

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

Issue Brief

SECTION 3.2

Area of Law

Criminal Provisions for Traffickers

The Policy Point

Creating and distributing child pornography carries penalties as high as similar federal offenses.

The Legislative Solution

Child pornography is the actual image of sexual abuse as it is being perpetrated on a child. Minor victims depicted in child pornography suffer irreparable physical, emotional and psychological harm. The demand for images of child sexual abuse has exploded with the introduction of the Internet, bringing anonymity and privacy to the buyer and seller of child pornography. Traffickers of child pornography are seizing the opportunity to make and sell child pornography on the Internet, where images continue to circulate, re-victimizing children each time the images are viewed. A federal conviction for producing and distributing images of child pornography is generally punishable by imprisonment for 5–30 years and a fine not to exceed \$250,000. Subsequent convictions, however, are punishable by imprisonment up to 40 or 50 years and a fine not to exceed \$250,000. States must enact laws which mandate serious penalties for those persons who create and sell child pornography with penalties adequately steep to de-incentivize them including imposition of fines, asset forfeiture, and restitution requirements that will be used for the benefit of their victims.

Select Statute Highlights

The highlighted statutes apply to all minors under the age of 18 and impose mandatory, significant penalties.

Alabama

Ala. Code § 13A-12-197(a) (Production of obscene matter) states, “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.” Ala. Code § 13A-12-197(b) makes each depiction of an individual under 17 a separate offense punishable by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-12-197 is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(14), 15-20A-48(a).

Hawaii

Haw. Rev. Stat. Ann. § 707-750(1)(a), (b) (Promoting child abuse in the first degree) states, “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;. . .” Promoting child abuse in the first degree is a Class A felony punishable by 20 years imprisonment without the possibility of suspension of sentence or probation and a possible fine up to \$50,000.

Montana

Mont. Code Ann. § 45-5-625(1)(a) (Sexual abuse of children) is punishable by life imprisonment or a term of imprisonment up to 100 years and a possible fine not to exceed \$10,000. Mont. Code Ann. § 45-5-625(2)(a). However, if the victim is under 16, unless punished under Mont. Code Ann. § 46-18-219, a conviction for sexual abuse of children is punishable by life imprisonment or by imprisonment for 4–100 years and a possible fine not to exceed \$10,000. Mont. Code Ann. § 45-5-625(2)(b). Penalties are enhanced when the child is under 13 and the offender is 18 or older to imprisonment for 100 years, 25 years if which cannot be suspended (“except as provided in 46-18-222”), a possible fine not to exceed \$50,000, an order to enroll in a treatment program, and possible supervision for the remainder of the offender’s life. Mont. Code Ann. § 45-5-625(4)(a), (b).