

ISSUE BRIEF

COMPONENT 2.9

Area of Law	Criminal Provisions Addressing Demand
The Policy Goal	Buying and possessing images of child sexual exploitation carries penalties as high as similar federal offenses.
The Reason	Images of child sexual exploitation (ICSE), commonly referred to as “child pornography,” are the actual images of sexual abuse as it is being perpetrated on a child. Minor victims depicted in ICSE suffer irreparable physical, emotional, and psychological harm. The most common forum for ICSE today is the Internet; once on the Internet, images cannot be removed completely and may continue to circulate, re-victimizing the child each time the images are viewed. A federal conviction for possession of ICSE is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000. Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000. To decrease demand for these images, those who purchase and possess ICSE must be subject to serious prison sentences, fines, and asset forfeiture; further, they should be required to pay restitution to the victims.

Examples of Legislative Solutions

The following statutes demonstrate substantial sentences and asset forfeiture for the possession or purchase of images of child sexual exploitation.

Delaware

Del. Code Ann. tit. 11, § 1109(4) (Dealing in child pornography) prohibits the conduct of a person who, “intentionally . . . accesses . . . receives, exchanges . . . stores . . . prints, reproduces or otherwise possesses any photograph, image, file, data or other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act.” A conviction under Del. Code Ann. tit. 11, § 1109 is punishable as a Class B felony by imprisonment for 2-25 years. If the victim is under the age of 14 and the offender is either 18 years of age or older or tried as an adult, however, a conviction is designated a “dangerous crime against a child” under Del. Code Ann. tit. 11, § 777(a) (Dangerous crime against a child, definitions, sentences). A first conviction for a “dangerous crime against a child” is punishable as a Class B felony by imprisonment for 2–25 years, while subsequent convictions are punishable by mandatory imprisonment for life. Del. Code Ann. tit. 11, § 777(b).

Georgia

Under Ga. Code Ann. § 16-12-100(b)(8) (Sexual exploitation of children; reporting violation; forfeiture; penalties), “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.” Additionally, Ga. Code Ann. § 16-12-100(b)(6) prohibits “any person knowingly to . . . purchase . . . 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.” A person who violates this statute is guilty of a felony punishable by 5–20 years imprisonment and a fine not to exceed \$100,000. Ga. Code Ann. § 16-12-100(f) (1). In addition, pursuant to Ga. Code Ann. § 16-12-100(e)(2), “Any property which is, directly or indirectly, used or intended to be used in any manner to facilitate a violation of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them.”

Mississippi

Miss. Code Ann. § 97-5-33(3) (Exploitation of children; prohibitions) states, “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.” Under subsection (5), a person may not “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.” A violation of Miss. Code Ann. § 97-5-33 is punishable by 5–40 years imprisonment and a \$50,000–\$500,000 fine for the first offense and 20 years to life and a \$100,000–\$1,000,000 fine for subsequent violations.

Tennessee

Pursuant to Tenn. Code Ann. § 39-17-1004(a)(1) (Offense of aggravated sexual exploitation of a minor), “(a)(1) It is unlawful for a person to knowingly . . . purchase or exchange material . . . that includes a minor engaged in: (A) Sexual activity; or (B) Simulated sexual activity that is patently offensive.” Under subsection (b)(1), “It is unlawful for a person to knowingly . . . purchase or exchange material that is obscene, as defined in § 39-17-901. . . which includes a minor engaged in: (A) Sexual activity; or (B) Simulated sexual activity that is patently offensive.” Violation is a Class C felony punishable by 3–15 years imprisonment and a possible fine not to exceed \$10,000. Tenn. Code Ann. § 40-35-111(b)(3). However, if the number of individual images is greater than 25, the crime is a Class B felony punishable by 8–30 years imprisonment and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-17-1004(a)(4), (b)(4), 40-35-111(b)(2). The defendant can be charged on individual counts for each image. Under Tenn. Code Ann. § 39-17-1003(a) (Offense of sexual exploitation of a minor), “[i]t is unlawful for any person to knowingly possess material that includes a minor engaged in: (1) Sexual activity; or (2) Simulated sexual activity that is patently offensive.” The Class D felony is punishable by 2–12 years imprisonment and a possible fine not to exceed \$5,000 for each individual image possessed. Tenn. Code Ann. §§ 39-17-1003(b), (d), 40-35-111(b)(4). If the number of images and/or materials exceeds 50, then the crime is a Class C felony punishable by 3–15 years imprisonment and a possible fine not to exceed \$10,000. Tenn. Code Ann. §§ 39-17-1003(d), 40-35-111(b)(3). If the number of images and/ or materials exceeds 100, then the crime is a Class B felony punishable by 8–30 years imprisonment and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-17-1003(d), 40-35-111(b)(2). Moreover, Tenn. Code Ann. § 39-17-1008 (Forfeiture of any conveyance or real or personal property used in commission of an offense under this part [Sexual Exploitation of Children]), states, “(a) Any conveyance or real or personal property used in the commission of an offense under this part is subject to forfeiture under the provisions of title 40, chapter 33, part 2. (b) Notwithstanding the provisions of § 40-33-211 [Property disposition], the proceeds from all forfeitures made pursuant to this section shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund. Moneys from the fund shall be

expended to fund activities authorized by the child abuse fund as set out in § 39-13-530 [Forfeiture of any conveyance or real or personal property used in a sexual offense committed against minors Child abuse fund]”

Wisconsin

Wis. Stat. § 948.12(2m) penalizes “[w]hoever exhibits or plays a recording of a child engaged in sexually explicit conduct, if all of the following apply . . . (a) The person knows that he or she has exhibited or played the recording. (b) Before the person exhibited or played the recording, he or she knew the character and content of the sexually explicit conduct. (c) Before the person exhibited or played the recording, he or she knew or reasonably should have known that the child engaged in sexually explicit conduct had not attained the age of 18 years.” Under Wis. Stat. § 948.12(3)(a), a violation is a Class D felony punishable by a maximum fine of \$100,000 and/or a maximum sentence of 25 years, unless the defendant is under 18, in which case he is guilty of a Class I felony punishable by a maximum fine of \$10,000 or a maximum sentence of 3½, or both.

Wis. Stat. § 973.042(2) (Child pornography surcharge) provides, “If a court imposes a sentence or places a person on probation for a crime under s. 948.05 [Sexual exploitation of a child] or 948.12 [Possession of child pornography] and the person was at least 18 years of age when the crime was committed, the court shall impose a child pornography surcharge of 500 [sic] for each image or each copy of an image associated with the crime. The court shall determine the number of images or copies of images associated with the crime by preponderance of the evidence and without a jury.”