

Production of Child Pornography

Updated June 2010

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ALABAMA

Ala. Code § 13A-12-196 (2010) Permitting or allowing child to engage in production of obscene matter.

Any parent or guardian who knowingly permits or allows their child, ward, or dependent under the age of 17 years to engage in the production of any obscene matter containing a visual depiction of such child, ward, or dependent under the age of 17 years engaged in any act of sado-masochistic abuse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class A felony.

Ala. Code § 13A-12-197 (2010) Production of obscene matter.

(a) Any person who knowingly films, prints, records, photographs or otherwise produces any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class A felony.

(b) For any person who violates Section 13A-12-197, each depiction of each individual less than 17 years of age constitutes a separate offense.

ALASKA

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 nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.

ARIZONA

Ariz. Rev. Stat. § 13-3553 (2010) Sexual exploitation of a minor; evidence; classification.

A. A person commits sexual exploitation of a minor by knowingly:

1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

B. If any visual depiction of sexual exploitation of a minor is admitted into evidence, the court shall seal that evidence at the conclusion of any grand jury proceeding, hearing or trial.

C. Sexual exploitation of a minor is a class 2 felony and if the minor is under fifteen years of age it is punishable pursuant to section 13-705.

ARKANSAS

Ark. Code Ann. § 5-27-403 (2010) Producing, directing, or promoting a sexual performance by a child.

(a) It is unlawful for any person, knowing the character and content of the material, to produce, direct, or promote a performance that includes sexual conduct by a child under seventeen (17) years of age.

(b) Any person violating this section is guilty of a Class B felony.

Ark. Code Ann. § 5-16-101 (2010) Crime of Video Voyeurism.

(a) It is unlawful to use any camera, videotape, photo-optical, photoelectric, or any other image recording device for the purpose of secretly observing, viewing, photographing, filming, or videotaping a person present in a residence, place of business, school, or other structure, or any room or particular location within that structure, if that person:

- (1) Is in a private area out of public view;
- (2) Has a reasonable expectation of privacy; and
- (3) Has not consented to the observation.

(b) It is unlawful to knowingly use a camcorder, motion picture camera, photographic camera of any type, or other equipment that is concealed or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means a person:

- (1) For the purpose of viewing any portion of the person's body that is covered with clothing and for which the person has a reasonable expectation of privacy;
- (2) Without the knowledge or consent of the person being videotaped, filmed, photographed, recorded, or viewed by electronic means; and
- (3) Under circumstances in which the person being videotaped, filmed, photographed, recorded, or viewed by electronic means has a reasonable expectation of privacy.

(c) (1) A violation of subsection (a) of this section is a Class D felony.

(2) (A) A violation of subsection (b) of this section is a Class B misdemeanor.

(B) However, a violation of subsection (b) of this section is a Class A misdemeanor if:

(i) The person who created the video recording, film, or photo obtained as described in subsection (b) distributed or transmitted it to another person; or

(ii) The person who created the video recording, film, or photo obtained as described in subsection (b) posted it in a format accessible by another person via the Internet.

(d) The provisions of this section do not apply to any of the following:

- (1) Video recording or monitoring conducted under a court order from a court of competent jurisdiction;
- (2) Security monitoring operated by or at the direction of an occupant of a residence;
- (3) Security monitoring operated by or at the direction of the owner or administrator of a place of business, school, or other structure;
- (4) Security monitoring operated in a motor vehicle used for public transit;

(5) Security monitoring and observation associated with a correctional facility, regardless of the location of the monitoring equipment;

(6) Video recording or monitoring conducted by a law enforcement officer within the official scope of his or her duty; or

(7) Videotaping under § 12-18-615(b).

Ark. Code Ann. § 5-28-203 (2010) Obscene Films.

(a) It is unlawful for any person to knowingly exhibit, sell, offer to sell, give away, circulate, produce, distribute, attempt to distribute, or have in his or her possession any obscene film.

(b) As used in this section:

(1) "Film" means motion picture film, still picture film, slides, and movie film of any type;

(2) "Obscene" means that to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest; and

(3) "Person" means any individual, partnership, firm, association, club, corporation, or other legal entity.

(c) (1) Any person that knowingly exhibits, sells, offers to sell, gives away, circulates, produces, distributes, or attempts to distribute any obscene film is guilty of a Class D felony.

(2) Any person that has in his or her possession an obscene film is guilty of a Class A misdemeanor.

CALIFORNIA

Cal. Penal Code § 311.1 (2009) Sale or distribution of obscene matter depicting persons under age of 18 years engaging in sexual conduct.

(a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, shall be punished either by imprisonment in the county jail for up to one year, by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment, or by imprisonment in the state prison, by a fine not to exceed ten thousand dollars (\$10,000), or by the fine and

imprisonment.

(b) This section does not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(c) This section does not apply to matter which depicts a child under the age of 18, which child is legally emancipated, including lawful conduct between spouses when one or both are under the age of 18.

(d) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or perform related activities in providing telephone services.

Cal. Penal Code § 311.1 (2009) Sexual exploitation of child.

(a) A person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual conduct.

(b) As used in this section, "sexual conduct" means any of the following:

(1) 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.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals or the pubic or rectal area of any person for the purpose of sexual stimulation of the viewer.

(6) Defecation or urination for the purpose of sexual stimulation of the viewer.

(c) Subdivision (a) does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(d) Every person who violates subdivision (a) shall be punished by a fine of not more than two thousand dollars (\$2,000) or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. If the person has been previously convicted of a violation of subdivision (a) or any section of this chapter, he or she shall be punished by imprisonment in the state prison.

(e) The provisions of this section do not apply to an employee of a commercial film developer who is acting within the scope of his or her employment and in accordance with the instructions of his or her employer, provided that the employee has no financial interest in the commercial developer by which he or she is employed.

(f) Subdivision (a) does not apply to matter that is unsolicited and is received without knowledge or consent through a facility, system, or network over which the person or entity has no control.

COLORADO

Colo. Rev. Stat. § 18-6-403 (2009) Sexual exploitation of a child.

(1) The general assembly hereby finds and declares: That the sexual exploitation of children constitutes a wrongful invasion of the child's right of privacy and results in social, developmental, and emotional injury to the child; that a child below the age of eighteen years is incapable of giving informed consent to the use of his or her body for a sexual purpose; and that to protect children from sexual exploitation it is necessary to prohibit the production of material which involves or is derived from such exploitation and to exclude all such material from the channels of trade and commerce.

(1.5) The general assembly further finds and declares that the mere possession or control of any sexually exploitative material results in continuing victimization of our children by the fact that such material is a permanent record of an act or acts of sexual abuse of a child; that each time such material is shown or viewed, the child is harmed; that such material is used to break down the will and resistance of other children to encourage them to participate in similar acts of sexual abuse; that laws banning the production and distribution of such material are insufficient to halt this abuse; that in order to stop the sexual exploitation and abuse of our children, it is necessary for the state to ban the possession of any sexually exploitative materials; and that the state has a compelling interest in outlawing the possession of any sexually exploitative materials in order to protect society as a whole, and particularly the privacy, health, and emotional welfare of its children.

(2) As used in this section, unless the context otherwise requires:

(a) "Child" means a person who is less than eighteen years of age.

(b) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July 1, 2003.)

(c) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts, or developing or undeveloped breast area (if the person is a child), for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

(d) "Erotic nudity" means the display of the human male or female genitals or pubic area, the

undeveloped or developing genitals or pubic area of the human male or female child, the human breasts, or the undeveloped or developing breast area of the human child, for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

(e) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, or sexual excitement.

(f) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts, or developing or undeveloped breast area (if the person is a child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(g) "Sadomasochism" means:

(I) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

(II) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(h) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(i) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(j) "Sexually exploitative material" means any photograph, motion picture, video, video tape, print, negative, slide, or other mechanically, electronically, chemically, or digitally reproduced visual material that depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.

(k) "Video", "video tape", or "motion picture" means any material that depicts a moving image of a child engaged in, participating in, observing, or being used for explicit sexual conduct.

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

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

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

(b.5) Possesses or controls any sexually exploitative material for any purpose; except that this paragraph (b.5) does not apply to peace officers or court personnel in the performance of their official duties, nor does it apply to physicians, psychologists, therapists, or social workers, so long as such persons are licensed in the state of Colorado and the persons possess such materials

in the course of a bona fide treatment or evaluation program at the treatment or evaluation site; or

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

(d) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing a performance.

(4) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July 1, 2003.)

(5) (a) Except as provided in paragraph (b) of this subsection (5), sexual exploitation of a child is a class 3 felony.

(b) Sexual exploitation of a child by possession of sexually exploitative material pursuant to paragraph (b.5) of subsection (3) of this section is a class 6 felony; except that said offense is a class 4 felony if:

(I) It is a second or subsequent offense; or

(II) The possession is of a video, video tape, or motion picture or more than twenty different items qualifying as sexually exploitative material.

(6) If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

CONNECTICUT

Conn. Gen. Stat. § 53a-193 (2010). Definitions

The following definitions are applicable to this section and sections 53a-194 to 53a-210, inclusive:

(1) Any material or performance is "obscene" if, (A) taken as a whole, it predominantly appeals to the prurient interest, (B) it depicts or describes in a patently offensive way a prohibited sexual act, and (C) taken as a whole, it lacks serious literary, artistic, educational, political or scientific value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or performance or the circumstances of its dissemination to be designed for some other specially susceptible audience. Whether a material or performance is obscene shall be judged by ordinary adults applying contemporary community standards. In applying contemporary community standards, the state of Connecticut is deemed to be the community.

(2) Material or a performance is "obscene as to minors" if it depicts a prohibited sexual act and, taken as a whole, it is harmful to minors. For purposes of this subdivision: (A) "Minor" means any person less than seventeen years old as used in section 53a-196 and less than sixteen years old as used in sections 53a-196a and 53a-196b, and (B) "harmful to minors" means that quality of

any description or representation, in whatever form, of a prohibited sexual act, when (i) it predominantly appeals to the prurient, shameful or morbid interest of minors, (ii) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (iii) taken as a whole, it lacks serious literary, artistic, educational, political or scientific value for minors.

(3) "Prohibited sexual act" means erotic fondling, nude performance, sexual excitement, sado-masochistic abuse, masturbation or sexual intercourse.

(4) "Nude performance" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully 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 discernibly turgid state in any play, motion picture, dance or other exhibition performed before an audience.

(5) "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or if such person is a female, breast.

(6) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(7) "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.

(8) "Masturbation" means the real or simulated touching, rubbing or otherwise stimulating a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast, either by manual manipulation or with an artificial instrument.

(9) "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

(10) "Material" means anything tangible which is capable of being used or adapted to arouse prurient, shameful or morbid interest, whether through the medium of reading, observation, sound or in any other manner. Undeveloped photographs, molds, printing plates, and the like, may be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(11) "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

(12) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, advertise, produce, direct or participate in.

(13) "Child pornography" means any visual depiction including any photograph, film, videotape, picture or computer-generated image or picture, whether made or produced by electronic, mechanical or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a person under sixteen years of age engaging in sexually explicit

conduct, provided whether the subject of a visual depiction was a person under sixteen years of age at the time the visual depiction was created is a question to be decided by the trier of fact.

(14) "Sexually explicit conduct" means actual or simulated (A) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal physical contact, whether between persons of the same or opposite sex, or with an artificial genital, (B) bestiality, (C) masturbation, (D) sadistic or masochistic abuse, or (E) lascivious exhibition of the genitals or pubic area of any person.

(15) "Visual depiction" includes undeveloped film and videotape and data, as defined in subdivision (8) of section 53a-250, that is capable of conversion into a visual image and includes encrypted data.

Conn. Gen. Stat. § 53a-196b (2010). Promoting a minor in an obscene performance: Class B felony

(a) A person is guilty of promoting a minor in an obscene performance when he knowingly promotes any material or performance in which a minor is employed, whether or not such minor receives any consideration, and such material or performance is obscene as to minors notwithstanding that such material or performance is intended for an adult audience.

(b) For purposes of this section, "knowingly" means having general knowledge of or reason to know or a belief or ground for belief which warrants further inspection or inquiry as to (1) the character and content of any material or performance which is reasonably susceptible of examination by such person and (2) the age of the minor employed.

(c) Promoting a minor in an obscene performance is a class B felony.

DELAWARE

Del. Code Ann. tit. 11, § 1108 (2010) Sexual exploitation of a child; class B felony.

A person is guilty of sexual exploitation of a child when:

(1) The person knowingly, photographs or films a child engaging in a prohibited sexual act or in the simulation of such an act, or otherwise knowingly creates a visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(2) The person knowingly, finances or produces any motion picture, video or other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(3) The person knowingly publishes or makes available for public distribution or sale by any means, including but not limited to computer, any book, magazine, periodical, pamphlet, photograph, Internet site or web page which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly publishes or makes available for public distribution or sale by any means, including computer, any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(4) The person permits, causes, promotes, facilitates, finances, produces or otherwise advances an exhibition, display or performances of a child engaging in a prohibited sexual act or the simulation of such an act.

Sexual exploitation of a child is a class B felony.

DISTRICT OF COLUMBIA

D.C. Code Ann. § 22-3101 (2009). Definitions [Formerly § 22-2011]

For the purposes of this chapter, the term:

(1) "Knowingly" means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry, or both.

(2) "Minor" means any person under 16 years of age.

(3) "Performance" means any play, motion picture, photograph, electronic representation, dance, or any other visual presentation or exhibition.

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

(5) "Sexual conduct" means:

(A) Actual or simulated sexual intercourse:

(i) Between the penis and the vulva, anus, or mouth;

(ii) Between the mouth and the vulva or anus; or

(iii) Between an artificial sexual organ or other object or instrument used in the manner of an artificial sexual organ and the anus or vulva;

(B) Masturbation;

(C) Sexual bestiality;

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

(E) Lewd exhibition of the genitals.

(6) "Sexual performance" means any performance or part thereof which includes sexual conduct by a person under 16 years of age.

D.C. Code Ann. § 22-3102 (2009). Prohibited acts [Formerly § 22-2012]

It shall be unlawful in the District of Columbia for a person knowingly to use a minor in a sexual performance or to promote a sexual performance by a minor.

(1) A person is guilty of the use of a minor in a sexual performance if knowing the character and content thereof, he or she employs, authorizes, or induces a person under 16 years of age to engage in a sexual performance or being the parent, legal guardian, or custodian of a minor, he or she consents to the participation by a minor in a sexual performance.

(2) A person is guilty of promoting a sexual performance by a minor when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a person under 16 years of age.

D.C. Code Ann. § 22-3103 (2009). Penalties [Formerly § 22-2013]

Violation of this chapter shall be a felony and shall be punished by:

(1) A fine of not more than \$ 5,000 or imprisonment for not more than 10 years, or both for the first offense; or

(2) A fine of not more than \$ 15,000 or imprisonment for not more than 20 years, or both for the 2nd and each subsequent offense.

D.C. Code Ann. § 22-3104 (2009). Affirmative defenses [Formerly § 22-2014]

(a) Under this chapter it shall be an affirmative defense that the defendant in good faith reasonably believed the person appearing in the performance was 16 years of age or over.

(b) (1) Except as provided in paragraph (2) of this subsection, in any prosecution for an offense pursuant to § 22-3102(2) it shall be an affirmative defense that the person so charged was:

(A) A librarian engaged in the normal course of his or her employment; or

(B) A motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter, or in any other nonmanagerial or nonsupervisory capacity in a motion picture theater.

(2) The affirmative defense provided by paragraph (1) of this subsection shall not apply if the person described therein has a financial interest (other than his or her employment, which employment does not encompass compensation based upon any proportion of the gross receipts) in:

(A) The promotion of a sexual performance for sale, rental, or exhibition;

(B) The direction of any sexual performance; or

(C) The acquisition of the performance for sale, retail, or exhibition.

FLORIDA

Fla. Stat. Ann. § 827.071 (2009). Sexual performance by a child; penalties

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

(a) "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(b) "Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

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

(d) "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(e) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(f) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(g) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(h) "Sexual performance" means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

(i) "Simulated" means the explicit depiction of conduct set forth in paragraph (g) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character

and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) It is unlawful for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession of each such photograph, motion picture, exhibition, show, representation, or presentation is a separate offense. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state 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.

Fla. Stat. § 847.0135 (2009). 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.

GEORGIA

Ga. Code Ann. § 16-12-100 (2009). Sexual exploitation of children; reporting violation; forfeiture; penalties

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

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.

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

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

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's

unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

(H) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(5) "Visual medium" means any film, photograph, negative, slide, magazine, or other visual medium.

(b)(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased.

(7) It is unlawful for any person knowingly to bring or cause to be brought into this state any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(8) It is unlawful for any person knowingly to possess or control any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(c) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the Georgia Bureau of Investigation or the law enforcement agency for the county in which such matter is submitted. Any person participating in the making of a report or causing a report to be made pursuant to this subsection or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this subsection is made in good faith.

(d) The provisions of subsection (b) of this Code section shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities.

(e)(1) A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in:

(A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and

(B) Any property used, or intended to be used, to commit such offense.

(2) In any action under this Code section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

(f)(1) The following property shall be subject to forfeiture to the State of Georgia:

(A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this Code section;

(B) Any visual medium produced, transported, shipped, or received in violation of this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or

(C) Any property constituting or directly derived from gross profits or other proceeds obtained from a violation of this Code section; except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for forfeitures under Code Section 16-13-49.

(g)(1) Except as otherwise provided in paragraph (2) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than \$100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

Ga. Code Ann. § 16-12-100.2 (2009). 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. Ann. § 707-750 (2010). Promoting child abuse in the first degree.

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

(a) Produces or participates in the preparation of child pornography;

(b) Produces or participates in the preparation of pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or

(c) Engages in a pornographic performance that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

"Child pornography" means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

(a) The pornographic production of such visual representation involves the use of a minor engaging in sexual conduct; or

(b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

"Community standards" means the standards of the State.

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

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

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

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

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

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

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

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

"Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

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

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

(4) Promoting child abuse in the first degree is a class A felony.

IDAHO

Idaho Code Ann. § 18-1507 (2010). Sexual exploitation of a child

(1) The legislature hereby finds and declares that the commercial sexual exploitation of children constitutes a wrongful invasion of the child's right of privacy and results in social, developmental,

and emotional injury to the child; that a child below the age of eighteen (18) years is incapable of giving informed consent to the use of his or her body for a commercial purpose; and that to protect children from commercial sexual exploitation it is necessary to prohibit the production for trade or commerce of material which involves or is derived from such exploitation and to exclude all such material from the channels of trade and commerce.

(2) As used in this section, unless the context otherwise requires:

(a) "Bestiality" means a sexual connection in any manner between a human being and any animal.

(b) "Child" means a person who is less than eighteen (18) years of age.

(c) "Commercial purpose" means the intention, objective, anticipation, or expectation of monetary gain or other material consideration, compensation, remuneration, or profit.

(d) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(e) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(f) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.

(g) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(h) "Sadomasochism" means:

(i) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

(ii) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(i) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(j) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(k) "Sexually exploitative material" means any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material which depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.

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

(a) Causes, induces, or permits a child to engage in, or be used for, any explicit sexual conduct; or

(b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses, or distributes any sexually exploitative material.

(4) The possession by any person of three (3) or more identical copies of any sexually exploitative material shall create a presumption that such possession is for a commercial purpose.

(5) The sexual exploitation of a child is a felony and shall be punishable by imprisonment in the state prison for a term not to exceed thirty (30) years or by a fine not to exceed fifty thousand dollars (\$ 50,000) or by both such fine and imprisonment.

(6) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.]

Idaho Code Ann. § 18-1506 (2010). Sexual abuse of a child under the age of sixteen years

(1) It is a felony for any person eighteen (18) years of age or older, with the intent to gratify the lust, passions, or sexual desire of the actor, minor child or third party, to:

(a) Solicit a minor child under the age of sixteen (16) years to participate in a sexual act;

(b) Cause or have sexual contact with such minor child, not amounting to lewd conduct as defined in section 18-1508, Idaho Code;

(c) Make any photographic or electronic recording of such minor child; or

(d) Induce, cause or permit a minor child to witness an act of sexual conduct.

(2) For the purposes of this section "solicit" means any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or

observing such minor child engaged in sexual contact.

(3) For the purposes of this section "sexual contact" means any physical contact between such minor child and any person, which is caused by the actor, or the actor causing such minor child to have self contact.

(4) For the purposes of this section "sexual conduct" means human masturbation, sexual intercourse, sadomasochistic abuse, or any touching of the genitals or pubic areas of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(5) Any person guilty of a violation of the provisions of this section shall be imprisoned in the state prison for a period not to exceed twenty-five (25) years.

ILLINOIS

325 Ill. Comp. Stat. Ann. § 720 ILCS 5/11-20.1 (2010). Child pornography

(a) A person commits the offense of child pornography who:

(1) films, videotapes, photographs, or otherwise depicts or portrays by means of any similar visual medium or reproduction or depicts by computer any child whom he knows or reasonably should know to be under the age of 18 or any severely or profoundly mentally retarded person where such child or severely or profoundly mentally retarded person is:

(i) actually or by simulation engaged in any act of sexual penetration or sexual conduct with any person or animal; or

(ii) actually or by simulation engaged in any act of sexual penetration or sexual conduct involving the sex organs of the child or severely or profoundly mentally retarded person and the mouth, anus, or sex organs of another person or animal; or which involves the mouth, anus or sex organs of the child or severely or profoundly mentally retarded person and the sex organs of another person or animal; or

(iii) actually or by simulation engaged in any act of masturbation; or

(iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal; or

(v) actually or by simulation engaged in any act of excretion or urination within a sexual context; or

(vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or

(vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a

fully or partially developed breast of the child or other person; or

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

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

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

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

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

(7) solicits, uses, persuades, induces, entices, or coerces a person to provide a child under the age of 18 or a severely or profoundly mentally retarded person to appear in any videotape, photograph, film, stage play, live presentation, or other similar visual reproduction or depiction by computer in which the child or severely or profoundly mentally retarded person will be depicted, actually or by simulation, in any act, pose, or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection.

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

(2) (Blank).

(3) The charge of child pornography shall not apply to the performance of official duties by law enforcement or prosecuting officers or persons employed by law enforcement or prosecuting agencies, court personnel or attorneys, nor to bonafide treatment or professional education programs conducted by licensed physicians, psychologists or social workers.

(4) Possession by the defendant of more than one of the same film, videotape or visual reproduction or depiction by computer in which child pornography is depicted shall raise a rebuttable presumption that the defendant possessed such materials with the intent to disseminate them.

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

(c) Violation of paragraph (1), (4), (5), or (7) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$ 2,000 and a maximum fine of \$ 100,000. Violation of paragraph (3) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$ 1500 and a maximum fine of \$ 100,000. Violation of paragraph (2) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000. Violation of paragraph (6) of subsection (a) is a Class 3 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000.

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

(e) Any film, videotape, photograph or other similar visual reproduction or depiction by computer which includes a child under the age of 18 or a severely or profoundly mentally retarded person engaged in any activity described in subparagraphs (i) through (vii) or paragraph 1 of subsection (a), and any material or equipment used or intended for use in photographing, filming, printing, producing, reproducing, manufacturing, projecting, exhibiting, depiction by computer, or disseminating such material shall be seized and forfeited in the manner, method and procedure provided by Section 36-1 of this Code [720 ILCS 5/36-1] for the seizure and forfeiture of vessels, vehicles and aircraft.

(e-5) Upon the conclusion of a case brought under this Section, the court shall seal all evidence depicting a victim or witness that is sexually explicit. The evidence may be unsealed and viewed, on a motion of the party seeking to unseal and view the evidence, only for good cause shown and in the discretion of the court. The motion must expressly set forth the purpose for viewing the material. The State's attorney and the victim, if possible, shall be provided reasonable notice of the hearing on the motion to unseal the evidence. Any person entitled to notice of a hearing under this subsection (e-5) may object to the motion.

(f) Definitions. For the purposes of this Section:

(1) "Disseminate" means (i) to sell, distribute, exchange or transfer possession, whether with or without consideration or (ii) to make a depiction by computer available for distribution or downloading through the facilities of any telecommunications network or through any other means of transferring computer programs or data to a computer.

(2) "Produce" means to direct, promote, advertise, publish, manufacture, issue, present or show.

(3) "Reproduce" means to make a duplication or copy.

(4) "Depict by computer" means to generate or create, or cause to be created or generated, a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

(5) "Depiction by computer" means a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

(6) "Computer", "computer program", and "data" have the meanings ascribed to them in Section 16D-2 of this Code [720 ILCS 5/16D-2].

(7) "Child" includes a film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer that is, or appears to be, that of a person, either in part, or in total, under the age of 18, regardless of the method by which the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is created, adopted, or modified to appear as such. "Child" also includes a film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer that is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is of a person under the age of 18.

(8) "Sexual penetration" and "sexual conduct" have the meanings ascribed to them in Section 12-12 of this Code [720 ILCS 5/12-12].

(g) Re-enactment; findings; purposes.

(1) The General Assembly finds and declares that:

(i) Section 50-5 of Public Act 88-680, effective January 1, 1995, contained provisions amending the child pornography statute, Section 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-20.1]. Section 50-5 also contained other provisions [720 ILCS 5/50-5].

(ii) In addition, Public Act 88-680 was entitled "AN ACT to create a Safe Neighborhoods Law". (A) Article 5 was entitled JUVENILE JUSTICE and amended the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.]. (B) Article 15 was entitled GANGS and amended various provisions of the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.] and the Unified Code of Corrections [730 ILCS 5/1-1-1 et seq.]. (C) Article 20 was entitled ALCOHOL ABUSE and amended various provisions of the Illinois Vehicle Code [625 ILCS 5/1-100 et seq.]. (D) Article 25 was entitled DRUG ABUSE and amended the Cannabis Control Act [720 ILCS 550/1 et seq.] and the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.]. (E) Article 30 was entitled

FIREARMS and amended the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.] and the Code of Criminal Procedure of 1963 [725 ILCS 5/100-1 et seq.]. (F) Article 35 amended the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.], the Rights of Crime Victims and Witnesses Act [725 ILCS 120/1 et seq.], and the Unified Code of Corrections [730 ILCS 5/1-1-1 et seq.]. (G) Article 40 amended the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.] to increase the penalty for compelling organization membership of persons. (H) Article 45 created the Secure Residential Youth Care Facility Licensing Act [730 ILCS 175/45-1 et seq.] and amended the State Finance Act [30 ILCS 105/1 et seq.], the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.], the Unified Code of Corrections [730 ILCS 5/1-1-1 et seq.], and the Private Correctional Facility Moratorium Act [730 ILCS 140/1 et seq.]. (I) Article 50 amended the WIC Vendor Management Act [410 ILCS 255/1 et seq.], the Firearm Owners Identification Card Act [430 ILCS 65/0.01 et seq.], the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.], the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.], the Wrongs to Children Act [720 ILCS 150/0.01 et seq.], and the Unified Code of Corrections [730 ILCS 5/1-1-1 et seq.].

(iii) On September 22, 1998, the Third District Appellate Court in *People v. Dainty*, 701 N.E. 2d 118, ruled that Public Act 88-680 violates the single subject clause of the Illinois Constitution (Article IV, Section 8 (d)) and was unconstitutional in its entirety. As of the time this amendatory Act of 1999 [P.A. 91-54] was prepared, *People v. Dainty* was still subject to appeal.

(iv) Child pornography is a vital concern to the people of this State and the validity of future prosecutions under the child pornography statute of the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.] is in grave doubt.

(2) It is the purpose of this amendatory Act of 1999 [P.A. 91-54] to prevent or minimize any problems relating to prosecutions for child pornography that may result from challenges to the constitutional validity of Public Act 88-680 by re-enacting the Section relating to child pornography that was included in Public Act 88-680.

(3) This amendatory Act of 1999 [P.A. 91-54] re-enacts Section 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-20.1], as it has been amended. This re-enactment is intended to remove any question as to the validity or content of that Section; it is not intended to supersede any other Public Act that amends the text of the Section as set forth in this amendatory Act of 1999 [P.A. 91-54]. The material is shown as existing text (i.e., without underscoring) because, as of the time this amendatory Act of 1999 [P.A. 91-54] was prepared, *People v. Dainty* was subject to appeal to the Illinois Supreme Court.

(4) The re-enactment by this amendatory Act of 1999 [P.A. 91-54] of Section 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-20.1] relating to child pornography that was amended by Public Act 88-680 is not intended, and shall not be construed, to imply that Public Act 88-680 is invalid or to limit or impair any legal argument concerning whether those provisions were substantially re-enacted by other Public Acts.

325 Ill. Comp. Stat. Ann. § 720 ILCS 5/11-20.3 (2010). Aggravated child pornography

(a) A person commits the offense of aggravated child pornography who:

(1) films, videotapes, photographs, or otherwise depicts or portrays by means of any similar visual medium or reproduction or depicts by computer any child whom he or she knows or

reasonably should know to be under the age of 13 years where such child is:

(i) actually or by simulation engaged in any act of sexual penetration or sexual conduct with any person or animal; or

(ii) actually or by simulation engaged in any act of sexual penetration or sexual conduct involving the sex organs of the child and the mouth, anus, or sex organs of another person or animal; or which involves the mouth, anus or sex organs of the child and the sex organs of another person or animal; or

(iii) actually or by simulation engaged in any act of masturbation; or

(iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal; or

(v) actually or by simulation engaged in any act of excretion or urination within a sexual context; or

(vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or

(vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the child or other person; or

(2) with the knowledge of the nature or content thereof, reproduces, disseminates, offers to disseminate, exhibits or possesses with intent to disseminate any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child whom the person knows or reasonably should know to be under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(3) with knowledge of the subject matter or theme thereof, produces any stage play, live performance, film, videotape or other similar visual portrayal or depiction by computer which includes a child whom the person knows or reasonably should know to be under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(4) solicits, uses, persuades, induces, entices, or coerces any child whom he or she knows or reasonably should know to be under the age of 13 to appear in any stage play, live presentation, film, videotape, photograph or other similar visual reproduction or depiction by computer in which the child or severely or profoundly mentally retarded person is or will be depicted, actually or by simulation, in any act, pose or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(5) is a parent, step-parent, legal guardian or other person having care or custody of a child whom the person knows or reasonably should know to be under the age of 13 and who knowingly permits, induces, promotes, or arranges for such child to appear in any stage play, live performance, film, videotape, photograph or other similar visual presentation, portrayal or simulation or depiction by computer of any act or activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(6) with knowledge of the nature or content thereof, possesses any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child whom the person knows or reasonably should know to be under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(7) solicits, or knowingly uses, persuades, induces, entices, or coerces a person to provide a child under the age of 13 to appear in any videotape, photograph, film, stage play, live presentation, or other similar visual reproduction or depiction by computer in which the child will be depicted, actually or by simulation, in any act, pose, or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection.

(b)(1) It shall be an affirmative defense to a charge of aggravated child pornography that the defendant reasonably believed, under all of the circumstances, that the child was 13 years of age or older, but only where, prior to the act or acts giving rise to a prosecution under this Section, he or she took some affirmative action or made a bonafide inquiry designed to ascertain whether the child was 13 years of age or older and his or her reliance upon the information so obtained was clearly reasonable.

(2) The charge of aggravated child pornography shall not apply to the performance of official duties by law enforcement or prosecuting officers or persons employed by law enforcement or prosecuting agencies, court personnel or attorneys, nor to bonafide treatment or professional education programs conducted by licensed physicians, psychologists or social workers.

(3) If the defendant possessed more than 3 of the same film, videotape or visual reproduction or depiction by computer in which aggravated child pornography is depicted, then the trier of fact may infer that the defendant possessed such materials with the intent to disseminate them.

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

(c) Sentence: (1) A person who commits a violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) is guilty of a Class X felony with a mandatory minimum fine of \$ 2,000 and a maximum fine of \$ 100,000.

(2) A person who commits a violation of paragraph (6) of subsection (a) is guilty of a Class 2 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000.

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

(4) A person who commits a violation of paragraph (6) of subsection (a) where the defendant has previously been convicted under the laws of this State or any other state of the offense of child pornography, aggravated child pornography, aggravated criminal sexual abuse, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or any of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child where the victim was under the age of 18 years or an offense that is substantially equivalent to those offenses, is guilty of a Class 1 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000.

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

(e) Any film, videotape, photograph or other similar visual reproduction or depiction by computer which includes a child under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of subsection (a), and any material or equipment used or intended for use in photographing, filming, printing, producing, reproducing, manufacturing, projecting, exhibiting, depiction by computer, or disseminating such material shall be seized and forfeited in the manner, method and procedure provided by Section 36-1 of this Code [720 ILCS 5/36-1] for the seizure and forfeiture of vessels, vehicles and aircraft.

(e-5) Upon the conclusion of a case brought under this Section, the court shall seal all evidence depicting a victim or witness that is sexually explicit. The evidence may be unsealed and viewed, on a motion of the party seeking to unseal and view the evidence, only for good cause shown and in the discretion of the court. The motion must expressly set forth the purpose for viewing the material. The State's attorney and the victim, if possible, shall be provided reasonable notice of the hearing on the motion to unseal the evidence. Any person entitled to notice of a hearing under this subsection (e-5) may object to the motion.

(f) Definitions. For the purposes of this Section:

(1) "Disseminate" means (i) to sell, distribute, exchange or transfer possession, whether with or without consideration or (ii) to make a depiction by computer available for distribution or downloading through the facilities of any telecommunications network or through any other means of transferring computer programs or data to a computer.

(2) "Produce" means to direct, promote, advertise, publish, manufacture, issue, present or show.

(3) "Reproduce" means to make a duplication or copy.

(4) "Depict by computer" means to generate or create, or cause to be created or generated, a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

(5) "Depiction by computer" means a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

(6) "Computer", "computer program", and "data" have the meanings ascribed to them in Section 16D-2 of this Code [720 ILCS 5/16D-2].

(7) For the purposes of this Section, "child" means a person, either in part or in total, under the age of 13, regardless of the method by which the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is created, adopted, or modified to appear as such.

(8) "Sexual penetration" and "sexual conduct" have the meanings ascribed to them in Section 12-12 of this Code [720 ILCS 5/12-12].

(g) When a charge of aggravated child pornography is brought, the age of the child is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the age in question. The trier of fact can rely on its own everyday observations and common experiences in making this determination.

INDIANA

Ind. Code Ann. § 35-42-4-4 (2009). Child exploitation.

(a) As used in this section:

"Disseminate" means to transfer possession for free or for a consideration.

"Matter" has the same meaning as in IC 35-49-1-3.

"Performance" has the same meaning as in IC 35-49-1-7.

"Sexual conduct" means sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or deviate sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who knowingly or intentionally:

(1) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or

(3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;

commits child exploitation, a Class C felony.

(c) A person who knowingly or intentionally possesses:

- (1) a picture;
- (2) a drawing;
- (3) a photograph;
- (4) a negative image;
- (5) undeveloped film;
- (6) a motion picture;
- (7) a videotape;
- (8) a digitized image; or
- (9) any pictorial representation;

that depicts or describes sexual conduct by a child who the person knows is less than sixteen (16) years of age or who appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

(d) Subsections (b) and (c) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials is for legitimate scientific or educational purposes.

Ind. Code Ann. § 35-42-4-4 (2010) Activities related to obscene performance.

A person who knowingly or intentionally engages in, participates in, manages, produces, sponsors, presents, exhibits, photographs, films, or videotapes any obscene performance commits a Class A misdemeanor. However, the offense is a Class D felony if the obscene performance depicts or describes sexual conduct involving any person who is or appears to be under sixteen (16) years of age.

IOWA

Iowa Code § 728.1 (2008). Definitions.

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

1. "Disseminate" means to transfer possession, with or without consideration.

2. "Knowingly" means being aware of the character of the matter.
3. "Material" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, 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, equipment, machines or materials.
4. "Minor" means any person under the age of eighteen.
5. "Obscene material" is any material depicting or describing the genitals, sex acts, masturbation, excretory functions or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for minors, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political or artistic value.
6. "Place of business" means the premises of a business required to obtain a sales tax permit pursuant to chapter 423, the premises of a nonprofit or not-for-profit organization, and the premises of an establishment which is open to the public at large or where entrance is limited by a cover charge or membership requirement.
7. Unless otherwise provided, "prohibited sexual act" means any of the following:
 - a. A sex act as defined in section 702.17.
 - b. An act of bestiality involving a minor.
 - c. Fondling or touching the pubes or genitals of a minor.
 - d. Fondling or touching the pubes or genitals of a person by a minor.
 - e. Sadomasochistic abuse of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.
 - f. Sadomasochistic abuse of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.
 - g. Nudity of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the nude minor.
8. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do any of these acts.
9. "Sadomasochistic abuse" means the infliction of physical or mental pain upon a person or the condition of a person being fettered, bound or otherwise physically restrained.
10. "Sex act" means any sexual contact, actual or simulated, either natural or deviate, between two or more persons, or between a person and an animal, by penetration of the penis into the vagina or anus, or by contact between the mouth or tongue and genitalia or anus, or by contact between a finger of one person and the genitalia of another person or by use of artificial sexual

organs or substitutes therefor in contact with the genitalia or anus.

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. § 21-3516 (2009) Sexual exploitation of a child.

(a) Sexual exploitation of a child is:

(1) Except as provided in subsection (a)(5), employing, using, persuading, inducing, enticing or coercing a child under 18 years of age to engage in sexually explicit conduct for the purpose of

promoting any performance;

(2) possessing any visual depiction, including any photograph, film, video picture, digital or computer generated image or picture, whether made or produced by electronic, mechanical or other means, where such visual depiction of a child under 18 years of age is shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender, the child or another;

(3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2);

(4) except as provided in subsection (a)(6), promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance;

(5) employing, using, persuading, inducing, enticing or coercing a child under 14 years of age to engage in sexually explicit conduct for the purpose of promoting any performance; or

(6) promoting any performance that includes sexually explicit conduct by a child under 14 years of age, knowing the character and content of the performance.

(b) As used in this section:

(1) "Sexually explicit conduct" means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse for the purpose of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person.

(2) "Promoting" means procuring, selling, providing, lending, mailing, delivering, transferring, transmitting, distributing, circulating, disseminating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender, the child or another.

(3) "Performance" means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation.

(4) "Nude" means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(c) Except as provided further, sexual exploitation of a child is a severity level 5, person felony.

Sexual exploitation of a child as described in subsection (a)(5) or (a)(6) when the offender is 18 years of age or older is an off-grid person felony.

(d) This section shall be part of and supplemental to the Kansas criminal code.

KENTUCKY

Ky. Rev. Stat. Ann. § 531.300 (2010). Definitions for KRS 531.080 and 531.310 to 531.370.

As used in KRS 531.080 and 531.310 to 531.370:

(1) "Distribute" means to transfer possession of, whether with or without consideration;

(2) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, 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, equipment, machines, or materials;

(3) "Obscene" means the predominate appeal of the matter taken as a whole is to a prurient interest in sexual conduct involving minors;

(4) "Sexual conduct by a minor" means:

(a) Acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated;

(b) Physical contact with, or willful or intentional exhibition of the genitals;

(c) Flagellation or excretion for the purpose of sexual stimulation or gratification; or

(d) The exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area or buttocks, or the female breast, whether or not subsequently obscured by a mark placed thereon, or otherwise altered, in any resulting motion picture, photograph or other visual representation, exclusive of exposure portrayed in matter of a private, family nature not intended for distribution outside the family;

(5) "Performance" means any play, motion picture, photograph or dance. Performance also means any other visual representation exhibited before an audience;

(6) "Sexual performance" means any performance or part thereof which includes sexual conduct by a minor; and

(7) "Promote" means to prepare, publish, print, procure or manufacture, or to offer or agree to do the same.

Ky. Rev. Stat. Ann. § 531.320 (2010). Promoting a sexual performance by a minor.

(1) A person is guilty of promoting a sexual performance by a minor when, knowing the character

and content thereof, he produces, directs or promotes any performance which includes sexual conduct by a minor.

(2) Promoting a sexual performance by a minor is:

(a) A Class C felony if the minor involved in the sexual performance is less than eighteen (18) years old at the time the minor engages in the prohibited activity;

(b) A Class B felony if the minor involved in the sexual performance is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and

(c) A Class A felony if the minor involved in the sexual performance incurs physical injury thereby.

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.

MAINE

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 § 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, distribute, or possess with the intent to distribute any matter, visual representation, or performance that depicts a minor engaged as a subject in 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. Ann. 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 Serv. § 750.145c (2010). Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; report to law enforcement agency by computer technician; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited.

Sec. 145c. (1) As used in this section:

(a) "Appears to include a child" means that the depiction appears to include, or conveys the impression that it includes, a person who is less than 18 years of age, and the depiction meets either of the following conditions:

(i) It was created using a depiction of any part of an actual person under the age of 18.

(ii) It was not created using a depiction of any part of an actual person under the age of 18, but all of the following apply to that depiction:

(A) The average individual, applying contemporary community standards, would find the depiction, taken as a whole, appeals to the prurient interest.

(B) The reasonable person would find the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(C) The depiction depicts or describes a listed sexual act in a patently offensive way.

(b) "Child" means a person who is less than 18 years of age, subject to the affirmative defense created in subsection (6) regarding persons emancipated by operation of law.

(c) "Commercial film or photographic print processor" means a person or his or her employee who, for compensation, develops exposed photographic film into movie films, negatives, slides, or prints; makes prints from negatives or slides; or duplicates movie films or videotapes.

(d) "Computer technician" means a person who installs, maintains, troubleshoots, upgrades, or repairs computer hardware, software, personal computer networks, or peripheral equipment.

(e) "Contemporary community standards" means the customary limits of candor and decency in this state at or near the time of the alleged violation of this section.

(f) "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area,

buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved. Erotic fondling does not include physical contact, even if affectionate, that is not for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(g) "Erotic nudity" means the lascivious exhibition of the genital, pubic, or rectal area of any person. As used in this subdivision, "lascivious" means wanton, lewd, and lustful and tending to produce voluptuous or lewd emotions.

(h) "Listed sexual act" means sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.

(i) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, either by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(j) "Passive sexual involvement" means an act, real or simulated, that exposes another person to or draws another person's attention to an act of sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity because of viewing any of these acts or because of the proximity of the act to that person, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(k) "Prurient interest" means a shameful or morbid interest in nudity, sex, or excretion.

(l) "Child sexually abusive activity" means a child engaging in a listed sexual act.

(m) "Child sexually abusive material" means any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

(n) "Sadomasochistic abuse" means either of the following:

(i) Flagellation or torture, real or simulated, for the purpose of real or simulated sexual stimulation or gratification, by or upon a person.

(ii) The condition, real or simulated, of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(o) "Sexual excitement" means the condition, real or simulated, of human male or female genitals in a state of real or simulated overt sexual stimulation or arousal.

(p) "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

(2) A person who persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or a person who arranges for, produces, makes, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, or finance any child sexually abusive activity or child sexually abusive material is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than \$100,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting

the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

(3) A person who distributes or promotes, or finances the distribution or promotion of, or receives for the purpose of distributing or promoting, or conspires, attempts, or prepares to distribute, receive, finance, or promote any child sexually abusive material or child sexually abusive activity is guilty of a felony, punishable by imprisonment for not more than 7 years, or a fine of not more than \$50,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. This subsection does not apply to the persons described in section 7 of 1984 PA 343, MCL 752.367.

(4) A person who knowingly possesses any child sexually abusive material is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$10,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. This subsection does not apply to any of the following:

(a) A person described in section 7 of 1984 PA 343, MCL 752.367, a commercial film or photographic print processor acting pursuant to subsection (8) , or a computer technician acting pursuant to subsection (9) .

(b) A police officer acting within the scope of his or her duties as a police officer.

(c) An employee or contract agent of the department of social services acting within the scope of his or her duties as an employee or contract agent.

(d) A judicial officer or judicial employee acting within the scope of his or her duties as a judicial officer or judicial employee.

(e) A party or witness in a criminal or civil proceeding acting within the scope of that criminal or civil proceeding.

(f) A physician, psychologist, limited license psychologist, professional counselor, or registered nurse licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, acting within the scope of practice for which he or she is licensed.

(g) A social worker registered in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, acting within the scope of practice for which he or she is registered.

(5) Expert testimony as to the age of the child used in a child sexually abusive material or a child sexually abusive activity is admissible as evidence in court and may be a legitimate basis for determining age, if age is not otherwise proven.

(6) It is an affirmative defense to a prosecution under this section that the alleged child is a person who is emancipated by operation of law under section 4(2) of 1968 PA 293, MCL 722.4, as proven by a preponderance of the evidence.

(7) If a defendant in a prosecution under this section proposes to offer in his or her defense evidence to establish that a depiction that appears to include a child was not, in fact, created using a depiction of any part of an actual person under the age of 18, the defendant shall at the time of the arraignment on the information or within 15 days after arraignment but not less than 10 days before the trial of the case, or at such other time as the court directs, file and serve upon the prosecuting attorney of record a notice in writing of his or her intention to offer that defense. The notice shall contain, as particularly as is known to the defendant or the defendant's attorney, the names of witnesses to be called in behalf of the defendant to establish that defense. The defendant's notice shall include specific information as to the facts that establish that the

depiction was not, in fact, created using a depiction of any part of an actual person under the age of 18. Failure to file a timely notice in conformance with this subsection precludes a defendant from offering this defense.

(8) If a commercial film or photographic print processor reports to a law enforcement agency having jurisdiction his or her knowledge or observation, within the scope of his or her professional capacity or employment, of a film, photograph, movie film, videotape, negative, or slide depicting a person that the processor has reason to know or reason to believe is a child engaged in a listed sexual act; furnishes a copy of the film, photograph, movie film, videotape, negative, or slide to a law enforcement agency having jurisdiction ; or keeps the film, photograph, movie film, videotape, negative, or slide according to the law enforcement agency's instructions, both of the following shall apply:

(a) The identity of the processor shall be confidential, subject to disclosure only with his or her consent or by judicial process.

(b) If the processor acted in good faith, he or she shall be immune from civil liability that might otherwise be incurred by his or her actions. This immunity extends only to acts described in this subsection.

(9) If a computer technician reports to a law enforcement agency having jurisdiction his or her knowledge or observation, within the scope of his or her professional capacity or employment, of an electronic visual image, computer-generated image or picture or sound recording depicting a person that the computer technician has reason to know or reason to believe is a child engaged in a listed sexual act; furnishes a copy of that image, picture, or sound recording to the law enforcement agency; or keeps the image, picture, or sound recording according to the law enforcement agency's instructions, both of the following shall apply:

(a) The identity of the computer technician shall be confidential, subject to disclosure only with his or her consent or by judicial process.

(b) If the computer technician acted in good faith, he or she shall be immune from civil liability that might otherwise be incurred by his or her actions. This immunity extends only to acts described in this subsection.

(10) This section applies uniformly throughout the state and all political subdivisions and municipalities in the state.

(11) A local municipality or political subdivision shall not enact ordinances, nor enforce existing ordinances, rules, or regulations governing child sexually abusive activity or child sexually abusive material as defined by this section.

MINNESOTA

Minn. Stat. § 617.241 (2009). Obscene materials and performances; distribution and exhibition prohibited; penalty

Subdivision 1. Definitions.

For purposes of this section, the following terms have the meanings given them:

(a) "Obscene" means that the work, taken as a whole, appeals to the prurient interest in sex and depicts or describes in a patently offensive manner sexual conduct and which, taken as a whole, does not have serious literary, artistic, political, or scientific value. In order to determine that a work is obscene, the trier of fact must find:

(1) that the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest in sex;

(2) that the work depicts sexual conduct specifically defined by paragraph (b) in a patently offensive manner; and

(3) that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(b) "Sexual conduct" means any of the following:

(1) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

(2) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexually revealing costume or the condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed or who is nude.

(3) Masturbation, excretory functions, or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ.

(4) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(c) "Community" means the political subdivision from which persons properly qualified to serve as jurors in a criminal proceeding are chosen.

(d) "Work" means "material" or "performance."

(e) "Material" means a book, magazine, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, videotape, script, image, instrument, statue, drawing, or other article.

(f) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

Subd. 2. Crime.

It is unlawful for a person, knowing or with reason to know its content and character, to:

(a) exhibit, sell, print, offer to sell, give away, circulate, publish, distribute or attempt to distribute any obscene material; or

(b) produce, present, participate in, or direct an obscene performance.

Subd. 3. Penalty.

A person violating subdivision 2 is guilty of a gross misdemeanor and may be sentenced to

imprisonment for not more than one year, or to payment of a fine of not more than \$3,000, or both.

Subd. 4. Second or subsequent violations.

Whoever violates the provisions of subdivision 2 within five years of a previous conviction under that subdivision is guilty of a felony and may be sentenced to imprisonment for not more than two years, or to payment of a fine of not more than \$10,000, or both.

Minn. Stat. § 617.246 (2009). Use of minors in sexual performance prohibited

Subdivision 1. Definitions.

(a) For the purpose of this section, the terms defined in this subdivision have the meanings given them.

(b) "Minor" means any person under the age of 18.

(c) "Promote" means to produce, direct, publish, manufacture, issue, or advertise.

(d) "Sexual performance" means any play, dance or other exhibition presented before an audience or for purposes of visual or mechanical reproduction that uses a minor to depict actual or simulated sexual conduct as defined by clause (e).

(e) "Sexual conduct" means any of the following:

(1) an act of sexual intercourse, normal or perverted, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal;

(2) sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed;

(3) masturbation;

(4) lewd exhibitions of the genitals; or

(5) physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(f) "Pornographic work" means:

(1) an original or reproduction of a picture, film, photograph, negative, slide, videotape, videodisc, or drawing of a sexual performance involving a minor; or

(2) any visual depiction, including any photograph, film, video, picture, drawing, negative, slide, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means that:

- (i) uses a minor to depict actual or simulated sexual conduct;
- (ii) has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct; or
- (iii) is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexual conduct.

For the purposes of this paragraph, an identifiable minor is a person who was a minor at the time the depiction was created or altered, whose image is used to create the visual depiction.

Subd. 2. Use of minor.

It is unlawful for a person to promote, employ, use or permit a minor to engage in or assist others to engage minors in posing or modeling alone or with others in any sexual performance or pornographic work if the person knows or has reason to know that the conduct intended is a sexual performance or a pornographic work.

Any person who violates this subdivision is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000 for the first offense and \$40,000 for a second or subsequent offense, or both.

Subd. 3. Operation or ownership of business.

A person who owns or operates a business in which a pornographic work, as defined in this section, is disseminated to an adult or a minor or is reproduced, and who knows the content and character of the pornographic work disseminated or reproduced, is guilty of a felony and may be sentenced to imprisonment for not more than ten years, or to payment of a fine of not more than \$20,000 for the first offense and \$40,000 for a second or subsequent offense, or both.

Subd. 4. Dissemination.

A person who, knowing or with reason to know its content and character, disseminates for profit to an adult or a minor a pornographic work, as defined in this section, is guilty of a felony and may be sentenced to imprisonment for not more than ten years, or to payment of a fine of not more than \$20,000 for the first offense and \$40,000 for a second or subsequent offense, or both.

Subd. 5. Consent; mistake.

Neither consent to sexual performance by a minor or the minor's parent, guardian, or custodian nor mistake as to the minor's age is a defense to a charge of violation of this section.

Subd. 6. Affirmative defense.

It shall be an affirmative defense to a charge of violating this section that the sexual performance or pornographic work was produced using only persons who were 18 years or older.

MISSISSIPPI

Miss. Code Ann. § 97-5-31 (2009). 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 (2009). 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.

Miss. Code Ann. § 97-5-35 (2009). Exploitation of children; penalties

Any person who violates any provision of Section 97-5-33 shall be guilty of a felony and upon conviction shall be fined not less than Fifty Thousand Dollars (\$ 50,000.00) nor more than Five Hundred Thousand Dollars (\$ 500,000.00) and shall be imprisoned for not less than five (5) years nor more than forty (40) years. Any person convicted of a second or subsequent violation of Section 97-5-33 shall be fined not less than One Hundred Thousand Dollars (\$ 100,000.00) nor more than One Million Dollars (\$ 1,000,000.00) and shall be confined in the custody of the Department of Corrections for life or such lesser term as the court may determine, but not less than twenty (20) years.

Miss. Code Ann. § 97-5-37 (2009). Exploitation of children; other remedies

The provisions of Sections 97-5-31 through 97-5-37 are supplemental to any statute relating to child abuse or neglect, obscenity, enticement of children or contributing to delinquency of a minor and acquittal or conviction pursuant to any other statute shall not be a bar to prosecution under Sections 97-5-31 through 97-5-37. Acquittal or conviction under Sections 97-5-31 through 97-5-37 shall not be a bar to prosecution and conviction under other statutes defining crimes or misdemeanors, nor to any civil or administrative remedy otherwise available.

MISSOURI

Mo. Rev. Stat. § 573.010 (2009). Definitions

As used in this chapter the following terms shall mean:

(1) "Child", any person under the age of fourteen;

(2) "Child pornography":

(a) Any obscene material or performance depicting sexual conduct, sexual contact, or a sexual performance, as these terms are defined in section 556.061, RSMo, and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a minor under the age of eighteen; or

(b) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:

a. The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

b. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

c. Such visual depiction has been created, adapted, or modified to show that an identifiable minor is engaging in sexually explicit conduct;

(3) "Displays publicly", exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway or public sidewalk, or from the property of others or from any portion of the person's store, or the exhibitor's store or property when items and material other than this material are offered for sale or rent to the public;

(4) "Explicit sexual material", any pictorial or three-dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals; provided, however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition;

(5) "Furnish", to issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit or otherwise provide;

(6) "Graphic", when used with respect to a depiction of sexually explicit conduct, that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any

part of the time that the sexually explicit conduct is being depicted;

(7) "Identifiable minor":

(a) A person:

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

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

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; and

(b) The term shall not be construed to require proof of the actual identity of the identifiable minor;

(8) "Indistinguishable", when used with respect to a depiction, virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. Indistinguishable does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults;

(9) "Material", anything printed or written, or any picture, drawing, photograph, motion picture film, videotape or videotape production, or pictorial representation, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or stored computer data, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, stored computer data and other latent representational objects;

(10) "Minor", any person under the age of eighteen;

(11) "Nudity", the showing of postpubertal human genitals or pubic area, with less than a fully opaque covering;

(12) "Obscene", any material or performance is obscene if, taken as a whole:

(a) Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and

(b) The average person, applying contemporary community standards, would find the material depicts or describes sexual conduct in a patently offensive way; and

(c) A reasonable person would find the material lacks serious literary, artistic, political or scientific value;

(13) "Performance", any play, motion picture film, videotape, dance or exhibition performed before an audience of one or more;

(14) "Pornographic for minors", any material or performance is pornographic for minors if the

following apply:

(a) The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient interest of minors; and

(b) The material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and

(c) The material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors;

(15) "Promote", to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same, by any means including a computer;

(16) "Sadomasochistic abuse", flagellation or torture by or upon a person as an act of sexual stimulation or gratification;

(17) "Sexual conduct", actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification;

(18) "Sexually explicit conduct", 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) Sadistic or masochistic abuse; or

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

(19) "Sexual excitement", the condition of human male or female genitals when in a state of sexual stimulation or arousal;

(20) "Visual depiction", includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image;

(21) "Wholesale promote", to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purposes of resale or redistribution.

Mo. Rev. Stat. § 573.025 (2009). Promoting child pornography in the first degree

1. A person commits the crime of promoting child pornography in the first degree if, knowing of its content and character, such person possesses with the intent to promote or promotes child pornography of a child less than fourteen years of age or obscene material portraying what appears to be a child less than fourteen years of age.
2. Promoting child pornography in the first degree is a class B felony unless the person knowingly promotes such material to a minor, in which case it is a class A felony. No person who pleads guilty to or is found guilty of, or is convicted of, promoting child pornography in the first degree shall be eligible for probation, parole, or conditional release for a period of three calendar years.
3. Nothing in this section shall be construed to require a provider of electronic communication services or remote computing services to monitor any user, subscriber or customer of the provider, or the content of any communication of any user, subscriber or customer of the provider.

Mo. Rev. Stat. § 573.035 (2009). Promoting child pornography in the second degree

1. A person commits the crime of promoting child pornography in the second degree if knowing of its content and character such person possesses with the intent to promote or promotes child pornography of a minor under the age of eighteen or obscene material portraying what appears to be a minor under the age of eighteen.
2. Promoting child pornography in the second degree is a class C felony unless the person knowingly promotes such material to a minor, in which case it is a class B felony. No person who is found guilty of, pleads guilty to, or is convicted of promoting child pornography in the second degree shall be eligible for probation.

Mo. Rev. Stat. § 573.050 (2009). Evidence in obscenity and child pornography cases

1. In any prosecution under this chapter evidence shall be admissible to show:
 - (1) What the predominant appeal of the material or performance would be for ordinary adults or minors;
 - (2) The literary, artistic, political or scientific value of the material or performance;
 - (3) The degree of public acceptance in this state and in the local community;
 - (4) The appeal to prurient interest in advertising or other promotion of the material or performance;
 - (5) The purpose of the author, creator, promoter, furnisher or publisher of the material or performance.
2. Testimony of the author, creator, promoter, furnisher, publisher, or expert testimony, relating to

factors entering into the determination of the issues of obscenity or child pornography, shall be admissible.

3. In any prosecution for possession of child pornography or promoting child pornography in the first or second degree, the determination that the person who participated in the child pornography was younger than eighteen years of age may be made as set forth in section 568.100, RSMo, or reasonable inferences drawn by a judge or jury after viewing the alleged pornographic material shall constitute sufficient evidence of the child's age to support a conviction.

4. In any prosecution for promoting child pornography in the first or second degree, no showing is required that the performance or material involved appeals to prurient interest, that it lacks serious literary, artistic, political or scientific value, or that it is patently offensive to prevailing standards in the community as a whole.

MONTANA

Mont. Code Ann. § 45-5-625 (2009). 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; or

(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.

(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. Ann. § 28-1463.02 (2009). Terms, defined

As used in the Child Pornography Prevention Act, unless the context otherwise requires:

(1) Child, in the case of a participant, shall mean any person under the age of eighteen years and, in the case of a portrayed observer, shall mean any person under the age of sixteen years;

(2) Erotic fondling shall mean touching a person's clothed or unclothed genitals or pubic area, breasts if the person is a female, or developing breast area if the person is a female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more persons involved. Erotic fondling shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more of the persons involved;

(3) Erotic nudity shall mean the display of the human male or female genitals or pubic area, the human female breasts, or the developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more of the persons involved;

(4) Sadomasochistic abuse shall mean flagellation or torture by or upon a nude person or a person clad in undergarments, a mask, or bizarre costume, or the condition of being fettered,

bound, or otherwise physically restrained when performed to predominantly appeal to the morbid interest;

(5) Sexually explicit conduct shall mean: (a) Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite sex or between a human and an animal or with an artificial genital; (b) real or simulated masturbation; (c) real or simulated sadomasochistic abuse; (d) erotic fondling; (e) erotic nudity; or (f) real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved; and

(6) Visual depiction shall mean live performance or photographic representation.

Neb. Rev. Stat. Ann. § 28-1463.03 (2009). Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense

(1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(5) It shall be an affirmative defense to a charge brought pursuant to subsection (1) of this section if the defendant was less than eighteen years of age at the time the visual depiction was created and the visual depiction of sexually explicit conduct includes no person other than the defendant.

(6) It shall be an affirmative defense to a charge brought pursuant to subsection (2) of this section if (a) the defendant was less than eighteen years of age, (b) the visual depiction of sexually explicit conduct includes no person other than the defendant, (c) the defendant had a reasonable belief at the time the visual depiction was sent to another that it was being sent to a willing recipient, and (d) the recipient was at least fifteen years of age at the time the visual depiction was sent.

Neb. Rev. Stat. Ann. § 28-1463.04 (2009). Violation; penalty

(1) Any person who is under nineteen years of age at the time he or she violates section 28-1463.03 shall be guilty of a Class III felony for each offense.

(2) Any person who is nineteen years of age or older at the time he or she violates section 28-

1463.03 shall be guilty of a Class ID felony for each offense.

(3) Any person who violates section 28-1463.03 and has previously been convicted of a violation of section 28-1463.03 or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

NEVADA

Nev. Rev. Stat. Ann. § 200.700 (2009). Definitions.

As used in NRS 200.700 to 200.760, inclusive, unless the context otherwise provides:

1. "Performance" means any play, film, photograph, computer-generated image, electronic representation, dance or other visual presentation.

2. "Promote" means to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.

3. "Sexual conduct" means sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person's body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.

4. "Sexual portrayal" means the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.

Nev. Rev. Stat. Ann. § 200.720 (2009). Promotion of sexual performance of minor unlawful. A person who knowingly promotes a performance of a minor:

1. Where the minor engages in or simulates, or assists others to engage in or simulate, sexual conduct; or

2. Where the minor is the subject of a sexual portrayal,

is guilty of a category A felony and shall be punished as provided in NRS 200.750.

Nev. Rev. Stat. Ann. § 200.725 (2009). Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty.

A person who knowingly prepares, advertises or distributes any item or material that depicts a minor engaging in, or simulating, or assisting others to engage in or simulate, 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 15 years, or by a fine of not more than \$15,000, or by both fine and imprisonment.

Nev. Rev. Stat. Ann. § 200.735 (2009). Exemption for purposes of law enforcement.

The provisions of NRS 200.710 to 200.730, inclusive, do not apply to law enforcement personnel during the investigation or prosecution of a violation of the provisions of NRS 200.710 to 200.730, inclusive.

NEW HAMPSHIRE

N.H. Rev. Stat. Ann. § 649-A:2 (2009). Definitions.

In this chapter:

I. "Child" means any person under the age of 18 years.

II. "Disseminate" means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit, or display.

III. "Sexually explicit conduct" means human masturbation, the touching of the actor's or other person's sexual organs in the context of a sexual relationship, sexual intercourse actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex or between humans and animals, or any lewd exhibitions of the buttocks, genitals, flagellation, bondage, or torture. Sexual intercourse is simulated when it depicts explicit sexual intercourse that gives the appearance of the consummation of sexual intercourse, normal or perverted.

IV. "Visual representation" means any visual depiction, including any photograph, film, video, digital image, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) The production of such visual depiction involves the use of a child engaging in or being engaged in sexually explicit conduct; or

(b) Such visual depiction is a digital image, computer image, or computer-generated image of a child engaging in or being engaged in sexually explicit conduct; or

(c) Such visual depiction has been created, adapted, or modified to appear that an identifiable child is engaging in or being engaged in sexually explicit conduct.

V. (a) "Identifiable child" means a person:

(1) Who was a child at the time the visual depiction was created, adapted, or modified; or

(2) Whose image as a child was used in creating, adapting, or modifying the visual depiction; and

(3) 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.

(b) The term "identifiable child" shall not be construed to require proof of the actual identity of the identifiable child.

VI. "Previous conviction" or "previously convicted" means having been convicted by a jury or a judge, or having plead guilty prior to the commission of the current offense. For purposes of this paragraph, a previous conviction need not have been affirmed on appeal.

VII. "Computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.

N.H. Rev. Stat. Ann. § 649-A:4 (2009). Exemption.

A person shall not be guilty of a violation under this chapter if he is a librarian, or a paid or volunteer member of a library staff working under the supervision of a librarian, engaged in the normal course of his employment, or if he is regularly employed by anybody as a motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter or in any other nonmanagerial or nonsupervisory capacity in a motion picture theatre; provided that he has no financial interest, other than his employment, which employment does not encompass compensation based upon any proportion of the gross receipts, in the promotion of a sexual performance for sale, rental or exhibition or in the promotion, presentation or direction of any sexual performance, and provided further that he is not in any way responsible for acquiring such material for sale, rental or exhibition.

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-A:3-b (2010) Manufacture of Child Sexual Abuse Images.

I. No person shall knowingly create, produce, manufacture, or direct a visual representation of a child engaging in or being engaged in sexually explicit conduct, or participate in that portion of such visual representation that consists of a child engaging in or being engaged in sexually explicit conduct.

II. If such person has had no previous convictions in this state or another state for the conduct prohibited in this section, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section 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, a person may be sentenced to life imprisonment or for such term as the court may order.

NEW JERSEY

N.J. Stat. Ann. § 2C:24-4 (2009). Endangering welfare of children

a. Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child as defined in R.S. 9:6-1, R.S. 9:6-3 and P.L. 1974, c. 119, § 1 (C. 9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this subsection to a child under the age of 16 is guilty of a crime of the third degree.

b. (1) As used in this subsection:

"Child" means any person under 16 years of age.

"Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

"Prohibited sexual act" means

(a) Sexual intercourse; or

(b) Anal intercourse; or

(c) Masturbation; or

(d) Bestiality; or

(e) Sadism; or

(f) Masochism; or

(g) Fellatio; or

(h) Cunnilingus;

(i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or

(j) Any act of sexual penetration or sexual contact as defined in N.J.S. 2C:14-1.

"Reproduction" means, but is not limited to, computer generated images.

(2) (Deleted by amendment, P.L. 2001, c. 291).

(3) A person commits a crime of the second degree if he causes or permits a child to engage in a prohibited sexual act or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance. If the person is a parent, guardian or other person legally charged with the care or custody of the child, the person shall be guilty of a crime of the first degree.

(4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.

(5)(a) Any person who knowingly receives for the purpose of selling or who knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer, through any means, including the Internet, any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, is guilty of a crime of the second degree.

(b) Any person who knowingly possesses or knowingly views any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, including on the Internet, is guilty of a crime of the fourth degree.

(6) For purposes of this subsection, a person who is depicted as or presents the appearance of being under the age of 16 in any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction shall be rebuttably presumed to be under the age of 16. If the child who is depicted as engaging in, or who is caused to engage in, a prohibited sexual act or simulation of a prohibited sexual act is under the age of 16, the actor shall be strictly liable and it shall not be a defense that the actor did not know that the child was under the age of 16, nor shall it be a defense that the actor believed that the child was 16 years of age or older, even if such a mistaken belief was reasonable.

NEW MEXICO

N.M. Stat. Ann. § 30-6A-2 (2009). Definitions

As used in the Sexual Exploitation of Children Act [30-6A-1 NMSA 1978]:

A. "prohibited sexual act" means:

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

- (2) bestiality;
- (3) masturbation;
- (4) sadomasochistic abuse for the purpose of sexual stimulation; or
- (5) lewd and sexually explicit exhibition with a focus on the genitals or pubic area of any person for the purpose of sexual stimulation;

B. "visual or print medium" means:

- (1) any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer or electronically generated imagery; or
- (2) any book, magazine or other form of publication or photographic reproduction containing or incorporating any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer generated or electronically generated imagery;

C. "performed publicly" means performed in a place that is open to or used by the public;

D. "manufacture" means the production, processing, copying by any means, printing, packaging or repackaging of any visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age; and

E. "obscene" means any material, when the content is taken as a whole:

- (1) appeals to a prurient interest in sex, as determined by the average person applying contemporary community standards;
- (2) portrays a prohibited sexual act in a patently offensive way; and
- (3) lacks serious literary, artistic, political or scientific value.

N.M. Stat. Ann. § 30-6A-3 (2009). Sexual exploitation of children

A. It is unlawful for a person to intentionally possess any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

B. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a third degree felony.

C. It is unlawful for a person to intentionally cause or permit a child under eighteen years of age to engage in any prohibited sexual act or simulation of such an act if that person knows, has reason to know or intends that the act may be recorded in any obscene visual or print medium or performed publicly. A person who violates the provisions of this subsection is guilty of a third degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a second degree felony.

D. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a second degree felony.

E. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

F. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a third degree felony.

G. The penalties provided for in this section shall be in addition to those set out in Section 30-9-11 NMSA 1978.

NEW YORK

N.Y. Penal Law § 263.00 (2010). Definitions

As used in this article the following definitions shall apply:

1. "Sexual performance" means any performance or part thereof which, for purposes of section 263.16 of this article, includes sexual conduct by a child less than sixteen years of age or, for purposes of section 263.05 or 263.15 of this article, includes sexual conduct by a child less than seventeen years of age.
2. "Obscene sexual performance" means any performance which, for purposes of section 263.11 of this article, includes sexual conduct by a child less than sixteen years of age or, for purposes of section 263.10 of this article, includes sexual conduct by a child less than seventeen years of age, in any material which is obscene, as such term is defined in section 235.00 of this chapter.
3. "Sexual conduct" means actual or simulated sexual intercourse, [fig 1] oral sexual conduct, anal sexual conduct, sexual [fig 2] bestiality, masturbation, sado-masochistic abuse, or lewd

exhibition of the genitals.

4. "Performance" means any play, motion picture, photograph or dance. Performance also means any other visual representation exhibited before an audience.

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

6. "Simulated" means the explicit depiction of any of the conduct set forth in subdivision three of this section which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals or buttocks.

7. "[fig 1] Oral sexual conduct" and "anal sexual conduct" mean the conduct defined by subdivision two of section 130.00 of this chapter.

8. "Sado-masochistic abuse" means the conduct defined in subdivision five of section 235.20 of this chapter.

N.Y. Penal Law § 263.10 (2010). Promoting an obscene sexual performance by a child

A person is guilty of promoting an obscene sexual performance by a child when, knowing the character and content thereof, he produces, directs or promotes any obscene performance which includes sexual conduct by a child less than [fig 1] seventeen years of age.

Promoting an obscene sexual performance by a child is a class D felony.

N.Y. Penal Law § 263.15 (2009). Promoting a sexual performance by a child

A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he produces, directs or promotes any performance which includes sexual conduct by a child less than [fig 1] seventeen years of age.

Promoting a sexual performance by a child is a class D felony.

N.Y. Penal Law § 263.20 (2009). Sexual performance by a child; affirmative defenses

1. Under this article, it shall be an affirmative defense that the defendant in good faith reasonably believed the person appearing in the performance was, for purposes of section 263.11 or 263.16 of this article, sixteen years of age or over or, for purposes of section 263.05, 263.10 or 263.15 of this article, seventeen years of age or over.

2. In any prosecution for any offense pursuant to this article, it is an affirmative defense that the person so charged was a librarian engaged in the normal course of his employment, a motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter or in any other non-managerial or non-supervisory capacity in a motion picture theatre; provided he has no financial interest, other than his employment, which employment does not encompass compensation based upon any proportion of the gross receipts, in the promotion of a sexual performance for sale, rental or exhibition or in the promotion, presentation or direction

of any sexual performance, or is in any way responsible for acquiring such material for sale, rental or exhibition.

NORTH CAROLINA

N.C. Gen. Stat. § 14-190.17 (2009). 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.

N.C. Gen. Stat. § 14-190.17 (2009). Second degree sexual exploitation of a minor

(a) Offense. -- A person commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he:

(1) Records, photographs, films, develops, or duplicates material that contains a visual representation of a minor engaged in sexual activity; or

(2) Distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of 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 E felony.

NORTH DAKOTA

N.D. Cent. Code § 12.1-27.2-01 (2009). Definitions.

As used in this chapter:

1. "Obscene sexual performance" means any performance which includes sexual conduct by a minor in any obscene material or obscene performance, as defined in section 12.1-27.1-01.

2. "Performance" means any play, motion picture, photograph, dance, or other visual representation, or any part of a performance.

3. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise.

4. "Sexual conduct" means actual or simulated sexual intercourse, sodomy, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals, including the further definitions of sodomy and sadomasochistic abuse under section 12.1-27.1-01.

5. "Sexual performance" means any performance which includes sexual conduct by a minor.

6. "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4 which creates the appearance of actual sexual conduct and which exhibits any nude or partially denuded human figure, as defined in section 12.1-27.1-03.1.

N.D. Cent. Code § 12.1-27.2-03 (2009). Promoting or directing an obscene sexual performance by a minor.

A person is guilty of a class B felony if, knowing the character and content of a performance, that person produces, directs, or promotes any obscene performance which includes sexual conduct by a person who was a minor at the time of the performance.

N.D. Cent. Code § 12.1-27.2-04 (2009). Promoting a sexual performance by a minor.

A person is guilty of a class C felony if, knowing the character and content of a performance, that person produces, directs, or promotes any performance which includes sexual conduct by a person who was a minor at the time of the performance.

N.D. Cent. Code § 12.1-27.2-04.2 (2009). Sexual performance by a minor – Enhanced penalties.

1. Notwithstanding the provisions of sections 12.1-32-01 and 12.1-32-01.1 relating to fines, a person who commits an offense under this chapter and who acts in the course of a commercial or

for-profit activity or transaction in which the offender had or shared ownership, control, managerial responsibility, or a financial interest other than wages is subject to the following penalty:

a. For an individual, a fine not to exceed ten thousand dollars; or

b. For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed twenty-five thousand dollars.

2. Notwithstanding the provisions of sections 12.1-32-01 and 12.1-32-01.1 relating to fines, the court shall impose the following fine upon the conviction of a person or entity described in subsection 1 for a second or subsequent offense under this chapter:

a. For an individual, a fine not to exceed fifty thousand dollars; or

b. For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed one hundred thousand dollars.

N.D. Cent. Code § 12.1-27.2-05 (2009). Sexual performance by a minor – Affirmative defenses.

It is an affirmative defense to a prosecution under this chapter that:

1. The defendant in good faith reasonably believed the person appearing in the performance was eighteen years of age or older;

2. The material or performance involved was disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other appropriate purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a similar interest in the material or performance; or

3. The defendant had no financial interest in promoting a sexual performance by a minor, other than employment in a theater, which employment does not include compensation based upon any proportion of the receipts arising from promotion of the sexual performance, and that person was in no way responsible for acquiring the material for sale, rental, or exhibition.

OHIO

Ohio Rev. Code Ann. § 2907.321 (2010). Pandering obscenity involving a minor

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, reproduce, or publish any obscene material that has a minor as one of its participants or portrayed observers;

(2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit,

present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;

(3) Create, direct, or produce an obscene performance that has a minor as one of its participants;

(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants;

(5) Buy, procure, possess, or control any obscene material, that has a minor as one of its participants;

(6) Bring or cause to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

(B) (1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.

(C) Whoever violates this section is guilty of pandering obscenity involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.322 [2907.32.2] or 2907.323 [2907.32.3] of the Revised Code, pandering obscenity involving a minor in violation of division (A)(5) of this section is a felony of the third degree.

Ohio Rev. Code Ann. § 2907.322 (2010). Pandering sexually oriented matter involving a minor

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(2) Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(3) Create, direct, or produce a performance that shows a minor participating or engaging in

sexual activity, masturbation, or bestiality;

(4) Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;*

(5) Knowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(6) Bring or cause to be brought into this state any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or bring, cause to be brought, or finance the bringing of any minor into or across this state with the intent that the minor engage in sexual activity, masturbation, or bestiality in a performance or for the purpose of producing material containing a visual representation depicting the minor engaged in sexual activity, masturbation, or bestiality.

(B) (1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.

(C) Whoever violates this section is guilty of pandering sexually oriented matter involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.321 [2907.32.1] or 2907.323 [2907.32.3] of the Revised Code, pandering sexually oriented matter involving a minor in violation of division (A)(5) of this section is a felony of the third degree.

Ohio Rev. Code Ann. § 2907.323 (2010). Illegal use of minor in nudity-oriented material or performance

(A) No person shall do any of the following:

(1) Photograph any minor who is not the person's child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor in a state of nudity, unless both of the following apply:

(a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or

research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;

(b) The minor's parents, guardian, or custodian consents in writing to the photographing of the minor, to the use of the minor in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

(2) Consent to the photographing of the person's minor child or ward, or photograph the person's minor child or ward, in a state of nudity or consent to the use of the person's minor child or ward in a state of nudity in any material or performance, or use or transfer a material or performance of that nature, unless the material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;

(3) Possess or view any material or performance that shows a minor who is not the person's child or ward in a state of nudity, unless one of the following applies:

(a) The material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

(b) The person knows that the parents, guardian, or custodian has consented in writing to the photographing or use of the minor in a state of nudity and to the manner in which the material or performance is used or transferred.

(B) Whoever violates this section is guilty of illegal use of a minor in a nudity-oriented material or performance. Whoever violates division (A)(1) or (2) of this section is guilty of a felony of the second degree. Except as otherwise provided in this division, whoever violates division (A)(3) of this section is guilty of a felony of the fifth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.321 [2907.32.1] or 2907.322 [2907.32.2.] of the Revised Code, illegal use of a minor in a nudity-oriented material or performance in violation of division (A)(3) of this section is a felony of the fourth degree. If the offender who violates division (A)(1) or (2) of this section also is convicted of or pleads guilty to a specification as described in section 2941.1422 [2941.14.22] of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (D)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code.

OKLAHOMA

Okla. Stat. Ann. tit. 21, § 1021 (2009). 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. Ann. tit. 21, § 1021.1 (2009). Persons to whom act does not apply--Civil or injunctive relief

A. Sections 1021 through 1024.4 of this title shall not apply to persons who may possess or distribute obscene matter or child pornography or participate in conduct otherwise prescribed by this act, when such possession, distribution, or conduct occurs in the course of law enforcement activities.

B. The criminal provisions of this title shall not prohibit the district attorney from seeking civil or injunctive relief to enjoin the production, publication, dissemination, distribution, sale of or participation in any obscene material or child pornography, or the dissemination to minors of material harmful to minors, or the possession of child pornography.

Okla. Stat. Ann. tit. 21, § 1021.2 (2009). Minors--Procuring for participation in pornography

A. Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any child pornography shall be guilty, upon conviction, of a felony and shall be punished by imprisonment for not more than twenty (20) years or by the imposition of a fine of not more than Twenty-five Thousand Dollars (\$ 25,000.00) or by both said fine and imprisonment. Persons convicted under this section shall not be eligible for a deferred sentence. 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 subsection 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.

B. The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

Okla. Stat. Ann. tit. 21, § 1024.1 (2009). Definitions

A. As used in Sections 1021, 1021.1 through 1021.3, Sections 1022 through 1024, and Sections 1040.8 through 1040.24 of this title, "child pornography" means and includes any film, motion picture, videotape, photograph, negative, undeveloped film, slide, photographic product, reproduction of a photographic product, CD-ROM, magnetic disk memory, magnetic tape memory, electronic or photo-optical format, play or performance wherein a minor under the age of eighteen (18) years is engaged in any act with a person, other than his or her spouse, of sexual intercourse which is normal or perverted, in any act of anal sodomy, in any act of sexual activity with an animal, in any act of sadomasochistic abuse including, but not limited to, flagellation or torture, or the condition of being fettered, bound or otherwise physically restrained in the context of sexual conduct, in any act of fellatio or cunnilingus, in any act of excretion in the context of

sexual conduct, in any lewd exhibition of the uncovered genitals in the context of masturbation or other sexual conduct, or where the lewd exhibition of the uncovered genitals, buttocks or, if such minor is a female, the breast, has the purpose of sexual stimulation of the viewer, or wherein a person under the age of eighteen (18) years observes such acts or exhibitions.

B. As used in Sections 1021 through 1024.4 and Sections 1040.8 through 1040.24 of this title:

1. "Obscene material" means and includes any representation, performance, depiction or description of sexual conduct, whether in any form or medium including still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, CD-ROM, magnetic disk memory, magnetic tape memory, electronic or photo-optical format, or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication or electronic or photo-optical format, if said items contain the following elements:

- a. depictions or descriptions of sexual conduct which are patently offensive as found by the average person applying contemporary community standards,
- b. taken as a whole, have as the dominant theme an appeal to prurient interest in sex as found by the average person applying contemporary community standards, and
- c. a reasonable person would find the material or performance taken as a whole lacks serious literary, artistic, educational, political, or scientific purposes or value.

The standard for obscenity applied in this section shall not apply to child pornography;

2. "Performance" means and includes any display, live or recorded, in any form or medium;

3. "Sexual conduct" means and includes any of the following:

- a. acts of sexual intercourse including any intercourse which is normal or perverted, actual or simulated,
- b. acts of deviate sexual conduct, including oral and anal sodomy,
- c. acts of masturbation,
- d. acts of sadomasochistic abuse including but not limited to:
 - (1) flagellation or torture by or upon any person who is nude or clad in undergarments or in a costume which is of a revealing nature, or
 - (2) the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed,

e. acts of excretion in a sexual context, or

f. acts of exhibiting human genitals or pubic areas; and

4. "Explicit child pornography" means material which a law enforcement officer can immediately identify upon first viewing without hesitation as child pornography.

The types of sexual conduct described in paragraph 3 of this subsection are intended to include situations when, if appropriate to the type of conduct, the conduct is performed alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

Okla. Stat. Ann. tit. 21, § 1040.8 (2009). Publication, distribution or participation in preparation of obscene material or child pornography--Unsolicited mailings

A. No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, give away, exhibit, publish, offer to publish, or otherwise distribute, display, or exhibit any book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, electronic video game or recording, image, cast, slide, figure, instrument, statue, drawing, presentation, or other article which is obscene material or child pornography, as defined in Section 1024.1 of this title. In the case of any unsolicited mailing of any of the material listed in this section, the offense is deemed complete from the time such material is deposited in any post office or delivered to any person with intent that it shall be forwarded. Also, unless preempted by federal law, no unsolicited mail which is harmful to minors pursuant to Section 1040.75 of this title shall be mailed to any person. The party mailing the materials specified in this section may be indicted and tried in any county wherein such material is deposited or delivered, or in which it is received by the person to whom it is addressed.

B. Any person who violates any provision of this section involving obscene materials, upon conviction, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one (1) year, or by a fine not exceeding One Thousand Dollars (\$ 1,000.00), or by both such fine and imprisonment.

C. Any person who violates any provision of this section involving child pornography, upon conviction, shall be guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for not more than twenty (20) years, or by a fine of not exceeding Ten Thousand Dollars (\$ 10,000.00), or by both such fine and imprisonment. The violator, upon conviction, shall be required to register as a sex offender under the Sex Offenders Registration Act.

Okla. Stat. Ann. tit. 21, § 1040.13 (2009). Acts prohibited – Felony

Every person who, with knowledge of its contents, sends, brings, or causes to be sent or brought into this state for sale or commercial distribution, or in this state prepares, sells, exhibits, commercially distributes, gives away, offers to give away, or has in his possession with intent to sell, to commercially distribute, to exhibit, to give away, or to offer to give away any obscene material or child pornography or gives information stating when, where, how, or from whom, or by what means obscene material or child pornography can be purchased or obtained, upon conviction, is guilty of a felony and shall be punished by imprisonment for not more than ten (10)

years in prison or by a fine of not more than Ten Thousand Dollars (\$ 10,000.00), or by both such imprisonment and fine.

OREGON

Or. Rev. Stat. § 163.665 (2010). Definitions for ORS 163.670 to 163.693.

As used in ORS 163.670 to 163.693:

(1) "Child" means a person who is less than 18 years of age, and any reference to a child in relation to a photograph, motion picture, videotape or other visual recording of the child is a reference to a person who was less than 18 years of age at the time the original image in the photograph, motion picture, videotape or other visual recording was created and not the age of the person at the time of an alleged offense relating to the subsequent reproduction, use or possession of the visual recording. (2) "Child abuse" means conduct that constitutes, or would constitute if committed in this state, a crime in which the victim is a child.

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

(a) Sexual intercourse or deviant sexual intercourse;

(b) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex or between humans and animals;

(c) Penetration of the vagina or rectum by any object other than as part of a medical diagnosis or treatment or as part of a personal hygiene practice;

(d) Masturbation;

(e) Sadistic or masochistic abuse; or

(f) Lewd exhibition of sexual or other intimate parts.

(4) "Visual depiction" includes, but is not limited to, photographs, films, videotapes, pictures or computer or computer-generated images or pictures, whether made or produced by electronic, mechanical or other means.

Or. Rev. Stat. § 163.676 (2010). Exemption from prosecution under ORS 163.684.

(1) No employee is liable to prosecution under ORS 163.684 or under any city or home rule county ordinance for exhibiting or possessing with intent to exhibit any obscene matter or performance provided the employee is acting within the scope of regular employment at a showing open to the public.

(2) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if the person has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the

motion picture theater where the person is regularly employed, but does not include a manager of the motion picture theater.

Or. Rev. Stat. § 163.682 (2010). Exceptions to ORS 163.665 to 163.693.

The provisions of ORS 163.665 to 163.693 do not apply to:

- (1) Any legitimate medical procedure performed by or under the direction of a person licensed to provide medical services for the purpose of medical diagnosis or treatment, including the recording of medical procedures;
- (2) Any activity undertaken in the course of bona fide law enforcement activity or necessary to the proper functioning of the criminal justice system, except that this exception shall not apply to any activity prohibited by ORS 163.670;
- (3) Any bona fide educational activity, including studies and lectures, in the fields of medicine, psychotherapy, sociology or criminology, except that this exception shall not apply to any activity prohibited by ORS 163.670;
- (4) Obtaining, viewing or possessing a photograph, motion picture, videotape or other visual recording as part of a bona fide treatment program for sexual offenders; or
- (5) A public library, as defined in ORS 357.400, or a library exempt from taxation under ORS 307.090 or 307.130, except that these exceptions do not apply to any activity prohibited by ORS 163.670.

Or. Rev. Stat. § 163.684 (2010). Encouraging child sexual abuse in the first degree.

- (1) A person commits the crime of encouraging child sexual abuse in the first degree if the person:
 - (a)(A) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, displays, finances, attempts to finance or sells any photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child or possesses such matter with the intent to develop, duplicate, publish, print, disseminate, exchange, display or sell it; or
 - (B) Knowingly brings into this state, or causes to be brought or sent into this state, for sale or distribution, any photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child; and
- (b) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse.(2) Encouraging child sexual abuse in the first degree is a Class B felony.

PENNSYLVANIA

18 Pa. Cons. Stat. Ann. § 6312 (2009). Sexual abuse of children

(a) Deleted by 2009, July 14, P.L. ____, No. 15, 1, effective in 60 days [Sept. 14, 2009].

(b) Photographing, videotaping, depicting on computer or filming sexual acts.--Any person who causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act is guilty of a felony of the second degree if such person knows, has reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed. Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act is guilty of a felony of the second degree.

(c) Dissemination of photographs, videotapes, computer depictions and films.

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

(2) A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.

(d) Child pornography.

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

(2) A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.

(e) Evidence of age.--In the event a person involved in a prohibited sexual act is alleged to be a child under the age of 18 years, competent expert testimony shall be sufficient to establish the age of said person.

(e.1) Mistake as to age.--Under subsection (b) only, it is no defense that the defendant did not know the age of the child. Neither a misrepresentation of age by the child nor a bona fide belief that the person is over the specified age shall be a defense.

(f) Exceptions.--This section does not apply to any material that is viewed, possessed, controlled, brought or caused to be brought into this Commonwealth, or presented for a bona fide educational, scientific, governmental or judicial purpose.

(g) Definitions.--As used in this section, the following words and phrases shall have the

meanings given to them in this subsection:

"Intentionally views." The deliberate, purposeful, voluntary viewing of material depicting a child under 18 years of age engaging in a prohibited sexual act or in the simulation of such act. The term shall not include the accidental or inadvertent viewing of such material.

"Prohibited sexual act." Sexual intercourse as defined in section 3101 (relating to definitions), masturbation, sadism, masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.

RHODE ISLAND

R.I. Gen. Laws § 11-9-1.1 (2010). Child nudity prohibited in publications

Every person, firm, association, or corporation which shall publish, sell, offer for sale, loan, give away, or otherwise distribute any book, magazine, pamphlet, or other publication, or any photograph, picture, or film which depicts any child, or children, under the age of eighteen (18) years and known to be under the age of eighteen (18) years of age by the person, firm, association, or corporation in a setting which taken as a whole suggests to the average person that the child, or children, is about to engage in or has engaged in, any sexual act, or which depicts any child under eighteen (18) years of age performing sodomy, oral copulation, sexual intercourse, masturbation, or bestiality, shall, for the first offense, be punished by imprisonment for not more than ten (10) years, or by a fine of not more than ten thousand dollars (\$ 10,000), or both; for any subsequent offense, by imprisonment for not more than fifteen (15) years, or by a fine of not more than fifteen thousand dollars (\$ 15,000), or both. Provided, that artistic drawings, sketches, paintings, sculptures, or other artistic renditions, shall be exempt from the provisions of this section.

R.I. Gen. Laws § 11-9-1.3 (2010). Child pornography prohibited

(a) Violations. It is a violation of this section for any person to:

- (1) Knowingly produce any child pornography;
- (2) Knowingly mail, transport, deliver or transfer by any means, including by computer, any child pornography;
- (3) Knowingly reproduce any child pornography by any means, including the computer; or
- (4) Knowingly possess any book, magazine, periodical, film, videotape, computer disk, computer file or any other material that contains an image of child pornography.

(b) Penalties.

(1) Whoever violates or attempts or conspires to violate subdivisions (a)(1), (a)(2) or (a)(3) of this section shall be subject to a fine of not more than five thousand dollars (\$ 5,000), or

imprisoned for not more than fifteen (15) years, or both.

(2) Whoever violates or attempts or conspires to violate subdivision (a)(4) of this section shall be subject to a fine of not more than five thousand dollars (\$ 5,000), or imprisoned not more than five (5) years, or both.

(c) Definitions. For purposes of this section:

(1) "Child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:

(i) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(ii) Such visual depiction is a digital image, computer image, or computer-generated image of a minor engaging in sexually explicit conduct; or

(iii) Such visual depiction has been created, adapted, or modified to display an identifiable minor engaging in sexually explicit conduct.

(2) "Computer" has the meaning given to that term in section 11-52-1;

(3) "Minor" means any person not having reached eighteen (18) years of age;

(4) "Identifiable minor."

(i) Means a person:

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

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

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

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

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

(6) "Sexually explicit conduct" means actual:

(i) Graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, or lascivious sexual intercourse where the genitals, or pubic area of any person is exhibited;

(ii) Bestiality;

(iii) Masturbation;

(iv) Sadistic or masochistic abuse; or

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

(7) "Visual depiction" includes undeveloped film and videotape and data stored on a computer disk or by electronic means, which is capable of conversion into a visual image;

(8) "Graphic," when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.

(d) Affirmative defenses.

(1) It shall be an affirmative defense to a charge of violating subdivision (a)(1), (a)(2), or (a)(3) of this section that:

(i) The alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

(ii) Each such person was an adult at the time the material was produced; and

(iii) The defendant did not advertise, promote, present, describe or distribute the material in such a manner as to convey the impression that it is or contains a visual depiction of a minor engaging in sexually explicit conduct.

(2) It shall be an affirmative defense to a charge of violating subdivision (a)(4) of this section that the defendant:

(i) Possessed less than three (3) images of child pornography; and

(ii) Promptly and in good faith and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy of it:

(A) Took reasonable steps to destroy each such image; or

(B) Reported the matter to a law enforcement agency and afforded that agency access to each such image.

(e) Severability. If any provision or provisions of this section, or the application of this section to any person or circumstance is held invalid by a court of competent authority, that invalidity does not affect other provisions or applications of this section which can be given effect without that invalid provision or provisions or application of the provision or provisions, and to this end the provisions of this section are declared to be separable and severable.

SOUTH CAROLINA

S.C. Code Ann. § 16-3-820 (2009). Producing, directing or promoting sexual performance by child; penalty.

(a) It is unlawful for any person to produce, direct, or promote a performance that includes sexual conduct by a child younger than eighteen years of age.

(b) Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the third degree and upon conviction shall be punished as provided in § 16-3-654.

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. § 16-15-405 (2009). Second degree sexual exploitation of a minor defined; presumptions; defenses; penalties.

(A) An individual commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he:

- (1) records, photographs, films, develops, duplicates, produces, or creates digital electronic file material that contains a visual representation of a minor engaged in sexual activity; or
- (2) distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.

(B) In a prosecution under this section, the trier of fact may infer that a participant in 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 not less than two years nor more than ten years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum sentence.

SOUTH DAKOTA

S.D. Codified Laws § 22-24A-2 (2009). Definitions

Terms used in §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, mean:

- (1) "Adult," any person eighteen years of age or older;
- (2) "Child pornography," any image or visual depiction of a minor engaged in prohibited sexual acts;
- (3) "Child" or "minor," any person under the age of eighteen years;
- (4) "Computer," any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, including wireless communication devices such as cellular phones. The term also includes any on-line service, internet service, or internet bulletin board;
- (5) Deleted by SL 2005, ch 120, § 408.
- (6) "Digital media," any electronic storage device, including a floppy disk or other magnetic storage device or any compact disc that has memory and the capacity to store audio, video, or written materials;
- (7) "Harmful to minors," any reproduction, imitation, characterization, description, visual depiction, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement if it:
 - (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;
 - (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) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors. This term does not include a mother's breast-feeding of her baby;
- (8) "Masochism," sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death;
- (9) "Nudity," the showing or the simulated showing of the human male or female genitals, pubic area, or buttocks with less than a fully 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 discernibly turgid state for the purpose of creating sexual excitement. This term does not include a mother's breast-feeding of her baby irrespective of whether or not the nipple is covered during or incidental to feeding;

(10) "Obscene," the status of material which:

(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

(b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value. This term does not include a mother's breast-feeding of her baby;

(11) "Person," includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations;

(12) "Sadism," sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death;

(13) "Sodomasochistic abuse," flagellation or torture by or upon a minor, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself;

(14) "Sexual battery," oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. This term does not include an act done for a bona fide medical purpose;

(15) "Sexual bestiality," any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other;

(16) "Prohibited sexual act," actual or simulated sexual intercourse, sadism, masochism, sexual bestiality, incest, masturbation, or sodomasochistic abuse; actual or simulated exhibition of the genitals, the pubic or rectal area, or the bare feminine breasts, in a lewd or lascivious manner; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; defecation or urination for the purpose of creating sexual excitement in the viewer; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. The term includes encouraging, aiding, abetting or enticing any person to commit any such acts as provided in this subdivision. The term does not include a mother's breast-feeding of her baby;

(17) "Sexual excitement," the condition of the human male or female genitals if in a state of sexual stimulation or arousal;

(18) "Sexually oriented material," any book, article, magazine, publication, visual depiction or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this section that creates the appearance of such conduct and that exhibits any uncovered portion of the breasts, genitals, or anus;

(20) "Visual depiction," any developed and undeveloped film, photograph, slide and videotape, and any photocopy, drawing, printed or written material, and any data stored on computer disk, digital media, or by electronic means that are capable of conversion into a visual image.

S.D. Codified Laws § 22-24A-3 (2009). Possession, manufacture, or distribution of child pornography -- Consent or mistake not a defense -- Penalty

A person is guilty of possessing, manufacturing, or distributing child pornography if the person:

(1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act;

(2) Causes or knowingly permits the creation of any visual depiction of a minor engaged in a prohibited sexual act, or in the simulation of such an act; or

(3) Knowingly possesses, distributes, or otherwise disseminates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act.

Consent to performing these proscribed acts 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. 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 3 felony.

The court shall order an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section.

TENNESSEE

Tenn. Code Ann. § 39-17-1002 (2010). Part definitions.

The following definitions apply in §§ 39-17-1002 -- 39-17-1007, unless the context otherwise requires:

(1) "Community" means the judicial district, as defined by § 16-2-506, in which a violation is alleged to have occurred;

(2) "Material" means:

(A) Any picture, drawing, photograph, undeveloped film or film negative, motion picture film, videocassette tape or other pictorial representation;

(B) Any statue, figure, theatrical production or electrical reproduction;

(C) Any image stored on a computer hard drive, a computer disk of any type, or any other medium designed to store information for later retrieval; or

(D) Any image transmitted to a computer or other electronic media or video screen, by telephone line, cable, satellite transmission, or other method that is capable of further transmission, manipulation, storage or accessing, even if not stored or saved at the time of transmission;

(3) "Minor" means any person who has not reached eighteen (18) years of age;

(4) "Patently offensive" means that which goes substantially beyond customary limits of candor in describing or representing such matters;

(5) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one (1) or more persons;

(6) "Promote" means to finance, produce, direct, manufacture, issue, publish, exhibit or advertise, or to offer or agree to do those things;

(7) "Prurient interest" means a shameful or morbid interest in sex; and

(8) "Sexual activity" means any of the following acts:

(A) Vaginal, anal or oral intercourse, whether done with another person or an animal;

(B) Masturbation, whether done alone or with another human or an animal;

(C) Patently offensive, as determined by contemporary community standards, physical contact with or touching of a person's clothed or unclothed genitals, pubic area, buttocks or breasts in an act of apparent sexual stimulation or sexual abuse;

(D) Sadomasochistic abuse, including flagellation, torture, physical restraint, domination or subordination by or upon a person for the purpose of sexual gratification of any person;

(E) The insertion of any part of a person's body or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure by a licensed professional;

(F) Patently offensive, as determined by contemporary community standards, conduct, representations, depictions or descriptions of excretory functions; or

(G) Lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.

Tenn. Code Ann. § 39-17-1004 (2010). Offense of aggravated sexual exploitation of a minor.

(a) (1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, that includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) A person who violates subdivision (a)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (a)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (a)(4).

(3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(b) (1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material that is obscene, as defined in § 39-17-901(10), or possess material that is obscene, with the intent to promote, sell, distribute, transport, purchase or exchange the material, which includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) A person who violates subdivision (b)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (b)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (b)(4).

(3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials, that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(c) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(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 promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange material within this state.

Tenn. Code Ann. § 39-17-1005 (2010). Offense of especially aggravated sexual exploitation of a minor.

(a) It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance of, or in the production of, acts or material that includes the minor engaging in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) A person violating subsection (a) may be charged in a separate count for each individual performance, image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation.

(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, employed, used, assisted, transported or permitted a minor to participate in the performance of or in the production of acts or material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(d) A violation of this section is a Class B felony. Nothing in this section shall be construed as limiting prosecution for any other sexual offense under this chapter, nor shall a joint conviction under this section and any other related sexual offense, even if arising out of the same conduct, be construed as limiting any applicable punishment, including consecutive sentencing under § 40-35-115, or the enhancement of sentence under § 40-35-114.

(e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(f) 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 promoted, employed, assisted, transported or permitted a minor to engage in the performance of, or production of, acts or material within this state.

TEXAS

Tex. Penal Code Ann. § 43.21 (2010). Definitions

(a) In this subchapter:

(1) "Obscene" means material or a performance that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

(C) taken as a whole, lacks serious literary, artistic, political, and scientific value.

(2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.

(3) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

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

(6) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(7) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

(b) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

Tex. Penal Code Ann. § 43.25 (2010). Sexual Performance by a Child

(a) In this section:

(1) "Sexual performance" means any performance or part thereof that includes sexual conduct by a child younger than 18 years of age.

(2) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(3) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons.

(4) "Produce" with respect to a sexual performance includes any conduct that directly contributes to the creation or manufacture of the sexual performance.

(5) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.

(6) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.

(7) "Deviate sexual intercourse" and "sexual contact" have the meanings assigned by Section 43.01.

(b) A person commits an offense if, knowing the character and content thereof, he employs, authorizes, or induces a child younger than 18 years of age to engage in sexual conduct or a sexual performance. A parent or legal guardian or custodian of a child younger than 18 years of age commits an offense if he consents to the participation by the child in a sexual performance.

(c) An offense under Subsection (b) is a felony of the second degree, except that the offense is a felony of the first degree if the victim is younger than 14 years of age at the time the offense is committed.

(d) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes a performance that includes sexual conduct by a child younger than 18 years of age.

(e) An offense under Subsection (d) is a felony of the third degree, except that the offense is a felony of the second degree if the victim is younger than 14 years of age at the time the offense is committed.

(f) It is an affirmative defense to a prosecution under this section that:

(1) the defendant was the spouse of the child at the time of the offense;

(2) the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose; or

(3) the defendant is not more than two years older than the child.

(g) When it becomes necessary for the purposes of this section or Section 43.26 to determine whether a child who participated in sexual conduct was younger than 18 years of age, the court or jury may make this determination by any of the following methods:

(1) personal inspection of the child;

(2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;

(3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;

(4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or

(5) any other method authorized by law or by the rules of evidence at common law.

Tex. Penal Code Ann. § 43.26 (2010). Possession or Promotion of Child Pornography

(a) A person commits an offense if:

(1) the person knowingly or intentionally possesses visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct; and

(2) the person knows that the material depicts the child as described by Subdivision (1).

(b) In this section:

(1) "Promote" has the meaning assigned by Section 43.25.

(2) "Sexual conduct" has the meaning assigned by Section 43.25.

(3) "Visual material" means:

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

(B) any disk, diskette, or other physical medium 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.

(c) The affirmative defenses provided by Section 43.25(f) also apply to a prosecution under this

section.

(d) An offense under Subsection (a) is a felony of the third degree.

(e) A person commits an offense if:

(1) the person knowingly or intentionally promotes or possesses with intent to promote material described by Subsection (a)(1); and

(2) the person knows that the material depicts the child as described by Subsection (a)(1).

(f) A person who possesses visual material that contains six or more identical visual depictions of a child as described by Subsection (a)(1) is presumed to possess the material with the intent to promote the material.

(g) An offense under Subsection (e) is a felony of the second degree.

UTAH

Utah Code Ann. § 76-5a-2 (2009). Definitions

As used in this chapter:

(1) "Child pornography" means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct;

(b) the visual depiction is of a minor engaging in sexually explicit conduct; or

(c) the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

(2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, or otherwise transferring or presenting child pornography with or without consideration.

(3) "Identifiable minor":

(a) means a person:

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

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

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

(b) does not require proof of the actual identity of the identifiable minor.

(4) "Live performance" means any act, play, dance, pantomime, song, or other activity performed by live actors in person.

(5) "Minor" means a person younger than 18 years of age.

(6) "Nudity or partial nudity" means any state of dress or undress in which the human genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(7) "Produce" means the photographing, filming, taping, directing, producing, creating, designing, or composing of child pornography or the securing or hiring of persons to engage in the production of child pornography.

(8) "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) masturbation;

(c) bestiality;

(d) sadistic or masochistic activities;

(e) lascivious exhibition of the genitals or pubic area of any person;

(f) the visual depiction of nudity or partial nudity for the purpose of causing sexual arousal of any person;

(g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or

(h) the explicit representation of the defecation or urination functions.

(9) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct which duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

Utah Code Ann. § 76-5a-3 (2009). Sexual exploitation of a minor -- Offenses

(1) A person is guilty of sexual exploitation of a minor:

(a) when the person:

(i) knowingly produces, possesses, or possesses with intent to distribute child pornography; or

- (ii) intentionally distributes or views child pornography; or
 - (b) if the person is a minor's parent or legal guardian and knowingly consents to or permits that minor to be sexually exploited under Subsection (1)(a).
- (2) Sexual exploitation of a minor is a felony of the second degree.
- (3) It is a separate offense under this section:
- (a) for each minor depicted, and if more than one minor is depicted in the child pornography in violation of this section, the depiction of each individual minor in the child pornography is a separate offense; and
 - (b) each time the same minor is depicted in different child pornography.
- (4) It is an affirmative defense to a charge of violating this section that no person under 18 years of age was actually depicted in the visual depiction or used in producing or advertising the visual depiction.
- (5) This section may not be construed to impose criminal or civil liability on:
- (a) any entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:
 - (i) reporting or data preservation duties required under any federal or state law; or
 - (ii) implementing a policy of attempting to prevent the presence of child pornography on any tangible or intangible property, or of detecting and reporting the presence of child pornography on the property; or
 - (b) any law enforcement officer acting within the scope of a criminal investigation.

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, § 2822 (2010). Use of a child in a sexual performance

(a) No person shall, with knowledge of the character and content, promote a sexual performance by a child or a performance which contains a lewd exhibition of the genitals, anus or breasts of a child, or hire, employ, procure, use, cause or induce a child to engage in such a performance.

(b) In any prosecution arising under this section, the defendant may raise as an affirmative defense that before the child participated in the sexual performance, the defendant, in good faith, had a reasonable and factual basis to conclude that the child had in fact attained the age of 16; and the defendant did not rely solely upon the oral allegations or representations of the child as to his or her age.

Vt. Stat. Ann. tit. 13, § 2824 (2010). Promoting a recording of sexual conduct

(a) No person may, with knowledge of the character and content, promote any photograph, film or visual recording of sexual conduct by a child, or of a lewd exhibition of a child's genitals or anus. This subsection does not apply to paintings, drawings, or to non-visual or written descriptions of sexual conduct.

(b) In any prosecution arising under this section, the defendant may raise any of the following affirmative defenses:

(1) that the recording was promoted for a bona fide medical, psychological, social work, legislative, judicial or law enforcement purpose, by or to a physician, psychologist, social worker,

legislator, judge, prosecutor, law enforcement officer, or other person having such a bona fide interest in the subject matter.

(2) that the defendant was a bona fide school, museum or public library, or was a person acting in the course of employment as an employee or official of such an organization or of a retail outlet affiliated with and serving the educational or intended purpose of that school, museum or library.

(3) that the defendant in good faith had a reasonable basis to conclude that the child in fact had attained the age of 16 when the recording was made.

VIRGINIA

Va. Code Ann. § 18.2-374.1 (2010). Production, publication, sale, financing, etc., of child pornography; presumption as to age; severability

A. For purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, "child pornography" means sexually explicit visual material which utilizes or has as a subject an identifiable minor. An identifiable minor is a person who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting or modifying the visual depiction; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and shall not be construed to require proof of the actual identity of the identifiable minor.

For the purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, the term "sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film, digital image, including such material stored in a computer's temporary Internet cache when three or more images or streaming videos are present, or similar visual representation which depicts sexual bestiality, a lewd exhibition of nudity, as nudity is defined in § 18.2-390, or sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in § 18.2-390, or a book, magazine or pamphlet which contains such a visual representation. An undeveloped photograph or similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent.

B. A person shall be guilty of production of child pornography who:

1. Accosts, entices or solicits a person less than 18 years of age with intent to induce or force such person to perform in or be a subject of child pornography; or

2. Produces or makes or attempts or prepares to produce or make child pornography; or

3. Who knowingly takes part in or participates in the filming, photographing, or other production of child pornography by any means; or

4. Knowingly finances or attempts or prepares to finance child pornography.

5. [Repealed.]

B1. [Repealed.]

C1. Any person who violates this section, when the subject of the child pornography is a child less than 15 years of age, shall be punished by not less than five years nor more than 30 years in a state correctional facility. However, if the person is at least seven years older than the subject of the child pornography 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 a mandatory minimum term of imprisonment. Any person who commits a second or subsequent violation of this section where the person is at least seven years older than the subject shall be punished by a term of imprisonment of not less than 15 years nor more than 40 years, 15 years of which shall be a mandatory minimum term of imprisonment.

C2. Any person who violates this section, when the subject of the child pornography is a person at least 15 but less than 18 years of age, shall be punished by not less than one year nor more than 20 years in a state correctional facility. However, if the person is at least seven years older than the subject of the child pornography the person shall be punished by term of imprisonment of not less than three years nor more than 30 years in a state correctional facility, three years of which shall be a mandatory minimum term of imprisonment. Any person who commits a second or subsequent violation of this section when he is at least seven years older than the subject shall be punished by a term of imprisonment of not less than 10 years nor more than 30 years, 10 years of which shall be a mandatory minimum term of imprisonment.

D. For the purposes of this section it may be inferred by text, title or appearance that a person who is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual material is less than 18 years of age.

E. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any sexually explicit visual material associated with a violation of this section is produced, reproduced, found, stored, or possessed.

F. The provisions of this section shall be severable and, if any of its provisions shall be held unconstitutional by a court of competent jurisdiction, then the decision of such court shall not affect or impair any of the remaining provisions.

Va. Code Ann. § 18.2-374.1:1 (2010). Possession, reproduction, distribution, and facilitation of child pornography; penalty

A. Any person who knowingly possesses child pornography is guilty of a Class 6 felony.

B. Any person who commits a second or subsequent violation of subsection A is guilty of a Class 5 felony.

C. Any person who reproduces by any means, including by computer, sells, gives away, distributes, electronically transmits, displays with lascivious intent, purchases, or possesses with intent to sell, give away, distribute, transmit, or display child pornography with lascivious intent shall be punished by not less than five years nor more than 20 years in a state correctional facility. Any person who commits a second or subsequent violation under this subsection shall be punished by a term of imprisonment of not less than five years nor more than 20 years in a state

correctional facility, five years of which shall be a mandatory minimum term of imprisonment.

D. Any person who intentionally operates an Internet website for the purpose of facilitating the payment for access to child pornography is guilty of a Class 4 felony.

E. All child pornography shall be subject to lawful seizure and forfeiture pursuant to [§ 19.2-386.31](#).

F. For purposes of this section it may be inferred by text, title or appearance that a person who is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual material is less than 18 years of age.

G. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any child pornography is produced, reproduced, found, stored, received, or possessed in violation of this section.

H. The provisions of this section shall not apply to any such material that is possessed for a bona fide medical, scientific, governmental, or judicial purpose by a physician, psychologist, scientist, attorney, or judge who possesses such material in the course of conducting his professional duties as such.

WASHINGTON

Wash. Rev. Code Ann. § 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.

Wash. Rev. Code Ann. § 9.68A.050 (2010). Dealing in depictions of minor engaged in sexually explicit conduct

A person who:

- (1) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct; or
- (2) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct is guilty of a class C felony punishable under chapter 9A.20 RCW.

WEST VIRGINIA

W. Va. Code Ann. § 61-8C-1 (2009). Definitions.

For the purposes of this article:

- (a) "Minor" means any child under eighteen years of age.
- (b) "Knowledge" means knowing or having reasonable cause to know which warrants further inspection or inquiry.
- (c) "Sexually explicit conduct" includes any of the following, whether actually performed or simulated:
 - (1) Genital to genital intercourse;
 - (2) Fellatio;
 - (3) Cunnilingus;
 - (4) Anal intercourse;
 - (5) Oral to anal intercourse;

- (6) Bestiality;
- (7) Masturbation;
- (8) Sadomasochistic abuse, including, but not limited to, flagellation, torture or bondage;
- (9) Excretory functions in a sexual context; or
- (10) Exhibition of the genitals, pubic or rectal areas of any person in a sexual context.

(d) "Person" means an individual, partnership, firm, association, corporation or other legal entity.

W. Va. Code Ann. § 61-8C-2 (2010) Use of minors in filming sexually explicit conduct prohibited; penalty.

(a) Any person who causes or knowingly permits, uses, persuades, induces, entices or coerces such minor to engage in or uses such minor to do or assist in any sexually explicit conduct shall be guilty of a felony when such person has knowledge that any such act is being photographed or filmed. Upon conviction thereof, such person shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.

(b) Any person who photographs or films such minor engaging in any sexually explicit conduct shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.

(c) Any parent, legal guardian or person having custody and control of a minor, who photographs or films such minor in any sexually explicit conduct or causes or knowingly permits, uses, persuades, induces, entices or coerces such minor child to engage in or assist in any sexually explicit act shall be guilty of a felony when such person has knowledge that any such act may be photographed or filmed. Upon conviction thereof, such persons shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.

WISCONSIN

Wis. Stat. Ann. § 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.

WYOMING

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

18 USCS § 1466A (2010). Obscene visual representations of the sexual abuse of children.

a) In general. Any person who, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that--

(1) (A) depicts a minor engaging in sexually explicit conduct; and

(B) is obscene; or

(2) (A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value; or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(1) [18 USCS § 2252A(b)(1)], including the penalties provided for cases involving a prior conviction.

(b) Additional offenses. Any person who, in a circumstance described in subsection (d), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that--

(1) (A) depicts a minor engaging in sexually explicit conduct; and

(B) is obscene; or

(2) (A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value; or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(2) [18 USCS § 2252A(b)(2)], including the penalties provided for cases involving a prior conviction.

(c) Nonrequired element of offense. It is not a required element of any offense under this section that the minor depicted actually exist.

(d) Circumstances. The circumstance referred to in subsections (a) and (b) is that--

(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

(4) any visual depiction involved in the offense has been mailed, or has been shipped or

transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

(e) Affirmative defense. It shall be an affirmative defense to a charge of violating subsection (b) that the defendant--

(1) possessed less than 3 such visual depictions; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction--

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

(f) Definitions. For purposes of this section--

(1) the term "visual depiction" includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means;

(2) the term "sexually explicit conduct" has the meaning given the term in section 2256(2)(A) or 2256(2)(B) [18 USCS § 2256(2)(A) or 2256(2)(B)]; and

(3) the term "graphic", when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.

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.

U.S. TERRITORIES

GUAM

Guam Code Ann. tit. 9, § 28.40 (2009). Definitions.

As used in this Article:

(a) Material means any picture, drawing, photograph, motion picture or pictorial representation, or any statue or other figure, or any mechanical, chemical or electrical reproduction, or anything which is or may be used as a means of communication (other than the written or spoken word). Material includes molds, printing plates and other latent representational objects.

(b) Prurient interest means a shameful or morbid interest in nudity, sex or excretion.

(c) Performance means any physical human bodily activity, whether engaged in alone or with other persons, including but not limited to dancing, acting, simulating or pantomiming which is either public or for commercial gain.

(d) Distribute means to transfer possession of material.

(e) Any material or performance is obscene if:

(1) The average person, applying contemporary community standards, finds that the material or performance, taken as a whole, appeals to the prurient interest; and

(2) The material or performance depicts or describes in a patently offensive way, sexual conduct, normal or perverted, actual or simulated; and

(3) The material or performance, taken as a whole, lacks serious literary, artistic, political or scientific value.

(f) Sadomasochistic abuse means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

(g) Sexual conduct means acts of masturbation, excretory functions, lewd exhibition of the genitals, sadomasochistic abuse, 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.

(h) Owner means any person who owns or has legal right to possession of any material.

Guam Code Ann. tit. 9, § 28.50 (2009). Obscenity: Participation in.

Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits any obscene performance which is public or for commercial gain is guilty of a misdemeanor.

Guam Code Ann. tit. 9, § 28.51 (2009). Obscenity: Employment of Minor.

A person is guilty of a felony of the third degree if he knowingly or recklessly employs or uses a minor under the age of sixteen (16) years to do or assist in doing any of the acts described in §§ 28.49 or 28.50 of this Chapter.

Guam Code Ann. tit. 9, § 28.52 (2009). Use of One's Child in Obscene Acts.

A person is guilty of a felony of the first degree if while having custody or control of any child under the age of sixteen (16) years, he shall knowingly permit that child to be used in or be a party to any material or performance that is obscene.

Guam Code Ann. tit. 9, § 28.80 (2009). Photography of Minor's Sexual Acts: Punished.

A person commits a felony of the first degree if he knowingly:

- (1) sells or offers for sale publications, pictures or films that depict minors under 16 years of age performing sexual acts; or
- (2) photographs minors under 16 years of age to engaging [sic] sexual acts.

PUERTO RICO

P.R. Laws Ann. tit. 33 § 4074 (2009). Obscene material, obscene acts, sexual behavior and related terms defined

For the effects of §§ 4074-4081 of this title, the following terms or phrases shall have the meaning set forth below:

(a) Obscene material. Means material which, considered as a whole by an average person and by applying contemporary community patterns, attracts lascivious interest, in other words, a morbid interest in nudity, sexuality or biological functions; and is material that depicts or describes sexual behavior in a patently offensive manner and, considered as a whole, fails to have any serious literary, artistic, political, religious, scientific or educational merit.

The material's attraction to lascivious interest in sex is judged with reference to the average adult unless the nature of the material or the manner in which it is marketed, distributed or exhibited demonstrates that it is designed for groups of sexual deviates, in which case, said attraction shall be judged with reference to the group for whom it is intended.

In proceedings for violations of the provisions of this subtitle where the way it is produced, presented, sold, marketed, distributed or publicized indicates that the accused is promoting the material commercially because of its lascivious attraction, the proof of this action shall constitute prima facie evidence that the same fails to have any serious literary, artistic, political, religious, scientific or educational merit.

The fact that the defendant knew that the material showed persons under sixteen (16) years of age engaging in sexual behavior, as defined in subsection (f) of this section, is a factor that must

be considered when determining that the material is obscene.

When the forbidden act is carried out for, with or in the presence of children less than sixteen (16) years old, it shall suffice that the material is intended to awaken a lascivious interest in sex.

(b) Material. Means any book, magazine, newspaper or other printed or written material, or any portrait, photograph, moving picture, cinematographic film or other graphic representation or oral or visual representation transmitted or retransmitted through cable, electromagnetic waves, computers, digital technology or any other electronic medium or any other communications means [media] or any statue, carving or figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other article, equipment or machine.

(c) Distribute. Means to transfer possession, either with or without remuneration, or to send a signal, transmit, retransmit or broadcast by cable, electromagnetic impulses or any electronic means or other communications media.

(d) Subsequent violation. Means any infraction or infractions of the same nature, using the same communications media that the first infraction was committed with, brought before any court of justice after thirty (30) or more days have elapsed from the first infraction.

(e) Obscene act. Means any physical activity of the human body, whether it is carried out alone or with other persons, including, but not limited to, singing, talking, dancing, acting, pretending, or by pantomime which, considered as a whole by the average person, according to contemporary community patterns, appeals to a lascivious interest, in other words, a morbid interest in nudity, sexuality or biological functions and represents or describes sexual behavior in a manifestly offensive manner and fails to have a serious literary, artistic, political, religious, scientific or educational value.

Incitement by actions leading to a lascivious interest shall be judged in relation to the average adult, unless the nature of said conduct or the manner in which it is produced, presented or displayed, demonstrates that it is designed for groups of sexual deviates, in which case the predominant attraction of the acts shall be judged with reference to the group for whom it is intended.

In proceedings for violations of the provisions of this subtitle where the manner of production, presentation or exhibition indicates that the accused is commercially exploiting obscene acts for their lascivious attraction, said circumstances shall constitute prima facie evidence that same lacks serious literary, artistic, political, religious, scientific or educational merit.

When determining whether the act, considered as a whole, appeals to a lascivious interest in sex, the fact that the defendant knew that the conduct showed persons under sixteen (16) years of age engaged in sexual behavior, as defined in subsection (f) of this section, is a factor that may be taken into consideration.

When the prohibited act is carried out for, with or in the presence of children under sixteen (16) years of age, it shall be sufficient that the material is intended to awaken a lascivious interest in sex.

(f) Sexual behavior. Means:

(1) Patently offensive representations or descriptions of consummated, normal or perverted sexual acts, whether they be real or simulated, including sexual relations, sodomy, unnatural acts and bestiality.

(2) Patently offensive representations or descriptions of masturbation, oral copulation, sexual sadism, sexual masochism, lascivious display of genital organs, stimulation of human genitalia with objects designed for such purposes, or scatological functions, whether such acts are carried out individually or between members of the same sex or the opposite sex, or between humans and animals. An act is simulated when it gives the impression of being sexual behavior.

P.R. Laws Ann. tit. 33 § 4075 (2009). Delivery, transportation, sale, distribution, exhibition

or possession of obscene material

(a) Any person who knowingly sends, or has delivered, or transports or has transported, or brings or has someone bring obscene material to Puerto Rico for sale, exhibition, publication or distribution, or who possesses, prepares, publishes or prints any obscene material in Puerto Rico, with the intention of distributing, selling, exhibiting it to others, or offering it for distribution or sale, shall be punished by imprisonment not to exceed six (6) months, or a fine not to exceed five hundred dollars (\$500), or both penalties at the court's discretion.

(b) Any person who commits the acts forbidden in subsection (a) of this section, knowing that in such obscene material a child under sixteen (16) years of age is presented while carrying out or simulating a sexual act, shall be punished upon conviction, by imprisonment for a term of two (2) years to a maximum of four (4) years, or a fine not to exceed fifty thousand dollars (\$50,000), or both penalties at the court's discretion.

(c) The provisions of this section, with regard to the exhibition, or possession with intent to exhibit, of any obscene material shall not apply to any employee, projector operator or movie cameraman who has been employed and who is working at his job, as long as said employee, projector operator or cameraman does not have a financial interest of any kind in the place where he is employed.

P.R. Laws Ann. tit. 33 § 4076 (2009). Obscene exhibitions

Any person who knowingly engages in or participates in administrating, producing, patronizing, presenting or exhibiting a spectacle with obscene acts or has a part in said show or contributes to its obscenity shall be punished by imprisonment not to exceed six (6) months, or a fine not to exceed five hundred dollars (\$500), or both penalties at the court's discretion. A spectacle shall be understood to mean any theatrical performance, cinema film, dance or any other exhibition intended for an audience.

P.R. Laws Ann. tit. 33 § 4077 (2009). Protection of minors

(a) Any person engaging in acts prohibited in §§ 4075 and 4076 of this title for or in the presence of children under sixteen (16) years of age shall be punished by imprisonment for a minimum term of one year and a maximum of three (3) years, or a maximum fine of five thousand dollars (\$5,000), or both penalties at the court's discretion.

(b) The penalty of imprisonment for a minimum term of three (3) years and a maximum of five (5) years shall be imposed on any person who employs, uses, persuades or induces a child under sixteen (16) years of age to engage in, or to induce another child to pose, model or perform sexual acts for the purpose of preparing, printing or exhibiting obscene material, or presenting an obscene spectacle.

(c) Any person who employs, hires or uses a child under sixteen (16) years of age to engage in or help him to engage in any of the forbidden acts in § 4075 of this title shall be punished by imprisonment for a minimum term of one year and a maximum of three (3) years, or a fine not to exceed five thousand dollars (\$5,000), or both penalties at the court's discretion.

P.R. Laws Ann. tit. 1 § 546 (2009). Right to prohibit obscene material and/or child pornography

Every person has the right to petition the State to prohibit and to take any steps to prevent the

production, exhibition, transmission, diffusion and dissemination of obscene material and/or that contains explicit sexual child abuse, or that is otherwise deemed as obscene material and/or child pornography, pursuant to the applicable laws and jurisprudence.

U.S. VIRGIN ISLANDS

V.I. Code Ann. tit. 14, § 1021 (2010). Definitions

As used in this chapter:

(a) "Obscene" means that to the average person, applying contemporary standards, the predominant appeal of the matter, taken as a whole, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters and is matter which is utterly without redeeming social importance.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical production or any other articles, equipment, machines or materials.

(c) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means having knowledge that the matter is obscene.

V.I. Code Ann. tit. 14, § 1022 (2010). Obscene and indecent conduct

Whoever--

(a) (1) exposes his person or the private parts thereof in any public place, or in any place where there are present other persons to be offended or annoyed thereby, or who exposes himself or takes part in any model artist exhibition, or makes any other exhibition of himself to public view or to the view of any number of persons, such as is offensive to decency, or is adapted to excite lewd or vicious thoughts or acts; or who shall appear upon any public street or thoroughfare within town limits of any town in the Virgin Islands in bathing costume or any similarly abbreviated attire such as to offend public decency;

(2) procures, counsels, or assists any person so to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself to public view or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to lewd or vicious thoughts or acts;

(3) writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper or books; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or

likewise makes any obscene or indecent figure;

(4) writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print, or figure;

(5) sings any lewd or obscene song, ballad, or uses any lewd or obscene words over any radio station located in or operating within the Virgin Islands, or in any public place, or in any place where there are present other persons to be offended or annoyed thereby;

(6) uses vile and obscene language in public streets or places or in private places so as to seriously disturb the peace; or

(7) urinates or defecates in public places--

shall be fined not more than \$100 or imprisoned not more than 90 days, or both.

(b) For purposes of this section, a woman's breast-feeding a child in any public or private location where the woman's presence is otherwise authorized does not under any circumstance constitute obscene or indecent conduct.

V.I. Code Ann. tit. 14, § 1024 (2010). Distribution; printing, exhibiting, distributing or possessing

(a) Every person who knowingly, sends or causes to be sent, or brings or causes to be brought, into the Virgin Islands for sale or distribution, or in the Virgin Islands prepares, publishes, prints, exhibits, distributes, or offers to distribute, or has in his possession with intent to distribute or to exhibit or offer to distribute, any obscene matter is guilty of a misdemeanor.

(b) Every person who (i) sends or causes to be sent, or brings or causes to be brought into the Virgin Islands for sale or distribution, or (ii) in the Virgin Islands possesses, prepares, publishes or prints, with the intent to distribute or to exhibit to others for commercial consideration, or (iii) who offers to distribute, distributes or exhibits to others for commercial consideration, any obscene matter, knowing that such matter depicts a minor engaging in or simulating sexual intercourse, masturbation, anal-oral copulation, sodomy, bestiality, oral copulation, sexual sadism, sexual masochism, any lewd or lascivious sexual activity, or excretory functions performed in a lewd or lascivious manner is guilty of a felony and shall be fined not less than \$25,000 and not more than \$50,000 or imprisoned not more than three years, or both.

(c) The provisions of this section with respect to the exhibition of, or the possession with intent to exhibit, any obscene matter shall not apply to a motion picture operator, projectionist or salesperson who is employed by a person licensed in accordance with Virgin Islands law and who is acting within the scope of his employment; Provided That such operator, projectionist or salesperson has no financial interest in the place wherein he is so employed.