

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 that 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.