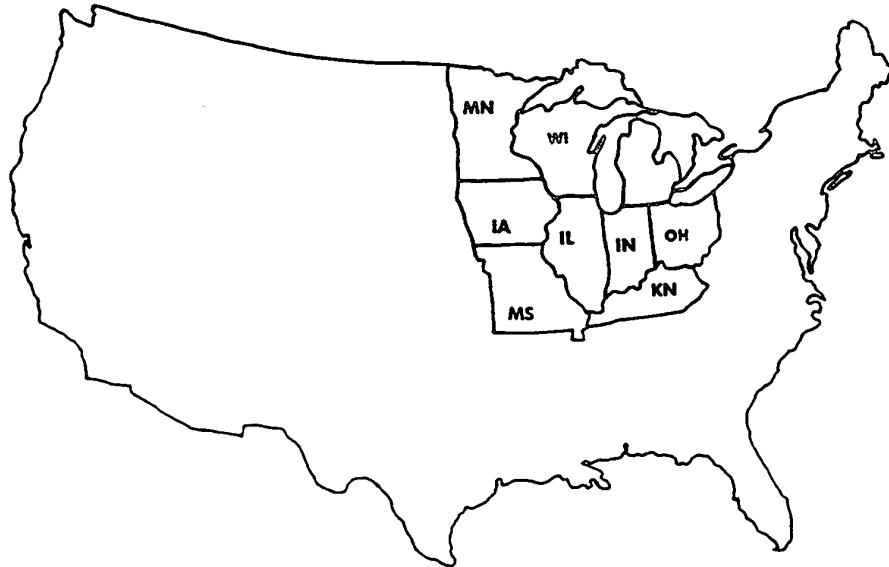


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**An Interstate Approach:  
Criminal Child Sexual Abuse & Exploitation Laws  
in Eight Mid-Western States**

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Washington, D.C.**

**Illinois Department of Children and Family Services**

**Interstate I-SEARCH Advisory Council**



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U.S. Department of Justice  
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The ABA Center on Children and the Law, a program of the American Bar Association's Young Lawyers Division, was established in 1978. Its mission is to improve the quality of life for children through advancement in law, justice, and public policy.

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## INTRODUCTION

In 1985, the Governors of Illinois, Indiana, Iowa, Kentucky, Minnesota, Missouri, Ohio and Wisconsin created the I-SEARCH Advisory Council in accordance with the Interstate Agreement on Missing and Exploited Children. The Council is comprised of representatives of state law enforcement and criminal justice agencies from each of these states. Its purpose is to enhance interstate cooperation in addressing the problems of missing and exploited children. Council bylaws define an exploited child as "any child who may be victimized through any activities and/or actions which include, but are not limited to: child pornography, child prostitution, child sexual abuse, and drug and substance abuse."

Over the past eight years, the Council has proven instrumental in overcoming obstacles to recovering and reuniting children with their families. The Council continues to serve as a training, resource, and advisory body to: the National Center For Missing and Exploited Children, the United States Justice Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the University of California at San Francisco's Center for the Study of Trauma.

In 1992, the Interstate I-SEARCH Advisory Council requested funding assistance from the Illinois Department of Children and Family Services under the Children's Justice Act Grant to support the networking of collective expertise of the Council, state Children's Justice Task Forces, and the American Bar Association's Center on Children and the Law.

As a result, this guide has been developed to assist law enforcement and child welfare personnel in their efforts to investigate and prosecute child sexual exploitation and abuse. The guide delineates laws of Council member states related to child pornography, prostitution, and criminal sex offenses. The laws are examined by way of a question-and-answer format with accompanying statutory analysis and further highlighted in attached tables. Included in the appendix are statutory summaries of child abuse reporting laws and verbatim excerpts of relevant federal laws. Unless stated otherwise, laws cited are current through July 31, 1993.

In addition, recommendations as to legislative reform are presented in a separate document which can be obtained from the I-SEARCH Advisory Council, the Illinois Children's Justice Task Force, and the American Bar Association's Center on Children and the Law.





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**APPENDIX I:**  
**CHILD PORNOGRAPHY AND RELATED OFFENSES**

**NOTE:** The summaries in this appendix are not verbatim excerpts of the statutes. They are current through July 31, 1993. If you wish to cite a particular statute, you should check the state code itself to ensure that you have accurate language and citation.



**ILLINOIS: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
<p>Child Pornography 720 ILCS § 5/11-20.1</p>	<p>1) Films, videotapes, photographs, or otherwise depicts or portrays by means of any similar visual medium or reproduction any child under 18 or any Institutionalized severely or profoundly mentally retarded person engaged in actual or simulated sexual conduct; or                  2) Reproduces, disseminates, offers to disseminate, exhibits or possesses with intent to disseminate, with knowledge of the nature and content thereof, any film, videotape, photograph or other similar visual reproduction of any child under 18 or individual described above engaged in actual or simulated sexual conduct (possession of more than one item of child pornography creates rebuttable presumption of intent to disseminate); or                  3) Produces any stage play, live performance, film, videotape or other similar visual portrayal, with knowledge of subject matter or theme thereof, which includes child under 18 or person described above engaged in actual or simulated sexual conduct; or                  4) Solicits child under 18 or individual described above to appear in stage play, live presentation, film, videotape, photograph or other similar visual reproduction in which child or individual is or will be depicted engaged in actual or simulated sexual conduct; or                  5) Parent, legal guardian or other person having care and custody of child under 18 or individual described above knowingly permits child or individual to appear in stage play, live performance, film, videotape, photograph or other similar visual presentation or portrayal of actual or simulated sexual conduct; or                  6) Possesses film, videotape, photograph or other similar visual reproduction of child under 18 or individual described above engaged in actual or simulated sexual conduct; and                  7) Knows or reasonably should know individual engaged in actual or simulated sexual conduct to be under 18 or an Institutionalized severely or profoundly mentally retarded person.</p>	<p>Under 18</p>	<p>Mistake of Age/Mental Status, if bona fide inquiry or affirmative action to ascertain;                  Employee of public or accredited library and act committed in course of employment;                  Performance of official duties by law enforcement and court officials;                  Bona fide treatment or professional education program conducted by licensed physician, psychologist or social worker</p>	<p>Class 1 Felony (\$\$ 1,4,5): \$2,000-50,000 ***** Class 2 Felony(\$3): \$1500-\$25,000 ***** Class 3 Felony(\$2): \$1,000-\$25,000 ***** Class 4 Felony (\$6): \$1,000-25,000 ***** Forfeiture 720 ILCS § 5/11-20.1A</p>
<p>Commercial Film &amp; Photographic Print Processor Reports 720 ILSC § 5/11-20.2</p>	<p>1) Commercial film and photographic print processor has knowledge of or observes, within scope of professional capacity or employment, film, photograph, videotape, negative or slide which depicts child whom processor knows or reasonably should know to be under 18 engaged in actual or simulated sexual conduct; and                  2) Fails to report above-described knowledge to peace officer immediately or as soon as possible.</p>	<p>Under 18</p>		<p>Business Offense: Fine of \$1,000</p>





**ILLINOIS: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
Harmful Material 720 ILSC § 5/11-21	1) Knowingly distributes to or sends or causes to be sent to, or exhibits to, or offers to distribute or exhibit any harmful (obscene) material to a child under 18; and 2) Knows child to be under 18 or fails to exercise reasonable care in ascertaining true age of child.  ***** 3) Person under 18 falsely states, either orally or in writing, that he is 18 or older, or presents to person evidence of age an identity that is false or not actually his own for purpose of ordering, obtaining, viewing, or procuring harmful material.	Under 18	Accredited/Public Library & circulation has legitimate scientific/educational purpose; Parental distribution; Mistake of age/relied on documentation; Mail, telephone, or similar transmittal and notice provided to receiver of age limits	Class A Misd.; Class 4 Felony (Sub.off.); ***** Class B Misd. (person under 18)
Obscenity 720 ILSC § 5/11-20	1) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or 2) Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or 3) Publishes, exhibits or otherwise makes available anything obscene; or 4) Performs an obscene act or otherwise presents an obscene exhibition of his body for gain; or 5) Creates, buys, procures or possesses obscene matter or material with intent to disseminate it in violation of section, or of the penal laws or regulations of any other jurisdiction; or 6) Advertises or otherwise promotes the sale of material represented or held out by him to be obscene, whether or not it is obscene; and 7) Has knowledge of the nature and content thereof or recklessly fails to exercise reasonable inspection to disclose nature or contents thereof.	No Age Limits	Not Obscene as defined in 5/11-20(b) & (c); Dissemination not for gain and made to personal associates other than children under 18; Dissemination having scientific or other special justification	Class A Misd.; ***** Class 4 Felony (Sub. Off.)
Public Indecency 720 ILCS § 5/11-9	1) Person 17 or older performs following in a public place (any place where conduct may reasonably be expected to be viewed by others): a) act of sexual penetration or sexual conduct as defined in Section 12-12; or b) lewd exposure of body done with intent to arouse or to satisfy sexual desires of person.	No Age Limits		Class A Misd.



**INDIANA: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
<p>Child Exploitation Ind. Code § 35-42-4-4</p>	<p>1) Knowingly or intentionally manages, produces, sponsors, presents, exhibits, photographs, films, or videotapes any performance or incident that includes sexual conduct by a child under 16; or 2) Knowingly or intentionally disseminates (transfers possession for free or for consideration), 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 child under 16. 3) Knowingly or intentionally possesses picture, drawing, photograph, negative image, undeveloped film, motion picture, videotape, or any pictorial representation that depicts or describes sexual conduct by child who is, or appears to be, less than 16 and that lacks serious literary, artistic, political or scientific value.</p>	<p>Under 16</p>	<p>Not applicable to bona fide school, museum, public library (qualifies for certain tax exemptions)/employees of such institutions acting within the scope of their employment/possession of listed materials is for legitimate scientific or educational purpose</p>	<p>Class D Felony (\$1,2) Class A Misd. (\$3)</p>
<p>Sale or Distribution or Exhibition of Obscene Matter Ind. Code § 35-49-3-1</p>	<p>1) Knowingly or intentionally sends or brings into Indiana obscene matter for sale or distribution; or 2) Knowingly or intentionally offers to distribute, distributes, or exhibits to another person obscene matter; or 3) (1) or (2) above and obscene matter depicts or describes sexual conduct involving any person who is or appears to be under 16.</p>	<p>No age limits; Under 16</p>		<p>Class A Misd. ***** Class D Felony (\$3)</p>
<p>Obscene Performance Ind. Code § 35-49-3-2</p>	<p>1) Knowingly or intentionally engages in, participates in, manages, produces, sponsors, presents, exhibits, photographs, films, or videotapes any obscene performance; or 2) (1) above and obscene performance depicts or describes sexual conduct involving any person who is or appears to be under 16.</p>	<p>No age limits; Under 16</p>		<p>Class A Misd. ***** Class D Felony (\$2)</p>
<p>Dissemination of Matter or Conducting Performance Harmful to Minors Ind. Code § 35-49-3-3</p>	<p>1) Knowingly or intentionally does any of the following: a) disseminates matter to minors that is harmful to minors; b) displays matter that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by parent or guardian; c) sells or displays for sale to any person matter that is harmful to minors within 500 feet of the nearest property line of a school or church; d) engages in or conducts a performance before minors that is harmful to minors; e) engages in or conducts a performance that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by parent or guardian; f) misrepresents his age for the purpose of obtaining admission to an area from which minors are restricted because of the display of matter or a performance that is harmful to minors; or g) misrepresents that he is a parent or guardian of a minor for the purpose of obtaining minor's admission to area where minors are being restricted because of display of matter or performance that is harmful to minors.</p>	<p>Under 18 (§ 35-49-1-4)</p>	<p>Legitimate scientific or educational purposes; Disseminated or displayed by bona fide school, museum, or public library; Reasonable belief minor 18 or older and age documentation; Salesclerk, motion picture projectionist, usher, or ticket taker, acting within scope of employment and having no financial interest</p>	<p>Class A Misd.</p>



**INDIANA: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
Public Indecency/Indecent Exposure Ind. Code § 35-45-4-1	1) Knowingly or intentionally in public place engages in sexual intercourse or deviate sexual conduct, appears in state of nudity, or fondles genitals or himself or another person; or 2) In non-public place, perpetrator engages in sexual intercourse or deviate sexual conduct, or fondles the genitals of himself or another person, with intent to be seen by persons other than invitees and occupants of place.	No age limits		Class A Misd. (\$1); ***** Class C Misd. (\$2)



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**IOWA: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
Dissemination and Exhibition of Obscene Material to Minors  Iowa Code § 728.2	1) Person, other than parent or guardian, knowingly disseminates (transfers possession with or without consideration, §728.1(3)), or exhibits obscene material to a minor, including the exhibition of obscene material so that it can be observed by a minor on or off the premises where it is displayed.	Under 18 (§728.1(6))	Exemptions for public libraries and educational institutions (728.7); Artistic, literary, political, scientific value; Degree of public acceptance of material; Intent of individual creating the material; Advertising promotion and circumstances relating to material's sale (728.9); Mistake of Age plus documentation (728.10)	Serious Misd.; Mandatory revocation of all permits and licenses issued for doing business on premises for 6 months
Admitting Minors to Premises Where Obscene Material is Exhibited  Iowa Code § 728.3	1) Knowingly sells, gives, delivers, or provides minor who is not child with pass or admits minor to premises where obscene material is exhibited.	Under 18	Same as above	Same as above
Rental or Sale of Hard-Core Pornography  Iowa Code § 728.4	1) Knowingly rents, sells, or offers for rental or sale material depicting patently offensive representations of oral, anal, or vaginal intercourse, actual or simulated, involving humans, or depicting patently offensive representations of masturbation, excretory functions, or bestiality, or lewd exhibition of the genitals, which the average adult taking the material as a whole in applying statewide contemporary community standards would find appeals to the prurient interest, and which material, taken as a whole, lacks serious literary, scientific, political, or artistic value.	No Age limits		Agg. Misd.; Subsequent Offenses Class D Felony





**IOWA: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
<p>Sexual Exploitation of a Minor Iowa Code § 728.12</p>	<p>1) Employs, uses, persuades, induces, entices, coerces, knowingly permits, or otherwise causes a minor to engage in a prohibited sexual act or in the simulation thereof; and                      2) Has reason to know, or intends that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, or other print or visual medium; or                      *****                      3) Knowingly promotes (defined in § 728.1(9)) any material visually depicting live performance of minor engaged in a prohibited sexual act or in the simulation of a prohibited sexual act; or                      *****                      4) Knowingly purchases or possesses negative, slide, book, magazine, or other print or visual medium depicting minor engaged in prohibited sexual act or simulation of prohibited sexual act.</p>	<p>Under 18</p>	<p>Section 4 not applicable to law enforcement officers, court personnel, licensed physicians and psychologists, or attorneys in the performance of their official duties</p>	<p>Class C Felony (§1,2): Fine of not more than \$50,000 plus other authorized sent.; ***** Class D Felony (§3): Fine not more than \$25,000 plus other authorized sent.; ***** Serious Misd. (§4)</p>
<p>Commercial Film and Photographic Print Processor Reports of Depictions of Minors Engaged in Prohibited Sexual Acts Iowa Code § 728.14</p>	<p>1) Commercial film and photographic print processor who has knowledge of or observes, within the scope of the processor's professional capacity or employment, film, photograph, video tape, negative, or slide which depicts minor whom the processor knows or reasonably should know to be under 18, engaged in a prohibited sexual act, not to include mere nudity; and                      2) Fails to report immediately the depiction to county attorney, but                      3) Processor is not required to review all films, photographs, video tapes, negatives, or slides delivered to processor within processor's professional capacity.</p>	<p>Under 18</p>		<p>Simple Misd.</p>
<p>Telephone Dissemination of Obscene Material to Minors Iowa Code § 728.15</p>	<p>1) Knowingly disseminates obscene material by the use of telephones or telephone facilities to minor, not to include information-access service provider that merely provides transmission capacity without control over the transmission's content.</p>	<p>Under 18</p>	<p>Takes measures to restrict access to minors pursuant to 728.15(2)</p>	<p>Agg. Misd.; Class D Felony (Sub. Off.)</p>



**KENTUCKY: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
Distribution of Obscene Matter  Ky. Rev. Stat. Ann. § 531.020	1) Having knowledge of its content and character, person: a) sends or causes to be sent into this state for sale or distribution any obscene matter; b) brings or causes to be brought into this state for sale or distribution any obscene matter; or c) prepares, publishes, prints, exhibits, distributes, offers to distribute in this state any obscene matter; and 2) If distributing any obscene matter, transferring possession with or without consideration (531.010(1)).	No age limits		Class B Misd.; Class A Misd. (more than one unit of obscene matter)
Distribution of Obscene Matter to Minors  Ky. Rev. Stat. Ann. § 531.030	1) Sends or causes to be sent, exhibits, distributes, or offers to distribute obscene material to minor with or without consideration (531.010(1)); and 2) Knows the person to be minor or has possession of such facts that he should reasonably know that person is minor.	Under 18		Class A Misd.; Class D Felony (sub.off.)
Using Minors to Distribute Obscene Material  Ky. Rev. Stat. Ann. § 531.040	1) Knowingly hires, employs, or uses minor to do or assist in acts prohibited by KRS 531.020; and 2) Knows person to be minor, or has possession of facts that he should reasonably know such person is minor; and 3) Knows the content and character of the material subject to KRS 531.020.	Under 18		Class A Misd.; Class D Felony (sub.off.)
Advertising Obscene Material  Ky. Rev. Stat. Ann. § 531.050	1) Writes or creates advertising, or solicits anyone to publish such advertising, or otherwise promotes the sale or distribution of obscene matter; and 2) Has knowledge of matter's content and character.	No age limits		Class B Misd.
Promoting Sale of Obscenity  Ky. Rev. Stat. Ann. § 531.060	1) As condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, knowingly: a) requires that the purchaser or consignee receive any matter reasonably believed by the purchaser or the consignee to be obscene; or b) denies or threatens to deny a franchise; or c) revokes or threatens to revoke, or imposes any penalty financial or otherwise because any person fails to accept such matter, or returns such matter.	No age limits		Class B Misd.; Class A Misd. (2nd Off.); Class D Felony (Sub.Off.)



**KENTUCKY: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
<p>Use of a Minor in a Sexual Performance</p> <p>Ky. Rev. Stat. Ann. § 531.310</p>	<p>1) Employs, consents to, authorizes, or induces minor to engage in a sexual performance (play, motion picture, photograph, dance, or any other visual representation exhibited before an audience, 531.300(5)); and</p> <p>2) Minor is less than 18 at time minor engages in prohibited activity; or *****</p> <p>3) (1) above and minor is less than 16 at time minor engages in prohibited activity; or *****</p> <p>4) (1) above and minor incurs physical injury.</p>	<p>Under 18, 16</p>		<p>Class C Felony (§1,2); *****</p> <p>Class B Felony (§3); *****</p> <p>Class A Felony (§4)</p>
<p>Promoting a Sexual Performance by a Minor</p> <p>Ky. Rev. Stat. Ann. § 531.320</p>	<p>1) Produces, directs, or promotes (defined in § 531.300(7)) any performance which includes sexual conduct by minor, knowing the character and content thereof; and *****</p> <p>2) (1) above and minor is less than 18 at time minor engages in prohibited activity; or *****</p> <p>3) (1) above and minor is less than 16 at time minor engages in prohibited activity; or *****</p> <p>4) (1) above and minor incurs physical injury.</p>	<p>Under 18, 16</p>		<p>Class C Felony (§1); *****</p> <p>Class B Felony (§2); *****</p> <p>Class A Felony (§3,4)</p>
<p>Possession of Matter Portraying a Sexual Performance by a Minor</p> <p>Ky. Rev. Stat. Ann. § 531.335</p>	<p>1) Knowingly has in possession or control any matter which visually depicts an actual sexual performance by minor; and</p> <p>2) Has knowledge of matter's content, character, and that the sexual performance is by a minor.</p>	<p>Under 18</p>		<p>Class A Misd.; Class D Felony (Sub.Off.)</p>
<p>Distribution of Matter Portraying a Sexual Performance by a Minor</p> <p>Ky. Rev. Stat. Ann. § 531.340</p>	<p>1) Having knowledge of its content and character, person:</p> <p>a) sends or causes to be sent into this state for sale or distribution any matter portraying a sexual performance by minor; or</p> <p>b) brings or causes to be brought into this state for sale or distribution any matter portraying a sexual performance by minor; or</p> <p>c) exhibits for profit or gain, distributes, offers to distribute, or intends to do so, any matter portraying a sexual performance by minor; and</p> <p>2) Having in his possession more than one unit as defined in KRS 531.300(2) shall create a rebuttable presumption that person has intent to distribute matter portraying a sexual performance.</p>	<p>Under 18</p>		<p>Class D Felony</p>



**KENTUCKY: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
Promoting Sale of Material Portraying a Sexual Performance by a Minor  Ky. Rev. Stat. Ann. § 531.350	1) As a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication, or other merchandise, a person: a) requires that the purchaser or consignee receive any matter portraying a sexual performance by minor; or b) denies or threatens to deny a franchise, or c) revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept such matter, or by reason of the return of such matter.	Under 18		Class A Misd; Class D Felony (2nd Off.); Class C Felony (Sub.Off.)
Advertising Material Portraying a Sexual Performance by a Minor  Ky. Rev. Stat. Ann. § 531.360	1) Writes or creates advertising, solicits anyone to publish such advertising, or otherwise promotes the sale or distribution of matter portraying a sexual performance by minor; and 2) Has knowledge of matter's content and character.	Under 18		Class A Misd.
Using Minors to Distribute Material Portraying a Sexual Performance by a Minor  Ky. Rev. Stat. Ann. § 531.370	1) Knowingly hires, employs, or uses minor to do or assist in doing any acts proscribed by 531.340; and 2) Knows person to be minor or has possession of such facts that he should reasonably know such person is minor.	Under 18		Class D Felony; Class C Felony (Sub.conv. of 531.370 or 531.030)
Unlawful Transaction with a Minor in the 2nd Degree  Ky. Rev. Stat. Ann. § 530.065	1) Knowingly induces, assists, or causes a minor to engage in illegal controlled substances activity, illegal gambling activity, or any other criminal activity constituting a felony.	Under 18		Class D Felony





**MINNESOTA: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
<p>Use of Minors In Sexual Performance Prohibited: Use of Minor</p> <p>Minn. Stat. § 617.246</p>	<p>1) Promote (defined in § 617.246(1)(c)), employ, use or permit minor to engage in or assist others in sexual performance; and</p> <p>2) Knows or has reason to know that the conduct intended is sexual performance; or</p> <p>*****</p> <p>3) Owns or operates business in which a work depicting minor in sexual performance is disseminated; and</p> <p>4) Knows the content and character of work disseminated; or</p> <p>*****</p> <p>5) Disseminates for profit work depicting minor in sexual performance; and</p> <p>6) Knows or has reason to know its content and character.</p>	<p>Under 18</p>	<p>No mistake of age or consent (by parent or minor) defenses</p>	<p>Felony: Prison Term of not more than 5 yrs, or fine of not more than \$10,000 for 1st off. and \$20,000 for sub. off., or both.</p>
<p>Possession of Pictorial Representations of Minors: Dissemination Prohibited</p> <p>Minn. Stat. § 617.247</p>	<p>1) Disseminates photographic representation (original or reproduction of film, videotape, videodisc, photograph, negative, or slide) of sexual conduct involving minor; and</p> <p>2) Knows or has reason to know its content and character and that actual minor is actor or photographic subject in it; or</p> <p>*****</p> <p>3) Possesses photographic representation (as stated above) of sexual conduct involving minor; and</p> <p>4) Knows or has reason to know its content and character and that an actual minor is actor or photographic subject in it.</p>	<p>Under 18</p>	<p>No consent (by parent or minor) defense; Section not applicable to performance of official duties by law enforcement and court officers, licensed physicians, psychologists, or social workers in course of bona fide treatment or education program</p>	<p>Gross Misd.; Mental exam ordered, with report to court as to necessity for treatment (Sub. Off. within 15 yrs. of prior conviction)</p>
<p>Harmful Materials; Dissemination and Display to Minors Prohibited</p> <p>Minn. Stat. § 617.293(1) &amp; (2)</p> <p>See Purpose &amp; Policy of Leg. Minn. Stat. § 617.291</p>	<p>1) Knowingly sells or loans for monetary consideration to minor:</p> <p>a) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of person or portion of human body which depicts nudity, sexual conduct, or sadomasochistic abuse and is harmful to minors; or</p> <p>b) any book, pamphlet, magazine, printed matter, however reproduced, or sound recording which contains any matter enumerated in clause (a), or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse which, taken as a whole, is harmful to minors; or</p> <p>2) Commercially and knowingly exhibits or displays any material which is harmful to minors in its content in any place of public accommodation where minors are or may be present and where minors are able to view the material, unless each item is kept in a sealed wrapper at all times.</p> <p>3) Commercially and knowingly exhibits or displays material, the cover or packaging of which, standing alone, is harmful to minors in any place of public accommodation where minors are or may be present or allowed to be present and where minors are able to view the material, unless each item is blocked from view by an opaque cover.</p>	<p>Under 18</p>	<p>Minors are not present or not able to view the material or the material's cover or packaging</p>	



**MINNESOTA: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
Exhibition Prohibited Minn. Stat. § 617.294	1) Knowingly exhibits to a minor for monetary consideration or sells to a minor an admission ticket or pass or admits a minor, whether or not for monetary consideration, to a place of public accommodation where there is a motion picture, show or other presentation or a play, dance, or other exhibition presented before an audience which, in whole or in part, depicts nudity, sexual conduct, or sadomasochistic abuse and is harmful to minors.	Under 18		
Indecent Exposure Minn. Stat. § 617.23	1) Willfully and lewdly exposes person's body, or private parts thereof, in any public place, or in place where others are present; or 2) Procures another to expose private parts.	No age limits		Misd. (Fine of not less than \$5.00 or imprisonment in county jail for not less than 10 days); Gross Misd. (Sub. Off.)
Indecent Literature; Distribution Minn. Stat. § 617.243	1) Person, copartnership, corporation requires that purchaser or consignee receive for resale any other article, book, comic or other publication reasonably believed by the purchaser or consignee to be obscene as defined in §617.241, as condition to sale or delivery for resale of any paper, magazine, book, comic, periodical or publication.	No age limits		Gross Misd.



**MISSOURI: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
Promoting Pornography in the 1st Degree  Mo. Rev. Stat. § 573.020	1) Promotes wholesale or possesses with the purpose to promote wholesale pornographic material; or 2) Promotes wholesale for minors or possesses with the purpose to promote wholesale pornographic materials for minors; and 3) Does so knowing the materials' content and character.	No age limits; Under 18		Class D Felony
Promoting Child Pornography in the 1st Degree  Mo. Rev. Stat. § 573.025	1) Photographs, films, videotapes, produces, publishes or otherwise creates child pornography, or knowingly causes another to do so; and 2) Knows material's content and character	Under 18	See § 573.050(3)-(4): determination of age/does not have to meet obscenity standard	Class B Felony: Fine of at least \$5,000, but not more than \$500,000, may be added to other penalties
Promoting Pornography in the 2nd Degree  Mo. Rev. Stat. § 573.030	1) Promotes or possesses with the purpose to promote any pornographic material for pecuniary gain; or 2) Produces, presents, directs or participates in any pornographic performance for pecuniary gain; and 3) Knows material's content and character.	No age limit		Class A Misd.
Promoting Child Pornography in the 2nd Degree  Mo. Rev. Stat. § 573.035	1) Sells, delivers, exhibits or otherwise makes available, or offers or agrees to sell, deliver, exhibit, or otherwise make available, any child pornography; or 2) Buys, procures or possesses child pornography with the purpose of furnishing to others; and 3) Knows material's content and character.	Under 18	See § 573.050(3)-(4) above	Class D Felony: Fine of at least \$5,000, but not more than \$500,000, may be added to other penalties
Possession of Child Pornography  Mo. Rev. Stat. § 573.037	1) Knowingly possesses or controls any obscene material that has minor as one of its participants or portrays minor as observer of sexual conduct, sexual conduct, sexual contact or sexual performance of minor; or 2) Knowingly possesses or controls material that shows a minor participating or engaging in sexual conduct.	Under 18		Class A. Misd; Class D Felony (Sub. Off.)



**MISSOURI: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
Furnishing Pornographic Materials To Minors  Mo. Rev. Stat. § 573.040	1) Furnishes material pornographic for minors, knowing that the person to whom it is furnished is a minor or acting in reckless disregard of the likelihood that such person is a minor; or 2) Produces, presents, directs or participates in any performance pornographic for minors that is furnished to a minor knowing that any person viewing such performance is a minor or acting in reckless disregard of the likelihood that a minor is viewing the performance; and 3) Knows material's content and character.	Under 18		Class A Misd.
Public Display of Explicit Sexual Material  Mo. Rev. Stat. § 573.060	1) Knowingly displays publicly explicit sexual material; or 2) Fails to take prompt action to remove such a display from property in his possession after learning of its existence.	No age limit		Class A Misd.
Abuse of a Child  Mo. Rev. Stat. § 568.060	1) Photographs or films a child less than 17 engaging in a prohibited sexual act or in the simulation of such an act; or 2) Causes or knowingly permits a child to engage in a prohibited sexual act or in the simulation of such an act for the purpose of photographing or filming the act. or 3) (1) or (2) above and inflicts serious emotional injury on child.	Under 17		Class C Felony (\$1,2); ***** Class B Felony (\$3)
Child Used In Sexual Performance  Mo. Rev. Stat. § 568.080	1) Employs, authorizes, or induces a child less than 17 to engage in a sexual performance, knowing the character and content thereof; or 2) Being child's parent, legal guardian, or custodian, consents to the participation of his/her child in a sexual performance; or 3) (1) & (2) above plus inflicts serious emotional injury on the child.	Under 17	See § 568.100: Determination of Age/Consent/Videotaped Testimony	Class C Felony (\$1,2); ***** Class B Felony (\$3)
Promoting Sexual Performance by a Child  Mo. Rev. Stat. § 568.090	1) Promotes a sexual performance by a child less than 17; or 2) Produces, directs, or promotes any performance which includes sexual conduct by a child less than 17; and 3) Knows the content and character of the performance.	Under 17	See § 568.100: Determination of Age/Consent/Videotaped Testimony	Class C Felony





**MISSOURI: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
Processor's Duty To Report  Mo. Rev. Stat. § 568.110	1) Commercial film and photographic print processor has knowledge of or observes, within the scope of professional capacity or employment, any film, photograph, videotape, negative or slide depicting a child under 17 engaged in an act of sexual conduct; and 2) Falls to report such instance to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible.	Under 17		Class B Misd.



**OHIO: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
<p>Disseminating Matter Harmful To Juveniles</p> <p>Ohio Rev. Code Ann. § 2907.31</p>	<p>1) Does recklessly, with knowledge of its character and content (presumed to have knowledge of actual notice of nature of material or performance, whether or not precise knowledge of contents § 2907.35(A)(2)&amp;(B)), any of the following:</p> <p>a) sells, delivers, furnishes, disseminates, provides, exhibits, rents, or presents to juvenile material or performance that is obscene or harmful to juveniles;</p> <p>b) offers or agrees to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile material or performance that is obscene or harmful to juveniles; or</p> <p>c) allows juvenile to review or peruse material or view live performance that is harmful to juveniles.</p>	<p>Under 18; 13 or older; under 13</p>	<p>Material not obscene: def. is parent, guardian, or spouse of minor;</p> <p>Minor accompanied by parent/guardian who consented to material or performance being furnished minor;</p> <p>Reasonable belief that juvenile not under 18 or unmarried, plus documentation as to age;</p> <p>Material obscene: bona fide medical, scientific, educational, religious, governmental, judicial, other proper purpose;</p> <p>Mistake of age is not defense, except for reasonable belief stated above for non-obscene materials;</p> <p>See 2907.35(C) stated below as defense for §2907.32</p>	<p>1st Degree Misd. (non-obscene material);</p> <p>4th Degree Felony (minor 13 or older &amp; material obscene);</p> <p>3rd Degree Felony (minor under 13 &amp; material obscene)</p>
<p>Displaying Matter Harmful to Juveniles</p> <p>Ohio Rev. Code Ann. § 2907.311</p>	<p>1) Has custody, control, or supervision of commercial establishment, with knowledge of character or content of material involved; and</p> <p>2) Displays at the establishment material that is harmful to juveniles and is open to view by juveniles as part of the invited general public.</p>	<p>Under 18</p>	<p>No violation if material placed behind device covering at least 2/3 of material, is wrapped or placed behind counter, or is covered or located so not open to view by juveniles</p>	<p>1st Degree Misd. (separate off. for each day violation occurs)</p>



**OHIO: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
<p>Pandering Obscenity</p> <p>Ohio Rev. Code Ann. § 2907.32</p>	<p>1) Does, with knowledge of character of material or performance (presumed to have knowledge if actual notice of nature of material or performance, whether or not precise knowledge of contents (§ 2907.35(A)(2)&amp;(B)), any of following:</p> <p>a) creates, reproduces, or publishes obscene material and offender knows that material is to be used for commercial exploitation or will be publicly disseminated or displayed, or is reckless in that regard;</p> <p>b) promotes or advertises for sale, delivery, or dissemination; or sells, delivers, publicly displays, exhibits, presents, rents, or provides; or offers or agrees to sell, deliver, publicly disseminate, publicly display, exhibit, present, rent, or provide obscene material;</p> <p>c) creates, directs, or produces obscene performance and offender knows that it is to be used for commercial exploitation or will be publicly presented, or is reckless in that regard;</p> <p>d) advertises or promotes obscene performance for presentation, or presents or participates in presenting obscene performance when performance is presented publicly, or when admission is charged;</p> <p>e) buys, procures, possesses (presumed to possess if five or more identical articles (§ 2907.35(A)(1))), or controls obscene material with purpose to violate §§ (b) and (d) above.</p>	<p>No age limits</p>	<p>Bona fide medical, scientific, educational, religious, governmental, judicial, other proper purpose;</p> <p>Not applicable to motion picture operator or projectionist within scope of employment as employee of owner or manager of theater or other public place for showing of motion pictures to public, and having no managerial responsibility or financial interest, other than wages (§2907.35(C))</p>	<p>1st Degree Misd.; 4th Degree Felony (sub. off.)</p>
<p>Pandering Obscenity Involving a Minor</p> <p>Ohio Rev. Code Ann. § 2907.321</p>	<p>1) Does, with knowledge of character of material or performance involved, any of following:</p> <p>a) creates, reproduces, or publishes obscene material that has minor as one of its participants or portrayed observers;</p> <p>b) promotes or advertises for sale or dissemination; sells, delivers, disseminates, displays, exhibits, presents, rents, or provides; or offers or agrees to sell, deliver, disseminate, display, exhibit, present, rent, or provide, obscene material that has minor as one of its participants or portrayed observers;</p> <p>c) creates, directs, or produces obscene performance that has minor as one of its participants;</p> <p>d) advertises or promotes for presentation, presents, or participates in presenting obscene performance that has minor as one of its participants;</p> <p>e) buys, procures, possesses, or controls obscene material, that has minor as one of its participants;</p> <p>f) brings or causes to be brought into Ohio obscene material that has minor as one of its participants or portrayed observers.</p>	<p>Under 18</p>	<p>Bona fide medical, scientific, educational, religious, governmental, judicial, other proper purpose;</p> <p>No mistake of age defense;</p> <p>Trier of fact may infer that person in material or performance is minor if material or performance, through title, text, visual representation, or otherwise, represents or depicts person as minor</p>	<p>2nd Degree Felony (§§ a,b,c,d,f); 4th Degree Felony (§ e); 3rd Degree Felony (sub. off. or conviction for violation of §§ 2907.22, 2907.323)</p>



**OHIO: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
<p>Pandering Sexually Oriented Matter Involving A Minor</p> <p>Ohio Rev. Code Ann. § 2907.322</p>	<p>1) Does, with knowledge of character of material or performance involved, any of following:</p> <p>a) creates, records, photographs, films, develops, reproduces, or publishes material that shows minor participating or engaging in sexual activity, masturbation, or bestiality;</p> <p>b) advertises for sale or dissemination, sells, distributes, transports, disseminates, exhibits, or displays material that shows minor participating or engaging in sexual activity, masturbation, or bestiality;</p> <p>c) creates, directs, or produces performance that shows minor participating or engaging in sexual activity, masturbation, or bestiality;</p> <p>d) advertises for presentation, presents, or participates in presenting performance that shows minor participating or engaging in sexual activity, masturbation, or bestiality;</p> <p>e) solicits, receives, purchases, exchanges, possesses or controls material that shows minor participating or engaging in sexual activity, masturbation, or bestiality;</p> <p>f) brings or causes to be brought into Ohio material that shows minor participating or engaging in sexual activity, masturbation, or bestiality; or brings, causes to be brought, or finances the bringing of minor into or across Ohio with intent that minor engage in sexual activity, masturbation, or bestiality in performance or for purpose of producing material containing visual representation depicting minor engaged in sexual activity, masturbation, or bestiality.</p>	<p>Under 18</p>	<p>Same as § 2907.321 above.</p>	<p>2nd Degree Felony (§§ a,b,c,d,f); 1st Degree Misd. (§ e); 4th Degree Felony (sub. off or conviction for violation of §§ 2907.321, 2907.323)</p>
<p>Illegal Use of Minor In Nudity-Oriented Material or Performance</p> <p>Ohio Rev. Code Ann. § 2907.323</p>	<p>1) Does any of the following:</p> <p>a) photographs minor who is not the person's child or ward in state of nudity, or creates, directs, produces, or transfers material or performance that shows minor in state of nudity (see defenses for exceptions);</p> <p>b) consents to photographing one's minor child or ward, or photographs one's minor child or ward in state of nudity in material or performance, or uses or transfers material or performance (see defenses for exceptions);</p> <p>c) possesses or views material or performance that shows minor who is not person's child or ward in state of nudity (see defenses for exceptions).</p>	<p>Under 18</p>	<p>Bona fide artistic, medical, scientific, educational, religious, governmental, judicial, other proper purpose (§§a,b,c); Parent, guardian, custodian consents in writing to photographing, to use of minor in material or performance, or to transfer of material and to specific manner in which material or performance is to be used (§§a,c);</p>	<p>2nd Degree Felony (§§ a,b); 1st Degree Misd. (§ c) 4th Degree Felony (§§ sub. off. or conviction for §§ 2907.321, 2907.322)</p>
<p>Deception to Obtain Matter Harmful to Juveniles</p> <p>Ohio Rev. Code Ann. § 2907.33</p>	<p>1) Does either of following for purpose of enabling juvenile to obtain material or gain admission to performance which is harmful to juveniles: falsely represents that he is parent, guardian, or spouse of juvenile; or furnishes juvenile with identification or document purporting to show that juvenile is 18 or over or married; or</p> <p>2) As a juvenile, does either of the following for purpose of obtaining material or gaining admission to performance which is harmful to juveniles: falsely represents that he is 18 or over or married; or exhibits identification or document purporting to show that he is 18 or over or married.</p>	<p>18 or under</p>		<p>2nd Degree Misd.; Adjudged unruly child (juvenile offender) with disposition under Chapter 2151 of Revised Code</p>





**OHIO: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES	PENALTY
<p>Compelling Acceptance of Objectionable Materials</p> <p>Ohio Rev. Code Ann. § 2907.34</p>	<p>1) Requires the purchaser or consignee to accept material reasonably believed to be obscene, or which if furnished or presented to juvenile would be violation of § 2907.31, as a condition to sale, allocation, consignment, or delivery of material or goods; or</p> <p>2) Denies or threatens to deny franchise or imposes or threatens to impose financial or other penalties upon purchaser or consignee because purchaser or consignee fails or refuses to accept material reasonably believed to be obscene as a condition to sale, allocation, consignment, or delivery of materials or goods or because the purchaser or consignee returns material believed to be obscene that he initially accepted.</p>	<p>No age limits</p>		<p>4th Degree Felony</p>
<p>Endangering Children</p> <p>Ohio Rev. Code Ann. § 2919.22</p>	<p>1) Does the following to child under 18 or individual who has physical or mental handicapping condition: entices, coerces, permits, encourages, compels, hires, employs, uses, or allows child or individual to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance; and</p> <p>2) Knows or reasonably should know that material or performance is obscene, is a sexually oriented matter, or is nudity-oriented matter; or</p> <p>3) Person who is parent, guardian, custodian, person having custody or control, or person in loco parentis of child under 18 or individual under 21 with physical or mental handicapping condition, creates substantial risk to health or safety of child by violating duty of care, protection, or support. (This is not complete statute summary; only provision relevant to child pornography is included.)</p>	<p>Under 18; under 21 if handicapping condition</p>	<p>Same as § 2907.321 above.</p>	<p>2nd Degree Felony</p>



**WISCONSIN: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES/ EVIDENTIARY CONSIDERATIONS	PENALTY
Sexual Exploitation of a Child  Wis. Stat. § 948.05	1) Employs, uses, persuades, induces, entices or coerces child to engage in sexually explicit conduct for the purpose of photographing, filming, videotaping, recording the sounds of or displaying in any way the conduct; or 2) Photographs, films, videotapes, records the sounds of or displays in any way a child engaged in sexually explicit conduct; or 3) Produces, performs in, profits from, promotes, imports (does not require commercial element or exempt personal use) into the state, reproduces, advertises, sells, distributes or possesses with intent to sell or distribute any undeveloped film, photographic negative, photograph, motion picture, videotape, sound recording or other reproduction of a child engaging in sexually explicit conduct; and 4) Has knowledge of the character and content of the sexually explicit conduct; or ***** 5) Person responsible for child's welfare knowingly permits, allows or encourages child to engage in sexually explicit conduct for purpose proscribed in (1), (2), & (3) above; and 6) Person includes parent, guardian, foster parent, employee of public or private residential home, institution or agency, other person legally responsible for child's welfare in residential setting, and person employed by one legally responsible for child's welfare who exercises temporary control or care for child (§948.01(3)).	Under 18	Mistake of Age Defense: Reasonable Cause to Believe and Documentation of Age Presented; Def. has burden of proof by preponderance of evidence.	Class C Felony
Child Enticement  Wis. Stat. § 948.07(4)	1) Causes or attempts to cause any child under 18 to go into any vehicle, building, room or secluded place; and 2) Takes pictures of child engaging in sexually explicit conduct.	Under 18		Class C Felony
Exposing Child To Harmful Material  Wis. Stat. § 948.11	1) Sells, exhibits, transfers or loans to child material harmful (defined §948.11(1)) to children, with or without monetary consideration, having knowledge of material's nature; or ***** 2) Possesses material harmful to children with intent to sell, exhibit, transfer or loan to children, having knowledge of material's nature.	Under 18	Mistake of age defense as long as def. sought affirmative proof of age (preponderance of evld. standard); Library and educational institution exemption; Specified professionals acting within scope of employment	Class E Felony (\$1) ***** Class A Misd. (\$2)
Possession of Child Pornography  Wis. Stat. § 948.12	1) Possesses undeveloped film, photographic negative, photograph, motion picture, videotape or other pictorial reproduction of child engaged in sexually explicit conduct; and 2) Knows that he or she possesses the material; and 3) Knows the character and content of the sexually explicit conduct shown in the material; and 4) Knows or reasonably should know that child engaged in sexually explicit conduct has not attained 18.	Under 18		Class E Felony



**WISCONSIN: CHILD PORNOGRAPHY AND RELATED OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEFENSES/ EVIDENTIARY CONSIDERATIONS	PENALTY
Fornication Wis. Stat. § 944.15	1) Has sexual intercourse in public in place or manner such that perpetrator knows or has reason to know that his/her conduct is observable by or in presence of persons other than person with whom he/she is having sexual intercourse.	No age limits		Class A Misd.
Sexual Gratification Wis. Stat. § 944.17	1) Commits act of sexual gratification as follows: a) in public (as defined in §944.15) involving sex organ of one person and mouth or anus of another; or b) involving his/her sex organ and sex organ, mouth, anus of animal; or c) involving his/her sex organ, mouth, anus and sex organ of animal.	No age limits		Class A Misd.
Lewd and Lascivious Behavior Wis. Stat. § 944.20	1) Commits indecent act of sexual gratification with another with knowledge that they are in presence of others; or 2) Publicly and indecently exposes genitals or pubic area.	No age limits		Class A Misd.



**APPENDIX II:**  
**PROSTITUTION OFFENSES**

**NOTE:** The summaries in the appendix are not verbatim excerpts of the statutes. They are current through July 31, 1993. If you wish to cite a particular statute, you should check the state code itself to ensure that you have accurate language and citation.





**ILLINOIS: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Prostitution 720 ILCS § 5/11-14	1) Performs, offers or agrees to perform the following: a) act of sexual penetration as defined in Section 12-12 of Code for money; or b) touching or fondling of sex organs of one person by another person for purpose of sexual arousal or gratification for money or anything of value.	No age limits	Money; Anything of Value		Class A Misd.; Class 4 Felony (3rd, sub. off., or related off.)
Soliciting For A Prostitute 720 ILCS § 5/11-15	1) Solicits another for the purpose of prostitution; or 2) Arranges or offers to arrange meeting of persons for the purpose of prostitution; or 3) Directs another to place knowing such direction is for the purpose of prostitution.	No age limits			Class A Misd.; Class 4 Felony (3rd, sub. off., or related off.)
Soliciting For A Juvenile Prostitute 720 ILCS § 5/11-15.1	1) (1)-(3) above; and 2) Individual solicited is under 16 or is an institutionalized severely or profoundly mentally retarded person.	Under 16		Reasonable belief as to age or mental status	Class 1 Felony
Pandering 720 ILCS § 5/11-16	1) Compels a person to become prostitute for money; or 2) Arranges or offers to arrange a situation in which a person may practice prostitution.	No age limits	Money		Class 4 Felony
Keeping a Place of Prostitution 720 ILCS § 5/11-17	1) Has or exercises control over the use of any place which could offer seclusion or shelter for practice of prostitution who does following: a) Knowingly grants or permits the use of such place for prostitution; or b) Grants or permits the use of such place under circumstances from which he could reasonably know that the place is used or is to be used for prostitution; c) Permits the continued use of a place after becoming aware of facts or circumstances from which he should reasonably know that the place is being used for prostitution.	No age limits			Class A Misd.; Class 4 Felony (3rd, sub. off., or related off.)



**ILLINOIS: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Keeping a Place of Juvenile Prostitution  720 ILCS § 5/11-17.1	1) Knowingly violates (1) above; and 2) Any prostitute in the place of prostitution is under 16; and	Under 16		Reasonable belief as to age or mental status	Class 1 Felony; Class X Felony (Sub. Off.); Subject to forfeiture (§11-20.1A)
Patronizing a Prostitute  720 ILCS § 5/11-18	1) Performs the following with person not his or her spouse: a) engages in an act of sexual penetration as defined in Section 12-12 with prostitute or b) enters or remains in place of prostitution with intent to engage in act of sexual penetration as defined in Section 12-12.	No age limits			Class B Misd.; Class 4 Felony (3rd, sub. off., or related off.)
Patronizing a Juvenile Prostitute  720 ILCS § 5/11-18.1	1) Engages in an act of sexual penetration as defined in Section 12-12 with a prostitute under 17.	Under 17		Reasonable belief as to age or mental status	Class 4 Felony
Pimping  720 ILCS § 5/11-19	1) Receives money or other property from prostitute, not for lawful consideration, knowing it was earned in whole or in part from the practice of prostitution.	No age limits	Money /Other Property		Class A Misd.; Class 4 Felony (3rd, sub. off., or related off.)
Juvenile Pimping  720 ILCS § 5/11-19.1	1) Receives money or other property from prostitute who is under 16 or institutionalized severely or profoundly mentally retarded person, not for a lawful consideration, knowing it was earned in whole or in part from the practice of prostitution.	Under 16	Money/Other Property	Reasonable belief as to age or mental status	Class 1 Felony



**ILLINOIS: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Exploitation of a Child  720 ILCS § 5/11-19.2	1) Confines child under 16 or institutionalized severely or profoundly mentally retarded person against his or her will by: a) the infliction or threat of imminent infliction of great bodily harm, permanent disability or disfigurement; or b) administering to the child or institutionalized person without his or her consent or by threat or deception and for other than medical purposes, any alcoholic intoxicant or a drug as defined in Controlled Substances Act or Cannabis Control Act (if child is under 13 or severely mentally retarded and no parental/guardian consent, administering drugs or alcoholic intoxicant shall be deemed to be without consent); and 2) Compels child or institutionalized person to become a prostitute; or 3) Arranges a situation in which child or institutionalized person may practice prostitution; or 4) Receives money or other property from child or institutionalized person knowing it was obtained in whole or in part from practice of prostitution; and 5) Violator is subject to forfeiture provisions of Section 11-20.1A.	Under 16;	Money/Other Property		Class X Felony
Indecent Solicitation of a Child  720 ILCS § 5/11-6	1) Person 17 or older solicits child under 13 to do any act, which if done would be aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse or criminal sexual abuse.	Under 13		No mistake of age defense	Class A Misd. if criminal sexual abuse; Class 4 Felony if other assault crimes



**INDIANA: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Prostitution Ind. Code § 35-45-4-2	1) Knowingly or intentionally performs, or offers to perform sexual intercourse or deviate sexual conduct for money or other property; or 2) Knowingly or intentionally fondles, or offers to fondle, the genitals of another person for money or other property.	No age limit	Money or other property		Class A Misd.; Class D Felony (2 prior convictions)
Patronizing a Prostitute Ind. Code § 35-45-4-3	1) Knowingly or intentionally pays, or offers or agrees to pay money or other property to another person for: a) having engaged in, or on the understanding that the other person will engage in, sexual intercourse or deviate sexual conduct with the person or with any other person; or b) having fondled, or on the understanding that the other person will fondle, the genitals of the person or any other person.	No age limit	Money or other property		Class A Misd.; Class D Felony (2 prior convictions)
Promoting Prostitution Ind. Code § 35-45-4-4	1) Knowingly or intentionally entices or compels another person to become a prostitute; or 2) Knowingly or intentionally procures, or offers or agrees to procure, a person for another person for the purpose of prostitution; or 3) Knowingly or intentionally permits another person to use a place for prostitution over which defendant has control; or 4) Receives money or other property from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution; or 5) knowingly or intentionally conducts or directs another person to a place for the purpose of prostitution.	No age limit; under age 18			Class C Felony; Class B Felony (victim under 18)
Child Solicitation Ind. Code § 35-42-4-6	1) Perpetrator, 18 or older, knowingly or intentionally solicits a child under 12 to engage in: a) sexual intercourse, b) deviate sexual conduct, or c) fondling or touching intended to arouse or satisfy the sexual desires of either child or older person.	Under 12			Class A Misd.





IOWA: PROSTITUTION OFFENSES

OFFENSES	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Prostitution Iowa Code § 725.1	1) Sells or offers for sale the person's services as a partner in a sex act, or 2) Purchases or offers to purchase such services.	No age limits	Exchange of money implied		Agg. Misd.
Pimping Iowa Code § 725.2	1) Solicits a patron for a prostitute, or 2) Knowingly takes or shares in the earnings of a prostitute, or 3) Knowingly furnishes a room or other place to be used for the purpose of prostitution, whether for compensation or not.	No age limits			Class D Felony
Pandering Iowa Code § 725.3	1) Persuades, arranges, coerces, or otherwise causes another, not a minor, to become a prostitute or return to prostitution after abandoning it; or 2) Keeps or maintains any premises for purposes of prostitution or takes a share in the income from such premises knowing the character and content of such income; or ***** 3) Persuades, arranges, coerces, or otherwise causes a minor to become a prostitute or to return to prostitution after abandoning it; or 4) Keeps or maintains any premises for purposes of prostitution involving minors or knowingly shares in the income from such premises knowing the character and content of such income.	No age limits; under 18			Class D Felony (\$1,2) ***** Class C Felony (\$3,4)
Leasing Premises for Prostitution Iowa Code § 725.4	1) Lessor or landlord rents or lets any building, structure or part thereof, boat, trailer or other place offering shelter or seclusion; and 2) Has knowledge that the lessee or tenant is using such for purposes of prostitution; and 3) Does not immediately terminate the tenancy or effectively put an end to the practice of prostitution on his/her property, upon acquiring knowledge of prostitution activities.	No age limits			Serious Misd.
Detention in Brothel Iowa Code § 709.7	1) Entices, by force, intimidation, or false pretense, another who is not a prostitute to enter a brothel with intent to cause such other to become an inmate thereof, or who detains another, whether a prostitute or not, in any brothel, against the will of such other, with intent that such other engage in prostitution.	No age limits			Class C Felony



IOWA: PROSTITUTION OFFENSES

OFFENSES	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Enticing Away A Child (or Attempt)  Iowa Code § 710.10	1) Entices away a child without authority and with intent to commit an illegal act upon the child; or ***** 2) Attempts to perform (1).	Under 18			Class D Felony (\$1); ***** Agg. Misd. (\$2)
Purchase or Sale of Individual  Iowa Code § 710.11	1) Purchases or sells or attempts to purchase or sell an individual to another person (not to include surrogate mother arrangement).	No age limits	Exchange of Money Implied		Class C Felony



**KENTUCKY: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Prostitution Ky. Rev. Stat. Ann. § 529.020	1) Engages or agrees or offers to engage in sexual conduct with another person in return for fee (see commentary to statute indicating that patronizing a prostitute is not made criminal offense under this statute).	No age limits	For fee (exchange of money implied)	Sex of prostitute is immaterial; Corroboration is required, does not include patron's testimony (§529.060)	Class B Misd.; Mandatory HIV testing (§529.090(1))
Promoting Prostitution in the 1st Degree Ky. Rev. Stat. Ann. § 529.030	1) Knowingly advances prostitution by compelling person by force or intimidation to engage in prostitution or by profiting from such coercive conduct by another; or ***** 2) Knowingly advances profits from prostitution of person less than 18; or ***** 3) Knowingly advances profits from prostitution of person less than 16; or ***** 4) (2) & (3) above and minor incurs physical injury.	No age limits; under 18; under 16		Compulsion not necessary (see commentary); Corroboration required, not to include testimony of individuals involved in prostitution activities defendant advanced (§529.060(2))	Class C Felony (\$1,2) ***** Class B Felony (\$3) ***** Class A Felony (\$4)
Promoting Prostitution in the 2nd Degree Ky. Rev. Stat. Ann. § 529.040	1) Knowingly advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, house of prostitution or prostitution business or enterprise involving prostitution activity by 2 or more prostitutes.	No age limits		See above §529.06(2)	Class D Felony
Promoting Prostitution in the 3rd Degree Ky. Rev. Stat. Ann. § 529.050	1) Knowingly advances or profits from prostitution.	No age limits		See above §529.060(2)	Class A Misd.
Permitting Prostitution Ky. Rev. Stat. Ann. § 529.070	1) Fails to make reasonable and timely effort to halt or abate use of premises for prostitution purposes over which individual has possession or control; and 2) Knows or has reasonable cause to know that premises are being used for prostitution purposes.	No age limits			Class B Misd.



**KENTUCKY: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Loitering For Prostitution Purposes  Ky. Rev. Stat. Ann. § 529.080	1) Loiters or remains in public place for the purpose of engaging or agreeing or offering to engage in prostitution.	No age limits			Violation: 1st Offense; Class B Misd. (sub. off.)
Prostitution/Transmission of STD  Ky. Rev. Stat. Ann. § 529.090 (2)-(4)	1) Commits prostitution and prior to the crime's commission, tests positive for sexually transmitted disease; and 2) Knows or has been informed that he has tested positive for sexually transmitted disease pursuant to KRS 214.410; and 3) Knows that he could possibly communicate such disease to another person through sexual activity; or ***** 4) Commits, offers, or agrees to commit prostitution by engaging in sexual activity, or procures another to engage in prostitution, in a manner likely to transmit HIV and prior to commission of crime, tests positive for HIV; and 5) Knows or has been informed that he has tested positive for HIV; and 6) Knows that he could possibly communicate HIV to another person through sexual activity.	No age limits			Class A Misd. (\$1,2,3); Class D Felony (\$4,5,6)
Unlawful Transaction with a Minor in the 2nd Degree  Ky. Rev. Stat. Ann. § 530.065	1) Knowingly induces, assists, or causes minor to engage in illegal controlled substances activity, illegal gambling activity, or any other criminal activity constituting felony.	Under 18			Class D Felony





**MINNESOTA: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
<p>Solicitation, Inducement and Promotion of Prostitution</p> <p>Minn. Stat. § 609.322 Subd. 1(1)(2)</p>	<p>1) While acting other than as a prostitute or patron, intentionally solicits, or induces individual under 16 to practice prostitution or promotes the prostitution of individual under 16.</p>	<p>Under 16</p>		<p>No mistake of age or consent def.; no def. ind. solicited/induced to practice prostitution did not actually engage in prostitution; no def. that individual had practiced prostitution previously (§609.325); no marital privilege (§609.326)</p>	<p>Not more than 20 yrs. in prison or fine of not more than \$40,000, or both;</p>
<p>Solicitation, Inducement and Promotion of Prostitution</p> <p>Minn. Stat. § 609.322 Subd. 1a</p>	<p>1) While acting other than as prostitute or patron, intentionally does any of the following:                      a) solicits or induces individual at least 16, but less than 18 to practice prostitution; or                      b) solicits or induces individual to practice prostitution by means of force; or                      c) uses a position of authority to solicit or induce individual to practice prostitution; or                      d) promotes the prostitution of individual who:                      i) is at least 16, but less than 18; or                      ii) the perpetrator knows individual has been induced or solicited to practice prostitution by means of force; or                      iii) the perpetrator knows that a position of authority has been used to induce or solicit individual to practice prostitution.</p>	<p>At least 16, but under 18;                      No age limits</p>		<p>See §609.325 and 609.326 above</p>	<p>Not more than 10 years in prison or fine of not more than \$20,000, or both</p>
<p>Solicitation, Inducement and Promotion of Prostitution</p> <p>Minn. Stat. § 609.322 Subd. 2</p>	<p>1) While acting as other than prostitute or patron, intentionally does any of the following:                      a) solicits or induces individual to practice prostitution by means of trick, fraud, or deceit; or                      b) being in a position of authority, consents to individual being taken or detained for the purposes of prostitution; or                      c) promotes the prostitution of individual who:                      i) the perpetrator knows has been induced or solicited to practice prostitution by means of trick, fraud or deceit; or                      ii) the perpetrator knows that individual in position of authority has consented to individual being taken or detained for purpose of prostitution.</p>	<p>No age limits</p>		<p>See §609.325 &amp; 609.326 above</p>	<p>Not more than 5 yrs. in prison or fine of not more than \$10,000, or both</p>



**MINNESOTA: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Solicitation, Inducement and Promotion of Prostitution  Minn. Stat. § 609.322 Subd. 3	1) While acting other than as prostitute or patron, intentionally solicits or induces individual 18 or above to practice prostitution or promotes the prostitution of individual 18 or older.	18 or older		See §609.325 & 609.326 above	Not more than 3 yrs. in prison or fine of not more than \$5,000 or both
Receiving Profit Derived From Prostitution  Minn. Stat. § 609.323	1) While acting other than as prostitute or patron, intentionally receives profit, knowing or having reason to know that it is derived from prostitution, or the promotion of prostitution, of individual under 16; or 2) While acting other than as prostitute or patron, intentionally receives profit, knowing or having reason to know that it is derived from prostitution, or the promotion of the prostitution, of individual described in 609.322, Subd. 1a(4) or cited above as (d)(i-iii); or 3) While acting other than as prostitute or patron, and not being related by blood, adoption, or marriage to the prostitute, intentionally receives profit, knowing or having reason to know that it is derived from prostitution, or promotion of prostitution of individual described in 609.322, Subd. 2(4) or cited above as (d)(i-ii); or 4) While acting other than as prostitute or patron, and not being related by blood, adoption or marriage to prostitute, intentionally receives profit, knowing or having reason to know that it is derived from the prostitution, or the promotion of the prostitution of individual 18 or above.	Under 16; ***** 18 or older		No mistake of age or consent defenses (§609.325(2)); No marriage privilege (§609.326); 609.323 not applicable to sale of goods or services to prostitute in ordinary course of lawful business;	Not more than 15 yrs. in prison or fine of not more than \$30,000, or both (\$1); ***** Not more than 5 yrs or fine of not more than \$10,000, or both (\$2); ***** Not more than 1 yr. in prison or fine of not more than \$3,000, or both (\$3)
Other Prohibited Acts  Minn. Stat. § 609.324 Subd. 1(a)	1) Intentionally engages in prostitution with individual under 13 or hires or offers or agrees to hire an individual under 13 to engage in sexual penetration or sexual contact.	Under 13			Not more than 20 yrs. in prison or fine of not more than \$40,000, or both



**MINNESOTA: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Other Prohibited Acts  Minn. Stat. § 609.324 Subd. 1(b)	1) Intentionally engages in prostitution with individual under 16, but at least 13, or hires or offers or agrees to hire individual under 16, but at least 13 to engage in sexual penetration or sexual contact.	Under 16, but at least 13			Not more than 10 yrs. in prison or fine of not more than \$20,000, or both
Other Prohibited Acts  Minn. Stat. § 609.324 Subd. 1(c)	1) Intentionally engages in prostitution with individual under 18, but at least 16, or hires or offers or agrees to hire individual under 18 but at least 16 to engage in sexual penetration or sexual contact.	Under 18, at least 16			Not more than 5 yrs. in prison or fine of not more than \$10,000, or both
Other Prohibited Acts  Minn. Stat. § 609.324 Subd. 1a	1) Person, not related by blood, adoption, or marriage to minor, permits a minor to reside, temporarily or permanently, in person's dwelling without parental or guardian's consent, knowing or having reason to know that minor is engaging in prostitution.	Under 18		Not applicable to residential placement supervised by public or social service agency	Not more than 1 yr. in prison or fine of not more than \$3,000, or both
Other Prohibited Acts  Minn. Stat. § 609.324 Subd. 2	1) Solicits or accepts solicitation to engage for hire in sexual penetration or sexual contact while in a public place.	No age limits			Not more than 1 yr. in prison or fine of not more than \$3,000, or both; Patron must be fined at least a minimum of \$1500, unless community service (\$609.324(4))



**MINNESOTA: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Other Prohibited Acts  Minn. Stat. § 609.324(3)	1) Intentionally engages in prostitution with individual 18 or above, or hires or offers or agrees to hire individual 18 or above to engage in sexual penetration or sexual contact.				Not more than 90 days or fine of not more than \$700, or both; Enhanced penalties for subsequent convictions
Use of Motor Vehicle to Patronize Prostitutes  Minn. Stat. § 609.324(5)	1) At time of sentencing for conviction under 609.324, court shall determine whether person used motor vehicle during commission of offense; and 2) If the court so finds, it shall forward its findings to the commissioner of public safety who shall record the finding on the individual's driving record. (Finding classified as private data on individuals, as defined in §13.02(12))				Conviction noted on driving record





**MISSOURI: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	AGE OF VICTIM	CONSIDERATION	DEFENSES	PENALTY
Prostitution Mo. Rev. Stat. §567.020	1)Engages or offers or agrees to engage in sexual conduct with another person in return for something of value to be received by person or by third person	No age limits	Money or property; any token, object or article exchangeable for money or property (§567.010(5))	Sex of parties Immaterial (§567.040)	Class B Misd.
Patronizing Prostitution Mo. Rev. Stat. § 567.030	1) Pursuant to prior understanding, gives something of value to another person to compensate that person or third person for engaging in sexual conduct with him or another; or 2) Gives or agrees to give something of value to another person on an understanding that in return that person or third person will engage in sexual conduct with him or another; or 3) Solicits or requests another person to engage in sexual conduct with him or with another, or secures a third person to engage in sexual conduct with him or another, in return for something of value.	No age limits	Same as above; Something of Value	Same as Above (§567.040)	Class B Misd.
Promoting Prostitution in 1st Degree Mo. Rev. Stat. § 567.050	1) Knowingly compels person to enter into, engage in, or remain in prostitution by: a) forcible compulsion; b) use of drug or intoxicating substance which renders person incapable of controlling his conduct or appreciating its nature; or c) the withdrawal or threatened withdrawal of dangerous drugs or narcotic from drug dependent person; or ***** 2) Promotes prostitution of a person less than 16.	No age limits; Under 16			Class B Felony
Promoting Prostitution in 2nd Degree Mo. Rev. Stat. § 567.060	1) Knowingly promotes prostitution by managing, supervising, controlling or owning, either alone or in association with others, house of prostitution or prostitution business or enterprise involving prostitution activity by two or more prostitutes.	No age limits			Class C Felony
Promoting Prostitution in 3rd Degree Mo. Rev. Stat. § 567.070	1) Knowingly promotes prostitution as prohibited in 567.020 above.	No age limits			Class D Felony



**MISSOURI: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	AGE OF VICTIM	CONSIDERATION	DEFENSES	PENALTY
Prostitution Houses Deemed Public Nuisances  Mo. Rev. Stat. § 567.080	1) Any room, building or other structure regularly used for sexual contact for pay or any unlawful prostitution activity prohibited by this chapter is a public nuisance.				Suit In Equity to Enjoin Nuisance



**OHIO: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
<p>Compelling Prostitution</p> <p>Ohio Rev. Code Ann. § 2907.21</p>	<p>1) Knowingly does any of the following:</p> <p>a) compels another to engage in sexual activity for hire;</p> <p>b) induces, procures, solicits, or requests minor to engage in sexual activity for hire, whether or not offender knows the minor's age;</p> <p>c) pays or agrees to pay minor, either directly or through minor's agent, so that minor will engage in sexual activity, whether or not offender knows age of minor;</p> <p>d) pays minor, either directly or through minor's agent, for minor having engaged in sexual activity, pursuant to prior agreement, whether or not offender knows age of minor.</p>	<p>Under 18; No age limits</p>	<p>For hire</p>	<p>No mistake of age defense; See § 2907.26 below</p>	<p>3rd Degree Felony</p>
<p>Promoting Prostitution</p> <p>Ohio Rev. Code Ann. § 2907.22</p>	<p>1) Knowingly does any of the following:</p> <p>a) establishes, maintains, operates, manages, supervises, controls, or has interest in brothel;</p> <p>b) supervises, manages, or control activities of prostitute in engaging in sexual activity for hire;</p> <p>c) transports another, or causes another to be transported across boundaries of Ohio or of any county in Ohio, in order to facilitate such other person's engaging in sexual activity for hire;</p> <p>d) induces or procures another to engage in sexual activity for hire for purpose of violating or facilitating violation of this section.</p>	<p>No age limits; under 18</p>	<p>For hire</p>	<p>No mistake of age defense; Admissibility of evidence re: prior convictions, proof place brothel and individual prostitute; no privileged communications between husbands and wives (§ 2907.26)</p>	<p>4th Degree Felony; 2nd Degree Felony (prostitute is minor)</p>
<p>Procuring</p> <p>Ohio Rev. Code Ann. § 2907.23</p>	<p>1) Knowingly and for gain does any of the following:</p> <p>a) entices or solicits another to patronize prostitute or brothel; or</p> <p>b) procures prostitute for another to patronize, or takes or directs another at his or her request to any place for purpose of patronizing prostitute; or</p> <p>2) Knowingly permits premises to be used for purpose of engaging in sexual activity for hire, having authority or responsibility over premises' use.</p>	<p>No age limits</p>	<p>For gain (\$1)</p>	<p>See § 2907.26 above</p>	<p>1st Degree Misd.</p>
<p>Soliciting</p> <p>Ohio Rev. Code Ann. § 2907.24</p>	<p>1) Solicits another to engage with other person in sexual activity for hire.</p>	<p>No age limits</p>	<p>For hire</p>	<p>See § 2907.26 above</p>	<p>3rd Degree Misd.</p>



**OHIO: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Prostitution  Ohio Rev. Code Ann. § 2907.25	1) Engages in sexual activity for hire.	No age limits	For hire	See § 2907.26 above	3rd Degree Misd.
Endangering Children  Ohio Rev. Code Ann. § 2919.22	1) Does the following to child under 18 or individual under 21 who has physical or mental handicapping condition: allows, entices, encourages, or forces child or individual to solicit for or engage in prostitution as prostitute, or otherwise facilitates child or individual in soliciting for or engaging in prostitution as prostitute (same meaning as in § 2907.01); or 2) Person who is parent, guardian, custodian, person having custody or control, or person in loco parentis of child under 18 or individual under 21 with physical or mental handicapping condition, creates substantial risk to health or safety of child by violating duty of care, protection, or support. (This is not complete statute summary; only provision relevant to juvenile prostitution is included.)	Under 18; under 21 if handicapping condition		No mistake of age defense	2nd Degree Felony





**WISCONSIN: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Prostitution Wis. Stat. § 944.30	1) Intentionally has or offers to have or requests to have nonmarital sexual intercourse for anything of value; or 2) Intentionally commits or offers to commit or requests to commit act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another for anything of value; or 3) Intentionally is inmate of a place of prostitution; or 4) Intentionally masturbates person or offers to masturbate person or requests to be masturbated by person for anything of value; or 5) Intentionally commits or offers to commit or requests to commit an act of sexual contact for anything of value.	No age limits	Anything of value		Class A Misd.
Patronizing Prostitutes Wis. Stat. § 944.31	1) Enters or remains in any place of prostitution with intent to have nonmarital sexual intercourse or to commit act of sexual gratification, in public or private, involving the sex organ of one person and the mouth or anus of another, masturbation, or sexual contact.	No age limits			Class A Misd.
Soliciting Prostitutes Wis. Stat. § 944.32	1) Except as provided in 948.08 (below), intentionally solicits or causes person to practice prostitution or establishes person in place of prostitution.	No age limits			Class D Felony
Pandering Wis. Stat. § 944.33	1) Solicits another to have nonmarital sexual intercourse, to commit act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact, with person the solicitor knows to be prostitute; or 2) Directs or transports person to prostitute or directs or transports prostitute to person, with intent to facilitate another in having nonmarital intercourse or committing act of sexual gratification, in public or private, involving the sex organ of one person and the mouth or anus of another, masturbation, or sexual contact with prostitute; or ***** 3) Above (1) & (2) and receives compensation from the earnings of prostitute.	No age limits	Consideration not necessary (enhanced penalty if compensation received)	State can present evidence of similar acts of accused to show intent and disposition	Class A Misd. (\$1,2); ***** Class C Felony (\$3)



**WISCONSIN: PROSTITUTION OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	CONSIDERATION	DEFENSES	PENALTY
Keeping Place of Prostitution  Wis. Stat. § 944.34	1) Intentionally keeps place of prostitution; or 2) Grants the use or allows the continued use of place as place of prostitution.				Class D Felony
Child Enticement  Wis. Stat. § 948.07	1) Causes or attempts to cause any child under 18 to go into any vehicle, building, room or secluded place with the intent to commit any of the following: a) having sexual contact or sexual intercourse with child in violation of 948.02 (sexual assault of a child); b) causing child to engage in prostitution; c) exposing sex organ to child or causing child to expose sex organ in violation of 948.10 (exposing genitals or pubic area); d) taking pictures of child engaging in sexually explicit conduct; e) causing bodily or mental harm to child; f) giving or selling to child a controlled substance.	Under 18			Class C Felony
Soliciting Child For Prostitution  Wis. Stat. § 948.08	1) Intentionally solicits or causes any child to practice prostitution or establishes any child in place of prostitution.	Under 18			Class C Felony



**APPENDIX III:  
CRIMINAL SEX OFFENSES**

**NOTE:** The summaries in the appendix are not verbatim excerpts of the statutes. They are current through July 31, 1993. If you wish to cite a particular statute, you should check the state code itself to ensure that you have accurate language and citation.



ILLINOIS: CRIMINAL SEX OFFENSES

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
Criminal Sexual Assault  720 ILCS § 5/12-13	1) Commits act of sexual penetration under any of following circumstances: a) by use of force or threat of force; b) accused knows victim cannot understand the nature of act and give knowing consent; c) victim is under 18 when act committed and accused is family member; or d) victim is at least 13 but under 18 when act committed and accused is 17 or older and holds a position of trust, authority or supervision in relation to victim.	No age limits; Under 18; At least 13, but under 18	No Age Limit; 17 or older	Consent defense where force or threat of force element (§5/12-17); No marriage defense if victim reports offense to S.A./law enforcement agency within 30 days or good cause shown (§5/12-18(c));	Class 1 Felony; Class X Felony (Sub. & Similar Off.); Payment for victim's treatment (§5/12-18(d))
Aggravated Criminal Sexual Assault  720 ILCS § 5/12-14	1) Commits criminal sexual assault outlined above and: a) Displayed, threatened to use, or used dangerous weapon or object fashioned or utilized in such manner as to lead victim under the circumstances to believe it to be a dangerous weapon; or b) Caused victim bodily harm; or c) Perpetrated criminal sexual assault during the course of commission or attempted commission of other felony; or d) Perpetrated offense against victim 60 or older; or e) Perpetrated offense against physically handicapped person; or ***** 2) Accused 17 or older commits an act of sexual penetration against victim under 13; or ***** 3) Accused under 17 commits act of sexual penetration with: a) victim under 9 when act committed; or b) victim who is at least 9, but under 13 when act committed and accused used force or threat of force to commit act. ***** 4) Commits act of sexual penetration with institutionalized severely or profoundly mentally retarded person.	No age limits; 60 or older; Under 13; Under 9; At least 9, but under 13	17 or older; Under 17	See above	Class X Felony; Payment for victim's treatment (§5/12-18(d))
Criminal Sexual Abuse  720 ILCS § 5/12-15	1) Commits act of sexual conduct by using or threatening force; or 2) Commits act of sexual conduct and accused knows victim is unable to understand the nature of act or is unable to give knowing consent; or 3) Accused under 17 commits act of sexual penetration or conduct with victim at least 9, but under 17 when act committed; or 4) Accused, less than five years older than victim, commits act of sexual penetration or conduct with victim at least 13, but under 17.	No age limits; At least 9, but under 17; At least 13, but under 17	No age limits; Under 17	See above; Mistake of Age: reasonable belief 17 or older for elements (3) & (4); Marriage (§5/12-18(c))	Class A Misd.; Class 2 Felony (Sub. or Similar Off.); Payment for Victim's Treatment (§5/12-18(d))





**ILLINOIS: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
<p>Aggravated Criminal Sexual Abuse</p> <p>720 ILCS § 5/12-16</p>	<p>1) Commits criminal sexual abuse (§5/12-15) and any of the following circumstances exist during commission of offense:</p> <p>a) displays, threatens to use or uses dangerous weapon or any object fashioned or utilized in manner as to lead victim to believe it to be dangerous weapon; or</p> <p>b) causes great bodily harm to victim; or</p> <p>c) victim is 60 or older; or</p> <p>d) victim is physically handicapped person; or</p> <p>*****</p> <p>2) Commits act of sexual conduct with victim under 18 when act committed and accused is family member; or</p> <p>*****</p> <p>3) Accused, 17 or older, commits act of sexual conduct with:</p> <p>a) victim who is under 13 when act committed; or</p> <p>b) who is at least 13, but under 17 when act committed and uses force or threatens force to commit act; or</p> <p>*****</p> <p>4) Accused, under 17, commits act of sexual conduct with:</p> <p>a) victim who is under 9 when act committed; or</p> <p>b) victim who is at least 9, but under 17 when act is committed and uses force or threatens force to commit act; or</p> <p>*****</p> <p>5) Accused, at least 5 years older than victim, commits act of sexual penetration or sexual conduct with victim who is at least 13, but under 17; or</p> <p>*****</p> <p>6) Commits act of sexual conduct with victim who is institutionalized severely or profoundly mentally retarded person at time act committed; or</p> <p>*****</p> <p>7) Commits act of sexual conduct with victim at least 13, but under 18 when act committed and accused is 17 or older and in position of trust, authority or supervision in relation to victim.</p>	<p>No age limits; 60 yrs. or older; Under 18; Under 13; At least 13, but under 17; Under 9; At least 9, but under 17; At least 13, but under 18</p>	<p>No age limits; 17 or older; Under 17; 5 yrs. older than victim at least 13, but under 17</p>	<p>See above; Mistake of Age: reasonable belief; Marriage (§5/12-18(c))</p>	<p>Class 2 Felony; Payment for Victim's Treatment (5/12-18(d))</p>



**ILLINOIS: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
Criminal Transmission of HIV  720 ILCS § 5/12-16.2	1) Accused knows that he or she is infected with HIV and: a) engages in intimate contact with another (exposure of body of one person to a bodily fluid of another person in a manner that could result in transmission of HIV); or b) transfers, donates, or provides his or her blood, tissue, semen, organs, or other potentially infectious body fluids for transfusion, transplantation, insemination, or other administration to another; or c) dispenses, delivers, exchanges, sells, or in any other way transfers to another any nonsterile intravenous or intramuscular drug paraphernalia; and 2) No requirement that infection with HIV has occurred in order for violation of offense.	No age limits	No age limits	Alleged victim had knowledge that accused infected and contact could result in infection; and consented to contact	Class 2 Felony
Sexual Relations Within Families  720 ILCS § 5/11-11	1) Commits act of sexual penetration and accused knows that he/she is related to other person as follows: brother or sister, either of whole or half-blood; father or mother, when victim is 18 or older when act is committed, regardless of legitimacy and whether child is of whole or half-blood or is adopted; stepfather or stepmother, when stepchild is 18 or over when act committed.	Under & Over 18	No age limits		Class 3 Felony
Permitting Sexual Abuse of a Child  720 ILCS § 150/5.1	1) Parent or step-parent knowingly allows or permits act of criminal sexual abuse or criminal sexual assault as defined in §§ 12-13, 12-14, 12-15 or 12-16 upon his or her child; and 2) Fails to take reasonable steps to prevent its commission or future occurrences of such acts.	Under 17	No age limits		Class A Misd.



**INDIANA: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
<p><b>Rape</b> Ind. Code § 35-42-4-1</p>	<p>1) Knowingly or intentionally has sexual intercourse with member of opposite sex and:                      a) victim compelled by force or imminent threat of force;                      b) victim unaware sexual intercourse is occurring; or                      c) victim is so mentally disabled or deficient that consent to sexual intercourse cannot be given; and                      *****</p> <p>2) Same as (1) above and:                      a) use or threatened use of deadly force;                      b) armed with deadly weapon; or                      4) victim or other person seriously injured.</p>	<p>No age limits</p>	<p>No age limits</p>	<p>Marriage, unless petition filed for divorce, legal separation, or protective order under IC §34-4-5.1 and spouses are living apart</p>	<p>Class B Felony (§1) ***** Class A Felony (§2)</p>
<p><b>Criminal Deviate Behavior</b> Ind. Code § 35-42-4-2</p>	<p>1) Knowingly or intentionally causes victim to perform or submit to deviate sexual conduct and:                      a) victim compelled by force or imminent threat of force;                      b) victim is unaware conduct is occurring; or                      c) victim is so mentally deficient that consent to conduct cannot be given; or                      *****</p> <p>2) Same as (1) above and:                      a) use or threatened use of deadly force;                      b) armed with deadly weapon; or                      c) victim or other person seriously injured.</p>	<p>No age limits</p>	<p>No age limits</p>		<p>Class B Felony (§1) ***** Class A Felony (§2)</p>



**INDIANA: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
Child Molesting Ind. Code § 35-42-4-3	1) Performs or submits to sexual intercourse or deviate sexual conduct with child under 12; or ***** 2) Performs or submits to fondling or touching of either child under 12 or older person with the intent to arouse or satisfy sexual desires of child or older person; or ***** 3) Person, 16 or older, performs or submits to sexual intercourse or deviate sexual conduct with child 12 or older, but under 16; or ***** 4) Performs or submits to fondling or touching of child 12 or older, but under 16 or older person with the intent to arouse or satisfy sexual desires of child or older person; ***** 5) Same as (1) above and: a) use or threatened use of deadly force; 6) armed with deadly weapon; or 7) serious bodily injury; ***** 6) Same as (2-4) above and: a) Use or threatened use of deadly force; or b) Armed with deadly weapon.	Under 12; 12 or older, but under 16	No age limits; 16 or older	Mistake of Age: reasonable belief child 16 or older at time of conduct; Child is or has been married	Class B Felony (§1) ***** Class C Felony (§2) ***** Class C Felony (§3) ***** Class D Felony (§4) ***** Class A Felony (§5; §2 plus §6; §3 plus §6) ***** Class B Felony (§6, §4 plus §6)





**INDIANA: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
<p>Vicarious Sexual Gratification Ind. Code § 35-42-4-5</p>	<p>1) Person, 18 or older, knowingly or intentionally directs, aids, induces, or causes child to touch or fondle him/herself or another child under 16 with intent to arouse or satisfy sexual desires of child or older person; or *****</p> <p>2) Same as (1) above, but child is under 12; *****</p> <p>3) Same as (1) above and: a) use or threatened use of deadly force; or b) armed with deadly weapon. *****</p> <p>4) Same as (1),(2), &amp; (3) above and results in serious bodily injury; *****</p> <p>5) Person, 18 or older, knowingly or intentionally directs, aids, induces, or causes child under 16 with intent to arouse or satisfy the sexual desires of child or older person to: a) engage in sexual intercourse with child under 16; b) engage in sexual conduct with an animal other than human being; or c) engage in deviate sexual conduct with another person; *****</p> <p>6) Same as (5) above, but child is under 12; *****</p> <p>7) Same as (5) above and: a) use and threatened use of deadly force; b) armed with a deadly weapon; or c) resulting in serious bodily injury.</p>	<p>Under 16; Under 12</p>	<p>18 or older</p>		<p>Class D Felony (§1) ***** Class C Felony (§2) ***** Class B Felony (§§3,6) ***** Class A Felony (§§4,7) ***** Class C Felony (§5)</p>
<p>Child Solicitation Ind. Code § 35-42-4-6</p>	<p>1) Person, 18 or older, knowingly or intentionally solicits child under 12 to engage in sexual intercourse, deviate sexual conduct, or fondling or touching intended to arouse or satisfy sexual desires of either child or older person.</p>	<p>Under 12</p>	<p>18 or older</p>		<p>Class A Misd.</p>
<p>Child Seduction Ind. Code § 35-42-4-7</p>	<p>1)Guardian, adoptive parent, adoptive grandparent, custodian (any person responsible for child's welfare employed by public or private residential school or foster care facility), or stepparent of child engages in sexual intercourse or deviate sexual conduct with child at least 16, but under 18. .</p>	<p>At least 16, but less than 18</p>	<p>18 or older</p>		<p>Class D Felony</p>
<p>Sexual Battery Ind. Code § 35-42-4-8</p>	<p>1) Touches victim with intent to arouse or satisfy own sexual desires or sexual desires of victim and: a) compulsion by force or imminent threat of force; or b) victim so mentally disabled or deficient that consent cannot be given; or *****</p> <p>2) Same as (1) above and use or threatened use of deadly force or armed with deadly weapon.</p>	<p>No age limits</p>	<p>No age limits</p>		<p>Class D Felony (§1) ***** Class C Felony (§2)</p>



**INDIANA: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
Public Indecency; Indecent Exposure  Ind. Code § 35-45-4-1	1) Knowingly or intentionally in public place engages in sexual intercourse or deviate sexual conduct, appears in a state of nudity, or fondles genitals of himself or another person; or ***** 2) Engages in sexual intercourse or deviate sexual conduct, or fondles the genitals of himself or another person in non-public place with intent to be seen by persons other than invitees and occupants of place.	No age limits	No age limits		Class A Misd. (§1) ***** Class C Misd. (§2)
Incest  Ind. Code §35-46-1-3	1) Person, 18 or older, engages in sexual intercourse or deviate sexual conduct with another person when person knows that other person is related to person biologically as parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew.	No age limits	18 or older	Marriage	Class D Felony



IOWA: CRIMINAL SEX OFFENSES

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
Sexual Abuse in the 1st Degree  Iowa Code § 709.2	1) Commits sexual abuse resulting in serious injury to victim and: a) performs sex act with victim with force or against will of victim, by threatening violence toward any person while victim is under influence of drug inducing sleep, or in state of unconsciousness; or b) performs sex act with victim who suffers from mental defect or incapacity precluding consent; or c) performs sex act with child (definition sex act, §702.17).	No age limits; Under 14 (child defined in §702.5)	No age limits	Not necessary to establish physical resistance by victim (§709.5)	Class A Felony
Sexual abuse in the second degree  Iowa Code § 709.3	1) Commits sexual abuse and: a) displays dangerous weapon in a threatening manner or threatens to use force creating a substantial risk of death or serious injury to any person; b) victim is under age of 12; or c) perpetrator is aided and abetted by one or more persons and sex act is committed by force or against will of victim.	No age limits; Under age of 12	No age limits	Same as above	Class B Felony
Sexual Abuse in the 3rd Degree  Iowa Code § 709.4	1) Commits sexual abuse and any of the following circumstances: a) performs act by force or against will of victim, whether or not victim is the person's spouse or is cohabiting with person; b) Victim suffers from a mental defect or incapacity which precludes consent; c) Victim is 12 or 13; d) Victim is 14 or 15 and following: i) perpetrator is member of same household; ii) perpetrator is related to victim by blood or affinity to fourth degree; iii) perpetrator is in position of authority over victim and uses that authority to coerce victim to submit; or iv) perpetrator is 6 or more years older than victim.	No age limits 12 or 13; 14 or 15	6 or more years older than victim	Same as above; Marriage or cohabitation not defense	Class C Felony
Lascivious Acts With A Child  Iowa Code § 709.8	1) Performs the following acts with child with or without the child's consent for the purpose of arousing or satisfying the sexual desires of either child or perpetrator: a) Fondles or touches child's pubes or genitals; b) Permits or causes child to fondle or touch person's genitals or pubes; c) Solicits a child to engage in sex act; d) Inflicts pain or discomfort upon child or permits child to inflict pain or discomfort on person.	Under 14 (child defined in § 702.5)	18 or older	Marriage; No consent defense	Class D Felony
Indecent Exposure  Iowa Code § 709.9	1) Exposes person's genitals or pubes to another not person's spouse; or 2) Commits sex act in presence of or view of third person; and 3) Perpetrator does so to arouse or satisfy sexual desires of either person; and 4) Perpetrator knows or reasonably should know that act is offensive to viewer.	No age limits	No age limits	Marriage; Reasonable belief act non-offensive	Serious Misd.



IOWA: CRIMINAL SEX OFFENSES

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
Assault With Intent To Commit Sexual Abuse  Iowa Code § 709.11	1) Commits assault (defined Section 708.1) with intent to commit sexual abuse (same as a,b,c in §709.2); or ***** 2) Same as (1) above and causes serious injury to any person; or ***** 3) Same as (1) above and causes bodily injury other than serious injury.	No age limits; Under 18	No age limits		Class C Felony (§2) ***** Class D Felony (§3) ***** Agg. Misd. (§1)
Indecent Contact With A Child  Iowa Code § 709.12	1) Commits following acts with child for purposes of arousing or satisfying sexual desires of either child or perpetrator: a) Fondles or touches inner thigh, groin, buttock, anus, or breast of child; b) Touches the clothing covering immediate area of inner thigh, groin, buttock, anus, or breast of child; c) Solicits or permits child to fondle or touch inner thigh, groin, buttock, anus, or breast of person; d) Solicits child to engage in any act prohibited under 709.8.	Under 14 (child defined in § 702.5)	18 or older; 16 or 17 if the child is a least five years the person's junior	Marriage; Consent not defense	Agg. Misd.
Lascivious Conduct With A Minor  Iowa Code § 709.14	1) Perpetrator is in position of authority over minor; and 2) Forces, persuades, or coerces minor with or without consent to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of perpetrator or minor.	Under 18	18 or older	Consent not defense	Serious Misd.
Sexual Exploitation By A Counselor or Therapist  Iowa Code § 709.15	1) Engages, as counselor or therapist (defined to include physician, nurse, social worker, clergy who provides mental health services), in a pattern or practice or scheme or conduct as follows: a) sexual conduct, with an emotionally dependent former patient or client for purpose of arousing or satisfying sexual desires of counselor or therapist or emotionally dependent patient or client or emotionally dependent former patient or client, which includes but is not limited to: kissing; touching of clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act defined in §702.17; or b) sexual conduct with patient or client or former patient or client within one year of termination of mental health services by counselor or therapist for purpose of arousing or satisfying sexual desires of counselor or therapist or patient or client or former patient of client which includes but is not limited to acts stated in section a above; or 2) Commits acts as described in sections a or b above.	No age limits	No age limits	Sexual exploitation does not include touching which is part of necessary examination or treatment acting within the scope of employment	Class D Felony (§1(a) or b); 0Agg. Misd. (§a); Serious Misd. (§b) (lieu of prison, may be required to attend treatment program)





IOWA: CRIMINAL SEX OFFENSES

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
Sexual Misconduct With Offenders Iowa Code § 709.16	1) Engages in a sex act with individual committed to custody of department of corrections or judicial district department of corrections and 2) Offender is officer, employee, contractor, vendor, volunteer, or agent of the department of correctional services.	No age limits	No age limits		Agg. Misd.
Incest Iowa Code § 726.2	1) Performs sex act with another whom person knows to be related to person, either legitimately or illegitimately, as ancestor, descendant, brother or sister of whole or half blood, aunt, uncle, niece, or nephew (perpetrator is other than child as defined in §702.5)	No age limits	No age limits		Class D Felony



**KENTUCKY: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	AGE OF VICTIM	DEF AGE	DEFENSES	PENALTY
Rape in the 1st Degree  Ky. Rev. Stat. Ann. § 510.040	1) Engages in sexual intercourse by forcible compulsion; or 2) Engages in sexual intercourse with person who lacks capacity to consent because person is physically helpless or less than 12; or ***** 3) Same as (1) and (2) above and serious physical injury results.	Under 12	No age limits	Mistake of age/incapacity: did not know facts or conditions responsible for victim's incapacity (§510.030); Marriage (§510.035); Reputation/opinion evidence as to victim's sexual behavior not admissible; particular acts/other evidence generally not admissible, but exceptions (KRE 412)	Class B Felony (\$1) ***** Class A Felony (under 12 or serious phy. inj.)
Rape in the 2nd Degree  Ky. Rev. Stat. Ann. § 510.050	1) Engages in sexual intercourse with person under 14.	Under 14	18 or older	Same as above; Force not necessary	Class C Felony
Rape in the 3rd Degree  Ky. Rev. Stat. Ann. § 510.060	1) Engages in sexual intercourse with person who is incapable of consent because the person has mental retardation or mental incapacity; or 2) Perpetrator is 21 or older and engages in sexual intercourse with person under 16.	No age limits; Under 16	No age limits; 21 or older	Same as above; Force not necessary	Class D Felony
Sodomy in the 1st Degree  Ky. Rev. Stat. Ann. § 510.070	1) Engages in deviate sexual intercourse with person by forcible compulsion; or 2) Engages in deviate sexual intercourse with person who is incapable of consent because person is physically helpless or under 12 years old; or ***** 3) Same as (1) & (2) above and physical injury results.	No age limits; Under 12	No age limits	Same as above, except 510.070(1) requires forcible compulsion	Class B Felony (\$1) ***** Class A Felony (Under 12 or serious phy. inj.) Class A Felony



**KENTUCKY: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	AGE OF VICTIM	DEF AGE	DEFENSES	PENALTY
Sodomy in the 2nd Degree  Ky. Rev. Stat. Ann. § 510.080	1) Perpetrator is 18 or older and engages in deviate sexual intercourse with person under 14.	Under 14	18 or older	Same as above, except no force required	Class C Felony
Sodomy in the 3rd Degree  Ky. Rev. Stat. Ann. § 510.090	1) Engages in deviate sexual intercourse with person who is incapable of consent because person has mental retardation or mental incapacity; or 2) Perpetrator is 21 or older and engages in deviate sexual intercourse with person under 16.	No age limit; Under 16	No age limit; 21 or older	Same as above	Class D Felony
Sodomy in the 4th Degree  Ky. Rev. Stat. Ann. § 510.100	1) Engages in deviate sexual intercourse with person of the same sex.	No age limits	No age limits	Consent not defense	Class A Misd.
Sexual Abuse in the 1st Degree  Ky. Rev. Stat. Ann. § 510.110	1) Subjects person to sexual contact by forcible compulsion; or 2) Subjects person to sexual contact who is incapable of consent because person is: physically helpless or under 12.	No age limits; Under 12	No age limits	Same as Rape in 1st Degree	Class D Felony
Sexual Abuse in the 2nd Degree  Ky. Rev. Stat. Ann. § 510.120	1) Subjects person to sexual contact who is incapable of consent due to mental retardation or mental incapacity; or 2) Subjects person under 14 to sexual contact	No age limits; Under 14	No age limits	Same as above	Class A Misd.



**KENTUCKY: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	AGE OF VICTIM	DEF AGE	DEFENSES	PENALTY
Sexual Abuse In the 3rd Degree  Ky. Rev. Stat. Ann. § 510.130	1) Subjects person to sexual contact without person's consent.			Person's lack of consent due solely to incapacity by reason of being under 16 and other person at least 14 and actor less than 5 years older than other person	Class B Misd.
Sexual Misconduct  Ky. Rev. Stat. Ann. § 510.140	1) Engages in sexual intercourse or deviate sexual intercourse with non-consenting person.	No age limits	No age limits		Class A Misd.
Indecent Exposure  Ky. Rev. Stat. Ann. § 510.150	1) Intentionally exposes his genitals under circumstances in which he knows or should know is likely to cause affront or harm.	No age limit	No age limit		Class B Misd.
Incest  Ky. Rev. Stat. Ann. § 530.020	1) Have sexual intercourse with person whom one knows to be ancestor, descendant, brother or sister; relationships include blood relationships of either whole or half blood without regard to legitimacy, adoption, and stepparent/stepchild relationship.	No age limits	No age limits		Class C Felony
Unlawful Transaction with Minor in 1st Degree  Ky. Rev. Stat. Ann. § 530.064	1) Knowingly induces, assists, or causes minor under 16 or 18 to engage in illegal sexual activity except for offenses involving child pornography and juvenile prostitution as defined in KRS Chapter 531 and KRS 529.030; and 2) Same as (1) above and minor incurs physical injury.	Under 18; Under 16	No age limits		Class C Felony (Vict. under 18) ***** Class B Felony (Vict. under 16) ***** Class A (\$2) Felony





**MINNESOTA: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
<p>Criminal Sexual Conduct in the 1st Degree</p> <p>Minn. Stat. § 609.342</p>	<p>1) Engages in sexual penetration with victim and any of the following circumstances exist:</p> <p>a) victim is under 13 and actor is more than 3 years older than victim; *****</p> <p>b) victim is at least 13 but less than 16 and actor is more than 4 years older than victim, is in position of authority over victim, and uses this authority to cause victim to submit; *****</p> <p>c) victim has reasonable fear of imminent great bodily harm to victim or another; *****</p> <p>d) actor is armed with dangerous weapon or other item used in such manner as to make victim believe item is dangerous weapon and its use or threatened use forces victim to submit; *****</p> <p>e) actor's conduct results in victim being personally injured and either of the following exists: i) actor uses force or coercion to accomplish sexual penetration; or ii) actor knows or has reason to know victim is mentally impaired, mentally incapacitated, or physically helpless; *****</p> <p>f) actor is aided or abetted by 1 or more accomplices (609.05) and either of the following exists: (d) &amp; (i) above; *****</p> <p>g) actor has significant relationship to victim and victim is under 16 at time of penetration; *****</p> <p>h) actor has significant relationship to victim and victim is under 16 at time of penetration and any of the following circumstances exist: i) force or coercion is utilized to accomplish penetration; ii) victim suffers personal injury; or iii) sexual abuse involves multiple acts committed over extended periods of time.</p>	<p>No age limits; Under 13; at least 13 but under 16; Under 16</p>	<p>No age limits; More than 3 years older than victim; More than four years older than victim</p>	<p>No defenses of mistake of age and consent as to sections (a), (b), (g), &amp; (h)</p>	<p>Not more than 30 yrs. in prison or fine of not more than \$40,000 or both ***** Discret. Stay w/cond. for viol. §g ***** Not more than 37 yrs. (Enhanced pen. for sub. off. (\$609.346)) ***** Certain life sentences permissible (\$609.346 Subd. 2a)</p>
<p>Criminal Sexual Conduct in the 2nd Degree</p> <p>Minn. Stat. § 609.343</p>	<p>1) Engages in sexual conduct if any of the following circumstances exist: Same as a, b, c, d, e, f, g, h, listed for criminal sexual conduct in the 1st degree.</p>	<p>Same as listed above for first degree</p>	<p>Same as listed above for 1st degree</p>	<p>State not required for (1)(a) to prove sexual contact coerced; No mistake of age or consent defenses for (1)(a),(b),(g), &amp; (h)</p>	<p>Not more than 25 yrs. in prison or a fine of not more than \$40,000, or both ***** Disc.St/Enh. Pen. above</p>



MINNESOTA: CRIMINAL SEX OFFENSES

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
<p>Criminal Sexual Conduct in the 3rd Degree</p> <p>Minn. Stat. § 609.344</p>	<p>1) Engages in sexual penetration with victim and any of the following circumstances exist:</p> <p>a) same as Criminal Sexual Conduct in 1st degree; *****</p> <p>b) victim is at least 13 but less than 16 and actor is more than 2 years older than victim; *****</p> <p>c) actor uses force or coercion to accomplish penetration; *****</p> <p>d) actor knows or has reason to know that victim is mentally impaired, mentally incapacitated, or physically helpless; *****</p> <p>e) victim is at least 16 but under 18 and actor is more than 4 years older than victim, is in position of authority over victim, and uses this authority to cause victim to submit. *****</p> <p>f) actor has significant relationship to victim and victim was at least 16 but under 18 at time of sexual penetration; *****</p> <p>g) actor has significant relationship to victim and victim was at least 16 but under 18 at time of sexual penetration and any of following circumstances exist: same as (h)-(v) listed for Criminal Sexual Conduct in the 1st Degree; *****</p> <p>h) actor is psychotherapist, victim is patient, and sexual penetration occurs during session or outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists; *****</p> <p>i) actor is psychotherapist, victim was patient, and victim is emotionally dependent on psychotherapist; *****</p> <p>j) actor is psychotherapist, victim was or is patient, and sexual penetration occurs by means of therapeutic deception; or *****</p> <p>k) actor accomplishes sexual penetration by means of false representation that penetration is for bona fide medical purpose; or *****</p> <p>l) actor is or purports to be clergy, the victim is not married to perpetrator, and the sexual penetration occurred during course of meeting in which victim sought or received religious or spiritual advice, aid, or comfort from the actor in private or the sexual penetration occurred during a period of time in which victim was meeting on ongoing basis with actor to seek or receive religious or spiritual advice, aid, or comfort in private.</p>	<p>No age limits; 13, but under 16; 16, but under 18;</p>	<p>No age limits; 2 years older than victim; 4 years older than victim;</p>	<p>No mistake of age or consent defenses for (a),(e),(f),(g); Mistake of age defense for 1(b)(prep. of evidence); No consent defense for (1)(b),(h),(j),(k),(l); Marriage is defense to (1)(l)</p>	<p>Not more than 15 years in pris on or fine of not more than \$30,000, or both; ***** Not more than 5 yrs. (\$b when def. is no more than 48 mo. but more than 24 mo. older than victim); ***** Disc. Stay above/See §609.346 for enh. penalty for sub. off.</p>



**MINNESOTA: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
Criminal Sexual Conduct in the 4th Degree  Minn. Stat. § 609.345	1) Engages in sexual contact and any of the following circumstances exist: a) same as Criminal Sexual Conduct in 2nd degree; ***** b) same as Criminal Sexual Conduct in 2nd Degree with exception mistake of age defense permissible; ***** c) actor uses force or coercion to accomplish sexual contact; ***** d) actor knows or has reason to know that victim is mentally impaired, mentally incapacitated, or physically helpless; ***** e)-l) same as Criminal Sexual Conduct in 3rd Degree, with exception act performed is sexual contact, not sexual penetration.	Under 13; At least 13, but under 16; At least 16, but under 18	No age limits; More than 3 years older than victim; Not more than 4 yrs. older	No mistake of age or consent defenses for (a), (e), (f), (g); Force not necessary; Mistake of age defense for (b) (prep. of evidence) standard)	Not more than 10 years or fine of not more than \$20,000, or both; ***** Disc. Stay above/See §609.346 enh. pen. for sub. off.
Criminal Sexual Conduct in the 5th Degree  Minn. Stat. § 609.3451	1) Engages in nonconsensual sexual contact, defined as follows: a) intentional touching by perpetrator of victim's intimate parts; or b) touching by victim of perpetrator's or another's intimate parts through coercion or use of a position of authority, or by inducement if victim is under 13 or mentally impaired; or c) touching by another of victim's intimate parts by coercion or use of position of authority; or d) touching of clothing covering immediate area of intimate parts, with exception of buttocks; or e) removal or attempted removal of clothing covering victim's intimate parts or undergarments with sexual or aggressive intent.	No age limits; Under 13	No age limits		Not more than 1 year in prison or a fine of not more than \$3,000, or both.
Solicitation of Children To Engage in Sexual Conduct  Minn. Stat. § 609.352	1) Solicits (commands, entreats, or attempts to persuade) a child under 15 to engage in sexual conduct with intent to engage in sexual conduct	Under 15	18 or older	No mistake of age defense	Not more than three years in prison, or fine of not more than \$5,000, or both
Incest  Minn. Stat. § 609.365	1) Has sexual intercourse with another nearer of kin to actor than 1st cousin, computed by rules of civil law, whether or the half or the whole blood, with knowledge of relationship.	No age limits	No age limits		Not more than 10 yrs. in prison



**MISSOURI: SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
<p>Rape (Attempted Rape; Forcible)</p> <p>Mo. Rev. Stat. § 566.030</p>	<p>1) Has sexual intercourse with person to whom he is not married without person's consent and using "forcible compulsion"; or *****</p> <p>2) (1) above and: a) infliction of serious physical injury on any person; b) displays deadly weapon or dangerous instrument in threatening manner; or c) subjects victim to sexual intercourse or deviate sexual intercourse with more than one person; or *****</p> <p>3) Has sexual intercourse with person under 14 to whom he is not married; or *****</p> <p>4) (3) above and: a) inflicts serious physical injury on any person; or b) displays deadly weapon or dangerous instrument in threatening manner.</p>	<p>No age limits; Under 14</p>	<p>No age limits</p>	<p>Marriage No mistake of age defense (\$566.020);</p>	<p>Not less than 5 years to life in prison (\$1); ***** Class A Fel. (\$2); ***** Class B Fel. (\$3) ***** Class A Fel. (\$4)</p>
<p>Sexual Assault in the 1st Degree</p> <p>Mo. Rev. Stat. § 566.040</p>	<p>1) perpetrator is 17 or older and has sexual intercourse with person to whom he is not married, who is incapacitated, or who is 14 or 15; *****</p> <p>2) (1) above and inflicts serious physical injury on any person, or displays deadly weapon in threatening manner.</p>	<p>14 or 15</p>	<p>No age limits</p>	<p>Marriage; Mistake of age and consent defenses (\$566.020)</p>	<p>Class C Fel. (\$ 1) ***** Class B Fel. (\$ 2)</p>
<p>Sexual Assault in the 2nd Degree</p> <p>Mo. Rev. Stat. § 566.050</p>	<p>1) Perpetrator is 17 or older and has sexual intercourse with person to whom he is not married who is sixteen years old; *****</p> <p>2) 1) above and inflicts serious injury on any person, or displays deadly weapon in threatening manner</p>	<p>16</p>	<p>17 or more</p>	<p>Marriage</p>	<p>Class D Fel. (\$1) ***** Class C Fel. (\$ 2)</p>
<p>Sodomy (or attempt to commit)</p> <p>Mo. Rev. Stat. § 566.060</p>	<p>1) Has deviate sexual intercourse with victim to whom he is not married without victim's consent and by "forcible compulsion;" or *****</p> <p>2) (1) above and: a) inflicts serious physical injury on any person; or b) displays deadly weapon or dangerous instrument in threatening manner; or c) subjects victim to deviate sexual intercourse or sexual intercourse with more than one person; or *****</p> <p>3) Has deviate sexual intercourse with victim to whom he is not married and who is under 14; or *****</p> <p>4) (3) above and (a) &amp; (b) of (2) above.</p>	<p>No age limits; under 14</p>	<p>No age limits;</p>	<p>Marriage; No mistake of age defense (\$566.020)</p>	<p>Not less than 5 years/life in prison (\$1) ***** Class A Fel. (\$2) ***** Class B Fel. (\$3) ***** Class A Fel. (\$4)</p>





**MISSOURI: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
Deviate Sexual Assault in the 1st Degree  Mo. Rev. Stat. § 566.070	1) Has deviate sexual intercourse with victim to whom he is not married, who is incapacitated, or who is 14 or 15; or ***** 2) (1) above inflicts serious injury on any person, or displays deadly weapon in threatening manner.	No age limits; 14 or 15	No age limits	Marriage; Mistake of age & consent defense	Class C Fel. (\$1) ***** Class B Fel. (\$2)
Deviate Sexual Assault in the 2nd Degree  Mo. Rev. Stat. § 566.080	1) Perpetrator is 17 or older and has deviate sexual intercourse with victim to whom he is not married and who is 16; or ***** 2) (1) above and inflicts serious injury, or displays deadly weapon in threatening manner.	16	17 or more	Marriage	Class C Fel. (\$1) ***** Class B Fel. (\$2)
Sexual Misconduct  Mo. Rev. Stat. § 566.090	1) Perpetrator is under 17 and has sexual intercourse with victim to whom he is not married who is 14 or 15; or ***** 2) Engages in deviate sexual intercourse with victim to whom he is not married and who is under 17; ***** 3) Has deviate sexual intercourse with another person of same sex.	No age limits; 14 or 15; Under 17	No age limits; Under 17	Marriage; Mistake of age defense (\$566.020)	Class A Misd.
Sexual Abuse in the 1st Degree  Mo. Rev. Stat. § 566.100	1) Subjects victim to whom he is not married to sexual contact without victim's consent and by "forcible compulsion;" or ***** 2) Subjects victim who is less than 12 to sexual contact; or ***** 3) (1) or (2) above and: a) inflicts serious physical harm on any person; or b) displays a deadly weapon in a threatening manner.	No age limits;  **** Less than 12	No age limits;	Marriage; No mistake of age defense (\$566.020)	Class D  *** Class C Felony
Sexual Abuse in the 2nd Degree  Mo. Rev. Stat. § 566.110	1) Subjects victim to whom he is not married to sexual contact and the victim is incapacitated or 12 or 13; or ***** 2) Same as (1) above and inflicts serious physical injury on any person or displays deadly weapon in threatening manner.	No age limits; 12 or 13;	No age limits	Marriage; Consent and incapacitated defenses (\$566.020); No mistake of age defense	Class A Misd. (\$1) ***** Class D Felony (\$2)



**MISSOURI: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
Sexual Abuse in the 3rd Degree  Mo. Rev. Stat. § 566.120	1) Subjects victim to whom he is not married to sexual contact without victim's consent; or ***** 2) (1) above and displays a deadly weapon in a threatening manner.	No age limits	No age limits	Marriage	Class B Misd. (§1) ***** Class A Misd. (§2)
Indecent Exposure  Mo. Rev. Stat. § 566.130	1) Knowingly exposes his genitals under circumstances he knows will likely cause affront or alarm.	No age limits	No age limits		Class A Misd.
Incest  Mo. Rev. Stat. § 568.020	1) Marries, purports to marry, or engages in sexual intercourse or deviate sexual intercourse with person he knows to be, without regard to legitimacy, the following: his ancestor or descendant by blood or adoption; his stepchild, while the marriage creating that relationship exists; his brother or sister of the whole or half-blood; or his uncle, aunt, nephew or niece of whole blood.	No age limits	No age limits		Class D Fel.



**OHIO: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
<p>Rape</p> <p>Ohio Rev. Code Ann. § 2907.02</p>	<p>1) Engages in sexual conduct with victim, who is not offender's spouse or is spouse of offender but is living separate and apart from the offender, when either of following apply:                      a) offender substantially impairs victim's judgment or control by administering drug or intoxicant to victim, surreptitiously or by force, threat of force, or deception; or                      b) victim is less than 13, whether or not the offender knows victim's age; or                      *****</p> <p>2) Engages in sexual conduct with victim purposely compels victim to submit by force or threat of force.</p>	<p>No age limits; Under 13</p>	<p>No age limits</p>	<p>No mistake of age defense; Not necessary for victim to prove physical resistance (§2907.02(C)); Limitations on evidence of victim or def. sexual history (§2907.02(D)); Appointment of counsel for victim/admissibility of evidence (§2907.02(F)); No marriage defense if force or threat of force (§2907.02(G))</p>	<p>1st Degree Agg. Felony; Life Imprisonment (Victim under 13 and force or threat of force)</p>
<p>Sexual Battery</p> <p>Ohio Rev. Code Ann. § 2907.03</p>	<p>1) Engages in sexual conduct with victim, not offender's spouse, when any of the following apply:                      a) offender knowingly coerces victim to submit by any means that would prevent resistance by person of ordinary resolution;                      b) offender knows that victim's ability to appraise nature of or control victim's own conduct is substantially impaired;                      c) offender knows that victim submits because victim is unaware that act is being committed;                      d) offender knows that victim submits because such person mistakenly identifies the offender as his or her spouse;                      e) offender is victim's natural or adoptive parent, or stepparent, or guardian, custodian, or person in loco parentis; or                      f) offender has supervisory or disciplinary authority over victim who is in legal custody or a patient in hospital or other institution.</p>	<p>No specific age cited; see § e (offender as parent, guardian, custodian, or person in loco parentis)</p>	<p>No age limits</p>	<p>Marriage defense</p>	<p>3rd Degree Felony</p>
<p>Corruption of a Minor</p> <p>Ohio Rev. Code Ann. § 2907.04</p>	<p>1) Engages in sexual conduct with victim, not the offender's spouse, and offender knows victim is 13 or older, but less than 16, or offender is reckless in that regard.</p>	<p>13 or older, but under 16</p>	<p>18 or older</p>	<p>Marriage defense</p>	<p>3rd Degree Felony; 1st Degree Misd. (def. less than 4 yrs. older than victim)</p>



**OHIO: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
<p>Gross Sexual Imposition</p> <p>Ohio Rev. Code Ann. § 2907.05</p>	<p>1) Have or cause to have sexual contact with victim, not the offender's spouse, or cause two or more other persons to have sexual contact when any of following apply:</p> <p>a) offender purposely compels victim to submit by force or threat of force;</p> <p>b) offender substantially impairs victim's judgment or control by administering drug or intoxicant to victim, surreptitiously or by force, threat of force, or deception for the purpose of preventing resistance;</p> <p>c) offender knows that victim's judgment or control is substantially impaired as result of the influence of drug or intoxicant administered to other person with his consent for purpose of any kind of medical or dental examination, treatment, or surgery; or</p> <p>d) the victim is under 13, whether or not offender knows the age of such person.</p>	<p>No age limits; 13 or under</p>	<p>No age limits</p>	<p>No mistake of age defense;</p> <p>Marriage defense;</p> <p>Not necessary for victim to prove physical resistance (§2907.05(C));</p> <p>Limitations on evidence of victim or def. sexual history (§2907.05(D));</p> <p>Appointment of counsel for victim/admissibility of evidence (§2907.05(F))</p>	<p>4th Degree Felony (§§a,b,c);</p> <p>3rd Degree Felony (§d)</p>
<p>Sexual Imposition</p> <p>Ohio Rev. Code Ann. § 2907.06</p>	<p>1) Have or cause to have sexual contact with victim, not the offender's spouse, or cause two or more other persons to have sexual contact when any of following apply:</p> <p>a) offender knows that sexual contact is offensive to victim, or is reckless in that regard;</p> <p>b) offender knows that victim's ability to appraise nature of or control offender's or touching person's conduct is substantially impaired; or</p> <p>c) the victim is 13 or older, but less than 16, whether or not offender knows the victim's ages, and offender is at least 18 and four or more years older than victim.</p>	<p>No age limits; 13 or older, but less than 16</p>	<p>No age limits; At least 18 and 4 yrs. or more older than victim</p>	<p>No mistake of age defense;</p> <p>Marriage defense;</p> <p>No conviction solely upon victim's testimony unsupported by other evidence (§2907.06(C))</p>	<p>3rd Degree Misd.</p>
<p>Importuning</p> <p>Ohio Rev. Code Ann. § 2907.07</p>	<p>1) Solicit person under 13 to engage in sexual activity with offender, whether or not offender knows age of such person; or *****</p> <p>2) Solicit person of same sex to engage in sexual activity with offender, when offender knows such solicitation is offensive to other person, or is reckless in that regard; or *****</p> <p>3) Solicit another, not the offender's spouse, to engage in sexual conduct with offender, when offender is 18 or older and four or more years older than victim, and victim is over 12, but not over 15, whether or not offender knows victim's age.</p>	<p>Under 13; No age limits; Over 12, but less than 15</p>	<p>No age limits; 18 or older and 4 yrs. or more older than victim</p>	<p>No mistake of age</p>	<p>3rd Degree Misd.</p>
<p>Voyeurism</p> <p>Ohio Rev. Code Ann. § 2907.08</p>	<p>1) Commits trespass or otherwise surreptitiously invades another's privacy to spy or eavesdrop upon another with the purpose of sexually arousing or gratifying himself or herself.</p>	<p>No age limits</p>	<p>No age limits</p>		<p>3rd Degree Misd.</p>





**OHIO: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
<p>Public Indecency Ohio Rev. Code Ann. § 2907.09</p>	<p>1) Does any of the following, under circumstances in which his or her conduct is likely to be viewed by and affront others, not members or his or her household: expose his or her private parts, or engage in masturbation; engage in sexual conduct; engage in conduct which to an ordinary observer would appear to be sexual conduct or masturbation.</p>	<p>No age limits</p>	<p>No age limits</p>		<p>4th Degree Misd.; 3rd Degree Misd. (2nd Off.); 2nd Degree Misd. (3rd Off.); 1st Degree Misd. (4th &amp; Sub. Off.)</p>
<p>Felonious Sexual Penetration Ohio Rev. Code Ann. § 2907.12</p>	<p>1) Without privilege to do so, inserts any part of body, or any instrument, apparatus, or other object into the vaginal or anal cavity of another who is not offender's spouse or who is offender's spouse but is living separate and apart from offender, when either of following apply: a) offender substantially impairs victim's judgment or control by administering any drug or intoxicant to victim, surreptitiously or by force, threat of force, or deception; or b) victim is less than 13, whether or not the offender know the victim's age; or ***** 2) Without privilege to do so, inserts any part of body, or any instrument, apparatus, or other object into the vaginal or anal cavity of another when offender purposely compels the victim to submit by force or threat of force.</p>	<p>No age limits; Under 13;</p>	<p>No age limits</p>	<p>No mistake of age defense; No marriage or cohabitation defense if force or threat of force</p>	<p>1st Degree Agg. Felony; Life Imprisonment (if victim under 13 and force or threat of force)</p>
<p>Criminal Child Enticement Ohio Rev. Code Ann. § 2905.05</p>	<p>1) Without privilege to do so, knowingly solicits, coaxes, entices, or lures child under 14 to enter into any vehicle (defined in §4501.01) whether or not offender knows child's age and both of following apply: a) offender does not have express or implied permission of parent, guardian, or other legal custodian of child in undertaking activity; and b) offender is not law enforcement officer, medic, fire fighter, or other person who regularly provides emergency services, and is not employee or agent of, or a volunteer acting under direction of board of education, or the offender is any of the aforementioned persons, but at the time the offender undertakes the activity, offender is not acting within scope of lawful duties in that capacity.</p>	<p>Under 14</p>	<p>No age limits</p>	<p>No mistake of age defense; Actor undertook activity in response to bona fide emergency situation or had reasonable belief that child's health, safety, or welfare at risk (§2905.05(B))</p>	<p>1st Degree Misd.; 4th Degree Felony (Sub. Off.)</p>



**WISCONSIN: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
<p>1st Degree Sexual Assault (1)</p> <p>Wis. Stat. § 940.225</p>	<p>1) Has sexual contact or intercourse without victim's consent and:                      a) causes pregnancy; or                      b) great bodily harm; or                      *****</p> <p>2) Has sexual contact or intercourse without victim's consent by use or threat of use of dangerous weapon or article used or fashioned in manner to lead victim reasonably to believe it to be dangerous weapon; or                      *****</p> <p>3) Has sexual contact or intercourse without victim's consent by use or threat of force or violence and while aided and abetted by one or more other persons.</p>	No age limits	No age limits	No marriage or victim's death defenses; Evidence of victim's prior sexual conduct inadmissible with exceptions (§972.11)	Class B Felony
<p>2nd Degree Sexual Assault</p> <p>Wis. Stat. § 940.225(2)</p>	<p>1) Has sexual contact or intercourse without victim's consent by use or threat of force or violence; or                      *****</p> <p>2) Has sexual contact or intercourse without victim's consent and causes injury, illness, disease or impairment of sexual or reproductive organ, or mental anguish requiring psychiatric care for victim; or                      *****</p> <p>3) Knowingly has sexual contact or intercourse with victim who suffers from mental illness or deficiency rendering the victim temporarily or permanently incapable of appraising his/her conduct; or                      *****</p> <p>4) Knowingly has sexual contact or intercourse with victim who is unconscious; or                      *****</p> <p>5) Has sexual contact or intercourse without victim's consent and is aided or abetted by one or more other persons; or                      *****</p> <p>6) Perpetrator is employee of inpatient facility or state treatment facility and has sexual contact or intercourse with victim who is patient or resident of facility.</p>	No age limits	No age limits	No marriage or victim's death defenses; Victim's prior sexual conduct (see above); Consent not a issue for (3), (4), & (6) but for (3) & (4) rebuttable by competent evidence	Class C Felony
<p>3rd Degree Sexual Assault</p> <p>Wis. Stat. § 940.225(3)</p>	<p>1) Has sexual intercourse without victim's consent.</p>	No age limits	No age limits	See above	Class D Felony.
<p>4th Degree Sexual Assault</p> <p>Wis. Stat. § 940.225(3m)</p>	<p>1) Has sexual contact without victim's consent.</p>	No age limits	No age limits	See above	Class A Misc.



**WISCONSIN: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
Forced Viewing of Sexual Activity  Wis. Stat. § 940.227	1) Causes child under 18, but above 13 to view sexually explicit conduct by use or threat of force or violence; or ***** 2) (1) above, but child is under 13.	Under 18, but above 13; ***** Under 13;	No age limits		Class D Felony (§1) ***** Class C Felony (§2)
Fornication  Wis. Stat. § 944.15	1) Has sexual intercourse in public in place or manner such that perpetrator knows or has reason to know that his/her conduct is observable by or in presence of persons other than person with whom he/she is having sexual intercourse.	No age limits	No age limits		Class A Misd.
Adultery  Wis. Stat. § 944.16	1) Perpetrator is married and has sexual intercourse with person not his spouse; or 2) Perpetrator has sexual intercourse with person who is married to another.	No age limits	No age limits		Class D Felony
Sexual Gratification  Wis. Stat. § 944.17	1) Commits act of sexual gratification as follows: a) In public (as defined in §944.15) involving sex organ of one person and mouth or anus of another; or b) Involving his/her sex organ and sex organ, mouth or anus of animal; or c) Involving his/her sex organ, mouth or anus and sex organ of animal.	No age limits	No age limits		Class A Misd.
Lewd and Lascivious Behavior  Wis. Stat. § 944.20	1) Commits indecent act of sexual gratification with another with knowledge that they are in presence of others; or 2) Publicly and indecently exposes genitals or public area.	No age limits	No age limits		Class A Misd.
1st Degree Sexual Assault of a Child  Wis. Stat. § 948.02(1)	1) Has sexual contact or intercourse with person under 13.	Under 13	No age limits		Class B Felony



**WISCONSIN: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
<p>2nd Degree Sexual Assault of a Child</p> <p>Wis. Stat. § 948.02(2)</p>	<p>1) Has sexual contact or sexual intercourse with person under 16.</p>	<p>Under 16</p>	<p>No age limits</p>	<p>No marriage or victim's death defenses</p>	<p>Class C Felony</p>
<p>Failure to Act to Prevent Sexual Assault of a Child</p> <p>Wis. Stat. § 948.02(3)</p>	<p>1) Person is responsible for welfare of child under 16 (parent, guardian, foster parent, public or private residential home employee, other responsible in residential setting, and person employed by one legally responsible for the child's welfare who exercises temporary control or care of the child) and:</p> <p>a) person has knowledge that another person intends to have, is having or has had sexual intercourse or contact with child;</p> <p>b) is physically and emotionally capable of taking action which will prevent intercourse or contact from taking place or being repeated,</p> <p>c) fails to take action exposing the child to unreasonable risk that intercourse or contact may occur between child and other person; or</p> <p>d) facilitates intercourse or contact that does occur between child and other person.</p>	<p>Under 16</p>	<p>No age limits</p>	<p>No marriage or victim's death defenses</p>	<p>Class C Felony</p>
<p>Child Enticement</p> <p>Wis. Stat. § 948.07(4)</p>	<p>1) Causes or attempts to cause child under 18 to go into any vehicle, building, room or secluded area; and</p> <p>2) Takes pictures of child engaging in sexually explicit conduct.</p>	<p>Under 18</p>	<p>No age limits</p>		<p>Class C Felony</p>
<p>Sexual Intercourse with a Child 16 or older</p> <p>Wis. Stat. § 948.09</p>	<p>1) Has sexual intercourse with child who has attained the age of 16 who is not the perpetrator's spouse.</p>	<p>16-18</p>	<p>No age limits</p>	<p>Marriage</p>	<p>Class A Misd.</p>
<p>Exposing Genitals or Public Area</p> <p>Wis. Stat. § 948.10</p>	<p>1) Causes a child to expose genitals or public area for purposes of sexual arousal or gratification; or</p> <p>2) Exposes genitals or public area to a child for above stated purpose.</p>	<p>18 or under</p>	<p>No age limits</p>	<p>Marriage</p>	<p>Class A Misd.</p>





**WISCONSIN: CRIMINAL SEX OFFENSES**

OFFENSE	ELEMENTS OF CRIME	VICTIM AGE	DEF AGE	DEFENSES	PENALTY
Incest  Wis. Stat. § 944.06	1) Marries or has nonmarital sexual intercourse with person he or she knows is blood relative and such relative is in fact related in degree in which marriage of parties is prohibited by state law.	No age limits	No age limits	Legitimate Marriage	Class A Misd.



## **CHILD PORNOGRAPHY**

This section details the child pornography statutes of Illinois, Indiana, Iowa, Kentucky, Minnesota, Missouri, Ohio, and Wisconsin. Topics include: age of protection; prohibited activities involving the production, dissemination, and possession of child pornography; the pornographic medium; definitions of sexual conduct; parental or guardian complicity; defenses to charges of illegal conduct; evidentiary considerations related to prosecution; forfeiture of proceeds; mandatory reporting requirements; exposure of juveniles to pornographic matter; and unique and other relevant statutory provisions. Appendix I consists of tables summarizing statutes cited below.

### **I Do States have statutes specifically addressing child pornography?**

#### **Illinois:**

Ill. Comp. Stat. ch. 720, §§ 5/11-20.1, 20.2

#### **Indiana:**

Ind. Code §§ 35-42-4-4, 35-49-3-1, 3-2

#### **Iowa:**

Iowa Code §§ 728.12, .14

#### **Kentucky:**

Ky. Rev. Stat. Ann. §§ 531.310, .320, .335, .340, .350, .360, .370

#### **Minnesota:**

Minn. Stat. §§ 617.246, .247

#### **Missouri:**

Mo. Rev. Stat. §§ 573.025, .035, .037, .568.060, .080, .090, 110

#### **Ohio:**

Ohio Rev. Code Ann. §§ 2907.321, .322, .323, 2919.22

#### **Wisconsin:**

Wis. Stat. §§ 948.05, .07, .12

**II What is the age of protection under child pornography statutes?**

<b>Illinois:</b>	Under 18
<b>Indiana:</b>	Under 16
<b>Iowa:</b>	Under 18
<b>Kentucky:</b>	Under 18 (enhanced penalties, if less than 16 and/or physical injury)
<b>Minnesota:</b>	Under 18
<b>Missouri:</b>	Under 18 (Under 17 if sexual performance or prosecuted pursuant to "Abuse of Child")
<b>Ohio:</b>	Under 18 (Under 21, if physical or handicapping condition)
<b>Wisconsin:</b>	Under 18

***COMMENTARY:***

With the exception of Indiana, all states prohibit the use of performers under the age of eighteen. Although Indiana's children are protected from exposure to obscene or harmful material until age eighteen, Indiana's child pornography statute only provides that performers cannot be under sixteen. Children between the ages of sixteen and eighteen who perform are not protected.

Missouri's child pornography statutes generally protect children under eighteen; however, the age limit is seventeen if a sexual performance is involved, Mo. Rev. Stat. §568.080, or if an individual is prosecuted for photographing or filming a child pursuant to "Abuse of Child." Mo. Rev. Stat. § 568.060. In addition, film and photographic print processors in Missouri only have a duty to report child pornography depicting children under seventeen. Mo. Rev. Stat. § 568.110.

Illinois expands its statutes' coverage to institutionalized individuals who have been diagnosed as having severe or profound mental retardation.

**III What activities are prohibited under child pornography statutes?**

**A) Production/Creation of Child Pornography**

**Illinois:**

Filming, videotaping, photographing, depicting or portraying by means of similar visual medium or reproduction of actual or simulated sexual conduct [Section 5/11-20.1(1)]

Producing live stage play, live performance, film, videotape or similar visual portrayal of actual or simulated sexual conduct [Section 5/11-20.1(3)]

"Produce" means to direct, promote, advertise, publish, manufacture, issue, present or show [Section 5/11-20.1(f)(3)]

**Indiana:**

Managing, producing, photographing, filming, or videotaping performance or incident that includes sexual conduct or obscene performance [Section 35-42-4-4(b)(1)]

**Iowa:**

Reason to know or intending act or simulated act be photographed, filmed, or otherwise preserved in negative, slide, book, magazine, or other print or visual medium [Section 728.12(1)]

**Kentucky:**

Producing, directing, promoting (preparing, publishing, printing, manufacturing (Section 531.300(7)) performance which includes sexual conduct by minor [Section 531.320(1)]

**Minnesota:**

Promoting (producing, directing, publishing, manufacturing, or issuing (Section 617.246)) minor to engage in or assist others to engage in posing or modeling alone or with others in any sexual performance [Section 617.246(2)]

**Missouri:**

Photographing, filming, videotaping, producing, publishing or otherwise creating child pornography, or knowingly causing another do to so [Section 573.025(1)]

Photographing or filming child less than 17 engaging in prohibited sexual act, or causing or knowingly permitting child to engage in prohibited sexual act or in simulation of such act for purpose of photographing or filming the act [Section 568.060(2)]

Producing or directing sexual performance by child less than 17 [Section 568.080(1)]

**Ohio:**

Creating, reproducing, or publishing obscene material that has minor as one of its participants or portrayed observers [Section 2907.321(A)(1)]

Creating, directing, or producing obscene performance that has minor as one of its participants [Section 2907.321(A)(3)]

Creating, recording, photographing, filming, developing, reproducing, or publishing any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality [Section 2907.322(A)(1)]

Creating, directing, or producing a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality [Section 2907.322(A)(3)]

Photographing minor who is not person's child or ward in a state of nudity, or creating, directing, producing, or transferring any material or performance that shows minor in state of nudity (for exceptions to this provision, see attached Table setting forth Ohio's child pornography laws)[Section 2907.323(A)(1)]

**Wisconsin:**

Photographing, filming, videotaping, recording sounds of or displaying in any way child engaged in sexually explicit conduct [Section 948.05(1)(b)]

Producing and performing in any undeveloped film, photographic negative, photograph, motion picture, videotape, sound recording or other reproduction of child engaged in sexually explicit conduct [Section 948.05(1)(c)]

**B) Employment/Solicitation of Child For Production**

**Illinois:**

Soliciting child to appear in stage play, live presentation, film, videotape, photograph or similar visual reproduction of actual or simulated sexual conduct [Section 5/11-20.1(4)]

**Indiana:**

No specific statutory provision

**Iowa:**

Employing, using, persuading, inducing, enticing, coercing, knowingly permitting, or otherwise causing minor to engage in a prohibited sexual act or simulation thereof [Section 728.12(1)]

**Kentucky:**

Employing, consenting to, authorizing, or inducing minor to engage in sexual performance, including play, motion picture, photograph, dance, or any other visual representation before audience [Section 531.310(1)]

Hiring, employing, or using minor to do or assist in distributing material portraying sexual performance by minor [Section 531.370(1)]

Inducing, assisting, or causing minor to engage in criminal activity constituting a felony [Section 530.065(10)]

**Minnesota:**

Employing, using or permitting minor to engage in or assist other in sexual performance [Section 617.246(2)]

**Missouri:**

Employing, authorizing, or inducing child less than 17 to engage in sexual performance [Section 568.080(1)]

**Ohio:**

Enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing child to act, model, or in any way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance [Section 2919.22(B)(6)]

**Wisconsin:**

Employing, using, persuading, inducing, enticing or coercing child to engage in sexually explicit conduct for purpose of photographing, filming, videotaping, recording sounds of or displaying in any way the conduct [Section 948.05(1)(a)]

Causing or attempting to cause any child under 18 to go into any vehicle, building, room or secluded place and takes pictures of child engaging in sexually explicit conduct [Section 948.07(4)]

**C) Dissemination/Promotion of Child Pornography****Illinois:**

Reproducing, disseminating (sell, distribute, exchange or transfer possession, whether with or without consideration (Section 5/11-20.1(f)(1)), offering to disseminate, exhibiting or possessing with intent to disseminate film, videotape, photograph or similar visual reproduction of actual or simulated sexual conduct [Section 5/11-20.1(1)&(2)]

Possessing more than one of film, videotape or visual reproduction in which child pornography is depicted raises rebuttable presumption that defendant possessed materials with intent to distribute [Section 5/11-20.1(b)(4)]

**Indiana:**

Sponsoring, presenting, exhibiting performance or incident which includes sexual conduct or obscene performance [Section 35-42-4-4(b)(1)]

Disseminating (transferring possession for free or for consideration), exhibiting to another person, offering to disseminate or exhibit to another person, or sending or bringing into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct or is obscene [Section 35-42-4-4(a)&(b)(2)]



**Iowa:**

Promoting (procuring, manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transferring, transmuted, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting, advertising, offering, or agreeing to any of these acts (Section 728.1(7)) any material visually depicting a live performance of a minor engaging in a prohibited sexual act or simulation of a prohibited act [Section 728.12(2)]

Disseminating means to transfer possession with or without consideration [Section 728.1(1)]

**Kentucky:**

Promoting (preparing, publishing, printing, procuring, manufacturing, or offering or agreeing to do the same (Section 531.300 (7)) performance which includes sexual conduct by minor [Section 531.320(1)]

Sending or causing to be sent into state for sale or distribution (transfer possession with or with consideration (Section 531.300(1)) matter portraying sexual performance by minor; bringing or causing to be brought into state for sale or distribution any matter portraying a sexual performance by minor; exhibiting for profit or gain, distributing, or offering to distribute, or intending to do so, any matter portraying a sexual performance by a minor [Section 531.340(1)]

More than one unit shall create rebuttable presumption that person has intent to distribute matter portraying a sexual performance [Section 531.040(2)]

Writing or creating advertising, soliciting anyone to publish advertising, or otherwise promoting the sale or distribution of matter portraying sexual performance by minor [Section 531.060(1)]

**Minnesota:**

Disseminating for profit work depicting minor in sexual performance [Section 617.246(4)]

Owning or operating business in which work depicting minor in sexual performance is disseminated [Section 617.246(3)]

Disseminating a photographic representation (original or reproduction of film, videotape, videodisc, photograph, negative, or slide) of sexual conduct involving minor [Section 617.247(3)]

Promoting (publishing, issuing, advertising (Section 617.246(1)(c)) minor to engage in sexual performance [Section 617.246(2)]

**Missouri:**

Selling, delivering, exhibiting or otherwise making available, or offering or agreeing to sell, deliver, exhibit, or otherwise make available, any child pornography [Section 573.035(1)]

Buying, procuring or possessing child pornography with purpose of furnishing to others [Section 573.035(2)]

Promoting sexual performance by child less than 17 [Section 568.090(1)]

Promote (as used in Chapter 573): to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same [Section 573.010(11)]

**Ohio:**

Promoting or advertising for sale or dissemination; selling, delivering, disseminating, displaying, exhibiting, presenting, renting, or providing; offering or agreeing to sell, deliver, disseminate, display, exhibit, present, rent, or provide obscene material that has a minor as one of its participants or portrayed observers [Section 2907.321(A)(2)]

Advertising or promoting for presentation, presenting, or participating in presenting an obscene performance that has a minor as one of its participants [Section 2907.321(A)(4)]

Advertising for sale or dissemination, selling, distributing, transporting, disseminating, exhibiting, or displaying any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality [Section 2907.322(A)(2)]

Advertising for presentation, presenting, or participating in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality [Section 2907.322(A)(4)]

**Wisconsin:**

Profiting from, promoting, importing (does not require commercial element or exempt personal use) into the state, reproducing, advertising, selling, distributing or possessing with intent to sell or distributing undeveloped film, photographic negative, photograph, motion picture, videotape, sound recording or other reproduction of child engaging in sexually explicit conduct [Section 948.05(1)(c)]

**D) Possession of Child Pornography****Illinois:**

Possessing, or possessing with intent to disseminate film, videotape, photograph, or similar visual presentation or portrayal of actual or simulated sexual conduct [Section 5/11-20.1(2)&(6)]

**Indiana:**

Knowingly or intentionally possessing a picture, a drawing, a photograph, a negative image, undeveloped film, a motion picture, a videotape, or any pictorial representation depict that depicts or describes sexual conduct by a child who is, or appears to be, less than sixteen years of age, and depiction lacks serious literary, artistic, political or scientific value [Section 35-42-4-4]

**Iowa:**

Purchasing or possessing negative, slide, book, magazine, other print or visual medium depicting prohibited sexual act or simulation of prohibited sexual act [Section 728.12(3)]

**Kentucky:**

Possessing or controlling any matter which visually depicts actual sexual performance by a minor [Section 531.335(1)]

**Minnesota:**

Possessing photographic representation (original or reproduction of film, videotape, videodisc, photograph, negative, or slide) of sexual conduct involving minor [Section 617.247(4)]

**Missouri:**

Buying, procuring or possessing child pornography with purpose of furnishing it to others [Section 573.035(1)(2)]

Possessing or controlling any obscene material that has a minor as one of its participants or portrays a minor as an observer of sexual conduct, sexual contact, or sexual performance; or possessing or controlling any material that shows a minor participating or engaging in sexual conduct [Section 573.037(1)]

**Ohio:**

Buying, procuring, possessing, or controlling any obscene material that has minor as one of its participants [Section 2907.321(A)(5)]

Soliciting, receiving, purchasing, exchanging, possessing or controlling any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality [Section 2907.322(A)(5)]

Possessing or viewing any material or performance that shows a minor who is not the person's child or ward in a state of nudity (see attached Table setting forth Ohio's child pornography laws for exceptions) [Section 2907.323(A)(3)]

**Wisconsin:**

Possessing undeveloped film, photographic negative, photograph, motion picture, videotape or other pictorial reproduction of child engaged in sexually explicit conduct[Section 948.12]

**COMMENTARY:**

All statutes prohibit the creation or production of child pornography. The terms "creation" or "production" may not be utilized in all instances; statutes do specify activities which can be construed to mean "creation" or "production," such as filming, videotaping, photographing, depicting or portraying by means of similar medium.

Regarding the employment or solicitation of minors to perform in pornography production, seven of the eight states outlaw such activity. Indiana law does not specifically address employment or solicitation. Iowa, Ohio, and Wisconsin statutes broadly delineate other activities related to solicitation, including using, encouraging, persuading, inducing, enticing, and coercing. Missouri and Kentucky statutes include inducing as an element of the crime. In addition to Iowa and Wisconsin, Ohio expressly prohibits compelling a child to participate in child pornography production. A Minnesota provision prohibits using a minor to assist another in a sexual performance and Kentucky law forbids the employment of a minor to assist another in distributing child pornography.

All state statutes prohibit some type of child pornography dissemination. Iowa has one of the more detailed definitions of promoting which encompasses "procuring, manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transferring, transmuting, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting, advertising, offering, or agreeing to any of the aforementioned acts." Iowa Code § 728.12(2). Likewise, other states forbid advertising. Indiana does not ban advertising outright, but does prohibit "offering to disseminate."

The majority of statutes clarify that dissemination means to transfer possession with or without consideration. Provisions in Ohio and Wisconsin do not specify a profit requirement, but also do not state distribution for free. (Commentary to Wisconsin's provisions refers to *State v. Bruckner*, 447 N.W.2d 376 (Wis. Ct. App. 1989) for the proposition that the term "import" means "bringing in from external source and does not require commercial element or exempt personal use.") Minnesota has two statutory provisions prohibiting dissemination of child pornography. The provision making dissemination a felony states "dissemination" is "for profit," Minn. Stat. § 617.246(4); the provision making it a misdemeanor is silent as to consideration, but the implication is that dissemination can be without consideration. Minn. Stat. § 217.247(3). One should note that Minnesota's law dealing with the exposure of minors to sexually explicit materials and exhibits provides that dissemination is "without monetary consideration." Minn. Stat. § 617.291(2).

Illinois and Kentucky appear to be the only states to create a rebuttable presumption that an individual intends to distribute child pornography if he or she possesses more than one item of it. Wisconsin and Missouri prohibit possession with the intent to furnish child pornography to others, but do not specify the number of items necessary to prove intent. In contrast, Ohio's provision states that an individual must possess five or more items to create a presumption that an individual intends to promote or pander obscenity. It is important to be aware, however, that Ohio law related to pandering obscenity or possessing nudity-oriented materials or performances involving minors is silent on the issue.

Mere possession of child pornography for in-home use is forbidden in all eight states. Kentucky's statute may have a limited purpose in that it proscribes possession of "matter which visually depicts an actual sexual performance by minor," Ky. Rev. Stat. Ann. § 531.335(1), rather than all potential pornographic matter of a simulated, animated, or computerized nature. Similarly, though Indiana's definition of child pornography in relation to possession appears to be restrictive, the material is defined as depicting "sexual conduct by a child who is, or appears to be, less than sixteen years of age and that lacks serious literary, artistic, political or scientific value...." Ind. Code § 35-42-4-4(c).

Ohio makes criminal the possession or viewing of "any material or performance that shows a minor who is not the person's child or ward in a state of nudity." Ohio Rev. Code Ann. § 2907.323(A)(3). The United States Supreme Court upheld the constitutionality of Ohio's statute in *Ohio v. Osborne*, 495 U.S. 103 (1990) balancing the State's vital interest in protecting children from the harmful effects of child pornography production against the infringement of individuals' constitutional rights under the First and Fourth Amendments. Ohio also makes it unlawful for an individual to possess "obscene material that has a minor as one of its participants," Ohio Rev. Code Ann. § 2907.321(A)(5), and "any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality," Ohio Rev. Code Ann. § 2907.322(A)(5).

Ohio is the only state to address the transportation of child pornography across state or county lines. In Ohio, it is unlawful to bring or to cause to be brought into the state child pornography or to transport a child into or across Ohio with the intent that the child engage in pornography production. Ohio Rev. Code Ann. §§ 2907.321(A)(6), 2907.322(A)(6).

#### **IV What is the pornographic medium?**

##### **Illinois:**

Film, videotape, photograph or other similar visual reproduction [Section 5/11-20.1(1),(2)]

Stage play, live performance, live presentation, film, videotape or other similar visual portrayal [Section 5/11-20.1(3),(4)]

##### **Indiana:**

Matter: Book, magazine, newspaper, or other printed or written material; picture, drawing, photograph, motion picture, or other pictorial representation; statue or other figure; recording, transcription, or mechanical, chemical, or electrical reproduction; any other articles, equipment, machines, or materials [Section 35-49-1-3]

Performance: play, motion picture, dance, or other exhibition or presentation, whether pictured, animated, or live, performed before an audience of one or more persons [Section 35-49-1-7]

##### **Iowa:**

Photograph, film, negative, slide, book, magazine, or other print or visual medium [Section 728.12(1)]

Material visually depicting live performance [Section 728.12(2)];

Material: book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials [Section 728.1(2)]

**Kentucky:**

**Matter:** book, magazine, newspaper, other printed or written material; picture, drawing, photograph, motion picture, other pictorial representation; statue or other figure; recording transcription; mechanical, chemical or electrical reproduction; other articles, equipment, machines, or materials [Section 531.300(2)]

**Performance:** play, motion picture, photograph, dance; other visual representation exhibited before an audience [Section 531.300(5)]

**Minnesota:**

**Work:** original or reproduction of picture, film, photograph, negative, slide, videotape, videodisc, or drawing [Section 617.246(f)]

**Photographic representation:** original or reproduction of film, videotape, videodisc, photograph, negative, or slide [Section 617.247(2)(a)]

**Sexual performance:** play, dance, or other exhibition presented before audience or for purposes of visual or mechanical reproduction which depicts sexual conduct [Section 617.246(d)]

**Missouri:**

**Child Pornography:** material or performance depicting sexual conduct, sexual contact, or sexual performance and which has as one of its participants or portrayed actual observers, a child under eighteen; provided that it shall not include material which is not the visual reproduction of a live event [573.010(1)]

**Material:** anything printed or written; picture, drawing, photograph, motion picture film, or pictorial representation; undeveloped photographs, molds, printing plates and other latent representational objects; statue or other figure; recording or transcription; or mechanical, chemical, or electrical reproduction; or anything which is or may be used as a means of communication [Section 573.010(5)]

**Performance:** play, motion picture film, videotape, dance or exhibition, performed before an audience [Section 573.010(8)]

**Ohio:**

**Material:** any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, tape, or other tangible thing capable of arousing interest through sight, sound, or touch [Section 2907.01(J); same meaning for Section 2919.22(5) as provided in Section 2912.22(C)(4)(a)]

**Performance:** any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience [Section 2907.01(K); same meaning for Section 2919.22(B)(5) as provided in Section 2912.22(C)(4)(a)]

**Nudity-oriented matter:** any material or performance that shows a minor in a state of nudity and that, taken as a whole by the average person applying contemporary community standards, appeals to the prurient interest [Section 2919.22(C)(4)(b)]

**Nudity:** the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, of covered male genitals in a discernible turgid state [Section 2907.01(H); applicable to Sections 2907.01-2907.37 (statute not clear as to applicability to 2919.22)]

**Sexually oriented matter:** means any material or performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality [Section 2919.22(C)(4)(c)]

**Obscenity:** when considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is obscene if any of the following apply: its dominant appeal is to the prurient interest; its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality; its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose; it contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than for a genuine scientific, educational, sociological, moral, or artistic purpose [Section 2907.01(F); applicable to Sections 2907.01-2907.37 & 2919.22]

**Wisconsin:**

Undeveloped film, photographic negative, photograph, motion picture, videotape, sound recording or other reproduction of child engaging in sexually explicit conduct [Section 948.05(1)]



**COMMENTARY:**

In order to ensure that all child pornography activities are illegal, statutes must address all potential media utilized to portray and communicate child pornography. For the most part, the state statutes examined are quite comprehensive. They delineate specific methods by which child pornography can be communicated, usually incorporating a "catch-all" phrase, such as "other visual portrayal."

All states, except Iowa and Wisconsin, provide that both the medium documenting the sexual activity and live performances are covered by child pornography laws. Two of seven states, Illinois and Missouri, specifically forbid the production of live performances involving minors. Kentucky, Minnesota, and Ohio's statutes imply the prohibition of such performances as they ban a minor's engagement in any sexual performance. In Wisconsin, although its statute addresses the medium recording sexual conduct, it does not appear to specifically prohibit live performances. In Iowa, despite a detailed definition of "material," child pornography is limited to a "visual reproduction of a live event."

Furthermore, states, such as Illinois and Wisconsin, make it clear that almost all acts of sexual conduct portrayed can be actual or simulated. Indiana and Ohio are the only states in which sexual conduct is not clarified as being actual or simulated.

Even though many state statutes defining pornography medium could be interpreted to include the use of computer technology, incorporation of language specifically addressing the issue would eliminate legal challenges in prosecutions of individuals utilizing computers in child pornography activities. Law enforcement officials and others are witnessing an increasing number of cases involving the utilization of computers to produce and promote child pornography, including the transmission of visual images, and to further other types of child sexual exploitation. See Chock, P. "The Use of Computers in the Sexual Exploitation of Children and Child Pornography." *Computer Law Journal* 7:3, 383-407 (1987, Summer). Federal law addressing child pornography specifically prohibits its dissemination "by any means, including computer." 18 U.S.C. §§2251, 2252 (West Supp. 1993)

**V How is sexual conduct defined?****Illinois:**

Actual or simulated act of: sexual intercourse with person or animal; sexual contact involving sex organs of child and the mouth, anus, or sex organs of another person or animal; sexual contact involving the mouth, anus or sex organs of child and sex organs of another person or animal; masturbation; lewd fondling, touching, or caressing involving another person or animal; excretion or urination within a sexual context; being bound, fettered, or subjected to sadistic, masochistic, or

sadomasochistic abuse in any sexual context; posing, posturing, or being in setting involving lewd exhibition of the unclothed genitals, pubic area, buttocks, or fully or partially developed breast of female child or other person [Section 5/11-20.1 (a)(i)-(vii)]

**Indiana:**

**Sexual conduct:** sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or deviate sexual conduct with animal, or any fondling or touching of child by another person or of another person by child intended to arouse or satisfy the sexual desires of either the child or other person [Section 35-42-4-4 (a)]

**Iowa:**

**Prohibited Sexual Act:** sex act as defined in section 702.17 (see below); an act of bestiality involving minor; fondling or touching pubes or genitals of person by minor; sadomasochistic abuse (the infliction of physical or mental pain upon person or the condition of person being fettered, bound or otherwise physically restrained) of minor or of person by minor for purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse; nudity of minor for the purpose of arousing or satisfying the sexual desires of person who may view depiction of the nude minor [Section 728.1(5),(8)]

For purposes of commercial film processor reporting statute, prohibited sexual act includes fondling or touching the pubes or genitals of minor or of person by minor for purpose of arousing or satisfying sexual desires of person who may view depiction of act; does not specifically include above-stated nudity of minor provision [Section 728.14(1)]

**Sex Act or Sexual Activity:** any sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed pursuant to chapter 148, 148C, 150, 150A, 151, or 152; or by use of artificial sexual organs or substitutes in contact with the genitalia or anus [Section 702.17]

**Kentucky:**

**Sexual Conduct by Minor:** acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated; physical contact with, or willful or intentional exhibition of genitals; flagellation or excretion for

purpose of sexual stimulation or gratification; exposure in obscene manner (predominate appeal of the matter taken as a whole is to a prurient interest in sexual conduct involving minors (Section 531.300(3)) of the unclothed or apparently unclothed human male or female genitals, pubic area or buttocks, or female breast, whether or not subsequently obscured by mark placed thereon, or otherwise altered, in any resulting motion picture, photograph or visual representation, exclusive of exposure portrayed in matter of private, family nature, not intended for distribution outside of family [Section 531.300(d)]

**Minnesota:**

**Sexual Conduct:** act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between human being and animal; sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in revealing costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed; masturbation or lewd exhibitions of genitals; physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of male or female humans, or breasts of female, whether alone or between members of same or opposite sex or between humans and animals in act of apparent sexual stimulation or gratification [Section 617.246(e)]

**Missouri:**

**Sexual Conduct:** acts of human masturbation, deviate sexual intercourse, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification [Section 556.061(29)]

**Sexual Contact:** any touching of the genitals or anus of any person, or the breast of any female person, or any such traveling through the clothing, for the purpose of arousing or gratifying sexual desire of any person [Section 556.061(30)]

**Sexual Performance:** any performance, or part thereof, which includes sexual conduct by a child who is less than seventeen years of age [Section 556.061(31)]

**Prohibited Sexual Act for purposes of Section 568.060:** sexual or anal intercourse, masturbation, bestiality, sadism, masochism, fellatio, cunnilingus, any other sexual activity or nudity, if such nudity is to be depicted for purpose of sexual stimulation or gratification of individual who may view such depiction [Section 568.060(2)]

**Ohio:**

**Sexual Conduct:** vaginal intercourse between a male and female, and anal intercourse, fellatio, and cunnilingus between persons regardless of sex; penetration, however slight, is sufficient to complete vaginal or anal intercourse [Section 2907.01(A); applicable to Sections 2907.01-2907.37 & 2919.22]

**Sexual Conduct:** vaginal intercourse between a male and female, anal intercourse, fellatio, and cunnilingus between persons, regardless of sex; penetration, however slight, is sufficient to complete vaginal or anal intercourse [Section 2907.01(A); applicable to Sections 2907.01-2907.37 & 2919.22]

**Sexual Contact:** any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person [Section 2907.01(B); applicable to Sections 2907.01-2907.37 & 2919.22]

**Sexual Activity:** sexual conduct or contact, or both [Section 2907.01(C); applicable to Sections 2907.01-2907.37 & 2919.22]

**Sexual Excitement:** the condition of human male or female genitals when in a state of sexual stimulation or arousal [Section 2907.01(G); applicable to Section 2907.01-2907.37 & 2919.22]

**Wisconsin:**

**Sexually Explicit Conduct (Actual or Simulated):** sexual intercourse, meaning vulvar penetration, cunnilingus, fellatio, or anal intercourse between persons or any other intrusion, however slight, of any part of person's body or of any object into the genital or anal opening either by person or upon person's instruction, the emission of semen not being required; bestiality; masturbation; sexual sadism or sexual masochistic abuse (infliction of force, pain or violence upon person for purpose of sexual arousal or gratification) including, but not limited to, flagellation, torture, or bondage; lewd exhibition of genitals or pubic area [Section 948.01(4)&(7)]

**COMMENTARY:****Obscenity:**

In accordance with *New York v. Ferber*, 458 U.S. 747 (1982), there is no constitutional requirement that child pornography be determined to be "obscene" before a defendant can be convicted for violating child pornography laws. Delivering the Court's opinion, Justice White stated that "whether a work, taken as a whole, appeals to the prurient interest of the average person bears no connection to the issue of

whether a child has been physically or psychologically harmed in the production of the work." 458 U.S. at 761.

The state statutes examined do not generally condition a conviction on proof of obscenity. However, statutes in Indiana, Kentucky, and Ohio lack clarity and could be interpreted to require a finding of obscenity for certain performances or portrayals prior to conviction.

Indiana's child exploitation statute, Ind. Code § 35-42-4-4, does not state that the sexual conduct depicted be obscene. Yet, this statute does appear to conflict with two Indiana statutes related to the sale or distribution of obscene matter, Ind. Code § 35-49-3-1, and obscene performances, Ind. Code § 35-49-3-2, which are applicable to the use of performers under the age of sixteen in pornography production.

Likewise, in Kentucky, the law prohibits the production or promotion of any performance which includes sexual conduct by a minor. "Sexual conduct of a minor" is defined to include "exposure in obscene manner (predominate appeal of matter taken as whole is to a prurient interest in sexual conduct) of the unclothed or apparently unclothed human male or female genitals, pubic area or buttocks, or female breast, whether or not subsequently obscured by mark placed thereon...." Ky. Penal Code § 531.300(d). See *Bach v. Commonwealth*, 703 S.W.2d 489 (Ky. 1986) (held that photographs and videotape of thirteen year old, produced in mother's presence, were not obscene as girl did not appear nude and materials produced were not "hard core" pornography or reflective of patently offensive conduct).

Ohio's statutes delineate three categories of child pornography: obscenity involving a minor; sexually oriented matter involving a minor; and nudity-oriented material. Unlike the statutes cited above, Ohio's categorization of child pornography would appear to ensure that the production, promotion, and possession of non-obscene child pornography is criminal. (Penalties are enhanced for possession and the commission of subsequent offenses if child pornography is obscene.)

#### **Sexual Conduct:**

All states attempt to delineate sexual activities which would constitute child pornography if portrayed. An important consideration as to whether a law can withstand constitutional challenge based on due process and First Amendment claims is whether the proscribed conduct is defined with specificity and not vague or overbroad. Issues which have arisen during the course of litigation include the following: whether the state can proscribe nudity without qualifying that a child's nude portrayal is lewd, lascivious, or designed to arouse sexual interest; and whether the portrayal of a child in a clothed state with his or her genital area highlighted or posed in a sexually provocative fashion constitutes child pornography.

The recent case of *United States v. Knox*, 977 F.2d 815 (3d Cir. 1992), cert. granted, 113 S.Ct. 2926 (1993) exemplifies the latter issue. In *Knox*, the United States Court

of Appeals for the Third Circuit reviewed the issue of whether or not a defendant had violated federal child pornography laws, 18 U.S.C. § 2252(a)(2),(4) (Supp. 1990); 18 U.S.C. § 2256 (2)(E) (1988), by possessing and receiving videotapes which depicted children exhibiting clothed genitals or pubic areas. In affirming the defendant's conviction, the court held: "Although our interpretation of an exhibition is expansive, the limiting principle in the statute is the requirement of lasciviousness. A visual depiction of a child, whether the child is clothed or naked must be lascivious to be proscribed." 977 F.2d at 823. (In November 1993, the United States Supreme Court remanded the case to the United States Court of Appeals for the Third Circuit for further review of the conviction. With the support of President Clinton, the United States Justice Department has proposed legislation to amend the challenged law to ensure that federal child pornography laws have broad applicability.)

The state laws examined vary on whether nudity is a prerequisite to violation of child pornography laws. For example, Illinois defines sexual conduct as including the "lewd exhibition of the unclothed genitals, pubic area, buttocks, or fully or partially developed breast of a female child or other person." Ill Comp. Stat. ch. 720, § 5/11-20.1(a)(i)-(vii). Indiana's provision refers to the "exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person...." Ind. Code § 35-42-4-4(a). Iowa Code § 728.1(5),(8) is similar to Indiana's provision. Moreover, its mandatory reporting statute for commercial film processors does include in its definition of prohibited sexual act the requirement of nudity. Iowa Code § 728.14(1).

The remaining statutory provisions either clarify that genital areas can be clothed or do not specifically address the issue implying that certain exhibitions could be violative of child pornography laws even if a child were clothed. As stated earlier, although Kentucky's law appears to require a finding of obscenity, it does incorporate into its definition the phrases "apparently unclothed" and "whether or not subsequently obscured by mark placed thereon." Ky. Rev. Stat. Ann. § 531.300(d). In referring to sadomasochistic abuse, Minnesota's law provides that the individual portrayed can be "clad in undergarments or in a revealing costume." Its sexual contact definition also alludes to the "lewd exhibition of genitals" (silent as to nudity) and "physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of male or female humans, or breasts of female.... Minn. Stat. § 617.246(e). See, *State v. Fan*, 445 N.W.2d 243 (Minn.App. 1989)(citing *Mankato v. Fetchnier*, 363 N.W.2d 76 (Minn.Ct.App. 1985); *People v. Walcher*, 55 N.E.2d 319 (Ill.App. 1987)(child pornography laws surviving constitutional overbreadth challenges).

Ohio, Missouri, and Wisconsin provisions are somewhat comparable. In Ohio, distinct crimes are created to prohibit depictions involving nude minors, as well as other types of sexually oriented matter. Ohio Rev. Code §§ 2907.321, 2907.322, 2907.323. Missouri includes in its sexual conduct definition "physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in a act of apparent stimulation or gratification." Mo. Rev. Stat. § 556.061(29). Also applicable is Missouri's sexual act definition which proscribes "nudity, if such nudity is to be depicted for purposes of sexual stimulation or gratification of the

individual who may view such depiction." Mo. Rev. Stat. § 568.060(2). Wisconsin's statutes refers to the "lewd exhibition of genitals or the pubic area," Wis. Stat. § 948.01(4),(7), and makes no reference to nudity.

## VI Do the statutes specifically address parental or guardian complicity?

### Illinois:

It is unlawful for child's parent or legal custodian to permit child to appear in stage play, live performance, film, videotape, photograph, or similar visual presentation or portrayal of actual or simulated sexual conduct [Section 5/11-20.1(5)]

### Indiana:

No

### Iowa:

Not specifically (implication parental or guardian complicity); It is unlawful to knowingly permit, or otherwise cause minor to engage in prohibited sexual act or simulation thereof [Section 728.12(1)]

### Kentucky:

Not specifically (implication parental or guardian complicity); It is unlawful to consent to or authorize minor to engage in sexual performance, including play, motion picture, photograph, dance, or any other visual representation before audience [Section 531.310(1)]

### Minnesota:

Not specifically (implication parental or guardian complicity); It is unlawful to permit minor to engage in or assist other in sexual performance [Section 617.246(2)]; Consent by parent is not a defense to prosecutions under Sections 617.246 and 617.247 [Sections 617.246(5) & 617.247(6)]

### Missouri:

It is unlawful for child's parent or legal custodian to consent to participation of his/her child in sexual performance [Section 568.080(1)]

### Ohio:

Not specifically (implication parental or guardian complicity); It is unlawful for person who is parent, guardian, custodian, person having custody or control, or person in loco parentis of child under 18 or individual under 21 with physical or

mental handicapping condition, to create a substantial risk to the health or safety of a child by violating duty of care, protection, or support [Section 2919.22(A)]; it is unlawful to allow a child or individual to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance [Section 2919.22(B)(5)]; note that in "Illegal Use of Minor In Nudity-Oriented Material or Performance," [Section 2907.323], a parent, guardian, or custodian can consent in writing to the photographing of the minor, to the use of the minor in the material or performance, to the transfer of the material, or to the specific use of the material, as long as the material or performance is for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose [Section 2907.323(A)(2)]

**Wisconsin:**

It is unlawful for person responsible for child's welfare to permit, allow or encourage child to engage in sexually explicit conduct [Section 948.05(2)]

Person includes parent, guardian, foster parent, employee of public or private residential home, institution or agency, other person legally responsible for child's welfare in residential setting, and person employed by one legally responsible for child's welfare who exercises temporary control or care for child [Section 948.01(3)]

***COMMENTARY:***

Illinois, Missouri, and Wisconsin statutes expressly prohibit parents or legal guardians from permitting or inducing their children to engage in activities related to child pornography production and promotion. In addition, Wisconsin law is more expansive and lists others, including foster parents, persons responsible for children in residential settings, and persons employed by individuals legally responsible for children who exercise temporary control or care for children.

Iowa, Kentucky, Minnesota, and Ohio statutes more generally state that individuals must not permit, induce, or engage minors to participate in above-stated conduct. Indiana law does not incorporate this language.

Ohio statutes also prohibit a parent, guardian, or custodian from consenting to his or her minor child being photographed or participating in any performance in a state of nudity, unless the material or performance has a bona fide artistic, medical, scientific, educational, religious, governmental, judicial or other proper purpose.



**VII Do the statutes specifically provide defenses to charges of prohibited activities or address evidentiary considerations (this section does include defenses established by case law)?**

**Illinois:**

Affirmative defense to prosecution under "Child Pornography" that defendant reasonably believed, under all of the circumstances, that child was 18 or older, and prior to act or acts giving rise to prosecution under Section 5/11-20.1, defendant took some affirmative action or made bona fide inquiry designed to ascertain whether child was 18 or older, and defendant's reliance upon information so obtained was clearly reasonable [Section 5/11-20.1(b)(1)]

Affirmative defense to prosecution under "Child Pornography" that defendant was employed by public library or any library operated by institution accredited by generally recognized accrediting agency, at time act leading to charge of child pornography took place, and such act was committed during the course of employment [Section 5/11-20.1(b)(2)]

Child pornography charge does not apply to performance of official duties by law enforcement, prosecuting officers, court personnel or attorneys; does not apply to bona fide treatment or professional education programs conducted by licensed physicians, psychologist or social workers [Section 5/11-20.1(b)(3)]

**Indiana:**

No specific statutory provisions, exception dissemination of matter or conducting performance harmful to minor [Section 35-49-3-4]

**Iowa:**

"Sexual Exploitation of a Minor" is not applicable to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in performance of their official duties [Section 728.12(3)]

**Kentucky:**

No specific statutory provisions

**Minnesota:**

No mistake of age to prosecution for "Use of Minors in Sexual Performance" [Section 617.246(5)]

Consent to sexual performance by minor or minor's parent, guardian, or custodian, and mistake as to minor's age are not defenses to prosecution under "Use of Minors in Sexual Performance Prohibited" and "Possession of Pictorial Representations of Minors" [Sections 617.246(5) & 617.247(6)]

"Possession of Pictorial Representation of Minors" is not applicable to performance of official duties by peace officers, court personnel, attorneys, and in the course of a bona fide treatment or professional education program, licensed physicians, psychologists, social workers, or persons acting at the direction of licensed physicians, psychologists, or social workers [Section 617.247(5)]

### **Missouri:**

In prosecution for promoting child pornography in 1st and 2nd degree, Sections 573.025 & 573.035, the determination that person who participated in child pornography was under 18 may be made by reasonable inference drawn by judge or jury after viewing the alleged pornographic material or any of the following methods adopted by judge or jury as stated in Section 568.100: personal inspection of child; inspection of the photograph or motion picture showing child engaged in sexual performance; oral testimony by witness to sexual performance as to child's age based on child's appearance at time; expert medical testimony based on child's appearance; any other method authorized by law or rules of evidence [Section 573.050(3)]

In above stated prosecution, no showing is required that performance or material appeals to prurient interest, that it lacks serious literary, artistic, political or scientific value, or that it is patently offensive to prevailing standards in community as a whole [Section 573.050(4)]

In prosecution for "Child Used In Sexual Performance," Section 568.080, and "Promoting Sexual Performance By Child," Section 568.090, judge or jury may make determination as to child's age as provided in Section 568.100 outlined above [Section 568.100(1)]

In above stated prosecution, when it becomes necessary to determine whether child who participated in sexual conduct consented to conduct, the term "consent" has meaning given it in Section 556.061 [Section 568.100(2)] (need 556.061)

In above stated prosecution, upon prosecuting attorney's request, court may order child's testimony to be videotaped under Section 492.303, or as otherwise provided by law [Section 568.100(3)]

### **Ohio:**

The mistake of age defense is disallowed in prosecutions for "Pandering Obscenity Involving Minor," Section 2907.321, "Pandering Sexually Oriented Matter Involving

a Minor," Section 2907.322, and "Child Pornography," Section 2919.22; the mistake of age defense is not specifically addressed in "Illegal use of minor in nudity-oriented material or performance," Section 2907.323 [Sections 2907.321(B)(2), 2907.322(B)(2), Section 2919.22(C)(2)]

The trier of fact may infer that the person in the material or performance, through title, text, visual representation, or otherwise, represents or depicts person as minor; Section 2907.323 does not have specific provision [Sections 2907.321(B)(3), 2907.322(B)(3), 2919.22(C)(3)]

A defense to all of the above-cited Ohio statutes is that the material or performance was for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose [Sections 2907.321(B)(1), 2907.322(B)(1), 2907.323(A)(1)(a) & (2) & (3)(a), Section 2919.22(C)(1)]

#### **Wisconsin:**

Affirmative defense to violation of "Sexual Exploitation of a Child," Section 948.05, is that defendant had reasonable cause to believe child had attained 18, and child exhibited to defendant, or defendant's agent or client, a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that child had attained 18; defendant has burden of proving this defense by preponderance of evidence [Section 948.05(3)]

#### **COMMENTARY:**

Minnesota and Ohio appear to be the only states in which the mistake of age defense is not permitted by statute. In addition, Minnesota law prohibits the consent defense. Ohio statutes allow the trier of fact to infer that a person in pornographic material or performance is a minor, if the material or performance, through title, text, visual representation, or otherwise, represents or depicts the person as a minor.

Illinois, Missouri and Wisconsin statutes do permit a defendant to raise the defense that he or she reasonably believed that a child involved in child pornography activities was 18 or older, as long as he or she made an affirmative effort to ascertain the child's age. Kentucky law creates a presumption as to minority based on a minor's appearance, but allows a defendant to prove by competent evidence that he or she in good faith reasonably believed that the person involved in the performance was not a minor.

Indiana and Iowa do not have statutory provisions addressing mistake of age or consent defenses.

Illinois, Iowa and Minnesota expressly exempt law enforcement and other professionals from prohibitions related to the possession of child pornography, as long as possession occurs within the scope of their employment.

**VIII Do the States have statutes providing for forfeiture of proceeds earned as a result of prohibited activity?**

**Illinois:** Yes [Ill. Comp. Stat. ch. 720, § 5/11-20.1A]

**Iowa:** No (Repealed by 85 Acts, ch 201, section 21. See Ch. 809)

**Indiana, Kentucky, Minnesota, Missouri, Ohio, Wisconsin:**

No statutory provisions

**COMMENTARY:**

Illinois is the only state which has enacted legislation addressing the forfeiture of proceeds earned or property maintained as a result of child pornography and juvenile prostitution activities. Its law provides that after sentencing and upon the petition of the Attorney General or State's Attorney, the court must hold a hearing to assess whether any property or property interest is subject to forfeiture. The petitioner must prove by the preponderance of the evidence that the property or property interest at issue is subject to forfeiture to the State. Pursuant to Illinois law, should the court order a forfeiture of proceeds or property to the State, the proceeds are divided equally between units of local government who conducted the investigation resulting in the forfeiture and the Violent Crime Victims Assistance Fund. Ill. Comp. Stat. ch. 720, § 5/11-20.1.

For examples of forfeiture statutes, one should examine laws enacted in Alabama, Georgia, Nevada, Oregon, and Virginia, as well as federal child pornography civil and criminal forfeiture statutes, 18 U.S.C.A. §§ 2253, 2254, set forth in Appendix V. See also, *Austin v. U.S.*, \_\_\_ U.S. \_\_\_, 113 S.Ct. 2801 (1993) (Eight Amendment's prohibition against "excessive fines" applicable to forfeiture proceedings); *U.S. v. Good*, \_\_\_ U.S. \_\_\_, No. 92-1180 (December 13, 1993) (government seizure of convicted drug dealer's real estate without notice or opportunity to be heard violative of Fifth Amendment).

**IX Do statutes require commercial film processors to report child pornography to law enforcement or other authorities?**

**Illinois:** Yes [Ill. Comp. Stat. ch. 720, § 5/11-20.2]

**Iowa:** Yes [Iowa Code § 728.14]

**Missouri:** Yes [Mo. Rev. Stat. § 568.110]

**Indiana, Kentucky, Minnesota, Ohio, Wisconsin:** No statutes

**COMMENTARY:**

In Illinois, Iowa, and Missouri, commercial film processors must immediately report to their local law enforcement authorities their suspicions that a child has participated in the production of child pornography. The Iowa statute also provides that a processor is not required to review all matter delivered to the processor within his or her professional capacity. In Missouri, the commercial film processor only has a duty to report materials depicting children under 17, as opposed to 18.

- X Do child abuse reporting laws include the mandatory reporting of suspected child pornography activities? (see Appendix IV for statutory summaries prepared by Marcia J. McKinley, Esq. of the Clearinghouse on Child Abuse and Neglect Information; subsection also relevant to sex offense and prostitution overviews)?**

**ILLINOIS**

The reporting statutes do not specifically require the reporting of suspected child pornography activities. However, an "abused child" is defined as a child whose parent, immediate family member, person responsible for the child's welfare, individual residing in same home as the child, or the paramour of the child's parent commits or allows to be committed any criminal sex offense against a child under 18. Criminal sex offense is not defined.

"Person responsible for the child's welfare" is delineated as follows: child's parent, guardian, or foster parent; any person responsible for the child's welfare in a residential agency or institution; any person responsible for the child's welfare within a child care facility; any other person responsible for the child's welfare at the time of the alleged abuse and neglect; or any person who came to know the child through an official capacity or position of trust, including health care professionals, educational personnel, recreational supervisors, and volunteers or support personnel in any setting where children may be subject to abuse or neglect. With the exception of above-mentioned non-relatives, reporting requirements are generally not applicable to extra-familial abuse or exploitation. [Ill. Comp. Stat. ch. 325, § 5/3]

**INDIANA**

The "child abuse and neglect" definition includes the child who is the victim of a sex offense under laws prohibiting rape, criminal deviate conduct, child molesting, child exploitation, child seduction, public indecency, prostitution, or incest. It also specifies the child whose parent, guardian, or custodian (includes person responsible for the child's welfare who is employed by a residential school or foster care facility) allows the child to participate in an obscene performance or to commit a prohibited sex offense.

However, "child abuse and neglect" does not include a child who is alleged to be a victim of a sexual offense committed when a person sixteen years of age or older, with a child between twelve and sixteen years of age, performs or submits to any fondling or touching of either the child or the older person, with the intent to arouse or to satisfy the sexual desires of either the child or the older person, unless the alleged offense involves the fondling or touching of the buttocks, genitals, or female breast.

The reporting statute does not appear to be limited to familial abuse and neglect. [Ind. Code §§ 31-6-11-2.1(2), 31-6-4-3(a)-(e), 35-42-4-1, 35-42-4-2, 35-42-4-3, 35-42-4-4, 35-42-4-7, 35-45-4-1, 35-45-4-2, 35-46-1-3]

## IOWA

Iowa's mandatory reporting statute defines child abuse in part as the commission of certain sexual offenses with or to a child by the acts or omissions of a person responsible for the care of a child. One sexual offense involves: employing, using, persuading, inducing, enticing, coercing, knowingly permitting, or otherwise causing a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act while knowing, having reason to know, or intending that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, or other print or visual medium.

Other sex acts are: sexual abuse in the 1st, 2nd, & 3rd degree; detention in a brothel; lascivious acts or conduct; indecent exposure or contact; assault with intent to commit sexual abuse; sexual abuse by a counselor or therapist; sexual misconduct with offenders; or incest.

The acts or omissions of a person responsible for the care of a child who allows, permits, or encourages the child to engage in prostitution (including acts or omissions with or to a person under eighteen) is also incorporated into the definition of abuse.

"Persons responsible for the care of a child" are delineated as: a parent, guardian, or foster parent; a relative or any other person with whom the child resides, without reference to the length of time or continuity of such residence; an employee or agent of any facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center or child care facility; any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care. [Iowa Code §§ 232.68(1),(2),(7), 709.2, 709.3, 709.4, 709.7, 709.8, 709.9, 709.11, 709.12, 709.14, 709.15, 726.2, 728.12, 725.1]

Unique to Iowa, the law provides that anyone with knowledge of an alleged offense involving sexual abuse, including the use of individuals under 18 in pornography activities, can file a child in need of assistance petition in juvenile court. The complaint is filed by a peace officer who has reason to believe that the alleged victim

may require treatment and that victim's parent, guardian, or custodian is unwilling or unable to do so. The offender does not have to be the individual who is responsible for the child's care. [Iowa Code § 709.13]

## KENTUCKY

Reporting of suspected child pornography activities is mandated. However, the mandate is only applicable to situations in which family and specified non-relatives (persons exercising custodial control or supervision of a child) commit or allow the commission of acts of sexual abuse, sexual exploitation or prostitution, or who create a risk that such acts will be committed upon a child [Section 600.020]

"Sexual abuse" is defined as any contacts or interactions between a child and an adult in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his or her welfare uses, allows, permits, or encourages the use of the child for the purposes of sexual simulation of the perpetrator or another person.

"Sexual abuse" includes allowing, permitting, or encouraging the use of the child for the purposes of the sexual stimulation of the perpetrator or another person.

"Sexual exploitation" involves allowing, permitting, or encouraging a child to engage in an act which constitutes prostitution or an act of obscene or pornographic photographing, filming, or depicting of a child. [Ky. Rev. Stat. Ann. §§ 600.020(1),(5),(15),(20),(36),(46),(47)]

## MINNESOTA

Minnesota mandates the reporting of suspected child sexual abuse and exploitation perpetrated by a person responsible for a child's care, or by a person in a position of authority. The law enumerates the following offenses as reportable: criminal sexual conduct in the first, second, third, or fourth degree; prostitution activities involving minors; production and promotion of child pornography; and threatened sexual abuse.

"Person in a position of authority" is an individual who is a parent or acting in the place of a parent and charged with any of the parent's rights, duties, or responsibilities to a child or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

"Person responsible for the child's care" is an individual who functions within the family unit and has responsibilities for the child's care as a parent, guardian, or other person having similar care responsibilities or functions outside the family unit and

has either full-time or short-term responsibilities for the care of the child such as a teacher, school administrator, or other lawful custodian of a child having responsibilities, including day care, babysitting, counseling, teaching, and coaching. [Minn. Stat. § 626.556(2), 609.341(10), 260.015(2a)(5), 609.342, 609.343, 609.344, 609.345, 609.322, 609.323, 609.324, 617.246(2)-(4)]

## MISSOURI

For mandatory reporting purposes, "abuse" includes the sexual abuse of a child inflicted by those responsible for the child's care, custody, and control (a parent or guardian, other members of the child's household, or those exercising supervision over a child for any part of a twenty-four hour day). The only reporting provision which specifically deals with child pornography is the provision which requires commercial film processors to report their suspicions of child pornography production (includes extra-familial sexual exploitation). [Mo. Rev. Stat. §§ 210.110(1),(2),(5),(6), 210.115(3)]

## OHIO

An "abused child" is one who is the victim of sexual activity or is endangered. "Endangering children" is defined to include subjecting children to prostitution and child pornography activities. "Sexual activity" means sexual contact, or both. "Sexual conduct" is defined as vaginal intercourse between a male and female and anal intercourse, fellatio, and cunnilingus between persons regardless of sex. Penetration, however slight, is sufficient to complete vaginal or anal intercourse. "Sexual contact" is any touching of an erogenous zone of another, including the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexual arousing or gratifying either person.

Abuse for reporting purposes is not limited to family members or individuals having custody or supervision of a child. [Ohio Rev. Code Ann. §§ 2151.03, 2151.031, 2907.01(A),(B),(C), 2919.22(A),(B), and (C)]

## WISCONSIN

"Abuse" does include sexual intercourse or assault, child sexual exploitation, involving child in prostitution, and forcing child to view sexual activity.

Abuse for reporting purposes is not limited to family members or individuals having custody or supervision.

Wisconsin law requires that health care providers or persons who obtain information about a child who is receiving or has received health care services from a health care provider must report their suspicions if they have any reasonable doubt as to the



voluntary nature of a child's participation in sexual conduct or sexual intercourse or if such conduct occurred or is likely to occur with a child's relative, guardian, legal custodian, or other specified non-relative who cares or supervises a child or who resides or has resided regularly or intermittently in the same dwelling as the child. [Wis. Stat. §§ 48.981(1), 940.225, 948.05, 944.30]

**COMMENTARY:**

All states require specified individuals to report to law enforcement or child protection agencies any suspicions of child abuse and neglect. State law varies, however, in regard to the scope of the abuse or neglect to be reported. The majority of statutes only require that suspected abuse and neglect perpetrated by parents, guardians, and others having custody or in positions of authority be reported to authorities. They do not mandate the reporting of abuse and neglect in which the perpetrator does not have the child's legal or authorized custody. In addition, the nature of the abuse or neglect reported may not include all types of sexual abuse or exploitation, such as prostitution and child pornography activities.

All states do have definitions of "abuse" and "neglect" for reporting purposes which are relatively broad. Indiana, Iowa, Kentucky, Minnesota, Ohio, and Wisconsin's description of "abuse" does enumerate offenses related to sexual assault, prostitution, and pornography. Illinois' provisions appear to be limited to "any criminal sex offense against a child under 18." Missouri's law refers to "sexual abuse."

Indiana and Wisconsin do not limit their reporting mandates to familial abuse or neglect. Although Iowa's statute defines abuse as being perpetrated by family or specified non-relatives, another provision allows any one with knowledge of an alleged offense involving sexual abuse, including use of individuals under eighteen in pornography activities, to file a child in need of assistance petition; this provision does not expressly limit the sexual abuse to perpetrators who are family or specified non-relatives.

**XI Do states have statutes prohibiting children's exposure to pornographic/obscene materials (applicable to criminal sex offense section; provisions included in Appendix I: Child Pornography And Related Offenses)?**

Illinois: Ill. Comp. Stat. ch. 720, § 5/11-21

Indiana: Ind. Code § 35-49-3-3

Iowa: Iowa Code §§ 728.2, 728.3

Kentucky: Ky. Rev. Stat. Ann. §§ 531.020, .030, .040

**Minnesota:** Minn. Stat. §§ 617.239, .294

**Missouri:** Mo. Rev. Stat. § 573.060

**Ohio:** Ohio Rev. Code Ann. §§ 2907.31, .311, .33

**Wisconsin:** Wis. Stat. § 948.11

### **COMMENTARY:**

Law enforcement and prosecutors should consider charging individuals involved with the production of child pornography with violations of the above-cited statutes. It is common knowledge that offenders who sexually abuse or exploit children expose children to child pornography or obscene materials to make them feel more comfortable with the sexual acts in which they will or are engaging. Although these statutes are probably intended to address the problem of commercial dissemination of pornographic matter harmful to minors, the statutes do not specifically limit the applicability of the statutes to commercial enterprises or dissemination.

## **XII Do states have unique or other relevant statutory provisions?**

### **KENTUCKY**

**Prohibited Conduct:** As condition to sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication, or other merchandize, person requires purchaser or consignee to receive matter portraying sexual performance by minor, or denies or threatens to deny franchise, or revokes or threatens to revoke, or imposes penalty, financial or otherwise, by reason of any person's refusal to accept such matter, or by reason of the return of such matter [Section 531.350(1)]; See also "Compelling Acceptance of Objectionable Materials, Ohio Rev. Code Ann. [Section 2907.34]

### **MISSOURI**

**Prohibited conduct:** Knowingly causes another to photograph, film, videotape, produce, publish or otherwise create child pornography [Section 573.025(1)]

**Definition of Child Pornography** provides that it shall not include material which is not the visual reproduction of a live event [Section 573.010(1)]

**Enhanced penalties** when child is seriously emotionally injured [Sections 568.060(3) & 568.080(2)]

## OHIO

Age of protection is extended to twenty-one years of age for individual with physical or mental handicap [Section 2917.22]

Ohio's child pornography statutes distinguish different types of pornography; the statutes deal with obscenity, sexually oriented matter, and nudity-oriented matter involving minors; in addition, there is a separate child pornography statute [Sections 2907.321, 2907.322, 2907.323, 2919.22]

The statutory provisions addressing nudity-oriented material expressly allows a parent, guardian, or custodian to consent to the photographing of his/her child in a state of nudity for material or performances, and to possess said materials, as long as the photographing is done for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose; they also make it illegal for an individual to photograph a child in a state of nudity or possess materials so depicting the child, unless the parent or guardian has consented, and the activity is for a bona fide or proper purpose [Sections 2907.323(1)(A)(a)(b) & (2) & (3)(a)(b)]

## WISCONSIN

Regarding parental or guardian complicity, Wisconsin's statute specifically states that individuals responsible for the child's welfare are prohibited from permitting, allowing, or encouraging a child to engage in sexually explicit conduct [Sections 948.01(3) & 948.05(2)].

Performer (assuming non-minor) is subject to statutory prohibition [Section 948.05(1)(c)]

Cause child or attempt to cause child to go into vehicle, building, room or secluded place and take pictures of child engaging in sexually explicit conduct [Section 948.07(4)]



## JUVENILE PROSTITUTION

This section details the juvenile prostitution statutes of Illinois, Indiana, Iowa, Kentucky, Minnesota, Missouri, Ohio, and Wisconsin. Topics include: prostitution offenses applicable to both adults and juveniles; conduct constituting prostitution; whether statutes deal with patrons and others who promote prostitution; the age of protection; defenses to charges of illegal conduct; evidentiary considerations; transmission of HIV or STDs; forfeiture; and unique and other relevant statutory provisions. Appendix II consists of tables summarizing statutes cited below.

### I Do States have statutes *specifically* addressing juvenile prostitution?

#### Illinois:

Ill. Comp. Stat. ch. 720 §§ 5/11-15.1, 17.1, 18.1, 19.1, 19.2, 5/11-6

#### Indiana:

Only specific statutory provisions are Ind. Code § 35-45-4-4 providing for enhanced penalty for promoting prostitution if prostitute under 18 and Ind. Code § 35-42-4-6 involving solicitation of child under 12

#### Iowa:

Only specific statutory provisions are "Pandering," Iowa Code § 725.3, and "Enticing Away A Child," Iowa Code § 710.10

#### Kentucky:

Only specific statutory provisions are "Promoting Prostitution in 1st Degree," Ky. Rev. Stat. Ann. § 529.030, and "Unlawful Transaction with Minor in 2nd Degree," Ky. Rev. Stat. Ann. § 530.065

#### Minnesota:

Minn. Stat. §§ 609.322, .323, .3232, .324, .3241, .325, .326

#### Missouri:

Only specific statutory provision is "Promoting Prostitution in 1st Degree," Mo. Rev. Stat. § 567.050

#### Ohio:

Ohio Rev. Code Ann. §§ 2907.21, .22, 2919.22

**Wisconsin:**

Only specific statutory provisions are "Child Enticement," Wis. Stat. § 948.07, and "Soliciting Child For Prostitution," Wis. Stat. § 948.08

**COMMENTARY:**

All states have comprehensive laws designed to combat prostitution. However, whether or not they adequately deal with the problem of prostitution involving minors is debatable. Of the eight state laws examined, Illinois, Minnesota, Ohio and Wisconsin appear to have the only statutes which specifically deter the use of minors in almost all prostitution activities. (Illinois and Minnesota vary the age of protection depending on the prostitution activities; issue will be discussed below.)

Illinois statutes expressly prohibit soliciting for juvenile prostitutes, keeping a place of juvenile prostitution, patronizing juvenile prostitutes, juvenile pimping, and exploiting juvenile prostitutes. *See Illinois v. Anderson*, 493 N.E.2d 410 (Ill.App.Ct. 1986)(affirmed dismissal of solicitation for juvenile prostitution charge as statute applies to persons who direct prospective patrons, but not prostitutes to place for prostitution); *Cf. Illinois v. Blair*, 114 Ill. App. 3d 655, 449 N.E.2d 172 (1983)(held that statute prohibited both soliciting a prostitute and soliciting another on behalf of a prostitute). (Statutory cites from Davis, *Program to Increase Understanding of Child Sexual Exploitation: Legal Analysis* (ABA Center on Children and the Law: To be published)).

Minnesota and Ohio's provisions address solicitation, inducement, and promotion of juvenile prostitutes. Although tersely stated, Wisconsin's law forbids soliciting and patronizing child prostitutes, as well as establishing any child in a place of prostitution.

In Indiana, Iowa, Kentucky, and Missouri, laws address juvenile prostitution in a more limited manner. Their laws do not make criminal patronizing or soliciting juvenile prostitutes. Indiana's statute does provide for an enhanced penalty for promoting prostitution if a prostitute is under 18 years of age. ("Child Solicitation," Ind. Code § 35-42-4-6 does not specifically deal with juvenile prostitution, but is a criminal sex offense making illegal the solicitation of a child under 12.) Kentucky and Iowa's statutes specify enhanced penalties if minors are involved in the pandering or promotion of prostitution. Missouri law prohibits promoting the prostitution of an individual under sixteen.

With the exception of Minnesota (Minn. Stat. §§ 609.322(1a) & (2)), the state laws examined do not specifically address parental or guardian complicity in a minor's involvement in prostitution activities. For statutory models addressing the issue, one should refer to statutes in Louisiana, Maine, Maryland, Nevada, New Mexico, and Wyoming which provide for enhanced penalties for parents, guardians, or custodians who authorize, permit, or promote a child's involvement in prostitution. Davis, *supra*.

**II Which statutes generally address prostitution and are applicable to juvenile prostitution?**

**Illinois:**

Ill. Comp. Stat. ch. 720 §§ 5/11-14, 15, 16, 17, 18, 19

**Indiana:**

Ind. Code §§ 35-45-4-2, 4-3, 4-4

**Iowa:**

Iowa Code §§ 725.1, 2, 3, 4; 709.7, 710.11

**Kentucky:**

Ky. Rev. Stat. Ann. §§ 529.020, 030, 040, 050, 070, 080, 090

**Minnesota:**

Minn. Stat. §§ 609.322, .323, .324, .3241, .325, .326

**Missouri:**

Mo. Rev. Stat. §§ 567.020, 030, 050, 060, 070, 080

**Ohio:**

Ohio Rev. Code Ann. §§ 2907.23, .24, .25

**Wisconsin:**

Wis. Stat. §§ 944.30, 31, 32, 33, 34, 36

**III What conduct constitutes "prostitution" under general prostitution statutes (consideration highlighted)?**

**Illinois:**

Person performs, offers or agrees to perform sexual penetration as defined below for money, or touching or fondling of the sex organs for money or anything of value, for the purpose of sexual arousal or gratification [Section 5/11-14]

Sexual Penetration means any contact, however slight, between sex organ of one person and sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio or anal penetration; evidence of semen emission is not required to prove sexual penetration [Section 5/12-12(f)]

**Indiana:**

Person performs, offers or agrees to perform, sexual intercourse or deviate sexual conduct, or fondles, or offers or agrees to fondle, the genitals of another person for money or other property [Section 35-45-4-2(2)]

No statutory definitions of sexual intercourse or deviate sexual conduct

**Iowa:**

Person sells or offers for sale the person's services as partner in sex act, or purchases or offers to purchase such services [Section 725.1]

Sex Act or Sexual Activity: any sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed pursuant to chapter 148, 148C, 150, 150A, 151, or 152 [Section 702.17]

**Kentucky:**

Person engages or agrees or offers to engage in sexual conduct with another person in return for a fee [Section 529.020]

Sexual conduct: sexual intercourse or any act of sexual gratification involving sex organs [Section 529.010(3)]

**Minnesota:**

Person engages, offers to engage, or agrees to engage for hire in sexual penetration or sexual contact [Section 609.321(9)]

Sexual Contact: any of the following acts, if the acts can reasonably be construed as being for the purpose of satisfying the actor's sexual impulses: the intentional



touching by an individual of a prostitute's intimate parts; or the intentional touching by a prostitute of another's individual's intimate parts [Section 609.321(10)]

**Sexual Penetration:** any of the following acts, if for the purpose of satisfying sexual impulses: sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight into the genital or anal openings of an individual's body by any part of another individual's body or any object used for the purpose of satisfying sexual impulses; semen emission is not necessary [Section 609.321(10)]

### **Missouri:**

Person engages, offers, or agrees to engage in sexual conduct with another person **in return for something of value** to be received by person or third person [Section 567.010(3)]

**Sexual conduct means:** sexual intercourse defined as any penetration, however slight, of female sex organ by male sex organ, whether or not an emission results; deviate sexual intercourse defined as sexual act involving genitals of one person and mouth, hand, tongue or anus or another person; sexual contact defined as touching, manual or otherwise, of anus or genitals of one person by another, done for purpose of arousing or gratifying sexual desire of either party [Section 567.010(4)]

**Something of value means** any money or property, or any token, object or article exchangeable for money or property [Section 567.010(5)]

### **Ohio:**

**Prostitution:** Engaging in sexual activity **for hire** [Section 2907.25]

**Prostitute:** male or female who promiscuously engages in sexual activity **for hire**, regardless of whether the hire is paid to the prostitute or to another [Sections 2907.01(D), 2919.22(6)]

**Sexual Activity:** sexual conduct or sexual contact, or both [Section 2907.01(C)]

**Sexual Conduct:** vaginal intercourse between a male and female, and anal intercourse, fellatio, and cunnilingus between persons, regardless of sex; penetration, however, slight, is sufficient to complete vaginal or anal intercourse [Section 2907.01(A)]

**Sexual Contact:** any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person [Section 2907.01(B)]

**Wisconsin:**

Person has, offers to have, or requests to have nonmarital sexual intercourse for any **thing of value**; commits, offers to commit act of sexual gratification, in public or private, involving sex organ of one person and mouth or anus of another for any **thing of value**; is an inmate of a place of prostitution; masturbates person, offers to masturbate person, or requests to be masturbated by person for any **thing of value**; commits, offers to commit, or requests to commit act of sexual contact for any **thing of value** [Section 944.30]

No statutory definitions of sexual intercourse and contact

**COMMENTARY:****Consideration:**

As many child prostitutes are concerned with obtaining food, shelter, and other basic necessities, the definition of prostitution need to be amended to include the exchange of sexual services for items other than money. Missouri and Wisconsin both have statutes which state that prostitution means the exchange of sexual favors for "something of value" or "any thing of value." Missouri goes on to interpret "something of value" as meaning "any money or property, or any token, object or article exchangeable for money or property."

Other state provisions are less clear as to consideration. Iowa's provision refers to "selling or offering for sale the person's services as partner in a sex act." Kentucky's statute states consideration is "a fee." Minnesota and Ohio's law alludes to engaging someone "for hire." Indiana speaks of consideration as "money or other property." No terms are defined.

Illinois law appears to create an unnecessary distinction in that the consideration for sexual penetration is "money" and for the touching or fondling of sex organs, it is "money or anything of value." Consideration also varies depending on the conduct being prohibited. For example, the Illinois pandering statute forbids an individual from compelling a person to become a prostitute "for money." Whereas, the state's pimping, juvenile pimping, and exploitation of a child statutes define consideration as being "money or other property."

**Sexual Conduct:**

Although the prohibited conduct related to the act of prostitution itself is similar in each state, the level of specificity related to definitions of sexual conduct is not consistent. Indiana and Wisconsin do not have statutory definitions of sexual conduct. In contrast, Illinois, Minnesota, Missouri and Ohio statutes have comprehensive descriptions; they reflect that sexual penetration can be "however slight," and possible without semen emission. Iowa has a relatively thorough

definition of sex activity, but does not include the above-stated language regarding penetration or semen emission. Kentucky law defines sexual conduct in a more limited manner as being "sexual intercourse or any act of sexual gratification involving sex organs."

**IV What conduct is prohibited under statutes which specifically address juvenile prostitution?**

**PATRONIZING**

**Illinois:**

Engaging in act of sexual penetration as defined in Section 12-12 (stated above in Section II) with prostitute under 17 [Section 5/11-18.1]

**Indiana:**

No statutory provision

**Iowa:**

No statutory provision

**Kentucky:**

No statutory provision

**Minnesota:**

Engaging in prostitution with minor, or hiring, offering or agreeing to hire minor to engage in sexual penetration or sexual contact (penalty dependent on minor's age) [Section 609.324]

**Missouri:**

No statutory provision

**Ohio:**

Paying or agreeing to pay a minor, either directly or through the minor's agent, so that the minor will engage in sexual activity, whether or not the offender knows the age of the minor [Section 2907.21(A)(3)]

Paying minor, either directly or through minor's agent, for minor having engaged in sexual activity, pursuant to prior agreement, whether or not offender knows age of minor [Section 2907.21(A)(4)]

Facilitating child in soliciting for or engaging in prostitution [Section 2919.22(B)(6)]

**Wisconsin:**

Causing any child (under 18) to practice prostitution (applicable to patron) [Section 948.08]

**SOLICITING**

**Illinois:**

Soliciting individual under 16 for purpose of prostitution; arranging or offering to arrange meeting involving person under 16 for purpose of prostitution; directing individual under 16 to place knowing such direction is for purpose of prostitution [Section 5/11-15.1]

**Indiana:**

Soliciting child under 12 to engage in sexual intercourse, deviate sexual conduct, or fondling or touching intended to arouse or satisfy the sexual desires of either child or older person [Section 35-42-4-6]

No statutory definitions of sexual intercourse or deviate sexual conduct

**Iowa:**

Enticing or attempting to entice away a child (under 18) without authority and with intent to commit an illegal act upon child [Section 710.10]

**Kentucky:**

Advancing prostitution by compelling person by force or intimidation to engage in prostitution or profits from such coercive conduct by another (enhanced penalties if person under 16, or under 18, and/or suffers physical injury) [Section 529.030]

Induces, assists, or causes minor to engage in criminal activity constituting a felony [Section 530.065]

**Minnesota:**

Soliciting or inducing individual (penalties dependent on minor's age) to practice prostitution, while acting other than patron or prostitute [Section 609.322]

**Missouri:**

See Juvenile Pandering/Pimping/Promoting Section below [Section 567.050]

**Ohio:**

Soliciting or requesting minor to engage in sexual activity for hire, whether or not offender knows the minor's age [Section 2907.21(A)(2)]

Enticing, encouraging child to solicit for or engage in prostitution, or otherwise facilitating child or individual in soliciting for or engaging in prostitution [Section 2919.22(B)(6)]

**Wisconsin:**

Soliciting or causing child (under 18) to practice prostitution [Section 948.08]

Causing or attempting to cause any child under 18 to go into any vehicle, building, room, or secluded place with intent to cause child to commit prostitution [Section 948.07(2)]

**PANDERING/PIMPING/PROMOTING**

**Illinois:**

Receiving money or other property from prostitute under 16, not for lawful consideration, knowing it was earned whole or in part from practice of prostitution [Section 5/11-19.1]

**Indiana:**

Receiving money or other property from prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution (questionable whether enhanced penalty provision applicable) [Section 35-45-4-4]

Procuring, offering, or agreeing to procure person for another person for purpose of prostitution (unclear whether enhanced penalty provision for minor involvement is applicable) [Section 35-45-4-4]

Conducting or directing another person to place for purpose of prostitution (unclear whether enhanced penalty provision for minor involvement is applicable) [Section 35-45-4-4]

**Iowa:**

Persuading, arranging, coercing, or otherwise causing a minor (under 18) to become prostitute or to return to prostitution after abandoning it [Section 725.3(2)]

Sharing in income of premises maintained for purpose of prostitution involving minors (under 18) and knowing character and content of such income [Section 725.3(2)]

**Kentucky:**

Advancing or profiting from prostitution of a person less than 16 or less than 18 (enhanced penalties depending on minor's age and whether minor incurs physical injury) [Section 529.030]

Advancing Prostitution: Acting other than as a prostitute or as patron thereof, person knowingly causes or aids person to engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of house of prostitution enterprise, or engages in any conduct designed to institute, aid or facilitate an act or enterprise of prostitution [Section 529.010(1)]

Profiting From Prostitution: Acting other than as a prostitute, person knowingly accepts, receives, agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in proceeds of prostitution activity [Section 529.010(2)]

**Minnesota:**

Promoting the prostitution of minor (penalty dependent on minor's age) [Section 609.322]

Receiving profit, knowing or having reason to know, that it is derived from prostitution, or the promotion of prostitution of minor (penalty dependent on minor's age) [Section 609.323]

**Missouri:**

Promoting prostitution of person under 16 [Section 567.050(1)]

Promoting Prostitution: acting other than as patron or prostitute, person promotes prostitution if person knowingly does the following: causes or aids a person to commit or engage in prostitution; procures or solicits patrons for prostitution; provides persons or premises for prostitution; operates or assists in operation of house of prostitution or prostitution enterprise; accepts, agrees to accept, or receives something of value pursuant to agreement or understanding with any person whereby he participates or is to participate in proceeds of prostitution activity; or engages in any conduct designed to institute, aid or facilitate act or enterprise of prostitution [Section 567.010(1)]

**Ohio:**

Transporting another, or causing another to be transported across boundaries of Ohio or of any county in Ohio, in order to facilitate such other person's engaging in sexual activity for hire (enhanced penalty if minor involved) [Section 2907.22(A)(3)]

Procuring another to engage in sexual activity for hire for purpose of violating or facilitating violation of "Promoting Prostitution" (enhanced penalty if minor involved) [Section 2907.22(A)(B)]

Facilitating child in soliciting for or engaging in prostitution [Section 2919.22(B)(6)]

**Wisconsin:**

Causing any child (under 18) to practice prostitution or establishing any child in place of prostitution [Section 948.08]

See Juvenile Soliciting Section above [Section 948.07(2)]

**CONFINING/COMPELLING**

**Illinois:**

Confining child under 16 against his or her will by: inflicting or threatening infliction of great bodily harm, permanent disability or disfigurement; or administering any alcoholic intoxicant or drug as defined by Controlled Substances Act or Cannabis Control Act to child without his or her consent or by threat or deception, for other than a medical purpose; and compelling child to become prostitute, or arranging situation in which child may practice prostitution; or receiving money or other property from child knowing it was obtained in whole or in part from prostitution [Section 5/11-19.2(A)]

Administering drugs to child under 13 is deemed to be without consent if administration is done without parental or legal guardian's consent [Section 5/11-19.2(B)]

**Indiana:**

Enticing or compelling another person to become prostitute; enhanced penalty if person enticed or compelled is under 18 [Section 35-45-4-4]

**Iowa:**

No statutory provision

**Kentucky:**

No statutory provision

**Minnesota:**

Induces minor to engage in prostitution (penalty dependent upon minor's age) [Section 609.322]

Being in position of authority, consenting to an individual being taken or detained for purposes of prostitution [Section 609.322(2)(3)]

Promoting the prostitution of individual who perpetrator knows is being taken or detained for the purpose of prostitution because an individual in position of authority has consented [Section 609.322(2)(4)(c)]

**Missouri:**

See Juvenile Pandering/Pimping/Promoting Section [Section 567.050(1)]

**Ohio:**

Inducing minor to engage in sexual activity for hire, whether or not offender knows the minor's age [Section 2907.21(A)(2)]

Forcing child to solicit for or engage in prostitution [Section 2919.22(B)(6)]

**Wisconsin:**

No statutory provision

**KEEPING PLACE OF JUVENILE PROSTITUTION**

**Illinois:**

Having or exercising control over use of place which offers seclusion or shelter for practice of prostitution and any prostitute utilizing premises is under 16; knowingly granting or permitting use of place for prostitution; granting or permitting use of place under circumstances from which person could reasonably know that place is used or to be used for prostitution; permitting the continued use of place after becoming aware of facts or circumstances from which person should reasonably know place is utilized for prostitution [Section 5/11-17.1]

**Indiana:**

Having control over use of place, permitting another person to use place for prostitution; questionable whether enhanced penalty provision applicable [Section 35-45-4-4]

**Iowa:**

Keeping or maintaining premises for purpose of prostitution involving minors [Section 725.3(2)]



**Kentucky:**

See above Pandering/Pimping Section and definition of advancing prostitution [Section 529.010(1)]

**Minnesota:**

Permitting minor to reside, temporarily or permanently, in person's dwelling, the person not being related by blood, adoption, or marriage to minor, without parental consent, knowing or having reason to know that minor is engaging in prostitution [Section 609.324]

**Missouri:**

See Adult Pandering/Pimping/Promoting Section [Section 567.050(1)]

**Ohio:**

Establishing, maintaining, operating, managing, supervising, controlling, or having interest in brothel; supervising, managing, or controlling activities of prostitute (enhanced penalty if minor involved) [Section 2907.22(A)(1)(2)]

**Wisconsin:**

Establishing child (under 18) in place of prostitution [Section 948.08]

**V What conduct not addressed above is prohibited under statutes which generally address prostitution and have applicability to both adults and juveniles?**

**ILLINOIS**

**Prostituting:**

Performing, offering, or agreeing to perform act of sexual penetration (see prostitution definition section) for money; or touching or fondling of sex organs of one person by another person for purpose of sexual arousal or gratification for money or anything of value [Section 5/11-14]

**Patronizing:**

Engaging in act of sexual penetration (prostitution definition section) with prostitute; entering into place of prostitution with intent to engage in act of sexual penetration [5/11-18(a)]

**Soliciting:**

Prohibited Conduct: same as stated in Juvenile Solicitation Section, except individuals solicited are 16 or older and not institutionalized severely or profoundly mentally retarded persons [Section 5/11-15.1(a)]

**Pandering/Pimping/Promoting:**

Arranging or offering to arrange situation in which person may practice prostitution; compelling person to become prostitute for money [Section 5/11-16(a)]

Prohibited Conduct: same as stated in Juvenile Pandering/Pimping/Promoting Section, except individuals involved are 16 or older and not institutionalized severely or profoundly mentally retarded persons [Section 5/11-19(a)]

**Confining/Compelling/Promoting:**

See above Adult Pandering/Pimping/Promoting Section [Section 5/11-16(a)(1)]

**Keeping Place of Prostitution:**

Prohibited Conduct: same as stated in Juvenile Keeping Place of Prostitution Section, except individuals involved are 16 or older and forfeiture provision not included in statute [Section 5/11-17(a)]

## INDIANA

**Prostituting:**

Performing or offering to perform sexual intercourse or deviate sexual conduct for money or other property; or fondling or offering to fondle the genitals of another person for money or other property [Section 35-45-4-2]

**Patronizing:**

Paying, offering, or agreeing to pay money or other property to another person for having engaged in, or on the understanding that the other person will engage in, sexual conduct with the person or with any other person; or having fondled, or on the understanding that the other person will fondle, the genitals of the person or any other person [Section 35-45-4-3]

No statutory definitions of sexual intercourse or deviate sexual conduct

**Soliciting:**

Prohibited Conduct: same as stated in Juvenile Soliciting Section [Section 35-45-4-4]

**Pandering/Pimping/Promoting:**

Prohibited Conduct: same as stated in Juvenile Soliciting Section [Section 35-45-4-4]

**Confining/Compelling:**

Prohibited Conduct: same as stated in Juvenile Confining/Compelling Section [Section 35-45-4-4]

**Keeping Place of Prostitution:**

Prohibited Conduct: same as stated in Juvenile Keeping Place of Prostitution Section [Section 35-45-4-4]

IOWA

**Prostituting:**

Selling or offering for sale the person's services as partner in sex act [Section 725.1]

**Patronizing:**

Purchasing or offering to purchase person's services to be partner in sex act [Section 725.1]

See above; no statutory definition of sex act

**Soliciting:**

See Adult Prostituting Section

**Pandering/Pimping/Promoting:**

Soliciting patron for prostitute; taking or sharing in earnings of prostitute [Section 725.2];

Persuading, arranging, coercing, or otherwise causing another to become prostitute or return to prostitution after abandoning it; taking a share in income from premises maintained for purposes of prostitution knowing the character and content of such income [Section 725.3(1)]

**Confining/Compelling:**

See Adult Pandering/Pimping/Promoting Section [Section 725.3(1)]

Enticing another who is not a prostitute to enter a brothel by force, intimidation, or false pretense with the intent to cause such other to become an inmate thereof, or detaining another, whether a prostitute or not, in any brothel, against the will of such other, with the intent that such other engage in prostitution therein [Section 709.7]

**Keeping Place of Prostitution:**

Furnishing room or other place to be used for purpose of prostitution, whether or not for compensation [Section 725.2];

Keeping or maintaining premises for purpose of prostitution [Section 725.3(1)]

Renting or leasing any building, structure, or part thereof, boat, trailer or other place offering shelter or seclusion, having knowledge that the lessee or tenant is using such for purposes of prostitution, and not immediately terminating the tenancy or effectively putting an end to the practice of prostitution on his/her property [Section 725.4]

**KENTUCKY**

**Prostituting:**

Engaging, agreeing, or offering to engage in sexual conduct with another person in return for a fee [Section 529.020(1)]

Sexual conduct: sexual intercourse or any act of sexual gratification involving the sex organs [Section 529.010(3)]

**Patronizing:**

No statutory provision

**Soliciting:**

No statutory provision

**Pandering/Pimping/Promoting:**

See Juvenile Pandering/Pimping/Promoting Section and definitions of advancing and profiting from prostitution [Section 529.010]

Advancing or profiting from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a

prostitution business or enterprise involving prostitution activity by two or more prostitutes [Section 529.040(1)]

Advancing or profiting from prostitution [Section 529.050(1)]

**Confining/Compelling:**

Advancing prostitution by compelling person by force or intimidation to engage in prostitution or by profiting from such coercive conduct by another [Section 529.030(1)(a)]

**Keeping Place of Prostitution:**

See Adult Pandering/Pimping/Promoting Section [Section 529.040(1)]

Failing to make reasonable and timely effort to halt or abate use of premises for prostitution purposes over which individual has possession or control, knowing or having reasonable cause to know that premises are being used for prostitution purposes [Section 529.070(1)]

**MINNESOTA**

**Prostituting:**

Soliciting or accepting a solicitation to engage for hire in sexual penetration or sexual contact while in a public place [Section 609.324(2)]

**Patronizing:**

Engaging in prostitution with individual 18 or older, or hiring individual 18 or older to engage in sexual penetration or sexual contact [Section 609.324(3)]

**Soliciting:**

See Adult Prostituting Section [Section 609.324(2)]

Soliciting individual to practice prostitution by means of trick, fraud, or deceit [Section 609.322(2)(2)]

Soliciting or inducing individual to practice prostitution [Section 609.322(3)]

**Pandering/Pimping/Promoting:**

Promoting the prostitution of an individual 18 or older [Section 609.322(3)]

Receiving profit, knowing or having reason to know that it is derived from prostitution, or promotion of prostitution of an individual 18 or older, while acting other than as prostitute or patron, and not being related by blood, adoption, or marriage to the prostitute [Section 609.323(2)]

**Confining/Compelling:**

Soliciting or inducing individual to practice prostitution by means of force; using position of authority to solicit or induce individual to practice prostitution [Section 609.322(41a)(2)-(3)]

Promoting the prostitution of an individual who perpetrator knows has been induced or solicited to practice prostitution by means of force or knows that a position of authority has been used to induce or solicit the individual to practice prostitution [Section 609.322(1a)(4)]

Promoting the prostitution of an individual who perpetrator knows has been induced or solicited to practice prostitution by means of trick, fraud, or deceit [Section 609.322 (2),(4)(b)]

**Keeping Place of Prostitution:**

No statutory provision

**MISSOURI**

**Prostituting:**

Engaging, offering, or agreeing to engage in sexual conduct with another person in return for something of value to be received by person or third person [Section 567.010(3)]

See Definition of Prostitution Section in which "sexual conduct" and "something of value" is defined [Section 567.010(4),(5)]

**Patronizing:**

Pursuant to a prior understanding, giving something of value to another person to compensate that person or third person for engaging in sexual conduct with another; giving or agreeing to give something of value to another person on understanding that in return that person will engage in sexual conduct with him or another; solicits or requests another person to engage in sexual conduct with him or with another, or secures third person to engage in sexual conduct with him or another, in return for something of value [Sections 567.030(1), 567.010(3)]

**Soliciting:**

See Adult Patronizing Section [Sections 567.030(1), 567.010(3)]

**Pandering/Pimping/Promoting:**

Promoting prostitution by managing, supervising, controlling, or owning, either alone or in association with others, a house of prostitution or prostitution business or enterprise involving prostitution activity by two or more prostitutes [Section 567.060(1)]

Promoting prostitution as prohibited in 567.020 (See Juvenile Pandering/Pimping/Promoting Section) [Section 567.070(1)]

**Confining/Compelling:**

Compelling person to enter into, engage in, or remain in prostitution by forcible compulsion, by use of a drug or intoxicating substance which renders person incapable of controlling his conduct or appreciating its nature, or by withdrawing or threatening to withdraw dangerous drugs or narcotics from a drug dependent person [Section 567.050(1)(2)]

**Keeping Place of Prostitution:**

See Adult Pandering/Pimping/Promoting Section [Section 567.060(1)]

Prostitution Houses Deemed Public Nuisance: Any room, building or other structure regularly used for sexual contact for pay of any unlawful prostitution activity is public nuisance; can initiate suit in equity to enjoin nuisance [Section 567.080]

**OHIO**

**Prostituting:**

Engaging in sexual activity for hire [Section 2907.25]

**Patronizing:**

Soliciting another to engage with other person in sexual activity for hire [Section 2907.24]; engaging in sexual activity for hire [Section 2907.25]

**Soliciting:**

Enticing or soliciting another to patronize prostitute or brothel [Section 2907.23(A)(1)]

Soliciting another to engage with other person in sexual activity for hire [Section 2907.24(a)]

**Pandering/Pimping/Promoting:**

Procuring prostitute for another to patronize, or takes or directs another at his or her request to any place for purpose of patronizing prostitute [Section 2907.23(A)(2)]

**Confining/Compelling:**

Compelling another to engage in sexual activity for hire [Section 2907.21(A)(1)]

**Keeping Place of Prostitution:**

Permitting premises to be used for purpose of engaging in sexual activity for hire, having authority or responsibility over premises' use [Section 2907.23(B)]

**WISCONSIN**

**Prostituting:**

See Definition of Prostitution Section above [Section 944.30]

**Patronizing:**

Entering or remaining in any place of prostitution with intent to have nonmarital sexual intercourse or committing act of sexual gratification, in public or private, involving the sex organ of one person and the mouth or anus of another, masturbation, or sexual contact [Section 944.31]

**Soliciting:**

Soliciting or causing person to practice prostitution [Section 944.32]

**Pandering/Pimping/Promoting:**

Establishing person in place of prostitution [Section 944.32]

Soliciting another to have nonmarital sexual intercourse or to commit act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation, or sexual contact, with person the solicitor knows to be a prostitute [Section 944.33(1)(a)]

Directing or transporting person to a prostitute or directing or transporting prostitute to person, with intent to facilitate another in having nonmarital intercourse or committing act of sexual gratification, in public or private, involving the sex organ of



one person and the mouth or anus of another, masturbation, or sexual contact with a prostitute [Section 944.33(1)(b)]

Enhanced penalties if individual receives compensation from the earnings of prostitute [Section 944.33(2)]

**Confining/Compelling:**

No specific statutory provision

**Keeping Place of Prostitution:**

Keeping place of prostitution; granting the use or allowing the continued use of a place as place of prostitution [Section 944.34]

**VI What is the age of protection under prostitution statutes prohibiting juvenile involvement?**

**Illinois:**

Under 17 (Patronizing Juvenile Prostitute, § 5/11-18.1)

Under 16 (Soliciting For Juvenile Prostitute, § 5/11-15.1; Keeping Place of Juvenile Prostitution, § 5/11-17.1; Juvenile Pimping, § 5/11-19.1; Exploitation of Child, § 5/11-19.2)

Under 13 (Indecent Solicitation of Child, § 5/11-6)

**Indiana:**

Under 12 (Child Solicitation, § 35-42-4-6)

Under 18 (Promoting Prostitution, § 35-45-4-4)

**Iowa:**

Under 18 (Pandering, § 725.3; Enticing Away Child, § 710.10)

**Kentucky:**

Under 18, but enhanced penalties if less than 16 (Promoting Prostitution in 1st Degree, § 529.030)

Under 18 (Unlawful Transaction with Minor in 2nd Degree, § 530.065)

**Minnesota:**

Under 18, but enhanced penalties if less than 16 or 13 (Solicitation, Inducement and Promotion of Prostitution, § 609.322; Other Prohibited Acts, § 609.324)

**Missouri:**

Under 16 (Promoting Prostitution in 1st Degree, § 567.050)

**Ohio:**

Under 18 (Compelling Prostitution, § 2907.21; Promoting Prostitution, § 2907.22; Engaging in Juvenile Prostitution, § 2919.22]

Under 21 if physical or mental handicapping condition [§ 2919.22(B)(6)]

**Wisconsin:**

Under 18 (Child Enticement, § 948.07; Soliciting Child for Prostitution, § 948.08)

**COMMENTARY:**

The statutes are not uniform in terms of the age of protecting children against juvenile prostitution. Regarding those statutes which expressly address juvenile prostitution, Iowa, Kentucky, Minnesota, Ohio, and Wisconsin have the only statutes that make the age of protection zero through eighteen. For certain prostitution activities, Ohio's "Endangering Children" statute, Ohio Rev. Code Ann. § 2919.22, extends the age of protection twenty-one if the individual has a physical or mental handicapping condition. Illinois provisions related to juvenile pimping and child exploitation also apply to institutionalized severely or profoundly mentally retarded individuals without age limitations.

Despite Illinois' comprehensive statutory framework discussed above, the age of protection varies depending on the conduct at issue. The age of protection extends to children under seventeen if patronizing is involved, but is only under sixteen if solicitation, keeping a place of prostitution, pimping, and child exploitation is the focus. Similarly, Indiana protects children under twelve from solicitation, but not children between the ages of twelve and eighteen (as noted above, the solicitation provision is not specific to juvenile prostitution); however, children under eighteen are covered under promotion provisions. Missouri's age of protection is under sixteen for promoting prostitution.

In Kentucky and Minnesota, offenders are subject to enhanced penalties if children younger than eighteen are involved in prostitution activities.

**VII Do statutes specifically provide for defenses to charges of prohibited activities involving juveniles or address evidentiary considerations (section does not include discussion of case law establishing defenses)?**

**Illinois:**

Defendant reasonably believed person was 16 or older at time of act giving rise to charge under § 5/11-15.1 (Soliciting Juvenile Prostitute), § 5/11-17.1 (Keeping Place of Juvenile Prostitution), § 5/11-11-19.1 (Juvenile Pimping); and in case of § 5/11-18.1 (Patronizing Juvenile Prostitute), person charged reasonably believed 17 or older.

No mistake of age defense if prosecuted under § 5/11-6 (Indecent Solicitation of Child Under 13 by Individual 17 or Older); § 5/11-19.2 (Exploitation of a Child) is silent as to mistake of age or consent defense.

**Indiana:**

No statutory provisions on mistake of age or consent defenses

**Iowa:**

No statutory provisions on mistake of age or consent defenses

**Kentucky:**

No statutory provisions on mistake of age or consent defenses

**Minnesota:**

No consent or mistake of age defenses to prosecutions under §§ 609.322 or 609.323 [Section 609.325(2)]

No defense to prosecution under § 609.322 that an individual solicited or induced to practice prostitution or whose prostitution was promoted, did not actually engage in prostitution [Section 609.325(1)]

No defense to actions under §§ 609.322 that individual solicited or induced to practice prostitution, or whose prostitution was promoted, had engaged in prostitution prior to that solicitation, inducement or promotion [Section 609.325(3)]

No marital privilege (§ 595.02) in any proceeding under §§ 609.322 and 609.323 [Section 609.326]

§ 609.323 (Receiving Profit Derived From Prostitution) is not applicable to the sale of goods or services to prostitute in ordinary course of lawful business.

§ 609.324(1a) (Other Prohibited Acts)(permitting non-relative minor to reside in person's dwelling knowing or having reason to know that minor is engaging in prostitution) is not applicable to residential placements supervised by public or social service agencies.

**Missouri:**

No statutory provisions on mistake of age or consent defenses

**Ohio:**

No mistake of age defense if prosecuted under § 2907.21 (Compelling Prostitution), § 2907.22 (Promoting Prostitution), and § 2919.22 (Engaging in Juvenile Prostitution)

**Wisconsin:**

No statutory provisions on mistake of age or consent defense

***COMMENTARY:***

There are relatively few statutory provisions related to defenses and evidentiary considerations in prosecutions for violations of juvenile prostitution statutes. If defenses or evidentiary considerations are delineated, they are applicable primarily to prosecutions under prostitution law involving adult conduct.

Minnesota and Ohio appear to have the only statutory provisions which expressly state that the mistake of age defense is not a defense in prosecutions for violations of its juvenile prostitution laws.

Illinois law provides that an individual charged with soliciting a juvenile prostitute, keeping a place of prostitution, or patronizing a juvenile prostitute may raise the defense of mistake of age. However, the defense is not permitted in prosecutions for indecent solicitation involving children under 13.

The statutes reviewed do not include the requirement that victim be of "previous chaste character." Minnesota prohibits the use of the defense that the individual had previously practiced prostitution.

Minnesota also forbids the defense of consent.

**VIII Do statutes address prostitution as it relates to the transmission of HIV or other sexually transmitted diseases?****Illinois:**

Upon conviction for most prostitution and sexual assault/abuse offenses, the defendant must undergo medical testing to determine whether he or she has HIV or other sexually transmissible disease; test results are to be kept strictly confidential by all medical personnel involved in testing and must be personally delivered in a sealed envelope to the judge of the court in which the conviction was entered for the judge's inspection in camera; court has the discretion to disclose results in accordance with the victim and public's best interest [Ch. 730 Section 5/5-5-3]

See sex offense overview detailing statutes concerning the testing of sex offenders, including minors, for HIV and other sexually transmitted diseases [Ch. 720 Section 5/12-18(e), Ch. 705 Section 405/5-23(8)] and criminal transmission [Ch. 720 Section 5/12-16.2]

**Indiana:**

Prostitution is considered a "sex crime" for purposes of mandatory HIV testing [Section 35-38-1-7.1(b)(e)]; see sex offense overview detailing statutes on the testing of sex offenders for HIV [Section 35-38-1-10.5] and notice to victims of test results [Section 35-38-1-10.6]

**Iowa:**

No statute

**Kentucky:**

Person convicted of prostitution or procuring another to commit prostitution under KRS 529.020 shall be required to undergo screening for HIV; and if infected, shall submit to treatment and counseling as condition of release from probation, community control, or incarceration; test results shall be made available to medical personnel, appropriate state agencies, or courts of appropriate jurisdiction to enforce chapter's provisions [Section 529.090(1)]

**Prohibited Conduct:** Commits prostitution, and prior to crime's commission, tests positive for sexually transmitted disease; knows or has been informed that he has tested positive for sexually transmitted disease as defined by KRS 214.410; and knows that he could possibly communicate such disease to another person through sexual activity [Section 529.090(2)]

**Prohibited Conduct:** Commits, offers, or agrees to commit prostitution by engaging in sexual activity, or procures another to engage in prostitution, in manner likely to

transmit HIV and prior to crime's commission, tests positive for HIV and knows that he could possibly communicate HIV to another person through sexual activity [Section 529.090(3) & (4)]

See sex offense overview for HIV testing of sex offenders [Section 510.320]

**Minnesota:**

No statute specific to prostitution; see sex offense overview for HIV testing of sex offenders [Section 611A.19]

**Missouri:**

No statute specific to prostitution; see sex offense overview for statute addressing HIV testing of sex offenders [Section 191.663]

**Ohio:**

No statute specific to prostitution; see sex offense overview for statutes detailing HIV testing of sex offenders [Section 2907.27(B)]

**Wisconsin:**

No statute specific to prostitution; see sex offense overview for statutes detailing HIV testing of sex offenders

**IX Do statutes provide for forfeiture of proceeds earned from prostitution activities or property utilized in such activities?**

**Illinois:**

Individual convicted under § 5/11-17.1 (Keeping place of Juvenile Prostitution) or § 5/11-19.2 (Exploitation of Child) is subject of forfeiture provisions of § 11-20.1A of Act.

**Indiana, Iowa, Kentucky, Minnesota, Missouri, Ohio, & Wisconsin:**

No statutory provisions

[For commentary, refer to Section VIII of Child Pornography Overview]

**X Do states have unique or other relevant statutory provisions?****Kentucky:**

Loitering or remaining in public place for purpose of engaging, agreeing, or offering to engage in prostitution [§ 529.080(1)]

**Minnesota:**

**Order of Protection:** Any parent or guardian who knows or has reason to believe that a person, while acting as other than a prostitute or patron, is inducing, coercing, soliciting, or promoting the prostitution of the parent or guardian's minor child, or is offering or providing food, shelter, or other subsistence for the purpose of enabling the parent or guardian's minor child to engage in prostitution, may seek an order for protection in the juvenile court; court can order that the person to return the child to the residence of the child's parents or guardian, that the person cease and desist from committing further acts described, and that the person cease to have further contact with the child; violation of the court's order constitutes contempt; a person who willfully fails to return the child as required by the order commits an act which manifests an intent substantially to deprive the parent or guardian of custodial rights within the meaning of § 609.26, clause (3) [Section 609.3232]

**Use of Motor Vehicle:** At time of sentencing for conviction under § 609.324, court shall determine whether person used motor vehicle during commission of offense; if court so finds, it shall forward its findings to commissioner of public safety who shall record finding on individual's driving record; finding is classified as private data on individuals, as defined in § 13.02(12) [§ 609.324(5)]

**Missouri:**

**Prostitution Houses Deemed Public Nuisances:** any room, building or other structure regularly used for sexual contact for pay or any unlawful prostitution activity is a public nuisance subject to a suit in equity to enjoin such nuisance [§ 567.080]

**Ohio:**

**Prohibiting the transporting of prostitute:** transporting another, or causing another to be transported across boundaries of Ohio or of any county in Ohio, in order to facilitate such other person's engaging in sexual activity for hire [§ 2907.22(A)(3)]

**Age of Protection:** generally 18, but extended to 21 for individual with mental or physical handicapping condition [§ 2919.22(B)]





**CRIMINAL SEX OFFENSES**

This section details statutory provisions addressing criminal sex offenses impacting on children. Topics include: prohibited sexual conduct; age of protection; statutes applicable to both child and adult victims; defenses to charges of illegal conduct; evidentiary considerations; HIV testing; registration of sex offenders; and unique and other relevant statutory provisions. Appendix III consists of tables summarizing most statutes cited below.

**I Do States have criminal statutes specifically addressing extra-familial sex offenses involving children, exclusive of statutes on child pornography and juvenile prostitution?****Illinois:**

Ill. Comp. Stat. ch. 720, §§ 5/12-13, 14, 15, 16

**Indiana:**

Ind. Code §§ 35-42-4-3, 4-5, 4-6, 4-7

**Iowa:**

Iowa Code §§ 709.2, .3, .4, .8, .11, .12, .14

**Kentucky:**

Ky. Rev. Stat. Ann. §§ 510.040, .050, .060, .070, .080, .090, .110, .120; 530.064

**Minnesota:**

Minn. Stat. §§ 609.342, .343, .344, .345, .3451, .352

**Missouri:**

Mo. Rev. Stat. §§ 566.030, .040, .050, .060, .070, .080, .090, .100, .110

**Ohio:**

Ohio Rev. Code Ann. §§ 2907.02, .03, .04, .05, .06, .07, .12

**Wisconsin:**

Wis. Stat. §§ 940.227, 948.02

**II Do States have criminal statutes specifically addressing familial sex offenses involving children?****Illinois:**

Ill. Comp. Stat. ch. 720, §§ 5/11-11, 150/5.1

**Indiana:**

Ind. Code § 35-46-1-3

**Iowa:**

Iowa Code § 726.2

**Kentucky:**

Ky. Rev. Stat. Ann. § 530.020

**Minnesota:**

Minn. Stat. §§ 609.341(10) & (15), .342(1)(b),(g),(h), .343(1)(b),(g),(h), .344(1)(e),(f),(g), .345(1)(b),(e),(f),(g), 609.365

**Missouri:**

Mo. Rev. Stat. § 568.020

**Ohio:**

Ohio Rev. Code Ann. §§ 2907.03

**Wisconsin:**

Wis. Stat. §§ 944.06, 893.587

***COMMENTARY:***

All states have statutes outlawing certain sexual activities between family members. In Illinois, Indiana, Iowa, Kentucky, and Minnesota, there are prohibitions against family members and other custodians engaging in sexual activities with children in accordance with both "incest" laws and criminal sex offense statutes. Missouri, Ohio and Wisconsin appear to be the only three states which address the issue of criminal familial abuse in one statute. It is notable that with the exception of Iowa, and possibly Indiana (deviate sexual conduct not defined), "incest" statutes are typically limited to prohibiting certain family members from engaging in sexual intercourse

and are inapplicable to other forms of sexual activities.

Even though "incest" laws are limited, only Illinois and Minnesota have criminal familial sexual abuse statutes broader in scope. In Illinois, the state's "Sexual Relations Within Families" law only pertains to sexual penetration, whereas its more general sex offense statutes govern both sexual penetration and other forms of sexual contact if the victim is under eighteen and a family member is involved. Similarly, in Minnesota, although its "incest" law does not cover all forms of sexual conduct, the state has laws expressly forbidding individuals having a "significant relationship" (defined to include family members) from engaging in sexual penetration and other types of sexual contact with victims under the ages of sixteen or eighteen.

Regarding the problem of a parent or guardian failing to prevent a child's sexual abuse or assault, Wisconsin and Illinois appear to have the only statutes addressing the issue. Wisconsin's law specifies that any person responsible for the welfare of a child under sixteen (includes parent, guardian, foster parent, public or private residential home employee, other who is responsible in a residential setting, and person employed by one legally responsible for the child's welfare who exercises temporary control or care of the child) who fails to prevent the sexual assault of a child is guilty of a felony. Though somewhat narrower in scope, Illinois' statute penalizes any parent or stepparent who knowingly allows or permits an act of criminal sexual abuse to be perpetrated against his or her child.

**III What sexual conduct perpetrated against children is proscribed by statute (does not include provisions applicable to adults)?**

**ILLINOIS**

**Offenses:**

Criminal Sexual Assault: Committing act of sexual penetration with any of the following persons: child under 18 and accused is family member; child 13 or older, but under 18 and accused is 17 or older and holds position of trust, authority or supervision in relation to child; or individual who accused knows is unable to understand the nature of the act or is unable to give knowing consent [Section 5/12-13(1)-(3)]

Aggravated Criminal Sexual Assault: Committing criminal sexual assault as outlined above and following: accused 17 or older commits act of sexual penetration with victim who is under 13 at time of act; or accused under 17 commits an act of sexual penetration with victim who is 9 or older, but under 13 when act is committed and accused uses force or threat of force to commit act [Section 5/12/14(b)]

Criminal Sexual Abuse: Committing act of sexual penetration or conduct and: accused knows victim is unable to understand the nature of act or is unable to give

knowing consent; accused is under 17 and victim is 9 or older, but under 17; or accused is less than five years older than victim who is 13 or older, but under 17 [Section 5/12/15(a)-(c)]

Aggravated Criminal Sexual Abuse: Committing act of sexual conduct and: child is under 18 and accused is family member; accused is 17 or older and child is under 13; accused is 17 or older and child is at least 13, but under 17 when act committed and accused uses force or threatens force; accused is under 17 and victim is under 9; child is 9 or older, but under 17 when act is committed and accused uses force or threatens force or accused is at least five years older; child is 13 or older, but under 18 and accused is 17 or older and holds position of trust, authority or supervision in relation to child [Section 5/12-16(b),(c),(f)]

Aggravated Criminal Sexual Abuse: Committing act of sexual penetration or sexual conduct with child who is 13 or older, but under 17 and accused is at least five years older than child [Section 5/12-16(d)]

Sexual Relations within Families: Committing act of sexual penetration and accused knows that he or she is related to other person as follows: brother or sister, either of whole or half-blood; father or mother, when the victim is 18 or older when act is committed, regardless of legitimacy and whether child is of whole or half-blood or is adopted; stepfather or stepmother, when stepchild is 18 or over when act committed [Section 5/11-11]

#### **Definitions:**

Sexual Penetration: any contact, however slight, between the sex organ of one person and the sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio or anal penetration; evidence of semen emission is not required to prove sexual penetration [Section 5/12-12(f)]

Sexual Conduct: any intentional or knowing touching or fondling by victim of accused, either directly or through clothing, of the sex organs, anus or breast of victim or accused, or any part of the body of a child under 13, for the purpose of sexual gratification or arousal of victim or accused [Section 5/12-12(e)]

## INDIANA

#### **Offenses:**

Child Molesting: Performing or submitting to sexual intercourse or deviate sexual conduct with child under 12 or doing same and perpetrator is 16 or older and child

is 12 or older, but less than 16; enhanced penalty depending on child's age and/or whether use or threatened use of deadly force or armed with deadly weapon [Section 35-42-4-3(a) & (c)]

Child Molesting: Performing or submitting to fondling or touching, of either child or older person, with intent to arouse or satisfy sexual desires of either child or older person, with child being under 12, or doing same and perpetrator is 16 or older and child is 12 or older; enhanced penalty depending on child's age and/or whether use or threatened use of deadly force or armed with deadly weapon [Section 35-42-4-3(b),(d)]

Vicarious Sexual Gratification: Directing, aiding, inducing, or causing child under 16 or under 12 to touch or fondle himself or another child with intent to arouse or satisfy the sexual desires of child or older person; enhanced penalty depending on child's age and/or whether use or threatened use of deadly force or armed with deadly weapon, and/or whether serious bodily injury results [Section 35-42-4-5(a)]

Vicarious Sexual Gratification: Directing, aiding, inducing, or causing child under 16 or under 12 to engage in sexual intercourse with child under 16, in sexual conduct with an animal other than a human being, and in deviate sexual conduct with another person; enhanced penalty depending on child's age and/or whether use or threatened use of deadly force or armed with deadly weapon, and/or whether serious bodily injury results [Section 35-42-4-5 (b)]

Child Solicitation: Soliciting child under 12 to engage in sexual intercourse, deviate sexual conduct, or fondling or touching intended to arouse or satisfy the sexual desires of either the child or older person [Section 35-42-4-6]

Child Seduction: Engaging in sexual intercourse with child 16 or older, but under 18, and perpetrator is 18 and the guardian, adoptive parent, custodian (person responsible for child's welfare who is employed by public or private residential school or foster care facility), or stepparent [Section 35-42-4-7]

Incest: Being 18 or older and engaging in sexual intercourse or deviate sexual conduct with another person, when the person knows that other person is related to person biologically as a parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew [Section 35-46-1-3]

#### **Definitions:**

No statutory definitions of sexual intercourse, deviate sexual conduct, fondling and touching

## IOWA

**Offenses:**

Sexual Abuse in 1st Degree: Committing sexual abuse resulting in serious injury to victim who suffers from incapacity precluding consent or who is child [Section 709.2]

Sexual Abuse in 2nd Degree: Committing sexual abuse and the other person is under age of 12 [Section 709.3]

Sexual Abuse in 3rd Degree: Performing sex act with individual, who is not a spouse with whom perpetrator cohabits, and victim suffers from mental defect or incapacity which precludes consent; victim is 12 or 13; or victim is 14 or 15 and following are true: perpetrator is member of same household; is related to victim by blood or affinity to fourth degree; is in position of authority to coerce victim to submit; or is six or more years older than victim [Section 709.4]

Lascivious Act with Child: Performing any of the following acts with child, with or without child's consent, unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them: fondling or touching the pubes or genitals of child; permitting or causing child to fondle or touch the person's genitals or pubes; soliciting child to engage in sex act; inflicting pain or discomfort upon child or permitting child to inflict pain or discomfort on the person [Section 709.8]

Indecent Contact with Child: Committing any of the following acts with a child, not the person's spouse, with or without child's consent, for purpose of arousing or satisfying the sexual desires of either of them: fondling or touching the inner thigh, groin, buttock, anus, or breast of child; touching the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of child; soliciting or permitting child to fondle or touch the inner thigh, groin, buttock, anus, or breast of person; soliciting child to engage in any act prohibited under Section 709.8 stated above [Section 709.9]

Lascivious Conduct with Minor: Forcing, persuading, or coercing minor to disrobe or partially disrobe for purpose of arousing or satisfying the sexual desires of perpetrator or minor and perpetrator is in position of authority over minor [Section 709.14]

Incest: Performing sex act with another whom the person knows to be related to the person, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, or nephew (perpetrator is other than child as defined in section 702.5) [Section 726.2]

**Definitions:**

Sexual Abuse: any sex act between persons when the act is performed with the other participant in any of the following circumstances: act is done by force or against will

of the other (if consent or acquiescence of the other is procured by threats of violence toward any person or if act is done while the other is under influence of drug inducing sleep or is otherwise in state of unconsciousness, the act is done against the will of the other); such other participant is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters; or other participant is a child [Section 709.1]

Child: any person under the age of 14 [Section 702.5]

Sex act or Sexual Activity: any sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger and hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed pursuant to chapter 148, 148C, 150, 150A, 151, or 152; or by the use of artificial sexual organs or substitutes in contact with genitalia or anus [Section 702.17]

## KENTUCKY

### Offenses:

Rape in 1st Degree: Engaging in sexual intercourse with person who is incapable of consent because person is physically helpless or under 12 (enhanced penalty if serious physical injury results) [Section 510.040]

Rape in 2nd Degree: Engaging in sexual intercourse with person less than 14 [Section 510.050]

Rape in 3rd Degree: Engaging in sexual intercourse with person who has mental incapacity; or perpetrator is 21 or older and person with whom he/she engages in sexual intercourse is under 16 [Section 510.060]

Sodomy in 1st Degree: Engaging in deviate sexual intercourse with person who is incapable of consent because person is physically helpless or less than 12 (enhanced penalty if serious physical injury results) [Section 510.070]

Sodomy in 2nd Degree: Engaging in deviate sexual intercourse with person less than 14 and perpetrator is 18 or older [Section 510.080]

Sodomy in 3rd Degree: Engaging in deviate sexual intercourse with person who is incapable of consent because of mental incapacity; or perpetrator is 21 or older and person with whom he/she engages in deviate sexual intercourse is under 16 [Section 510.090]

Sexual Abuse in 1st Degree: Subjecting person to sexual contact who is incapable of consent because of being physically helpless or being under 12 [Section 510.110]

Sexual Abuse in 2nd Degree: Subjecting person to sexual contact who is incapable of consent because of mental incapacity or who is under 14 [Section 510.120]

Unlawful Transaction with Minor in 1st Degree: Inducing, assisting, or causing minor under 16 or under 18 to engage in illegal sexual activity, except for child pornography or juvenile prostitution offenses defined in KRS Chapters 529.030 and 531 (enhanced penalties depending on minor's age and/or whether physical injury) [Section 530.064]

Incest: Having sexual intercourse with person whom one knows to be an ancestor, descendant, brother or sister; relationships include blood relationships of either whole or half blood without regard to legitimacy, relationship of adoption, and relationship of stepparent and stepchild [Section 530.020]

**Definitions:**

Sexual Intercourse: defined in its ordinary sense and includes penetration of the sex organs or anus of one person by a foreign object manipulated by another person; it occurs upon any penetration, however slight, and emission is not required; does not include penetration of the sex organ or anus by foreign object in the course of the performance of generally recognized health care practices [Section 510.010(8)]

Deviate Sexual Intercourse: any act of sexual gratification involving the sex organs of one person and the mouth or anus of another [Section 510.010(1)]

Sexual Contact: any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party [Section 510.120(7)]

Foreign Object: anything used in commission of a sexual act other than the person of the actor [Section 510.010(9)]

Physically Helpless: a person who is unconscious or for any other reason is physically unable to communicate unwillingness to act [Section 510.010(6)]

**MINNESOTA**

**Offenses:**

Criminal Sexual Conduct in 1st Degree: Engaging in sexual penetration and any of following circumstances: victim is under 13 and perpetrator is more than 3 years older than victim; victim is at least 13, but under 16 and perpetrator is more than 4 years older than victim, is in position of authority over victim, and uses this authority



to cause victim to submit; perpetrator has significant relationship to victim and victim is under 16 at time of penetration [Section 609.342(1)(a),(b),(g)]

Criminal Sexual Conduct in 1st Degree: Perpetrator has significant relationship to victim, victim is under 16 at time of penetration, and any of following exist: force, coercion, dangerous weapon or threatened use of weapon is utilized to accomplish penetration; victim has reasonable fear of imminent great bodily harm to him/herself or another; victim suffers personal injury; or sexual abuse involves multiple acts committed over extended periods of time [Section 609.342(h)]

Criminal Sexual Conduct in 2nd Degree: Engaging in sexual contact and any of the circumstances as stated for "Criminal Conduct in 1st Degree exists [Section 609.343(a),(b),(g), (h)]

Criminal Sexual Conduct in 3rd Degree: Engaging in sexual penetration and any of the following exist: victim is at least 13, but under 16 and perpetrator is more than 2 years older than victim; perpetrator knows or has reason to know that victim is mentally impaired, mentally incapacitated, or physically helpless; victim is at least 16, but under 18 and perpetrator is more than 4 years older than victim, is in position of authority over victim, and uses this authority to cause victim to submit; perpetrator has significant relationship to victim and victim is at least 16, but under 18 at time of sexual penetration; or perpetrator has significant relationship to victim and victim is at least 16, but under 18 at time of sexual penetration and any of circumstances exist as stated in Section 609.342(h)(i-v) [Section 609.344(b),(d),(e),(f),(g)]

Criminal Sexual Conduct in 4th Degree: Engaging in sexual contact and any of the circumstances as stated for "Criminal Sexual Conduct in 2nd Degree" exists [Section 609(a),(b),(d),(e),(f),(g)]

Criminal Sexual Conduct in 5th Degree: Engaging in nonconsensual sexual contact as follows: the touching by victim of perpetrator's or another's intimate parts through coercion or use of a position of authority, or by inducement if victim is under 13 or mentally impaired; or the touching by another of the victim's intimate parts by coercion or use of position of authority [Section 609.3451]

Solicitation of Children to Engage in Sexual Conduct: Soliciting (commanding, entreating, or attempting to persuade) child under 15 to engage in sexual conduct with intent to engage in sexual conduct (sexual contact of individual's primary genital area, sexual penetration as defined in Section 609.342, or sexual performance as defined in Section 617.246) [Section 609.352]

Incest: Having sexual intercourse with another nearer of kin to actor than first cousin, computed by rules of civil law, whether of the half or the whole blood, with knowledge of the relationship [Section 609.365]

**Definitions:**

**Sexual Penetration:** sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into genital or anal openings of complainant's body or any part of the actor's body or any object used by actor for this purpose, where the act is committed without the complainant's consent, except in those cases in which consent is not a defense; semen emission is not necessary [Section 609.341(12)]

**Sexual Contact:** for purposes of Section 609.343(1)(a)-(f), it includes the following acts committed without complainant's consent (except in cases in which consent is not a defense), and with sexual or aggressive intent: the intentional touching by actor of complainant's intimate parts; the touching by complainant of intimate parts of actor, complainant, or another by coercion or the use of a position of authority, or by inducement if complainant is under 13 or mentally impaired; the touching by another of complainant's intimate parts by coercion or use of position of authority; or in any of the aforesaid cases, the touching of the clothing covering the immediate area of the intimate parts [Section 609.341(11)(a)]

**Sexual Contact:** for purposes of Section 609.343 (g)-(h), includes the following acts committed with sexual or aggressive intent: intentional touching by actor of complainant's intimate parts; touching by complainant of actor's, complainant's, or another's intimate parts; the touching by another of complainant's intimate parts; or in any of the aforesaid cases, the touching of the clothing covering the immediate area of the intimate parts [Section 609.341(11)(b)]

**Sexual Contact:** for purposes of Section 609.345(1) (a)-(e), the same as it is for Section 609.343(1)(a)-(f) stated above ; and for purposes of Section 609.345(1)(f)-(g) the same as it is for Section 609.343(g)-(h) stated above [Section 609.341(11)(a)(b)]

**Position of Authority:** includes, but is not limited to following: person who is parent or acting in place of parent and charged with parent's rights, duties, or responsibilities to child; person who is charged with any duty or responsibility for health, welfare, or supervision of child, either independently or through another, no matter how brief, at time of act [Section 609.341(10)]

**Significant Relationship:** complainant's parent, stepparent, or guardian; persons related to complainant by blood, marriage, or adoption, including brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; adult who jointly resides intermittently or regularly in same dwelling as complainant and who is not complainant's spouse [Section 609.341(15)]

## MISSOURI

**Offenses:**

Rape: Having sexual intercourse with person under 14 to whom he is not married; or the same and inflicts serious physical injury on any person or displays deadly weapon or dangerous instrument in threatening manner (enhanced penalty)[Section 566.030(3)]

Sexual Assault in 1st Degree: Being 17 or older and having sexual intercourse with person to whom he is not married, who is incapacitated, or who is 14 or 15; enhanced penalty as stated for rape [Section 566.040(1)]

Sexual Assault in 2nd Degree: Being 17 or older and having sexual intercourse with person to whom he is not married and who is 16; enhanced penalty as stated for rape [Section 566.050(1)]

Sodomy: Having deviate sexual intercourse with victim to whom he is not married and who is under 14; enhanced penalty as stated for rape [Section 566.060(3)]

Deviate Sexual Assault in 1st Degree: Having deviate sexual intercourse with victim to whom he is not married, who is incapacitated, or who is 14 or 15; enhanced penalty as stated for rape [Section 566.070(1)]

Deviate Sexual Assault in 2nd Degree: Being 17 or older and having deviate sexual intercourse with victim to whom he is not married and who is 16; enhanced penalty as stated for rape [Section 566.080(1)]

Sexual Misconduct: Being under 17 and having sexual intercourse with victim to whom he is not married and who is 14 or 15 or the same and victim is under 17 [Section 566.090(1),(2)]

Sexual Abuse in 1st Degree: Subjecting victim who is under 12 to sexual contact; enhanced penalty as stated for rape [Section 566.100(2)]

Sexual Abuse in 2nd Degree: Subjecting victim to whom he is not married to sexual contact and victim is incapacitated or 12 or 13; enhanced penalty as stated for rape [Section 566.110(1)]

Incest: Marrying, purporting to marry, or engaging in sexual intercourse or deviate sexual intercourse with person he knows to be, without regard to legitimacy, the following; his ancestor or descendant by blood or adoption; his stepchild, while the marriage creating that relationship exists; his brother or sister of the whole or half-blood; or his uncle, aunt, nephew or niece of the whole blood [Section 568.020]

**Definitions:**

Sexual intercourse: any penetration, however, slight, of female sex organ by male sex organ, whether or not emission results [Section 566.010(1)]

Deviate sexual intercourse: sexual act involving genitals of one person and mouth, tongue, hand or anus of another person [Section 566.010(2)]; modified for incest to extent that act involves any act of sexual gratification between persons not lawfully married, involving the genitals of one person and mouth, tongue or anus of another [Section 568.020(2)]

Sexual Contact: any touching of genitals or anus of any person, or breast of any female, or any such touching through clothing, for purpose of arousing or gratifying sexual desire of any person [Section 566.010(3)]

**OHIO****Offenses:**

Rape: Engaging in sexual conduct with victim who is less than 13, whether or not the offender knows victim's age; life sentence if force or threat of force [Section 2907.02 (A)(1)(b)&(B)];

Sexual Battery: Engaging in sexual conduct with victim and offender is natural or adoptive parent, stepparent, guardian, custodian, or person in loco parentis to victim [Section 2907.03(A)(5)]

Corruption of a Minor: Engaging in sexual conduct with victim, not the offender's spouse, and offender knows victim is 13 or older, but less than 16, or offender is reckless in that regard [Section 2907.04(A)]

Gross Sexual Imposition: Having or causing to have sexual contact with victim under 13 or causing two or more other persons under 13 to have sexual contact, whether or not the offender knows the victims' ages [Section 2907.05(A)(4)]

Sexual Imposition: Having or causing to have sexual contact with victim 13 or older, but less than 16, not the offender's spouse, or causing two or more other persons 13 or older, but less than 16 to have sexual contact, whether or not the offender knows the victims' ages [Section 2907.06(A)(4)]

Importuning: Soliciting person under 13 in sexual activity with offender, whether or not offender knows age of person; or soliciting another, not the offender's spouse, to engage in sexual conduct with offender who is 18 or older and four or more years older than victim, and victim is over 12, but less than 15 [Section 2907.07(A)&(C)]

**Felonious Sexual Penetration:** Without privilege to do so, inserting any part of body, or any instrument, apparatus, or other object into the vaginal or anal cavity of a victim less than 13, regardless of whether or not the offender knows the victim's age [Section 2907.12(A)(1)(b)]

**Definitions:**

**Sexual Conduct:** vaginal intercourse between a male and female, and anal intercourse, fellatio, an cunnilingus between persons regardless of sex; penetration, however slight, is sufficient to complete vaginal and anal intercourse [Section 2907.01(A)]

**Sexual Contact:** any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person [Section 2907.01(B)]

**Sexual Activity:** sexual conduct or sexual contact, or both [Section 2907.01(C)]

## WISCONSIN

**Offenses:**

**Forced Viewing of Sexual Activity:** Causing child under 18, but older than 13 or under 13 to view sexually explicit conduct by use or threat of force or violence (enhanced penalty if younger child involved) [Section 940.227]

**1st Degree Sexual Assault of Child:** Having sexual contact or intercourse with person under 13 [Section 948.02(1)]

**2nd Degree Sexual Assault of Child:** Having sexual contact or sexual intercourse with person under 16 [Section 948.02(2)]

**Failure to Act to Prevent Sexual Assault of Child:** Having knowledge that another person intends to have, is having or has had sexual intercourse with child, is physically and emotionally capable of taking action which will prevent intercourse or contact from taking place or being repeated, fails to take action exposing child to an unreasonable risk that intercourse or contact may occur between child and other person, or facilitates intercourse or contact that does occur between child and other person, and person is responsible for the child's welfare (includes parent, guardian, foster parent, public or private residential home employee, other responsible in a residential setting, and person employed by one legally responsible for child's welfare who exercises temporary control or care of child [Section 948.02(3)]; See "Incest With Child," Section 948.06(2) for similar provision

**Child Enticement:** Causing or attempting to cause child under 18 to go into any vehicle, building, room or secluded place with intent to perform following acts: having sexual contact or sexual intercourse with child in violation of Section 948.07; causing child to engage in prostitution; exposing sex organ to child or causing child to expose sex organ in violation of Section 948.10; taking pictures of child engaging in sexually explicit conduct; causing bodily or mental harm (defined in Section 948.01(2)) to child; or giving or selling to child a controlled substance in violation of ch. 161 [Section 948.07]

**Sexual Intercourse with Child 16 or Older:** Having sexual intercourse with child 16 or older who is not perpetrator's spouse [Section 948.09]

**Exposing Genitals or Pubic Area:** Causing child under 18 to expose genitals or pubic area for purposes of sexual arousal or gratification; or exposing genitals or pubic area to child for above-stated purpose [Section 948.10]

**Incest:** Marrying or having sexual intercourse or sexual contact with child he or she knows is related, either by blood or adoption, and child is related in degree of kinship closer than 2nd cousin; or failing to prevent incest with child (language similar to Section 948.02(3) above) [Section 948.06]

#### **Definitions:**

**Sexual Contact:** any intentional touching by complainant or defendant, either directly or through clothing by use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant [Section 948.01(5)]

**Sexual Intercourse:** vulvar penetration, as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of part of person's body or any object into genital area or anal opening either by defendant or upon defendant's instruction; emission of semen is not required [Section 948.01(6)]

**Sexually explicit conduct:** actual or simulated: sexual intercourse as defined above; bestiality; masturbation; sexual sadism or sexual masochistic abuse including, but not limited to, flagellation, torture or bondage; or lewd exhibition of genitals or pubic area [Section 948.01(7)]

#### **COMMENTARY:**

The majority of states have detailed statutory definitions of criminal sexual conduct, sexual penetration, or deviate sexual intercourse. Illinois, Kentucky, Minnesota, Missouri, and Wisconsin provisions also ensure that sexual penetration can be "however slight," and possible "without semen emission." Ohio's definition does refer

to penetration as being "however slight," but does not include the phrase "without semen emission."

Although Indiana's law prohibits sexual intercourse, deviate sexual conduct, fondling and touching as they relate to children of specified ages, these terms are not statutorily defined. Also, Iowa's statutory definition of sex act or activity does not include inappropriate touching or fondling, though these activities are addressed in "Lascivious Act with Child," Iowa Code § 709.8.

#### IV What is the age of protection under criminal sex offense statutes?

[See to Appendix III for references on the age of protection under criminal sex offense statutes]

#### *COMMENTARY:*

There is a lack of uniformity as to the age at which children are protected under state statutory rape and sexual assault laws where the issue of a child's consent is immaterial to the prosecution of the sex offense. The inconsistency is primarily due to efforts by legislators to address consensual sex between teenagers and assumptions, possibly culturally based, about the age at which children can be expected to engage in sexual activities. For the most part, the age of protection is dependent on the type of sexual activity perpetrated, the age of the perpetrator, or whether the perpetrator is a family member or holds a position of trust or authority in relation to the victim. Also, penalties are usually enhanced if younger children are assaulted or molested.

In contrast to other states, Wisconsin's sexual assault laws appear to have broad applicability as they protect children as old as eighteen and generally do not set limits on the offender's age. (The offender's age is usually defined so as to avoid the prosecution of teenagers participating in consensual sexual activities.) In Wisconsin, "First Degree Sexual Assault with a Child" is having sexual contact or intercourse with a person under the age of thirteen; "Second Degree Sexual Assault with a Child" is having sexual contact or intercourse with a person under sixteen; and "Sexual Intercourse with a Child 16 or Older" is having sexual intercourse with a child (defined as under 18), not one's spouse, who has attained sixteen years of age. Likewise, the law protects children under eighteen from having to expose their genitals or pubic area or being exposed to an offender's genital or pubic area. In addition, Wisconsin's incest law prohibiting sexual intercourse between family members does safeguard children under eighteen years of age, as the statute does not state age limitations.

The remaining state laws generally provide that if an individual engages in sexual penetration or conduct with a child under the age of twelve, thirteen, or fourteen, the individual is guilty of a felony and subject to a term of imprisonment. The majority of statutes prohibit sexual conduct with teenagers, at least twelve or thirteen, but

under sixteen or seventeen, if the perpetrator is more than three, four or five years older than the victim. The age of protection, as well as the age of the offender, varies depending on the sexual activity outlawed. In cases in which a family member or individual in a position of trust or authority engages a child in sexual intercourse, the age of protection is usually eighteen. (For further discussion of incest laws, see Parent/Guardian Complicity Section II above.)

**V Which State statutes generally address criminal sex offenses applicable to both child and adult victims? (See Appendix III, Criminal Sex Offense Tables for elements of crime)?**

**Illinois:**

Statutes cited above in child sex offense section IV with variation

**Indiana:**

"Rape," § 35-42-4-1  
 "Criminal Deviate Behavior," § 35-42-4-2  
 "Sexual Battery," § 35-42-4-8

**Iowa:**

Statutes cited above in child sex offense section IV with variation;  
 "Indecent Exposure," § 709.9  
 "Assault with Intent to Commit Sexual Abuse," § 709.11

**Kentucky:**

Statutes cited above in child sex offense section IV with variation;  
 "Sodomy in 4th Degree," § 510.100  
 "Sexual Abuse in 3rd Degree," § 510.130  
 "Sexual Misconduct," § 510.140  
 "Indecent Exposure," § 510.150

**Minnesota:**

Statutes cited above in child sex offense section IV with variation

**Missouri:**

Statutes cited above in child sex offense section IV with variation;  
 "Sexual Abuse in 3rd Degree," § 566.120;  
 "Indecent Exposure," § 566.130



**Ohio:**

Statutes cited above in child sex offense section IV with variation;  
 "Voyeurism," § 2907.07;  
 "Public Indecency," § 2907.09

**Wisconsin:**

"1st Degree Sexual Assault," § 940.225(1);  
 "2nd Degree Sexual Assault," § 940.225(2);  
 "3rd Degree Sexual Assault," § 940.225(3);  
 "4th Degree Sexual Assault," § 940.225(4);  
 "Fornication," § 944.15;  
 "Adultery," § 944.16;  
 "Sexual Gratification," § 944.17;  
 "Lewd and Lascivious Behavior," § 944.20;

**VI Do statutes specifically provide defenses to charges of child sexual assault or address evidentiary considerations?**

**Illinois:**

Mistake of Age: Defense to charges of "Criminal Sexual Abuse," Section 12-15 (b) & (b), and "Aggravated Criminal Sexual Abuse," Section 12-16(d): accused reasonably believed the person to be 17 or older [Section 5/12-17(b)]

Consent: Victim's consent is defense to charges of "Criminal Sexual Assault," "Aggravated Criminal Sexual Assault," "Criminal Sexual Abuse," and "Aggravated Criminal Sexual Abuse," where force or threat of force is element of offense. [Section 5/12-17(a)] (applicable to non-juvenile sex crimes)

Consent: a freely given agreement to act of sexual penetration or sexual conduct in question; lack of verbal or physical resistance or submission by victim resulting from use of force or threat of force by accused does not constitute consent; manner of dress of victim at time of offense does not constitute consent [Section 5/12-17(a)]

Status of Perpetrator: No defense to charges of violating Sections 12-13, 12-14, 12-15, or 12-16 that individual is incapable of committing offense under these sections because of age, physical condition, or relationship to the victim, except that no individual may be charged by his or her spouse under Sections 12-15 and 12-16 [Section 5/12-18(a),(c)]

Marriage: Prosecution of victim's spouse for violation of Sections 12-13 or 12-14 is barred unless the victim reports the offense to a law enforcement agency or State's Attorney's office within 30 days after the offense is committed, except when the court

finds good cause for the delay [Section 5/12-18(c)]

Medical Exemption: Not an offense under Sections 12-13, 12-14, 12-15 and 12-16 when physician, nurse, medical personnel, or caretaker conducts a medical examination or procedure in a manner consistent with medical standards [Section 5/12-18(b)]

Infancy: Nothing in this Section shall be construed to modify or abrogate the affirmative defense of infancy under Section 6-1 of this Code or the provisions of Section 5-4 of the Juvenile Court Act of 1987 [Section 5/12/18(a)]

Semen Emission: In prosecution for violation of Sections 12-13, 12-14, 12-15, or 12-16, evidence of semen emission is not required to prove sexual penetration [Section 5/12-12]

#### **Indiana:**

Mistake of Age: Defense to charge of "Child Molesting," Section 35-42-4-3: accused reasonably believed that child was 16 at time of conduct [Section 35-42-4-3(e)]

Marriage: Defense to charge of "Child Molesting," Section 35-42-4-3: child is or has been married [Section 35-42-4-3(f)]

#### **Iowa:**

Physical Resistance: In prosecution for violating sex offense statutes, it is not necessary to establish physical resistance by participant in order to establish that act of sexual abuse was committed by force or against the will of participant; circumstances surrounding the commission of act can be considered in determining whether or not act was done by force or against will of other [Section 709.5]

Jury Instructions on Witnesses: No instruction is to be given in trial for sexual abuse cautioning the jury to use a different standard relating to victim's testimony than that of any other witness to the offense or any other offense [Section 709.6]

#### **Kentucky:**

Consent: Element of every sex offense that sexual act was committed without consent of victim; person is deemed incapable of consent if under 16, mentally retarded or suffering from mental illness, mentally incapacitated, or physically helpless; lack of consent also results from forcible compulsion, incapacity to consent, or if offense is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which victim does not expressly or impliedly acquiesce in actor's conduct [Section 510.020]

Mistake of Age or Other Condition: In prosecution for committing sex offense in which victim's lack of consent is based on victim being less than 16, mentally retarded, mentally incapacitated or physically helpless, the accused may prove in exculpation that at time he engaged in conduct constituting offense, he did not know of the facts or conditions responsible for incapacity to consent [Section 510.030]

Marriage: Person who engages in sexual intercourse, deviate sexual intercourse, or sexual contact with individual to whom he/she is married does not commit crime under sex offense statutes, regardless of age or mental retardation [Section 510.035]

Admissibility of victim's character and behavior (relevant primarily to sex offenses involving adults): Reputation or opinion evidence related to sexual behavior of alleged victim is not admissible; evidence of victim's past sexual behavior other than reputation or opinion evidence is not admissible, unless evidence is admitted to establish source of semen or injury, consent, or it directly pertains to offense charged; rule provides procedure for admission of evidence [KRE 412 parallels Section 510.145 which has been repealed (1990)]

#### Minnesota:

Mistake of Age and Consent: In prosecutions of "Criminal Sexual Conduct in 1st & 2nd Degrees," Sections 609.342 (a),(b),(g),(h) & 609.343 (a),(b),(g),(h), and "Solicitation of Children to Engage in Sexual Conduct," Section 609.352, neither mistake of age nor consent is defense

Mistake of Age and Consent: In prosecutions of "Criminal Sexual Conduct in 3rd and 4th Degrees," Sections 609.344 & 609.345, neither mistake of age nor consent is defense to violation of subsections (a),(e),(f),& (g); mistake of age defense permitted for alleged violation of subsection (b)

Coercion: Proof of coercion does not require proof of specific act or threat; coercion is defined to mean words or circumstances which cause complainant to reasonably fear that actor will inflict bodily harm upon, or hold in confinement, the complainant or another, or force complainant to submit to sexual penetration or contact [Section 609.341(14)]; showing of coercion is not necessary to prove violation of Section 609.345(a)

Marriage: [Section 609.349]

#### Missouri:

Marriage: In prosecution for violation of above cited Missouri sex offenses, with exception of "Sexual Abuse in 3rd Degree" and "Indecent Exposure, marriage is defense

Mistake of Age: In cases in which criminality of conduct depends upon child being under 14, defendant cannot raise mistake of age defense; when criminality of conduct depends upon child being 14 or 15, defendant can raise defense that he reasonably believed that child was 16 or older [Section 566.020]

Incapacity: In cases in which criminality of conduct depends upon victim being incapacitated, defendant can raise defense that he reasonably believed that victim was not incapacitated and that victim consented to act; defendant has burden of injecting issue of belief as to capacity and consent [Section 566.020]

#### **Ohio:**

Mistake of Age: With the exception of "Sexual Battery," Section 2907.03 and "Corruption of a Minor," Section 2907.04, which do not expressly address the defense, the mistake of age defense is not permitted in prosecutions of criminal sex offenses involving children [Sections 2907.02, 2907.05, 2907.06, 2907.07, 2907.12]

Marriage: The marriage defense is permitted in most prosecutions of criminal sex offenses; the exceptions are "Rape," Section 2907.02, and "Felonious Sexual Penetration," Section 2907.12 if force or threat of force is present; in addition, cohabitation is not a defense for forced "Felonious Sexual Penetration" [Sections 2907.02(G) & 2907.12(C)]

Admissibility of Evidence: In cases of "Rape" and "Gross Sexual Imposition," reputation evidence and specific instances of sexual activity regarding both the victim and the defendant are generally not admissible, unless they are evidence of the origin of semen, pregnancy, or disease, or past sexual activity between the victim and the defendant, and the court finds that the evidence is material to a fact at issue and not so inflammatory or prejudicial as to outweigh its probative value [Sections 2907.02(D), 2907.05(D)]

Appointment of Counsel for Victim: The court can approve the appointment of counsel for the victim in any proceeding addressing the admissibility of evidence in a "Rape" or "Gross Sexual Imposition" case; if the victim is indigent or otherwise unable to obtain the assistance of counsel, the court may appoint counsel to represent the victim without cost to the victim [Sections 2907.02(F), 2907.05(F)]

Physical Resistance: A victim does not have to prove physical resistance in prosecutions for "Rape" and "Gross Sexual Imposition" [Sections 2907.02(C), 2907.05(C)]

#### **Wisconsin:**

Marriage: In prosecution for violation of "Sexual Assault of Child," Sections 948.02 (1),(2), & (3), defendant is not presumed incapable of violating sections because of marriage to complainant [Section 948.02(4)]

Victim's Death: Defendant can be prosecuted under above stated sections even if victim is dead at time of sexual contact or sexual intercourse [Section 948.02(5)]

*COMMENTARY:*

Minnesota and Ohio are the only states to expressly prohibit the mistake of age defense in almost all sexual assault prosecutions involving children. In Minnesota, the exceptions to the rule are offenses involving criminal sexual conduct in the third and fourth degrees when the victim is at least 13, but under 16 and the offender is more than two years older than the victim. In these limited circumstances, the mistake of age defense is allowed. Similarly, in Ohio, statutory law provides that for the offenses of rape, gross sexual imposition, sexual imposition, felonious sexual penetration, and criminal child enticement, there is no mistake of age defense. Ohio law is silent on the mistake of age issue for its remaining sex offense statutes. (It should be noted that this discussion focuses on statutory defenses and does not examine case law in which defenses to criminal sex offenses may have been established.)

Missouri and Illinois generally permit mistake of age defenses in prosecutions for criminal sexual assault with some exceptions dependent on the seriousness of the offense and the child's age. For example, Missouri does not allow the mistake of age defense in cases of rape, sodomy, and second degree sexual abuse, but does permit its use for first degree sexual assault, first degree deviate sexual assault, and sexual misconduct. For other sex offenses involving children, Missouri's statutes on second degree sexual assault, second degree deviate sexual conduct, and first degree sexual abuse, are silent as to the defense. Likewise, Illinois law does not address the defense for all statutory provisions related to child sexual assault, such as criminal sexual assault and aggravated sexual assault. In Illinois, the mistake of age defense is specifically permitted for criminal sexual abuse and aggravated criminal sexual abuse offenses.

Kentucky and Indiana appear to be the only two states to permit mistake of age defenses in almost all criminal child sex offense prosecutions. Wisconsin and Iowa do not address mistake of age in its statutes.

In regard to the defense of consent, the majority of states do not deal with the issue by statute. Minnesota and Kentucky prohibit the defense of consent in most prosecutions for criminal sex offenses involving children. To a more limited degree, Iowa law forbids the defense in prosecutions for "Lascivious Acts With A Child or Minor" and "Indecent Contact With A Child." Illinois allows the defense in cases in which force or threat of force is an element of the sex offense crime.

In the majority of states, the admissibility of evidence on a victim's previous sexual behavior or reputation is most likely governed by case law or evidentiary rule, as opposed to statute. Kentucky, Ohio, and Wisconsin statutes do provide limitations for the admissibility of such evidence in their statutes for specified sex crimes.

However, these statutory provisions do not specifically address limitations as they relate to child victims.

**VII Do statutes provide for the registration of sex offenders with government agencies?**

**Illinois:**

Ill. Comp. Stat. ch. 730, §§ 150/1-10 ("Habitual Child Sex Offender Registration Act")

See also Ill. Com. Stat. ch. 45, §§ 20/0.01 ("Interstate Agreements on Sexually Dangerous Persons Act"; outlined in Section IX below)

**Minnesota:**

Minn. Stat. §§ 243.165, 243.166

**Missouri:**

Mo. Rev. Stat. §§ 43.506, 650.055

**Ohio:**

Ohio Rev. Code Ann. §§ 2950.01-2950.08 ("Habitual Sex Offender Registration Act")

**Indiana, Iowa, Kentucky, and Wisconsin:**

No statutory provisions

**COMMENTARY:**

In drafting or amending legislation dealing with the registration of sex offenders, one has to evaluate the following: the crimes for which a convicted offender must register (pleading to lesser offenses, not titled sex offenses or specified in statute); the length of the mandated registration period; the retroactive application of the law to individuals convicted of sex offenses prior to the enactment of a sex offender registration act; and whether the act governs offenders convicted in other states.

Although Illinois, Minnesota, Missouri, and Ohio have laws which require sex offenders to register with local law enforcement authorities upon their release from prison or placement on probation, their laws could be strengthened to ensure that a greater number of convicted sex offenders are governed by their registration laws. For instance, Illinois and Ohio law define sex offenses narrowly and does not include offenses related to child pornography or prostitution. In addition, Illinois registration law does not govern at least two of its laws specifically addressing child sexual abuse, "Sexual Relations Within Families," and "Permitting Sexual Abuse of A Child." In

both Illinois and Ohio, the law does not cover out-of-state sex offense convictions and is limited to a ten year period of registration.

Minnesota also does not include conviction for prostitution or child pornography offenses under its sex offender registration law (see Chapter No. 326, H.F. No. 1585; statute appears to have been amended to exclude these crimes in the 1993 legislative session), but it does include the reporting of other crimes, such as murder and kidnapping involving a minor victim. Like Illinois and Ohio's statutes, Minnesota's law has a ten year period of mandated registration. In addition, Minnesota does have a provision that when Minnesota accepts a prisoner under a reciprocal interstate compact agreement, the prisoner must agree to comply with Minnesota's registration laws upon his or her release if the prisoner decides to live in Minnesota (Chapter No. 326, H.F. No. 1585).

Of the four state laws examined, Missouri has the least comprehensive in that its law merely requires reporting to the Federal Interstate Identification Index System. Its law does not establish a comprehensive statutory framework for the registration and supervision of convicted sex offenders.

Judith Drazen Schretter, Esq. of the National Center For Missing and Exploited Children has researched case law in the fifty states addressing the constitutionality of sex offender registration laws. She concluded that the "consensus of the cases examined...upholding mandatory registration of sex offenders is that registration is not a form of punishment and therefore is not subject to the Eighth Amendment prohibition against cruel and unusual punishment." She adds that due process and equal protection claims have not been successful in challenging the laws as courts have determined that "neither a defendant's right to privacy nor his right to travel has been unreasonably infringed by the requirement to register."

For Illinois appellate decisions on sex offender registration, see *Illinois v. Taylor*, 561 N.E.2d 393 (Ill. App.4 Dist. 1990) (continuing jurisdiction of trial court to certify defendant as habitual child sex offender); *Illinois v. Adams*, 555 N.E.2d 761 (Ill. App.2 Dist. 1990)(registration not violative of Eight Amendment, due process, or equal protection); *Illinois v. Rogers*, 555 N.E.2d 53 (Ill. App.2 Dist. 1990)(defendant's prior conviction for having had sexual intercourse with fifteen year old when he was seventeen not governed by registration act as the law violated no longer existed and was a misdemeanor offense)(Case law discussion provided by National Center For Missing and Exploited Children.)

#### VIII Do statutes address the testing of sex offenders for HIV and other sexually transmitted diseases or the offense of transmission?

##### Illinois:

Criminal Transmission of HIV: Accused knows that he or she is infected with HIV and does the following: engages in intimate contact with another (exposure of body

of one person to a bodily fluid of another person) in manner that could result in transmission of HIV; transfers, donates, or provides his or her blood, tissue, semen, organs, or other potentially infectious body fluids for transfusion, transplantation, insemination, or other administration to another; or dispenses, delivers, exchanges, sells, or in any other way transfers to another any nonsterile intravenous or intramuscular drug paraphernalia; No requirement that infection with HIV has occurred in order for there to be violation of offense [Ch. 720 Section 5/12-16.2]

**Defense:** Alleged victim consented to contact and had knowledge that accused was infected and described contact could result in infection [Ch. 720 Section 5/12-16.2(d)]

**HIV Testing:** After finding probable cause that accused has violated Sections 12-13 (Criminal Sexual Assault) or 12-14 (Aggravated Criminal Sexual Assault), or after indictment is returned charging accused of violation of Sections 12-13 or 12-14, and upon the victim's request, the State's Attorney must seek order to compel accused to be tested for HIV; statute provides for procedure related to administration of test and maintenance of confidentiality [Ch. 720 Section 5/12-18(e)]

**HIV Testing (more expansive provision):** Whenever a defendant is convicted of an offense under Sections 11-14 (Prostitution), 11-15 (Soliciting For A Prostitute), 11-15.1 (Soliciting for Juvenile Prostitute), 11-16 (Pandering), 11-17 (Keeping Place of Prostitution), 11-18 (Patronizing a Prostitute), 11-18.1 (Patronizing a Juvenile Prostitute), 11-19 (Pimping), 11-19.2 (Exploitation of a Child), 12-13 (Criminal Sexual Assault), 12-14 (Aggravated Criminal Sexual Assault), 12-15 (Criminal Sexual Abuse), or 12-16 (Aggravated Criminal Sexual Abuse), the defendant must undergo medical testing to determine whether offender has HIV; results of test are to be kept strictly confidential by all medical personnel involved in the testing and must be personally delivered in a sealed envelope to the judge of the court in which the conviction was entered for the judge's inspection in camera; statute provides for procedures for disclosure of test results to victim, if requested by victim; if victim under fifteen and victim's parents or legal guardian so requests, court must notify parents or legal guardian of test results [Ch. 730 Section 5/5-5-3(g)]

**HIV Testing (minors):** if minor is found to be delinquent for criminal sexual assault, aggravated criminal sexual abuse, or criminal sexual abuse, the court must order minor to under HIV testing; provisions address performance of test, confidentiality, procedures for disclosure of results; court is mandated to provide information on availability of HIV testing and counseling to all parties to whom test results are revealed [Ch. 705 Section 405/5-23(8)]

### **Indiana:**

**HIV Testing:** Court shall order that a person undergo screening for HIV if the person is convicted of a sex crime listed in section 7.1(b)(8) [IC 35-38-1-7.1(e)] of this chapter and the crime created an epidemiologically demonstrated risk of transmission of HIV as described in section 7.1(b)(8) [IC 35-38-1-7.1(b)(8)] of this section or is convicted of an offense related to controlled substances listed in section 7.1(f) of this



chapter and the offense involved the conditions described in section 7.1(b)(9)(A) of the chapter; if the screening indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test [Section 35-38-1-10.5(a),(b)]

Statute addresses disclosure of results to state department of health, requirement that probation officer conduct presentence investigation, impact on privileged communications, and immunity upon disclosure [Section 35-38-1-10.5(c),(d),(e),(f)]

Provides for notice to victim and counseling [Section 35-38-1-10.6]

**Iowa:**

No statutory provisions

**Kentucky:**

HIV Testing: In cases in which defendant is charged with sex offense involving sexual intercourse, deviate sexual intercourse, or sexual contact and the circumstances demonstrate a possibility of transmission of HIV, defendant shall be informed by judge of the availability of HIV testing at time of initial court appearance; the judge shall notify the victim or victim's parent or guardian that the defendant has been so notified [Section 510.320(2)]

When defendant has been convicted of above-stated offenses, other provisions of law notwithstanding, the court, regardless of any prior HIV test, shall order the defendant to undergo an HIV test under the direction of the Cabinet of Human Resources [Section 510.320(3)]

HIV testing statute also addresses confidentiality concerns, the distribution of HIV results, treatment concerns should defendant prove to be infected with HIV, and appellate process [Section 510.320(4)-(7)]

See Prostitution Section and outline of HIV testing and prohibition against transmission statute for persons convicted of prostitution or procuring another to commit prostitution [Section 529.090]

**Minnesota:**

HIV Testing: Court may issue an order requiring a person convicted of violating sections 609.342, 609.343, 609.344, 609.345 (Criminal Sexual Conduct in the 1st, 2nd, 3rd, and 4th Degree) to submit to testing to determine the presence of the HIV antibody if: the prosecutor moves for the test order in camera; the victim requests the test; and evidence exists that the broken skin or mucous membrane of the victim was exposed to or had contact with the offender's semen or blood during the crime's commission [Section 611A.19(1)(a)]

If the court grants the prosecutor's motion, the court shall order that the test be performed by an appropriate health professional and that no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services [Section 611A.19(1)(b)]

Statute also addresses disclosure of test results and contents of notice to victim [Section 611A.19(2)]

#### **Missouri:**

**HIV Testing:** Any person who is convicted or who pleads guilty or nolo contendere to any sexual offense defined in Chapter 566, RSMO, which includes sexual intercourse as an element of the crime, shall be ordered by the court to undergo HIV testing prior to incarceration without the right of refusal [Section 191.663(2)]

Statute provides that HIV testing shall be taxed to the defendant as costs in the criminal proceedings; costs may be retained by the court from the bond filed by the defendant [Section 191.663(3)]

**Posting of Bond:** Any defendant charged with a sexual offense defined in Chapter 566, RSMO, which includes sexual intercourse as an element of the crime, shall be required to post a minimum bond amount for his release prior to trial; the minimum bond shall be sufficient to cover the cost of any post-trial HIV testing ordered by the court [Section 191.663(4)]

Statute provides that victim and jail or correctional administrators shall have access to test results [Section 191.663(5)]

#### **Ohio:**

**Examination for venereal disease:** If a person is charged with a violation of section 2907.02, 2907.03, 2907.04, 2907.24, or 2907.25, the arresting authority or court shall cause the accused to be examined by a physician to determine if the accused is suffering from a venereal disease; if found to have a venereal disease in an infectious stage, the offender shall submit to treatment; if convicted of or pleads guilty and placed on probation, the offender shall submit to and faithfully follow a course of medical treatment for the venereal disease [Section 2907.27(A)(1)]

**HIV Testing:** If a person is charged with violation of sections 2907.02, 2907.03, or 2907.04, the court shall cause the accused to be examined by a physician who shall perform or order the performance of a HIV test to determine if the accused is a carrier of HIV; results shall be communicated in confidence to the court and the victim will be informed and will receive the results if requested; if test results are positive, the results shall be reported to the health department and to the sheriff, the

head of the state penal institution or reformatory institution, or other person in charge of any jail or prison in which the defendant is incarcerated; if the test result is negative and the charge is not dismissed or if the accused has been convicted of the charge or a different offense arising out of the same circumstances as the offense charged, the court shall order that the test be repeated not earlier than three months nor later than six months after the original test; fact defendant was given HIV test or the results of the test shall not be admitted over the objection of the accused in the prosecution of the offense charged [Section 2907.27(B)]

Results of HIV test or identity of individual taking test may be disclosed to law enforcement pursuant to a lawfully issued search warrant or subpoena in connection with a criminal investigation or prosecution [Section 3701.243]

#### **Wisconsin:**

**HIV Testing:** In a criminal action under sections 940.225, 948.02, 948.05, 948.06, the district attorney must apply to the circuit court for his or her county to order the defendant to submit to a test or a series of tests administered by a health professional to detect the presence of HIV or a sexually transmitted disease; in doing so, the district attorney must have probable cause to believe that the defendant has significantly exposed the victim and the victim or parent/guardian of a minor victim must request that the alleged offender to be tested; upon petition of the district attorney, the court must schedule a hearing on the matter giving notice of at least seventy-two hours to the parties; the defendant may have counsel present at the hearing; if the court orders the HIV test, the court must require the health care professional who performs the test to refrain from disclosing the test results to the defendant; to refrain, notwithstanding section 146.025(4)(c), from making the test results part of the defendant's record; and to disclose the test results to the victim or victim's guardian and the victim's health care provider; the court is not required to order the defendant to submit to a test or a series of tests if the court finds substantial reason relating to the health or life of the defendant not to so and states the reason on the record [Section 968.38]

### **IX Do States have unique or other relevant statutory provisions?**

#### **Illinois:**

**Payment for Treatment:** In addition to any sentences stated in Sections 12-13, 12-14, 12-15, and 12-16, the court may order a person convicted of the aforementioned sections to meet all or any portion of the financial obligations of treatment, including but not limited to medical, psychiatric, rehabilitative or psychological treatment, prescribed for the victim or victims of the offense [Section 5/12-18(d)]

**Interstate Agreements on Sexually Dangerous Persons Act:** Statute authorizes the Governor to enter into interstate agreements regarding the interstate transfer and out

of state residence of conditionally released persons who are classified as sexually dangerous [Ch. 45 Section 20/1]

**Iowa:**

**Child In Need of Assistance Complaints:** During or following an investigation into allegations involving violations of Chapter 709 (Sexual Abuse), Chapter 726 (Protection of the Family and Dependent Persons), and Chapter 728 (Obscenity), a victim under 18, and an alleged offender who is not a person responsible for care of the child, anyone with knowledge of the alleged offense can file a complaint pursuant to Section 232.83 alleging the child to be child in need of assistance; any peace officer with knowledge of the investigation must file a child in need of assistance complaint when the peace officer has reason to believe that victim may require treatment as a result of the alleged offense and that the child's parents, guardian, or custodian is unwilling or unable to provide the treatment [Section 709.13]

**Kentucky:**

Prosecution under alternative statutes:

Inducing, assisting, or causing minor to engage in illegal controlled substances activity, illegal gambling activity, or any other criminal activity constituting felony [Section 530.065]

Inducing, assisting, or causing minor to engage in criminal activity, to become a habitual truant, or to disobey minor's parent or guardian [Section 530.070]

Acting in manner which results in injury to physical or mental welfare of person who is unable to care for himself because of mental illness or retardation [Section 530.080]

**Evidence of violation inadmissible in child custody or visitation suit:** In proceeding to determine custody of or visitation with children, no evidence that one has been charged with violation of sex offense statutes, if person charged and the complainant are married or that such a proceeding is pending, or any evidence regarding the circumstances on which such charge is based, is admissible into evidence on the issue of custody or visitation, nor shall any weight be given by any court to the existence of such a proceeding or the fact on which such proceeding is based; this provision is not construed to prevent evidence of incest or sexual assault of a child from being admitted in a custody or visitation proceeding [Section 510.310] (rewrite)

**Expungement of Records:** Arrest record of anyone accused by his spouse of violating sex offense statutes shall be expunged if charge is dismissed with prejudice or verdict of not guilty is entered; if charges brought against defendant are dismissed with prejudice or defendant is found not guilty, court shall order all law enforcement and other public agencies holding records of offense to expunge the records; no person whose records have been expunged pursuant to section shall have to answer "Yes"

and may answer "No" to the question "Have you ever been arrested?" or any similar question with regard to the offense for which the records were expunged [Section 510.300] (what impact on inquiries related to employment for work involving children)

**Minnesota:**

**Stay of Imprisonment:** If convicted of Sections 609.342 (1)(g), 609.343(1)(g), 609.344(1)(g), 609.345(1)(g), unless required under Section 609.346, court has discretion to stay sentence of imprisonment if court finds that stay is in best interest of complainant or family unit and a professional assessment team states that offender has been accepted by and can respond to treatment program; if sentence stayed, court must include as condition of probation that incarceration be in a local jail or workhouse and that offender complete a treatment program.

**Sex Offender Assessment:** When person is convicted of violating sections 609.342, 609.343, 609.344, 609.345, 609.3451(1), 609.79, or 617.23, or another charge arising out of a charge based on one or more of these sections, the court shall order an independent professional assessment of the offender's need for sex offender treatment; provisions for waiver if guidelines provide a presumptive prison sentence for the offender or an adequate assessment was conducted prior to the conviction; if the assessment indicates that the offender is in need of and amenable to sex offender treatment, the court must include in the sentence a requirement that the offender undergo treatment, unless the court sentences the offender to prison [Section 609.3452]

**Enhanced penalties/Mandatory Sentences:** If an individual is convicted of subsequent sex offenses, court has the authority to impose enhanced penalties and mandatory prison terms [Section 609.346]

**DNA Testing of Convicted Sex Offenders Upon Sentencing or Release:** Results on maintained by bureau of criminal apprehension [Section 609.3461]

**Missouri:**

**Treatment for Sex Offenders:** If individual convicted of violating provisions of Missouri's sex offense statutes and receives a suspended sentence or placed under board of probation and parole, the individual must participate in program of treatment, education and rehabilitation designed for perpetrators of sexual offenses and can be charged a reasonable fee to cover program's costs [Section 566.140]

**DNA Testing of Sex Offenders:** Notwithstanding certain provisions, a local law enforcement agency may perform DNA profiling analysis in individual cases to assist law enforcement officials and prosecutors in the preparation and use of DNA evidence for presentation in court [Section 650.057]



**STATUTE COMPILATIONS (CURRENT THROUGH DECEMBER 31, 1992) OF THE NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE/AMERICAN PROSECUTORS RESEARCH INSTITUTE: CRIMINAL CHILD ABUSE PROCEEDINGS**

**I STATUTES ADDRESSING THE ADMISSIBILITY OF VIDEOTAPED DEPOSITIONS AND/OR TESTIMONY IN CRIMINAL CHILD ABUSE PROCEEDINGS**

**Illinois:** No statute

**Indiana:** Ind. Code § 35-37-4-8 (1990)(held unconstitutional under Indiana State Constitution, but constitutional under federal confrontation clause in *Brady v. Indiana*, 575 N.E.2d 981 (1991))

**Iowa:** Iowa Code § 910A.14 (1992); § 813.2(Rule 12) (1985)

**Kentucky:** Ky. Rev. Stat. Ann. § 421.350(4) (1986) (held unconstitutional as applied in *Gaines v. Commonwealth*, 728 S.W.2d 525 (1987))

**Minnesota:** Minn. Stat. § 595.02(4) (1992)(prior version held unconstitutional in *State v. Conklin*, 444 N.W.2d 268 (1989))

**Missouri:** Mo. Rev. Stat. §§ 491.675 - 491.678 (1985); § 491.680 (1992); §§ 491.685 - 491.693 (1985); § 491.696 (1987); § 491.699 (1985); § 491.702 (1987); § 491.705 (1985); (held unconstitutional in part in *State v. Davidson*, 764 S.W.2d 731 (1989))

**Ohio:** Ohio Rev. Code Ann. § 2907.41 (1986)(Held constitutional in *State v. Self*, 564 N.E.2d 446 (1990)); § 2937.11 (1986)(preservation of preliminary hearing testimony); § 2945.49 (1986)

**Wisconsin:** Wis. Stat. Ann. § 967.04 (1987)(held constitutional in *State v. Thomas*, 425 N.W.2d 641 (1988))

**Federal:** 18 U.S.C.A. § 3509(b)(2)(1990)

**II STATUTES REGARDING THE ADMISSIBILITY OF VIDEOTAPED INTERVIEWS AND/OR STATEMENTS IN CRIMINAL CHILD ABUSE PROCEEDINGS**

**Illinois:** No statute

**Indiana:** Ind. Code § 35-37-4-6 (1990)(held constitutional in *Miller v. State*, 517 N.E.2d 64 (1987))

**Iowa:** Iowa Code § 910.14(3) (1992)

**Kentucky:** Ky. Rev. Stat. Ann. § 421.350(2) (1986)(held unconstitutional under state constitution in *Gaines v. Commonwealth*, 728 S.W.2d 525 (1987))

**Minnesota:** Minn. Stat. § 595.02(3) (1992)

**Missouri:** Mo. Rev. Stat. § 492.304 (1992)

**Ohio:** No statute

**Wisconsin:** Wis. Stat. § 908.08 (1989)(held constitutional in *State v. Tarantino*, 458 N.W.2d 582 (1990))

### III STATUTES ADDRESSING CHILD HEARSAY EXCEPTIONS IN CRIMINAL CHILD ABUSE PROCEEDINGS

**Illinois:** Ill. Ann. Stat. ch. 725, § 5/115/10 (1992)(held constitutional in *People v. Rocha*, 547 N.E.2d 1335 (1989))

**Indiana:** Ind. Code § 35-37-4-6 (1990)

**Iowa:** No statute

**Kentucky:** No statute

**Minnesota:** Minn. Stat. § 595.02(3) (1992)(held constitutional in *State v. Lanam*, 459 N.W.2d 656 (1990))

**Missouri:** Mo. Rev. Stat. § 491.075 (1992)(held constitutional in *State v. Wright*, 751 S.W.2d 48 (1988))

**Ohio:** Ohio R. Evid. 807 (1991)

**Wisconsin:** No statute

### IV STATUTES ADDRESSING THE USE OF CLOSED-CIRCUIT TELEVISION TESTIMONY IN CRIMINAL CHILD ABUSE PROCEEDINGS

**Illinois:** Ill. Ann. Stat. ch. 725, § 5/106B-1 (1992)(held constitutional in *People v. Schmitt*, 562 N.E.2d 377 (1990))

**Indiana:** Ind. Code § 35-37-4-8 (1990)(held constitutional in *Brady v. Indiana*, 575 N.E.2d 981 (1991))



**Iowa:** Iowa Code § 910A.14(1) (1992)(held constitutional in *Morgan v. Iowa*, 469 N.W.2d 419 (1991))

**Kentucky:** Ky. Rev. Stat. Ann. § 421.350 (1986)(held constitutional in *Commonwealth v. Willis*, 716 S.W.2d 224 (1986))

**Minnesota:** Minn. Stat. § 595.02(4) (1992)(held constitutional in *State v. Conklin*, 444 N.W.2d 268 (1989))

**Missouri:** No statute

**Ohio:** Ohio Rev. Code Ann. §§ 2907.41, 2937.11(B) (1986)(held constitutional in *State v. Self*, 564 N.E.2d 446 (1990))

**Wisconsin:** No statute

**Federal:** 18 U.S.C.A. § 3509(b) (1990)

**V STATUTES ADDRESSING CLOSURE OF COURTROOM DURING CHILD VICTIM OR WITNESS TESTIMONY IN CRIMINAL CHILD ABUSE CASES**

**Illinois:** Ill. Rev. Stat. ch. 725, § 5/115-11 (1992) (statute allows media to remain in courtroom)

**Indiana:** No statute

**Iowa:** No statute

**Kentucky:** No statute

**Minnesota:** Minn. Stat. § 631.045 (1986)

**Missouri:** No statute

**Ohio:** No statute

**Wisconsin:** Wis. Stat. § 970.03(4) (1987)

**Federal:** 18 U.S.C.A. § 3509(e) (1990)

**VI STATUTES PERMITTING THE USE OF LEADING QUESTIONS WITH CHILD WITNESSES**

The eight mid-western States do not have such statutes; see Ala. Code §§ 15-25-1 & 15-25-3(c) (1985) and Cal. Evid. Code § 767(b) (1984) for examples.

**VII STATUTES PERMITTING THE USE OF ANATOMICAL DOLLS IN CRIMINAL CHILD ABUSE CASES**

The eight mid-western States do not have such statutes; see Ala. Code § 15-25-5 (1985) & Conn. Gen. Stat. § 54-86g(1990) for examples.

**Federal:** 18 U.S.C.A. § 3509(1) (1990)

**VIII STATUTES LIMITING THE LENGTH OF A CHILD VICTIM'S IN-COURT TESTIMONY**

Iowa is only State of the eight mid-western States with statute; see Iowa Code § 910A.14(4) (1992)

**IX STATUTES LIMITING THE NUMBER OF INTERVIEWS WITH CHILD VICTIMS**

Minnesota is only State of the eight mid-western States with statute; see Minn. Stat. § 626.561(1)(1985)

**X STATUTES MANDATING A SPEEDY DISPOSITION OF CRIMINAL CASES INVOLVING CHILD VICTIMS OR WITNESSES**

**Illinois:** Ill. Ann. Stat. ch. 725, § 5/114-4(k) (1992)

**Indiana:** Ind. Code § 35-36-7-3 (1987)

**Iowa:** Iowa R. Crim. Proc. § 8.1(3) (1985)

**Kentucky:** Ky. Rev. Stat. Ann. § 421.510 (1986)

**Minnesota:** Minn. Stat. § 630.36 (1992)

**Missouri:** Mo. Rev. Stat. § 491.710 (1987)

**Ohio:** No statute

**Wisconsin:** Wis. Stat. § 971.105 (1986)

**Federal:** 18 U.S.C.A. § 3509(j) (1990)

**XI STATUTES ADDRESSING THE COMPETENCY OF CHILD WITNESSES TO TESTIFY IN CRIMINAL TRIALS**

**Illinois:** Ill. Ann. Stat. ch. 725, § 5/115-14 (1992)

**Indiana:** Ind. Code § 35-37-4-1 (1981); § 34-1-14-4 (1881)

**Iowa:** Iowa R. Evid. 601 (1990)

**Kentucky:** Ky. Rev. Stat. Ann. § 421.200 (1952)

**Minnesota:** Minn. R. Evid. 601; Minn. Stat. § 595.02(1) (1992)

**Missouri:** Mo. Rev. Stat. § 491.060(2) (1988)

**Ohio:** Ohio Rev. Code Ann. § 2317.01 (1989)

**Wisconsin:** Wis. Stat. § 906.01 (1974)

**Federal:** 18 U.S.C.A. § 3509(c) (1990); Fed. R. Evid. 601

**XII STATUTES ADDRESSING THE APPOINTMENT OF SUPPORT PERSONS FOR CHILD VICTIMS/WITNESSES IN CRIMINAL CHILD ABUSE CASES**

**Appointment of Guardian Ad Litem:**

**Illinois:** Ill. Ann. Stat. ch. 705, § 405/2-17 (1992)

**Iowa:** Iowa Code § 910A.15 (1992)

**Kentucky:** Ky. Rev. Stat. Ann. § 26A.140 (1992)

**Federal:** 18 U.S.C.A. § 3509(h) (1990)

**Appointment of Support Person:**

**Minnesota:** Minn. Stat. § 631.046 (1986)

**Federal:** 18 U.S.C.A. § 3509(i) (1990)

**XIII STATUTES LIMITING THE RELEASE OF IDENTIFYING INFORMATION ON CHILD ABUSE VICTIMS IN CRIMINAL PROCEEDINGS**

**Illinois:** Ill. Ann. Stat. ch. 725, §§ 190/1 - 190/3 (1992)

**Indiana:** Ind. Code § 35-37-4-12 (1991)(applies to victims generally)

**Iowa:** Iowa Code § 910A.13 (1986)

**Kentucky:** No statute

**Minnesota:** Minn. Stat. §§ 609.3471 (1992) & 611A.035 (1987) (2nd provision applies to victims generally)

**Missouri:** No statute

**Ohio:** Ohio Rev. Code Ann. § 2907.11 (1975)(applies to victims generally)

**Wisconsin:** Wis. Stat. §§ 904.13 (1985) & 904.01 (1974) (applies to victims generally)

**Federal:** 18 U.S.C.A. §3509(d) (1990)

**STATUTE COMPILATIONS (CURRENT THROUGH DECEMBER 31, 1992) OF THE NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE/AMERICAN PROSECUTORS RESEARCH INSTITUTE: MISCELLANEOUS****I STATUTES REQUIRING OR AUTHORIZING JOINT INVESTIGATIONS AND COOPERATION BETWEEN LAW ENFORCEMENT AND CHILD PROTECTION AGENCIES IN CHILD ABUSE CASES**

**Illinois:** Ill. Ann. Stat. ch. 55, §§ 80/3, 80/4 (1992); ch. 325, § 5/7 (1992)

**Indiana:** Ind. Code § 31-6-11-10 (1992)

**Iowa:** Iowa Code § 232.71 (1992)

**Kentucky:** No statute

**Minnesota:** Minn. Stat. § 626.556(10) (1991)

**Missouri:** Mo. Rev. Stat. § 660.520 (1990)

**Ohio:** Ohio Rev. Code Ann. § 2151.421 (1992)

**Wisconsin:** Wis. Stat. § 48.981 (1991)

**II STATUTES MANDATING OR AUTHORIZING THE CREATION OF MULTI-DISCIPLINARY/MULTI-AGENCY CHILD PROTECTION TEAMS**

**Illinois:** Ill. Ann. Stat. ch. 325, § 5/3 (1992); § 5/7.1 (1992)

**Indiana:** Ind. Code §§ 31-6-11-2.1 (1990); 31-6-11-14 (1985); 31-6-11-15 (1979)

**Iowa:** Iowa Code §§ 232.71(3) & (17) (1992); § 235A.13 (1987)

**Kentucky:** Ky. Rev. Stat. Ann. § 620.020 (1992); § 620.040 (1992)

**Minnesota:** Minn. Stat. § 626.558 (1990)

**Missouri:** Mo. Rev. Stat. § 660.520 (1990)

**Ohio:** No statute

**Wisconsin:** No statute

**Federal:** 18 U.S.C.A. § 3509(a) & (b) (1990)

**III STATUTES MANDATING OR AUTHORIZING THE CREATION OF CHILD DEATH REVIEW TEAMS**

**Illinois:** No statute

**Indiana:** No statute

**Iowa:** No statute

**Kentucky:** No statute

**Minnesota:** Minn. Stat. § 210.01(12) (1991)

**Missouri:** Mo. Rev. Stat. §§ 210.192, 210.194, 58.452, 58.722 (1991)

**Ohio:** No statute

**Wisconsin:** No statute

**V STATUTES EXTENDING OR REMOVING STATUTES OF LIMITATION FOR OFFENSES AGAINST CHILDREN**

**Illinois:** Ill. Ann. Stat. ch. 720, § 5/3-6 (1992)

**Indiana:** No statute

**Iowa:** Iowa Code § 802.2 (1990)

**Kentucky:** No statute

**Minnesota:** Minn. Stat. § 628.26 (1991)

**Missouri:** Mo. Rev. Stat. § 556.037 (1990)

**Ohio:** No statute

**Wisconsin:** Wis. Stat. § 939.74(c) (1990)

**Federal:** 18 U.S.C.A. § 3509(k) (1990)

**VI STATUTES ADDRESSING CRIMINAL PARENTAL ABDUCTION**

**Illinois:** Ill. Rev. Stat. ch. 38, para. 10-15 (1989); ch. 38, para. 10-7 (1986)

**Indiana:** Ind. Code § 35-42-3-4 (1990)

**Iowa:** Iowa Code § 710.6 (1986)

**Kentucky:** Ky. Rev. Stat. Ann. § 509.070 (1984)

**Minnesota:** Minn. Stat. § 609.26 (1991)

**Missouri:** Mo. Rev. Stat. §§ 565.149, .150, .153, .156, .160, .163, .165, .167, .169 (1988)

**Ohio:** Ohio Rev. Code Ann. § 2905.04 (1985); § 2919.23 (1991)

**Wisconsin:** Wis. Stat. § 948.31 (1989)

Summaries of the above statutes can be obtained from the National Center For Prosecution of Child Abuse, American Prosecutors Research Institute, 99 Canal Center Plaza, Suite 510, Alexandria, VA 22314 (703-739-0321)(FAX: 703-549-6259).

**APPENDIX IV:**  
**CHILD ABUSE REPORTING AND INVESTIGATION LAWS**  
**SUMMARIES COMPILED BY**  
**MARCIA MCKINLEY, ESQ.**  
**NATIONAL CLEARINGHOUSE ON CHILD ABUSE**  
**AND NEGLECT INFORMATION**

**Note:** The tables and summaries in this appendix are not verbatim excerpts of the statutes. If you wish to cite a particular statute, you should check the state code itself to ensure that you have accurate language and citation. The summaries are current through December 31, 1992.

**DEFINITIONS**

**ILLINOIS**

**Ill. Ann. Stat. ch. 23, para. 2053 (1990) and 2054 (1990)**

- I. **"Abused child"** = a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:
  - A. inflicts, causes to be inflicted, or allows to be inflicted upon such child physical injury by nonaccidental means, which causes:
    - 1. death,
    - 2. disfigurement,
    - 3. impairment of physical or emotional health, or
    - 4. loss or impairment of any bodily function;
  - B. creates a substantial risk of physical injury to such child by nonaccidental means which would be likely to cause:
    - 1. death,
    - 2. disfigurement,
    - 3. impairment of physical or emotional health, or
    - 4. loss or impairment of any bodily function;
  - C. commits or allows to be committed any criminal sex offense against such child under 18 years of age;
  - D. commits or allows to be committed an act(s) of torture upon such child; or
  - E. inflicts excessive corporal punishment.
- II. **"Neglected child"** = any child:
  - A. whose parent or other person responsible for the child's welfare:
    - 1. withholds or denies nourishment or medically indicated treatment including food or care denied solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians; or
    - 2. does not provide the proper or necessary support or medical or other remedial care recognized as necessary for a child's well-being, or other care necessary or his or her well-being, including adequate food, clothing, and shelter;



- B. who is abandoned by his or her parents or other person responsible for the child's welfare; or
- C. who is a newborn infant whose blood or urine contains any amount of a controlled substance or metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or the newborn infant.

III. Exceptions

- A. A child shall not be considered neglected or abused for the sole reason that such child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care as provided in Section 4. . . [Section 4] A child whose parent, guardian, or custodian in good faith selects and depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care may be considered neglected or abused, but not for the sole reason that his or her parent, guardian, or custodian accepts and practices such beliefs.
- B. A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the law.

IV. Miscellaneous Definitions

- A. "Child" = person under the age of 18 years, unless legally emancipated by reason of:
  - 1. marriage; or
  - 2. entry into a branch of the United States armed services.
- B. "Person responsible for the child's welfare" =
  - 1. the child's parent, guardian, or foster parent;
  - 2. any person responsible for the child's welfare in a residential agency or institution;
  - 3. any person responsible for the child's welfare within a child care facility;
  - 4. any other person responsible for the child's welfare at the time of the alleged abuse or neglect; or
  - 5. any person who came to know the child through an official capacity or position of trust, including:
    - a. health care professionals,
    - b. educational personnel,

- c. recreational supervisors, and
- d. volunteers or support personnel in any setting where children may be subject to abuse or neglect.

*HISTORICAL NOTE:* Illinois reclassified and renumbered their statutes effective January 1, 1993. Ill. Ann. Stat. ch. 23, para. 2053 and 2054 are now numbered 325 Ill. Comp. Stat. Ann. 5/3 and 5/4 respectively.

## **MANDATORY REPORTERS**

### **ILLINOIS**

**Ill. Ann. Stat. ch. 23, para. 2054 (1990) and 2054.1 (1987) and ch. 38, para. 11-20.2 (1986)**

#### **I. Who Must Report**

- A. Physicians; residents; interns; hospitals; hospital administrators and personnel engaged in examination, care, and treatment of persons; surgeons; dentists; dentist hygienists; osteopaths; chiropractors; podiatrists; coroners; medical examiners; emergency medical technicians; registered nurses; licensed practical nurses.
- B. School personnel; educational advocates assigned to a child pursuant to the law; directors or staff assistants of nursery schools or child day-care centers; recreational program or facility personnel; child care workers.
- C. Substance abuse treatment personnel; crisis line or hotline personnel; social workers; domestic violence program personnel; registered psychologists and assistants working under the direct supervision of psychologists; psychiatrists.
- D. Christian Science practitioners; truant officers; social services administrators; law enforcement officers; supervisors and administrators of general assistance; probation officers; foster parents; homemakers; field personnel of the Illinois Departments of Public Aid, Public Health, Mental Health and Developmental Disabilities, Corrections, Human Rights, Rehabilitation Services, or Children and Family Services.

#### **II. Under these Circumstances**

- A. When they have reasonable cause to believe a child known to them in their professional or official capacity may be an abused or neglected child; or

B. when they have reasonable cause to suspect that a child has died as a result of abuse or neglect.

III. Privileged Communications: The privileged quality of communication between any professional person required to report and his or her patient or client shall not apply to situations involving abused or neglected children and shall not constitute grounds for failure to report.

*NOTE:* Ill. Ann. Stat. ch. 38, para. 11-20.2 (1986) also creates a duty to report. This section requires commercial film and photographic print processors who have knowledge of or observe, within the scope of their professional capacities or employments, any film, photograph, videotape, negative, or slide which depicts a child whom the processors know or reasonably should know to be under the age of 18 where such child is actually or by simulation:

- engaged in any act of sexual intercourse with any person or animal;
- engaged in any act of sexual contact involving the sex organs of the child and the mouth, anus, or sex organs of another person or animal, or which involves the mouth, anus, or sex organs of the child and the sex organs of another person or animal;
- engaged in any act of masturbation;
- portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal;
- engaged in any act of excretion or urination within sexual context; or
- portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context.

Such reports should be made to a peace officer immediately or as soon as possible. Failure to make such report shall be a business offense with a fine of \$1,000.

*HISTORICAL NOTE:* Illinois reclassified and renumbered their statutes effective January 1, 1993. Ill. Ann. Stat. ch. 23, para. 2053 and 2054.1 are now numbered 325 Ill. Comp. Stat. Ann. 5/3 and 5/4.1 respectively.

## REPORTING PROCEDURES

### ILLINOIS

Ill. Ann. Stat. ch. 23, para. 2053 (1990); 2054 (1990); 2054.1 (1987); 2057 (1991); 2057.4(a) and (b)(4) (1991); 2057.8 (1992); 2057.10 (1989); and 2057.12 (1989)

I. Generally

- A. Reporting Child Abuse and Neglect
    - 1. Form of Report
      - a. Mandatory reporters shall immediately report or cause a report to be made: by telephone to the central register on the single, statewide, toll-free telephone number; or in person or by telephone through the nearest Department of Children and Family Services office.
      - b. All reports by mandatory reporters shall be confirmed in writing to the appropriate Child Protective Service Unit, which may be on forms supplied by the Department, within 48 hours of any initial report.
    - 2. Contents of Reports. The report shall include, if known:
      - a. the name and address of the child and his or her parents or other persons having his or her custody;
      - b. the child's age;
      - c. the nature of the child's condition including any evidence of previous injuries or disabilities; and
      - d. any other information that the reporter believes might be helpful in establishing the cause of such abuse or neglect; and the identity of the person believed to have caused such abuse or neglect.
  - B. Reporting Suspicious Deaths: Mandatory reporters who have reasonable cause to suspect that a child has died as a result of abuse or neglect shall also immediately report their suspicions to the appropriate medical examiner or coroner.
- II. Specific Situation: Whenever a person is required to report in his or her capacity as a staff member of a medical or other institution, school, facility, or agency, he or she shall make report immediately to the Department of Children and Family Services and may also notify the person in charge of such institution, school, facility, or agency, or his or her designated agent, that such report has been made.
- III. Cross-Reporting to/by Professionals
- A. By the Department of Children and Family Services
    - 1. The Department shall, within 24 hours, orally notify local law enforcement personnel and the Office of the State's Attorney of the involved county of the receipt of any report alleging:
      - a. the death of a child;
      - b. serious injury to a child, including brain damage, skull fractures,

## Illinois

- subdural hematomas, internal injuries, torture of a child, malnutrition of a child;
- c. sexual abuse to a child, including sexual intercourse, sexual exploitation, sexual molestation, and venereal disease in a child age 12 and under.
2. All oral reports made by the Department to local law enforcement personnel and the Office of the State's Attorney of the involved county shall be confirmed in writing within 48 hours of the oral report.
  3. Whenever the Department receives a report alleging that a child is a truant, the Department shall notify the superintendent of the school district in which the child resides and the appropriate superintendent of the educational service region.
  4. The Department shall, except in investigations where the Director determines that such notification would be detrimental to the Department's investigation, inform the appropriate supervisor or administrator of the employment or activity and the person being investigated that the Child Protective Service Unit has commenced a formal investigation when:
    - a. at the conclusion of the Unit's initial investigation of a report, the Unit determines the report to be a good faith indication of alleged child abuse or neglect that warrants a formal investigation by the Unit, the Department, any law enforcement agency, or any other responsible agency; and
    - b. the person who is alleged to have caused the abuse or neglect is employed or otherwise engaged in an activity resulting in frequent contact with children and the alleged abuse or neglect are in the course of such employment or activity.
  5. Upon receiving an oral or written report of suspected child abuse or neglect, the Department shall immediately notify, either orally or electronically, the Child Protective Service Unit of a previous report concerning a subject of the present report or other pertinent information.
- B. By the Child Protective Service Unit
1. Upon the receipt of each oral report, the Child Protective Service Unit shall immediately transmit a copy thereof to the state central register of child abuse and neglect.
  2. The Child Protective Service Unit shall determine, within 60 days, whether the report is "indicated" or "unfounded" and report it to the central register; where it is not possible to initiate or complete an investigation within 60 days, the report may be deemed "undetermined"

provided every effort has been made to undertake a complete investigation. The Department may extend the period in which such determinations must be made in individual cases for additional periods of up to 30 days each for good cause shown.

- C. Reports made to the central register through the statewide, toll-free telephone number shall be immediately transmitted to the appropriate Child Protective Service Unit.
- D. Upon receiving a report from a person who has reasonable cause to suspect that a child has died as a result of abuse or neglect, the medical examiner or coroner shall investigate the report and communicate his or her apparent gross findings, orally, immediately upon completion of the gross report, but in all cases within 72 hours and within 21 days in writing to:
  - 1. the local law enforcement agency;
  - 2. the appropriate State's Attorney;
  - 3. the Department of Children and Family Services; and,
  - 4. the hospital, if the institution making the report is a hospital.

*NOTE:* For reporting procedures for commercial film and photographic print processors, see note under "Mandatory Reporters."

*HISTORICAL NOTE:* Public Act 87-649, effective January 1, 1992, amended sections 2057.8 and 2057.14. The only change that has been made to the reporting procedures is that the person making the report classification must now determine whether the named child is the subject of an action under Article II of the Juvenile Court Act and, if so, must transmit a copy of the report to the child's guardian ad litem.

Additionally, Illinois reclassified and renumbered their statutes effective January 1, 1993. Ill. Ann. Stat. ch. 23, para. 2053, 2054, 2054.1, 2057, 2057.4, 2057.8, 2057.10, and 2057.12 are now numbered 325 Ill. Comp. Stat. Ann. 5/3, 5/4.1, 5/4.1, 5/7, 5/7.4, 5/7.8, 5/7.10, and 5/7.12.

## **REPORTING DRUG-EXPOSED INFANTS**

### **ILLINOIS**

**Ill. Ann. Stat. tit. 23, sec. 2057.3b (1990)**

All persons required to report may refer to the Department of Public Health any pregnant person in this State who is addicted as defined by law. The Department of Public Health shall notify the local Infant Mortality Reduction Network service provider or Department-funded prenatal care provider in the area in which the person resides. The service provider

shall prepare a case management plan and assist the pregnant woman in obtaining counseling and treatment from a local substance abuse service provider licensed by the Department of Alcoholism and Substance Abuse or a licensed hospital which provides substance abuse treatment services. The local Infant Mortality Reduction Network service provider and Department-funded prenatal care provider shall monitor the pregnant woman through the service program.

### **CROSS-REPORTING BETWEEN SOCIAL SERVICES AND LAW ENFORCEMENT ILLINOIS**

**Ill. Ann. Stat. ch. 23, para. 2053 (1990); 2054 (1990); and 2057 (1991)**

#### **I. Receiving Agency**

- A. Mandatory reporters shall immediately report or cause a report to be made:
  - 1. by telephone to the central register on the single, statewide, toll-free telephone number; or
  - 2. in person or by telephone through the nearest Department of Children and Family Services office.
  
- B. All reports by mandatory reporters shall be confirmed in writing to the appropriate Child Protective Service Unit, which may be on forms supplied by the Department, within 48 hours of any initial report.

#### **II. Cross-Reporting**

- A. The Department of Children and Family Services shall, within 24 hours, orally notify local law enforcement personnel and the Office of the State's Attorney of the involved county of the receipt of any report alleging:
  - 1. serious injury to a child, including brain damage, skull fractures, subdural hematomas, internal injuries, torture of a child, malnutrition of a child;
  - 2. sexual abuse to a child, including sexual intercourse, sexual exploitation, sexual molestation, and venereal disease in a child age 12 and under.
  
- B. All oral reports made by the Department to local law enforcement personnel and the Office of the State's Attorney of the involved county shall be confirmed in writing within 48 hours of the oral report.

*HISTORICAL NOTE:* Illinois reclassified and renumbered their statutes effective January 1, 1993. Ill. Ann. Stat. ch. 23, para. 2053, 2054, and 2057 are now numbered 325 Ill. Comp. Stat. Ann. 5/3, 5/4, and 5/7.

**PENALTIES FOR FALSE REPORTING  
ILLINOIS**

**Ill. Ann. Stat. ch. 23, para. 2054 (1990)**

Any person who knowingly transmits a false report to the Department commits the offense of disorderly conduct under the law. Any person who violates this provision a second or subsequent time shall be guilty of a Class 4 felony.

**PENALTIES FOR FAILURE TO REPORT  
ILLINOIS**

**Ill. Rev. Stat. Ann. ch. 23, para. 2054 (1990) and 2054.02 (1990)**

- I. Any person who knowingly and willfully violates any provision of the reporting law, other than a second or subsequent violation of transmitting a false report, shall be guilty of a Class A misdemeanor.
- II. Any physician who willfully fails to report suspected child abuse or neglect as required by the reporting laws shall be referred to the Illinois State Medical Disciplinary Board for action in accordance with law. Any other person required to report suspected child abuse or neglect who willfully fails to report such shall be guilty of a Class A misdemeanor.

**IMMUNITY FOR REPORTERS  
ILLINOIS**

**Ill. Ann. Stat. ch. 23, sec. 2059 (1990)**

Any person, institution, or agency, under the reporting laws, participating in good faith in the making of a report or referral shall have immunity from any civil, criminal, or other liability that might result by reason of such actions. For the purpose of any civil or criminal proceedings, the good faith of any persons required to report or refer, or permitted to report, cases of suspected child abuse or neglect or permitted to refer individuals under the reporting laws, shall be presumed.



**DEFINITIONS**

**INDIANA**

**Ind. Code Ann. sec. 31-6-11-2.1(2) (1992); 31-6-4-3(a)-(e) (1990); 35-42-4-1 (1989); 35-42-4-2 (1977); 35-42-4-3 (1978); 35-42-4-4 (1990); 35-42-4-7 (1987); 35-45-4-1 (1977); 35-45-4-2 (1977); and 35-46-1-3 (1987)**

I. **"Child abuse and neglect"** = a child who is alleged to be a child in need of services. A child is a child in need of services if before the child's 18th birthday:

A. the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary:

1. food, clothing, or shelter,
2. medical care,
3. education, or
4. supervision;

B. the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian;

C. the child is a victim of a sex offense under laws prohibiting:

1. rape,
2. criminal deviate conduct,
3. child molesting,
4. child exploitation,
5. child seduction,
6. public indecency,
7. prostitution, or
8. incest;

D. the child's parent, guardian, or custodian allows the child to participate in an obscene performance; or

E. the child's parent, guardian, or custodian allows the child to commit a prohibited sex offense.

II. **Exceptions**

A. When a parent, guardian, or custodian fails to provide specific medical treatment for a child because of the legitimate and genuine practice of the parent's, guardian's, or custodian's religious beliefs, a rebuttable presumption arises that the child is not a child in need of services because of such failure.

However, this presumption does not prevent a juvenile court from ordering, when the health of a child requires, medical services from a physician licensed to practice medicine in Indiana. This presumption does not apply to situations in which the life or health of a child is in serious danger.

- B. This does not limit the right of a person to use reasonable corporal punishment when disciplining a child if the person is the parent, guardian, or custodian of the child. In addition, this does not limit the lawful practice or teaching of religious beliefs.
- C. The term "child abuse or neglect" does not include a child who is alleged to be a child in need of services because that child is alleged to be a victim of the sexual offense committed when a person 16 years of age or older, with a child between 12 and 16 years of age, performs or submits to any fondling or touching of either the child or the older person, with the intent to arouse or to satisfy the sexual desires of either the child or the older person, unless the alleged offense involves the fondling or touching of the buttocks, genitals, or female breast.

### III. Miscellaneous Definitions

- A. **"Custodian"** includes any person responsible for the child's welfare who is employed by a residential school or foster care facility.
- B. **"An omission"** = an occurrence in which the parent, guardian, or custodian allowed that person's child to receive any injury that the parent, guardian, or custodian had a reasonable opportunity to prevent or mitigate.

### MANDATORY REPORTERS

#### INDIANA

Ind. Code Ann. sec. 31-6-11-3(a) (1979) and 31-6-11-8 (1988)

- I. Who Must Report: Any individuals.
- II. Under these Circumstances: When they have reason to believe that a child is a victim of child abuse or neglect.
- III. Privileged Communications. The privileged communication between a husband and wife, between a health care provider and that health care provider's patient, or between a school counselor and a student is not a ground for failing to report.

**REPORTING PROCEDURES  
INDIANA**

**Ind. Code Ann. sec. 31-6-11-3 (1979); 31-6-11-4 (1979); 31-6-11-5(a) (1980); 31-6-11-11(d) and (e) (1992); 31-6-11-12 (1979); 31-6-11-22 (1992); and 31-6-11-2.1(5) (1992)**

**I. Generally**

- A. Form of Reports:** A mandatory reporter shall immediately make an oral report.
- B. To Whom:** Reporters shall make reports to the local child protection service or law enforcement agency.

**II. Specific Situation:** If an individual is required to report in his or her capacity as a staff member of a medical or other institution, school, facility, or agency, he or she shall immediately notify the individual in charge of the institution, school, facility, or agency, or his or her designated agent, who also becomes responsible to report or cause a report to be made. Nothing in this section is intended to relieve individuals of their obligation to report on their own behalf, unless a report has already been made to the best of the individual's belief.

**III. Cross-Reporting to/by Professionals**

**A. By the Child Protection Service**

- 1.** A written report of a child who may be a victim of child abuse or neglect shall be made by the child protection service within 48 hours of its receipt of the oral report required of individuals. Written reports shall be made on forms supplied by the administrator. Such reports must include, if known, the following information:
  - a.** the names and addresses of the child and his or her parents, guardian, custodian, or other person responsible for his or her care;
  - b.** the child's age and sex;
  - c.** the nature and apparent extent of the child's injuries, abuse, or neglect, including any evidence of prior injuries of the child or abuse or neglect of the child or his or her siblings;
  - d.** the name of the person allegedly responsible for causing the injury, abuse, or neglect;
  - e.** the source of the report;
  - f.** the reporter and where he or she can be reached;

- g. the actions taken by the reporting source, including the taking of photographs and X rays, removal or keeping of the child, or notifying the coroner; and
  - h. any other information that the administrator may, by regulation, require, or the person making the report believes might be helpful.
- 2. A copy of the written report of the child protection service shall immediately be made available to:
  - a. the appropriate law enforcement agency;
  - b. the prosecutor; and,
  - c. in a case involving death, to the coroner for his or her consideration.
- 3. The local child protection service shall give telephone notice and forward immediately a copy of reports which involve the death of a child to the appropriate prosecutor.
- 4. A copy of all reports shall be forwarded immediately by the child protection service to the appropriate prosecutor if a prior request in writing for such copies has been made to the service by the prosecutor.
- 5. The child protection service shall make a complete written report of the investigation, together with its recommendations.
  - a. These reports shall be made available to the appropriate court, the prosecutor, or the appropriate law enforcement agency upon request.
  - b. If the investigation substantiates a finding of child abuse or neglect as determined by the child protection service, a report shall be sent to the coordinator of the community child protection team.
- 6. Upon receipt of a written report by the child protection service, the coroner shall accept the report for investigation and shall report his or her findings to:
  - a. the appropriate law enforcement agency;
  - b. the prosecutor;
  - c. the local child protection service; and
  - d. if the institution making the report is a hospital, the hospital.
- 7. Whenever the child protection service receives a report of suspected child abuse or neglect from a hospital, community mental health center, referring physician, or a school, the child protection service shall send a report to the administrator of the hospital, community mental health center, referring physician, or the principal of the school.

## Indiana

- a. Within 30 days after the date the child protection service receives the report of suspected child abuse or neglect, the service shall send a report containing such items as are known at that time.
- b. Within 90 days after the date the service receives the report of suspected child abuse or neglect, a report shall be sent, containing any additional items not covered in the prior report, if then available.
- c. Contents of Reports. The report must contain the following items of information: the name of the alleged victim of child abuse or neglect; the name of the alleged perpetrator and that person's relationship to the alleged victim; whether the case is closed; whether information concerning the case has been expunged; the name of any agency to which the alleged victim has been referred; whether the child protection service has made an investigation of the case and has not taken any further action; whether a substantiated case of child abuse or neglect was informally adjusted; whether the alleged victim was referred to the juvenile court as a child in need of services; whether the alleged victim was returned to his or her home; whether the alleged victim was placed in residential care outside his or her home; whether a wardship was established for the alleged victim; whether criminal action is pending or has been brought against the alleged perpetrator; a brief description of any casework plan that has been developed by the child protection service; the caseworker's name and telephone number; the date the report is prepared; and such other information as the Division of Family and Children may prescribe.

### B. By Law Enforcement Agencies

1. When a law enforcement agency receives a report that a child may be a victim of child abuse or neglect, it shall immediately communicate the report to the local child protection service.
2. In all instances, the law enforcement agency shall forward any information, including copies of investigation reports, on incidents of cases in which a child may be a victim of child abuse or neglect to:
  - a. the local child protection agency; and
  - b. the juvenile court.

**REPORTING DRUG-EXPOSED INFANTS  
INDIANA**

**Ind. Stat. Ann. sec. 31-6-4-3.1 (1987)**

A child is a child in need of services if the child is born with fetal alcohol syndrome or an addiction to a controlled substance or a legend drug.

*NOTE:* See summaries for "Definitions of Child Abuse and Neglect," "Mandatory Reporters of Child Abuse and Neglect," and "Procedures for Reporting Child Abuse and Neglect."

**CROSS-REPORTING BETWEEN SOCIAL SERVICES AND LAW ENFORCEMENT  
INDIANA**

**Ind. Code Ann. sec. 31-6-11-4 (1979); 31-6-11-5(a) (1980); 31-6-11-11(e) (1992); and 31-6-11-12 (1979)**

- I. Receiving Agency: Reporters shall make reports to the local child protection service or law enforcement agency.
- II. Cross-Reporting
  - A. A written report of a child who may be a victim of child abuse or neglect shall be made by the child protection service within 48 hours of its receipt of the oral report required of individuals. A copy of the written report of the child protection service shall immediately be made available to:
    1. the appropriate law enforcement agency; and
    2. the prosecutor.
  - B. A copy of all reports shall be forwarded immediately by the child protection service to the appropriate prosecutor if a prior request in writing for such copies has been made to the service by the prosecutor.
  - C. The child protection service shall make a complete written report of the investigation, together with its recommendations. These reports shall be made available to the appropriate court, the prosecutor, or the appropriate law enforcement agency upon request.
  - D. When a law enforcement agency receives a report that a child may be a victim of child abuse or neglect, it shall immediately communicate the report to the local child protection service.

- E. In all instances, the law enforcement agency shall forward any information, including copies of investigation reports, on incidents of cases in which a child may be a victim of child abuse or neglect to:
1. the local child protection agency; and
  2. the juvenile court.

**PENALTIES FOR FAILURE TO REPORT  
INDIANA**

**Ind. Code Ann. sec. 31-6-11-20 (1979)**

- I. A person who knowingly fails to make a report required by law commits a class B misdemeanor.
- II. A person who, in his or her capacity as a staff member of a medical or other institution, school, facility, or agency, is required to make a report to the individual in charge of the institution, school, facility, or agency, or his or her designated agent, who is also responsible to report or cause a report to be made, and who knowingly fails to make a report commits a class B misdemeanor. This penalty is imposed in addition to the penalty imposed in (I).

**IMMUNITY FOR REPORTERS  
INDIANA**

**Ind. Code Ann. sec. 31-6-11-7 (1985)**

A person, other than a person accused of child abuse or neglect, who makes or causes to be made any report of a child who may be a victim of child abuse or neglect is immune from any civil or criminal liability that might otherwise be imposed because of such actions. However, immunity does not attach for any person who has acted maliciously or in bad faith. A person making a report that a child may be a victim of child abuse or neglect or assisting in any requirement of the reporting laws is presumed to have acted in good faith.

**DEFINITIONS****IOWA**

Iowa Code Ann. sec. 232.68(1),(2), and (7) (1989); 709.2 (1976); 709.3 (1984); 709.4 (1989); 709.7 (1976); 709.8 (1985); 709.9 (1977); 709.11 (1981); 709.12 (1988); 709.14 (1989); 709.15 (1992); 726.2 (1986); 728.12 (1989); and 725.1 (1976)

**I. "Child abuse" or "abuse" =**

- A. any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of the child;
- B. the commission of any of the following sexual offenses with or to a child, as a result of the acts or omissions of the person responsible for the care of the child (this includes any sexual offense with or to a person under 18 years of age):
  - 1. sexual abuse in the first, second, or third degree,
  - 2. detention in brothel,
  - 3. lascivious acts with a child,
  - 4. indecent exposure,
  - 5. assault with intent to commit sexual abuse,
  - 6. indecent contact with a child,
  - 7. lascivious conduct with a minor,
  - 8. sexual abuse by a counselor or therapist,
  - 9. sexual misconduct with offenders,
  - 10. incest,
  - 11. employing, using, persuading, inducing, enticing, coercing, knowingly permitting, or otherwise causing a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act while knowing, having reason to know, or intending that act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, or other print or visual medium;
- C. the failure on the part of a person responsible for the care of a child to provide for any of the following when financially able to do so or when offered financial or other reasonable means to do so:
  - 1. adequate food, shelter, or clothing, or
  - 2. adequate other care necessary for the child's health and welfare;
- D. the acts or omissions of a person responsible for the care of a care which allow, permit, or encourage the child to engage in prostitution (this includes acts or omissions with or to a person under 18 years of age).



II. Exception: A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child, however this shall not preclude a court from ordering that medical service be provided to the child where the child's health requires it.

III. Miscellaneous Definitions

A. "Child" = any person under the age of 18 years.

B. "Person responsible for the care of a child" =

1. a parent, guardian, or foster parent;
2. a relative or any other person with whom the child resides, without reference to the length of time or continuity of such residence;
3. an employee or agent of any facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center or child care facility;
4. any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

C. "Person responsible for the care of a child" =

1. a parent, guardian, or foster parent;
2. a relative or other person with whom the child resides, without reference to the length of time or continuity of such residence;
3. an employee or agent of any facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility;
4. any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

**MANDATORY REPORTERS**

**IOWA**

Iowa Code Ann. sec. 232.69(1) (1989); 232.68(5) (1989); and 728.14 (1989)

I. Who Must Report. Any of the following persons, who in the scope of professional practice or in providing child foster care, examines, attends, counsels, or treats a child:

A. Dental hygienists.

- B. Licensed school employees; employees or operators of a licensed child care centers, registered group day-care homes, or registered family day-care homes.
  - C. Self-employed social workers; social workers under the jurisdiction of the Department of Human Services; social workers employed by agencies, institutions, or health care facilities; certified psychologists; members of the staff of a mental health center; counselors; mental health professionals.
  - D. Individual licensees under the law; peace officers.
- II. Under these Circumstances: When they reasonable believe a child has been abused.
- III. Additional Mandatory Reporters. Health practitioners who:
- A. in the scope of professional practice examine, attend, or treat a child;
  - B. receive information confirming that a child is infected with a sexually transmitted disease.
- IV. Miscellaneous Definition. "**Health practitioner**" = licensed physicians and surgeons; osteopaths; osteopathic physicians and surgeons; dentists; optometrists; podiatrists; chiropractors; residents or interns in any of these professions; licensed dental hygienists; registered nurses; licensed practical nurses; basic emergency medical care providers; advanced emergency medical care providers.

*NOTE:* Iowa Code sec. 728.14 (1989) requires commercial film and photographic print processors who have knowledge of or observe, within the scope of their professional capacities or employments, a film, photograph, video tape, negative, or slide which depicts a minor whom the processors know or reasonably should know to be under the age of 18, to report the depiction to the County Attorney immediately or as soon as possible. Processors shall not report to the County Attorney depictions involving mere nudity of the minor, but shall report depictions involving a prohibited sexual act. This law shall not be construed to require processors to review all films, photographs, video tapes, negatives, or slides delivered to the processor within the processors' professional capacity or employment. For purposes of this law, "**prohibited sexual act**" means any of the following:

- a sex act as defined by law;
- an act of bestiality involving a minor;
- fondling or touching the pubes or genitals of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the act;

- fondling or touching the pubes or genitals of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the act;
- sadomasochistic abuse of a minor for the purpose of arousing or satisfying sexual desires of a person who may view a depiction of the abuse;
- sadomasochistic abuse of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.

A person who violates this section is guilty of a simple misdemeanor.

## REPORTING PROCEDURES

### IOWA

Iowa Code sec. 232.70(1)-(5) (1987); 232.71(1),(4), and (7)-(9) (1992); and 232.68(4) and (8) (1989)

#### I. Generally

- A. Form of the Report: Each report made by a mandatory reporter shall be made both orally, by telephone or otherwise, and in writing.
- B. To Whom
  1. The oral report shall be made to the Department of Human Services. If the reporter has reason to believe that immediate protection for the child is advisable, that person shall also make an oral report to an appropriate law enforcement agency.
  2. The written report shall be made to the Department of Human Services within 48 hours after the oral report.
- C. Contents of Reports. The oral and written reports shall contain the following formation, or as much of it as the reporter is able to furnish:
  1. the names and home addresses of the child and the child's parents or other persons believed to be responsible for the child's care;
  2. the child's present whereabouts if not the same as the parent's or other person's home address;
  3. the child's age;
  4. the nature and extent of the child's injuries, including any evidence of previous injuries;
  5. the name, age, and condition of other children in the same home;
  6. any other information which the reporter believes might be helpful in

establishing:

- a. the cause of the injury to the child;
  - b. the identity of the person(s) responsible for the injury; or
  - c. in providing assistance to the child; and
7. the reporter's name and address.

## II. Cross-Reporting to/by Professionals

### A. By the Department of Human Services

1. Immediately upon receipt of an oral report, the Department of Human Services shall make a determination as to whether the report constitutes an allegation of child abuse. If the report does constitute a child abuse allegation, the Department of Human Services shall make a report to the central registry.
2. The Department of Human Services shall forward a copy of the written report to the central registry.
3. The Department of Human Services shall notify the appropriate County Attorney of the receipt of any report.
4. Based on an investigation of alleged child abuse by an employee of a facility providing care to a child, the Department of Human Services shall notify the licensing authority for the facility, the governing body of the facility, and the administrator in charge of the facility of any of the following:
  - a. a violation of facility policy noted in the investigation;
  - b. an instance in which facility policy or lack of facility policy may have contributed to the alleged child abuse;
  - c. an instance in which general practice in the facility appears to differ from the facility's written policy.
5. The Department of Human Services, upon completion of its investigation, shall make a preliminary report of its investigation. A copy of this report shall be transmitted to juvenile court within 4 regular working days after the Department of Human Services initially receives the abuse report unless the juvenile court grants an extension of time for good cause shown. If the preliminary report is not a complete report, a complete report shall be filed within 10 working days of the receipt of the abuse report, unless the juvenile court grants an extension of time for good cause shown.
6. The Department of Human Services shall transmit a copy of the report of its investigation, including actions taken or contemplated, to the central registry. The Department of Human Services shall make periodic follow-up reports thereafter in a manner prescribed by the

- central registry.
7. The Department of Human Services shall transmit a copy of the report of its investigation to the County Attorney.
  8. If a report to the Department of Human Services is determined not to constitute a child abuse allegation, but a criminal act involving a child is alleged, the Department shall immediately refer the matter to the appropriate law enforcement agency.
- B. The juvenile court shall notify the central registry of any action it takes with respect to a suspected case of child abuse.
- C. The County Attorney shall notify the central registry of any actions or contemplated actions with respect to a suspected case of child abuse.

*NOTE:* For reporting procedures for commercial film and photographic print processors, see note under "Mandatory Reporters."

#### **REPORTING DRUG-EXPOSED INFANTS**

##### **IOWA**

**Iowa Code Ann. sec. 232.77(2) (1990)**

If a health practitioner discovers in a child under 1 year of age physical or behavioral symptoms of the effects of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives thereof, which are not prescribed by a health practitioner, or if the health practitioner has determined through examination of the natural mother of the child that the child was exposed in utero, the health practitioner may perform or cause to be performed a medically relevant test, as defined by law, on the child. The practitioner shall report any positive results of such a test on the child to the Department, unless the natural mother has shown good faith in seeking appropriate care and treatment. The Department shall begin an investigation pursuant to law upon receipt of such a report. The positive result shall constitute a showing of probable cause, but shall not be used in any criminal prosecution of the natural mother of the child, and shall not represent grounds for a determination of child abuse.

#### **CROSS-REPORTING BETWEEN SOCIAL SERVICES AND LAW ENFORCEMENT**

##### **IOWA**

**Iowa Code sec. 232.70(2) and (4) (1987); 232.71(7) and (9) (1992); and 232.68(4)(1989)**

- I. Receiving Agency

- A. The oral report shall be made to the Department of Human Services.
- B. If the reporter has reason to believe that immediate protection for the child is advisable, that person shall also make an oral report to an appropriate law enforcement agency.

II. Cross-Reporting

- A. The Department of Human Services shall notify the appropriate County Attorney of the receipt of any report.
- B. The Department of Human Services, upon completion of its investigation, shall make a preliminary report of its investigation. A copy of this report shall be transmitted to juvenile court within 4 regular working days after the Department of Human Services initially receives the abuse report unless the juvenile court grants an extension of time for good cause shown. If the preliminary report is not a complete report, a complete report shall be filed within 10 working days of the receipt of the abuse report, unless the juvenile court grants an extension of time for good cause shown.
- C. The Department of Human Services shall transmit a copy of the report of its investigation to the County Attorney.
- D. If a report to the Department of Human Services is determined not to constitute a child abuse allegation, but a criminal act involving a child is alleged, the Department shall immediately refer the matter to the appropriate law enforcement agency.

*NOTE:* For reporting procedures for commercial film and photographic print processors, see note under "Mandatory Reporters."

**PENALTIES FOR FALSE REPORTING**

**IOWA**

**Iowa Code Ann. sec. 232.75(3) (1987)**

A person who reports or causes to be reported to the Department of Human Services false information regarding an alleged act of child abuse, knowing that the information is false or that the act did not occur, commits a simple misdemeanor.

**PENALTIES FOR FAILURE TO REPORT**

**IOWA**

**Iowa Code Ann. sec. 232.75(1) and (2) (1987)**

Any person, official, agency, or institution required by law to report a suspected case of child abuse:

- I. who knowingly and willfully fails to do so is guilty of a simple misdemeanor;
- II. who knowingly fails to do so is civilly liable for the damages proximately caused by such failure.

**IMMUNITY FOR REPORTERS**

**IOWA**

**Iowa Code Ann. sec. 232.73 (1990)**

A person participating in good faith in the making of a report shall have immunity from any civil or criminal liability which might otherwise be incurred or imposed.

**DEFINITIONS**

**KENTUCKY**

**Ky. Rev. Stat. Ann. sec. 600.020(1),(5),(15),(20),(36),(46), and (47) (1988)**

- I. "Abused or neglected child" = a child whose health or welfare is harmed or threatened with harm when his or her parent, guardian, or other person exercising custodial control or supervision of the child:
  - A. inflicts or allows to be inflicted upon the child physical or emotional injury by nonaccidental means;
  - B. creates or allows to be created a risk of physical or emotional injury to the child by nonaccidental means;
  - C. commits or allows to be committed upon the child an act of:
    - 1. sexual abuse,
    - 2. sexual exploitation, or
    - 3. prostitution;
  - D. creates or allows to be created a risk that any of the following will be committed upon the child:
    - 1. sexual abuse,
    - 2. sexual exploitation, or
    - 3. prostitution;
  - E. abandons or exploits such child;
  - F. does not provide the child with adequate:
    - 1. care,
    - 2. supervision,
    - 3. food, clothing, or shelter,
    - 4. education, or
    - 5. medical care necessary for the child's well-being.
- II. Exception: A parent or other person exercising custodial control or supervision of the child legitimately practicing his or her religious beliefs shall not be considered a negligent parent solely because he or she fails to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child.



III. Miscellaneous Definitions

- A. **"Child"** = any person who has not reached his or her 18th birthday.
- B. **"Dependent child"** = any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child.
- C. **"Emotional injury"** = an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in his or her ability to function within a normal range of performance and behavior with due regard to his or her age, development, culture, and environment.
- D. **"Physical injury"** =
  - 1. substantial physical pain; or
  - 2. any impairment of physical condition.
- E. **"Sexual abuse"** includes any contacts or interactions between a child and an adult in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his or her welfare uses, allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person.
- F. **"Sexual exploitation"** includes:
  - 1. a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his or her welfare allows, permits, or encourages the child to engage in an act which constitutes prostitution; or
  - 2. a parent, guardian, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child.

**MANDATORY REPORTERS**

**KENTUCKY**

**Ky. Rev. Stat. Ann. sec. 620.030(1) (1988) and 620.050(2) (1988)**

I. Who Must Report

- A. Physicians; osteopathic physicians; nurses; coroners; medical examiners; residents; interns; chiropractors; dentists; optometrists; emergency medical technicians; paramedics; health professionals.
  - B. Teachers; school personnel; child-caring personnel.
  - C. Social workers; mental health professionals.
  - D. Peace officers; any organization or agency for any of the above persons.
  - E. Any persons.
- II. Under these Circumstances: When they know or have reasonable cause to believe that a child is dependent, neglected, or abused.
- III. Privileged Communications: Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report.

**REPORTING PROCEDURES  
KENTUCKY**

**Ky. Rev. Stat. Ann. sec. 620.030(1)-(2) (1988) and 620.040(1)-(2) (1992)**

- I. Generally
- A. Mandatory reporters shall immediately cause an oral or written report to be made, by telephone or otherwise, to:
    - 1. a local law enforcement agency or the Kentucky state police;
    - 2. the cabinet or its designated representative;
    - 3. the Commonwealth's Attorney or the County Attorney.
  - B. In addition to the original report, any person shall, if requested, file with the local law enforcement agency, the Kentucky state police, the Commonwealth's Attorney, the County Attorney, the cabinet, or the cabinet's designated representative within 48 hours of the original report a written report containing:
    - 1. the names and addresses of the child, the child's parents or other persons exercising custodial control or supervision, and the person allegedly responsible for the abuse or neglect;
    - 2. the child's age;

## Kentucky

3. the nature and extent of the child's alleged dependency, neglect, or abuse (including any previous charges of dependency, neglect, or abuse) to this child or the child's siblings; and
  4. any other information that the person making the report believes may be helpful in the furtherance of the law.
- II. Specific Situation: Any supervisor who receives from an employee a report of suspected dependency, neglect, or abuse shall promptly make a report to the proper authorities for investigation.
- III. Cross-Reporting to/by Professionals
- A. Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, the recipient of the report shall forthwith notify the following of the receipt of the report: the cabinet or its designated representative; the local law enforcement agency or Kentucky State Police; and the Commonwealth's Attorney or County Attorney.
1. The cabinet shall investigate the matter immediately and within 48 hours, exclusive of weekends and holidays, make a written report concerning the action which has been taken on the matter to:
    - a. the Commonwealth's or County Attorney; and
    - b. the local enforcement agency or Kentucky State Police.
  2. If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall forthwith notify:
    - a. the Commonwealth's or County Attorney; and
    - b. the local law enforcement agency or Kentucky State Police.
- B. Upon receipt of a report alleging dependency, the recipient shall forthwith notify the cabinet or its designated representative.
- C. If the cabinet or its designated representative receives a report of abuse by other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall forthwith notify the following of the receipt of the report and its contents, who shall investigate the matter:
1. the local law enforcement agency or Kentucky State Police; and
  2. the Commonwealth's or County Attorney.

**CROSS-REPORTING BETWEEN SOCIAL SERVICES AND LAW ENFORCEMENT  
KENTUCKY**

**Ky. Rev. Stat. Ann. sec. 620.030(1)-(2) (1988) and 620.040(1)-(2) (1992)**

- I. Receiving Agency. Mandatory reporters shall immediately cause a report to be made to:
  - A. a local law enforcement agency or the Kentucky state police;
  - B. the cabinet or its designated representative;
  - C. the Commonwealth's Attorney or the County Attorney.
  
- II. Cross-Reporting
  - A. Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, the recipient of the report shall forthwith notify the following of the receipt of the report:
    - 1. the cabinet or its designated representative;
    - 2. the local law enforcement agency or Kentucky State Police; and
    - 3. the Commonwealth's Attorney or County Attorney.
  
  - B. The cabinet shall investigate the matter immediately and within 48 hours, exclusive of weekends and holidays, make a written report concerning the action which has been taken on the matter to:
    - 1. the Commonwealth's or County Attorney; and
    - 2. the local enforcement agency or Kentucky State Police.
  
  - C. If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall forthwith notify:
    - 1. the Commonwealth's or County Attorney; and
    - 2. the local law enforcement agency or Kentucky State Police.
  
  - D. Upon receipt of a report alleging dependency, the recipient shall forthwith notify the cabinet or its designated representative.
  
  - E. If the cabinet or its designated representative receives a report of abuse by other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall forthwith notify the following of the receipt of the report and its contents, who shall investigate the matter:

**Kentucky**

1. the local law enforcement agency or Kentucky State Police; and
2. the Commonwealth's or County Attorney.

**IMMUNITY FOR REPORTERS**

**KENTUCKY**

**Ky. Rev. Stat. Ann. sec. 620.050(1) (1988)**

Anyone acting upon reasonable cause in the making of a report in good faith shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed.

**DEFINITIONS  
MINNESOTA**

**Minn. Stat. Ann. sec. 626.556(2) (1991); 609.341(10) (1989); 260.015(2a)(5)(1992); 609.342 (1992); 609.343 (1992); 609.344 (1992); 609.345 (1992); 609.322 (1992); 609.323 (1992); 609.324 (1990); and 617.246(2)-(4) (1986)**

- I. "Sexual abuse" = the subjection of a child by a person responsible for the child's care, or by a person in a position of authority, to any act which constitutes:
  - A. criminal sexual conduct in the first, second, third, or fourth degree; or
  - B. any act which involves a minor and which constitutes a violation of:
    - 1. solicitation, inducement, and promotion of prostitution,
    - 2. receiving profit derived from prostitution,
    - 3. intentionally engaging in prostitution with an individual under the age of 18 years,
    - 4. permitting a minor not related by blood, adoption, or marriage, to reside in the person's dwelling without the consent of the minor's parents or guardian, knowing or having reason to know that the minor is engaging in prostitution,
    - 5. soliciting or accepting a solicitation to engage for hire in sexual penetration or sexual contact while in a public place,
    - 6. intentionally engaging in prostitution with an individual 18 years of age or above,
    - 7. intentionally hiring, offering, or agreeing to hire an individual 18 years of age or above to engage in sexual penetration or contact,
    - 8. promoting, employing, using, or permitting a minor to engage in or assist others to engage in or assist others to engage in posing or modeling alone or with others in any sexual performance if the person knows or has reason to know that the conduct intended is a sexual performance,
    - 9. owning or operating a business in which a work depicting a minor in a sexual performance is disseminated, knowing the content and character of the work disseminated, or
    - 10. disseminating for profit a work depicting a minor in sexual performance; or
  - C. threatened sexual abuse.

II. "Physical abuse" =

- A. any physical or mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child by nonaccidental means;
- B. any physical or mental injury that cannot reasonably be explained by the child's history of the injuries; or
- C. any aversive and deprivation procedures that have not been authorized by law governing the use of aversive or deprivation procedures in facilities serving persons with mental retardation or related conditions.

III. "Neglect" =

- A. failure by a person responsible for a child's care to do any of the following, when reasonably able to do so:
  - 1. to supply a child with necessary:
    - a. food, clothing, or shelter, or
    - b. medical care, or
  - 2. to protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health;
- B. prenatal exposure to a controlled substance as defined by law used by the mother for a nonmedical purpose, as evidenced by:
  - 1. withdrawal symptoms in the child at birth,
  - 2. results of a toxicology test performed on the mother at delivery or the child at birth, or
  - 3. medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance;
- C. medical neglect, which includes the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

IV. Exception: A child is not neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care, except that there is a duty to report if a lack of medical care may cause imminent and serious danger to the child's health.

V. Miscellaneous Definitions

- A. "Person in position of authority" = any person who is:

1. a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities to a child; or
  2. a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.
- B. "Person responsible for the child's care" =**
1. an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities; or
  2. an individual functioning outside the family unit and having either full-time or short-term responsibilities for the care of the child such as a teacher, school administrator, or other lawful custodian of a child having care responsibilities including:
    - a. day care,
    - b. babysitting,
    - c. counseling,
    - d. teaching, and
    - e. coaching.
- C. "The withholding of medically indicated treatment" =** the failure to respond to the infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions. This does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical judgment:
1. the infant is chronically and irreversibly comatose;
  2. the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the infant's survival; or
  3. the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane.
- D. "Mental injury" =** an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.
- E. "Threatened injury" =** a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse, or mental injury.



**MANDATORY REPORTERS**

**MINNESOTA**

**Minn. Stat. Ann. sec. 626.556(3)(a) and (9) (1991)**

**I. Who Must Report**

- A. A professional or professional's delegate who is engaged in the practice of the:
  - 1. Healing arts; hospital administration; psychiatric treatment.
  - 2. Child care; education.
  - 3. Psychological treatment.
  - 4. Social services; or law enforcement.
  
- B. A clergy member who receives the information while engaged in ministerial duties, provided that he or she is not required to report information that is otherwise privileged by law.

**II. Under these Circumstances. When they know or have reason to believe a child:**

- A. is being neglected or physically or sexually abused; or
- B. has been neglected or physically or sexually abused within the preceding 3 years;
- C. has died as a result of neglect or physical or sexual abuse.

**REPORTING PROCEDURES**

**MINNESOTA**

**Minn. Stat. Ann. sec. 626.556(3)(a) and (c),(7),(9), and (10)(b) (1991)**

**I. Generally**

- A. Reporting Child Abuse and Neglect
  - 1. Form of Report
    - a. An oral report shall be made immediately by telephone or otherwise.
    - b. An oral report made by a mandatory reporter shall be followed within 72 hours, exclusive of weekends and holidays, by a written report.
  - 2. To Whom. Mandatory Reporters shall immediately report the information to:

- a. the local welfare agency;
  - b. police department; or
  - c. the county sheriff.
3. Contents of Report. Any report shall be of sufficient content to identify:
- a. the child;
  - b. any person believed to be responsible for the abuse or neglect of the child if the person is known;
  - c. the nature and extent of the abuse or neglect; and
  - d. the name and address of the reporter.

B. Reporting Suspicious Deaths: When a mandatory reporter knows or has reason to believe a child has died as a result of neglect or physical or sexual abuse, the mandatory reporter shall report that information to the appropriate medical examiner or coroner instead of the local welfare agency, police department, or county sheriff.

## II. Specific Situations

- A. A person mandated to report physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility.
- B. When a mandatory reporter knows or has reason to believe a child has died as a result of neglect or physical or sexual abuse, the reporter shall report that information to the appropriate medical examiner or coroner instead of the local welfare agency, police department, or county sheriff.

## III. Cross-Reporting to/by Professionals

### A. By Local Welfare Agencies

1. The local welfare agency, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing.
2. Copies of written reports received by a local welfare department shall be forwarded immediately to the local police department or the county sheriff.
3. When a local agency receives a report or otherwise has information indicating that a child who is a client has been the subject of physical abuse or neglect at an agency, facility, or program defined by law, it

shall immediately inform the ombudsman.

4. If the report alleges neglect, physical abuse, or sexual abuse by a person responsible for the child's care functioning outside the family unit in a setting other than a facility defined by law, the local welfare agency shall immediately notify the appropriate law enforcement agency.

**B. By Police Departments and County Sheriffs**

1. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency orally and in writing.
2. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency.

- C.** Medical examiners or coroners shall notify the local welfare agency, police department, or county sheriff in instances in which they believe that the child has died as a result of neglect or physical or sexual abuse. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the police department or county sheriff and the local welfare agency. If the child was receiving services or treatment for mental illness, mental retardation or a related condition, chemical dependency, or emotional disturbance from an agency, facility, or program defined by law, the medical examiner or coroner shall also notify and report findings to the ombudsman.

**REPORTING DRUG-EXPOSED INFANTS  
MINNESOTA**

**Minn. Stat. Ann. sec. 626.556(2)(c) (1991), 626.5561(1)-(3) and (5) (1990), and 626.5562(1)-(5) (1991)**

- I. Neglect includes prenatal exposure to a controlled substance, as defined in the law, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.
- II. A person mandated to report under the reporting law shall immediately report to the local welfare agency if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy. Any person may make a voluntary report if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy. An oral report shall be made

immediately by telephone or otherwise. An oral report made by a person required to report shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the local welfare agency. Any report shall be of sufficient content to identify the pregnant woman, the nature and extent of the use, if known, and the name and address of the reporter.

- A. If the report alleges a pregnant woman's use of a controlled substance for a nonmedical purpose, the local welfare agency shall immediately conduct an appropriate assessment and offer services indicated under the circumstances. Services offered may include a referral for chemical dependency assessment, a referral for chemical dependency treatment if recommended, and a referral for prenatal care. The local welfare agency may also take any appropriate action under the law, including seeking an emergency admission under the law. The local welfare agency shall seek an emergency admission if the pregnant woman refuses recommended voluntary services or fails recommended treatment.
- B. Reports under this law are governed by the laws regarding reports of child abuse and neglect.
- C. A person making a voluntary or mandated report under this law or assisting in an assessment is immune from any civil or criminal liability that otherwise might result from the person's actions, if the person is acting in good faith. This does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.

### III. Required toxicology tests

- A. A physician shall administer a toxicology test to a pregnant woman under the physician's care or to a woman under the physician's care within 8 hours after delivery to determine whether there is evidence that she has ingested a controlled substance, if the woman has obstetrical complications that are a medical indication of possible use of a controlled substance for a nonmedical purpose. If the test results are positive, the physician shall report the results under the law. A negative test result does not eliminate the obligation to report if other evidence gives the physician reason to believe the patient has used a controlled substance for a nonmedical purpose.
- B. A physician shall administer to each newborn infant born under the physician's care a toxicology test to determine whether there is evidence of prenatal exposure to a controlled substance, if the physician has reason to believe based on a medical assessment of the mother or the infant that the

## Minnesota

mother used a controlled substance for a nonmedical purpose during the pregnancy. If the test results are positive, the physician shall report the results as neglect under the law. A negative test result does not eliminate the obligation to report if other medical evidence of prenatal exposure to a controlled substance is present.

- C. Physicians shall report to the Department of Health the results of tests performed. A report shall be made on the certificate of live birth medical supplement or the report of fetal death medical supplement filed on or after February 1, 1991.
- D. Any physician or other medical personnel administering a toxicology test to determine the presence of a controlled substance in a pregnant woman, in a woman within 8 hours after delivery, or in a child at birth or during the first month of life is immune from civil or criminal liability arising from administration of the test, if the physician ordering the test believes in good faith that the test is required under this law and the test is administered in accordance with an established protocol and reasonable medical practice.
- E. A positive test result reported under this law must be obtained from a confirmatory test performed by a drug testing laboratory which meets the requirements of the law and must be performed according to the requirements for performance of confirmatory tests imposed by the licensing, accreditation, or certification program listed in the law in which the laboratory participates.

### **CROSS-REPORTING BETWEEN SOCIAL SERVICES AND LAW ENFORCEMENT MINNESOTA**

**Minn. Stat. Ann. sec. 626.556(3)(a) and (7) (1991)**

- I. Receiving Agency. Mandatory Reporters shall immediately report the information to:
  - A. the local welfare agency;
  - B. police department; or
  - C. the county sheriff.
- II. Cross-Reporting
  - A. The local welfare agency, upon receiving a report, shall immediately notify the

local police department or the county sheriff orally and in writing.

- B. Copies of written reports received by a local welfare department shall be forwarded immediately to the local police department or the county sheriff.
- C. When a local agency receives a report or otherwise has information indicating that a child who is a client has been the subject of physical abuse or neglect at an agency, facility, or program defined by law, it shall immediately inform the ombudsman.
- D. If the report alleges neglect, physical abuse, or sexual abuse by a person responsible for the child's care functioning outside the family unit in a setting other than a facility defined by law, the local welfare agency shall immediately notify the appropriate law enforcement agency.
- E. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency orally and in writing.
- F. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency.

**PENALTIES FOR FALSE REPORTING**

**MINNESOTA**

**Minn. Stat. Ann. sec. 626.556(5) (1991)**

Any person who knowingly or recklessly makes a false report under the reporting laws shall be liable in a civil suit for any actual damages suffered by the person(s) so reported and for any punitive damages set by the court or jury.

**PENALTIES FOR FAILURE TO REPORT**

**MINNESOTA**

**Minn. Stat. Ann. sec. 626.556(6) (1991)**

A person mandated by the reporting law to report who knows or has reason to believe that a child is neglected or physically or sexually abused, as defined by law, or has been neglected or physically or sexually abused within the preceding 3 years, and fails to report is guilty of a misdemeanor.

**IMMUNITY FOR REPORTERS**

**MINNESOTA**

**Minn. Stat. Ann. sec. 626.556(4) (1991)**

Any persons making a voluntary or mandated report under the reporting laws are immune from any civil or criminal liability that might result from their actions, if they are acting in good faith. This law does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child. If a person who makes a report under the reporting laws prevails in a civil action from which the person has been granted immunity, the court may award the person attorney fees and costs.

**DEFINITIONS**

**MISSOURI**

**Mo. Ann. Stat. sec. 210.110(1),(2),(5), and (6) (1985) and 210.115(3) (1991)**

- I. "Abuse" = any of the following, inflicted on a child by nonaccidental means by those responsible for the child's care, custody, and control:
  - A. physical injury;
  - B. sexual abuse; or
  - C. emotional abuse.
  
- II. "Neglect" = failure to provide, by those responsible for the child's care, custody, and control:
  - A. the proper or necessary support;
  - B. education as required by law;
  - C. nutrition;
  - D. medical or surgical care; or
  - E. any other care necessary for his or her well-being.
  
- III. Exceptions
  - A. Discipline, including spanking, administered in a reasonable manner, shall not be construed to be abuse.
  - B. Any child who does not receive specified medical treatment by reason of the legitimate practice of the religious belief of the child's parents, guardian, or others legally responsible for the child, for that reason alone, shall not be considered to be an abused or neglected child. However, this exception shall not preclude a court from ordering that medical services be provided to the child when his or her health requires it.
  
- IV. Miscellaneous Definitions
  - A. "Child" = any person under 18 years of age.



- B. "Those responsible for the care, custody, and control of the child" include:
1. the child's parents or guardian;
  2. other members of the child's household; or
  3. those exercising supervision over a child for any part of a 24 hour day.

**MANDATORY REPORTERS  
MISSOURI**

**Mo. Ann. Stat. sec. 210.110(4) (1985); 210.115(1) and (5) (1991); 210.140 (1980); and 568.110 (1984)**

I. Who Must Report

- A. Physicians; medical examiners; coroners; dentists; chiropractors; optometrists; podiatrists; residents; interns; nurses; hospital and clinic personnel (engaged in examination, care, or treatment of persons); other health care practitioners.
- B. Day care center workers or other child care workers; teachers; principals; other school officials.
- C. Psychologists; mental health practitioners; social workers.
- D. Juvenile officers; probation officers; parole officers; Christian Science practitioners; peace officers; law enforcement officials; other persons with responsibility for the care of children.

II. Under these Circumstances

- A. When they have reasonable cause to suspect that a child has been or may be subjected to abuse or neglect;
- B. when they observe a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect;
- C. when they have reasonable cause to suspect that a child who is or may be under the age of 15 has died, or that a child between the ages of 15 and 18 years of age has died as a result of abuse or neglect;
- D. when any person or official who is mandated to report, including employees of the Missouri Division of Family Services, have reasonable cause to suspect that:
  1. a child who is or may be under the age of 15 has died; or

2. a child between the ages of 15 and 18 years of age has died as a result of abuse or neglect.

III. **Privileged Communications:** Any legally recognized privileged communication, except that between attorney and client, shall not apply to situations involving known or suspected child abuse or neglect and shall not constitute grounds for failure to report as required or permitted.

*NOTE:* Mo. Ann. Stat. sec. 568.110 (1984) requires commercial film and photographic print processors who have knowledge of or observe, within the scope of the person's professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 17 years engaged in an act of sexual conduct to report. Such reporters must report immediately or as soon as practically possible to the law enforcement agency having jurisdiction over the case.

## **REPORTING PROCEDURES**

### **MISSOURI**

**Mo. Ann. Stat. 210.115(1),(2),(5),and (6) (1991); 210.110(4) (1985); 210.130 (1982); 210.145(4),(5),(7),(10), and (11) (1990); and 568.110 (1984)**

#### **I. Generally**

##### **A. Reporting Child Abuse and Neglect**

1. **Form of Reports:** Oral reports of abuse or neglect shall be made to the Missouri Division of Family Services by telephone or otherwise.
2. **To Whom:** Mandatory reporters shall immediately report or cause a report to be made to the Missouri Division of Family Services.
3. **Contents of Reports.** Such reports shall include the following information:
  - a. the names and addresses of the child and his or her parents or other persons responsible for his or her care, if known;
  - b. the child's age, sex, and race;
  - c. the nature and extent of the child's injuries, abuse, or neglect, including any evidence of previous injuries, abuse, or neglect to the child or his or her siblings;
  - d. the name, age, and address of the person responsible for the injuries, abuse, or neglect, if known;
  - e. family composition;
  - f. the source of the report;
  - g. the name and address of the reporter, his or her occupation,

- and where he or she can be reached;
- h. the actions taken by the reporting source, including the taking of color photographs, the making of radiologic examinations, the removal or keeping of the child, the notification of the coroner or medical examiner; and
- i. any other information that the reporter believes may be helpful.

- B. **Reporting Suspicious Deaths.** Any person or official who is mandated to report, including employees of the Missouri Division of Family Services, who has reasonable cause to suspect that:
- 1. a child who is or may be under the age of 15 has died shall report that fact to the appropriate medical examiner or coroner; or
  - 2. a child between the ages of 15 and 18 years of age has died as a result of abuse or neglect shall report that fact to the appropriate medical examiner or coroner.

II. **Specific Situation:** Whenever a reporter is required to report in his or her official capacity as a staff member of a medical institution, school facility or other agency, the person in charge or that person's designee shall be notified immediately. The person in charge or that person's designee shall then become responsible for immediately making or causing such report to be made to the Missouri Division of Family Services. However, this does not preclude any person from reporting abuse or neglect.

III. **Cross-Reporting to/by Professionals**

- A. **By the Medical Examiner or Coroner**
- 1. After receiving a report by a mandatory reporter who has reasonable cause to suspect that a child who is or may be under the age of 15 has died, the medical examiner or coroner shall accept the report for investigation and shall report his or her findings to the child death review team.
  - 2. After receiving a report by a mandatory reporter who has reasonable cause to suspect that a child between the ages of 15 and 18 years of age has died as a result of abuse or neglect, the medical examiner or coroner shall accept the report for investigation and shall report his or her findings to:
    - a. the police or other peace officer;
    - b. the juvenile officer;
    - c. the prosecuting attorney;
    - d. the Missouri Division of Family Services; and
    - e. to the hospital, if the institution making the report is a hospital.

B. By the Missouri Division of Family Services

1. Upon receipt of a report, the Missouri Division of Family Services shall immediately communicate by telephone such report to its appropriate local office, after a check has been made with the central registry to determine whether previous reports have been made regarding actual or suspected abuse or neglect of the subject child, of his or her siblings, and the perpetrator, and relevant dispositional information regarding such previous reports.
2. Upon receipt of a report which, if true, would constitute the crime of abuse of a child, the local office shall contact the appropriate law enforcement agency and provide such agency with a detailed description of the report received. In such cases, the local Division office shall request the assistance of the local law enforcement agency in all aspects of the investigation of the complaint. The local Division office making such a request shall, within a reasonable time report in writing the following information to the local prosecuting or circuit attorney: the name of the division employee who contacted the law enforcement agency; the law enforcement agency contacted; the name of the officer or employee of the law enforcement agency which was contacted; the time, date, and form of the request for assistance; a general description of the facts of the reported abuse or neglect which were related to the law enforcement agency in the request; and the response of the local law enforcement agency to the request. The report to the prosecuting or circuit attorney shall not include the names of the complainant, the alleged perpetrator, or the suspected victim, but may contain nonidentifying information regarding those persons. A copy of the report made to the prosecuting or circuit attorney shall be sent to the state office of the Division.
3. Upon completion of the investigation if the local office of the Division suspects that the report was made maliciously or for the purpose or harassment, the local division office shall refer the report and any evidence of malice or harassment to the local prosecuting or circuit attorney.
4. As a result of its investigation, the local office of the Division shall report a child's injuries or disabilities from abuse or neglect to the juvenile officer, and may make such report to the appropriate law enforcement authority.
5. Within 30 days of an oral report of abuse or neglect from the Division, the local office shall file a written report with the central registry on forms supplied by the Division for that purpose. The report shall contain the facts ascertained, a description of the services offered and accepted, those responsible for the care of the subject child, and other

relevant dispositional information. The written report shall be updated at regular intervals for as long as the subject child or his family, or both, are receiving services.

*NOTE:* For reporting procedures for commercial film and photographic print processors, see note under "Mandatory Reporters."

**CROSS-REPORTING BETWEEN SOCIAL SERVICES AND LAW ENFORCEMENT  
MISSOURI**

**Mo. Ann. Stat. 210.115(1) (1991); 210.110(4) (1985); 210.130 (1982); 210.145(5),(7), and (10) (1990)**

I. Receiving Agency: Mandatory reporters shall immediately report or cause a report to be made to the Missouri Division of Family Services.

II. Cross-Reporting

A. Upon receipt of a report which, if true, would constitute the crime of abuse of a child, the local office shall contact the appropriate law enforcement agency and provide such agency with a detailed description of the report received. In such cases, the local Division office shall request the assistance of the local law enforcement agency in all aspects of the investigation of the complaint. The local Division office making such a request shall, within a reasonable time report in writing the following information to the local prosecuting or circuit attorney: the name of the division employee who contacted the law enforcement agency; the law enforcement agency contacted; the name of the officer or employee of the law enforcement agency which was contacted; the time, date, and form of the request for assistance; a general description of the facts of the reported abuse or neglect which were related to the law enforcement agency in the request; and the response of the local law enforcement agency to the request. The report to the prosecuting or circuit attorney shall not include the names of the complainant, the alleged perpetrator, or the suspected victim, but may contain nonidentifying information regarding those persons. A copy of the report made to the prosecuting or circuit attorney shall be sent to the state office of the Division.

B. Upon completion of the investigation if the local office of the Division suspects that the report was made maliciously or for the purpose or harassment, the local division office shall refer the report and any evidence of malice or harassment to the local prosecuting or circuit attorney.

- C. As a result of its investigation, the local office of the Division shall report a child's injuries or disabilities from abuse or neglect to the juvenile officer, and may make such report to the appropriate law enforcement authority.

*NOTE:* For reporting procedures for commercial film and photographic print processors, see note under "Mandatory Reporters."

**PENALTIES FOR FALSE REPORTING**

**MISSOURI**

**Mo. Ann. Stat. sec. 210.165(2)-(4) (1986)**

- I. Any person who intentionally files a false report of child abuse or neglect shall be guilty of a class A misdemeanor.
- II. Every person who has been previously convicted of making a false report to the Division of Family Services and who is subsequently convicted of making a false report is guilty of a class D felony and shall be punished as provided by law. Evidence of prior convictions of false reporting shall be heard by the court, out of the hearing of the jury, prior to the submission of the case to the jury, and the court shall determine the existence of the prior convictions.

**PENALTIES FOR FAILURE TO REPORT**

**MISSOURI**

**Mo. Ann. Stat. sec. 210.165(1) (1986)**

Any person violating any provision of the laws requiring reports of child abuse or neglect is guilty of a class A misdemeanor.

**IMMUNITY FOR REPORTERS**

**MISSOURI**

**Mo. Ann. Stat. sec. 210.135 (1982)**

Any person, official, or institutions complying with the provisions of the reporting laws in the making of a report shall have immunity from any civil or criminal liability that otherwise might result by reason of such actions. Provided, however, any person intentionally filing a false report shall not have immunity from any civil or criminal liability.

**DEFINITIONS**

**OHIO**

Ohio Rev. Code Ann. sec. 2151.03 (1989); 2151.031 (1989); 2907.01(A),(B), and (C) (1991); and 2919.22(A),(B), and (C) (1989)

I. "Abused child" = any child who:

- A. is the victim of sexual activity;
- B. is endangered;
- C. exhibits evidence of any physical or mental injury or death which is:
  - 1. inflicted by nonaccidental means, or
  - 2. at variance with the history given of it;
- D. suffers physical or mental injury that harms or threatens to harm the child's health or welfare because of the acts of his or her parents, guardian, or custodian;
- E. is subjected to out-of-home care child abuse.

II. "Neglected child" = any child:

- A. who is abandoned by his or her parents, guardian, or custodian;
- B. who lacks proper parental care because of the faults or habits of his or her parents, guardian, or custodian;
- C. whose parents, guardian, or custodian neglects or refuses to provide him or her with proper or necessary:
  - 1. subsistence,
  - 2. education,
  - 3. medical or surgical care or treatment, or
  - 4. other care necessary for his or her health, morals, or well-being;
- D. whose parents, guardian, or custodian neglects or refuses to provide him or her with the special care made necessary by his or her mental condition;
- E. whose parents, legal guardian, or custodian have placed or attempted to place him or her in violation of the law;

- F. who suffers physical or mental injury that harms or threatens to harm the child's health or welfare, because of the omission of his or her parents, guardian, or custodian; or
- G. who is subjected to out-of-home care child neglect.

### III. Exceptions

- A. A child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person acting in place of a child's parent is not an abused child if the measure is not prohibited under the law prohibiting endangering children.
- B. A parent, guardian, or custodian of a child shall not be criminally liable when, solely in the practice of his or her religious beliefs, he or she fails to provide adequate medical or surgical care or treatment for the child. This does not abrogate or limit any person's responsibility to report known or suspected child abuse or neglect and children who are known to face or are suspected of facing a threat of suffering abuse or neglect. It does not preclude the state, any political subdivision, or any court from exercising its authority to ensure that medical or surgical care or treatment is provided to a child when his or her health so requires.
- C. Endangering children does not apply to any material or performance that is produced, presented, or disseminated for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.
- D. It is not a violation of the duties of care, protection, or support when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

### IV. Miscellaneous Definitions

- A. "Sexual activity" = sexual conduct or sexual contact, or both.



- B. **"Sexual conduct"** = vaginal intercourse between a male and female and anal intercourse, fellatio, and cunnilingus between persons regardless of sex. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.
- C. **"Sexual contact"** = any touching of an erogenous zone of another, including the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.
- D. **"Endangering children"**
1. No person who is the parent, guardian, custodian, person having custody or control, or person acting in place of the parent of a child under 18 years of age, or a mentally or physically handicapped child under 21 years of age shall create a substantial risk to the child's health or safety by violating a duty of care, protection, or support.
  2. No person shall do any of the following to a child under 18 years of age or a mentally or physically handicapped child under 21 years of age:
    - a. abuse the child;
    - b. torture or cruelly abuse the child;
    - c. administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;
    - d. repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;
    - e. entice, permit, encourage, compel, employ, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that is obscene, sexually oriented matter, or nudity-oriented matter;
    - f. allow, encourage, or force the child to solicit for or engage in prostitution as a prostitute.

**MANDATORY REPORTERS****OHIO****Ohio Rev. Code Ann. sec. 2151.421(A) (1992)****I. Who Must Report**

- A. Physicians, including hospital interns or residents; dentists; podiatrists; practitioners of limited branches of medicine or surgery; registered nurses; licensed practical nurses; visiting nurses; other health care professionals; speech pathologists; audiologists; coroners.
- B. Licensed school psychologists; administrators or employees of child day-care centers, certified child care agencies, or other children services agencies; school teachers; school employees; school authorities.
- C. Licensed psychologists; social workers; licensed professional counselors.
- D. Attorneys; persons rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion.

**II. Under these Circumstances: When they are acting in their official or professional capacities and know or suspect that a child under 18 years or a physically or mentally handicapped child under 21 years has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates child abuse or neglect.****III. Privileged Communications. An attorney or a physician is not required to make a report concerning any communication made to him or her by one of his or her clients in the attorney-client relationship or the physician-patient relationship respectively if the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding, except that the client/patient is deemed to have waived any testimonial privilege with respect to that communication and the attorney or physician shall make a report with respect to that communication, if all of the following apply:**

- A. the client/patient, at the time of the communication, is either a child under 18 years of age or a physically or mentally handicapped person under 21 years of age;
- B. the attorney or physician knows or suspects, as a result of the communication or any observations made during that communication, that the client/patient has suffered or faces a threat of suffering any physical or mental wound,

injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client/patient; and

- C. the attorney-client relationship or the physician-patient relationship does not arise out of the client/patient's attempt to have an abortion without the notification of her parents, guardian, or custodian.

## REPORTING PROCEDURES

### OHIO

Ohio Rev. Code Ann. sec. 2151.421(A),(C),(D), and (F) (1992)

#### I. Generally

- A. Form of Reports: Reports shall be made forthwith by telephone or in person, and shall be followed by a written report, if requested by the receiving agency or officer.
- B. To Whom. Reporters must make or cause to be made a report of their knowledge or suspicion to:
  - 1. the Children Services Board;
  - 2. the county Department of Human Services exercising the children services function; or
  - 3. a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.
- C. Contents of Reports. Written reports shall contain:
  - 1. the names and addresses of the child and his or her parents or the person(s) having custody of the child, if known;
  - 2. the child's age;
  - 3. the nature and extent of the child's known or suspected injuries, abuse, or neglect, or of the known or suspected threat of injury, abuse, or neglect, including any evidence of previous injuries, abuse, or neglect;
  - 4. any other information that might be helpful in establishing the cause of the known or suspected injury, abuse, or neglect or of the known or suspected threat of injury, abuse, or neglect.

#### II. Cross-Reporting to/by Professionals

- A. By the Department of Human Services or Children Services Board
  - 1. The county Department of Human Services or Children Services Board shall report each case to a central registry which the state Department

- of Human Services shall maintain.
  - 2. The county Department of Human Services or Children Services Board shall submit a report of its investigation, in writing, to the law enforcement agency.
  - 3. The county Department of Human Services or Children Services Board shall make any recommendations to the county Prosecuting Attorney or city Director of Law that it considers necessary to protect any children that are brought to its attention.
- B. Upon the receipt of a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, the municipal or county peace officer who receives the report shall refer the report to the appropriate county Department of Human Services or Children Services Board.

**CROSS-REPORTING BETWEEN SOCIAL SERVICES AND LAW ENFORCEMENT  
OHIO**

**Ohio Rev. Code Ann. sec. 2151.421(A),(D), and (F) (1992)**

- I. Receiving Agency. Reporters must make or cause to be made a report of their knowledge or suspicion to:
- A. the Children Services Board;
  - B. the county Department of Human Services exercising the children services function; or
  - C. a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.
- II. Cross-Reporting
- A. The county Department of Human Services or Children Services Board shall submit a report of its investigation, in writing, to the law enforcement agency.
  - B. The county Department of Human Services or Children Services Board shall make any recommendations to the county Prosecuting Attorney or city Director of Law that it considers necessary to protect any children that are brought to its attention.

- C. Upon the receipt of a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, the municipal or county peace officer who receives the report shall refer the report to the appropriate county Department of Human Services or Children Services Board.

**PENALTIES FOR FALSE REPORTING**

**OHIO**

**Ohio Rev. Code Ann. sec. 2921.14 (1991) and 2151.42.1(G)(2) (1992)**

- I. In any civil or criminal action or proceeding in which it is alleged and proved that participation in the making of a report under the reporting laws was not in good faith or participation in a judicial proceeding resulting from a report was not in good faith, the court shall award the prevailing party reasonable attorney's fees and costs and, if a civil action or proceeding is voluntarily dismissed, may award reasonable attorney's fees and costs to the party against whom the civil action or proceeding is brought.
- II. No person shall knowingly make or cause another person to make a false report under the reporting law alleging that any person has committed an act or omission that resulted in a child being an abused or neglected child. Whoever violates this law is guilty of making or causing a false report of child abuse or child neglect, a misdemeanor of the first degree.

**IMMUNITY FOR REPORTERS**

**OHIO**

**Ohio Rev. Code Ann. sec. 2151.42.1(G) (1992)**

Except as provided in the law regarding false reports, anyone or any hospital, institution, school, health department, or agency participating in the making of reports under the reporting law shall be immune from any civil or criminal liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of the making of the reports.

**DEFINITIONS  
WISCONSIN**

Wis. Stat. Ann. sec. 48.981(1) (1991); 940.225 (1987); 948.05 (1987); and 944.30 (1983)

- I. **"Abuse"** = any of the following to a child:
  - A. physical injury inflicted on a child by nonaccidental means;
  - B. sexual intercourse or sexual assault;
  - C. sexual exploitation of a child;
  - D. permitting, allowing, or encouraging a child to violate laws against prostitution;
  - E. emotional damage; or
  - F. a violation of laws against forced viewing of sexual activity.
  
- II. **"Neglect"** = failure, refusal, or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide any of the following, so as to seriously endanger the physical health of the child:
  - A. necessary care;
  - B. necessary food, clothing, or shelter; or
  - C. necessary medical or dental care.
  
- III. **Miscellaneous Definitions**
  - A. **"Child"** = any person under 18 years of age.
  - B. **"Emotional damage"** = harm to a child's psychological or intellectual functioning which is exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which is caused by the child's parent, guardian, legal custodian or other person exercising temporary or permanent control over the child and for which the child's parent, guardian or legal custodian has failed to obtain the treatment necessary to remedy the harm. This may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is

not within the normal range for the child's age and stage of development.

- C. **"Physical injury"** includes:
  - 1. lacerations;
  - 2. fractured bones;
  - 3. burns;
  - 4. internal injuries;
  - 5. severe or frequent bruising; or
  - 6. great bodily harm.
  
- D. **"Relative"** = a parent, grandparent, stepparent, brother, sister, first cousin, second cousin, nephew, niece, uncle, aunt, stepgrandparent, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, stepuncle, or steppaunt.

**MANDATORY REPORTERS**

**WISCONSIN**

**Wis. Stat. Ann. sec. 48.981(2) (1989)**

- I. **Who Must Report**
  - A. Physicians; coroners; medical examiners; nurses; dentists; chiropractors; optometrists; other medical professionals; physical therapists; occupational therapists; speech-language pathologists; audiologists; emergency medical technicians.
  - B. School teachers, administrators, or counselors; child care workers in day-care centers or child caring institutions; day-care providers.
  - C. Mental health professionals; alcohol or other drug abuse counselors; members of the treatment staff employed by or working under contract with a county department.
  - D. Social or public assistance workers; police or law enforcement officers.
  
- II. **Under these Circumstances. When they have:**
  - A. reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglect; or

- B. reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur.

### III. Miscellaneous

- A. The following persons are not required to report sexual intercourse or sexual contact involving a child as suspected or threatened abuse:
1. health care providers who provide any health care service to a child;  
or
  2. persons who obtains information about a child who is receiving or has received health care services from a health care provider.
- B. Except that these persons must report if they have any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse or if they have reason to suspect any of the following:
1. that the sexual intercourse or sexual contact occurred or is likely to occur with any of the following:
    - a. a child's relative,
    - b. the child's guardian,
    - c. the child's legal custodian,
    - d. an employee of a residential facility or child caring institution in which the child was or is placed,
    - e. a person who provides or has provided care for the child in or outside of the child's home,
    - f. a person who resides or has resided regularly or intermittently in the same dwelling the child, or
    - g. any other person who exercises or has exercised temporary or permanent control over or who temporarily or permanently supervises or has supervised the child;
  2. that the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions;
  3. that the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact;
  4. that the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact; or



5. that another participant in the sexual contact or sexual intercourse was or is exploiting the child.

## REPORTING PROCEDURES

### WISCONSIN

Wis. Stat. Ann. sec. 48.981(3) (1989)

#### I. Generally

- A. Form of Reports: Mandatory reporters shall immediately inform, by telephone or personally. The county department may require that a subsequent report be made in writing.
- B. To Whom: Mandatory Reporters shall immediately inform the county Department or the sheriff or city police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or to a belief that abuse or neglect will occur.

#### II. Cross-Reporting to/by Professionals

##### A. By County Departments

1. Each county Department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.
2. In a county which has wholly or partially within its boundaries a federally recognized indian reservation or a Bureau of Indian Affairs service area for the Winnebago tribe, if a county Department which receives a report pertaining to a child knows that the child is an Indian child who resides in the county, the county Department shall provide notice, which shall consist only of the name and address of the child and the fact that a report has been received about that child, within 24 hours to one of the following:
  - a. If the county Department knows with which tribe or band the child is affiliated and it is a Wisconsin tribe or band, the tribal agent of that tribe or band.
  - b. If the county Department does not know with which tribe or band the child is affiliated or the child is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Winnebago service area where the child resides.

- c. If neither of these provisions apply, the report shall be made to any tribal agent serving a reservation or Winnebago service area in the county.
  - 3. Using the format prescribed by the Department, each county Department shall provide the Department with information about each report that it receives or that is received by a licensed child welfare agency that is under contract with the county Department and about each investigation that it or a licensed child welfare agency under contract with the county Department conducts.
- B. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the county Department all cases reported to it.

**CROSS-REPORTING BETWEEN SOCIAL SERVICES AND LAW ENFORCEMENT  
WISCONSIN**

**Wis. Stat. Ann. sec. 48.981(3) (1989)**

- I. Receiving Agency: Mandatory Reporters shall immediately inform the county Department of Social Services or the sheriff or city police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or to a belief that abuse or neglect will occur.
- II. Cross-Reporting
  - A. Each county Department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.
  - B. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the county Department all cases reported to it.

**PENALTIES FOR FAILURE TO REPORT  
WISCONSIN**

**Wis. Stat. Ann. sec. 48.981(6) (1991)**

Whoever intentionally violates the reporting law by failure to report as required may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

**IMMUNITY FOR REPORTERS**

**WISCONSIN**

**Wis. Stat. Ann. sec. 48.981(4) (1991)**

Any person or institution participating in good faith in the making of a report shall have immunity from any civil or criminal liability that results by reason of the action. For the purpose of any civil or criminal proceeding, the good faith of any person reporting under this reporting law shall be presumed. The immunity provided under this law does not apply to liability for abusing or neglecting a child.



**APPENDIX V:**  
**FEDERAL LAW RELEVANT TO CHILD SEXUAL EXPLOITATION**  
**PROVIDED BY**  
**NOY DAVIS, ESQ.**  
**AMERICAN BAR ASSOCIATION**  
**CENTER ON CHILDREN AND THE LAW**

**Note:** If you wish to cite a particular statute, you should check the federal code itself to ensure that you have accurate language and the most recent law.

United States Code Annotated  
Title 18. Crimes and Criminal Procedure

§ 2251. Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (d), if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose or producing any visual depiction of such conduct shall be punished as provided under subsection (d) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(c)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering ---

(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct:

shall be punished as provided under subsection (d).

(2) The circumstance referred to in paragraph (1) is that ---

(A) such person knows or has reason to know that such notice or advertisement will be transported in interstate or foreign commerce by any means including by computer or mailed; or

(B) such notice or advertisement is transported in interstate or foreign commerce by any means including by computer or mailed.

(d) Any individual who violates this section shall be fined not more than \$100,000, or imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this section, such individual shall be fined not more than \$200,000, or imprisoned not less than five years nor more than 15 years, or both. Any organization which violates this section shall be fined not more than \$250,000.

§2251A. Selling or buying of children

(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either ---

(1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) with intent to promote either ---

(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either ---

(1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) with intent to promote either ---

(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(c) The circumstances referred to in subsections (a) and (b) are that ---

(1) in the course of the conduct described in such subsections the minor or the actor traveled in or was transported in interstate or foreign commerce;

(2) any offer described in such subsections was communicated or transported in interstate or foreign commerce by any means including by computer or mail; or

(3) the conduct described in such subsections took place in any territory or possession of the United States.

§ 2252. Certain activities relating to material involving the sexual exploitation of minors

(a) Any person who ---

(1) knowingly transport or ships in interstate or foreign commerce by any means including by computer or mails any visual depiction, if ---

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(2) knowingly receives, or distributes any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce by any means including by computer or through the mails, if ---

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(3) either ---



(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly sells or possesses with intent to sell any visual depiction; or

(B) knowingly sells or possesses with intent to sell any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means, including by computer, if ---

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct; or

(4) either ---

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of United States, or in the Indian country as defined in section 51 of this title, knowingly possesses 3 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

(B) knowingly possesses 3 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if ---

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct;  
shall be punished as provided in subsection (b) of this section.

(b)(1) Whoever violates paragraph (1), (2), or (3) of subsection (a) shall be fined under this title or imprisoned not more than ten years, or both, but, if such person has a prior conviction under this section, such person shall be fined under this title and imprisoned for not less than five years nor more than fifteen years.

(2) Whoever violates paragraph (4) of subsection (a) shall be fined under this title or imprisoned for not more than five years, or both.

§ 2253. Criminal forfeiture

(a) Property subject to criminal forfeiture - A person who is convicted of an offense under this chapter involving a visual depiction described in section 2251, 2251A, or 2252 of this chapter shall forfeit to the United States such person's interest in ---

(1) any visual depiction described in sections 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of this chapter;

(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

(b) Third party transfers. - All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(c) Protective orders. - (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section ---

(A) upon the filing of an indictment or information charging a violation of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that ---

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being

destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

except that an order entered pursuant to subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(d) Warrant of seizure - The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (c) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(e) Order of forfeiture - The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(f) Execution - Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or

take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

g) Disposition of property - Following the seizure of property ordered forfeited under this section, the Attorney General shall destroy or retain for official use any article described in paragraph (1) of subsection (a), and shall retain for official use or direct the disposition of any property described in paragraph (2) or (3) of subsection (a) by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(h) Authority of attorney general - With respect to property ordered forfeited under this section, the Attorney General is authorized to ---

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, under section 616 of the Tariff Act of 1930, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(i) Applicability of civil forfeiture provisions - Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 2254(d) of this title (18 U.S.C. 2254(d)) shall apply to a criminal forfeiture under this section.

(j) Bar on intervention - Except as provided in subsection (m) of this section, no party claiming an interest in property subject to forfeiture under this section may -

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of

such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(k) Jurisdiction to enter orders - The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(l) Depositions - In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 15 of the Federal Rules of Criminal Procedure.

(m) Third party interests - (1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that --

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(n) Construction - This section shall be liberally construed to effectuate its remedial purposes.

(o) Substitute assets - If any of the property described in subsection (a), as a result of any act or omission of the defendant --

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without

difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

§ 2254 Civil forfeiture

(a) Property subject to civil forfeiture - The following property shall be subject to forfeiture by the United States:

(1) Any visual depiction described in section 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, or received in violation of this chapter.

(2) Any property, real or personal, used or intended to be used to commit or to promote the commission of an offense under this chapter involving a visual depiction described in section 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(3) Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from a violation of this chapter involving a visual depiction described in section 2251, 2251A, or 2252 of this chapter, except of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(b) Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims - Any property subject to forfeiture to the United States under this section may be seized by the Attorney General, the Secretary of the Treasury, or the United States Postal Service upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when the seizure is pursuant to a search under a search warrant or incident to an arrest. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

(c) Custody of federal official - Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, Secretary of the Treasury, or the United States Postal Service subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General, Secretary of the Treasury, or the United States Postal Service may --

- (1) place the property under seal;
- (2) remove the property to a place designated by the official or agency; or
- (3) require that the General Services Administration take custody of the

property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) Other Laws and Proceedings Applicable - All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service, except to the extent that such duties arise from seizures and forfeitures affected by any customs officer.

(e) Inapplicability of certain sections - Sections 1606, 1613, 1614, 1617, and 1618 of title 19, United States Code, shall not apply with respect to any visual depiction or any matter containing a visual depiction subject to forfeiture under subsection (a)(1) of this section.

(f) Disposition of Forfeited Property - Whenever property is forfeited under this section the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and, with respect to property described in paragraph (2) or (3) of subsection (a), may ---

(1) retain the property for official use or transfer the custody or ownership of any forfeited property to a Federal, State, or local agency under section 616 of the Tariff Act of 1930;

(2) sell, by public sale or any other commercially feasible means, any forfeited property which is not required to be destroyed by law and which is not harmful to the public; or

(3) require that the General Services Administration take custody of the property and dispose of it in accordance with law.

The Attorney General, Secretary of the Treasury, or the United States Postal Service shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by an official or agency pursuant to paragraph (1) shall not be subject to judicial review. With respect to a forfeiture conducted by the



Attorney General, the Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28 the proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter. With respect to a forfeiture conducted by the Postal Service, the proceeds from any sale under paragraph (2) and any money forfeited under this section shall be deposited in the Postal Service Fund as required by section 2003(b)(7) of title 39.

(g) Title to Property - All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(h) Stay of Proceeding - The filing of an indictment or information alleging a violation of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

(i) Venue - In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

#### § 2255. Civil remedy for personal injuries

(a) Any minor who is a victim of a violation of section 2251 or 2252 of this title and who suffers personal injury as a result of such violation may sue in any appropriate United States District Court and shall recover the actual damages such minor sustains and the cost of the suit, including a reasonable attorney's fee. Any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than \$50,000 in value.

(b) Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability.

#### § 2256. Definitions for chapter

For the purposes of this chapter, the term ---

- (1) "minor" means any person under the age of eighteen years;
- (2) "sexually explicit conduct" means actual or simulated ---

(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) bestiality;

(C) masturbation;

(D) sadistic or masochistic abuse; or

(E) lascivious exhibition of the genitals or public area of any person;

(3) "producing" means producing, directing, manufacturing, issuing, publishing, or advertising;

(4) "organization" means a person other than an individual;

(5) "visual depiction" includes undeveloped film and videotape;

(6) "computer" has the meaning given that term in section 1030 of this title; and

(7) "custody or control" includes temporary supervision over or responsibility for a minor whether legally or illegally obtained.

#### § 2257. Record keeping requirements

(a) Whoever produces any book, magazine, periodical, film, videotape, or other matter which ---

(1) contains one or more visual depictions made after November 1, 1990 of actual sexually explicit conduct; and

(2) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

shall create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction.

(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of actual sexually explicit conduct ---

(1) ascertain, by examination of an identification document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

(2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and

(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) of this subsection and such other identifying information as may be prescribed by regulation.

(c) Any person to whom subsection (a) applies shall maintain the records required by this section at his business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times.

(d)(1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in this section, directly or indirectly, be used as evidence against any person with respect to any violation of law.

(2) Paragraph (1) of this subsection shall not preclude the use of such information or evidence in a prosecution or other action for a violation of this section or for a violation of any applicable provision of law with respect to the furnishing of false information.

(e)(1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in paragraph (1) of subsection (a) of this section, in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located.

(2) If the person to whom subsection (a) of this section applies is an organization the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

(f) it shall be unlawful ---

(1) for any person to whom subsection (a) applies to fail to create or maintain the records as required by subsections (a) and (c) or by any regulation promulgated under this section;

(2) for any person to whom subsection (a) applies knowingly to make any false entry in or knowingly to fail to make an appropriate entry in, any record required by subsection (b) of this section or any regulation promulgated under this section;

(3) for any person to whom subsection (a) applies knowingly to fail to comply with the provisions of subsection (e) or any regulation promulgated pursuant to that subsection; and

(4) for any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter, produce in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce or which is intended for shipment in interstate or foreign commerce, which ---

(A) contains one or more visual depictions made after the effective date of this subsection of actual sexually explicit conduct; and

(B) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

which does not have affixed thereto, in a manner prescribed as set forth in subsection (e)(1), a statement describing where the records required by this section may be located, but such person shall have no duty to determine the accuracy of the contents of the statement or the records required to be kept.

(g) The Attorney General shall issue appropriate regulations to carry out this section.

(h) As used in this section ---

(1) the term "actual sexually explicit conduct" means actual but not simulated conduct as defined in subparagraphs (A) through (D) of paragraph (2) of section 2256 of this title;

(2) "identification document" has the meaning given that term in section 1028(d) of this title;

(3) the term "produces" means to produce, manufacture, or publish any book, magazine, periodical, film, video tape or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity which does not involve hiring, contracting for managing, or otherwise arranging for the participation of the performers depicted; and

(4) the term "performer" includes any person portrayed in a visual depiction engaging in, or assisting another person to engage in, actual sexually explicit conduct.

(i) Whoever violates this section shall be imprisoned for not more than 2 years, and fined in accordance with the provisions of this title, or both. Whoever violates this section after having been convicted of a violation punishable under this section shall be imprisoned for any period of years not more than 5 years but not less than 2 years, and fined in accordance with the provisions of this title, or both.

§ 2258. Failure to report child abuse

A person who, while engaged in a professional capacity or activity described in subsection (b) of section 226 of the Victims of Child Abuse Act of 1990 on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section, shall be guilty of a Class B misdemeanor.

National Child Protection Act of 1993 (H.R. 1237)

See also H.R. 1237, the "National Child Protection Act of 1993," approved by the United States Senate and House of Representatives and signed into law by President Clinton on December 20, 1993. The Report of the Committee on the Judiciary accompanying H.R. 1237 states the following:

The purpose of the National Child Protection Act of 1993 is to require the States to report information on arrests and convictions for child abuse crimes to the national criminal history record system maintained by the Federal Bureau of Investigation, to encourage the States to adopt legislation requiring background checks for child care providers through the FBI criminal history record system, to establish procedures for such checks, and to authorize funding for improvements in criminal history records.

