

ISSUE BRIEF

COMPONENT 4.4

Area of Law	Criminal Provisions for Facilitators
The Policy Goal	Promoting and selling images of child sexual exploitation carries penalties as high as similar federal offenses.
The Reason	The demand for images of child sexual exploitation has exploded with the introduction of the Internet, bringing anonymity and privacy to the buyer and seller of these images and creating a tremendous opportunity for individuals and businesses to capitalize on profits from facilitating the manufacture, promotion, and sale of these images. A legislative response from states to criminalize and impose serious penalties for those persons who promote or sell these images is critical.

Examples of Legislative Solutions

The state laws selected below define a child as a person under the age of 18 and impose serious penalties on offenders.

Arkansas

Ark. Code Ann. § 5-27-304(a) (Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child) makes it illegal to “[w]ith knowledge of the character of the visual or print medium involved . . . : (1) Knowingly advertise for sale or distribution, sell, distribute, transport, ship, exhibit, display, or receive for the purpose of sale or distribution any visual or print medium depicting a child participating or engaging in sexually explicit conduct; or (2) Knowingly solicit, receive, purchase, exchange, possess, view, distribute, or control any visual or print medium depicting a child participating or engaging in sexually explicit conduct.” A first violation of this section is a Class C felony punishable by imprisonment for 3–10 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-27-304(b)(1), 5-4-401(a)(4), 5-4-201(a)(2). Subsequent violations are Class B felonies punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-304(b)(2), 5-4-401(a)(3), 5-4-201(a)(1).

Ark. Code Ann. § 5-27-403(a) (Producing, directing, or promoting a sexual performance by a child) makes it a crime for a person “knowing the character and content of the material, to . . . promote a performance that includes sexual conduct by a child under eighteen (18) years of age.” As a Class B felony, this crime is punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-403(b), 5-4-401(a)(3), 5-4-201(a)(1).

Ark. Code Ann. § 5-27-602(a)(1) (Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child) makes it a crime when a person knowingly “[r]eceives for the purpose of selling or 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 that depicts a child or incorporates the image of a child engaging in sexually explicit conduct.” Ark. Code Ann. § 5-27-602(a)(1). A first violation is a Class C felony punishable by imprisonment for 3–10 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-27-602(b)(1), 5-4-401(a)(4), 5-4-201(a)(2). Subsequent offenses are Class B felonies punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-602(b)(2), 5-4-401(a)(3), 5-4-201(a)(1).

Connecticut

Conn. Gen. Stat. § 53a-196b(a) (Promoting a minor in an obscene performance) states, “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.” A conviction under Conn. Gen. Stat. § 53a-196b(a) is punishable as a Class B felony by imprisonment for 1–20 years, a fine not to exceed \$15,000, or both. Conn. Gen. Stat. §§ 53a-35a(6), 53a-41(2), 53a-28(b)(4), (6).

Conn. Gen. Stat. § 53a-196c(a) (Importing child pornography states, “A person is guilty of importing child pornography when, with intent to promote child pornography, such person knowingly imports or causes to be imported into the state three or more visual depictions of child pornography of known content and character.” A conviction under this statute is punishable as a Class B felony by 5–20 years, of which all but 5 years may be suspended, and a possible fine not to exceed \$15,000. Conn. Gen. Stat. §§ 53a-196c(b), 53a-35a(6), 53a-41(2), 53a-28(b)(4).

Mississippi

Miss. Code Ann. § 97-5-33(4) (Exploitation of Children; prohibitions) states, “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.” Miss. Code Ann. § 97-5-33(3) 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 Miss. Code Ann. § 97-5-35, a first-time conviction for violating any provision of Miss. Code Ann. § 97-5-33 is punishable by imprisonment for 5–40 years and a \$50,000–\$500,000 fine. Repeat offenders face 20 years to life imprisonment and a \$100,000–\$1,000,000 fine. Miss. Code Ann. § 97-5-35.

Nevada

Nev. Rev. Stat. Ann. § 200.725 (Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty) makes it a category B felony when a person “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” punishable by imprisonment for 1–15 years and/or a fine not to exceed \$15,000. Victims under 16 who “appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result . . .” also have a civil cause of action against facilitators pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) and may recover “actual damages, which shall be deemed to be at least \$150,000, plus attorney’s fees and costs.”

New Hampshire

N.H. Rev. Stat. Ann. § 649-A:3(I)(a)–(b), (II) (Possession of Child Sexual Abuse Images) makes it a Class A felony to “possess, or control . . . [or] [b]ring or cause to be brought into this

state any visual representation of a child engaging in sexually explicit conduct.” A conviction is punishable by up to 15 years imprisonment and fines up to \$4,000. N.H. Rev. Stat. Ann. §§ 649-A:3(II), 651:2(I), (II)(a), (IV)(a)–(c). It is also unlawful under N.H. Rev. Stat. Ann. § 649-A:3-a(I)(a), (b) to “[k]nowingly sell, exchange, or otherwise transfer, or possess with the intent to sell, exchange, or otherwise transfer any” child pornography or to “[k]nowingly publish, exhibit, or otherwise make available . . .” child pornography. This offense is punishable by up to 20 years imprisonment with a minimum sentence not to exceed ½ of the maximum or, where previously convicted of such an offense or its reasonable equivalent in another jurisdiction, up to 30 years imprisonment with a minimum sentence not to exceed ½ of the maximum. N.H. Rev. Stat. Ann. §§ 649-A:3-a(II)(a), 651:2(I), (IV)(a).

Virginia

Va. Code Ann. § 18.2-374.1:1(D) (Possession, reproduction, distribution, solicitation, and facilitation of child pornography; penalty) states, “[a]ny 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.” This offense is punishable by imprisonment for 2–10 years and a potential fine of up to \$100,000. Va. Code Ann. § 18.2-10(d), (g). If the offender is a not a natural person, only a fine will be assessed for this felony. Va. Code Ann. § 18.2-10(g).