

2005 DRAFTING REQUEST

Bill

Received: **10/26/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Suzanne Jeskewitz (608) 266-3796**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - crimes agnst kids
Criminal Law - sex offenses**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Jeskewitz@legis.state.wi.us**

Carbon copy (CC:) to: **cathlene.hanaman@legis.state.wi.us
robin.ryan@legis.state.wi.us
anne.sappenfield@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Penalties for certain child sex offenses; proving intent of a person using a computer to facilitate a child sex offense; positions covered by prohibition on child sex offender working with children

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 12/21/2005	kfollett 12/21/2005		_____			S&L Crime
/1			rschluet 12/22/2005	_____	Inorthro 12/22/2005		S&L Crime
/2	mdsida	kfollett	rschluet	_____	sbasford	sbasford	

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	01/13/2006	01/13/2006	01/17/2006 _____		01/17/2006	01/17/2006	

FE Sent For:

<END>

At
intro.

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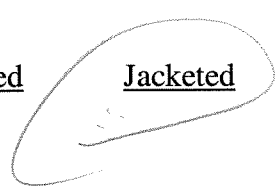
Topic:

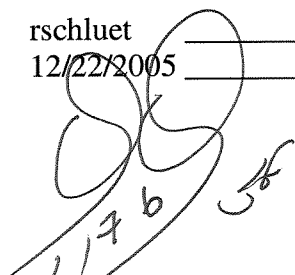
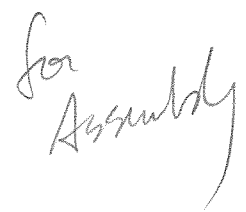
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/1		12/15/05 1/1/06 rschluet 12/22/2005		_____	lnorthro 12/22/2005		
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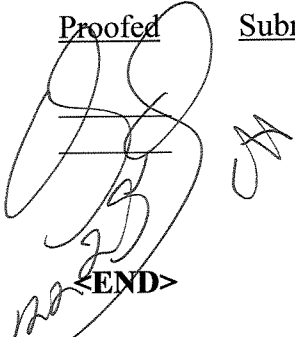
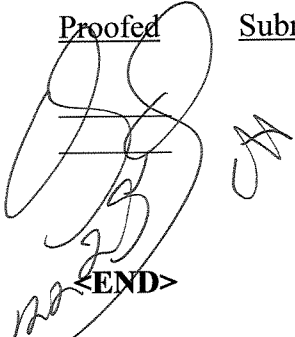
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1/?	mdsida	11/15/05 12/21/05					
FE Sent For:		11/15/05 12/22/05					

<END>

Mandatory
Minimum for
948.12

What is it
for simple possession

Distribution / Receipt
Class C 5yr min.

948.11
what is mandatory
minimum?

Possession ?
1 - 1000 ?
1000 - 10,000
> 10,000

(make this an exception to "other than
use a computerized comm system")
getting child to record image,
send something to themself.

948.075-

(3) Show Specify plc's, mail are sufficient to
prove intent

= 4 yrs spread ~~12 yr~~ - NO per Parr

Mirror fed'l law

Delete "primarily" from 948.13 ✓

~~XXXXXXXXXXXX~~

Here are some suggestions about specific acts that should be included in a definition of "another act" as one of the elements required in Use of a Computer to Facilitate a Child Sex Crime:

1. Traveling any distance to meet a child or what is believed to be a child
2. Transmission of any lewd act via web camera
3. Use of a telephone or cell phone to contact a child or what is believed to be a child
4. Obtaining of any image of a child via the Internet, to include web camera transmissions. The image does not have to be pornographic in nature
5. Booking of accommodations, such as a hotel or motel room
6. Booking of other travel arrangements, including rental car, bus, airline tickets, or train tickets
7. Sending any item by any means, including mail, delivery service, or personal delivery, to a child or what is believed to be a child
8. Solicitation and receipt of any item by any means from a child or what is believed to be a child
9. Any surveillance/stalking, whether done by the perpetrator or on behalf of the perpetrator, to avoid detection of the perpetrator by law enforcement
10. Contact with children through the internet in chat rooms and e-mail messages
11. Sex toys, underwear, intimate apparel, lingerie and other sexual items

Thanks

Eric

Delite
per Eric

Susan,

Here are a few thoughts to consider. In no way do I consider myself an expert in this language so please take it for what its worth. And, did you get a hold of Carolyn? (I have a horrible sneaky suspicion that I accidentally hung up on you while transferring..... yikes!)

12. Traveling any distance to meet a child or what is believed to be a child
13. Transmission of any lewd act via web camera (*you might not want to limit yourself to only webcams since technology changes so quickly. Perhaps add digital camera, video camera or any other photographic medium*)
14. Use of a telephone or cell phone to contact a child or what is believed to be a child (*soon VoIP -voice over IP- will be a cheap form of communication. Again, might want to be more vague or add this in somehow*)
15. Obtaining of any image of a child via the Internet, to include web camera transmissions. *The image does not have to be pornographic in nature (images & movies)*
16. Booking of accommodations, such as a hotel or motel room
17. Booking of other travel arrangements, including rental car, bus, airline tickets, or train tickets
18. Sending any item by any means, including mail, delivery service, or personal delivery, to a child or what is believed to be a child
19. Solicitation and receipt of any item by any means from a child or what is believed to be a child
20. Any surveillance/stalking whether done by the perpetrator or on behalf of the perpetrator, to avoid detection of the perpetrator by law enforcement

Warren, James R.

From: Szatkowski, Eric J.
Sent: Wednesday, October 26, 2005 4:07 PM
To: Warren, James R.
Subject: More info from AUSA Pawlak

Hi Jim..

This is Brian's response to the question about minimum/mandatory sentences for travelers (there are such penalties):

See 18 US 2421 thru 2427. See USSS 2G The other stats. of most interest are 2251 thru 2260 also 2G. there are also obscenity statutes 1461 et al.

This is his response to the question about minimum/mandatory sentences for those who expose children to harmful materials/narrations (our statute 948.11):

I don't think it is a federal offense to show children obscenity, that is adult pornography. If you can find it in the above sections let me know. I have never heard of anyone charging it.

This is his response to the question about sentencing guidelines based on the number of images of child pornography:

USSS 2G2.2(b)(7) takes the number of images into consideration for the advisory guidelines.

Please let me know if you need me to get copies of the federal statute books/sentencing guidelines. All of the codes referred to by Brian are in those books.

Thanks

Eric

1 (i) by striking "15" and inserting "20";

2 and

3 (ii) by striking "30" and inserting "40";

4 and

5 (E) in section 2252A(b)(2)—

6 (i) by striking "5" and inserting "10"; and

7 (ii) by striking "10" and inserting "20".

8 (2) Chapter 117 of title 18, United States Code, is
9 amended—

10 (A) in section 2422(a), by striking "10" and in-
11 sserting "20";

12 (B) in section 2422(b), by striking "15" and
13 inserting "30"; and

14 (C) in section 2423(a), by striking "15" and in-
15 sserting "30".

16 (3) Section 1591(b)(2) of title 18, United States
17 Code, is amended by striking "20" and inserting "40".

18 (b) MINIMUM PENALTY INCREASES.—(1) Chapter
19 110 of title 18, United States Code, is amended—

20 (A) in section 2251(d)—

21 (i) by striking "or imprisoned not less than
22 10" and inserting "and imprisoned not less
23 than 15";

24 (ii) by striking "and both,";



- 1 (A) in section 2422(b)—
2 (i) by striking “, imprisoned” and inserting
3 “and imprisoned not less than 5 years and”;
4 and
5 (ii) by striking “, or both”; and
6 (B) in section 2423(a)—
7 (i) by striking “, imprisoned” and inserting
8 “and imprisoned not less than 5 years and”;
9 and
10 (ii) by striking “, or both”.

11 **SEC. 104. STRONGER PENALTIES AGAINST KIDNAPPING.**

12 (a) **SENTENCING GUIDELINES.**—Notwithstanding
13 any other provision of law regarding the amendment of
14 Sentencing Guidelines, the United States Sentencing
15 Commission is directed to amend the Sentencing Guide-
16 lines, to take effect on the date that is 30 days after the
17 date of the enactment of this Act—

18 (1) so that the base offense level for kidnapping
19 in section 2A4.1(a) is increased from level 24 to
20 level 32;

21 (2) so as to delete section 2A4.1(b)(4)(C); and

22 (3) so that the increase provided by section
23 2A4.1(b)(5) is 6 levels instead of 3.

24 (b) **MINIMUM MANDATORY SENTENCE.**—Section
25 1201(g) of title 18, United States Code, is amended by



1 (b) CONFORMING AMENDMENT.—Section 2423(a) of
2 title 18, United States Code, is amended by striking “or
3 attempts to do so,”.

4 **SEC. 106. TWO STRIKES YOU'RE OUT.**

5 (a) IN GENERAL.—Section 3559 of title 18, United
6 States Code, is amended by adding at the end the fol-
7 lowing new subsection:

8 “(e) MANDATORY LIFE IMPRISONMENT FOR RE-
9 PEATED SEX OFFENSES AGAINST CHILDREN.—

10 “(1) IN GENERAL.—A person who is convicted
11 of a Federal sex offense in which a minor is the vic-
12 tim shall be sentenced to life imprisonment if the
13 person has a prior sex conviction in which a minor
14 was the victim, unless the sentence of death is im-
15 posed.

16 “(2) DEFINITIONS.—For the purposes of this
17 subsection—

18 “(A) the term ‘Federal sex offense’ means
19 an offense under section 2241 (relating to ag-
20 gravated sexual abuse), 2242 (relating to sexual
21 abuse), 2244(a)(1) (relating to abusive sexual
22 contact), 2245 (relating to sexual abuse result-
23 ing in death), 2251 (relating to sexual exploi-
24 tation of children), 2251A (relating to selling or
25 buying of children), 2422(b) (relating to coer-



Major Findings and Conclusions

The *N-JOV Study* estimates there were 1,713 arrests for Internet-related sex crimes involving CP possession in the 12 months beginning July 1, 2000. While this number is small compared to our estimate of 65,000 arrests in 2000 for sexual assaults of all types committed against minors, indications are that law-enforcement activity and consequently arrests for CP possession will increase. The growth of this crime is linked with the growth in use of the Internet, which has allowed the widespread and anonymous distribution of child pornography and permitted CP possessors to easily access illegal images from their homes.

As Internet use continues to grow, so does law-enforcement activity. Since the time frame of the *N-JOV Study*, the expertise and specialization in Internet Crimes Against Children Task Forces has continued to expand and more state and local law-enforcement agencies have received training in investigating Internet child sexual exploitation crimes through programs funded by the U.S. Department of Justice and other sources. These factors may be increasing the number of arrests for CP possession in Internet-related crimes.

At the same time some factors may be hampering the law-enforcement response to child pornography. One such factor may be a movement of resources in federal and other agencies from combating child exploitation to anti-terrorism. Another may be the Supreme Court decision in *Ashcroft vs. Free Speech Coalition*, which occurred after the time frame of the *N-JOV Study*. This decision, which requires prosecutors to prove child-pornography images are pictures of real children and not computer generated, may have made child-pornography cases harder to prosecute, which could decrease arrests. The *N-JOV Study* establishes a baseline number of arrests against which future growth or declines attributable to these and other factors can be measured.

CP possession is a serious crime. The *N-JOV Study* documents the inherent seriousness of CP possession. More than 80% of arrested CP possessors had images of prepubescent children, and 80% had images of minors being sexually penetrated. Approximately 1 in 5 (21%) arrested CP possessors had images of children enduring bondage, sadistic sex, and other sexual violence. More than 1 in 3 (39%) CP possessors had videos depicting child pornography with motion and sound.

Although their identities are often unknown, many of the children in these graphic images were sexually victimized and assaulted. Those who possess these pictures – for sexual gratification, curiosity, as a means of profit, or for other reasons – are adding to the burdens of these young victims, whose trauma may be increased by knowing their pictures are circulating globally on the Internet with no hope of permanent removal or could be entered into circulation in the future.

CP possessors were a diverse group. While the great majority were men older than 25 who had graphic images and images of prepubescent children, there was considerable variety among arrested CP possessors. Many were older than 40, but some were juveniles. Their incomes ranged from poverty to wealth and their levels of education ran the gamut. Many had fewer than 100 graphic images, but some had more than 1,000. More than one-quarter maintained organized child-pornography collections, but most did not. One-third were known child-pornography distributors, but investigators noted that distribution was often hard to prove. Some committed other sex crimes against minors besides CP possession. A few were diagnosed as being mentally ill or had diagnosed sexual disorders, some had identified drinking or drug problems, and there was evidence that some were involved in other kinds of deviant sexual activities not involving children like bestiality and sadism. But many were not in any of these categories. The *N-JOV Study* does not provide data about the motivations of CP possessors or the sequences of their offenses, but it does give a picture of diversity suggesting a variety of motives and varying levels of involvement with child pornography among arrested CP possessors. Any profiling of such offenders needs to take such diversity into account.

Use of sophisticated technology was uncommon among arrested CP possessors. Most CP possessors in the *N-JOV Study* did not use sophisticated methods to hide their images or identities; however, these findings pertain only to arrested CP possessors. Some argue law enforcement is nabbing the newest, least sophisticated, or most impulsive CP possessors while the technologically savvy go undetected (Jenkins, 2001). Not all CP possessors, however, may be technologically savvy. Researchers simply do not have enough information to evaluate the relationship between technological sophistication and detection.

In a considerable number of cases law enforcement found "dual offenders" who both sexually victimized children, or attempted to, and possessed CP, with both crimes discovered in the same investigation. Dual offenders were particularly likely to be uncovered in investigations involving online meetings with youth and solicitations to investigators posing online as minors. Further, one out of six CP possession cases beginning with an investigation of or allegation about CP possession discovered a dual offender who had also sexually victimized a child or attempted to do so.

Reports from individuals outside of law enforcement played an important role in bringing CP possession to the attention of law enforcement, including cases coming to light as sexual victimizations of children and CP possession. More than half of CP possession cases began with reports from individuals to law enforcement. This response from individuals underscores the importance of education to create public awareness and encourage reporting of CP possession. It is also important to note some of the reporters in these cases discovered child pornography while engaged in what many would consider aberrant sexual situations. Awareness should be promoted

not just among law enforcement, child-welfare advocates, parents, and guardians, but also among people who may come across child pornography because they are exploring Internet sex sites or engaged in unconventional sexual situations.

Internet-related CP possession cases arose at all levels of law enforcement. CP possession cases both arose at all levels of law enforcement and tended to involve multiple jurisdictions, multiple agencies, and cooperation between federal and state or local agencies. Agencies at all levels need to keep up with advances in technology and maintain staff trained in specialized investigation methods to respond to these cases. Further, federal agencies or ICAC Task Forces were involved in 70% of CP possession cases indicating state and local agencies were making good use of the resources afforded by the U.S. Department of Justice.

Conviction rates may be higher for Internet-related CP possession cases than for conventional child-sexual-victimization cases. Almost all of the CP possessors in cases with known outcomes were convicted of crimes in either state or federal courts. This was true of both CP possessors who were dual offenders (97%) and those who were not (94%). None of the CP possessors were acquitted. In comparison "conventional" child-sexual-victimization cases not involving the Internet average 22% dismissals before prosecution and 6% acquittals. Rates of incarceration for CP possessors (59%) are similar to those for conventional cases of child sexual victimization, about 56%, although there is wide variation among jurisdictions (Cross, Walsh, Simone, & Jones, 2003). More of the dual offenders, 68% versus 48% of CP possessors only, served time. This certainly suggests the criminal-justice system is treating CP possession seriously.

Advances in technology do not necessarily give advantages to criminals over law enforcement. Some observers have emphasized how the Internet has provided new opportunities for criminal activity such as easier access to both children and child pornography. As technology evolves at a rapid speed, law enforcement is concerned about products being developed that are specifically designed to provide a greater degree of anonymity for offenders and decrease their risk of detection. Recognizing that while evolving technology may raise additional challenges in law enforcement's investigation of these cases, technological developments also have given new tools and advantages to law enforcement. Examples include the complex databases and software that scan for child-pornography images, increased ability to engage in undercover activity, and the ability to track electronic trails and evidence left by offenders as they communicate and surf online. The high conviction rates for arrested CP possessors observed in this study may be testimony to the quality of evidence law enforcement is able to accumulate in Internet-related cases. Graphic images depicting the sexual penetration of children provide conclusive criminal evidence in CP possession cases. They may also strongly reduce ambiguity about offenders' motives and actions as well as corroborating victim testimony in some cases of child sexual victimization.

Limitations

The *N-JOV Study* is the first research gathering information about a national sample of arrested CP possessors. Data from a national sample is a strength of the *N-JOV Study*, but like every scientific survey, the study also has limitations. Readers should keep some of these important things in mind when considering the findings and conclusions of this study.

First, some errors and biases may have been introduced because we interviewed law-enforcement investigators. We regarded these respondents as the best sources for in-depth information about the nature of Internet-initiated crimes because their professional responsibilities require them to gather extensive information about these cases. The information they provided, however, could be biased by training, professional attitudes, or the adversarial nature of their roles in some of these cases.

Second, the findings of the study apply only to CP possessors who were arrested for Internet-related sex crimes committed against minors. We do not know if these arrested CP possessors were representative of all Internet-related CP possessors. It is highly likely there were Internet-related CP possessors during that period of time who were undetected by law enforcement. It is also possible some Internet-related CP possessors were detected during that period of time but not arrested. Because of this, our findings, particularly those regarding dual offenders and CP possessors who used sophisticated technical methods to store child pornography cannot be interpreted to apply to offenders who were not detected or arrested or those who committed sex crimes that were not Internet-related. Moreover, the arrests for Internet-related sex crimes committed against minors examined in the *N-JOV Study* comprised only a small portion of the overall number of arrests for sex crimes committed against minors that happened during the time frame of this study, making it impossible to draw any conclusions about relationships between CP possession and sex crimes committed against minors overall.

Third, there is an additional caution to our findings about dual offenders. Knowing a considerable number of dual offenders were discovered during investigations of Internet-related, child-sexual-victimization and CP possession cases does not explain how possessing child pornography is related to child sexual victimization or whether it causes or encourages such victimization. We did not have the data to determine this. In particular we had no information about the sequencing of the crimes committed by dual offenders or about undetected crimes they may have committed and little information about their criminal histories and how they used the child pornography they possessed.

Recommendations

CP possession investigations should be aggressively pursued on all fronts on behalf of child victims. CP possession is a serious crime meriting continued and increased law-enforcement activity. Most arrested CP possessors had images explicitly showing children being sexually victimized by adults and sexually penetrated. The children in such images are crime victims, and CP possessors who use their images for sexual gratification or other purposes are further victimizing these children. That many of these images circulate online adds a new dimension of injury to the victims in these cases. Part of the potential trauma of being pictured in child pornography is that depicted children may know their images are on public display and it is unlikely the images can be completely and permanently removed from online circulation. Law-enforcement efforts against CP possessors are made on behalf of real child victims, and the crime of CP possession should not be minimized simply because the children in the images are often nameless and cannot speak for themselves.

But there are additional reasons these investigations should be aggressively pursued, including

- The investigations were highly successful. These child-pornography investigations had highly successful outcomes. Almost all of the CP possessors were convicted and most were incarcerated and required to register as sex offenders. There was no evidence the child-pornography investigations involved trivial images or images questionably defined as child pornography by authorities.
- CP possession was a common thread running throughout investigations of Internet-related sex crimes committed against minors. Considerable numbers of arrested offenders who met victims online or solicited undercover investigators posing online as minors, were dual offenders who possessed child pornography in addition to the other sex crimes they committed. Investigators also found some offenders in "conventional" child-sexual-victimization cases that did not involve the Internet whom had downloaded child pornography from the Internet in addition to sexually victimizing children. Child pornography and the Internet may be factors in sex crimes committed against minors more often than investigators currently know or expect, and the connection between these crimes may be growing.
- A considerable number of investigations beginning with allegations or investigations of child-pornography possession resulted in the arrest of dual offenders. One in six investigations beginning with CP possession led to a dual offender, one who both possessed CP and sexually victimized children. This is a sizeable number, and the dual offenders who were apprehended likely would not have been caught otherwise, since most sex crimes committed against minors do not come to the attention of law

enforcement (Finkelhor & Dzuiba-Leatherman, 1994; Finkelhor & Ormrod, 1999; Kilpatrick & Saunders, 1999). These investigations should be given high priority.

- **Arrests of CP possessors may prevent future sexual victimization.** At this point there is little information about the relationship between viewing child pornography and sexually victimizing children. Researchers do not know how many arrested CP possessors might be undetected child sexual victimizers or how many might go on to victimize in the future. Even if some of them never go on to sexually victimize a child, it is reasonable to view and treat arrested CP possessors as at high risk for victimizing children. Arrested CP possessors can and should receive evaluation, diagnosis, and treatment. They can and should be monitored through probation and sex-offender registration. Because of their prior arrests, arrested CP possessors may face enhanced penalties if they do go on to sexually victimize children. Some may even be deterred from greater crimes by the embarrassment and disruption arrest and conviction caused in their lives, even if they are not incarcerated. It is impossible to measure the amount of child sexual victimization prevented by the arrests of CP possessors, but it is likely there is a prevention effect.
- **Arrests of CP possessors put needed pressure on the online, child-pornography trade.** The trade in child pornography has created a market for images of children being sexually victimized. Criminals who photograph and videotape the sexual victimization of children feed this market. CP possessors promote the market each time they acquire an illegal image. Law-enforcement investigations put pressure on this market that may reduce the number of images produced and children sexually victimized.

Publicity about enforcement efforts should be aggressively promoted as a deterrent. Aggressive messages about the penalties imposed on CP possessors and humiliation and life disruption resulting from arrest could have deterrent value for some CP possessors. These messages should be delivered through conventional sources – media advertising, reports, and news stories – as well as through Internet sources like the major Internet Service Providers.

Reporting of CP possession and of all types of child sexual victimization should be promoted, particularly online. The public played an important role in reporting CP possession and related child-sexual-victimization crimes to law enforcement. The use of online reporting mechanisms, like the CyberTipline, run by the National Center for Missing & Exploited Children to receive reports of Internet-related crimes, should continue to be aggressively promoted, along with reporting of child sexual victimization in general.

Reporting of child pornography should also be promoted in other online venues, particularly sites attracting or serving as portals to people who are interested in child pornography or who might develop such interests. For example

"peer-to-peer" software is used to transmit child pornography. The companies that develop this file-sharing software maintain widely used web sites where prevention messages could be posted. These companies should be urged to clearly admonish users against transmitting child pornography, warn them of the consequences, and provide a mechanism for reporting illegal images. Other portals such as Internet Relay Chat and Bulletin Board Services could similarly assist in prevention efforts.

Venues attractive to sexual adventurers or the "sexually indiscriminant," should be urged to run anti-child-pornography messages to create awareness of the boundaries between legal and illegal material and behavior. Internet Service Providers, search engines, and web businesses profiting from the public's interest in pornography should be urged to aim awareness and prevention messages about the harms of child pornography and child sexual victimization at their users and fund and participate in other dissuasion and deterrence campaigns. These messages can be respectful of users' rights to access sexual material, while emphasizing the boundaries between legal and illegal material and actions and the aggressive stance of law enforcement with respect to these crimes.

Internet undercover operations targeting online sex offenders should continue. Undercover operations in which investigators posed online as minors accounted for a substantial number of arrests for CP possession and attempted child sexual victimization. These play an important role in deterrence. That more than 40% of solicitors to undercover investigators posing online as minors were dual offenders strengthens the argument for continuing to conduct these investigations. As with other anti-child-pornography, law-enforcement efforts, advertising a law-enforcement presence online and emphasizing the consequences of arrest and prosecution enhance the prevention value of law-enforcement activity.

Law-enforcement agencies should always investigate CP possessors to determine if they have sexually victimized minors. A considerable number of investigations beginning as CP possession detected child sexual victimization. This number might have been higher if every agency followed protocols treating CP possessors as possible child sexual victimizers and provided guidelines for risk assessment and investigation.

Law-enforcement agencies should always investigate child sexual victimizers to determine if they possess child pornography or used the Internet or a computer to facilitate the sexual victimization of children. In the *N-JOV Study* a considerable number of cases beginning as investigations of conventional child sexual victimization not involving the Internet expanded to include child pornography found on computers. Protocols for handling cases of child sexual victimization should prompt law enforcement to routinely evaluate the possibility of Internet-related child pornography and other evidence.

Protocols for computer searches in nonsexual crimes should account for the possibility child pornography may be found. Child pornography was also found on computers during investigations of nonsexual crimes. In fact 5% of the CP possessors came to the attention of law enforcement through investigations not involving sex crimes, for example, in cases where computers were searched for evidence of drug sales. Law-enforcement protocols for searching and seizing computers in all crimes should recognize the potential for finding and provide guidelines for handling child pornography. Protocols should also encourage referrals to ICAC Task Forces and other agencies with expertise in child pornography and Internet-related sex crimes committed against minors.

Law enforcement needs for training and resources to conduct multijurisdictional investigations, undercover operations, and computer forensics in child-pornography cases should be supported. Law enforcement must keep abreast of advances in technology. Legislators must make long-term commitments to invest in sophisticated equipment and technologically skilled staff members for law enforcement. These cases and the agencies responding to them require financial resources to acquire, maintain, and upgrade equipment; pay and keep staff with expertise in computer technology; provide training in specialized investigation methods; and promote interjurisdictional cooperation. Because of the ongoing advancements in computers and the Internet, investments in sophisticated equipment and technologically skilled staff members are and will continue to be necessary for law enforcement, not just in regard to CP possession, but to other forms of Internet-related crimes that are likely permanent side effects of widespread Internet use such as identity theft, hacking, and Internet-related fraud. Further, protocols and guidelines for interagency collaborations, like those developed by the ICAC Task Forces, should be widely disseminated and used.

Law-enforcement officials at all levels also need to be sensitive to the psychological reactions of investigators in CP possession cases. These cases can be emotionally difficult. Many of the investigators who were interviewed remarked about how disturbing it was to view child pornography. The agencies with units specializing in CP possession cases often provide counseling and other resources to investigators, but many CP possession cases arose in agencies that probably do not frequently see such cases. It is important for law-enforcement agencies to monitor and develop ways to mitigate the impact on investigators working these cases.

Law-enforcement efforts to identify, locate, and assist victims pictured in child pornography should be promoted and supported. Procedures for evaluating the possibility of identifying, locating, and assisting victims shown in child-pornography images should be part of law-enforcement protocols and training. These investigations require expertise balanced with sensitivity in order to protect the child. Protocols should call for coordination of these efforts through the National Center for Missing & Exploited Children's

Exploited Child Unit (ECU),¹⁶ which is responsible, by federal law, for coordinating and referring reports of child pornography to appropriate law-enforcement agencies and which maintains information pertaining to identified children featured in child pornography. Also it is critical for law enforcement to provide feedback to ECU about the disposition of CyberTipline referrals they have received.

Law-enforcement policymakers should support coordinated efforts to respond to the *Free Speech Coalition* ruling creating a virtual-image defense in CP possession cases. Proactive responses to the *Free Speech Coalition* ruling should be encouraged and supported. In particular the identification of child victims pictured in child pornography should be coordinated among federal agencies, NCMEC's Exploited Child Unit, and the ICAC Task Forces. A more streamlined process should be created to better assist investigators and prosecutors, in all jurisdictions, needing assistance when proving to courts that children pictured in images are real children. Access to other resources, such as training and expert witnesses, should also be supported, expanded, and broadly coordinated to assure that law-enforcement agencies and prosecutors have easy access to means of responding to the requirements of the *Free Speech Coalition* ruling.

Law enforcement must be sensitive to civil-liberties issues arising in CP possession cases. Law-enforcement activity in this area is vulnerable to criticism on civil-liberties grounds; particularly in regard to targeting or entrapping innocent individuals. For example because the possession of adult pornography is legal and it is sometimes difficult to determine whether sexually explicit images depict minors or adults, child-pornography investigations could investigate individuals engaged in constitutionally protected conduct. In addition, given the easy availability and large trade in legal pornography on the Internet, individuals may unknowingly or unwittingly access and download child pornography. If investigators pursuing undercover sting operations are untrained or do not follow appropriate guidelines, they could prompt targeted individuals to engage in criminal activity they might not otherwise engage in.

The information accumulated in the present study does not suggest law enforcement is trampling on civil liberties in this area. In particular the Internet Crimes Against Children Task Forces funded by the U.S. Department of Justice have protocols crafted to avoid violations of civil liberties. But the present study interviewed only law-enforcement sources, and not offenders or defense attorneys who might have highlighted more problems from a civil liberties point of view.

¹⁶ The National Center for Missing & Exploited Children has established and implemented a protocol for identifying victims of ongoing abuse depicted in child pornography. For assistance, NCMEC's Exploited Child Unit can be contacted at 1-800-843-5678. In addition to their protocol the ECU assists law enforcement in the review of images and movies to determine if they appear to contain children identified in past law-enforcement investigations. Established by the U.S. Congress, the ECU serves as a resource center for law enforcement and others regarding child sexual exploitation.

Nonetheless, because of the potential for civil-liberty violations and because this is a rapidly changing new domain both from a technological and law-enforcement perspective, an active dialogue must be maintained with those concerned about civil liberties. A public perception that law enforcement is using investigations of child pornography and other Internet-related crimes to infringe on civil liberties even in a few cases might do serious damage to the ability of law enforcement to effectively pursue cases involving child pornography. Thus it is important for the various forms of civil liberties infringements to be anticipated in advance and proactively avoided as law-enforcement practice develops in this area.

A second *N-JOV Study* should be planned for the near future. A second *N-JOV Study* to track changes and trends in law-enforcement responses to child-pornography possession and other Internet-related sex crimes committed against minors should be planned for the near future to provide needed information to policymakers and law-enforcement agencies dealing with this new and expanding crime domain.

Dsida, Michael

From: Matthews, Pam
Sent: Friday, November 18, 2005 9:06 AM
To: Dsida, Michael
Subject: RE: Showing obscene materials to a child

Hi Mike,

Sue is fine with current law on these two issues. How soon do you think we might have a draft to look at?

Pam

From: Dsida, Michael
Sent: Friday, November 11, 2005 12:34 PM
To: Matthews, Pam
Subject: RE: Showing obscene materials to a child

When we met, Rep. Jeskewitz wanted to know whether federal law provided a mandatory minimum term of imprisonment for engaging in conduct prohibited under s. 948.11 (exposing a child to harmful material or harmful descriptions or narrations). Since there is no mandatory minimum for the most analogous offenses (see below), how do you want to treat that section, if at all?

From: Dsida, Michael
Sent: Thursday, November 10, 2005 1:15 PM
To: Matthews, Pam
Subject: RE: Showing obscene materials to a child

Here are two statutes that apply:

18 USC § 1470. Transfer of obscene material to minors

Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both.

18 USC § 2252B. Misleading domain names on the Internet

* * * * *

(b) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors on the Internet shall be fined under this title or imprisoned not more than 4 years, or both.

As is the case with the child pornography sentences, the number of years specified in these statutes does not necessarily indicate the maximum sentence.

From: Dsida, Michael
Sent: Thursday, November 10, 2005 1:02 PM
To: Matthews, Pam
Subject: Showing obscene materials to a child

It looks like the email from the US Attorney's Office that you sent to me was incorrect. There does appear to be a federal statute prohibiting showing obscene materials to a child. I will take a look at it and let you know what I find.

I'll send you information regarding the sentencing requirements for child pornography in a separate email.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@legis.state.wi.us

Dsida, Michael

From: Szatkowski, Eric J.
Sent: Wednesday, December 21, 2005 10:53 AM
To: Dsida, Michael
Subject: RE: Sex Offender Legislation

I don't know the answer to that, because I did not come up with that one. I agree with your take on it, so perhaps just exclude it.

Hope that helps

Thanks

Eric

From: Dsida, Michael
Sent: Wednesday, December 21, 2005 10:51 AM
To: Szatkowski, Eric J.
Subject: RE: Sex Offender Legislation

I realize that you responded before. Unfortunately, what you were addressing was not the question I intended to ask. You were responding with respect to item 10 on the electronic version. I was referring to item 10 on the paper copy of the list: "Contact with children through the internet in chat rooms and email messages." What I wanted to know was how contacting children through the internet or email or in chat rooms is different from the "using a computer to communicate with a child" element in s. 948.075 (1). Is intended to cover communication with *other* children?? (I can also just exclude that item from the list of "other acts" if you would prefer.)

Sorry for the confusion.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@legis.state.wi.us

12/22/2005