

ISSUE BRIEF

COMPONENT 3.2

Area of Law	Criminal Provisions for Traffickers
The Policy Goal	Creating and distributing 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 demand for ICSE has exploded with the introduction of the Internet, bringing anonymity and privacy to the buyer and seller of these images. Traffickers of ICSE are seizing the opportunity to make and sell these images on the Internet, where they continue to circulate, revictimizing children each time the images are viewed. A federal conviction for producing and distributing ICSE 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 ICSE with penalties adequately steep to disincentivize offenders, including imposition of fines, asset forfeiture, and restitution with requirements that financial penalties will be used for the benefit of ICSE victims.

Examples of Legislative Solutions

The highlighted statutes apply to all offenses involving a minor under the age of 18 and impose significant penalties.

Alabama

Ala. Code § 13A-12-197(a) (Production of obscene matter containing visual depiction of person under 17 years of age involved in obscene acts) 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. Haw. Rev. Stat. Ann. §§ 706-659, 706-640(1)(a).

Indiana

Under Ind. Code Ann. § 35-42-4-4(b) (Child exploitation), “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; (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 Level 5 felony.” A Level 5 felony is punishable by an imprisonment term of 1–6 years, “with the advisory sentence being four (4) years,” and a possible fine up to \$10,000. Ind. Code Ann. § 35-50-2-6(b).

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, 10 years of which cannot be suspended (“except as provided in 46-18-222(1) through (5)”), 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).

New Mexico

N.M. Stat. Ann. § 30-6A-3(D) (Sexual exploitation of children) states, “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 for sexual exploitation of children and shall be sentenced [to a maximum of 11 years imprisonment and a maximum fine of \$5,000] pursuant to the provisions of N.M. Stat. Ann. § 31-18-15[A(10), E(10),] unless the child is under the age of thirteen, in which event the person is guilty of a second degree felony for sexual exploitation of children and shall be sentenced to [a maximum of 12 years imprisonment and a maximum fine of \$5,000 pursuant to] the provisions of N.M. Stat. Ann. §31-18-15 [A(6), E(6)].” N.M. Stat. Ann. § 30-6A-3(E) states, “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 for sexual exploitation of a child” A conviction under N.M. Stat. Ann. § 30-6A-3(E) is punishable by 12 years imprisonment and a maximum fine of \$5,000. N.M Stat. Ann. § 31-18-15(A)(6), (E)(6).