

# Computer Facilitated Luring and Solicitation of a Child

Updated June 2010

Please note that this area of law is changing rapidly. We strongly recommend checking both case law, and current legislation for possible modifications to the statutes listed below.

*The sections of this document written in red indicate negative treatment by the courts.*

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## **ALABAMA**

### **ALA. CODE § 13A-6-111 (2010). Child; transmission of obscene material.**

(a) A person is guilty of transmitting obscene material to a child if the person transmits, by means of any computer communication system allowing the input, output, examination, or transfer of computer programs from one computer to another, material which, in whole or in part, depicts actual or simulated nudity, sexual conduct, or sadomasochistic abuse, for the purpose of initiating or engaging in sexual acts with the child.

(b) For purposes of determining jurisdiction, the offense is committed in this state if the transmission that constitutes the offense either originates in the state or is received in the state.

(c) A person charged under this section shall be tried as an adult and the record of the proceeding shall not be sealed nor subject to expungement.

(d) Transmitting obscene material of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his or her benefit to a child is a Class B felony.

### **ALA. CODE § 13A-6-121 (2010). Facilitating solicitation of unlawful sexual conduct with a child.**

A person who knowingly compiles, enters into, or transmits by use of computer or otherwise; makes, prints, publishes, or reproduces by computerized or other means; knowingly causes or allows to be entered into or transmitted by use of computer or otherwise; or buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement of any child's name, telephone number, place of residence, other geographical location, physical characteristics, or other descriptive or identifying information for the purpose of facilitating, encouraging, offering, or soliciting unlawful sexual conduct of or with any child, or the visual depiction of such conduct, is guilty of facilitating solicitation of unlawful sexual conduct with a child. Any person who violates this section commits a Class C felony.

**ALA. CODE § 13A-6-122 (2010). Electronic solicitation of a child.**

In addition to the provisions of Section 13A-6-69, Code of Alabama 1975, a person who, knowingly, with the intent to commit an unlawful sex act, entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service, Internet bulletin board service, weblog, cellular phone, video game system, personal data assistant, telephone, facsimile machine, camera, universal serial bus drive, writable compact disc, magnetic storage device, floppy disk, or any other electronic communication or storage device, a child who is at least three years younger than the defendant, or another person believed by the defendant to be a child at least three years younger than the defendant to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his or her benefit or for the benefit of another, is guilty of electronic solicitation of a child. Any person who violates this section commits a Class B felony.

**ALA. CODE § 13A-6-123 (2010). Facilitating the on-line solicitation of a child.**

Any owner or operator of a computer on-line service, weblog, Internet service, or Internet bulletin board service, who knowingly aids and abets another person or who, with the purpose of facilitating or encouraging the on-line solicitation of the child, permits any person to use the service to commit a violation of this article is guilty of facilitating the on-line solicitation of a child. Any person who violates this section commits a Class B felony.

**ALASKA**

**ALASKA STAT. § 11.41.452 (2010). Online enticement of a minor.**

(a) A person commits the crime of online enticement of a minor if the person, being 18 years of age or older, knowingly uses a computer to communicate with another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455(a)(1) -- (7) and

(1) the other person is a child under 16 years of age; or

(2) the person believes that the other person is a child under 16 years of age.

(b) In a prosecution under (a)(2) of this section, it is not a defense that the person enticed, solicited, or encouraged was not actually a child under 16 years of age.

(c) In a prosecution under this section, it is not necessary for the prosecution to show that the act described in AS 11.41.455(a)(1) -- (7) was actually committed.

(d) Except as provided in (e) of this section, online enticement is a class C felony.

(e) Online enticement is a class B felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

**ALASKA STAT. § 11.41.455 (2010). Unlawful exploitation of a minor**

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) -- (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child's genitals; or
- (7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

(c) Unlawful exploitation of a minor is a

- (1) class B felony; or
- (2) class A felony if the person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction.

(d) In this section, "audio recording" means a non-book prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.



# **ARIZONA**

## **ARIZ. REV. STAT. ANN. § 13-3551 (2010). Definitions**

In this chapter, unless the context otherwise requires:

1. "Communication service provider" has the same meaning prescribed in section 13-3001.
2. "Computer" has the same meaning prescribed in section 13-2301, Subsection E.
3. "Computer system" has the same meaning prescribed in section 13-2301, Subsection E.
4. "Exploitive exhibition" means the actual or simulated exhibition of the genitals or pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.
5. "Minor" means a person or persons who were under eighteen years of age at the time a visual depiction was created, adapted or modified.
6. "Network" has the same meaning prescribed in section 13-2301, Subsection E.
7. "Producing" means financing, directing, manufacturing, issuing, publishing or advertising for pecuniary gain.
8. "Remote computing service" has the same meaning prescribed in section 13-3001.
9. "Sexual conduct" means actual or simulated:
  - (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex.
  - (b) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.
  - (c) Sexual bestiality.
  - (d) Masturbation, for the purpose of sexual stimulation of the viewer.
  - (e) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.
  - (f) Defecation or urination for the purpose of sexual stimulation of the viewer.
10. "Simulated" means any depicting of the genitals or rectal areas that gives the appearance of sexual conduct or incipient sexual conduct.
11. "Visual depiction" includes each visual image that is contained in an undeveloped film, videotape or photograph or data stored in any form and that is capable of conversion into a visual image.

**ARIZ. REV. STAT. ANN. § 13-3554 (2010). Luring a minor for sexual exploitation; classification.**

A. A person commits luring a minor for sexual exploitation by offering or soliciting sexual conduct with another person knowing or having reason to know that the other person is a minor.

B. It is not a defense to a prosecution for a violation of this section that the other person is not a minor.

C. Luring a minor for sexual exploitation is a class 3 felony, and if the minor is under fifteen years of age it is punishable pursuant to section 13-705.

**ARIZ. REV. STAT. ANN. § 13-3560 (2010). Aggravated luring a minor for sexual exploitation; classification; definitions.**

A. A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.

2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.

B. It is not a defense to a prosecution for a violation of this section that the other person is not a minor or that the other person is a peace officer posing as a minor.

C. Aggravated luring a minor for sexual exploitation is a class 2 felony, and if the minor is under fifteen years of age it is punishable pursuant to section 13-705, subsection D.

D. The defense prescribed in section 13-1407, subsection F applies to a prosecution pursuant to this section.

E. For the purposes of this section:

1. "Electronic communication device" means any electronic device that is capable of transmitting visual depictions and includes any of the following:

(a) A computer, computer system or network as defined in section 13-2301.

(b) A cellular or wireless telephone as defined in section 13-4801.

2. "Harmful to minors" has the same meaning prescribed in section 13-3501.

**ARIZ. REV. STAT. ANN. § 13-3506.01 (2010). Furnishing harmful items to minors; internet activity; classification; definitions**

*Construed Unconstitutional in whole or part by ACLU v. Napolitano, 2002 U.S. Dist. LEXIS 28303 (D. Ariz. June 14, 2002)*

A. It is unlawful for any person, with knowledge of the character of the item involved, to intentionally or knowingly transmit or send to a minor by means of electronic mail, personal messaging or any other direct internet communication an item that is harmful to minors when the person knows or believes at the time of the transmission that a minor in this state will receive the item.

B. This section does not apply to:

1. Posting material on an internet web site, bulletin board or newsgroup.

2. Sending material via a mailing list or listserv that is not administered by the sender. For the purposes of this paragraph, "mailing list" or "listserv" means a method of internet communication where a message is sent to an internet address and then is retransmitted to one or more subscribers to the mailing list or listserv.

C. It is not a defense to a prosecution for a violation of this section that the recipient of the transmission was a peace officer posing as a minor.

D. A violation of this section is a Class 4 felony.

E. The failure to report a violation of this section is a Class 6 felony as prescribed by section 13-3620.

F. For the purposes of this section:

1. "Internet" means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the transmission control protocol or internet protocol or any successor protocol to transmit information.

2. "Internet web site" means a location where material placed in a computer server-based file archive is publicly accessible, over the internet, using hypertext transfer protocol or any successor protocol.

## **ARKANSAS**

**ARK. CODE ANN. § 5-27-302 (2010). Definitions.**

As used in this subchapter:

(1) "Child" means any person under seventeen (17) years of age;

(2) "Commercial exploitation" means having monetary or other material gain as a direct or indirect goal;

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

(4) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Sadomasochistic abuse for the purpose of sexual stimulation; or

(E) Lewd exhibition of:

(i) The genitals or pubic area of any person; or

(ii) The breast of a female; and

(5) "Visual or print medium" means any film, photograph, negative, slide, book, magazine, or other visual or print medium other than material specifically used by a licensed medical professional or mental health professional, or both, for the purpose of assessment, evaluation, and treatment of a sex offender.

**ARK. CODE ANN. § 5-27-303 (2010). Engaging children in sexually explicit conduct for use in visual or print medium.**

(a) Any person who employs, uses, persuades, induces, entices, or coerces any child to engage in or who has a child assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual or print medium depicting the sexually explicit conduct is guilty of a:

(1) Class B felony for the first offense; and

(2) Class A felony for a subsequent offense.

(b) Any parent, legal guardian, or person having custody or control of a child who knowingly permits the child to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual or print medium depicting the sexually explicit conduct is guilty of a:

(1) Class B felony for the first offense; and

(2) Class A felony for a subsequent offense.

**ARK. CODE ANN. § 5-27-306 (2010). Internet stalking of a child.**

(a) A person commits the offense of internet stalking of a child if the person being twenty-one (21) years of age or older knowingly uses a computer online service, internet service, or local internet bulletin board service to:

(1) Seduce, solicit, lure, or entice a child fifteen (15) years of age or younger in an effort to arrange a meeting with the child for the purpose of engaging in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity;

(2) Seduce, solicit, lure, or entice an individual that the person believes to be fifteen (15) years of age or younger in an effort to arrange a meeting with the individual for the purpose of engaging in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity;

(3) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on a child fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the child for the purpose of engaging in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity;

(4) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on an individual that the person believes to be fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the individual for the purpose of engaging in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity.

(b) Internet stalking of a child is a:

(1) Class B felony if the person attempts to arrange a meeting with a child fifteen (15) years of age or younger, even if a meeting with the child never takes place;

(2) Class B felony if the person attempts to arrange a meeting with an individual that the person believes to be fifteen (15) years of age or younger, even if a meeting with the individual never takes place; or

(3) Class A felony if the person arranges a meeting with a child fifteen (15) years of age or younger and an actual meeting with the child takes place, even if the person fails to engage the child in:

(A) Sexual intercourse;

(B) Sexually explicit conduct; or

(C) Deviate sexual activity.

(c) This section does not apply to a person or entity providing an electronic communications service to the public that is used by another person to violate this section, unless the person or entity providing an electronic communications service to the public:

(1) Conspires with another person to violate this section; or

(2) Knowingly aids and abets a violation of this section.

**ARK. CODE ANN. § 5-27-603 (2010). Computer child pornography.**

(a) A person commits computer child pornography if the person knowingly:

(1) Compiles, enters into, or transmits by means of computer, makes, prints, publishes, or reproduces by other computerized means, knowingly causes or allows to be entered into or transmitted by means of computer or buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement or any child's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexually explicit conduct of or with any child or another individual believed by the person to be a child, or the visual depiction of the conduct; or

(2) Utilizes a computer online service, internet service, or local bulletin board service to seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another individual believed by the person to be a child, to engage in sexually explicit conduct.

(b) Computer child pornography is a Class B felony.

## **CALIFORNIA**

### **CAL. PENAL CODE § 272 (2009). Contributing to delinquency of minor; Luring minor under 14 away from home**

(a)

(1) Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 18 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause that person to become or to remain a person within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years.

(2) For purposes of this subdivision, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child.

(b)

(1) An adult stranger who is 21 years of age or older, who knowingly contacts or communicates with a minor who is under 14 years of age, who knew or reasonably should have known that the minor is under 14 years of age, for the purpose of persuading and luring, or transporting, or attempting to persuade and lure, or transport, that minor away from the minor's home or from any location known by the minor's parent, legal guardian, or custodian, to be a place where the minor is located, for any purpose, without the express consent of the minor's parent or legal guardian, and with the intent to avoid the consent of the minor's parent or legal guardian, is guilty of an infraction or a misdemeanor, subject to subdivision (d) of Section 17.

(2) This subdivision shall not apply in an emergency situation.

(3) As used in this subdivision, the following terms are defined to mean:

(A) "Emergency situation" means a situation where the minor is threatened with imminent bodily harm, emotional harm, or psychological harm.

(B) "Contact" or "communication" includes, but is not limited to, the use of a telephone or the Internet, as defined in Section 17538 of the Business and Professions Code.

(C) "Stranger" means a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization, as defined in subdivision (e) of Section 6600 of the Welfare

and Institutions Code.

(D) "Express consent" means oral or written permission that is positive, direct, and unequivocal, requiring no inference or implication to supply its meaning.

(4) This section shall not be interpreted to criminalize acts of persons contacting minors within the scope and course of their employment, or status as a volunteer of a recognized civic or charitable organization.

(5) This section is intended to protect minors and to help parents and legal guardians exercise reasonable care, supervision, protection, and control over minor children.

**CAL. PENAL CODE § 288.2 (2010). Sending harmful matter to minor by telephone messages, electronic mail, Internet, or commercial online service; Defenses; Exemption of carrier, broadcaster, or transmitter**

(a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter, as defined in Section 313, to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent or for the purpose of seducing a minor, is guilty of a public offense and shall be punished by imprisonment in the state prison or in a county jail.

A person convicted of a second and any subsequent conviction for a violation of this section is guilty of a felony.

(b) Every person who, with knowledge that a person is a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by electronic mail, the Internet, as defined in Section 17538 of the Business and Professions Code, or a commercial online service, any harmful matter, as defined in Section 313, to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent, or for the purpose of seducing a minor, is guilty of a public offense and shall be punished by imprisonment in the state prison or in a county jail.

A person convicted of a second and any subsequent conviction for a violation of this section is guilty of a felony.

(c) It shall be a defense to any prosecution under this section that a parent or guardian committed the act charged in aid of legitimate sex education.

(d) It shall be a defense in any prosecution under this section that the act charged was committed in aid of legitimate scientific or educational purposes.

(e) It does not constitute a violation of this section for a telephone corporation, as defined in Section 234 of the Public Utilities Code, a cable television company franchised pursuant to Section 53066 of the Government Code, or any of its affiliates, an Internet service provider, or commercial online service provider, to carry, broadcast, or transmit messages described in this



section or perform related activities in providing telephone, cable television, Internet, or commercial online services

**CAL. PENAL CODE § 288.3 (2009). Contact or communication with minor with knowledge and intent to commit specified offenses punishable by imprisonment; Additional punishment for repeat violation.**

(a) Every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit an offense specified in Section 207, 209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2, 311.4 or 311.11 involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense.

(b) As used in this section, "contacts or communicates with" shall include direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system.

(c) A person convicted of a violation of subdivision (a) who has previously been convicted of a violation of subdivision (a) shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

**CAL. PENAL CODE § 288.4 (2009). Arrangement of meeting with minor for purpose of engaging in certain lewd and lascivious behavior; Punishment.**

(a)

(1) Every person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a person he or she believes to be a minor for the purpose of exposing his or her genitals or pubic or rectal area, having the child expose his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(2) Every person who violates this subdivision after a prior conviction for an offense listed in subdivision (c) of Section 290 shall be punished by imprisonment in the state prison.

(b) Every person described in paragraph (1) of subdivision (a) who goes to the arranged meeting place at or about the arranged time, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Nothing in this section shall preclude or prohibit prosecution under any other provision of law.

## **COLORADO**

### **COLO. REV. STAT. § 13-21-1001 (2009). Definitions.**

As used in this article, unless the context otherwise requires:

- (1) "Child" means a person under eighteen years of age.
- (2) "Sexual contact", "sexual intrusion", and "sexual penetration" shall have the same meanings as set forth in section 18-3-401 (4), (5), and (6), C.R.S., respectively.

### **COLO. REV. STAT. § 13-21-1002 (2009). Computer dissemination of indecent material to a child – prohibition**

- (1) A person commits computer dissemination of indecent material to a child when:
  - (a) Knowing the character and content of the communication which, in whole or in part, depicts actual or simulated nudity, or sexual conduct, as defined in section 19-1-103 (97), C.R.S., the person willfully uses a computer, computer network, telephone network, data network, or computer system allowing the input, output, examination, or transfer of computer data or computer programs from one computer to another or a text-messaging or instant-messaging system to initiate or engage in such communication with a person he or she believes to be a child; and
  - (b) By means of such communication the person importunes, invites, entices, or induces a person he or she believes to be a child to engage in sexual contact, sexual intrusion, or sexual penetration with the person, or to engage in a sexual performance or sexual conduct, as defined in section 19-1-103 (97), C.R.S., for the person's benefit.
- (2) Computer dissemination of indecent material to a child is prohibited. A person who violates the provisions of subsection (1) of this section shall be subject to a civil penalty as provided in section 13-21-1003.
- (3) It shall not be an affirmative defense in a civil action brought under this part 10 that the person the defendant believed to be a child in fact was not a child.

### **COLO. REV. STAT. § 18-3-306 (2009). Internet luring of a child**

- (1) An actor commits internet luring of a child if the actor knowingly communicates a statement over a computer or computer network to a person who the actor knows or believes is under fifteen years of age, describing explicit sexual conduct as defined in section 18-6-403 (2) (e), and, in connection with the communication, makes a statement persuading or inviting the person to meet the actor for any purpose, and the actor is more than four years older than the person or than the age the actor believes the person to be.

(2) It shall not be a defense to this section that a meeting did not occur.

(a) and (b) (Deleted by amendment, L. 2007, p. 1688, § 8, effective July 1, 2007.)

(3) Internet luring of a child is a class 5 felony; except that luring of a child is a class 4 felony if committed with the intent to meet for the purpose of engaging in sexual exploitation as defined in section 18-6-403 or sexual contact as defined in section 18-3-401.

(4) For purposes of this section, "in connection with" means communications that further, advance, promote, or have a continuity of purpose and may occur before, during, or after the invitation to meet.

### **COLO. REV. STAT. § 18-3-405.4 (2009). Internet sexual exploitation of a child**

A person commits internet sexual exploitation of a child if a person, who is at least four years older than a child who is under fifteen years of age, knowingly importunes, invites, or entices the child through communication via a computer network or system to:

(a) Expose or touch the child's own or another person's intimate parts while communicating with the person via a computer network or system; or

(b) Observe the person's intimate parts while communicating with the person via a computer network or system.

(2) It shall not be an affirmative defense to this section that the child was actually a law enforcement officer posing as a child under fifteen years of age.

(3) Internet sexual exploitation of a child is a class 4 felony.

## **CONNECTICUT**

### **CONN. GEN. STAT. § 53a-65 (2010). Definitions.**

As used in this part, except section 53a-70b, the following terms have the following meanings:

(1) "Actor" means a person accused of sexual assault.

(2) "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Its meaning is limited to persons not married to each other. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the victim's body.

(3) "Sexual contact" means any contact with the intimate parts of a person not married to the

actor for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person or any contact of the intimate parts of the actor with a person not married to the actor for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person.

(4) "Mentally defective" means that a person suffers from a mental disease or defect which renders such person incapable of appraising the nature of such person's conduct.

(5) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent.

(6) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(7) "Use of force" means: (A) Use of a dangerous instrument; or (B) use of actual physical force or violence or superior physical strength against the victim.

(8) "Intimate parts" means the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts.

(9) "Psychotherapist" means a physician, psychologist, nurse, substance abuse counselor, social worker, clergyman, marital and family therapist, mental health service provider, hypnotist or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

(10) "Psychotherapy" means the professional treatment, assessment or counseling of a mental or emotional illness, symptom or condition.

(11) "Emotionally dependent" means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the patient or former patient is unable to withhold consent to sexual contact by or sexual intercourse with the psychotherapist.

(12) "Therapeutic deception" means a representation by a psychotherapist that sexual contact by or sexual intercourse with the psychotherapist is consistent with or part of the patient's treatment.

(13) "School employee" means: (A) A teacher, substitute teacher, school administrator, school superintendent, guidance counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or a private elementary, middle or high school or working in a public or private elementary, middle or high school; or (B) any other person who, in the performance of his or her duties, has regular contact with students and who provides services to or on behalf of students enrolled in (i) a public elementary, middle or high school, pursuant to a contract with the local or regional board of education, or (ii) a private elementary, middle or high school, pursuant to a contract with the supervisory agent of such private school.

**CONN. GEN. STAT. § 53a-90a (2010). Enticing a minor. Penalties.**

(a) A person is guilty of enticing a minor when such person uses an interactive computer service to knowingly persuade, induce, entice or coerce any person under sixteen years of age to engage in prostitution or sexual activity for which the actor may be charged with a criminal offense. For purposes of this section, "interactive computer service" means any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(b) (1) Except as provided in subdivision (2) of this subsection, enticing a minor is a class D felony for a first offense, a class C felony for a second offense and a class B felony for any subsequent offense.

(2) Enticing a minor is a class B felony if the victim of the offense is under thirteen years of age and any person found guilty of such class B felony shall, for a first offense, be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court and, for any subsequent offense, be sentenced to a term of imprisonment of which ten years of the sentence imposed may not be suspended or reduced by the court.

**CONN. GEN. STAT. § 53a-90b (2010). Misrepresentation of age to entice a minor: Class C felony.**

(a) A person is guilty of misrepresentation of age to entice a minor when such person, in the course of and in furtherance of the commission of a violation of section 53a-90a, intentionally misrepresents such person's age.

(b) Misrepresentation of age to entice a minor is a class C felony.

**DELAWARE**

**DEL. CODE ANN. tit. 11, § 1103 (2010). Definitions relating to children.**

(a) "Abuse" means causing any physical injury to a child through unjustified force as defined in § 468(1)(c) of this title, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

(b) "Child" shall mean any individual 18 years of age or less. For the purposes of §§ 1108, 1109, 1110, 1111 and 1112A of this Title, "child" shall also mean any individual who is intended by the defendant to appear to be 14 years of age or less.

(c) "Delinquent child" means a child who commits an act which if committed by an adult would constitute a crime.

(d) "Neglect" or "neglected child" is as defined in § 901 of Title 10.

(e) "Prohibited sexual act" shall include:

(1) Sexual intercourse;

(2) Anal intercourse;

(3) Masturbation;

(4) Bestiality;

(5) Sadism;

(6) Masochism;

(7) Fellatio;

(8) Cunnilingus;

(9) Nudity, if such nudity is to be depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction;

(10) Sexual contact;

(11) Lascivious exhibition of the genitals or pubic area of any child;

(12) Any other act which is intended to be a depiction or simulation of any act described in this subsection.

(f) "Truancy" or "truant" shall refer to a pupil enrolled in grades kindergarten through 12 of a public school who has been absent from school for more than 3 school days during a school year without a valid excuse as defined in regulations of the district board of education of the school district in which the pupil is or should be enrolled pursuant to the provisions of Title 14, or where a student is enrolled in a charter school, by the board of directors of the charter school.

(g) "Visual depiction" includes, but is not limited to:

(1) Any image which is recorded, stored or contained on or by developed or undeveloped photographic film, motion picture film or videotape; or

(2) Data which is stored or transmitted on or by any computer, or on or by any digital storage medium or by any other electronic means which is capable of conversion into a visual image; or

(3) Any picture, or computer-generated image or picture, or any other image whether made, stored or produced by electronic, digital, mechanical or other means.

**DEL. CODE ANN. tit. 11, § 1112A (2010). Sexual solicitation of a child; class C felony**

(a) A person is guilty of sexual solicitation of a child if the person, being 18 years of age or older, intentionally or knowingly:

(1) Solicits, requests, commands, importunes or otherwise attempts to cause any child who has not yet reached that child's eighteenth birthday to engage in a prohibited sexual act; or

(2) Solicits, requests, commands, importunes or otherwise attempts to cause any child who has not yet reached that child's sixteenth birthday to meet with such person or any other person for the purpose of engaging in a prohibited sexual act; or

(3) Compiles, enters, accesses, transmits, receives, exchanges, disseminates, stores, makes, prints, reproduces or otherwise possesses by any means, including by means of computer, any notice, statement, document, advertisement, file or data containing the name, telephone number, address, e-mail address, school address or location, physical characteristics or other descriptive or identifying information pertaining to any child who has not yet reached that child's sixteenth birthday for the purpose of facilitating, encouraging, offering or soliciting a prohibited sexual act involving such child and such person or any other person.

(b) For the purposes of this section, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if the child was within the State at the time of the prohibited conduct and the defendant was aware of circumstances which rendered the presence of such child within Delaware a reasonable possibility.

(c) Sexual solicitation of a child is a class C felony.

(d) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

## **DISTRICT OF COLUMBIA**

### **D.C. CODE § 22-2201 (2010). Certain obscene activities and conduct declared unlawful; definitions; penalties; affirmative defenses; exception [Formerly § 22-2001]**

(a) (1) It shall be unlawful in the District of Columbia for a person knowingly:

(A) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

(B) To present, direct, act in, or otherwise participate in the preparation or presentation of, any obscene, indecent, or filthy play, dance, motion picture, or other performance;

(C) To pose for, model for, print, record, compose, edit, write, publish, or otherwise participate in preparing for publication, exhibition, or sale, any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

(D) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute or provide any article, thing, or device which is intended for or represented as being for indecent or immoral use;

(E) To create, buy, procure, or possess any matter described in the preceding subparagraphs of this paragraph with intent to disseminate such matter in violation of this subsection;

(F) To advertise or otherwise promote the sale of any matter described in the preceding subparagraphs of this paragraph; or

(G) To advertise or otherwise promote the sale of material represented or held out by such person to be obscene.

(2) (A) For purposes of subparagraph (E) of paragraph (1) of this subsection, the creation, purchase, procurement, or possession of a mold, engraved plate, or other embodiment of obscenity specially adapted for reproducing multiple copies or the possession of more than 3 copies, of obscene, indecent, or filthy material shall be prima facie evidence of an intent to disseminate such material in violation of this subsection.

(B) For purposes of paragraph (1) of this subsection, the term "knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any article, thing, device, performance, or representation described in paragraph (1) of this subsection which is reasonably susceptible of examination.

(3) When any person is convicted of a violation of this subsection, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of any materials described in paragraph (1) of this subsection, which were named in the charge against such person and which were found in the possession or under the control of such person at the time of such person's arrest.

(b) (1) It shall be unlawful in the District of Columbia for any person knowingly:

(A) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide to a minor:

(i) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body, which depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

(ii) Any book, magazine, or other printed matter however reproduced or sound recording, which depicts nudity, sexual conduct, or sado-masochistic abuse or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or



(B) To exhibit to a minor, or to sell or provide to a minor an admission ticket to, or pass to, or to admit a minor to, premises whereon there is exhibited, a motion picture, show, or other presentation which, in whole or in part, depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

(2) For purposes of paragraph (1) of this subsection:

(A) The term "minor" means any person under the age of 17 years.

(B) The term "nudity" includes the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(C) The term "sexual conduct" includes acts of sodomy, masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.

(D) The term "sexual excitement" includes the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(E) The term "sado-masochistic abuse" includes flagellation or torture by or upon a person clad in undergarments or a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(F) The term "knowingly" means having a general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both of:

(i) The character and content of any material described in paragraph (1) of this subsection which is reasonably susceptible of examination by the defendant; and

(ii) The age of the minor.

(c) It shall be an affirmative defense to a charge of violating subsection (a) or (b) of this section that the dissemination was to institutions or individuals having scientific, educational, or other special justification for possession of such material.

(d) Nothing in this section shall apply to a licensee under the Communications Act of 1934 (47 U.S.C.S. § 151 et seq.) while engaged in activities regulated pursuant to such Act.

(e) A person convicted of violating subsection (a) or (b) of this section shall for the 1st offense be fined not more than \$ 1,000 or imprisoned not more than 180 days, or both. A person convicted of a 2nd or subsequent offense under subsection (a) or (b) of this section shall be fined not less than \$ 1,000 nor more than \$ 5,000 or imprisoned not less than 6 months or more than 3 years, or both.

**D.C. CODE § 22-3001 (2010). Definitions [Formerly § 22-4101]**

For the purposes of this chapter:

(1) "Actor" means a person accused of any offense proscribed under this chapter.

(2) "Bodily injury" means injury involving loss or impairment of the function of a bodily member, organ, or mental faculty, or physical disfigurement, disease, sickness, or injury involving significant pain.

(3) "Child" means a person who has not yet attained the age of 16 years.

(4) "Consent" means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent.

(4A) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(4B) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(5) "Force" means the use or threatened use of a weapon; the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or the use of a threat of harm sufficient to coerce or compel submission by the victim.

(5A) "Minor" means a person who has not yet attained the age of 18 years.

(6) "Official custody" means:

(A) Detention following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following or pending civil commitment proceedings, or pending extradition, deportation, or exclusion;

(B) Custody for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation; or

(C) Probation or parole.

(7) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(8) "Sexual act" means:

(A) The penetration, however slight, of the anus or vulva of another by a penis;

(B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

(C) The penetration, however slight, of the anus or vulva by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(D) The emission of semen is not required for the purposes of subparagraphs (A)-(C) of this paragraph.

(9) "Sexual contact" means the touching with any clothed or unclothed body part or any object, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(10) "Significant relationship" includes:

(A) A parent, sibling, aunt, uncle, or grandparent, whether related by blood, marriage, domestic partnership, or adoption;

(B) A legal or de facto guardian or any person, more than 4 years older than the victim, who resides intermittently or permanently in the same dwelling as the victim;

(C) The person or the spouse, domestic partner, or paramour of the person who is charged with any duty or responsibility for the health, welfare, or supervision of the victim at the time of the act; and

(D) Any employee or volunteer of a school, church, synagogue, mosque, or other religious institution, or an educational, social, recreational, athletic, musical, charitable, or youth facility, organization, or program, including a teacher, coach, counselor, clergy, youth leader, chorus director, bus driver, administrator, or support staff, or any other person in a position of trust with or authority over a child or a minor.

(11) "Victim" means a person who is alleged to have been subject to any offense set forth in subchapter II of this chapter.

#### **D.C. CODE § 22-3010 (2010). Enticing a child or minor [Formerly § 22-4110]**

(a) Whoever, being at least 4 years older than a child or being in a significant relationship with a minor, (1) takes that child or minor to any place for the purpose of committing any offense set forth in §§ 22-3002 to 22-3006 and 22-3008 to 22-3009.02, or (2) seduces, entices, allures, convinces, or persuades or attempts to seduce, entice, allure, convince, or persuade a child or minor to engage in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined in an amount not to exceed \$ 50,000, or both.

(b) Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child

to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined in an amount not to exceed \$ 50,000, or both.

(c) No person shall be consecutively sentenced for enticing a child or minor to engage in a sexual act or sexual contact under subsection (a)(2) of this section and engaging in that sexual act or sexual contact with that child or minor; provided, that the enticement occurred closely associated in time with the sexual act or sexual contact.

## **FLORIDA**

### **FLA. STAT. § 847.0135 (2010). Computer pornography; traveling to meet minor; penalties**

(1) SHORT TITLE. --This section shall be known and may be cited as the "Computer Pornography and Child Exploitation Prevention Act."

(2) COMPUTER PORNOGRAPHY. --A person who:

(a) Knowingly compiles, enters into, or transmits by use of computer;

(b) Makes, prints, publishes, or reproduces by other computerized means;

(c) Knowingly causes or allows to be entered into or transmitted by use of computer; or

(d) Buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

(3) CERTAIN USES OF COMPUTER SERVICES OR DEVICES PROHIBITED. --Any person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

(a) Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child; or

(b) Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who, in violating this

subsection, misrepresents his or her age, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each separate use of a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission wherein an offense described in this section is committed may be charged as a separate offense.

(4) TRAVELING TO MEET A MINOR. --Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child or with another person believed by the person to be a child after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

(a) Seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to engage in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child; or

(b) Solicit, lure, or entice or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) CERTAIN COMPUTER TRANSMISSIONS PROHIBITED..

(a) A person who:

1. Intentionally masturbates;

2. Intentionally exposes the genitals in a lewd or lascivious manner; or

3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity live over a computer online service, Internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or television monitor by a victim who is less than 16 years of age, commits lewd or lascivious exhibition in violation of this subsection. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this subsection shall not constitute a defense to a prosecution under this subsection.

(b) An offender 18 years of age or older who commits a lewd or lascivious exhibition using a computer commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) An offender less than 18 years of age who commits a lewd or lascivious exhibition using a computer commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this subsection.

(6) OWNERS OR OPERATORS OF COMPUTER SERVICES LIABLE.. --It is unlawful for any owner or operator of a computer online service, Internet service, or local bulletin board service knowingly to permit a subscriber to use the service to commit a violation of this section. Any person who violates this section commits a misdemeanor of the first degree, punishable by a fine not exceeding \$ 2,000.

(7) STATE CRIMINAL JURISDICTION,. --A person is subject to prosecution in this state pursuant to chapter 910 for any conduct proscribed by this section which the person engages in, while either within or outside this state, if by such conduct the person commits a violation of this section involving a child, a child's guardian, or another person believed by the person to be a child or a child's guardian.

(8) EFFECT OF PROSECUTION. --Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state or another jurisdiction for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

## **GEORGIA**

### **GA. CODE ANN. § 16-6-5 (2010). Enticing a child for indecent purposes**

(a) A person commits the offense of enticing a child for indecent purposes when he or she solicits, entices, or takes any child under the age of 16 years to any place whatsoever for the purpose of child molestation or indecent acts.

(b) Except as provided in subsection (c) of this Code section, a person convicted of the offense of enticing a child for indecent purposes shall be punished by imprisonment for not less than ten nor more than 30 years. Any person convicted under this Code section of the offense of enticing a child for indecent purposes shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(c) If the victim is at least 14 but less than 16 years of age and the person convicted of enticing a child for indecent purposes is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2

### **GA. CODE ANN. § 16-12-100.2 (2010). Computer or electronic pornography and child exploitation prevention**

(a) This Code section shall be known and may be cited as the "Computer or Electronic Pornography and Child Exploitation Prevention Act of 2007."

(b) As used in this Code section, the term:

(1) "Child" means any person under the age of 16 years.

(2) "Electronic device" means any device used for the purpose of communicating with a child for sexual purposes or any device used to visually depict a child engaged in sexually explicit conduct, store any image or audio of a child engaged in sexually explicit conduct, or transmit any audio or visual image of a child for sexual purposes. Such term may include, but shall not be limited to, a computer, cellular phone, thumb drive, video game system, or any other electronic device that can be used in furtherance of exploiting a child for sexual purposes;

(3) "Identifiable child" means a person:

(A) Who was a child at the time the visual depiction was created, adapted, or modified or whose image as a child was used in creating, adapting, or modifying the visual depiction; and

(B) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature or by electronic or scientific means as may be available.

The term shall not be construed to require proof of the actual identity of the child.

(4) "Sadomasochistic abuse" has the same meaning as provided in Code Section 16-12-100.1.

(5) "Sexual conduct" has the same meaning as provided in Code Section 16-12-100.1.

(6) "Sexual excitement" has the same meaning as provided in Code Section 16-12-100.1.

(7) "Sexually explicit nudity" has the same meaning as provided in Code Section 16-12-102.

(8) "Visual depiction" means any image and includes undeveloped film and video tape and data stored on computer disk or by electronic means which is capable of conversion into a visual image or which has been created, adapted, or modified to show an identifiable child engaged in sexually explicit conduct.

(c) (1) A person commits the offense of computer or electronic pornography if such person intentionally or willfully:

(A) Compiles, enters into, or transmits by computer or other electronic device;

(B) Makes, prints, publishes, or reproduces by other computer or other electronic device;

(C) Causes or allows to be entered into or transmitted by computer or other electronic device;  
or

(D) Buys, sells, receives, exchanges, or disseminates

any notice, statement, or advertisement, or any child's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with an identifiable child or the visual depiction of such conduct.

(2) Any person convicted of violating paragraph (1) of this subsection shall be punished by a fine of not more than \$10,000.00 and by imprisonment for not less than one nor more than 20 years.

(d) (1) It shall be unlawful for any person intentionally or willfully to utilize a computer on-line service or Internet service, including but not limited to a local bulletin board service, Internet chat room, e-mail, on-line messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child or another person believed by such person to be a child to commit any illegal act described in Code Section 16-6-2, relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years and by a fine of not more than \$25,000.00; provided, however, that, if at the time of the offense the victim was 14 or 15 years of age and the defendant was no more than three years older than the victim, then the defendant shall be guilty of a misdemeanor of a high and aggravated nature.

(e) (1) A person commits the offense of obscene Internet contact with a child if he or she has contact with someone he or she knows to be a child or with someone he or she believes to be a child via a computer on-line service or Internet service, including but not limited to a local bulletin board service, Internet chat room, e-mail, or on-line messaging service, and the contact involves any matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the child or the person, provided that no conviction shall be had for a violation of this subsection on the unsupported testimony of a child.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years or by a fine of not more than \$10,000.00; provided, however, that, if at the time of the offense the victim was 14 or 15 years of age and the defendant was no more than three years older than the victim, then the defendant shall be guilty of a misdemeanor of a high and aggravated nature.

(f) (1) It shall be unlawful for any owner or operator of a computer on-line service, Internet service, local bulletin board service, or other electronic device that is in the business of providing a service that may be used to sexually exploit a child to intentionally or willfully to permit a subscriber to utilize the service to commit a violation of this Code section, knowing that such person intended to utilize such service to violate this Code section. No owner or operator of a public computer on-line service, Internet service, local bulletin board service, or other electronic device that is in the business of providing a service that may be used to sexually exploit a child shall be held liable on account of any action taken in good faith in providing the aforementioned services.



(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor of a high and aggravated nature.

(g) The sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this Code section shall not constitute a defense to prosecution under this Code section.

(h) A person is subject to prosecution in this state pursuant to Code Section 17-2-1, relating to jurisdiction over crimes and persons charged with commission of crimes generally, for any conduct made unlawful by this Code section which the person engages in while:

(1) Either within or outside of this state if, by such conduct, the person commits a violation of this Code section which involves a child who resides in this state or another person believed by such person to be a child residing in this state; or

(2) Within this state if, by such conduct, the person commits a violation of this Code section which involves a child who resides within or outside this state or another person believed by such person to be a child residing within or outside this state.

(i) Any violation of this Code section shall constitute a separate offense.

## **HAWAII**

### **HAW. REV. STAT. § 707-756 (2010). Electronic enticement of a child in the first degree.**

(1) Any person who, using a computer or any other electronic device:

(a) Intentionally or knowingly communicates:

(i) With a minor known by the person to be under the age of eighteen years;

(ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or

(iii) With another person who represents that person to be under the age of eighteen years;

(b) With the intent to promote or facilitate the commission of a felony:

(i) That is a murder in the first or second degree;

(ii) That is a class A felony; or

(iii) That is another covered offense as defined in section 846E-1,

agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and

(c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time,

is guilty of electronic enticement of a child in the first degree.

(2) Electronic enticement of a child in the first degree is a class B felony. Notwithstanding any law to the contrary, a person convicted of electronic enticement of a child in the first degree shall be sentenced to an indeterminate term of imprisonment as provided by law.

**HAW. REV. STAT. § 707-757 (2010). Electronic enticement of a child in the second degree.**

(1) Any person who, using a computer or any other electronic device:

(a) Intentionally or knowingly communicates:

(i) With a minor known by the person to be under the age of eighteen years;

(ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or

(iii) With another person who represents that person to be under the age of eighteen years; and

(b) With the intent to promote or facilitate the commission of a felony, agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and

(c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time; is guilty of electronic enticement of a child in the second degree.

(2) Electronic enticement of a child in the second degree is a class C felony. Notwithstanding any law to the contrary, if a person sentenced under this section is sentenced to probation rather than an indeterminate term of imprisonment, the terms and conditions of probation shall include, but not be limited to, a term of imprisonment of one year.

**HAW. REV. STAT. § 707-759 (2010). Indecent electronic display to a child.**

(1) Any person who intentionally masturbates or intentionally exposes the genitals in a lewd or lascivious manner live over a computer online service, internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or other electronic device by:

(a) A minor known by the person to be under the age of eighteen years;

(b) Another person, in reckless disregard of the risk that the other person is under the age of

eighteen years, and the other person is under the age of eighteen years; or

(c) Another person who represents that person to be under the age of eighteen years, is guilty of indecent electronic display to a child.

(2) Indecent electronic display to a child is a misdemeanor.

**HAW. REV. STAT. § 708-893 (2010). Use of a computer in the commission of a separate crime.**

(1) A person commits the offense of use of a computer in the commission of a separate crime if the person:

(a) Intentionally uses a computer to obtain control over the property of the victim to commit theft in the first or second degree; or

(b) Knowingly uses a computer to identify, select, solicit, persuade, coerce, entice, induce, or procure the victim or intended victim of the following offenses:

(i) Section 707-726, relating to custodial interference in the first degree;

(ii) Section 707-727, relating to custodial interference in the second degree;

(iii) Section 707-731, relating to sexual assault in the second degree;

(iv) Section 707-732, relating to sexual assault in the third degree;

(v) Section 707-733, relating to sexual assault in the fourth degree;

(vi) Section 707-751, relating to promoting child abuse in the second degree; or

(vii) Section 712-1215, relating to promoting pornography for minors.

(2) Use of a computer in the commission of a separate crime is an offense one class or grade, as the case may be, greater than the offense facilitated. Notwithstanding any other law to the contrary, a conviction under this section shall not merge with a conviction for the separate crime.

**IDAHO**

**IDAHO CODE ANN. § 18-1509A (2010). Enticing of children over the internet -- Penalties -- Jurisdiction**

(1) A person aged eighteen (18) years or older shall be guilty of a felony if he or she knowingly uses the internet to solicit, seduce, lure, persuade or entice by words or actions, or both, a minor

child under the age of sixteen (16) years or a person the defendant believes to be a minor child under the age of sixteen (16) years to engage in any sexual act with or against the child where such act is a violation of chapter 15, 61 or 66, title 18, Idaho Code.

(2) Every person who is convicted of a violation of this section shall be punished by imprisonment in the state prison for a period not to exceed fifteen (15) years.

(3) It shall not constitute a defense against any charge or violation of this section that a law enforcement officer, peace officer, or other person working at the direction of law enforcement was involved in the detection or investigation of a violation of this section.

(4) The offense is committed in the state of Idaho for purposes of determining jurisdiction if the transmission that constitutes the offense either originates in or is received in the state of Idaho.

## **ILLINOIS**

### **720 ILL. COMP. STAT. 5/11-6 (2010). Indecent solicitation of a child**

Sec. 11-6. Indecent solicitation of a child. (a) A person of the age of 17 years and upwards commits the offense of indecent solicitation of a child if the person, with the intent that the offense of aggravated criminal sexual assault, criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse be committed, knowingly solicits a child or one whom he or she believes to be a child to perform an act of sexual penetration or sexual conduct as defined in Section 12-12 of this Code [720 ILCS 5/12-12].

(a-5) A person of the age of 17 years and upwards commits the offense of indecent solicitation of a child if the person knowingly discusses an act of sexual conduct or sexual penetration with a child or with one whom he or she believes to be a child by means of the Internet with the intent that the offense of aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse be committed.

(a-6) It is not a defense to subsection (a-5) that the person did not solicit the child to perform sexual conduct or sexual penetration with the person.

(b) Definitions. As used in this Section: "Solicit" means to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to, in person, over the phone, in writing, by computer, or by advertisement of any kind.

"Child" means a person under 17 years of age.

"Internet" means an interactive computer service or system or an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, and includes, but is not limited to, an information service, system, or access software provider that provides access to a network system commonly known as the Internet, or any comparable system or service and also includes, but is not limited to, a World Wide Web page, newsgroup, message board, mailing list, or chat area on any interactive computer service or system or other online service.

"Sexual penetration" or "sexual conduct" are defined in Section 12-12 of this Code [720 ILCS 5/12-12].

(c) Sentence.

Indecent solicitation of a child under subsection (a) is:

(1) a Class 1 felony when the act, if done, would be predatory criminal sexual assault of a child or aggravated criminal sexual assault;

(2) a Class 2 felony when the act, if done, would be criminal sexual assault;

(3) a Class 3 felony when the act, if done, would be aggravated criminal sexual abuse.

Indecent solicitation of a child under subsection (a-5) is a Class 4 felony.

### **720 ILL. COMP. STAT. 5/11-6.5(2010). Indecent solicitation of an adult**

*Construed Unconstitutional in whole or part by People v. M.T. (In re M.T.), 352 Ill. App. 3d 131, 816 N.E.2d 354, 2004 Ill. App. LEXIS 1001, 287 Ill. Dec. 592 (Ill. App. Ct. 1st Dist. 2004)*

(a) A person commits indecent solicitation of an adult if the person:

(1) Arranges for a person 17 years of age or over to commit an act of sexual penetration as defined in Section 12-12 [720 ILCS 5/12-12] with a person:

(i) Under the age of 13 years; or

(ii) Thirteen years of age or over but under the age of 17 years; or

(2) Arranges for a person 17 years of age or over to commit an act of sexual conduct as defined in Section 12-12 [720 ILCS 5/12-12] with a person:

(i) Under the age of 13 years; or

(ii) Thirteen years of age or older but under the age of 17 years.

(b) Sentence.

(1) Violation of paragraph (a)(1)(i) is a Class X felony.

(2) Violation of paragraph (a)(1)(ii) is a Class 1 felony.

(3) Violation of paragraph (a)(2)(i) is a Class 2 felony.

(4) Violation of paragraph (a)(2)(ii) is a Class A misdemeanor.

(c) For the purposes of this Section, "arranges" includes but is not limited to oral or written

communication and communication by telephone, computer, or other electronic means.  
"Computer" has the meaning ascribed to it in Section 16D-2 of this Code [720 ILCS 5/16D-2].

**720 ILL. COMP. STAT. 5/11-6 .6 (2010). Solicitation to meet a child**

(a) A person of the age of 18 or more years commits the offense of solicitation to meet a child if the person while using a computer, cellular telephone, or any other device, with the intent to meet a child or one whom he or she believes to be a child, solicits, entices, induces, or arranges with the child to meet at a location without the knowledge of the child's parent or guardian and the meeting with the child is arranged for a purpose other than a lawful purpose under Illinois law.

(b) Sentence. Solicitation to meet a child is a Class A misdemeanor. Solicitation to meet a child is a Class 4 felony when the solicitor believes he or she is 5 or more years older than the child.

(c) For purposes of this Section, "child" means any person under 17 years of age; and "computer" has the meaning ascribed to it in Section 16D-2 of this Code [720 ILCS 5/16D-2].

**INDIANA**

**IND. CODE § 35-42-4-6 (2010). Child solicitation.**

(a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

- (1) in person;
- (2) by telephone;
- (3) in writing;
- (4) by using a computer network (as defined in IC 35-43-2-3(a));
- (5) by advertisement of any kind; or
- (6) by any other means;

to perform an act described in subsection (b) or (c).

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or

(3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)), and a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:

(1) sexual intercourse;

(2) deviate sexual conduct; or

(3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)), and a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

#### **IND. CODE § 35-42-4-13 (2010). Inappropriate communication with child – Penalty**

(a) This section does not apply to the following:

(1) A parent, guardian, or custodian of a child.

(2) A person who acts with the permission of a child's parent, guardian, or custodian.

(3) A person to whom a child makes a report of abuse or neglect.

(4) A person to whom a child reports medical symptoms that relate to or may relate to sexual activity.

(b) As used in this section, "sexual activity" means sexual intercourse, deviate sexual conduct, or the fondling or touching of the buttocks, genitals, or female breasts.

(c) A person at least twenty-one (21) years of age who knowingly or intentionally communicates

with an individual whom the person believes to be a child less than fourteen (14) years of age concerning sexual activity with the intent to gratify the sexual desires of the person or the individual commits inappropriate communication with a child, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)).

## **IOWA**

### **IOWA CODE § 710.10 (2010). Enticing a minor.**

1. A person commits a class "C" felony when, without authority and with the intent to commit sexual abuse or sexual exploitation upon a minor under the age of thirteen, the person entices or attempts to entice a person reasonably believed to be under the age of thirteen.
2. A person commits a class "D" felony when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person entices or attempts to entice a person reasonably believed to be under the age of sixteen.
3. A person commits a class "d" felony when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person entices a person reasonably believed to be under the age of sixteen.
4. A person commits an aggravated misdemeanor when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person attempts to entice a person reasonably believed to be under the age of sixteen. A person convicted under this subsection shall not be subject to the registration requirements under chapter 692a unless the finder of fact determines that the illegal act was sexually motivated.
5. A person shall not be convicted of a violation of this section unless the person commits an overt act evidencing a purpose to entice.
6. For purposes of determining jurisdiction under section 803.1, an offense is considered committed in this state if the communication to entice or attempt to entice a person believed to be a minor who is present in this state originates from another state, or the communication to entice or attempt to entice a person believed to be a minor is sent from this state.

### **IOWA CODE § 709.12 (2010). Indecent contact with a child.**

A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person's spouse, with or without the child's consent, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child.
2. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or



breast of the child.

3. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person.
4. Solicit a child to engage in any act prohibited under section 709.8, subsection 1, 2, or 4.

The provisions of this section shall also apply to a person sixteen or seventeen years of age who commits any of the enumerated acts with a child who is at least five years the person's junior, in which case the juvenile court shall have jurisdiction under chapter 232.

**IOWA CODE § 728.12 (2010). Sexual exploitation of a minor.**

1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or be preserved in an electronic, magnetic, or optical storage system, or in any other type of storage system. A person who commits a violation of this subsection commits a class "C" felony. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.
2. It shall be unlawful to knowingly promote any material visually depicting a live performance of a minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits a class "D" felony. Notwithstanding section 902.9, the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.
3. It shall be unlawful to knowingly purchase or possess a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or an electronic, magnetic, or optical storage system, or any other type of storage system which depicts a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense. For purposes of this subsection, an offense is considered a second or subsequent offense if, prior to the person's having been convicted under this subsection, any of the following apply:
  - a. The person has a prior conviction or deferred judgment under this subsection.
  - b. The person has a prior conviction, deferred judgment, or the equivalent of a deferred judgment in another jurisdiction for an offense substantially similar to the offense defined in this subsection. The court shall judicially notice the statutes of other states that define offenses substantially similar to the offense defined in this subsection and that therefore can be considered corresponding statutes.
4. This section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

## **KANSAS**

### **KAN. STAT. ANN. § 21-3510 (2009). Indecent solicitation of a child.**

Repealed; effective and in force on and after July 1, 2011.

(a) Indecent solicitation of a child is:

(1) Enticing or soliciting a child 14 or more years of age but less than 16 years of age to commit or to submit to an unlawful sexual act; or

(2) inviting, persuading or attempting to persuade a child 14 or more years of age but less than 16 years of age to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

(b) Indecent solicitation of a child is a severity level 6, person felony.

### **KAN. STAT. ANN. § 21-3511 (2009). Aggravated indecent solicitation of a child.**

Repealed; effective and in force on and after July 1, 2011.

Aggravated indecent solicitation of a child is:

(a) Enticing or soliciting a child under the age of 14 years to commit or to submit to an unlawful sexual act; or

(b) inviting, persuading or attempting to persuade a child under the age of 14 years to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

Aggravated indecent solicitation of a child is a severity level 5, person felony.

### **KAN. STAT. ANN. § 21-3503 (2009). Indecent liberties with a child.**

Repealed; effective and in force on and after July 1, 2011.

(a) Indecent liberties with a child is engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age:

(1) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(2) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) It shall be a defense to a prosecution of indecent liberties with a child as described in subsection (a)(1) that the child was married to the accused at the time of the offense.

(c) Indecent liberties with a child is a severity level 5, person felony.

**KAN. STAT. ANN. § 21-3504 (2009). Aggravated indecent liberties with a child.**

**Repealed; effective and in force on and after July 1, 2011.**

(a) Aggravated indecent liberties with a child is:

(1) Sexual intercourse with a child who is 14 or more years of age but less than 16 years of age;

(2) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent thereto:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or satisfy the sexual desires of either the child or the offender, or both; or

(B) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another; or

(3) engaging in any of the following acts with a child who is under 14 years of age:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) It shall be a defense to a prosecution of aggravated indecent liberties with a child as provided in subsection (a)(1), (a)(2)(A) and (a)(3)(A) that the child was married to the accused at the time of the offense.

(c) Except as provided further, aggravated indecent liberties with a child as described in subsections (a)(1) and (a)(3) is a severity level 3, person felony. Aggravated indecent liberties with a child as described in subsection (a)(2) is a severity level 4, person felony. When the offender is 18 years of age or older, aggravated indecent liberties with a child as described in subsection (a)(3) is an off-grid person felony.

**KAN. STAT. ANN. § 21-3523 (2009). Electronic solicitation.**

**Repealed; effective and in force on and after July 1, 2011.**

(a) Electronic solicitation is, by means of communication conducted through the telephone, internet, or by other electronic means:

- (1) Enticing or soliciting a person whom the offender believes to be a child 14 or more years of age but less than 16 years of age to commit or submit to an unlawful sexual act; or
- (2) enticing or soliciting a person whom the offender believes to be a child under the age of 14 to commit or submit to an unlawful sexual act.
- (b) Electronic solicitation as described in subsection (a)(1) is a severity level 3 person felony. Electronic solicitation as described in subsection (a)(2) is a severity level 1 person felony.
- (c) For the purposes of this section, "communication conducted through the internet or by other electronic means" includes but is not limited to e-mail, chatroom chats and text messaging.
- (d) This section shall be part of and supplemental to the Kansas criminal code.

## **KENTUCKY**

### **KY. REV. STAT. ANN. § 510.155 (2010). Unlawful use of electronic means to induce a minor to engage in sexual or other prohibited activities -- Prohibition of multiple convictions arising from single course of conduct – Solicitation as evidence of intent.**

- (1) It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reckless in that belief, for any activity in violation of KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 529.100 where that offense involves commercial sexual activity, or 530.064(1)(a), or KRS Chapter 531.
- (2) No person shall be convicted of this offense and an offense specified in KRS 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to consummate in the commission of the same offense with the same minor or peace officer.
- (3) The solicitation of a minor through electronic communication under subsection (1) of this section shall be prima facie evidence of the person's intent to commit the offense even if the meeting did not occur.
- (4) This section shall apply to electronic communications originating within or received within the Commonwealth.
- (5) A violation of this section is punishable as a Class D felony.

### **KY. REV. STAT. ANN. § 510.110 (2010). Sexual abuse in the first degree.**

- (1) A person is guilty of sexual abuse in the first degree when:
  - (a) He or she subjects another person to sexual contact by forcible compulsion; or

(b) He or she subjects another person to sexual contact who is incapable of consent because he or she:

1. Is physically helpless;
2. Is less than twelve (12) years old; or
3. Is mentally incapacitated; or

(c) Being twenty-one (21) years old or more, he or she:

1. Subjects another person who is less than sixteen (16) years old to sexual contact;
2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or
3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or

(d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.

(2) Sexual abuse in the first degree is a Class D felony, unless the victim is less than twelve (12) years old, in which case the offense shall be a Class C felony.

## **LOUISIANA**

### **LA. REV. STAT. ANN. § 14:81.1 (2010). Pornography involving juveniles**

A. Pornography involving juveniles is any of the following:

(1) The photographing, videotaping, filming, or otherwise reproducing visually of any sexual performance involving a child under the age of seventeen.

(2) The solicitation, promotion, or coercion of any child under the age of seventeen for the purpose of photographing, videotaping, filming, or otherwise reproducing visually any sexual performance involving a child under the age of seventeen.

(3) The intentional possession, sale, distribution, or possession with intent to sell or distribute of

any photographs, films, videotapes, or other visual reproductions of any sexual performance involving a child under the age of seventeen.

(4) The consent of a parent, legal guardian, or custodian of a child under the age of seventeen for the purpose of photographing, videotaping, filming, or otherwise reproducing visually any sexual performance involving the child.

B. For purposes of this Section the following definitions shall apply:

(1) "Sexual performance" means any performance or part thereof that includes sexual conduct involving a child under the age of seventeen.

(2) "Performance" means any play, motion picture, photograph, dance, or other visual presentation.

(3) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals.

(4) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, prevent, exhibit, or advertise, or to offer or agree to do the same.

C. Possession of three or more of the same photographs, films, videotapes, or other visual reproductions shall be prima facie evidence of intent to sell or distribute.

D. Lack of knowledge of the juvenile's age shall not be a defense.

E. (1) Whoever commits the crime of pornography involving juveniles shall be fined not more than ten thousand dollars and be imprisoned at hard labor for not less than two years or more than ten years, without benefit of parole, probation, or suspension of sentence.

(2) Whoever commits the crime of pornography involving juveniles by violating the provisions of Paragraph (A)(2) of this Section on a victim under the age of thirteen years when the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

(3) Upon completion of the term of imprisonment imposed in accordance with Paragraph (2) of this Subsection, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.

(4) Unless it is determined by the Department of Public Safety and Corrections, pursuant to rules adopted in accordance with the provisions of this Subsection, that a sexual offender is unable to pay all or any portion of such costs, each sexual offender to be electronically monitored shall pay the cost of such monitoring.

(5) The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department if, and only to the degree that sufficient funds are made available for such purpose whether by appropriation of state funds or from any other

source.

(6) The Department of Public Safety and Corrections shall develop, adopt, and promulgate rules in the manner provided in the Administrative Procedure Act, that provide for the payment of such costs. Such rules shall contain specific guidelines which shall be used to determine the ability of the offender to pay the required costs and shall establish the reasonable costs to be charged. Such rules may provide for a sliding scale of payment so that an offender who is able to pay a portion, but not all, of such costs may be required to pay such portion.

F. Any evidence of pornography involving a child under the age of seventeen shall be contraband. Such contraband shall be seized in accordance with law and shall be disposed of in accordance with R.S. 46:1845.

G. In prosecutions for violations of this Section, the trier of fact may determine, utilizing the following factors, whether or not the person displayed or depicted in any photograph, videotape, film, or other video reproduction introduced in evidence was under the age of seventeen years at the time of filming or recording:

- (1) The general body growth, bone structure, and bone development of the person.
- (2) The development of pubic or body hair on the person.
- (3) The development of the person's sexual organs.
- (4) The context in which the person is placed or the age attributed to the person in any accompanying video, printed, or text material.
- (5) Available expert testimony and opinion as to the chronological age or degree of physical or mental maturity or development of the person.
- (6) Such other information, factors, and evidence available to the trier of fact which the court determines is probative and reasonably reliable.

**LA. REV. STAT. ANN. § 14:81.3 (2010). Computer-aided solicitation of a minor**

A. Computer-aided solicitation of a minor is committed when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger, for the purpose of or with the intent to persuade, induce, entice, or coerce the person to engage or participate in sexual conduct or a crime of violence as defined in R.S. 14:2(B), or with the intent to engage or participate in sexual conduct in the presence of the person who has not yet attained the age of seventeen, or person reasonably believed to have not yet attained the age of seventeen. It shall also be a violation of the provisions of this Section when the contact or communication is initially made through the use of electronic textual communication and subsequent communication is made through the use of any other form of communication.

B. (1) (a) Whoever violates the provisions of this Section when the victim is thirteen years of age or more but has not attained the age of seventeen shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than five years nor more than ten years, without benefit of parole, probation, or suspension of sentence.

(b) Whoever violates the provisions of this Section when the victim is under thirteen years of age shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than ten years nor more than twenty years, without benefit of parole, probation, or suspension of sentence.

(c) Whoever violates the provisions of this Section, when the victim is a person reasonably believed to have not yet attained the age of seventeen, shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than two years nor more than ten years, without benefit of parole, probation, or suspension of sentence.

(2) On a subsequent conviction, the offender shall be imprisoned for not less than ten years nor more than twenty years at hard labor without benefit of parole, probation, or suspension of sentence.

(3) In addition to the penalties imposed in either Paragraph (1) or (2) of this Subsection, the court may impose, as an additional penalty on the violator, the limitation or restriction of access to the Internet when the Internet was used in the commission of the crime.

C. It shall not constitute a defense to a prosecution brought pursuant to this Section that the person reasonably believed to be under the age of seventeen is actually a law enforcement officer or peace officer acting in his official capacity.

D. For purposes of this Section, the following words have the following meanings:

(1) "Electronic textual communication" means a textual communication made through the use of a computer on-line service, Internet service, or any other means of electronic communication, including but not limited to a local bulletin board service, Internet chat room, electronic mail, or on-line messaging service.

(2) "Sexual conduct" means actual or simulated sexual intercourse, deviant sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, lewd exhibition of the genitals, or any lewd or lascivious act.

E. The provisions of this Section shall not apply to the transference of such images by a telephone company, cable television company, or any of its affiliates, an Internet provider, or commercial online service provider, or to the carrying, broadcasting, or performing of related activities in providing telephone, cable television, Internet, or commercial online services.

F. An offense committed under this Section may be deemed to have been committed where the electronic textual communication was originally sent, originally received, or originally viewed by any person, or where any other element of the offense was committed.

G. After the institution of prosecution, access to and the disposition of any material seized as evidence of this offense shall be in accordance with R.S. 46:1845.



H. Any evidence resulting from the commission of computer-aided solicitation of a minor shall constitute contraband.

I. A violation of the provisions of this Section shall be considered a sex offense as defined in R.S. 15:541(14.1). Whoever commits the crime of computer- aided solicitation of a minor shall be required to register as a sex offender as provided for in Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950

## **MAINE**

### **ME. REV. STAT. ANN. tit. 17-A, § 259 (2009). Solicitation of child by computer to commit a prohibited act**

1. REPEALED. Laws 2001, c. 383, § 24, eff. Jan. 31, 2003.

1-A. A person is guilty of soliciting a child by a computer to commit a prohibited act if:

A. The actor:

- 1) Uses a computer knowingly to solicit, entice, persuade or compel another person to meet with the actor;
- 2) Is at least 16 years of age;
- 3) Knows or believes that the other person is less than 14 years of age; and
- 4) Is at least 3 years older than the expressed age of the other person; and

B. The actor has the intent to engage in any one of the following prohibited acts with the other person:

- 1) A sexual act;
- 2) Sexual contact; or
- 3) Sexual exploitation of a minor pursuant to section 282.

Violation of this subsection is a Class D crime.

1-B. A person is guilty of soliciting a child by a computer to commit a prohibited act if:

A. The actor:

- 1) Uses a computer knowingly to solicit, entice, persuade or compel another person to meet with the actor;

- 2) Is at least 16 years of age;
- 3) Knows or believes that the other person is less than 12 years of age; and
- 4) Is at least 3 years older than the expressed age of the other person; and

B. The actor has the intent to engage in any one of the following prohibited acts with the other person:

- 1) A sexual act;
- 2) Sexual contact; or
- 3) Sexual exploitation of a minor pursuant to section 282.

Violation of this subsection is a Class C crime.

2. As used in this section, the term "computer" has the same meaning as in section 431, subsection 2.

3. REPEALED. Laws 2003, c. 711, § B-11.

**ME. REV. STAT. ANN. tit. 17-A, § 282 (2009). Sexual exploitation of a minor.**

1. A person is guilty of sexual exploitation of a minor if:

A. Knowing or intending that the conduct will be photographed, the person intentionally or knowingly employs, solicits, entices, persuades, uses or compels another person, not that person's spouse, who is in fact a minor, to engage in sexually explicit conduct. Violation of this paragraph is a Class B crime;

B. The person violates paragraph A and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime;

C. The person violates paragraph A and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime;

D. Being a parent, legal guardian or other person having care or custody of another person who is in fact a minor, that person knowingly or intentionally permits that minor to engage in sexually explicit conduct, knowing or intending that the conduct will be

photographed. Violation of this paragraph is a Class B crime;

E. The person violates paragraph D and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime; or

F. The person violates paragraph D and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime.

2. The following mandatory minimum terms of imprisonment apply to sexual exploitation of a minor.

A. A court shall impose upon a person convicted under subsection 1, paragraph A or D a sentencing alternative involving a term of imprisonment of at least 5 years.

B. A court shall impose upon a person convicted under subsection 1, paragraph B or E a sentencing alternative involving a term of imprisonment of at least 10 years.

The court may not suspend a minimum term of imprisonment imposed under this section unless it sets forth in detail, in writing, the reasons for suspending the sentence. The court shall consider the nature and circumstances of the crime, the physical and mental well-being of the minor and the history and character of the defendant and may only suspend the minimum term if the court is of the opinion that the exceptional features of the case justify the imposition of another sentence. Section 9-A governs the use of prior convictions when determining a sentence.

## **MARYLAND**

### **Md. CODE ANN., CRIM. LAW § 3-301 (2010). Definitions.**

(a) In general. -- In this subtitle the following words have the meanings indicated.

#### **\*\* REVISOR'S NOTE**

This subsection formerly was Art. 27, § 461(a).

#### **\*\* REVISOR'S NOTE**

In this section, the references to this "subtitle" are substituted for the former references to this "subheading", although this subtitle is derived, in part, from material outside of that contained in the former "Sexual Offenses" subheading in Article 27. Because the material revised in this

subtitle that was not contained in the former "Sexual Offenses" subheading does not use the terms defined in this section in a manner contrary to the meanings set forth here, no substantive change results.

**\*\* REVISOR'S NOTE**

No other changes are made.

(b) Mentally defective individual. -- "Mentally defective individual" means an individual who suffers from mental retardation or a mental disorder, either of which temporarily or permanently renders the individual substantially incapable of:

- (1) appraising the nature of the individual's conduct;
- (2) resisting vaginal intercourse, a sexual act, or sexual contact; or
- (3) communicating unwillingness to submit to vaginal intercourse, a sexual act, or sexual contact.

**\*\* REVISOR'S NOTE**

This subsection is new language derived without substantive change from former Art. 27, § 461(b).

**\*\* REVISOR'S NOTE**

The defined term "mentally defective individual" is substituted for the former defined term "mentally defective" for grammatical accuracy.

**\*\* REVISOR'S NOTE**

The references to an "individual" are substituted for the former references to a "victim" because, where the defined term "mentally defective individual" is applicable in this subtitle, the term "victim" is used in the substantive crime. *See* §§ 3-304(a)(2), 3-306(a)(2)(i), and 3-307(a)(2) of this subtitle.

**\*\* REVISOR'S NOTE**

The former redundant phrases "the act of" are deleted as implicit in the references to "vaginal intercourse".

(c) Mentally incapacitated individual. -- "Mentally incapacitated individual" means an individual who, because of the influence of a drug, narcotic, or intoxicating substance, or because of an act committed on the individual without the individual's consent or awareness, is rendered substantially incapable of:

- (1) appraising the nature of the individual's conduct; or
- (2) resisting vaginal intercourse, a sexual act, or sexual contact.

**\*\* REVISOR'S NOTE**

This subsection is new language derived without substantive change from former Art. 27, § 461(c).

**\*\* REVISOR'S NOTE**

The defined term "mentally incapacitated individual" is substituted for the former defined term "mentally incapacitated" for grammatical accuracy.

**\*\* REVISOR'S NOTE**

The references to an "individual" are substituted for the former references to a "victim" because, where the defined term "mentally defective individual" is applicable in this subtitle, the term "victim" is used in the substantive crime. *See* §§ 3-304(a)(2), 3-306(a)(2)(i), and 3-307(a)(2) of this subtitle.

**\*\* REVISOR'S NOTE**

The former redundant phrase "the act of" is deleted as implicit in the reference to "vaginal intercourse".

(d) Physically helpless individual. -- "Physically helpless individual" means an individual who:

(1) is unconscious; or

(2) (i) does not consent to vaginal intercourse, a sexual act, or sexual contact; and

(ii) is physically unable to resist, or communicate unwillingness to submit to, vaginal intercourse, a sexual act, or sexual contact.

**\*\* REVISOR'S NOTE**

This subsection is new language derived without substantive change from former Art. 27, § 461(d).

**\*\* REVISOR'S NOTE**

The defined term "physically helpless individual" is substituted for the former defined term "physically helpless" for grammatical accuracy.

**\*\* REVISOR'S NOTE**

The references to an "individual" are substituted for the former references to a "victim" because, where the defined term "physically helpless individual" is applicable in this subtitle, the term "victim" is used in the substantive crime. *See* §§ 3-304(a)(2), 3-306(a)(2)(i), and 3-307(a)(2) of this subtitle.

**\*\* REVISOR'S NOTE**

The former redundant phrases "an act of" are deleted as implicit in the references to "vaginal intercourse".

(e) Sexual act. --

(1) "Sexual act" means any of the following acts, regardless of whether semen is emitted:

(i) analingus;

(ii) cunnilingus;

(iii) fellatio;

(iv) anal intercourse, including penetration, however slight, of the anus; or

(v) an act:

1. in which an object penetrates, however slightly, into another individual's genital opening or anus; and

2. that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party.

(2) "Sexual act" does not include:

(i) vaginal intercourse; or

(ii) an act in which an object penetrates an individual's genital opening or anus for an accepted medical purpose.

\*\* REVISOR'S NOTE

This subsection is new language derived without substantive change from former Art. 27, § 461(e).

\*\* REVISOR'S NOTE

In paragraph (1)(iv) of this subsection, the phrase "including penetration, however slight, of the anus" is substituted for the former inaccurate phrase "[p]enetration, however slight, is evidence of anal intercourse".

\*\* DEFINED TERM:

"Vaginal intercourse"

§ 3-301

\*\*

(f) Sexual contact. -- \*\*

(1) "Sexual contact", as used in §§ 3-307, 3-308, and 3-314 of this subtitle, means an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party. \*\*

(2) "Sexual contact" includes an act: \*\*

(i) in which a part of an individual's body, except the penis, mouth, or tongue, penetrates, however slightly, into another individual's genital opening or anus; and \*\*

(ii) that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party. \*\*

(3) "Sexual contact" does not include: \*\*

(i) a common expression of familial or friendly affection; or \*\*

(ii) an act for an accepted medical purpose.

#### REVISOR'S NOTE

This subsection is new language derived without substantive change from former Art. 27, § 461(f).

#### REVISOR'S NOTE

In paragraph (1) of this subsection, the former reference to "any part of" a genital, anal, or other intimate area is deleted because the specific reference to touching a part of a genital, anal, or other intimate area is included in the general reference to touching that area. \*\*

(g) Vaginal intercourse. -- \*\*

(1) "Vaginal intercourse" means genital copulation, whether or not semen is emitted. \*\*

(2) "Vaginal intercourse" includes penetration, however slight, of the vagina.

#### REVISOR'S NOTE

This subsection is new language derived without substantive change from former Art. 27, § 461(g).

#### REVISOR'S NOTE

In paragraph (1) of this subsection, the former reference to "ordinary meaning" is deleted as surplusage.

#### REVISOR'S NOTE

In paragraph (2) of this subsection, the phrase "includes penetration, however slight, of the vagina" is substituted for the former inaccurate phrase "[p]enetration, however slight, is evidence of vaginal intercourse" for clarity.

**MD. CODE ANN., CRIM. LAW § 3-324 (2010). Sexual solicitation of minor**

(a) "Solicit" defined. -- In this section, "solicit" means to command, authorize, urge, entice, request, or advise a person by any means, including:

- (1) in person;
- (2) through an agent or agency;
- (3) over the telephone;
- (4) through any print medium;
- (5) by mail;
- (6) by computer or Internet; or
- (7) by any other electronic means.

(b) Prohibited. -- A person may not, with the intent to commit a violation of § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article.

(c) Jurisdiction. -- A violation of this section is considered to be committed in the State for purposes of determining jurisdiction if the solicitation:

- (1) originated in the State; or
- (2) is received in the State.

(d) Penalty. -- A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$ 25,000 or both

**MD. CODE ANN., CRIM. LAW § 11-207 (2010). Child pornography**

(a) Prohibited. -- 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) Penalty. -- 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) Evidence. --

(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.

## **MASSACHUSETTS**

### **MASS. GEN. LAWS ch. 265, § 26C (2010). Enticement of Children.**

(a) As used in this section, the term "entice" shall mean to lure, induce, persuade, tempt, incite, solicit, coax or invite.

(b) Any one who entices a child under the age of 16, or someone he believes to be a child under the age of 16, to enter, exit or remain within any vehicle, dwelling, building, or other outdoor space with the intent that he or another person will violate section 13B, 13F, 13H, 22, 22A, 23, 24 or 24B of chapter 265, section 4A, 16, 28, 29, 29A, 29B, 29C, 35A, 53 or 53A of chapter 272, or any offense that has as an element the use or attempted use of force, shall be punished by imprisonment in the state prison for not more than 5 years, or in the house of correction for not more than 2 1/2 years, or by both imprisonment and a fine of not more than \$5,000.

### **MASS. GEN. LAWS ch. 272, § 29A (2010). Child Pornography; Enticement, Solicitation, Employment, Etc. of Children.**

(a) Whoever, either with knowledge that a person is a child under eighteen years of age or while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, and with lascivious intent, hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child to pose or be exhibited in a state of nudity, for the purpose of representation or reproduction in any visual material, shall be punished by imprisonment in the state prison for a term of not less than ten nor more than twenty years, or by a fine of not less than ten thousand nor more than fifty thousand dollars, or by both such fine and imprisonment.

(b) Whoever, either with knowledge that a person is a child under eighteen years of age or while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child to participate or engage in any act that depicts, describes, or represents sexual conduct for the purpose of representation or reproduction in any visual material, or to engage in any live performance involving sexual conduct, shall be punished by imprisonment in the state prison for a term of not less than ten nor more than twenty years, or by a fine of not less than ten thousand nor more than fifty thousand dollars, or by both such fine and imprisonment.

(c) In a prosecution under this section, a minor shall be deemed incapable of consenting to any conduct of the defendant for which said defendant is being prosecuted.

(d) For the purposes of this section, the determination whether the person in any visual material prohibited hereunder is under eighteen years of age may be made by the personal testimony of such person, by the testimony of a person who produced, processed, published, printed or manufactured such visual material that the child therein was known to him to be under eighteen years of age, or by expert medical testimony as to the age of the person based upon the person's

physical appearance, by inspection of the visual material, or by any other method authorized by any general or special law or by any applicable rule of evidence.

## **MICHIGAN**

### **MICH. COMP. LAWS § 750.145a (2010). Accosting, enticing or soliciting child for immoral purpose.**

Sec. 145a. A person who accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$4,000.00, or both.

### **MICH. COMP. LAWS § 750.145d (2010). Use of internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions.**

(1) A person shall not use the internet or a computer, computer program, computer network, or computer system to communicate with any person for the purpose of doing any of the following:

(a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a, 145c, 157c, 349, 350, 520b, 520c, 520d, 520e, or 520g, or section 5 of 1978 PA 33, MCL 722.675, in which the victim or intended victim is a minor or is believed by that person to be a minor.

(b) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 411h or 411i.

(c) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under chapter XXXIII or section 327, 327a, 328, or 411a(2).

(2) A person who violates this section is guilty of a crime as follows:

(a) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of less than 1 year, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

(b) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 1 year or more but less than 2 years, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(c) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 2 years or more but less than 4 years, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(d) If the underlying crime is a felony with a maximum term of imprisonment of 4 years or more but less than 10 years, the person is guilty of a felony punishable by imprisonment for not

more than 10 years or a fine of not more than \$5,000.00, or both.

(e) If the underlying crime is a felony punishable by a maximum term of imprisonment of 10 years or more but less than 15 years, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(f) If the underlying crime is a felony punishable by a maximum term of imprisonment of 15 years or more or for life, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.

(3) The court may order that a term of imprisonment imposed under this section be served consecutively to any term of imprisonment imposed for conviction of the underlying offense.

(4) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section, including the underlying offense.

(5) This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

(6) A violation or attempted violation of this section occurs if the communication originates in this state, is intended to terminate in this state, or is intended to terminate with a person who is in this state.

(7) A violation or attempted violation of this section may be prosecuted in any jurisdiction in which the communication originated or terminated.

(8) The court may order a person convicted of violating this section to reimburse this state or a local unit of government of this state for expenses incurred in relation to the violation in the same manner that expenses may be ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.

(9) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(f) "Internet" means that term as defined in section 230 of title II of the communications act of 1934, chapter 652, 110 Stat. 137, 47 U.S.C. 230.

(g) "Minor" means an individual who is less than 18 years of age.

## **MINNESOTA**

### **MINN. STAT. § 609.352 (2009). Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children**

#### Subdivision 1. Definitions.

As used in this section:

- (a) "child" means a person 15 years of age or younger;
- (b) "sexual conduct" means sexual contact of the individual's primary genital area, sexual penetration as defined in section 609.341, or sexual performance as defined in section 617.246; and
- (c) "solicit" means commanding, entreating, or attempting to persuade a specific person in person, by telephone, by letter, or by computerized or other electronic means.

#### Subd. 2. Prohibited act.

A person 18 years of age or older who solicits a child or someone the person reasonably believes is a child to engage in sexual conduct with intent to engage in sexual conduct is guilty of a felony and may be sentenced as provided in subdivision 4.

#### Subd. 2a. Internet or computer solicitation of children.

A person 18 years of age or older who uses the Internet or a computer, computer program, computer network, or computer system to commit any of the following acts, with the intent to arouse the sexual desire of any person, is guilty of a felony and may be sentenced as provided in subdivision 4:

- (1) soliciting a child or someone the person reasonably believes is a child to engage in sexual conduct;
- (2) engaging in communication relating to or describing sexual conduct with a child or someone the person reasonably believes is a child; or
- (3) distributing any material, language, or communication, including a photographic or video image, that relates to or describes sexual conduct to a child or someone the person reasonably believes is a child.

#### Subd. 2b. Jurisdiction.

A person may be convicted of an offense under subdivision 2a if the transmission that constitutes the offense either originates within this state or is received within this state.

#### Subd. 3. Defenses.

- (a) Mistake as to age is not a defense to a prosecution under this section.

(b) The fact that an undercover operative or law enforcement officer was involved in the detection or investigation of an offense under this section does not constitute a defense to a prosecution under this section.

Subd. 4. Penalty.

A person convicted under subdivision 2 or 2a is guilty of a felony and may be sentenced to imprisonment for not more than three years, or to payment of a fine of not more than \$5,000, or both.

## **MISSISSIPPI**

### **MISS. CODE ANN. § 97-5-27 (2010). Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age in sexual contact**

(1) Any person who intentionally and knowingly disseminates sexually oriented material to any person under eighteen (18) years of age shall be guilty of a misdemeanor and upon conviction shall be fined for each offense not less than Five Hundred Dollars (\$ 500.00) nor more than Five Thousand Dollars (\$ 5,000.00) or be imprisoned for not more than one (1) year in the county jail, or be punished by both such fine and imprisonment. A person disseminates sexually oriented material within the meaning of this section if he:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any sexually oriented writing, picture, record or other representation or embodiment that is sexually oriented; or

(b) Presents or directs a sexually oriented play, dance or other performance or participates directly in that portion thereof which makes it sexually oriented; or

(c) Exhibits, presents, rents, sells, delivers or provides, or offers or agrees to exhibit, present, rent or to provide any sexually oriented still or motion picture, film, filmstrip or projection slide, or sound recording, sound tape or sound track or any matter or material of whatever form which is a representation, embodiment, performance or publication that is sexually oriented.

(2) For purposes of this section, any material is sexually oriented if the material contains representations or descriptions, actual or simulated, of masturbation, sodomy, excretory functions, lewd exhibition of the genitals or female breasts, sadomasochistic abuse (for the purpose of sexual stimulation or gratification), homosexuality, lesbianism, bestiality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.

(3) (a) A person is guilty of computer luring when:

(i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output, examination or transfer of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person under the age of eighteen (18); and

(ii) By means of such communication he importunes, invites or induces a person under the age of eighteen (18) years to engage in sexual intercourse, deviant sexual intercourse or sexual contact with him, or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit.

(b) A person who engages in the conduct proscribed by this subsection (3) is presumed to do so with knowledge of the character and content of the material.

(c) In any prosecution for computer luring, it shall be a defense that:

(i) The defendant made a reasonable effort to ascertain the true age of the minor and was unable to do so as a result of actions taken by the minor; or

(ii) The defendant has taken, in good faith, reasonable, effective and appropriate actions under the circumstances to restrict or prevent access by minors to the materials prohibited, which may involve any appropriate measures to restrict minors from access to such communications, including any method which is feasible under available technology; or

(iii) The defendant has restricted access to such materials by requiring use of a verified credit card, debit account, adult access code or adult personal identification number; or

(iv) The defendant has in good faith established a mechanism such that the labeling, segregation or other mechanism enables such material to be automatically blocked or screened by software or other capabilities reasonably available to responsible adults wishing to effect such blocking or screening and the defendant has not otherwise solicited minors not subject to such screening or blocking capabilities to access that material or to circumvent any such screening or blocking.

(d) In any prosecution for computer luring:

(i) No person shall be held to have violated this subsection (3) solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software or other related capabilities that are incidental to providing such access or connection that do not include the creation of the content of the communication.

(ii) No employer shall be held liable for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency or the employer, having knowledge of such conduct, authorizes or ratifies such conduct, or recklessly disregards such conduct.

(iii) The limitations provided by this paragraph (d) shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate such provisions, or who knowingly advertises the availability of

such communications, nor to a person who provides access or connection to a facility, system or network engaged in the violation of such provisions that is owned or controlled by such person.

(e) Computer luring is a felony, and any person convicted thereof shall be punished by commitment to the custody of the Department of Corrections for a term not to exceed three (3) years and by a fine not to exceed Ten Thousand Dollars (\$ 10,000.00).

**MISS. CODE ANN. § 97-5-31 (2010). Exploitation of children; definitions**

As used in Sections 97-5-33 through 97-5-37, the following words and phrases shall have the meanings given to them in this section:

(a) "Child" means any individual who has not attained the age of eighteen (18) years.

(b) "Sexually explicit conduct" means actual or simulated:

(i) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(ii) Bestiality;

(iii) Masturbation;

(iv) Sadistic or masochistic abuse;

(v) Lascivious exhibition of the genitals or pubic area of any person; or

(vi) Fondling or other erotic touching of the genitals, pubic area, buttocks, anus or breast.

(c) "Producing" means producing, directing, manufacturing, issuing, publishing or advertising.

(d) "Visual depiction" includes without limitation developed or undeveloped film and video tape or other visual unaltered reproductions by computer.

(e) "Computer" has the meaning given in Title 18, United States Code, Section 1030.

(f) "Simulated" means any depicting of the genitals or rectal areas that gives the appearance of sexual conduct or incipient sexual conduct.

**MISS. CODE ANN. § 97-5-33 (2010). Exploitation of children; prohibitions**

(1) No person shall, by any means including computer, cause, solicit or knowingly permit any child to engage in sexually explicit conduct or in the simulation of sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(2) No person shall, by any means including computer, photograph, film, video tape or otherwise depict or record a child engaging in sexually explicit conduct or in the simulation of sexually



explicit conduct.

(3) No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(4) No person shall, by any means including computer, receive with intent to distribute, distribute for sale, sell or attempt to sell in any manner any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(5) No person shall, by any means including computer, possess any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(6) No person shall, by any means including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce, or order a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct.

(7) No person shall by any means, including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce or order a child to produce any visual depiction of adult sexual conduct or any sexually explicit conduct.

(8) The fact that an undercover operative or law enforcement officer posed as a child or was involved in any other manner in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

(9) For purposes of determining jurisdiction, the offense is committed in this state if all or part of the conduct described in this section occurs in the State of Mississippi or if the transmission that constitutes the offense either originates in this state or is received in this state.

## **MISSOURI**

### **MO. REV. STAT. § 566.103 (2010). Crime of promoting on-line sexual solicitation, violation, penalty**

1. A person or entity commits the offense of promoting on-line sexual solicitation if such person or entity knowingly permits a web-based classified service owned or operated by such person or entity to be used by individuals to post advertisements promoting prostitution, enticing a child to engage in sexual conduct, or promoting sexual trafficking of a child after receiving notice under this section.

2. As used in this section, the term "web-based classified service" means a person or entity in whose name a specific URL or Internet domain name is registered which has advertisements for goods and services or personal advertisements.

3. An advertisement may be deemed to promote prostitution, entice a child to engage in sexual conduct, or promote sexual trafficking of a child, if the content of such advertisement would be interpreted by a reasonable person as offering to exchange sexual conduct for goods or services in

violation of chapter 567, RSMo, as seeking a child for the purpose of sexual conduct or commercial sex act, or as offering a child as a participant in sexual conduct or commercial sex act in violation of section 566.151, 566.212, or 566.213.

4. It shall be prima facie evidence that a person or entity acts knowingly if an advertisement is not removed from the web-based classified service within seventy-two hours of that person or entity being notified that an advertisement has been posted on that service which is prohibited under this section.

5. Notice under this section may be provided by certified mail or facsimile transmission by the attorney general or any prosecuting attorney or circuit attorney.

6. A violation of this section shall be a felony, punishable by a fine in the amount of five thousand dollars per day that the advertisement remains posted on the web-based classified service after seventy-two hours of when notice has been provided pursuant to this section.

7. Original jurisdiction for prosecution of a violation of this section shall be with the local prosecuting attorney or circuit attorney.

**MO. REV. STAT. § 566.151 (2010). Enticement of a child, penalties**

1. A person at least twenty-one years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the Internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct.

2. It is not an affirmative defense to a prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.

3. Enticement of a child or an attempt to commit enticement of a child is a felony for which the authorized term of imprisonment shall be not less than five years and not more than thirty years. No person convicted under this section shall be eligible for parole, probation, conditional release, or suspended imposition or execution of sentence for a period of five calendar years.

**MO. REV. STAT. § 566.153 (2010). Age misrepresentation, crime of -- penalty**

1. A person commits the crime of age misrepresentation with intent to solicit a minor when he or she knowingly misrepresents his or her age with the intent to use the Internet to engage in criminal sexual conduct involving a minor.

2. Age misrepresentation with intent to solicit a minor is a class D felony.

## **MONTANA**

### **MONT. CODE ANN. § 45-5-625 (2010). Sexual abuse of children.**

- (1) A person commits the offense of sexual abuse of children if the person:
- (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;
  - (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;
  - (c) knowingly, by any means of communication, including electronic communication, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;
  - (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;
  - (e) knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;
  - (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections;
  - (g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;
  - (h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated; or
  - (i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the intention of engaging in sexual conduct, actual or simulated.
- (2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$ 10,000.
- (b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$ 10,000.
- (c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$ 10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$ 50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) As used in this section, the following definitions apply:

(a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) "Sexual conduct" means:

(i) actual or simulated:

(A) sexual intercourse, whether between persons of the same or opposite sex;

(B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(C) bestiality;

(D) masturbation;

(E) sadomasochistic abuse;

(F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or

(G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

(ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(d) "Visual medium" means:

(i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

## **NEBRASKA**

### **NEB. REV. STAT. § 28-320.02 (2010). Sexual assault; use of electronic communication device; prohibited acts; penalties**

(1) No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of a computer as that term is defined in section 28-1343, to engage in an act which would be in violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320. A person shall not be convicted of both a violation of this subsection and a violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320 if the violations arise out of the same set of facts or pattern of conduct and the individual solicited, coaxed, enticed, or lured under this subsection is also the victim of the sexual assault under section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320.

### **NEB. REV. STAT. § 28-833 (2010). Electronic communication device; penalty.**

(1) A person commits the offense of enticement by electronic communication device if he or she is nineteen years of age or over and knowingly and intentionally utilizes an electronic communication device to contact a child under sixteen years of age or a peace officer who is believed by such person to be a child under sixteen years of age and in so doing:

(a) Uses or transmits any indecent, lewd, lascivious, or obscene language, writing, or sound;

(b) Transmits or otherwise disseminates any visual depiction of sexually explicit conduct as defined in section 28-1463.02; or

(c) Offers or solicits any indecent, lewd, or lascivious act.

(2) Enticement by electronic communication device is a Class IV felony.

(3) Enticement by electronic communication device is deemed to have been committed either at the place where the communication was initiated or where it was received.

(4) For purposes of this section, electronic communication device means any device which, in its ordinary and intended use, transmits by electronic means writings, sounds, visual images, or data of any nature to another electronic communication device.

## **NEVADA**

### **NEV. REV. STAT. § 201.195 (2009). Solicitation of minor to engage in acts constituting crime against nature; penalties.**

1. A person who incites, entices or solicits a minor to engage in acts which constitute the infamous crime against nature:

(a) If the minor actually engaged in such acts as a result and:

(1) The minor was less than 14 years of age, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served.

(2) The minor was 14 years of age or older, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served.

(b) If the minor did not engage in such acts:

(1) For the first offense, is guilty of a gross misdemeanor.

(2) For any subsequent offense, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served.

2. As used in this section, the "infamous crime against nature" means anal intercourse, cunnilingus or fellatio between natural persons of the same sex. Any sexual penetration, however slight, is sufficient to complete the infamous crime against nature.

### **NEV. REV. STAT. § 201.560 (2009). Definitions; exception; penalties.**

1. Except as otherwise provided in subsection 3, a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with:

(a) A child who is less than 16 years of age and who is at least 5 years younger than the person with the intent to persuade, lure or transport the child away from his home or from any location

known to his parent or guardian or other person legally responsible for the child to a place other than where the child is located, for any purpose:

(1) Without the express consent of the parent or guardian or other person legally responsible for the child; and

(2) With the intent to avoid the consent of the parent or guardian or other person legally responsible for the child; or

(b) Another person whom he believes to be a child who is less than 16 years of age and at least 5 years younger than he is, regardless of the actual age of that other person, with the intent to persuade or lure the person to engage in sexual conduct.

2. Except as otherwise provided in subsection 3, a person commits the crime of luring a person with mental illness if he knowingly contacts or communicates with a person with mental illness with the intent to persuade, lure or transport the person with mental illness away from his home or from any location known to any person legally responsible for the person with mental illness to a place other than where the person with mental illness is located:

(a) For any purpose that a reasonable person under the circumstances would know would endanger the health, safety or welfare of the person with mental illness;

(b) Without the express consent of the person legally responsible for the person with mental illness; and

(c) With the intent to avoid the consent of the person legally responsible for the person with mental illness.

3. The provisions of this section do not apply if the contact or communication is made or attempted with the intent to prevent imminent bodily, emotional or psychological harm to the child, person believed to be a child or person with mental illness.

4. A person who violates or attempts to violate the provisions of this section through the use of a computer, system or network:

(a) With the intent to engage in sexual conduct with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental illness to engage in sexual conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000;

(b) By providing the child, person believed to be a child or person with mental illness with material that is harmful to minors or requesting the child, person believed to be a child or person with mental illness to provide the person with material that is harmful to minors, is guilty of a category C felony and shall be punished as provided in NRS 193.130; or

(c) If paragraph (a) or (b) does not apply, is guilty of a gross misdemeanor.

5. A person who violates or attempts to violate the provisions of this section in a manner other than through the use of a computer, system or network:

(a) With the intent to engage in sexual conduct with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental illness to engage in sexual conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years and may be further punished by a fine of not more than \$10,000;

(b) By providing the child, person believed to be a child or person with mental illness with material that is harmful to minors or requesting the child, person believed to be a child or person with mental illness to provide the person with material that is harmful to minors, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years and may be further punished by a fine of not more than \$10,000; or

(c) If paragraph (a) or (b) does not apply, is guilty of a gross misdemeanor.

6. As used in this section:

(a) "Computer" has the meaning ascribed to it in NRS 205.4735.

(b) "Harmful to minors" has the meaning ascribed to it in NRS 201.257.

(c) "Material" means anything that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.

(d) "Network" has the meaning ascribed to it in NRS 205.4745.

(e) "Person with mental illness" means a person who has any mental dysfunction leading to impaired ability to maintain himself and to function effectively in his life situation without external support.

(f) "Sexual conduct" has the meaning ascribed to it in NRS 201.520.

(g) "System" has the meaning ascribed to it in NRS 205.476.

## **NEW HAMPSHIRE**

### **N.H. REV. STAT. ANN. § 649-B:2 (2010). Definition.**

In this chapter, "child" means any person under the age of 16 years.

### **N.H. REV. STAT. ANN. § 649-B:3 (2010). Computer Pornography Prohibited.**

I. No person shall knowingly:

(a) Compile, enter into, or transmit by means of computer;



(b) Make, print, publish, or reproduce by other computerized means;

(c) Cause or allow to be entered into or transmitted by means of computer; or

(d) Buy, sell, receive, exchange, or disseminate by means of computer, any notice, statement, or advertisement, or any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information, for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any child, or the visual depiction of such conduct.

II. Any person who violates the provisions of this section is guilty of a class B felony.

**N.H. REV. STAT. ANN. § 649-B:4 (2010). Certain Uses of Computer Services Prohibited.**

I. No person shall knowingly utilize a computer on-line service, internet service, or local bulletin board service to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to commit any of the following:

(a) Any offense under RSA 632-A, relative to sexual assault and related offenses.

(b) Indecent exposure and lewdness under RSA 645:1.

(c) Endangering a child as defined in RSA 639:3, III.

II. (a) A person who violates the provisions of paragraph I shall be guilty of a class A felony if such person believed the child was under the age of 13, otherwise such person shall be guilty of a class B felony.

(b) A person convicted under paragraph I based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction shall be charged as a class A felony. If the indictment also alleges that the person believed that the child was under the age of 13, the person may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 10 years.

(c) If the person has been previously convicted 2 or more times for an offense under this section or a reasonably equivalent statute in another state, the person may be sentenced to a maximum term not to exceed 30 years.

III. It shall not be a defense to a prosecution under this section that the victim was not actually a child so long as the person reasonably believed that the victim was a child.

**N.H. REV. STAT. ANN. § 649-B:5 (2010). Owners or Operators of Computer Services Liable.**

I. It shall be a class A misdemeanor for any owner or operator of a computer on-line service, Internet service, or local bulletin board service knowingly to permit a subscriber to utilize the service to commit a violation of this chapter.

II. Any out-of-state computer service company doing business in New Hampshire which receives a subpoena from the state of New Hampshire resulting from an investigation of a violation of this chapter shall respond to such subpoena within 14 days. Failure to respond may result in the suspension or revocation of such company's right to do business in New Hampshire.

## **NEW JERSEY**

### **N.J. STAT. ANN. § 2C:13-6 (2010). Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment; definitions**

a. A person commits a crime of the second degree if he attempts, via electronic or any other means, to lure or entice a child or one who he reasonably believes to be a child into a motor vehicle, structure or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

b. As used in this section:

"Child" means a person less than 18 years old.

"Electronic means" includes, but is not limited to, the Internet, which shall have the meaning set forth in N.J.S.2C:24-4.

"Structure" means any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

c. Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for attempted kidnapping under the provisions of N.J.S.2C:13-1.

d. A person convicted of a second or subsequent offense under this section shall be sentenced to a term of imprisonment. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6, the term of imprisonment shall include, unless the person is sentenced pursuant to the provisions of N.J.S.2C:43-7, a mandatory minimum term of one-third to one-half of the sentence imposed, or three years, whichever is greater, during which time the defendant shall not be eligible for parole. If the person is sentenced pursuant to N.J.S.2C:43-7, the court shall impose a minimum term of one-third to one-half of the sentence imposed, or five years, whichever is greater. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section.

For the purposes of this section, an offense is considered a second or subsequent offense if the actor has at any time been convicted pursuant to this section, or under any similar statute of the United States, this State or any other state for an offense that is substantially equivalent to this section.

e. A person convicted of an offense under this section who has previously been convicted of a violation of N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-3 or N.J.S.2C:24-4 shall be sentenced to a term of imprisonment. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6, the term of imprisonment shall include, unless the person is sentenced pursuant to the provisions of N.J.S.2C:43-7, a mandatory minimum term of five years, during which time the defendant shall not be eligible for parole. The court may not suspend or make any other non-custodial disposition of any person sentenced pursuant to this section.

For the purposes of this subsection, an offense is considered a previous conviction of N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-3 or N.J.S.2C:24-4 if the actor has at any time been convicted under any of these sections or under any similar statute of the United States, this State or any other state for an offense that is substantially equivalent to any of these sections.

f. Notwithstanding the provisions of N.J.S.2C:1-8 or any other law, a conviction under this section shall not merge with a conviction of any other criminal offense, nor shall such other conviction merge with a conviction under this section, and the court shall impose separate sentences upon each violation of this section and any other criminal offense. The court may not suspend or make any other non-custodial disposition of any person sentenced pursuant to this section.

## **NEW MEXICO**

### **N.M. STAT. § 30-9-1 (2010). Enticement of child**

Enticement of child consists of:

A. enticing, persuading or attempting to persuade a child under the age of sixteen years to enter any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 [[30-9-1 to 30-9-9 NMSA](#) 1978] of the Criminal Code; or

B. having possession of a child under the age of sixteen years in any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 of the Criminal Code.

Whoever commits enticement of child is guilty of a misdemeanor.

### **N.M. STAT. § 30-37-3.2 (2010). Child solicitation by electronic communication device**

A. Child solicitation by electronic communication device consists of a person knowingly and intentionally soliciting a child under sixteen years of age, by means of an electronic communication device, to engage in sexual intercourse, sexual contact or in a sexual or obscene

performance, or to engage in any other sexual conduct when the perpetrator is at least four years older than the child.

B. Whoever commits child solicitation by electronic communication device is guilty of a:

- (1) fourth degree felony if the child is at least thirteen but under sixteen years of age; or
- (2) third degree felony if the child is under thirteen years of age.

C. Whoever commits child solicitation by electronic communication device and also appears for, attends or is present at a meeting that the person arranged pursuant to the solicitation is guilty of a:

- (1) third degree felony if the child is at least thirteen but under sixteen years of age; or
- (2) second degree felony if the child is under thirteen years of age.

D. In a prosecution for child solicitation by electronic communication device, it is not a defense that the intended victim of the defendant was a peace officer posing as a child under sixteen years of age.

E. For purposes of determining jurisdiction, child solicitation by electronic communication device is committed in this state if an electronic communication device transmission either originates or is received in this state.

F. As used in this section, "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, cellular telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.

## **NEW YORK**

### **N.Y. PENAL LAW § 120.70 (2010). Luring a child**

1. A person is guilty of luring a child when he or she lures a child into a motor vehicle, aircraft, watercraft, isolated area, building, or part thereof, for the purpose of committing against such child any of the following offenses: an offense as defined in section 70.02 of this chapter; an offense as defined in section 125.25 or 125.27 of this chapter; a felony offense that is a violation of article one hundred thirty of this chapter; an offense as defined in section 135.25 of this chapter; an offense as defined in sections 230.30, 230.33 or 230.34 of this chapter; an offense as defined in sections 255.25, 255.26, or 255.27 of this chapter; or an offense as defined in sections 263.05, 263.10, or 263.15 of this chapter. For purposes of this subdivision "child" means a person less than seventeen years of age. Nothing in this section shall be deemed to preclude, if the evidence warrants, a conviction for the commission or attempted commission of any crime, including but not limited to a crime defined in article one hundred thirty-five of this chapter.

2. Luring a child is a class E felony, provided, however, that if the underlying offense the actor intended to commit against such child constituted a class A or a class B felony, then the offense

of luring a child in violation of this section shall be deemed respectively, a class C felony or class D felony.

**N.Y. PENAL LAW § 235.20 (2010). Disseminating indecent material to minors; definitions of terms**

The following definitions are applicable to sections 235.21, 235.22, 235.23 and 235.24 of this article:

1. "Minor" means any person less than seventeen years old.
2. "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.
3. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.
4. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
5. "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
6. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:
  - (a) Considered as a whole, appeals to the prurient interest in sex of minors; and
  - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
  - (c) Considered as a whole, lacks serious literary, artistic, political and scientific value for minors.
7. The term "access software" means software (including client or server software) or enabling tools that do not create or provide the content of the communication but that allow a user to do any one or more of the following:
  - (a) filter, screen, allow or disallow content;
  - (b) pick, choose, analyze or digest content; or
  - (c) transmit, receive, display, forward, cache, search, subset, organize, reorganize or translate content.

**N.Y. PENAL LAW § 235.21 (2010). Disseminating indecent material to minors in the second degree**

*Construed Unconstitutional in whole or part by American Libraries Ass'n v. Pataki, 969 F. Supp. 160, 1997 U.S. Dist. LEXIS 8793, 25 Media L. Rep. (BNA) 2217 (S.D.N.Y. 1997)*

A person is guilty of disseminating indecent material to minors in the second degree when:

1. With knowledge of its character and content, he sells or loans to a minor for monetary consideration:
  - (a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors; or
  - (b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) hereof, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors; or
2. Knowing the character and content of a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he:
  - (a) Exhibits such motion picture, show or other presentation to a minor for a monetary consideration; or
  - (b) Sells to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such motion picture, show or other presentation; or
  - (c) Admits a minor for a monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture show or other presentation; or
3. Knowing the character and content of the communication which, in whole or in part, depicts actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he intentionally uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor.

Disseminating indecent material to minors in the second degree is a class E felony.

**N.Y. PENAL LAW § 235.22 (2010). Disseminating indecent material to minors in the first degree**

*Construed Unconstitutional in whole or part by People v. Barrows, 177 Misc. 2d 712, 677 N.Y.S.2d 672, 1998 N.Y. Misc. LEXIS 332 (N.Y. Sup. Ct. 1998)*

A person is guilty of disseminating indecent material to minors in the first degree when:

1. knowing the character and content of the communication which, in whole or in part, depicts or describes, either in words or images actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he intentionally uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor; and

2. by means of such communication he importunes, invites or induces a minor to engage in sexual intercourse, [fig 1] oral sexual conduct or anal sexual conduct, or sexual contact with him, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his benefit.

Disseminating indecent material to minors in the first degree is a class D felony.

## **NORTH CAROLINA**

### **N.C. GEN. STAT. § 14-202.3 (2010). Solicitation of child by computer to commit an unlawful sex act**

(a) Offense. -- A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer, a child who is less than 16 years of age and at least 3 years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least 3 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. Consent is not a defense to a charge under this section.

(b) Jurisdiction. -- The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(c) Punishment. -- A violation of this section is punishable as follows:

(1) A violation is a Class H felony except as provided by subdivision (2) of this subsection.

(2) If either the defendant, or any other person for whom the defendant was arranging the meeting in violation of this section, actually appears at the meeting location, then the violation is a Class G felony.

### **N.C. GEN. STAT. § 14-190.16 (2010). First degree sexual exploitation of a minor**

(a) Offense. -- A person commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:

(1) Uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(2) Permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(3) Transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(4) Records, photographs, films, develops, or duplicates for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

(b) Inference. -- In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations, or otherwise represents or depicts as a minor is a minor.

(c) Mistake of Age. -- Mistake of age is not a defense to a prosecution under this section.

(d) Punishment and Sentencing. -- Violation of this section is a Class C felony.

## **NORTH DAKOTA**

### **N.D. CENT. CODE § 12.1-20-05 (2010). Corruption or solicitation of minors.**

1. An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with a minor, is guilty of a class A misdemeanor if the victim is a minor fifteen years of age or older.

2. An adult who solicits with the intent to engage in a sexual act with a minor under age fifteen or engages in or causes another to engage in a sexual act when the adult is at least twenty-two years of age and the victim is a minor fifteen years of age or older, is guilty of a class C felony.

3. An adult who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. An adult who commits a violation of subsection 2 within fifty feet [15.24 meter] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.

### **N.D. CENT. CODE § 12.1-20-05.1 (2010). Luring minors by computer or other electronic means.**

1. An adult is guilty of luring minors by computer or other electronic means when:

a. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of data or programs from one computer or electronic device to another to initiate or engage in such communication with a person the adult believes to be a minor; and

b. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.



2. A violation of this section is a class A misdemeanor if the adult is less than twenty-two years of age and reasonably believes the minor is age fifteen to seventeen. If the adult is less than twenty-two years of age and reasonably believes the minor is under age fifteen, or the adult is twenty-two years of age or older and the adult reasonably believes the minor is age fifteen to seventeen, violation of this section is a class C felony. If the adult is twenty-two years of age or older and the adult reasonably believes the minor is under the age of fifteen, violation of this section is a class B felony. The court shall sentence an adult convicted of a class B or class C felony under this section to serve a term of imprisonment of at least one year, except the court may sentence an individual to less than one year if the individual did not take a substantial step toward meeting with the minor.

3. The attorney general may issue an administrative subpoena compelling an internet service provider or cellular phone company to provide subscriber information to a law enforcement agency investigating a possible violation of this section.

## **OHIO**

### **OHIO REV. CODE ANN. § 2905.05 (2010). Criminal child enticement**

(A) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure any child under fourteen years of age to accompany the person in any manner, including entering into any vehicle or onto any vessel, whether or not the offender knows the age of the child, if both of the following apply:

(1) The actor does not have the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity.

(2) The actor is not a law enforcement officer, medic, firefighter, or other person who regularly provides emergency services, and is not an employee or agent of, or a volunteer acting under the direction of, any board of education, or the actor is any of such persons, but, at the time the actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity.

(B) No person, with a sexual motivation, shall violate division (A) of this section.

(C) It is an affirmative defense to a charge under division (A) of this section that the actor undertook the activity in response to a bona fide emergency situation or that the actor undertook the activity in a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(D) Whoever violates this section is guilty of criminal child enticement, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, section 2907.02 or 2907.03 or former section 2907.12 of the Revised Code, or section 2905.01 or 2907.05 of the Revised Code when the victim of that prior offense was under seventeen years of age at the time of the offense, criminal child enticement is a felony of the fifth degree.

(E) As used in this section:

- (1) "Sexual motivation" has the same meaning as in section 2971.01 of the Revised Code.
- (2) "Vehicle" has the same meaning as in section 4501.01 of the Revised Code.
- (3) "Vessel" has the same meaning as in section 1547.01 of the Revised Code.

**OHIO REV. CODE ANN. § 2907.07 (2010). Importuning**

*Construed Unconstitutional in whole or part by: State v. Tooley, 2005 Ohio 6709, 2005 Ohio App. LEXIS 6032 (Ohio Ct. App., Portage County Dec. 16, 2005)*

(A) No person shall solicit a person who is less than thirteen years of age to engage in sexual activity with the offender, whether or not the offender knows the age of such person.

(B) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, and the other person is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of the other person.

(C) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

(1) The other person is less than thirteen years of age, and the offender knows that the other person is less than thirteen years of age or is reckless in that regard.

(2) The other person is a law enforcement officer posing as a person who is less than thirteen years of age, and the offender believes that the other person is less than thirteen years of age or is reckless in that regard.

(D) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

(1) The other person is thirteen years of age or older but less than sixteen years of age, the offender knows that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the other person.

(2) The other person is a law enforcement officer posing as a person who is thirteen years of age or older but less than sixteen years of age, the offender believes that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement officer assumes in posing as the person who is thirteen years of age or older but less than sixteen years of age.

(E) Divisions (C) and (D) of this section apply to any solicitation that is contained in a transmission via a telecommunications device that either originates in this state or is received in this state.

(F) (1) Whoever violates this section is guilty of importuning.

(2) Except as otherwise provided in this division, a violation of division (A) or (C) of this section is a felony of the third degree on a first offense, and, notwithstanding division (C) of section 2929.13 of the Revised Code, there is a presumption that a prison term shall be imposed as described in division (D) of section 2929.13 of the Revised Code. If the offender previously has been convicted of a sexually oriented offense or a child-victim oriented offense, a violation of division (A) or (C) of this section is a felony of the second degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the second degree.

(3) A violation of division (B) or (D) of this section is a felony of the fifth degree on a first offense, and, notwithstanding division (B) of section 2929.13 of the Revised Code, there is a presumption that a prison term shall be imposed as described in division (D) of section 2929.13 of the Revised Code. If the offender previously has been convicted of a sexually oriented offense or a child-victim oriented offense, a violation of division (B) or (D) of this section is a felony of the fourth degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the fourth degree that is not less than twelve months in duration.

## **OKLAHOMA**

### **OKLA. STAT. tit. 21, § 1021 (2010). Indecent exposure--Indecent exhibitions--Obscene material or child pornography--Solicitation of minors**

A. Every person who willfully and knowingly either:

1. Lewdly exposes his person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby;

2. Procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;

3. Writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, knowingly downloads on a computer, or exhibits any obscene material or child pornography; or

4. Makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any type of obscene material or child pornography,

shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Twenty Thousand Dollars (\$ 20,000.00) or by imprisonment for not less than thirty (30) days nor more than ten (10) years, or by both such fine and imprisonment.

B. Every person who:

1. Willfully solicits or aids a minor child to perform; or

2. Shows, exhibits, loans, or distributes to a minor child any obscene material or child pornography for the purpose of inducing said minor to participate in,

any act specified in paragraphs 1, 2, 3 or 4 of subsection A of this section shall be guilty of a felony, upon conviction, and shall be punished by imprisonment in the custody of the Department of Corrections for not less than ten (10) years nor more than thirty (30) years, except when the minor child is under twelve (12) years of age at the time the offense is committed, and in such case the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years.

C. Persons convicted under this section shall not be eligible for a deferred sentence.

D. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

E. For purposes of this section, "downloading on a computer" means electronically transferring an electronic file from one computer or electronic media to another computer or electronic media.

**OKLA. STAT. tit. 21 § 1040.13a (2010). Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor**

A. It is unlawful for any person to facilitate, encourage, offer or solicit sexual conduct with a minor, or other individual the person believes to be a minor, by use of any technology, or to engage in any communication for sexual or prurient interest with any minor, or other individual the person believes to be a minor, by use of any technology. For purposes of this subsection, "by use of any technology" means the use of any telephone or cell phone, computer disk (CD), digital video disk (DVD), recording or sound device, CD-ROM, VHS, computer, computer network or system, Internet or World Wide Web address including any blog site or personal web address, e-mail address, Internet Protocol address (IP), text messaging or paging device, any video, audio, photographic or camera device of any computer, computer network or system, cell phone, any other electrical, electronic, computer or mechanical device, or any other device capable of any transmission of any written or text message, audio or sound message, photographic, video, movie, digital or computer-generated image, or any other communication of any kind by use of an electronic device.

B. A person is guilty of violating the provisions of this section if the person knowingly transmits any prohibited communication by use of any technology defined herein, or knowingly prints, publishes or reproduces by use of any technology described herein any prohibited

communication, or knowingly buys, sells, receives, exchanges, or disseminates any prohibited communication or any information, notice, statement, website, or advertisement for communication with a minor or access to any name, telephone number, cell phone number, e-mail address, Internet address, text message address, place of residence, physical characteristics or other descriptive or identifying information of a minor, or other individual the person believes to be a minor.

C. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

D. Any violation of the provisions of this section shall be a felony, punishable by a fine in an amount not to exceed Ten Thousand Dollars (\$ 10,000.00), or by imprisonment in the custody of the Department of Corrections for a term of not more than ten (10) years, or by both such fine and imprisonment. For purposes of this section, each communication shall constitute a separate offense. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

E. For purposes of any criminal prosecution pursuant to any violation of this section, the person violating the provisions of this section shall be deemed to be within the jurisdiction of this state by the fact of accessing any computer, cellular phone or other computer-related or satellite-operated device in this state, regardless of the actual jurisdiction where the violator resides.

**OKLA. STAT. tit. 21 § 1123 (2010). Lewd or indecent proposals or acts as to child under 16 or person believed to be under 16--Sexual battery**

NOTICE: SECOND OF TWO VERSIONS OF THIS SECTION.

A. It is a felony for any person to knowingly and intentionally:

1. Make any oral, written or electronically or computer-generated lewd or indecent proposal to any child under sixteen (16) years of age, or other individual the person believes to be a child under sixteen (16) years of age, for the child to have unlawful sexual relations or sexual intercourse with any person; or

2. Look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or

3. Ask, invite, entice, or persuade any child under sixteen (16) years of age, or other individual the person believes to be a child under sixteen (16) years of age, to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or

4. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or

5. In a lewd and lascivious manner and for the purpose of sexual gratification:

a. urinate or defecate upon a child under sixteen (16) years of age,

b. ejaculate upon or in the presence of a child,

c. cause, expose, force or require a child to look upon the body or private parts of another person,

d. force or require any child under sixteen (16) years of age or other individual the person believes to be a child under sixteen (16) years of age, to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined by Sections 1024.1 and 1040.75 of this title,

e. cause, expose, force or require a child to look upon sexual acts performed in the presence of the child, or

f. force or require a child to touch or feel the body or private parts of said child or another person.

Any person convicted of any violation of this subsection shall be punished by imprisonment in the custody of the Department of Corrections for not less than three (3) years nor more than twenty (20) years, except when the child is under twelve (12) years of age at the time the offense is committed, and in such case the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years. The provisions of this subsection shall not apply unless the accused is at least three (3) years older than the victim. Any person convicted of a second or subsequent violation of this subsection shall be guilty of a felony punishable as provided in this subsection and shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this subsection shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, Section 888 of this title, sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or of any attempt to commit any of these offenses or any combination of convictions pursuant to these sections shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole.

B. No person shall commit sexual battery on any other person. "Sexual battery" shall mean the intentional touching, mauling or feeling of the body or private parts of any person sixteen (16) years of age or older, in a lewd and lascivious manner and without the consent of that person or when committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this

state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state.

C. Any person convicted of a violation of subsection B of this section shall be deemed guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years.

D. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

E. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

## **OREGON**

### **OR. REV. STAT. § 163.432 (2010). Online sexual corruption of a child in the second degree.**

(1) A person commits the crime of online sexual corruption of a child in the second degree if the person is 18 years of age or older and:

(a) For the purpose of arousing or gratifying the sexual desire of the person or another person, knowingly uses an online communication to solicit a child to engage in sexual contact or sexually explicit conduct; and

(b) Offers or agrees to physically meet with the child.

(2) Online sexual corruption of a child in the second degree is a Class C felony.

### **OR. REV. STAT. § 163.433 (2010). Online sexual corruption of a child in the first degree.**

(1) A person commits the crime of online sexual corruption of a child in the first degree if the person violates ORS 163.432 and intentionally takes a substantial step toward physically meeting with or encountering the child.

(2) Online sexual corruption of a child in the first degree is a Class B felony.

**OR. REV. STAT. § 163.434 (2010). Provisions applicable to online sexual corruption of a child.**

(1) It is an affirmative defense to a prosecution for online sexual corruption of a child in the first or second degree that the person was not more than three years older than the person reasonably believed the child to be.

(2) It is not a defense to a prosecution for online sexual corruption of a child in the first or second degree that the person was in fact communicating with a law enforcement officer, as defined in ORS 163.730, or a person working under the direction of a law enforcement officer, who is 16 years of age or older.

(3) Online sexual corruption of a child in the first or second degree is committed in either the county in which the communication originated or the county in which the communication was received.

**OR. REV. STAT. § 167.057 (2010). Luring of a minor**

(1) A person commits the crime of luring a minor if the person:

(a) Furnishes to, or uses with, a minor a visual representation or explicit verbal description or narrative account of sexual conduct; and

(b) Furnishes or uses the representation, description or account for the purpose of:

(A) Arousing or satisfying the sexual desires of the person or the minor; or

(B) Inducing the minor to engage in sexual conduct.

(2) A person is not liable to prosecution for violating subsection (1) of this section if the person furnishes or uses a representation, description or account of sexual conduct that forms merely an incidental part of an otherwise nonoffending whole and serves some purpose other than titillation.

(3) In a prosecution under subsection (1) of this section, it is an affirmative defense:

(a) That the representation, description or account was furnished or used for the purpose of psychological or medical treatment and was furnished by a treatment provider or by another person acting on behalf of the treatment provider;

(b) That the defendant had reasonable cause to believe that the person to whom the representation, description or account was furnished or with whom the representation, description or account was used was not a minor; or

(c) That the defendant was less than three years older than the minor at the time of the alleged offense.

(4) In a prosecution under subsection (1) of this section, it is not a defense that the person to whom the representation, description or account was furnished or with whom the representation,



description or account was used was not a minor but was a law enforcement officer posing as a minor.

(5) Luring a minor is a Class C felony.

## **PENNSYLVANIA**

### **18 PA. CONS. STAT. ANN. § 6318 (2010). Unlawful contact with minor**

(a) **OFFENSE DEFINED.**-- A person commits an offense if he is intentionally in contact with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:

(1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).

(2) Open lewdness as defined in section 5901 (relating to open lewdness).

(3) Prostitution as defined in section 5902 (relating to prostitution and related offenses).

(4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances).

(5) Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children).

(6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).

(b) **GRADING.**-- A violation of subsection (a) is:

(1) an offense of the same grade and degree as the most serious underlying offense in subsection (a) for which the defendant contacted the minor; or

(2) a felony of the third degree; whichever is greater.

(B.1) **CONCURRENT JURISDICTION TO PROSECUTE.**-- The Attorney General shall have concurrent prosecutorial jurisdiction with the district attorney for violations under this section and any crime arising out of the activity prohibited by this section when the person charged with a violation of this section contacts a minor through the use of a computer, computer system or computer network. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to prosecute the case, and,

if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(c) DEFINITIONS.-- As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Computer." An electronic, magnetic, optical, hydraulic, organic or other high-speed data processing device or system which performs logic, arithmetic or memory functions and includes all input, output, processing, storage, software or communication facilities which are connected or related to the device in a computer system or computer network.

"Computer network." The interconnection of two or more computers through the usage of satellite, microwave, line or other communication medium.

"Computer system." A set of related, connected or unconnected computer equipment, devices and software.

"Contacts." Direct or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or agency, through any print medium, the mails, a common carrier or communication common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.

"Minor." An individual under 18 years of age.

## **RHODE ISLAND**

### **R.I. GEN. LAWS § 11-37-8.8 (2010). Indecent solicitation of a child**

(a) A person is guilty of indecent solicitation of a child if he or she knowingly solicits another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution or in any act in violation of chapter 9, 34, or 37 of this title.

(b) As used in this section, the word "solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to, in person, over the phone, in writing, by computer, through the Internet, or by advertisement of any kind.

### **R.I. GEN. LAWS § 11-37-8.9 (2010). Penalty for indecent solicitation of a child**

Every person who shall commit indecent solicitation of a child shall be imprisoned for not less than five (5) years.

## **SOUTH CAROLINA**

### **S.C. CODE ANN. § 16-15-342 (2009). Criminal solicitation of a minor; defenses; penalties.**

(A) A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.

(B) Consent is a defense to a prosecution pursuant to this section if the person under the age of eighteen, or the person reasonably believed to be under the age of eighteen, is at least sixteen years old.

(C) Consent is not a defense to a prosecution pursuant to this section if the person under the age of eighteen, or the person reasonably believed to be under the age of eighteen, is under the age of sixteen.

(D) It is not a defense to a prosecution pursuant to this section, on the basis of consent or otherwise, that the person reasonably believed to be under the age of eighteen is a law enforcement agent or officer acting in an official capacity.

(E) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than ten years, or both.

### **S.C. CODE ANN. § 16-15-375 (2009). Definitions applicable to §§ 16-15-385 through 16-15-425.**

The following definitions apply to Section 16-15-385, disseminating or exhibiting to minors harmful material or performances; Section 16-15-387, employing a person under the age of eighteen years to appear in a state of sexually explicit nudity in a public place; Section 16-15-395, first degree sexual exploitation of a minor; Section 16-15-405, second degree sexual exploitation of a minor; Section 16-15-410, third degree sexual exploitation of a minor; Section 16-15-415, promoting prostitution of a minor; and Section 16-15-425, participating in prostitution of a minor.

(1) "Harmful to minors" means that quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:

(a) the average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and

(b) the average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

(c) to a reasonable person, the material or performance taken as a whole lacks serious literary, artistic, political, or scientific value for minors.

(2) "Material" means pictures, drawings, video recordings, films, digital electronic files, or other visual depictions or representations but not material consisting entirely of written words.

(3) "Minor" means an individual who is less than eighteen years old.

(4) "Prostitution" means engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) "Sexual activity" includes any of the following acts or simulations thereof:

(a) masturbation, whether done alone or with another human or animal;

(b) vaginal, anal, or oral intercourse, whether done with another human or an animal;

(c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;

(d) an act or condition that depicts bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(e) excretory functions;

(f) the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

(6) "Sexually explicit nudity" means the showing of:

(a) uncovered, or less than opaquely covered human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast; or

(b) covered human male genitals in a discernibly turgid state.

**S.C. CODE ANN. § 16-15-395 (2009). First degree sexual exploitation of a minor defined; presumptions; defenses; penalties.**

(A) An individual commits the offense of first degree sexual exploitation of a minor if, knowing

the character or content of the material or performance, he:

(1) uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity;

(2) permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity;

(3) transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(4) records, photographs, films, develops, duplicates, produces, or creates a digital electronic file for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

(B) In a prosecution under this section, the trier of fact may infer that a participant in a sexual activity depicted in material as a minor through its title, text, visual representations, or otherwise, is a minor.

(C) Mistake of age is not a defense to a prosecution under this section.

(D) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned for not less than three years nor more than twenty years. No part of the minimum sentence of imprisonment may be suspended nor is the individual convicted eligible for parole until he has served the minimum term of imprisonment. Sentences imposed pursuant to this section must run consecutively with and commence at the expiration of another sentence being served by the person sentenced.

## **SOUTH DAKOTA**

### **S.D. CODIFIED LAWS § 22-24A-4 (2009). Solicitation of minor -- Definitions**

Terms used in § 22-22-24.5 mean:

(1) "Minor," a person fifteen years of age or younger; and

(2) "Solicit," to seduce, lure, entice or persuade, or attempt to seduce, lure, entice or persuade a specific person by telephone, in person, by letter, by using a computer or any other electronic means.

**S.D. CODIFIED LAWS § 22-24A-5 (2009). Solicitation of minor -- Consent or mistake not a defense -- Penalty**

A person is guilty of solicitation of a minor if the person eighteen years of age or older:

(1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in a prohibited sexual act; or

(2) Knowingly compiles or transmits by means of a computer; or prints, publishes or reproduces by other computerized means; or buys, sells, receives, exchanges or disseminates, any notice, statement or advertisement of any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information for the purpose of soliciting a minor or someone the person reasonably believes is a minor to engage in a prohibited sexual act.

The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section does not constitute a defense to a prosecution under this section.

Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 5 felony.

The court shall order an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section.

**Pending Legislation will change the class of felony and the effect of subsequent violations, as follows:**

A person is guilty of solicitation of a minor if the person eighteen years of age or older:

(1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in a prohibited sexual act; or

(2) Knowingly compiles or transmits by means of a computer; or prints, publishes or reproduces by other computerized means; or buys, sells, receives, exchanges or disseminates, any notice, statement or advertisement of any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information for the purpose of soliciting a minor or someone the person reasonably believes is a minor to engage in a prohibited sexual act.

The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section does not constitute a defense to a prosecution under this section.

Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 4 felony.

The court shall order an assessment pursuant to Section 22-22-1.3 of any person convicted of violating this section.

## **TENNESSEE**

### **TENN. CODE ANN. § 39-13-528 (2010). Offense of solicitation of a minor.**

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- (1) Rape of a child, pursuant to § 39-13-522;
- (2) Aggravated rape, pursuant to § 39-13-502;
- (3) Rape, pursuant to § 39-13-503;
- (4) Aggravated sexual battery, pursuant to § 39-13-504;
- (5) Sexual battery by an authority figure, pursuant to § 39-13-527;
- (6) Sexual battery, pursuant to § 39-13-505;
- (7) Statutory rape, pursuant to § 39-13-506;
- (8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005; or
- (9) Sexual activity involving a minor, pursuant to § 39-13-529.

(b) It is no defense that the solicitation was unsuccessful, that the conduct solicited was not engaged in, or that the law enforcement officer could not engage in the solicited offense. It is no defense that the minor solicited was unaware of the criminal nature of the conduct solicited.

(c) A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.

(d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state, or solicited a law enforcement officer posing as a minor located within this state.

**TENN. CODE ANN. § 39-13-529 (2010). Offense of soliciting sexual exploitation of a minor – Exploitation of a minor by electronic means.**

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet service, including webcam communications, directly or through another, to intentionally command, hire, persuade, induce or cause a minor to engage in sexual activity or simulated sexual activity that is patently offensive, as defined in § 39-17-1002, where such sexual activity or simulated sexual activity is observed by that person or by another.

(b) It is unlawful for any person eighteen (18) years of age or older, directly or by means of electronic communication, electronic mail or Internet service, including webcam communications, to intentionally:

(1) Engage in sexual activity, or simulated sexual activity, that is patently offensive, as defined in § 39-17-1002, for the purpose of having the minor view the sexual activity or simulated sexual activity, including circumstances where the minor is in the presence of the person, or where the minor views such activity via electronic communication, including electronic mail, Internet service and webcam communications;

(2) Display to a minor, or expose a minor to, any material containing sexual activity or simulated sexual activity that is patently offensive, as defined in § 39-17-1002, where the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the minor or the person displaying the material; and

(3) Display to a law enforcement officer posing as a minor, and whom the person making the display reasonably believes to be less than eighteen (18) years of age, any material containing sexual activity or simulated sexual activity that is patently offensive, as defined in § 39-17-1002, where the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the intended minor or the person displaying the material.

(c) The statute of limitations for the offenses in this section shall be the applicable statute for the class of the offense, or until the child reaches the age of eighteen (18), whichever is greater.

(d) A person is subject to prosecution in this state under this statute for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the conduct involved a minor located in this state.

(e) (1) A violation of subsection (a) is a Class B felony.

(2) A violation of subsection (b) is a Class E felony; provided, that, if the minor is less than thirteen (13) years of age, the violation is a Class C felony.

## **TEXAS**

**TEX. PENAL CODE ANN. § 33.021 (2010). Online Solicitation of a Minor**



(a) In this section:

(1) "Minor" means:

(A) an individual who represents himself or herself to be younger than 17 years of age; or

(B) an individual whom the actor believes to be younger than 17 years of age.

(2) "Sexual contact," "sexual intercourse," and "deviate sexual intercourse" have the meanings assigned by Section 21.01.

(3) "Sexually explicit" means any communication, language, or material, including a photographic or video image, that relates to or describes sexual conduct, as defined by Section 43.25.

(b) A person who is 17 years of age or older commits an offense if, with the intent to arouse or gratify the sexual desire of any person, the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, intentionally:

(1) communicates in a sexually explicit manner with a minor; or

(2) distributes sexually explicit material to a minor.

(c) A person commits an offense if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person.

(d) It is not a defense to prosecution under Subsection (c) that:

(1) the meeting did not occur;

(2) the actor did not intend for the meeting to occur; or

(3) the actor was engaged in a fantasy at the time of commission of the offense.

(e) It is a defense to prosecution under this section that at the time conduct described by Subsection (b) or (c) was committed:

(1) the actor was married to the minor; or

(2) the actor was not more than three years older than the minor and the minor consented to the conduct.

(f) An offense under Subsection (b) is a felony of the third degree, except that the offense is a felony of the second degree if the minor is younger than 14 years of age or is an individual whom the actor believes to be younger than 14 years of age at the time of the commission of the offense. An offense under Subsection (c) is a felony of the second degree.

(g) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

## **UTAH**

### **UTAH CODE ANN. § 76-4-401 (2010). Enticing a minor -- Elements -- Penalties**

(1) As used in this section:

(a) "Minor" means a person who is under the age of 18.

(b) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another person's telephone or computer by addressing the communication to the person's telephone number.

(2) (a) A person commits enticement of a minor when the person knowingly uses or attempts to use the Internet or text messaging to solicit, seduce, lure, or entice a minor or another person that the actor believes to be a minor to engage in any sexual activity which is a violation of state criminal law.

(b) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to:

(i) initiate contact with a minor or a person the actor believes to be a minor; and

(ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.

(3) It is not a defense to the crime of enticing a minor under Subsection (2), or an attempt to commit this offense, that a law enforcement officer or an undercover operative who is working with a law enforcement agency was involved in the detection or investigation of the offense.

(4) An enticement of a minor under Subsection (2)(a) or (b) with the intent to commit:

(a) a first degree felony is a:

(i) second degree felony upon the first conviction for violation of this Subsection (4)(a); and

(ii) first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life, upon a second or any subsequent conviction for a violation of this Subsection (4)(a);

(b) a second degree felony is a third degree felony;

(c) a third degree felony is a class A misdemeanor;

(d) a class A misdemeanor is a class B misdemeanor; and

(e) a class B misdemeanor is a class C misdemeanor.

(5) (a) When a person who commits a felony violation of this section has been previously convicted of an offense under Subsection (5)(b), the court may not in any way shorten the prison sentence, and the court may not:

(i) grant probation;

(ii) suspend the execution or imposition of the sentence;

(iii) enter a judgment for a lower category of offense; or

(iv) order hospitalization.

(b) The sections referred to in Subsection (5)(a) are:

(i) Section 76-4-401, enticing a minor;

(ii) Section 76-5-301.1, child kidnapping;

(iii) Section 76-5-402, rape;

(iv) Section 76-5-402.1, rape of a child;

(v) Section 76-5-402.2, object rape;

(vi) Section 76-5-402.3, object rape of a child;

(vii) Subsection 76-5-403(2), forcible sodomy;

(viii) Section 76-5-403.1, sodomy on a child;

(ix) Section 76-5-404, forcible sexual abuse;

(x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;

(xi) Section 76-5-405, aggravated sexual assault;

(xii) any offense in any other state or federal jurisdiction which constitutes or would constitute a crime in Subsections (4)(b)(i) through (xi); or

(xiii) the attempt, solicitation, or conspiracy to commit any of the offenses in Subsections (4)(b)(i) through (xii).

## **VERMONT**

### **Vt. STAT. ANN. tit. 13, § 2821 (2010). Definitions**

As used in this chapter:

(1) "Child" means any person under the age of 16 years.

(2) "Sexual conduct" means any of the following:

(A) any conduct involving contact between the penis and the vulva, the penis and the penis, the penis and the anus, the mouth and the penis, the mouth and the anus, the vulva and the vulva or the mouth and the vulva;

(B) any intrusion, however slight, by any part of a person's body or any object into the genital or anal opening of another with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desire of any person;

(C) any intentional touching, not through the clothing, of the genitals, anus or breasts of another with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desire of any person;

(D) masturbation;

(E) bestiality; or

(F) sadomasochistic abuse for sexual purposes.

(3) "Performance" means:

(A) an event which is photographed, filmed or visually recorded; or

(B) a play, dance or other visual presentation or exhibition before an audience.

(4) "Sexual performance" means any performance or any part of a performance, which includes sexual conduct by a child.

(5) "Promote" means to procure, issue, manufacture, publish, sell, give, provide, lend, mail, deliver, distribute, disseminate, circulate, present, exhibit, advertise, or offer to do the same, by any means, including electronic transmission.

### **Vt. STAT. ANN. tit. 13, § 2828 (2010). Luring a child**

(a) No person shall knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of

16, to engage in a sexual act as defined in section 3251 of this title or engage in lewd and lascivious conduct as defined in section 2602 of this title.

(b) This section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.

(c) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.

## **VIRGINIA**

### **VA. CODE ANN. § 18.2-370 (2010). Taking indecent liberties with children; penalties**

A. Any person 18 years of age or over, who, with lascivious intent, knowingly and intentionally commits any of the following acts with any child under the age of 15 years is guilty of a Class 5 felony:

(1) Expose his or her sexual or genital parts to any child to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person; or

(2) [Repealed.]

(3) Propose that any such child feel or fondle the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child; or

(4) Propose to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361; or

(5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subdivisions of this section.

B. Any person 18 years of age or over who, with lascivious intent, knowingly and intentionally receives money, property, or any other remuneration for allowing, encouraging, or enticing any person under the age of 18 years to perform in or be a subject of sexually explicit visual material as defined in § 18.2-374.1 or who knowingly encourages such person to perform in or be a subject of sexually explicit material; shall be guilty of a Class 5 felony.

C. Any person who is convicted of a second or subsequent violation of this section shall be guilty of a Class 4 felony; provided that (i) the offenses were not part of a common act, transaction or scheme; (ii) the accused was at liberty as defined in § 53.1-151 between each conviction; and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

D. Any parent, step-parent, grandparent or step-grandparent who commits a violation of either this section or clause (v) or (vi) of subsection A of § 18.2-370.1 (i) upon his child, step-child, grandchild or step-grandchild who is at least 15 but less than 18 years of age is guilty of a Class 5

felony or (ii) upon his child, step-child, grandchild or step-grandchild less than 15 years of age is guilty of a Class 4 felony.

**VA. CODE ANN. § 18.2-374.3 (2010). Use of communications systems to facilitate certain offenses involving children**

A. As used in subsections C, D, and E "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, the Internet, or any telecommunications, wire, computer network, or radio communications system.

B. It shall be unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of procuring or promoting the use of a minor for any activity in violation of § 18.2-370 or § 18.2-374.1. A violation of this subsection is a Class 6 felony.

C. It shall be unlawful for any person 18 years of age or older to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with lascivious intent, any person he knows or has reason to believe is a child less than 15 years of age to knowingly and intentionally:

1. Expose his sexual or genital parts to any child to whom he is not legally married or propose that any such child expose his sexual or genital parts to such person;

2. Propose that any such child feel or fondle the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child;

3. Propose to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361; or

4. Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any purposes set forth in the preceding subdivisions.

Any person who violates this subsection is guilty of a Class 5 felony. However, if the person is at least seven years older than the child he knows or has reason to believe is less than 15 years of age, the person shall be punished by a term of imprisonment of not less than five years nor more than 30 years in a state correctional facility, five years of which shall be mandatory minimum term of imprisonment. Any person who commits a second or subsequent violation of this subsection when the person is at least seven years older than the child he knows or has reason to believe is less than 15 years of age shall be punished by a term of imprisonment of not less than 10 years nor more than 40 years, 10 years of which shall be a mandatory minimum term of imprisonment.

D. Any person who uses a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with lascivious intent, any child he knows or has reason to believe is at least 15 years

of age but less than 18 years of age to knowingly and intentionally commit any of the activities listed in subsection C if the person is at least seven years older than the child is guilty of a Class 5 felony. Any person who commits a second or subsequent violation of this subsection shall be punished by a term of imprisonment of not less than one nor more than 20 years, one year of which shall be a mandatory minimum term of imprisonment.

E. Any person 18 years of age or older who uses a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a child less than 18 years of age for (i) any activity in violation of § 18.2-355 or 18.2-361, (ii) any activity in violation of § 18.2-374.1, or (iii) a violation of § 18.2-374.1:1 is guilty of a Class 5 felony.

## **WASHINGTON**

### **WASH. REV. CODE § 9.68A.011 (2010). Definitions**

Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) To "photograph" means to make a print, negative, slide, digital image, motion picture, or videotape. A "photograph" means anything tangible or intangible produced by photographing.

(2) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

(3) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer;

(e) Exhibition of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer;

(f) Defecation or urination for the purpose of sexual stimulation of the viewer; and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

(4) "Minor" means any person under eighteen years of age.

(5) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

**Effective June 10, 2010 : Sec. 3 RCW 9.68A.011 and 2002 c 70 s 1 are each amended to read as follows:**

Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) [A] AN "INTERNET SESSION" MEANS A PERIOD OF TIME DURING WHICH AN INTERNET USER, USING A SPECIFIC INTERNET PROTOCOL ADDRESS, VISITS OR IS LOGGED INTO AN INTERNET SITE FOR AN UNINTERRUPTED PERIOD OF TIME. <A]

[A] (2) <A] To "photograph" means to make a print, negative, slide, digital image, motion picture, or videotape. A "photograph" means anything tangible or intangible produced by photographing.

[D] (2) <D] [A] (3) <A] "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

[D] (3) <D] [A] (4) <A] "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sadomasochistic abuse [D] for the purpose of sexual stimulation of the viewer <D] ;

(e) [D] Exhibition of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer; <D]

[D] (f) <D] Defecation or urination for the purpose of sexual stimulation of the viewer;

[A] (F) DEPICTION OF THE GENITALS OR UNCLOTHED PUBIC OR RECTAL AREAS OF ANY MINOR, OR THE UNCLOTHED BREAST OF A FEMALE MINOR, FOR THE PURPOSE OF SEXUAL STIMULATION OF THE VIEWER. FOR THE PURPOSES OF THIS SUBSECTION (4)(F), IT IS NOT NECESSARY THAT THE MINOR KNOW THAT HE OR SHE IS PARTICIPATING IN THE DESCRIBED CONDUCT, OR ANY ASPECT OF IT; <A] and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

[D] (4) <D] [A] (5) <A] "Minor" means any person under eighteen years of age.

[D] (5) <D] [A] (6) <A] "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.



**WASH. REV. CODE § 9.68A.090 (2010). Communication with minor for immoral purposes -- Penalties**

*Unconstitutional in part by: In re Marriage of Williams, 56 Wn. App. 138, 782 P.2d 1087, 1989 Wash. App. LEXIS 389 (1989)*

(1) Except as provided in subsection (2) of this section, a person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.

(2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes through the sending of an electronic communication.

**WEST VIRGINIA**

**W. VA. CODE § 61-3C-14b (2010). Soliciting, etc. a minor via computer; penalty.**

Any person over the age of eighteen, who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person using the computer or a person he or she believes to be such a minor, to commit any illegal act proscribed by the provisions of article eight [ §§ 61-8-1 et seq.], eight-b [ §§ 61-8B-1 et seq.], eight-c [ §§ 61-8C-1 et seq.] or eight-d [ §§ 61-8D-1 et seq.] of this chapter, or any felony offense under section four hundred one [ § 60A-4-401], article four, chapter sixty-a of this code, is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in a state correctional facility not less than two nor more than ten years, or both.

**W. VA. CODE § 61-8A-1 (2010). Definitions.**

When used in this article, the following words, and any variations thereof required by the context, shall have the meaning ascribed to them in this section:

(a) "Adult" means a person eighteen years of age or older.

(b) "Computer network" means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.

(c) "Display" means to show, exhibit or expose matter, in a manner visible to general or invited public, including minors. As used in this article, display shall include the placing or exhibiting of matter on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window, showcase, display case or similar public place.

(d) "Distribute" means to transfer possession, transport, transmit, sell or rent, whether with or without consideration.

(e) "Employee" means any individual who renders personal services in the course of a business, who receives compensation and who has no financial interest in the ownership or operation of the business other than his salary or wages.

(f) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

(g) "Knowledge of the character of the matter" means having awareness of or notice of the overall sexual content and character of matter as depicting, representing, or describing obscene matter.

(h) "Matter" means any visual, audio, or physical item, article, production transmission, publication, exhibition, or live performance, or reproduction thereof, including any two or three dimensional visual or written material, film, picture, drawing, video, graphic, or computer generated or reproduced image; or any book, magazine, newspaper or other visual or written material; or any motion picture or other pictorial representation; or any statue or other figure; or any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other articles, video laser disc, computer hardware and software, or computer generated images or message recording, transcription, or object, or any public or commercial live exhibition performed for consideration or before an audience of one or more.

(i) "Minor" means an unemancipated person under eighteen years of age.

(j) "Obscene matter" means matter that:

(1) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

(2) An average person, applying community standards, would find depicts or describes, in a patently offensive way, sexually explicit conduct; and

(3) A reasonable person would find, taken as a whole, lacks serious literary, artistic, political or scientific value.

(k) "Parent" includes a biological or adoptive parent, legal guardian or legal custodian.

(l) "Person" means any adult, partnership, firm, association, corporation or other legal entity.

(m) "Sexually explicit conduct" means an ultimate sexual act, normal or perverted, actual or simulated, including sexual intercourse, sodomy, oral copulation, sexual bestiality, sexual sadism and masochism, masturbation, excretory functions and lewd exhibition of the genitals.

**W. VA. CODE § 61-8A-4 (2010). Use of obscene matter with intent to seduce minor.**

Any adult, having knowledge of the character of the matter, who knows that a person is a minor and distributes, offers to distribute or displays by any means any obscene matter to the minor, and such distribution, offer to distribute, or display is undertaken with the intent or for the purpose of facilitating the sexual seduction or abuse of the minor, is guilty of a felony and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars, or confined in a state correctional facility for not more than five years, or both. For a second and each subsequent commission of such offense, such person is guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars or confined in a state correctional facility for not more than ten years, or both.

## **WISCONSIN**

### **Wis. Stat. § 948.01 (2010). Definitions.**

In this chapter, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction:

(1) "Child" means a person who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law, "child" does not include a person who has attained the age of 17 years.

(1d) "Exhibit," with respect to a recording of an image that is not viewable in its recorded form, means to convert the recording of the image into a form in which the image may be viewed.

(1g) "Joint legal custody" has the meaning given in s. 767.001 (1s)

(1r) "Legal custody" has the meaning given in s. 767.001 (2)

(2) "Mental harm" means substantial harm to a child's psychological or intellectual functioning which may be evidenced by a substantial degree of certain characteristics of the child including, but not limited to, anxiety, depression, withdrawal or outward aggressive behavior. "Mental harm" may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(3) "Person responsible for the child's welfare" includes the child's parent; stepparent; guardian; foster parent; treatment foster parent; an employee of a public or private residential home, institution or agency; other person legally responsible for the child's welfare in a residential setting; or a person employed by one legally responsible for the child's welfare to exercise temporary control or care for the child.

(3m) "Physical placement" has the meaning given in s. 767.001 (5)

(3r) "Recording" includes the creation of a reproduction of an image or a sound or the storage of data representing an image or a sound.

(4) "Sadoomasochistic abuse" means the infliction of force, pain or violence upon a person for the purpose of sexual arousal or gratification.

(5) "Sexual contact" means any of the following:

(a) Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant:

1. Intentional touching by the defendant or, upon the defendants instruction, by another person, by the use of any body part or object, of the complainants intimate parts.

2. Intentional touching by the complainant, by the use of any body part or object, of the defendants intimate parts or, if done upon the defendants instructions, the intimate parts of another person.

(b) Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendants instruction, by another person upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(c) For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendants body, whether clothed or unclothed.

(6) "Sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a persons body or of any object into the genital or anal opening either by the defendant or upon the defendants instruction. The emission of semen is not required.

(7) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, meaning vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a persons body or of any object into the genital or anal opening either by a person or upon the persons instruction. The emission of semen is not required;(b) Bestiality;(c) Masturbation;(d) Sexual sadism or sexual masochistic abuse including, but not limited to, flagellation, torture or bondage; or(e) Lewd exhibition of intimate parts.

**WIS. STAT. § 948.05 (2010). Sexual exploitation of a child.**

(1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child may be penalized under sub. (2p):

(a) Employs, uses, persuades, induces, entices, or coerces any child to engage in sexually explicit conduct for the purpose of recording or displaying in any way the conduct.

(b) Records or displays in any way a child engaged in sexually explicit conduct.

(1m) Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct may be penalized under sub. (2p) if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years.

(2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. (1) (a) or (b) or (1m) may be penalized under sub. (2p)

(2p) (a) Except as provided in par. (b), a person who violates sub. (1), (1m), or (2) is guilty of a Class C felony.

(b) A person who violates sub. (1), (1m), or (2) is guilty of a Class F felony if the person is under 18 years of age when the offense occurs.

(3) It is an affirmative defense to prosecution for violation of sub. (1) (a) or (b) or (2) if the defendant had reasonable cause to believe that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

#### **Wis. STAT. § 948.07 (2010). Child enticement.**

Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class D felony:

(1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02, 948.085, or 948.095

(2) Causing the child to engage in prostitution.

(3) Exposing a sex organ to the child or causing the child to expose a sex organ in violation of s. 948.10

(4) Recording the child engaging in sexually explicit conduct.

(5) Causing bodily or mental harm to the child.

(6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961

#### **Wis. STAT. § 948.075 (2010). Use of a computer to facilitate a child sex crime.**

(1r) Whoever uses a computerized communication system to communicate with an individual who the actor believes or has reason to believe has not attained the age of 16 years with intent to

have sexual contact or sexual intercourse with the individual in violation of s. 948.02 (1) or (2) is guilty of a Class C felony.

(2) This section does not apply if, at the time of the communication, the actor reasonably believed that the age of the person to whom the communication was sent was no more than 24 months less than the age of the actor.

(3) Proof that the actor did an act, other than use a computerized communication system to communicate with the individual, to effect the actors intent under sub. (1r) shall be necessary to prove that intent.

## **WYOMING**

### **WYO. STAT. ANN. § 6-2-301 (2010). Definitions.**

(a) As used in this article:

(i) "Actor" means the person accused of criminal assault;

(ii) "Intimate parts" means the external genitalia, perineum, anus or pubes of any person or the breast of a female person;

(iii) "Physically helpless" means unconscious, asleep or otherwise physically unable to communicate unwillingness to act;

(iv) "Position of authority" means that position occupied by a parent, guardian, relative, household member, teacher, employer, custodian or any other person who, by reason of his position, is able to exercise significant influence over a person;

(v) "Sexual assault" means any act made criminal pursuant to W.S.88 6-2-302 through 6-2-319;

(vi) "Sexual contact" means touching, with the intention of sexual arousal, gratification or abuse, of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or of the clothing covering the immediate area of the victim's or actor's intimate parts;

(vii) "Sexual intrusion" means:

(A) Any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification or abuse; or

(B) Sexual intercourse, cunnilingus, fellatio, analingus<sup>89</sup> or anal intercourse with or without emission.

(viii) "Victim" means the person alleged to have been subjected to sexual assault;

(ix) "This article" means W.S.90 6-2-301 through 6-2-320.

**WYO. STAT. ANN. § 6-2-318 (2010). Soliciting to engage in illicit sexual relations; penalty.**

Except under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 through 6-2-304, or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 through 6-2-317, anyone who has reached the age of majority and who solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301 is guilty of a felony, and upon conviction shall be imprisoned for a term of not more than five (5) years.

**WYO. STAT. ANN. § 6-4-303 (2010). Sexual exploitation of children; penalties; definitions.**

(a) As used in this section:

(i) "Child" means a person under the age of eighteen (18) years;

(ii) "Child pornography" means any visual depiction, including any photograph, film, video, picture, computer or computer-generated image or picture, whether or not made or produced by electronic, mechanical or other means, of explicit sexual conduct, where:

(A) The production of the visual depiction involves the use of a child engaging in explicit sexual conduct;

(B) The visual depiction is of explicit sexual conduct involving a child or an individual virtually indistinguishable from a child; or

(C) The visual depiction has been created, adapted or modified to depict explicit sexual conduct involving a child or an individual virtually indistinguishable from a child.

(D) Repealed by Laws 2005, ch. 70, § 2.

(iii) "Explicit sexual conduct" means actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex, bestiality, masturbation, sadistic or masochistic abuse or lascivious exhibition of the genitals or pubic area of any person;

(iv) "Visual depiction" means developed and undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image.

(b) A person is guilty of sexual exploitation of a child if, for any purpose, he knowingly:

(i) Causes, induces, entices, coerces or permits a child to engage in, or be used for, the making of child pornography;

(ii) Causes, induces, entices or coerces a child to engage in, or be used for, any explicit sexual conduct;

(iii) Manufactures, generates, creates, receives, distributes, reproduces, delivers or possesses with the intent to deliver, including through digital or electronic means, whether or not by computer, any child pornography;

(iv) Possesses child pornography, except that this paragraph shall not apply to:

(A) Peace officers, court personnel or district attorneys engaged in the lawful performance of their official duties;

(B) Physicians, psychologists, therapists or social workers, provided such persons are duly licensed in Wyoming 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) Counsel for a person charged under this section.

(c) The sexual exploitation of a child pursuant to paragraphs (b)(i) through (iii) of this section is a felony punishable by imprisonment for not less than five (5) years nor more than twelve (12) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

(d) The sexual exploitation of a child by possession of sexually exploitive material pursuant to paragraph (b)(iv) of this section is a felony punishable by imprisonment for not more than ten (10) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

(e) A second or subsequent conviction pursuant to paragraphs (b)(i) through (iv) of this section, or of a substantially similar law of any other jurisdiction, is a felony punishable by imprisonment for not less than seven (7) years nor more than twelve (12) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

(f) Any person who is convicted of an offense under this section shall forfeit to the state the person's interest in:

(i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;

(ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;

(iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.



# FEDERAL LEGISLATION/ U.S. TERRITORIES

## FEDERAL LEGISLATION

### *RELATED STATUTES*

#### **18 U.S.C.S. § 1470 (2010). Transfer of obscene material to minors**

Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both.

#### **18 U.S.C.S. § 2251 (2010). Sexual exploitation of children.**

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

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

(c)

(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

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

(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail; or

(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail.

(d)

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

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

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

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

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

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

(e) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591 [18 USCS § 1591], chapter 71, chapter 109A, or chapter 117 [18 USCS §§ 2251 et seq., 18 USCS §§ 1460 et seq., 2241 et seq., or 2421 et seq.], or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117 [18 USCS §§ 2251 et seq., 18 USCS §§ 1460 et seq., 2241 et seq., or 2421 et seq.], or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for not less than 30 years or for life.

**18 U.S.C.S. 2252B (2010). Misleading domain names on the internet.**

(a) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title or imprisoned not more than 2 years, or both.

(b) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors on the Internet shall be fined under this title or imprisoned not more than 10 years, or both.

(c) For the purposes of this section, a domain name that includes a word or words to indicate the sexual content of the site, such as "sex" or "porn", is not misleading.

(d) For the purposes of this section, the term "material that is harmful to minors" means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context--

- (1) predominantly appeals to a prurient interest of minors;
- (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (3) lacks serious literary, artistic, political, or scientific value for minors.

(e) For the purposes of subsection (d), the term "sex" means acts of masturbation, sexual intercourse, or physical [physical] contact with a person's genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.

**18 U.S.C.S. 2252B (2010). Misleading words or digital images on the internet**

(a) In general. Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title and imprisoned for not more than 10 years.

(b) Minors. Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a minor into viewing material harmful to minors on the Internet shall be fined under this title and imprisoned for not more than 20 years.

(c) Construction. For the purposes of this section, a word or digital image that clearly indicates the sexual content of the site, such as "sex" or "porn", is not misleading.

(d) Definitions. As used in this section--

- (1) the terms "material that is harmful to minors" and "sex" have the meaning given such terms in section 2252B [18 USCS § 2252B]; and
- (2) the term "source code" means the combination of text and other characters comprising the content, both viewable and nonviewable, of a web page, including any website publishing language, programming language, protocol or functional content, as well as any successor languages or protocols.

## **AMERICAN SAMOA**

### **AM. SAMOA CODE ANN. §46.4404 (2007). Furnishing pornographic materials to minors.**

(a) A person commits the crime of furnishing pornographic material to minors if, knowing its content and character, he:

(1) furnishes any material pornographic for minors, knowing that the person to whom it is furnished is a minor or acting in reckless disregard of the likelihood that the person is a minor; or

(2) produces, presents, directs, or participates in any performance pornographic for minors that is furnished to a minor knowing that any person viewing the performance is a minor or acting in reckless disregard of the likelihood that a minor is viewing the performance.

(b) Furnishing pornographic material to minors is a class A misdemeanor.

## **GUAM**

### **GUAM CODE ANN. tit. 9, § 28.65 (2009). Indecent Exposure; Defined & Punished.**

A person commits a petty misdemeanor if he exposes his genitals or performs any other lewd act under circumstances in which his conduct is likely to be observed by any person who would be offended or alarmed.

## **PUERTO RICO**

### **P.R. LAWS ANN. tit. 33, § 2166 (2009). Communications of an obscene nature with the intention of molesting; penalties.**

There shall be guilty of public offense in the Commonwealth of Puerto Rico any person who, by means of a telephone communication:

(a) Makes any remark, solicitation, insinuation, or obscene, lascivious or indecent proposition; or

(b) makes a telephone call, whether the conversation be established or not, without revealing his identity and with the intention of molesting, abusing, frightening or threatening any person who is at the place of the telephone called to; or

(c) who causes the telephone of another person to ring repeatedly and continuously with the intention of molesting any person at the telephone called to; or

(d) repeatedly makes telephone calls, whose sole purpose through the conversation is aimed at molesting any person at the telephone called to; or

(e) knowingly permits that any telephone under his control be used for any purpose forbidden by §§ 2166 and 2167 of this title. The person found guilty of the offenses created by §§ 2166 and 2167 of this title shall be punished by a fine of not less than one hundred dollars (\$100) nor more

than five hundred dollars (\$500) or by imprisonment in jail for a term of not less than thirty (30) days nor more than one year, or by both penalties in the discretion of the court.

**P.R. LAWS ANN. tit. 33, § 4079a (2009). Transmission or retransmission of obscene material**

Any person who knowingly distributes any obscene material through television, radio or any electronic media or other communications media shall be punished by imprisonment which shall not exceed six (6) months or a fine which shall not exceed five hundred dollars (\$500) or both penalties at the court's discretion. In case of subsequent violations to this section, upon conviction said person shall be punished by imprisonment for a fixed term of two (2) years and five (5) months. If there were aggravating circumstances the fixed penalty established herein may be increased to a maximum of four (4) years or a fixed fine of fifty thousand dollars (\$50,000) or both penalties at the discretion of the court. If there were extenuating circumstances, the fixed penalty established herein may be reduced to a minimum of one year and eight (8) months or a fixed fine of twenty thousand dollars (\$20,000) or both penalties at the discretion of the court. Provided, That in case of subsequent violations to the provisions of this section by a juridical person, the court may impose a penalty of suspension or cancellation as provided in §§ 3243 and 3244 of this title.

**VIRGIN ISLANDS**

**V.I. CODE ANN. tit. 14, § 1025 (2010). Distribution or exhibition to minor under 18**

(a) Every person who, with knowledge that a person is a minor under 18 years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under 18 years of age, knowingly distributes to, or sends or causes to be sent to, or exhibits to, or offers to distribute any obscene matter to a minor under 18 years of age, is guilty of a misdemeanor.

(b) Any parent, guardian or adult who in the company of a minor under his or her control permits, allows or otherwise causes said minor to enter any premises engaged in any activities prohibited by this section, shall be guilty of a misdemeanor.