulation.

Appendix B

Colorado Statute § 18-6-403 Sexual Exploitation of a Child

(3) A person commits sexual exploitation of a child if, for any purpose, he or she knowingly:

(a) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the making of any sexually exploitative material; or

(b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, distributes, transports or transfers to another person, or makes accessible to another person, including, but not limited to, through digital or electronic means, any sexually exploitative material; or

(b.5) Accesses with intent to view, views, possesses, or controls any sexually exploitative material for any purpose; except that this subsection (3)(b.5) does not apply to law enforcement personnel, defense counsel personnel, or court personnel in the performance of their official duties, nor does it apply to physicians, psychologists, therapists, or social workers, so long as such persons are licensed in the state of Colorado and the persons possess such materials in the course of a bona fide treatment or evaluation program at the treatment or evaluation site; or

(c) Possesses with the intent to deal in, sell, or distribute, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or

(d) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing a performance, or accesses with intent to view or views explicit sexual conduct in the form of a performance involving a child if the conduct in the performance was caused, induced, enticed, requested, directed, or specified by the viewer or potential viewer.

Colorado Statute 18-1.3-401 Felonies Classified-Presumptive Penalties

(10)(a) The general assembly hereby finds that certain crimes that are listed in subsection (10)(b) of this section present an extraordinary risk of harm to society and therefore, in the interest of public safety, for such crimes that constitute class 3 felonies, the maximum sentence in the presumptive range is increased by four years; for such crimes that constitute class 4 felonies, the maximum sentence in the presumptive range is increased by two years; for such crimes that constitute class 5 felonies, the maximum sentence in the presumptive range is increased by one year; for such crimes that constitute class 6 felonies, the maximum sentence in the presumptive range is increased by six months.

Appendix C

2022 Connecticut General Statutes Title 53a - Penal Code Chapter 952 - Penal Code: Offenses Section 53a-196d. - Possessing child pornography in the first degree: Class B felony

a) A person is guilty of possessing child pornography in the first degree when such person knowingly possesses

- 1) fifty or more visual depictions of child pornography;
- 2) one or more visual depictions of child pornography that depict the infliction or threatened infliction of serious physical injury; or
- 3) (A) a series of images in electronic, digital or other format, which is intended to be displayed continuously, consisting of two or more frames, or a film or videotape, consisting of two or more frames, that depicts (i) more than one child engaging in

sexually explicit conduct, or (ii) more than one act of sexually explicit conduct by one or more children, or (B) any combination of a (i) series of images in electronic, digital or other format, which is intended to be displayed continuously, (ii) film, or (iii) videotape, which series, film or videotape each consists of two or more frames and depicts a single act of sexually explicit conduct by one child.

(b) In any prosecution for an offense under this section, it shall be an affirmative defense that the acts of the defendant, if proven, would constitute a violation of section 53a-196h.

(c) Possessing child pornography in the first degree is a class B felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court.

Appendix D

Hawaii Revised Statutes § 707-750 Promoting Child Abuse in the First Degree

(1) A person commits the offense of promoting child abuse in the first degree if, knowing or having reason to know its character and content, the person:

- a) Produces or participates in the preparation of child pornography;
- b) Produces or participates in the preparation of pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or
- c) Engages in a pornographic performance that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

"Child pornography" means any pornographic visual representation, 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 sexual conduct, if:

- a) The pornographic production of such visual representation involves the use of a minor engaging in sexual conduct; or
- b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

"Community standards" means the standards of the State.

"Computer" shall have the same meaning as in section 708-890.

"Lascivious" means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

"Material" means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

"Minor" means any person less than eighteen years old.

"Performance" means any play, motion picture film, dance, or other exhibition performed before any audience.

"Pornographic" shall have the same meaning as in section 712-1210.

"Produces" means to produce, direct, manufacture, issue, publish, or advertise.

"Sodomasochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

"Sexual conduct" means actual or simulated sexual intercourse, including genital-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact, whether between persons of the same or opposite sex, masturbation, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

"Visual representation" refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material or the performance produced, directed, or participated in. The fact that the person who was employed, used, or otherwise contained in the pornographic material or performance, was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

(4) Promoting child abuse in the first degree is a class A felony. [L 1978, c 214, §1; am L 1982, c 218, §1; am L 1986, c 314, §58; am L 1988, c 91, §1; am L 1997, c 363, §1; am L 2002, c 200, §2; am L 2016, c 16, §1]

Appendix E

2022 Illinois Compiled Statutes Chapter 720 – CRIMINAL OFFENSES 720 ILCS 5/ - Criminal Code 2012

Sec. 11-20.1. Child pornography.

(a) A person commits child pornography who:

(1) films, videotapes, photographs, or otherwise depicts or portrays by means of any similar visual medium or reproduction or depicts by computer any child whom he or she knows or reasonably should know to be under the age of 18 or any person with a severe or profound intellectual disability where such child or person with a severe or profound intellectual disability is:

- (i) actually or by simulation engaged in any act of sexual penetration or sexual conduct with any person or animal; or
- (ii) actually or by simulation engaged in any act of sexual penetration or sexual conduct involving the sex organs of the child or person with a severe or profound intellectual disability and the mouth, anus, or sex organs of another person or animal; or which involves the mouth, anus or sex organs of the child or person with a severe or profound intellectual disability and the sex organs of another person or animal; or
- (iii) actually or by simulation engaged in any act of masturbation; or
- (iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal; or
- (v) actually or by simulation engaged in any act of excretion or urination within a sexual context; or

(vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or
(vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the child or other person; or

(2) with the knowledge of the nature or content thereof, reproduces, disseminates, offers to disseminate, exhibits or possesses with intent to disseminate any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child or person with a severe or profound intellectual disability whom the person knows or reasonably should know to be under the age of 18 or to be a person with a severe or profound intellectual disability, engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(3) with knowledge of the subject matter or theme thereof, produces any stage play, live performance, film, videotape or other similar visual portrayal or depiction by computer which includes a child whom the person knows or reasonably should know to be under the age of 18 or a person with a severe or profound intellectual disability engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(4) solicits, uses, persuades, induces, entices, or coerces any child whom he or she knows or reasonably should know to be under the age of 18 or a person with a severe or profound intellectual disability to appear in any stage play, live presentation, film, videotape, photograph or other similar visual reproduction or depiction by computer in which the child or person with a severe or profound intellectual disability is or will be depicted, actually or by simulation, in any act, pose or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(5) is a parent, step-parent, legal guardian or other person having care or custody of a child whom the person knows or reasonably should know to be under the age of 18 or a person with a severe or profound intellectual disability and who knowingly permits, induces, promotes, or arranges for such child or person with a severe or profound intellectual disability to appear in any stage play, live performance, film, videotape, photograph or other similar visual presentation, portrayal or simulation or depiction by computer of any act or activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(6) with knowledge of the nature or content thereof, possesses any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child or person with a severe or profound intellectual disability whom the person knows or reasonably should know to be under the age of 18 or to be a person with a severe or profound intellectual disability, engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(7) solicits, or knowingly uses, persuades, induces, entices, or coerces, a person to provide a child under the age of 18 or a person with a severe or profound intellectual disability to appear in any videotape, photograph, film, stage play, live presentation, or other similar visual reproduction or depiction by computer in which the child or person

with a severe or profound intellectual disability will be depicted, actually or by simulation, in any act, pose, or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection.

(a-5) The possession of each individual film, videotape, photograph, or other similar visual reproduction or depiction by computer in violation of this Section constitutes a single and separate violation. This subsection (a-5) does not apply to multiple copies of the same film, videotape, photograph, or other similar visual reproduction or depiction by computer that are identical to each other.

(b)(1) It shall be an affirmative defense to a charge of child pornography that the defendant reasonably believed, under all of the circumstances, that the child was 18 years of age or older or that the person was not a person with a severe or profound intellectual disability but only where, prior to the act or acts giving rise to a prosecution under this Section, he or she took some affirmative action or made a bonafide inquiry designed to ascertain whether the child was 18 years of age or older or that the person was not a person with a severe or profound intellectual disability and his or her reliance upon the information so obtained was clearly reasonable.

(1.5) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this Section.

(2) (Blank).

(3) The charge of child pornography shall not apply to the performance of official duties by law enforcement or prosecuting officers or persons employed by law enforcement or prosecuting agencies, court personnel or attorneys, nor to bonafide treatment or professional education programs conducted by licensed physicians, psychologists or social workers. In any criminal proceeding, any property or material that constitutes child pornography shall remain in the care, custody, and control of either the State or the court. A motion to view the evidence shall comply with subsection (e-5) of this Section.

(4) If the defendant possessed more than one of the same film, videotape or visual reproduction or depiction by computer in which child pornography is depicted, then the trier of fact may infer that the defendant possessed such materials with the intent to disseminate them.

(5) The charge of child pornography does not apply to a person who does not voluntarily possess a film, videotape, or visual reproduction or depiction by computer in which child pornography is depicted. Possession is voluntary if the defendant knowingly procures or receives a film, videotape, or visual reproduction or depiction for a sufficient time to be able to terminate his or her possession.

(6) Any violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) that includes a child engaged in, solicited for, depicted in, or posed in any act of sexual penetration or bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in a sexual context shall be deemed a crime of violence.

(c) If the violation does not involve a film, videotape, or other moving depiction, a violation of paragraph (1), (4), (5), or (7) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$2,000 and a maximum fine of \$100,000. If the violation involves a film, videotape, or other moving depiction, a violation of paragraph (1), (4), (5), or (7) of subsection (a) is a Class X felony with a mandatory minimum fine of \$2,000 and a maximum fine of \$100,000. If the violation does not involve a film, videotape, or other moving depiction, a violation of paragraph (3) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$1500 and a maximum fine of \$100,000. If the violation involves a film, videotape, or other moving depiction, a violation of paragraph (3) of subsection (a) is a Class X felony with a mandatory minimum fine of \$1500 and a maximum fine of \$100,000. If the violation does not involve a film, videotape, or other moving depiction, a violation of paragraph (2) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$1000 and a maximum fine of \$100,000. If the violation involves a film, videotape, or other moving depiction, a violation of paragraph (2) of subsection (a) is a Class X felony with a mandatory minimum fine of \$1000 and a maximum fine of \$100,000. If the violation does not involve a film, videotape, or other moving depiction, a violation of paragraph (6) of subsection (a) is a Class 3 felony with a mandatory minimum fine of \$1000 and a maximum fine of \$100,000. If the violation involves a film, videotape, or other moving depiction, a violation of paragraph (6) of subsection (a) is a Class 2 felony with a mandatory minimum fine of \$1000 and a maximum fine of \$100,000.

(c-5) Where the child depicted is under the age of 13, a violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) is a Class X felony with a mandatory minimum fine of \$2,000 and a maximum fine of \$100,000. Where the child depicted is under the age of 13, a violation of paragraph (6) of subsection (a) is a Class 2 felony with a mandatory minimum fine of \$1,000 and a maximum fine of \$100,000. Where the child depicted is under the age of 13, a person who commits a violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) where the defendant has previously been convicted under the laws of this State or any other state of the offense of child pornography, aggravated child pornography, aggravated criminal sexual abuse, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or any of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child where the victim was under the age of 18 years or an offense that is substantially equivalent to those offenses, is guilty of a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 9 years with a mandatory minimum fine of \$2,000 and a maximum fine of \$100,000.

Where the child depicted is under the age of 13, a person who commits a violation of paragraph (6) of subsection (a) where the defendant has previously been convicted under the laws of this State or any other state of the offense of child pornography, aggravated child pornography, aggravated criminal sexual abuse, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or any of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child where the victim was under the age of 18 years or an offense that is substantially equivalent to those offenses, is guilty of a Class 1 felony with a mandatory minimum fine of \$1,000 and a maximum fine of \$100,000. The issue of whether the child depicted is under the age of 13 is an element of the offense to be resolved by the trier of fact.

(d) If a person is convicted of a second or subsequent violation of this Section within 10 years of a prior conviction, the court shall order a presentence psychiatric examination of the person. The examiner shall report to the court whether treatment of the person is necessary.

Appendix F

Pennsylvania Statute 18 PA.C.S.A. § 6312- Sexual Abuse of Children

(b) Photographing, videotaping, depicting on computer or filming sexual acts.--

(1) Any person who causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act commits an offense if such person knows, has reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed.

(2) Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act commits an offense.

(c) Dissemination of photographs, videotapes, computer depictions and films.--Any person who knowingly sells, distributes, delivers, disseminates, transfers, displays or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(d) Child pornography.--Any person who intentionally views or knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(d.1) Grading.--The offenses shall be graded as follows:

(1) Except as provided in paragraph (3), an offense under subsection (b) is a felony of the second degree.

(2)(i) Except as provided in paragraph (3), a first offense under subsection (c) or (d) is a felony of the third degree.

(ii) A second or subsequent offense under subsection (c) or (d) is a felony of the second degree.

(3) When a person commits an offense graded under paragraph (1) or (2)(i), the grading of the offense shall be one grade higher than the grade specified in paragraph (1) or (2)(i) if:

(i) indecent contact with the child as defined in section 3101 (relating to definitions) is depicted; or

(ii) the child depicted is under 10 years of age or prepubescent.

Pennsylvania Statute 18 Pa.C.S.A. § 3101-Definitions

“Indecent contact.” Any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in any person.

Pennsylvania Statute 18 Pa.C.S.A. § 106-Classification of Offenses

(2) A crime is a felony of the first degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is more than ten years.

(3) A crime is a felony of the second degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than ten years.

(4) A crime is a felony of the third degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than seven years.

Appendix G

West Virginia Statute § 61-8C-3 Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalty

(a) Any person who, knowingly and willfully, sends or causes to be sent or distributes, exhibits, possesses, electronically accesses with intent to view or displays or transports any material visually portraying a minor engaged in any sexually explicit conduct is guilty of a felony.

(b) Any person who violates the provisions of subsection (a) of this section when the conduct involves fifty or fewer images shall, upon conviction, be imprisoned in a state correctional facility for not more than two years or fined not more than \$2,000 or both.

(c) Any person who violates the provisions of subsection (a) of this section when the conduct involves more than fifty but fewer than six hundred images shall, upon conviction, be imprisoned in a state correctional facility for not less than two nor more than ten years or fined not more than \$5,000, or both.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section any person who violates the provisions of subsection (a) of this section when the conduct involves six hundred or more images or depicts violence against a child or a child engaging in bestiality shall, upon conviction, be imprisoned in a state correctional facility for not less than five nor more than fifteen years or fined not more than \$25,000, or both.

(e) For purposes of this section each video clip, movie or similar recording of five minutes or less shall constitute seventy-five images. A video clip, movie or similar recording of a duration longer than five minutes shall be deemed to constitute seventy-five images for every two minutes in length it exceeds five minutes.

11-207 Enhanced Penalties Bill.pdf

Uploaded by: David Probert

Position: FWA

AN ACT concerning

Criminal Law-Distribution of Child Pornography-Enhancing Penalties

FOR the purposes of enhancing penalties to the offense of distribution of child pornography and possession with intent to distribute child pornography under certain circumstances.

BY repealing and reenacting, with amendments,
Article-Criminal Law
Section 11-207
Annotated Code of Maryland
(2016 Replacement Volume and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

11-207

(A) A PERSON MAY NOT:

(1) CAUSE, INDUCE, SOLICIT, OR KNOWINGLY ALLOW A MINOR TO ENGAGE AS A SUBJECT IN THE PRODUCTION OF OBSCENE MATTER OR A VISUAL REPRESENTATION OR PERFORMANCE THAT DEPICTS A MINOR ENGAGED AS A SUBJECT IN SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT;

(2) PHOTOGRAPH OR FILM A MINOR ENGAGING IN AN OBSCENE ACT, SADOMASOCHISTIC ABUSE, OR SEXUAL CONDUCT;

(3) USE A COMPUTER TO DEPICT OR DESCRIBE A MINOR ENGAGING IN AN OBSCENE ACT, SADOMASOCHISTIC ABUSE, OR SEXUAL CONDUCT;

(4) KNOWINGLY PROMOTE, ADVERTISE, SOLICIT, DISTRIBUTE, OR POSSESS WITH THE INTENT TO DISTRIBUTE ANY MATTER, VISUAL REPRESENTATION, OR PERFORMANCE:

(I) THAT DEPICTS A MINOR ENGAGED AS A SUBJECT IN SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT; OR

(II) IN A MANNER THAT REFLECTS THE BELIEF, OR THAT IS INTENDED TO CAUSE ANOTHER TO BELIEVE, THAT THE MATTER, VISUAL REPRESENTATION, OR PERFORMANCE DEPICTS A MINOR ENGAGED AS A SUBJECT OF SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT; OR

(5) USE A COMPUTER TO KNOWINGLY COMPILE, ENTER, TRANSMIT, MAKE, PRINT, PUBLISH, REPRODUCE, CAUSE, ALLOW, BUY, SELL, RECEIVE, EXCHANGE, OR DISSEMINATE ANY NOTICE, STATEMENT, ADVERTISEMENT, OR MINOR'S NAME, TELEPHONE NUMBER, PLACE OF RESIDENCE, PHYSICAL CHARACTERISTICS, OR OTHER DESCRIPTIVE OR IDENTIFYING INFORMATION FOR THE PURPOSE OF ENGAGING IN, FACILITATING, ENCOURAGING, OFFERING, OR SOLICITING UNLAWFUL SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT OF OR WITH A MINOR.

(B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$25,000 OR BOTH; AND

(2) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING \$50,000 OR BOTH.

(C) A PERSON WHO VIOLATES SUBSECTION A(4) IN QUANTITIES OF 100 OR MORE IMAGES IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS IN ADDITION TO ANY OTHER SENTENCE IMPOSED FOR THE UNDERLYING VIOLATION OF § 11-207 OR ANY OTHER PENALTY IMPOSED UNDER PARAGRAPH (D) OF THIS SUBSECTION SUBJECT TO NOTICE REQUIREMENTS UNDER SUBSECTION E.

(1)(I) IN THIS SECTION, FOR THE PURPOSES OF DETERMINING THE NUMBER OF IMAGES UNDER THIS SUBSECTION, THE FOLLOWING SHALL APPLY:

(A) EACH PHOTOGRAPH, PICTURE, ELECTRONIC PHOTOGRAPH, COMPUTER GENERATED IMAGE, OR ANY SIMILAR VISUAL REPRESENTATION SHALL BE CONSIDERED TO BE ONE (1) IMAGE.

(B) EACH VIDEO, ELECTRONIC VIDEO, FILM, VIDEOTAPE, OR SIMILAR VIDEO DEPICTION SHALL BE CONSIDERED TO CONTAIN TWENTY (20) IMAGES

(D) A PERSON WHO VIOLATES SUBSECTION A(4) WITH ANY MATTER DEPICTING A MINOR OR AN INDIVIDUAL INDISTINGUISHABLE FROM AN ACTUAL MINOR YOUNGER THAN 13 YEARS OF AGE IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS IN ADDITION TO ANY OTHER SENTENCE IMPOSED FOR THE UNDERLYING VIOLATION OF § 11-207 OR ANY OTHER PENALTY IMPOSED UNDER PARAGRAPH (C) OF THIS SUBSECTION SUBJECT TO NOTICE REQUIREMENTS UNDER SUBSECTION E.

(1) THE AGE OF THE SUBJECT OF THE MATTER MAY BE ESTABLISHED PURSUANT TO SUBSECTION G(2)

(E) A COURT MAY IMPOSE AN ENHANCED PENALTY UNDER THIS SECTION IF:

(1) AT LEAST 30 DAYS BEFORE TRIAL IN THE CIRCUIT COURT, AND 15 DAYS BEFORE TRIAL IN THE DISTRICT COURT, THE STATE'S ATTORNEY NOTIFIES THE DEFENDANT IN WRITING OF THE STATE'S INTENTION TO SEEK THE ENHANCED PENALTIES.

NOTICE TO DEFENDANT IN INDICTMENT OR CRIMINAL INFORMATION

(F) IF THE DEFENDANT IS CHARGED BY INDICTMENT OR CRIMINAL INFORMATION, THE STATE MAY INCLUDE THE NOTICE REQUIRED UNDER SUBSECTION (E)(1) OF THIS SECTION IN THE INDICTMENT OR INFORMATION.

(G)(e)(1)(i) THIS PARAGRAPH APPLIES ONLY IF THE MINOR'S IDENTITY IS UNKNOWN OR THE MINOR IS OUTSIDE THE JURISDICTION OF THE STATE.

(II) IN AN ACTION BROUGHT UNDER THIS SECTION, THE STATE IS NOT REQUIRED TO IDENTIFY OR PRODUCE TESTIMONY FROM THE MINOR WHO IS DEPICTED IN THE OBSCENE MATTER OR IN ANY VISUAL REPRESENTATION OR PERFORMANCE THAT DEPICTS THE MINOR ENGAGED AS A SUBJECT IN SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT.

(2) THE TRIER OF FACT MAY DETERMINE WHETHER AN INDIVIDUAL WHO IS DEPICTED IN AN OBSCENE MATTER, OR ANY VISUAL REPRESENTATION OR PERFORMANCE AS THE SUBJECT IN SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT, WAS A MINOR BY:

(I) OBSERVATION OF THE MATTER DEPICTING THE INDIVIDUAL;

(II) ORAL TESTIMONY BY A WITNESS TO THE PRODUCTION OF THE MATTER, REPRESENTATION, OR PERFORMANCE;

(III) EXPERT MEDICAL TESTIMONY; OR

(IV) ANY OTHER METHOD AUTHORIZED BY AN APPLICABLE PROVISION OF LAW OR RULE OF EVIDENCE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.

11-208 Enhanced Penalties language.pdf

Uploaded by: David Probert

Position: FWA

(a)(1) In this section, “indistinguishable from an actual and identifiable child” means an ordinary person would conclude that the image is of an actual and identifiable minor.

(2) “Indistinguishable from an actual and identifiable child” includes a computer-generated image that has been created, adapted, or modified to appear as an actual and identifiable child.

(3) “Indistinguishable from an actual and identifiable child” does not include images or items depicting minors that are:

- (i) drawings;
- (ii) cartoons;
- (iii) sculptures; or
- (iv) paintings.

(B)(1) IN THIS SECTION, FOR THE PURPOSES OF DETERMINING THE NUMBER OF IMAGES UNDER SUBSECTION C OF THIS SUBSECTION, THE FOLLOWING SHALL APPLY:

(A) EACH PHOTOGRAPH, PICTURE, ELECTRONIC PHOTOGRAPH, COMPUTER GENERATED IMAGE, OR ANY SIMILAR VISUAL REPRESENTATION SHALL BE CONSIDERED TO BE ONE (1) IMAGE.

(2) EACH VIDEO, ELECTRONIC VIDEO, FILM, VIDEOTAPE, OR SIMILAR VIDEO DEPICTION SHALL BE CONSIDERED TO CONTAIN TWENTY (20) IMAGES

~~(b)~~ (C) A person may not knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation showing an actual child or a computer-generated image that is indistinguishable from an actual and identifiable child under the age of 16 years:

- (1) engaged as a subject of sadomasochistic abuse;
- (2) engaged in sexual conduct; or
- (3) in a state of sexual excitement.

~~(e)~~(D)(1) Except as provided in paragraph (3) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$2,500 or both.

(2) A person who violates this section, having previously been convicted under this section, is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.

(3) A PERSON WHO VIOLATES THIS SECTION BY POSSESSING 100 OR MORE IMAGES AS DETERMINED BY SUBSECTION B(1) OF THIS SECTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS IN ADDITION TO ANY OTHER SENTENCE IMPOSED FOR THE UNDERLYING VIOLATION OF § 11-208 OR ANY OTHER PENALTY IMPOSED UNDER PARAGRAPH (4) OF THIS SUBSECTION SUBJECT TO NOTICE REQUIREMENTS UNDER SUBSECTION D.

(4) A PERSON MAY NOT KNOWINGLY POSSESS OR INTENTIONALLY RETAIN MATTER IN VIOLATION OF MD. CRIM. LAW § 11-208 THAT DEPICTS A MINOR OR INDISTINGUISHABLE FROM A MINOR YOUNGER THAN 13 YEARS OF AGE IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS IN ADDITION TO ANY OTHER SENTENCE IMPOSED FOR THE UNDERLYING VIOLATION OF § 11-208 OR ANY OTHER PENALTY IMPOSED UNDER PARAGRAPH (3) OF THIS SUBSECTION SUBJECT TO NOTICE REQUIREMENTS UNDER SUBSECTION D.

(I) (A) THE AGE OF THE SUBJECT OF THE MATERIAL MAY BE ESTABLISHED ACCORDING TO MD. CRIM. LAW § 11-207(C)

(E) A COURT MAY IMPOSE AN ENHANCED PENALTY UNDER THIS SECTION IF:

(1) AT LEAST 30 DAYS BEFORE TRIAL IN THE CIRCUIT COURT, AND 15 DAYS BEFORE TRIAL IN THE DISTRICT COURT, THE STATE'S ATTORNEY NOTIFIES THE DEFENDANT IN WRITING OF THE STATE'S INTENTION TO SEEK THE ENHANCED PENALTIES.

(F) IF THE DEFENDANT IS CHARGED BY INDICTMENT OR CRIMINAL INFORMATION, THE STATE MAY INCLUDE THE NOTICE REQUIRED UNDER SUBSECTION (D)(1) OF THIS SECTION IN THE INDICTMENT OR INFORMATION.

~~(d)~~(G) Nothing in this section may be construed to prohibit a parent from possessing visual representations of the parent's own child in the nude unless the visual representations show the child engaged:

- (1) as a subject of sadomasochistic abuse; or
- (2) in sexual conduct and in a state of sexual excitement.

~~(e)~~(H) It is an affirmative defense to a charge of violating this section that the person promptly and in good faith:

- (1) took reasonable steps to destroy each visual representation; or
- (2) reported the matter to a law enforcement agency.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.