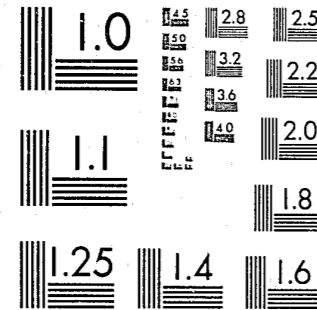


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## The Juvenile Runaway Phenomenon

# FBI LAW ENFORCEMENT BULLETIN

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# Sexual Exploitation of Children

## An Overview of Its Scope, Impact, and Legal Ramifications

“ . . . prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.”



By  
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### Introduction

The past six years have seen increased public and professional concern about an insidious form of child abuse—the exploitation of children for sexual stimulation and commercial gain. Media attention to the problem has produced graphic and alarming reports about a situation too disturbing to fully comprehend. Additionally, Congressional hearings on the subject, culminating in new federal legislation and reviewing its implementation, have given the problem national attention.<sup>1</sup>

Two important recent developments at the federal level have also occurred. The first is the release on April 20, 1982, of a report by the U.S.

General Accounting Office on teenage prostitution and child pornography and governmental efforts to deal with these problems.<sup>2</sup> The second is a decision of the U.S. Supreme Court in the case of *New York v. Ferber*, in which the Court unanimously affirmed the constitutionality of state laws which prohibit the dissemination of material depicting children engaged in sexual conduct regardless of whether the material is obscene.<sup>3</sup>

Speaking for the Court, Justice White stated that the use of children as subjects of pornographic materials “is harmful to the physiological, emotional, and mental health of the child” and that the “prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.”

### The Scope of Child Sexual Exploitation

Children are sexually exploited in a variety of ways. Most commonly, they are used as prostitutes or models for the production of pornographic photographs and films. Child pornography is generally defined as films, photographs, magazines, books and motion pictures which depict children in sexually explicit acts, both heterosexual and homosexual. Production, distribution and sale of child pornography is a secretive business,



Mr. Davidson

making a determination of its full extent extremely difficult. Estimates of the number of children involved range from the thousands to the hundreds of thousands. The statistics cannot be accurately verified and the facts and figures vary, but one thing is clear: a significant number of children are being sexually exploited throughout the country.

Some child pornography and child prostitution operations have become highly organized on a nationwide scale. To date, police have uncovered child pornography and prostitution centers in many large cities. However, operations have also been discovered in suburban and rural communities. More recently, allegations of sexual exploitation of young Congressional pages in Washington, D.C. have made headlines.

There have also been cases where child pornography and prostitution operations have been organized into “sex rings.” For example, a Tennessee minister who operated a home for wayward boys encouraged the boys to engage in orgies. He then filmed them with hidden cameras and sold the films. Also, he arranged for “sponsors” to come to the home and have sex with the boys.

However, child pornography is generally a “cottage industry,” with production occurring surreptitiously in private homes and motel rooms. Consequently, combatting the problem and protecting the children can be very difficult. It is, however, an essential responsibility of prosecutors.

### Profile of People Who Sexually Exploit Children

The rapid growth of child pornography reveals a demand for the material by people who are stimulated by sexual activity with children. They are known as “pedophiles”—people who are predisposed to sexually use children or who turn to them as a result of conflicts or problems in their adult relationships. Some have organized and become vocal about what they believe is their right to sexual fulfillment. For example, the Rene Guyon Society in California purports to have 5,000 members who claim to have each deflowered a young child. Their motto: “sex by eight or it is too late.” In May, 1977, the first meeting of the International Pedophilic Information Exchange was held in Wales. It advocates a change in the laws to permit sex between adults and “consenting” children, although such permission is a legal impossibility since children are not capable of consenting.

The pedophile's sexual access to children is gained by either pressuring the child into sexual activity through enticement, encouragement, or instruction, or by forcing such activity through threat, intimidation, or physical duress. However, pedophiles usually seek to control children rather than injure them. Pedophiles are not “dirty old men,” but are rather at the younger end of the age spectrum. Many commit their first pedophilic offense while in their teens. Generally, they are neither retarded nor psychotic.

Although it is commonly believed that children are at greater risk of sexual victimization from homosexual adults than from heterosexual, this is not true. Research has found females not only victimized almost twice as often as male children, but where

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**“. . . combatting the problem and protecting the children . . . is . . . an essential responsibility of prosecutors.”**

child sex offenders have a predominant sexual orientation toward adults, they largely lead exclusively heterosexual lives.

**Profile of the Exploited Child**

Those who sexually exploit children have little difficulty recruiting youngsters. Typically, the victims are runaways who come to the city with little or no money. It is estimated that as many as 1.8 million children run away from home each year. Adult exploiters pick them up at bus stations, hamburger stands and street corners and offer them money, gifts or drugs for sexual favors.

However, not all exploited children are runaways. Many seem to live normal lives with their families. Frequently, they are children who have been abused at home or live with parents who don't care about their activities. Often the parents are unaware of what their children are doing, but there have been cases where parents have sold their own children for sexual purposes.

The effects of sexual exploitation on children are devastating. Many children suffer physical harm as a result of the premature and inappropriate sexual demands placed on them. Perhaps more serious is the disruption of emotional development. Although the psychological problems experienced by children who are sexually exploited have not been extensively studied, there is ample evidence that such involvement is harmful. One recent study suggests that children who are used to produce pornography suffer harmful effects similar

to those experienced by incest victims. Such effects may include depression, guilt and psychologically induced somatic disorders. Often, these children grow up to lead a life of drugs and prostitution. More tragically, children who are sexually abused are more likely to abuse their own children.

**The Need for Effective Prosecution Under Child Pornography Laws**

In the past six years, Congress and the state legislatures have played a crucial role in the fight against the rapidly growing problem of child pornography. Prior to 1977 there were few laws, either federal or state, directly addressing the issue. Today, virtually all states and the federal government have enacted laws to help deal with the problem.

In 1978 Congress enacted the *Protection of Children Against Sexual Exploitation Act* (Public Law 95-225, 18 U.S.C. §§ 2251-53). This law extends the federal government's authority to prosecute both the producers and distributors of child pornography. In addition, the law prohibits the transportation of all children across state lines for the purpose of sexual exploitation.

Signed into law in February, 1978, 18 U.S.C. § 2251 provides punishment for persons who use, employ or persuade minors (defined as any person under 16) to become involved in the production of visual or print material which depicts sexually explicit conduct, if the producer knows or has reason to know that the material will be transported in interstate or foreign commerce, or mailed. Punishment is also specifically provided for parents, legal guardians, or other persons having custody or control of minors

who knowingly permit a minor to participate in the production of such material. *Distributors* of the material are also covered, as Section 2252 prohibits the shipping or receiving, for the purpose of commercial distribution, or "obscene" child pornography through interstate or foreign commerce or the mails. Finally, the law amends the Mann Act (18 U.S.C. § 2423) to extend protection to males who are transported across state lines for the purpose of prostitution and additionally prohibits the causing of a minor to engage in sexual conduct for commercial exploitation. Previously the Mann Act only prohibited the transportation of *females* for use in prostitution.

The sanctions provided by the law are stiff. Both production and distribution carry penalties of imprisonment up to ten years and fines up to \$10,000. In addition, the maximum penalties are increased to 15 years imprisonment and \$15,000 for subsequent offenses.

Regrettably, to date there have been no successful prosecutions against producers of child pornography under the Act, and as of April 1982, only fourteen convictions of distributors. Responsibility for investigation of these cases has been shared between the Federal Bureau of Investigation and the U.S. Postal Service (with the FBI having jurisdiction over the production aspects of the Act).

According to recent U.S. Justice Department testimony before the Congress, utilization of the Act has been limited by the fact that the statute covers only distribution for commercial purposes. Much child pornogra-

phy is produced for the private self-gratification of pedophiles and is not necessarily produced for any commercial purpose. Many distributors of child pornography loan, trade or exchange this material, rather than sell it, through an underground pedophile "collectors" network. This has led the Department to call for the deletion of the "commercial purposes" or "pecuniary interest" requirement of the Act (legislation has been filed in the 97th Congress to accomplish this: H.R. 6287). To date, only three states (Arizona, California, and Illinois) have child pornography statutes which prohibit the exchanging or trading of this material.

However, child pornography, like child abuse, is generally a state concern. Yet prior to 1977, only two states had laws which prohibited the use of children in the production or distribution of pornographic materials or performances. Today, 49 states have enacted statutes which specifically deal with the problem.

A few states have dealt innovatively with this problem. For example, Idaho has included provisions in its child labor laws which prohibit the employment of children in productions which depict sexual conduct.<sup>4</sup> Other states have amended their child abuse laws to include provisions which prohibit using or permitting a child to perform in a sexually explicit act.<sup>5</sup> Some have even gone beyond the traditional notion that child abuse laws apply only to the parents or guardians of a child. For example, Hawaii describes the distribution of child pornography as "promoting child abuse."<sup>6</sup>

Most commonly, however, the states have followed the lead of the federal government and have created separate offenses within their criminal codes which specifically outlaw child sexual exploitation. These laws are similar to the obscenity laws, but many omit the requirement that the material be *obscene*. (In the *Ferber* decision, the Supreme Court ruled that such statutes do not violate the First Amendment). Instead, they prohibit using or permitting children to be filmed or photographed in specifically defined sexual acts. Additionally, they generally prohibit the distribution and sale of such materials.

The vast majority of these new criminal offenses are felonies. Prison terms vary, but are set around ten years in most states and range from one year to life imprisonment in others. Fines also vary, the most common being about \$10,000, but they range from \$1,000 to \$50,000. A few states consider the crime a misdemeanor and provide penalties of less than one year and \$1,000.

All of the sexual exploitation laws impose criminal liability on producers of child pornography. Coercing a child to participate in the production of material depicting sexually explicit conduct has been outlawed in a majority of states. A significant number of state laws specifically include parents as possible offenders, although many other states describe offenders in a more general sense as "any person who knowingly permits (sexual exploitation of a child)," which could be construed to include parents. Finally, a majority of states follow the federal law in specifically imposing criminal culpability on the distributors of child pornography.

Currently, about a dozen states have comprehensive laws which specifically cover all of these classes of offenders. Combined with the states that include people who "permit" children to be sexually exploited, almost half of the state child sexual exploitation laws can be considered comprehensive in terms of offenders.

Statutes which regulate child pornography must describe the type of production prohibited. Most laws prohibit the production of any "visual or print medium" which depicts children in prohibited sexual conduct. Visual or print medium as defined by the federal law means "any film, photograph, negative, slide, book, magazine, or other visual or print medium."

Children can also be sexually exploited by their use in live performances. Consequently, a majority of states also prohibit the production of live performances which depict children engaged in prohibited sexual conduct. While the use of children in such performances is certainly not as pervasive as other forms of child pornography, these states have found the situation serious enough to afford children this protection. The use of children in live sexual performances is not prohibited by the federal law, except where the children are transported across state lines for use in such shows.

Prosecutors face several evidentiary obstacles in child sexual exploitation cases. Among them is the prosecutor's burden of proving that the child was actually a minor at the time of the offense. This is particularly difficult in child pornography cases because the identity and location of the child depicted are usually unknown. To overcome this obstacle, the use of expert testimony to establish the child's age has been allowed in some

**"The system, in its zeal to prosecute the criminal, must not forget the purpose of these laws—to protect children."**

states.<sup>7</sup> Also, several states permit the jury to make a subjunctive judgment regarding the age of the child without the aid of expert testimony.<sup>8</sup> Others have established a rebuttable presumption that a child appearing in pornography is under the age of majority.<sup>9</sup>

Several states have included other provisions within their new laws which assist prosecutors in gathering evidence. The California statute, for example, has a provision which requires adult bookstores to keep detailed records of all transactions from wholesalers and distributors of sexual material involving children.<sup>10</sup> Louisiana has a provision stating that possession of three or more items of child pornography is *prima facie* evidence of intent to sell or distribute.<sup>11</sup> The U.S. General Accounting Office report on this topic suggests the enactment of statutes which would require film processors and laboratories that receive what appear to be child pornography to turn the material over to local law enforcement bodies or the state's attorney.

**Child Prostitution Laws**

Virtually all of the new child sexual exploitation laws focus solely on pornography. Yet, as already noted, the use of children for sexual purposes is not limited to pornography; children are also commonly exploited by their use in prostitution. In fact, many children engage in prostitution before becoming involved in pornography. Thus, child prostitution, while often a forerunner, may be a more serious problem than child pornography.

More than half of the states have separate offenses for aiding child prostitution which are included under their general prostitution laws. These provisions generally prohibit causing, abetting, soliciting or promoting the prostitution of one under a specified age. The offense most commonly applied to those who prostitute minors under these general statutes is "promoting the prostitution of a minor." Promoting prostitution is usually defined as advancing or profiting from the prostitution of another. This offense is generally a higher degree offense than promoting the prostitution of an adult, and as such, has a higher corresponding penalty. The penalty for this offense is often the same as for the offense of inducing the prostitution of any person by use of force. Some of these provisions specifically state that it is not a defense that the person had reason to believe the child to be above the specified age.<sup>12</sup>

Other provisions under the general prostitution statutes that apply to the prostitution of minors (including soliciting, pandering, procuring, encouraging, and supervising) are again classified as higher degree offenses than those applicable to adults, and again have correspondingly greater penalties. Some of the general prostitution statutes have provisions that specifically provide punishment for those who permit the prostitution of any person over whom they exercise custody or control, or prohibit prostitution by a parent, legal guardian, or one having legal charge of another.

Some provisions of general prostitution law appear to be out of date. A few outlaw the prostitution of only female minors. However, this language is rare, and some statutes have language specifying that the acts mentioned are prohibited without

regard to the sex of any of the parties. Three states separate their child prostitution prohibitions from their general prostitution laws (Arizona, Colorado and Nebraska). Under these statutes, each offense is stated separately and usually covers most of the activities related to prostitution. These include causing one to engage in, permitting a minor to engage in, financing, managing, supervising, controlling, transporting, promoting, procuring, encouraging, profiting from, receiving any benefit from, or soliciting a person to patronize a minor for the purposes of prostitution.

**Legal Protection of the Victimized Child**

In the event that the child is identified and located in a sexual exploitation case, prosecutors should be sensitive to the difficulties encountered by the child victim/witness. The use of an exploited child as a witness in a criminal prosecution can cause severe emotional problems for that child. He or she may be forced to relive the experience all over again, and endure the guilt and pressure imposed by a court proceeding. To prevent this, innovative techniques developed to protect sexual abuse and incest victims should be used in sexual exploitation cases as well. The system, in its zeal to prosecute the criminal, must not forget the purpose of these laws—to protect children. [For a detailed discussion of sensitive intervention techniques to protect child witnesses in such cases, see, J. Bulkley and H. Davidson, *Child Sexual Abuse: Legal Issues and Approaches*, National Legal Resource Center for Child Advocacy and Protection, American Bar

Association (1980) pp. 10-15; and J. Bulkley, *Child Sexual Abuse and the Law*, National Legal Resource Center for Child Advocacy and Protection, ABA (1981).]

Programs which provide counseling and other services to treat the serious emotional, psychological and physical harm suffered by these children should be identified. Referrals in these cases should regularly be made to the Child Protective Services agency. A number of excellent programs have been developed during the past few years which provide linkages between criminal prosecution and treatment-related programs for victims and offenders in intra-family child sexual abuse case. [See, J. Bulkley, *Innovations in the Prosecution of Child Sexual Abuse Cases*, National Legal Resource Center for Child Advocacy and Protection, American Bar Association (1981).] However, programs are just beginning to emerge which focus on the needs of child victims of sexual exploitation who are involved with law enforcement agencies.

One of these is the D.H.S. Exploited Child Unit in Louisville, Kentucky, which was established as a model of cooperating service delivery organizations dealing with child prostitution and pornography. This project of the Jefferson County Task Force on Juvenile Prostitution and Child Pornography began in July, 1980, as an arm of the county's Department of Human Services. It is housed in the county's Criminal Justice Commission office in order to work more closely with law enforcement agencies. The Task Force consists of representatives from the human services agency, state and local police departments, local F.B.I. and U.S. Postal In-

spection Service, and the County and Commonwealth's Attorney's Office.

Following a massive public information campaign, the Task Force established a 24-hour hotline for reporting matters concerning child sexual exploitation, organized a statewide social service information/referral network and research program, and created a special Police-Social Work Team to handle these cases. Child-victims of sexual exploitation are now referred to the Exploited Child Unit which acts as a case coordinator when cases are being brought before the juvenile court. A goal of the Unit is to both assure effective coordination of the work of the various agencies involved in these cases and to obtain appropriate services for the child-victims. The Unit also provides a communications liaison between the law enforcement and social services community, assists the child in the interviewing process (while assuring that his/her legal rights are protected), helps secure necessary protective custody orders from the court, and establishes a long-term relationship and rapport with the child and family so as to enable successful prosecution of the exploiter.

**Conclusion**

In its recent report on this subject, the U.S. General Accounting Office presented expert recommendations on the prevention of child sexual exploitation and the rehabilitation of its victims. These included suggestions that:

- Law enforcement officials enforce prostitution laws more vigorously.

- Police develop a more aggressive approach to child sex crimes and establish special child exploitation units to deal with the overlapping problem of child pornography, child prostitution, runaways, and child molestation.
- Prosecutors aggressively pursue convictions in child pornography cases and be specially trained to ensure convictions.
- Legislators increase the effectiveness of present statutes for prosecution of pimps, especially pimps of juvenile prostitutes, as well as to make it easy to prosecute customers of prostitutes, especially customers of juvenile prostitutes.

If each of these proposed solutions is carried out, we can make great strides in combatting this serious problem. **FBI**

**Footnotes**

<sup>1</sup> U.S. Congress, House Committee on Education and Labor, Hearings before the Subcommittee on Select Education, Ninety-Fifth Congress, First Session (Hearings held May 27-31 and July 10, 1977), Ninety-Seventh Congress, Second Session (Hearings held April 23 and June 24, 1982), House Committee on the Judiciary, Hearings before the Subcommittee on Crime, Ninety-fifth Congress, First Session (Hearings held May 23, 25, June 10, and September 20, 1977); Senate Judiciary Committee, Hearings before the Subcommittee to Investigate Juvenile Delinquency, Ninety-fifth Congress, First Session (Hearings held May 27 and June 16, 1977), Hearings before the Subcommittee on Juvenile Justice, Ninety-Seventh Congress, First and Second Session (Hearings held November 5, 1981 and April 1, 1982).

<sup>2</sup> Report to the Chairman, Subcommittee on Select Education, House Committee on Education and Labor, by the U.S. General Accounting Office, *Sexual Exploitation of Children—A Problem of Unknown Magnitude*, HRD-82-64.

<sup>3</sup> *New York v. Ferber*, 50 U.S.L.W. 5077 (U.S. July 2, 1982), reversing and remanding 422 N.E. 2d 523 (1981).

<sup>4</sup> Idaho Code § 44-1306 (1979).

<sup>5</sup> See, e.g., Maryland Code Ann. Art. 27, § 35A (Supp. 1980).

<sup>6</sup> Hawaii Rev. Stat. §§ 707-750 to 751 (Supp. 1978).

<sup>7</sup> See, e.g., 18 Pennsylvania Cons. Stat. Ann. § 6312(d) (1981).

<sup>8</sup> See, e.g., Alabama Code 7-233(b) (Supp. 1980); New York Penal Law § 263.25 (1980).

<sup>9</sup> New Jersey Stat. Ann. § 2C:24-4 (1981).

<sup>10</sup> California Labor Code § 1309.5(a)-(b) (West Supp. 1980).

<sup>11</sup> Louisiana Rev. Stat. Ann. § 14.81.1 (Supp. 1981).

<sup>12</sup> See, e.g., Colorado Rev. Stat. § 18-7-407 (1978).

**END**