

**HB**

**33**



## Alaska State Legislature

### Representative Anna Fairclough – House District 17

#### **Sponsor Statement for HB 333 "An Act relating to the reporting of Child Pornography."**

The distribution and possession of child pornography is arguably one of the most despicable crimes that exists in our society today. The exploitation of the most vulnerable members of our society is appalling and Alaskans should do all they can to protect our children and prevent the distribution and possession of child pornography.

HB 333 would strengthen Alaska's existing laws on the reporting of child pornography by expanding it to include not just those who are "processing or producing visual or printed matter," but also computer technicians, those who provide internet and cellular phone services and film and photo finishers. The penalty for failure to report such materials can result in a class A misdemeanor.

In June 2007, an Elmendorf soldier was arrested with 15,000 images of child pornography on his computer. In July, a Girdwood man with more than 7,000 images was arrested. In October, a Palmer man with more than 8,000 images. These statistics are from our state newspapers. Anyone who doesn't think that child pornography is a problem in this state needs to be very aware of these facts.

The National Center for Missing and Exploited Children's Child Pornography Fact Sheet states that during a one-year study 40% of those arrested for possession of child pornography were "dual offenders," meaning they also sexually victimized children. They went on to state that both crimes were discovered in the same investigation. That would certainly lead us to believe that the more people we arrest for possession of child pornography, the more children we can save from molestation and victimization.

The idea for this legislation was brought to me by a constituent who works in the field of technology who saw a need for this legislation. While most people in the vocations covered by this legislation would report such activity to the proper authorities, concerns about loss of business might deter some from making the right decision.

I urge your support of HB 333. The more people we have fighting to stop the possession and distribution of child pornography the better.



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**Sec. 47.17.023. Reports regarding child pornography.**

**A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reasonable cause to suspect that the matter visually depicts a child engaged in conduct described in AS 11.41.455 (a) shall immediately report this to the nearest law enforcement agency, and provide the law enforcement agency with all information known about the nature and origin of the matter.**

## **Relevant Statutes**

### **AS 47.17.023 as it currently reads:**

Sec. 47.17.023. Reports regarding child pornography.

A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reasonable cause to suspect that the matter visually depicts a child engaged in conduct described in AS 11.41.455 (a) shall immediately report this to the nearest law enforcement agency, and provide the law enforcement agency with all information known about the nature and origin of the matter.

### **AS 11.41.455 as referenced in the above statute:**

Sec. 11.41.455. 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.

### **Alaska Statutes regarding penalty for failure to report:**

Sec. 47.17.068. Penalty for failure to report.

A person who fails to comply with the provisions of AS 47.17.020 or 47.17.023 and who knew or should have known that the circumstances gave rise to the need for a report, is guilty of a class A misdemeanor.

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National Center for Missing & Exploited Children

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### **What Is Child Pornography?**

Under federal law, child pornography<sup>1</sup> is defined as a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, photograph, film, video, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where it

- depicts a minor engaging in sexually explicit conduct and is obscene, or
- 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 such depiction lacks serious literary, artistic, political, or scientific value.<sup>2</sup>

Sexually explicit conduct includes various forms of sexual activity such as intercourse, bestiality, masturbation, sadistic or masochistic abuse, and lascivious exhibition of the genitals.<sup>3</sup> It is illegal to possess, distribute, or manufacture these images.

These illegal images can be presented in various forms including print media; videotape; film; compact disc, read-only memory (CD-ROM); or digital versatile technology (DVD)<sup>4</sup> and can be transmitted through computer bulletin-board systems (BBS), USENET Newsgroups, Internet Relay Chat, web-based groups, peer-to-peer technology, and an array of constantly changing world wide web sites.<sup>5</sup>

All states and the District of Columbia have laws concerning child pornography. As a result a person who violates federal laws concerning these images may also face additional state charges.

### **Who Is a Minor?**

Federal statute defines "minor" as any person younger than 18.<sup>6</sup> "While a majority of states follow the federal statute, some state laws define 'minor' or 'child' as a youth younger than 14, 16, or 17.<sup>7</sup> Delaware law includes any person 18 years of age and younger in its definition of a 'child.'"<sup>8</sup>

### **Is Child Pornography a Crime?**

Yes, the possession or distribution of child pornography is illegal under federal laws and laws in all 50 states; however, researchers and law-enforcement officials believe this crime is increasing and the increase is related to growing Internet use.<sup>9</sup>

In response to this growing crime, the U.S. Department of Justice (USDoJ) has responded in several ways including funding the National Center for Missing & Exploited Children's CyberTipline, [www.cybertipline.com](http://www.cybertipline.com), acting as the national clearinghouse for reports of Internet-related child pornography and other Internet-related sex crimes committed against children. The USDoJ also created regional Internet Crimes Against Children (ICAC) Task Forces to assist state and local law enforcement in handling these crimes and funded specialized Internet child exploitation units in federal law-enforcement agencies.<sup>10</sup>

### **Where Is Child Pornography Predominantly Found?**

The Internet has created an exciting new world of information and communication for anyone with access to online services. While this technology offers unparalleled opportunities for children and adults to learn about the universe we live in, it has also had an immeasurable impact on the sexual exploitation of children, specifically the distribution of sexually exploitive images of children.

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The development, increasing accessibility, and use of home-computer technology has revolutionized the distribution of these images by increasing the ease and decreasing the cost of production and distribution especially across international borders. Computer technology is transforming the production of these images into a "sophisticated global cottage industry."<sup>11</sup>

While the activities of most pornographers are rather covert, it is not unusual for adults and children to encounter illegal images while exploring legitimate areas of the Internet. A current study has estimated that "as much as 20 percent of all pornographic activity on the Internet may involve children";<sup>12</sup> however, accurate estimates are difficult to produce since a reliable methodology to measure the actual extent of these images online has yet to be devised.<sup>13</sup> Nonetheless parents and guardians should closely monitor the online activities of their children and always maintain access to their children's online accounts.

### **What Motivates People Who Possess Child Pornography?**

There is not much research about the motivations of people who possess child pornography. But, from the little information that exists, it suggests these people are a diverse group using this form of pornography for a variety of reasons.<sup>14</sup> Those who possess child pornography include people who are

- sexually interested in prepubescent children (pedophiles) or young adolescents (hebephiles), who use child pornography for sexual fantasy and gratification
- sexually "indiscriminate," meaning they are constantly looking for new and different sexual stimuli
- sexually curious, downloading a few images to satisfy that curiosity
- interested in profiting financially by selling images or setting up web sites requiring payment for access<sup>15</sup>

### **Who Possesses Child Pornography?**

The diversity of these possessors is exemplified by many factors including wide age ranges; incomes ranging from poverty to wealth; levels of education running the gamut from some not finishing high school to others having post college degrees; and those who come from cities, suburbs, small towns, and rural areas. Some are well known, well thought of in their communities, and/or have high-profile jobs. Others seem isolated, seem to be obsessed with the Internet, and/or have long criminal histories.<sup>16</sup>

Almost all child-pornography possessors (estimated 1,713) arrested between July 1, 2000, and June 30, 2001, were male, 91% were white, and 86% were older than 25. Only 3% were younger than 18. Most were unmarried at the time of their crime, either because they had never married (41%) or because they were separated, divorced, or widowed (21%). Thirty-eight (38%) percent were either married or living with partners.<sup>17</sup>

Of those estimated arrestees, most had pornographic images of prepubescent children (83%) and images graphically depicting sexual penetration (80%). Approximately 1 in 5 people arrested (21%) had images depicting sexual violence to children such as bondage, rape, and torture. More than 1 in 3 (39%) had child-pornography videos with motion and sound.<sup>18</sup>

Of those estimated arrestees, law enforcement found about half (48%) had more than 100 graphic still images, and 14% had 1,000 or more graphic images.<sup>19</sup>

Forty percent (40%) of those estimated arrestees were "dual offenders," who sexually

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victimized children and possessed child pornography, with both crimes discovered in the same investigation. An additional 15% were dual offenders who attempted to sexually victimize children by soliciting undercover investigators who posed online as minors.<sup>20</sup>

### **How Old Were the Children Found in These Images?**

According to investigators who handled the cases of estimated arrestees, most had images of children who had not yet reached puberty. Specifically 83% had images of children between ages 6 and 12; 39% had images of 3- to 5-year-old children; and 19% had images of toddlers or infants younger than age 3.<sup>21</sup>

### **Are the Children in the Images Boys or Girls?**

According to investigators who handled the cases of estimated arrestees, 62% had pictures of mostly girls. Fourteen percent (14%) had pictures of mostly boys. Fifteen percent (15%) had pictures showing boys and girls in about equal numbers.<sup>22</sup>

### **How Graphic Are the Images?**

According to investigators who handled the cases of estimated arrestees, most had graphic images explicitly showing sexual acts by or on children. Specifically 92% had images of minors focusing on genitals or showing explicit sexual activity; 80% had pictures showing the sexual penetration of a child, including oral sex; 71% possessed images showing sexual contact between an adult and a minor, defined as an adult touching the genitals or breasts of a minor or vice-versa; 21% had child pornography depicting violence such as bondage, rape, or torture and most of those involved images of children who were gagged, bound, blindfolded, or otherwise enduring sadistic sex; and 79% also had what might be termed "softcore" images of nude or semi-nude minors, but only 1% possessed such images alone.<sup>23</sup>

### **What Are the Effects of Child Pornography?**

It is important to realize these images can have a devastating and lasting effect on children. In addition to any physical injuries they might suffer in the course of their molestation, such as genital bruising, lacerations, or exposure to sexually transmitted diseases, child victims may also experience depression, withdrawal, anger, and other psychological disorders.<sup>24</sup> Such effects may continue into adulthood. For instance women abused as children have statistically significant higher rates of nightmares, back pain, headaches, pelvic pain, eating binges, and other similar symptoms.<sup>25</sup> Child victims also frequently experience feelings of guilt and responsibility for the abuse and betrayal, a sense of powerlessness, and feelings of worthlessness and low self-esteem.<sup>26</sup> These feelings are often expressed through increased fearfulness and changes in sleep patterns including re-occurring memories, flashbacks, dreams, and nightmares associated with posttraumatic stress.<sup>27</sup> Younger children tend to externalize stress by re-enacting sexual activities through play, while adolescents may experience negative effects on their growing sexuality as a result of inappropriate early sexual experiences.<sup>28</sup>

The lives of children featured in these illegal images are forever altered, not only by the molestation but by the permanent record of the exploitation. Once sexual exploitation takes place, the molester may document these encounters on film or video. This documentation can then become the "ammunition" needed to blackmail the child into further submission, which is necessary to continue the relationship and maintain its secrecy. In addition these documented images allow molesters to "relive" their sexual fantasies with children long after the exploitation has stopped.

A greater number of child molesters are now using computer technology to organize and maintain their collections of these illegal images. In addition they are also using

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the Internet to increase the size of these collections. Personally manufactured illegal images of children are especially valuable on the Internet, which provide the molester with a respected status among fellow exploiters and traders of this material. Once this status is achieved, molesters will often begin to trade images of their own sexual exploits with children among themselves.

**When these images reach cyberspace, they are irretrievable and can continue to circulate forever. Thus the child is revictimized as the images are viewed again and again.**

### How Do Online Exploiters Find Children?

Individuals looking for potential child victims online have no difficulty finding them. It is quite common for these individuals to frequent "kids only" chatrooms and communicate with children who unwittingly divulge personal information about themselves. A more recent phenomenon is the solicitation of sex over the Internet.

After this initial meeting, these individuals will often continue to communicate with the child electronically or through other means. Some of these individuals may then attempt to lower the child's inhibitions by gradually introducing sexual content into their online conversations and even send pornographic images to the child. When children are shown images of peers engaged in sexual activities, they are led to believe this behavior is acceptable. This lowers their inhibitions and makes it easier for the molester to take advantage of the child sexually.

Parents and guardians are strongly encouraged to speak openly with their children about online dangers and monitor their online activities.

### End Notes

<sup>1</sup>As stated by Janis Wolak, Kimberly Mitchell, and David Finkelhor in *Internet Sex Crimes Against Minors: The Response of Law Enforcement* (Alexandria, Virginia: National Center for Missing & Exploited Children, November 2003, page vii), "The term 'child pornography,' because it implies simply conventional pornography with child subjects, is an inappropriate term to describe the true nature and extent of sexually exploitive images of child victims. Use of this term should not be taken to imply that children 'consented' to the sexual acts depicted in these photographs; however, it is the term most readily recognized by the public, at this point in time, to describe this form of child sexual exploitation. It is used in this [document] to refer to illegal pictorial material involving children under the standards developed by statute, case law, and law-enforcement-agency protocols. It is hoped a more accurate term will be recognized, understood, and accepted for use in the near future."

<sup>2</sup>18 U.S.C. § 1466A and 18 U.S.C. § 2256.

<sup>3</sup>Id.

<sup>4</sup>Eva J. Klain, Heather J. Davies, Molly A. Hicks. *Child Pornography: The Criminal-Justice-System Response* (Alexandria, Virginia: National Center for Missing & Exploited Children, March 2001, page 1) [hereinafter *Response*], citing Daniel S. Armagh, Nick L. Battaglia, and Kenneth V. Lanning, *Use of Computers in the Sexual Exploitation of Children*, Office of Juvenile Justice and Delinquency Prevention, *Portable Guides to Investigating Child Abuse*. Washington, D.C.: U.S. Department of Justice, 1999, page 6.

<sup>5</sup>*Response*, supra note 4, page 1.

<sup>6</sup>Janis Wolak, David Finkelhor, and Kimberly Mitchell. *Child-Pornography Possessors Arrested in Internet-Related Crimes: Findings From the National Juvenile Online Victimization Study* (Alexandria, Virginia: National Center for Missing & Exploited Children, 2005, page ix) [hereinafter *Possessors*] citing 18 U.S.C. § 2256(1).

<sup>7</sup>*Possessors*, pages ix-x citing research conducted by the National Center for Missing & Exploited Children in December 2004 which found, in regard to state statutes criminalizing possession of child pornography, 37 states define "minor" or "child" as a youth younger than the age of 18 (Alaska, ALASKA STAT. § 11.61.127(a); Arizona, ARIZ. REV. STAT. § 13-3551(5); California, CAL. PENAL CODE § 311.11(a); Colorado, COLO. REV. STAT. § 18-6-403(2)(a); Connecticut, CONN. GEN. STAT. § 1-1d; Florida, FLA. STAT. ch. 827.01(2); Georgia, GA. CODE ANN. § 16-12-100(a)(1); Hawaii, HAW. REV. STAT. § 707-752(2); Idaho, IDAHO CODE § 8-1507(2)(b); Illinois, 720 ILL. COMP. STAT. 5/11-20.1(6); Iowa, IOWA CODE § 728.1(4); Kansas, KAN. STAT. ANN. § 21-3516(a)(2); Kentucky, KY. REV. STAT. ANN. §§ 2.015, 500.080(9); Massachusetts, MASS. GEN. LAWS ch. 272, § 29C; Michigan, MICH. COMP. LAWS § 750.145c(b); Minnesota, MINN. STAT. § 617.246(1)(b); Mississippi, MISS. CODE ANN. § 97-5-

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31(a); Missouri, MO. REV. STAT. § 573.010(2); Montana, MONT. CODE ANN. §§ 45-5-625, 45-8-205; New Mexico, N.M. STAT. ANN. § 30-6A-3(A); North Carolina, N.C. GEN. STAT. § 14-190.13(3); North Dakota, N.D. CENT. CODE § 12.1-27.2-05(1); Ohio, OHIO REV. CODE ANN. § 2907.01(M); Oklahoma, OKLA. STAT. tit. 21, § 1024.1(A); Oregon, OR. REV. STAT. § 163.665(1); Pennsylvania, 18 PA. CONS. STAT. § 6312(d)(1); Rhode Island, R.I. GEN. LAWS § 11-9-1.3(c)(3); South Carolina, S.C. CODE ANN. § 16-15-375(3); South Dakota, S.D. CODIFIED LAWS § 22-22-24.1(3); Tennessee, TENN. CODE ANN. § 39-17-1002(3); Texas, TEX. PENAL CODE ANN. § 43.26(a); Utah, UTAH CODE ANN. § 76-5a-2(5); Virginia, VA. CODE ANN. § 18.2-374.1:1(A); Washington, WASH. REV. CODE § 9.68A.011(4); West Virginia, W. VA. CODE § 61-8C-1(a); Wisconsin, WIS. STAT. § 948.01(1); Wyoming, WYO. STAT. ANN. § 6-4-303(a)(i)); 3 define "minor" or "child" as a youth younger than the age of 17 (Alabama, ALA. CODE § 13A-12-192; Arkansas, ARK. CODE ANN. § 5-27-302(1); and Louisiana, LA. REV. STAT. ANN. § 14:81.1(A)(3)); 7 define "minor" or "child" as a youth younger than the age of 16 (Indiana, IND. CODE § 35-42-4-4(c); Maryland, MD. CODE ANN., Crim. Law § 11-208(a); Nevada, NEV. REV. STAT. 200.730; New Hampshire, N.H. REV. STAT. ANN. § 649-A:2(I); New Jersey, N.J. STAT. ANN. § 2C: 24-4(b)(1); New York, N.Y. PENAL LAW § 263.16; and Vermont, VT. STAT. ANN. tit. 13, § 2821(1)); and 1 defines "minor" or "child" as a youth younger than the age of 14 (Maine, ME. REV. STAT. ANN. tit. 17, § 2924(2-A)).

The age of a "child" in Nebraska depends on whether the child is: a participant (younger than 18 years of age) or a portrayed observer (younger than 16 years of age). NEB. REV. STAT. § 28-1463.02(1).

In the District of Columbia, possession of child pornography with the intent to disseminate may be prosecuted under the general obscenity statute; however, mere possession is not mentioned. D.C. CODE ANN. § 22-2201(a)(1)(E). There are two criminal offenses that address "sexual performances using minors": "using a minor in a sexual performance" and "promoting a sexual performance by a minor." D.C. CODE ANN. § 22-3102. For these offenses, "minor" is defined as any person younger than 16 years of age. D.C. CODE ANN. §§ 22-3101(2), 22-3102.

<sup>8</sup>Possessors, supra note 6, page x citing DEL. CODE ANN. tit. 11, § 1103(e).

<sup>9</sup>Possessors, supra note 6, page ix.

<sup>10</sup>Id.

<sup>11</sup>Response, supra note 4, page 3, citing Child Pornography: An International Perspective, World Congress Against the Commercial Sexual Exploitation of Children, Stockholm, Sweden, August 27-31, 1996, page 9.

<sup>12</sup>Response, supra note 4, page 3, citing Allotted Day on Child Pornography, 36th Parliament, 1st Session, Edited Hansard 1, No. 172, February 2, 1999, page 12.

<sup>13</sup>Response, supra note 4, page 3.

<sup>14</sup>Possessors, supra note 6, page x citing Response, supra note 4 and M. Taylor and E. Quayle. Child pornography: An Internet crime. Hove: Brunner-Routledge, 2003.

<sup>15</sup>Possessors, supra note 6, page x.

<sup>16</sup>Id., pages 2-3.

<sup>17</sup>Id., pages 1-2.

<sup>18</sup>Id., page vii.

<sup>19</sup>Id., page 7.

<sup>20</sup>Id., page viii.

<sup>21</sup>Id., page 4.

<sup>22</sup>Id., page 5.

<sup>23</sup>Id.

<sup>24</sup>Response, supra note 4, page 10, citing Bentovim and Bentovim, "The Effects on Children and Their Families" in Organized Abuse: The Current Debate, pages 60-62 [hereinafter Effects on Children].

<sup>25</sup>Response, supra note 4, page 10, citing Jeanne McCauley, David E. Kern, Ken Kolodner, et al., Clinical Characteristics of Women with a History of Childhood Abuse: Unhealed Wounds, 277 JAMA 1197, page 1362.

<sup>26</sup>Response, supra note 4, page 10, citing Heather Y. Swanston, Jennifer S. Tebbutt, Brian I. O'Toole, and R. Kim Oates, Sexually Abused Children 5 Years After Presentation: A Case-Control Study, 100 Pediatrics, 1997, page 600, 603.

<sup>27</sup>Response, supra note 4, page 10, citing Effects on Children, supra note 24, pages 60-62.

<sup>28</sup>Id.