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THE ATTORNEY MANUAL

to Guide Representation of Children
Victimized by the Online Distribution
of Child Sexual Abuse Material

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This manual is provided for informational purposes only in support of NCMEC’s mission to serve as a resource center for law enforcement, families, and the public to help find missing children, reduce child sexual exploitation, and prevent future victimization. The manual does not constitute legal advice or professional opinion about specific facts. Information provided in this manual may not remain current, complete or accurate, so recipients should use this document only as a starting point for their own independent research and analysis. If legal advice or other expert assistance is required, the services of a competent professional should be sought. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the authors exclusively and do not necessarily reflect those of any other organization or agency.

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The Attorney Manual to Guide Representation of Children Victimized by the Online Distribution of Child Sexual Abuse Material

PREFACE

This Manual was created as a joint project between the National Center for Missing & Exploited Children (NCMEC) and the generous pro bono support of Jones Day. The Manual is intended to be used both as a resource guide for attorneys experienced in representing children victimized by the online circulation of sexually abusive material and as an introduction to this area of law for attorneys who are representing a victim for the first time.

A victim of child pornography has the legal right to have his or her voice heard in criminal and civil proceedings in both federal or state court and also to seek monetary compensation from every offender who views, possesses, or distributes sexually abusive images or videos depicting the victim. Victims are much more likely to have access to recovery services and to obtain restitution when they are represented by lawyers who are familiar with the legal and support resources available to their clients.

The victimization a child experiences when images or videos taken of the rape and sexual abuse the child suffered are circulated online is different in scope, impact, and legal complexity from any other personal injury. While the victim in this type of case is always a child when he or she is harmed, your client may be the parent or guardian of the child or the now-adult child victim. Or, due to the devastating and continuing nature of this crime, your client may transition from the parent or guardian to the victim when he or she reaches the age of majority.

This Manual begins where the process begins—the point at which a victim is notified that his or her sexually abusive images or videos have been distributed online. The Manual describes the options for seeking restitution, including the processes for criminal restitution and civil recovery; how a private attorney can work with prosecutors, mental health professionals, and NCMEC to support your client; and the collateral legal issues that may arise with respect to child victims who have been exploited through the distribution of their online images. Child victims are often impacted by an array of related legal issues arising from the distribution of their images or videos, ranging from custodial issues when the offender is a parent or guardian to privacy, online harassment, and stalking concerns. It is critical for attorneys assisting child victims with restitution to be attentive to and aware of these ancillary legal issues so they can assist and support their clients as needed. Recommendations and best practices are included throughout the Manual based on NCMEC's over three decades of experience providing services to children who have been sexually exploited and Jones Day's legal experience representing dozens of clients who have been victimized by the online distribution of child pornography.

As you read through this Manual, there are three important notes to keep in mind about terminology used to describe the crimes inflicted on these children. First, the term “child pornography” is used throughout U.S. law to describe images and videos depicting the sexual exploitation of children. Outside of the legal system, NCMEC chooses to use the term “child sexual abuse material” (CSAM) to more accurately reflect what is depicted by this content—the

rape and sexual abuse of children.¹ You will see both terms (“child pornography” and “CSAM”) used in this Manual, depending on the context.² Second, children who have been sexually abused and whose images of abuse have been distributed online are victims of this crime. However, outside of the legal context, NCMEC often uses the term “survivors” to refer to children who have overcome the initial trauma of their sexual abuse and are continuing to work their way through the recovery process. You will see references to both “survivor” and “victim” in this Manual when describing or referring to your client. Third, child pornography content can be composed of images and/or videos. References in this Manual to CSAM, child pornography imagery, or child pornography content are intended to include both image and video depictions of child sexual abuse.

For any questions regarding the subject matter of this Manual or how NCMEC can help support your client and your legal representation of a child who has been victimized by online sexual exploitation, please email familysupport@ncmec.org.

ACKNOWLEDGMENTS

This manual would not be possible without the dedication and generous pro bono support from Jones Day. The National Center for Missing & Exploited Children is grateful to each of the participants in the Attorney Roundtable held in March 2019, for sharing their experience and insights into effectively representing children victimized by online distribution of child sexual abuse material. NCMEC extends special thanks for the contributions in support of this Attorney Manual from Jade Fisher (Utah Crime Victims Legal Clinic), Meg Garvin (National Crime Victim Law Institute), Elaine Lenahan (Lenahan Law, PLLC), Margaret Mabie (Marsh Law Firm PLLC) and James Marsh (Marsh Law Firm PLLC) as well as the tireless support of Bethany Biesenthal (Jones Day) and Allison McQueen (Jones Day).

¹ Because “CSAM” more accurately reflects what is depicted in these images and videos (the sexual abuse and exploitation of children), it is the preferred term among advocates and survivors both in the United States and internationally. In 2020, federal legislation was introduced that would revise the term “child pornography” to “child sexual abuse material” throughout the U.S. Criminal Code. *See* Eliminating Abusive and Rampant Neglect of Interactive Technologies Act of 2020, S. 3398, 116th Cong. (2020). NCMEC anticipates that this legislation will be reintroduced in 2021.

² An index of other key terms and acronyms can be found at Appendix A.

FOREWORD—A Letter from a Survivor

Dear Attorneys,

When I was a minor a family member went to federal prison for abusing me most of my early childhood and sharing images of the abuse online. About five years after the arrest, I randomly received a letter in the mail. It said that they had caught someone with the images of me. I was shocked because I hadn't heard from anyone about my case in all those years. They were notifying me that I could file for restitution because of the law about notifying me every time someone was caught. I was in a dangerous place with my mental health even before the notifications. When I started to receive multiples notices a week, I asked for them to stop contacting me. I was young, had no idea how I could file for restitution, and could not mentally handle knowing how often people were caught with images of my abuse.

A couple years later an attorney contacted me who had heard about my case and wanted to help. I wanted to learn more but I was worried about collecting restitution from people who had hurt me. I didn't want to feel like I was getting paid for their continued abuse of me. I was so thankful that my attorney reached out and was able to explain that this was the price that offenders should have to pay for what they have done to me. Once I saw how I could finally get therapy and help if we collected restitution I was fully on board. I liked the idea of holding people accountable for their actions. I also liked that it was warning other people that they will be held liable for their actions if they look up these kinds of images. It shows that this is not a victimless crime.

I would recommend other survivors get an attorney so that they don't have to suffer with this alone. It will be really overwhelming to them at first to start working with an attorney, but it gets easier over time. They will need a family member, friend, or therapist to support them emotionally throughout the process. It was really hard at first to know the volume of people that get caught. I was able to have my attorney receive the notifications for me and now I don't have to think about it as often. It helped me knowing that someone is in my corner representing me and holding the offenders accountable. This can help other survivors too, and once survivors get restitution it makes their lives a little bit easier knowing they can afford to get the help they deserve.

As an attorney, you need to know that every survivor is different. You should ask and explain everything to the survivors that they want to know. Some survivors will want to know every detail and others will want to know as little as possible. This will change over time. It changes based on where they are in their healing journey. If you do not know how much you should tell the survivor, just ask them how much they want to know or don't want to know. If the survivor seems unsure, ask if they would be comfortable with a family member or therapist hearing the information first, then sharing with the survivor in a way that is best for them.

My attorney had their work cut out for them when they started my case. They had to get a lot of information together to create packets to send out to the courts. I had to meet with a psychologist and write a victim impact statement. I would have never been able to do any of this on my own. I would have no idea how, and it would have been too overwhelming emotionally. I am very thankful for my attorney because without them I would not have gotten the counseling I need to be in the place that I am today.

The partnership I have with my attorney and the restitution I am receiving has allowed me to have hope in my future. I hope that every attorney who wants to work with survivors will get to have this experience as well. Thank you for taking the time to learn about these issues.

*Sincerely,
A Survivor*

I. BACKGROUND

A. CHILD SEXUAL EXPLOITATION MEMORIALIZED AND DISTRIBUTED AS CHILD PORNOGRAPHY

Federal law defines child pornography as any visual depiction of sexually explicit conduct involving a minor (a person less than 18 years old).³ Federal law prohibits the production, distribution, importation, reception, or possession of child pornography.⁴ A victim of child pornography is someone who “has suffered direct physical, emotional, or pecuniary harm as a result of the commission of [the crime of child pornography].”⁵

The law recognizes that “the ‘victimization’ of the children involved does not end when the pornographer’s camera is put away.”⁶ Rather, these children are further victimized in three distinct ways:

First, the simple fact that the images have been disseminated perpetuates the abuse initiated by the producer of the materials. The materials produced are a permanent record of the children’s participation and *the harm to the child is exacerbated by their circulation Second*, the mere existence of child pornography represents an invasion of the privacy of the child depicted *Third*, the consumer of child pornography instigates the original production of child pornography by providing an economic motive for creating and distributing the materials.⁷

Child pornography has been likened to “a set of crime scene photos that are a permanent record of the crime committed against the child.”⁸ Unlike any other crime, the impact of this crime is re-inflicted on a child victim every time an offender circulates the victim’s sexually abusive imagery online. Not only do survivors of CSAM live with the debilitating fear that someone might see the online content memorializing their abuse, but they also must live with perpetual

³ 18 U.S.C. §§ 2256(1), (8).

⁴ *Id.* §§ 2252A, 2252.

⁵ Victims’ Rights and Restitution Act, 34 U.S.C. § 20141(e)(2)(A). A copy of the Victims’ Rights and Restitution Act can be found at Appendix B.

⁶ *United States v. Norris*, 159 F.3d 926, 929 (5th Cir. 1998).

⁷ *Id.* at 929–30 (internal quotations and citations omitted); *see also* *Paroline v. United States*, 572 U.S. 434, 439–40 (2014) (“The demand for child pornography harms children in part because it drives production, which involves child abuse. The harms caused by child pornography, however, are still more extensive because child pornography is a permanent record of the depicted child’s abuse, and the harm to the child is exacerbated by its circulation. Because child pornography is now traded with ease on the internet, the number of still images and videos memorializing the sexual assault and other sexual exploitation of children, many very young in age, has grown exponentially.” (internal quotations and citations omitted)).

⁸ Melisa Medina, *Split Decisions in Child Pornography Restitution Cases Further Injure the Victims*, 2 CHILD & FAMILY L. J. 87, 89 (2014).

revictimization each time the abusive imagery is shared among offenders online.⁹ While the legal elements to this crime may be relatively simple, the impact on the victim is completely unique. There is no other crime type like the possession and distribution of CSAM where consistent revictimization is inflicted through the commission of new criminal acts.

B. NCMEC’S ROLE IN PROVIDING RESOURCES TO HELP VICTIMS OF CHILD SEXUAL ABUSE

NCMEC is a private, nonprofit organization created as a grassroots response to an unthinkable tragedy. In 1981, six-year-old Adam Walsh was with his mother in a Florida shopping mall when he vanished without a trace. His devastated parents, John and Revé Walsh, had nowhere to turn for help. The search for Adam revealed many inadequacies that plagued missing children investigations at the time. There was no coordinated response across multiple law enforcement agencies to search for Adam, no AMBER Alert system to quickly deliver critical information to the public, and no place for families to go for guidance or emotional support.

Revé and John endured 10 excruciating days searching for Adam before he was found murdered 100 miles away. The Walsh family channeled its grief and came together with other child advocates to create NCMEC in 1984. Over the past 37 years, NCMEC has grown to become the leading nonprofit organization and the nation’s congressionally designated clearinghouse for missing-and-exploited-children issues. Today NCMEC has more than 370 employees who work to prevent child abduction, recover missing children, and combat child sexual victimization through five main programs of work relating to: (1) missing children; (2) exploited children; (3) community outreach; (4) training and education; and (5) family resources.

C. NCMEC PROGRAMS TO COMBAT ONLINE CHILD SEXUAL EXPLOITATION

As the internet became more accessible to the general public in the 1990s, NCMEC began to see a growing threat to children who were sexually exploited, enticed, and groomed into abusive situations by online predators. In response to this threat, NCMEC created two core programs to

⁹ See *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 249 (2002) (“Like a defamatory statement, each new publication of the speech would cause new injury to the child’s reputation and emotional well-being.”); *New York v. Ferber*, 458 U.S. 747, 759 (1982) (“The distribution of photographs and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children” because “the materials produced are a permanent record of the children’s participation and the harm to the child is exacerbated by their circulation.”); see also CANADIAN CENTRE FOR CHILD PROTECTION, SURVIVORS’ SURVEY: EXECUTIVE SUMMARY 2017 7, 10, 28–31, https://protectchildren.ca/pdfs/C3P_SurvivorsSurveyExecutiveSummary2017_en.pdf (explaining that the recording of the sexual abuse of a child has a “significant, lifelong impact on the victim” that “can persist into adulthood and may significantly reduce the ability of survivors to cope with day-to-day stressors, maintain healthy relationships, and reach their full potential in educational and economic pursuits”); *Child Sexual Abuse Material (CSAM)*, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, <https://www.missingkids.org/theissues/csam> (last visited Sept. 20, 2021) (“More and more, survivors of CSAM speak to the long-lasting damage and impact of their images and videos being circulated on the internet. The lack of control of both the files’ existence and circulation leaves the survivors struggling in their recovery.”). Core psychological literature highlighting the effect of child pornography crimes on victims can be found at Appendix C.

combat online child sexual exploitation: the CyberTipline and the Child Victim Identification Program (CVIP).¹⁰

1. The CyberTipline

NCMEC created the CyberTipline (<https://www.missingkids.org/gethelpnow/cybertipline>) in 1998 to serve as an online mechanism for members of the public and electronic service providers (ESPs) to report incidents of suspected child sexual exploitation, including: child sex trafficking; online enticement of children for sexual acts; child sexual molestation; child pornography; child sex tourism; unsolicited obscene materials sent to children; misleading domain names; and misleading words or digital images. The vast majority of reports NCMEC receives—over 95%—relate to apparent child pornography. Since its inception over 22 years ago, NCMEC's CyberTipline has received over 92 million reports total. The volume of CyberTipline reports has grown exponentially as internet usage has expanded. In 1999, NCMEC's CyberTipline received under 10,000 reports; in 2014, it received over 1 million reports; in 2019, it received nearly 17 million reports; and in 2020, it received over 21 million reports. The volume of content included in the reports has increased dramatically as well. In 2018, NCMEC received 45 million images, videos, and content relating to child sexual exploitation. That number rose to over 69 million pieces of reported content in 2019, and over 65 million in 2020.

In addition to increases in the sheer volume of reports and suspected CSAM contained in each report submitted to NCMEC, the complexity of the reported content also continues to increase. As an example, between 2017 and 2018, the number of videos depicting the sexual abuse of children reported to the CyberTipline increased by 541%. In 2019, videos constituted the majority of content reported to NCMEC for the first time. While just five years ago, the number of videos reported to NCMEC's CyberTipline was fewer than 350,000, in 2019, over 41 million videos of child sexual abuse were reported; and in 2020, over 31 million videos were reported. Additionally, the emergence and popularity of chat and messenger services has led to increasingly complex reports that often combine verbal enticement and grooming with the eventual distribution of sexually abusive images and videos and often the infliction of sexual blackmail or sextortion on children.

2. Child Victim Identification Program (CVIP)

NCMEC created CVIP in 2002. Staff working on CyberTipline reports of child sexual exploitation repeatedly saw images of the same children, so they began to track which children had been rescued by law enforcement and which children had not been identified and potentially were still in abusive situations. Today, NCMEC operates CVIP for three central purposes: (1) to help identify and locate unidentified child victims who are depicted in child pornography content; (2) to provide recovery services and restitution support to child survivors, their families, and their private legal counsel; and (3) to help verify when sexually abusive images of a child who has been rescued and identified by law enforcement are distributed so that appropriate information can be provided to the child's family and/or legal counsel for victim restitution purposes. As the attorney for a child who is victimized by the online distribution of their sexually abusive content, you will

¹⁰ A presentation describing NCMEC's Survivor Services can be found at Appendix D.

interact predominantly with the latter two functions of CVIP and the resources that this program provides to the Department of Justice (DOJ) and to victims, their families, and their lawyers.

When law enforcement officers execute a warrant during an investigation relating to child sexual exploitation, they may seize electronic media containing child pornography from computers and electronic devices belonging to the offender. There is no federal legal requirement, and only a handful of state statutory requirements, for law enforcement agencies to forward seized child pornography to NCMEC. However, many federal and state law enforcement agencies will forward this seized media containing CSAM to NCMEC's CVIP to further victim identification and ensure that child victims are notified for restitution purposes.¹¹

When law enforcement submits seized CSAM to CVIP, NCMEC triages the content to determine (1) which images/videos are new and need to be compiled and provided with a series name so efforts can be made to identify the child, and (2) which images/videos are of children who have been previously identified and require notification be sent to DOJ for restitution purposes. The flow chart in Appendix E sets forth the basic elements of the CVIP process.

Between CVIP's creation in 2002 and the end of 2020, NCMEC has processed over 331 million images and videos and has helped law enforcement identify over 19,300 children who are depicted in these images and videos of online sexual abuse.

NCMEC's CVIP also manages a Survivor Services Program that focuses on improving the response to survivors of CSAM distribution through direct survivor engagement. This program incorporates survivor voices and experiences into developing and enhancing post-identification resources and services for survivors, caregivers, and child-serving professionals.¹²

D. NCMEC'S ROLE IN TRACKING ONLINE DISTRIBUTION OF A VICTIM'S SEXUALLY ABUSIVE CONTENT

Often, a child victim, or his or her family, will reach out to an attorney or NCMEC without knowing if, or to what extent, the child's images or videos have been distributed online. Victims may also not know what "series name" identifies their distributed images, how they can work with an attorney to opt in or opt out of DOJ's notification process when their images are distributed, and how you can work with NCMEC and DOJ as the victim's private counsel to manage these options. This Part provides a detailed overview of these processes.

As shown in the CVIP flow chart in Appendix E, when law enforcement submits seized media to CVIP that contain images or videos of a child who has been identified, NCMEC tracks each instance of distribution of this child's images or videos and provides this information for use in federal or military cases to the FBI's Child Pornography Victim Assistance (CPVA) program

¹¹ For detailed background regarding how child victims are notified by DOJ when their sexually abusive material is distributed online, see *infra* Part I.E.

¹² For more information relating to this program, see Resources for Survivors of Sexual Abuse Material; NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, <https://missingkids.org/gethelpnow/csam-resources> (last visited Sept. 20, 2021). A more detailed overview of NCMEC's CVIP program can also be found at Appendix E.

on a weekly basis.¹³ If the seized media contains images or videos of a child who has not been identified, NCMEC will still track distribution in anticipation of the future point in time when law enforcement has identified the victim. Once law enforcement has provided confirmation that a child has been identified, CVIP will “enroll” the child as an identified child, assign a series name, and forward this information to the FBI’s CPVA.

When a series is not known to have distribution, NCMEC will typically assign an alphanumeric designation to the content. If the series starts to be traded at a later date, the alphanumeric designation will be converted to a series name. A series name is never a victim’s true name and does not reference any details of the abuse or other identifying information, but is a unique name used to represent the collection of images or videos of a particular child or group of children. Typically, a series name references a name that offenders use to trade these images or refers to non-identifying background identifiers seen in the images.

There are cases in which there is little to no distribution of a victim’s images and cases in which distribution ebbs and flows over the years. NCMEC will track potential distribution for every identified child victim enrolled with CVIP because there have been unfortunate cases where there appeared to be no distribution, yet years later the images or videos began to be traded. Regardless of known distribution status, it is important for victims to discuss their unique case facts with you relating to distribution. Even if there is no current distribution of your client’s sexually abusive material, there may be other opportunities, services, or resources available to the child relating to restitution or ancillary legal issues that you may be able to address with your client.

As the nation’s clearinghouse for online child sexual exploitation, NCMEC can be an early resource for a child’s family, law enforcement, victim advocates, and state care agencies to understand how to navigate the process after a child has been identified. This may include providing emergency mental health support, peer support, and therapeutic resources; providing a basic overview of legal remedies and assistance in securing private legal counsel; and actively coordinating with technology companies to attempt the removal of online CSAM, exploitative material, and predatory content related to identified victims.

For identified victims represented by counsel, NCMEC can provide technical assistance relating to how NCMEC assists in tracking distribution for restitution purposes, the notification process, and background information relating to the child’s series. After you have formalized and provided proof of representation to NCMEC, NCMEC can provide three core documents that provide essential background and context for your representation and can help in your initial steps in seeking restitution for your client. These three documents are:

- **Attorney Series Information Report (ASIR).** The ASIR provides detailed information about your client’s child pornography series, including a summary of the child’s abuse, case information relating to the prosecution of the initial production of the sexual exploitation content, and distribution information to date. A template affidavit and a sample ASIR can be found at Appendix F. The ASIR is designed to

¹³ See *Child Pornography Victim Assistance (CPVA)*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/resources/victim-services/cpva> (last visited Sept. 20, 2021).

provide a snapshot of your client's series, including potentially related victims and the volume of known distribution tracked by NCMEC.

- **Active Federal Case Affidavit.** The Active Federal Case Affidavit provides a list of active federal cases that may involve distribution of your client's images or videos and are still in the timeframe within which you may be able to file a request for restitution. This affidavit is designed to cover the gap between pending prosecutions potentially involving your client's CSAM and your receipt of notifications from DOJ regarding distribution. A template for the Active Federal Case Affidavit can be found at Appendix G.
- **Active State Case Affidavit.** Like the Active Federal Case Affidavit, the Active State Case Affidavit provides a list of active state cases that may involve distribution of your client's images or videos and are still in the timeframe within which you may be able to file a request for restitution. Currently, there is no consistent process for you to receive notice when distribution of your client's images are prosecuted at the state level, so this affidavit may be uniquely valuable to provide additional opportunities to pursue restitution at the state level. A template for the Active State Case Affidavit can be found at Appendix H.

E. VICTIM NOTIFICATION: PROCESS, PREFERENCES, AND RIGHTS

1. Notification Requirements Under the Crime Victims' Rights Act

Under the federal Crime Victims' Rights Act (CVRA), the government must provide the victim of any crime with notice of legal proceedings involving the crime against the victim. In the context of child pornography crimes, the government must notify victims any time that a person has been arrested for possessing their images.¹⁴ Specifically, a responsible official for an agency investigating the crime of child pornography or a related crime shall provide the victim with the earliest possible notice of case events,¹⁵ including details concerning:

- a. the status of the investigation of the crime, to the extent that it is appropriate and will not interfere with the investigation;¹⁶ and
- b. the arrest of a suspected offender.¹⁷

During the prosecution, the responsible officials from the prosecutor's office must provide notice of the following court-related case events to victims:

¹⁴ 18 U.S.C. § 3771(a)(2); U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE 30 (2011 ed. rev. May 2012), [justice.gov/sites/default/files/olp/docs/ag_guidelines2012.pdf](https://www.justice.gov/sites/default/files/olp/docs/ag_guidelines2012.pdf). A copy of the Crime Victims' Rights Act can be found at Appendix I.

¹⁵ Regardless of the law's requirements, in practice these notification elements simply do not happen in most cases, particularly at the state level.

¹⁶ 34 U.S.C. § 20141(c)(3)(A).

¹⁷ *Id.* § 20141(c)(3)(B).

- a. The filing of charges against a suspect.¹⁸
- b. The scheduling of each court proceeding that the witness is required or entitled to attend.¹⁹
- c. The release or detention of a suspected offender.²⁰
- e. The acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial.²¹
- f. If the offender is convicted, the sentence, including the date on which the offender will be eligible for parole, if any.²²

NCMEC notifies the FBI's CPVA on a weekly basis of all identified series distributed in federal investigations. This enables the CPVA to provide notification as detailed below to a victim (if 18 or older), the victim's legal representative, or a private attorney designated to receive such notices that the child's images have been distributed in a federal criminal case. Unfortunately, as discussed in more detail in Part I.E.4, there is no mandatory or consistent system of notification relating to the distribution of a child's sexually abusive images or videos in state investigations.

The CPVA is the central repository for victim contact and related information for child pornography victims, regardless of which federal, state, or local law enforcement agency recovered and identified the child or is investigating cases involving distribution of the child's sexually abusive material. The CPVA also provides various services to child victims and their families, including notification through the Victim Notification System (VNS) to a parent or guardian or a victim (if 18 or older) each time a child's images or videos are distributed online in federal cases. Such notification is the only automatic means for a victim to know when his or her images have been found in the possession of a charged defendant (either through trading or possessing) and, by extension, that he or she could pursue criminal restitution or seek civil restitution following a prosecution.

2. Opting In or Out of Notifications

Survivors have an option to "opt in" or "opt out" of receiving notifications about federal distribution. While it may at first seem unlikely that a survivor would opt out of receiving notifications, the notification process itself can be traumatizing and overwhelming to some survivors during the recovery process. The volume of notifications can be unpredictable, and some survivors' images can be distributed by dozens or even thousands of individuals involved in separate federal investigations or prosecutions. As a result, notifications can re-traumatize a survivor and increase his or her anxiety about the scope and scale of the trading, distribution, and

¹⁸ *Id.* § 20141(c)(3)(C).

¹⁹ *Id.* § 20141(c)(3)(D).

²⁰ *Id.* § 20141(c)(3)(E).

²¹ *Id.* § 20141(c)(3)(F).

²² *Id.* § 20141(c)(3)(G).

possession of the abusive imagery. The notifications also can keep the trauma fresh as a daily reminder that the memorialization of the victim's sexual abuse lives on. Survivors are advised by DOJ that, if they choose to be notified every time one of their sexual abuse images appears in an investigation and/or court proceeding, they "may start to receive a large number of notifications."²³ In addition to the potential volume, it is also important to note that distribution of some survivors' images and videos online, and the resulting notifications, are not necessarily linear and can ebb and flow over the course of months or years.

Because of the impact the notification process can have on victims and their families, a victim advocate from a federal agency will meet with a victim (if at least 18 years old) or the parent or guardian of the child on behalf of CPVA to discuss the notification process and explain the victim's rights, including the potential to prepare and submit a victim impact statement. CPVA will provide the victim with a notification preference form that the victim can use to opt in or out of the notification process. A survivor may designate an alternate contact, such as a parent or guardian or attorney, to receive notifications on his or her behalf. A sample of the notification preference form can be found at Appendix J. The victim advocate will also conduct a needs assessment and provide the survivor with referrals for mental health services. Currently, CPVA cannot refer survivors directly to lawyers, but will refer them to NCMEC's survivor support services, from which they can learn more about their legal rights and resources for legal assistance.

A survivor and their family can change their opt-in and opt-out preferences over time. For many private attorneys, one of your first acts as counsel should be to notify the CPVA of your representation and provide your client's authorization for you to receive notifications on the client's behalf. This enables you and your client to coordinate on how best to handle notifications and spares the client any unintended consequences of the notification process.

A parent or guardian's decision to opt in or opt out for notifications will expire when a victim turns 18 years old. Attorneys should be proactive when representing a victim who is nearing their eighteenth birthday to discuss the client's wishes in connection with receiving notifications after they turn 18. CPVA will contact a victim after his or her eighteenth birthday to determine whether he or she wishes to complete a new Notification Preference Form. Your client can designate a parent or guardian or you (as legal counsel) as an alternate contact to receive notifications on his or her behalf. A potential complicating factor to keep in mind at this juncture is the possibility that the victim is not aware of the abuse he or she suffered or the extent to which imagery of that abuse has been distributed online.

For survivors younger than 18, a parent or guardian is responsible for deciding whether to opt in or out for receiving notifications. Survivors aged 18 or older are responsible for their own decisions. As will be discussed in more detail later, survivors who opt out will not receive regular notifications and therefore will have no consistent process to learn when their sexually abusive material has been distributed. As a result of opting out or waiting some time after turning age 18 to opt in, these survivors could miss opportunities to learn of distribution sufficient to exercise

²³ *Federal Bureau of Investigation, Victim Services*, <https://www.fbi.gov/resources/victim-services/cpva>. For this reason, it is recommended that victims create a unique alternate email address for receiving these notices, which allows a victim to choose when to check at their own convenience.

their rights to restitution.²⁴ Nevertheless, currently a vast majority of victims opt out due to the daunting task of managing notifications, a lack of understanding regarding their legal rights, a lack of ability to obtain legal counsel, and because the constant stream of notifications can be overwhelming, especially at the start of their recovery process.²⁵ For example, images in one actively-traded series have been distributed by offenders in over 21,000 cases. This has produced thousands of notifications and 21,000 potential requests for restitution. If this victim was not represented by legal counsel, she could spend a lifetime sorting out these notifications and pursuing those claims.

Conversely, survivors represented by lawyers on average receive more restitution in more cases because attorneys are better equipped to strategically manage notifications, seek restitution, and track restitution amounts in dozens or hundreds of restitution proceedings across the country. While the government maintains some tracking of restitution awards in federal cases, this system is dependent on information provided by the U.S. Attorneys' Offices.

Unfortunately, most identified victims still lack legal counsel. While there are over 19,300 identified victims and more than 2,170 whose images/videos are actively traded, only 83 have retained counsel and only 62 are now actively seeking restitution. At the time of publication of this Manual, just over 25 attorneys are handling these cases. Your role in representing these victims—and assisting in making them financially whole—is essential. If you are representing a victim who has not opted in for notification or otherwise taken steps to pursue restitution, your first step should be to complete the CPVA notification preference form on your client's behalf. To change a victim's notification preference, attorneys should contact the FBI's Victim Services Division at cpva@fbi.gov.

3. DOJ's Notification Process

The DOJ notification, which will be sent every time your client's image or video is determined to have been distributed by an offender who is part of a federal proceeding, will inform you that your client has been identified as a victim in a particular case. The notice will come via email in the form of a letter from DOJ and will provide the name of the case, the federal judicial district where the case is pending, and the court docket number.²⁶ In addition, the notice will include the name of the Assistant United States Attorney who is responsible for the case, along with the name of the Victim Witness Coordinator. The notice will also indicate the current stage of the case (defendant has been arrested, arraigned, is entering a guilty plea, etc.), along with some relevant information regarding the charges.

²⁴ Although it means a survivor will not receive notifications that could trigger awareness to initiate a restitution process, there is no legal requirement for a survivor to opt in to receive notifications in order to seek restitution. As further explained in section II.D.1(c), a survivor also can seek restitution through the new remedies available under the AVAA without having opted in to notifications.

²⁵ Of the over 19,300 victims NCMEC has helped law enforcement identify, more than 2,170 are actively traded victims. Only 315 of those actively traded victims (14.5% of actively traded victims, and 1.6% of all identified victims) have opted to receive notifications. See Appendix D.

²⁶ Notices will come from any one of the United States' 94 federal judicial districts, including Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands.

Subsequent notices will inform you of any updates on the case. This can include information about upcoming hearings (arraignment, status, mental competency, etc.), guilty pleas, trial dates, sentencing dates, and incarceration information (where the offender is incarcerated, release date, etc.). Typically, attorneys can expect to receive a notice the day after the sentencing hearing. This notice will detail the sentence imposed and sometimes will state whether restitution was awarded and, if so, the amount.

A redacted copy of a notification form is attached as Appendix K.

4. State and Local Notifications

Although you may find the federal notification system to be complicated, unfortunately it is leaps and bounds ahead of what occurs at the state level, where victims receive no notice at all when their sexually abusive images are circulated. No uniform notification process exists for state and local cases. While there are a handful of victim notification statutes on the books at the state level, most are not particularly effective. For the most part, in those states that do have statutes, state notification does not occur outside of exceptional circumstances (e.g., a private attorney has made a unique connection with a local law enforcement officer or local prosecutor).²⁷ State systems for notification on child pornography cases are generally unestablished, unofficial, and hit or miss, and the majority of states have no unofficial notification practices. In most states, therefore, an attorney will not be notified when his or her client's images or videos are distributed by an offender who is part of a state proceeding.²⁸

Given these shortcomings in state notification programs, attorneys are often left to rely on connections with law enforcement and prosecutors to determine if their client's images are involved in a state case. For attorneys who are just getting involved in restitution cases, it may be time-consuming but worthwhile to reach out to local prosecutors and victim advocates to inform them of your work, offer your assistance, and notify them that you represent a particular victim.

A chart documenting the victim notification statutes, if any, for each state is attached as Appendix L.

II. HOW VICTIMS CAN RECOVER

A. THE LAWYER'S ROLE IN SEEKING RECOVERY

Victims of child pornography can recover for the harm they have suffered through criminal restitution during the course of a prosecution or civil restitution in a separate civil proceeding.

²⁷ There are some state prosecutors' offices that are familiar with one or more attorneys who represent victims of child pornography. In exceptional circumstances, those prosecutors will directly notify an attorney when they see that content relating to their client has been distributed in a case.

²⁸ The National Crime Victim Law Institute (NCVLI) advocates on a regular basis that, even without an explicit statute, notice is required by various due process rights implicated by this issue, including a victim's right to privacy, restitution, and protection. Of course, the difficulty is determining early enough that required notice did not occur, so the issue can be remedied without requiring uphill arguments that the court needs to reschedule or completely repeat a proceeding. Given the difficulty of determining when notice is due at the state level, more often than not, NCVLI ends up requesting the court repeat proceedings entirely with sufficient notice.

Both criminal restitution and civil remedies function to compensate victims for the distribution and possession of their child sexual abuse images and videos.²⁹ Although these remedies share a common goal, there are key differences between the two. While criminal restitution is ordered by a court as part of the offender's sentence in a criminal case,³⁰ civil remedies are awarded by a court or a jury in a separate civil lawsuit. It is also important to note that criminal restitution is theoretically mandatory upon conviction, while civil relief is available only if a victim initiates (and wins) his or her own case against the offender.

Private legal counsel can provide the most benefit to child victims by representing them in both criminal and civil restitution matters and helping them to decipher the complicated process of notifications discussed in Part I.E. Specifically, lawyers can assist during the criminal restitution process by working with the prosecutor to obtain the highest restitution judgment possible. This process typically includes: (1) communicating with the prosecutor as early as possible in a proceeding to ensure that your client's images or videos are being included within the charges and that restitution is being sought; (2) communicating with the prosecutor and probation officer about the appropriate amount of restitution; (3) preparing and submitting an expert report documenting the appropriate restitution amount; and (4) preparing and presenting a victim impact statement to the court to ensure the highest possible award. The criminal restitution process begins once you have received a notification that your client's image has been distributed, as described earlier in this Manual.

The lawyer's role in civil restitution matters is similar to that in any civil case in which relief is sought—file a complaint, conduct discovery, and proceed in the usual course to settlement or judgment. The primary differentiating factor is the unique—and often not intuitive—considerations involved in working with a victim who has suffered trauma at a young age. Another key factor is that the minimum damages award in some statutes obviates a showing of actual damages.

B. CRIMINAL RESTITUTION

Restitution is a monetary payment that a criminal defendant makes to a victim to reimburse him or her for the losses suffered as a result of the defendant's crimes. Restitution can cover a wide range of out-of-pocket losses related to the crime, including medical expenses, therapy costs, lost wages, damage to property, and expenses related to participation in the criminal justice system

²⁹ *Doe v. Hesketh*, 828 F.3d 159, 171 (3d Cir. 2016) (concluding that a victim may bring a civil claim even where that victim has previously received criminal restitution for her purported full damages); *United States v. Beckmann*, 786 F.3d 672, 682 (8th Cir. 2015) (explaining that restitution can account for an offender's "continuing and grievous harm" of reproducing, distributing, and possessing child pornography of the victim); *United States v. Kearney*, 672 F.3d 81, 94 (1st Cir. 2012) (finding that Congress was well aware of the continued harm "caused by possession and distribution of child pornography at the time it enacted § 2259" and Congress has "since repeatedly emphasized, in legislation amending the laws governing child pornography, the continuing harm the distribution and possession of child pornography inflicts"); *United States v. Laney*, 189 F.3d 954, 966 (9th Cir. 1999) (finding that "Congress was well aware that children victimized by sexual abuse often do not recover quickly from their injuries" and that "Congress intended to allow district courts to include future counseling expenses in the amount of restitution under section 2259"); *United States v. Hardy*, 707 F. Supp. 2d 597, 603 (W.D. Pa. 2010) (concluding that "Congress meant restitution to compensate the victim for his or her loss").

³⁰ *United States v. Cohen*, 459 F.3d 490, 496 (4th Cir. 2006).

(such as necessary attorney costs, child care, and transportation expenses).³¹ A restitution judgment acts as a lien against any property or assets the defendant has or will have.³² Criminal restitution is available only where the defendant was prosecuted criminally and was found or pled guilty.³³

Criminal restitution is available to victims of child pornography under both federal and state law. Part II.D will discuss in more detail the three federal statutes that provide for restitution in child pornography cases. Part II.G will discuss in more detail how restitution is awarded at the state level under statutes that expressly provide for relief to be awarded to survivors of child pornography crimes or under general criminal restitution statutes.

Regardless of whether criminal or civil restitution is sought under federal or state law, the process of obtaining restitution for survivors of child pornography can be long and arduous. Given the length of the discovery and pre-trial processes, *years* may pass between the time an offender is arrested and the date an offender is officially convicted and sentenced. The seemingly never-ending legal process can take a serious emotional toll on victims. If a survivor chooses to appear at the offender's criminal trial, the process of obtaining restitution may also force victims to relive their trauma in front of a judge or a jury. Keeping in mind these realities, the remainder of this Part describes the various avenues for recovering restitution from the beginning to the end of a criminal proceeding.

C. "AMY": PAVING THE WAY FOR CRIMINAL RESTITUTION IN CHILD PORNOGRAPHY CASES

Historically, in cases involving child pornography, restitution was awarded only when a defendant was the direct source of the victim's harm (i.e., the defendant documented his or her sexual abuse of the child and created the CSAM). The class of offenders subject to restitution orders in the child pornography context expanded dramatically in 2008 when "Amy" sought restitution from Alan Hesketh, a former vice president of Pfizer.³⁴ Hesketh had downloaded 1,981 images of child pornography from the internet,³⁵ including four images of Amy, who had been sexually abused and exploited by her uncle years earlier.³⁶ Hesketh was charged with possessing, receiving, and distributing hundreds of images of child pornography.³⁷ Amy requested \$3.4

³¹ See, e.g., 18 U.S.C. § 3663A(b) (listing various forms of mandatory restitution to be ordered in criminal cases).

³² See, e.g., U.S. ATTORNEY'S OFFICE, NORTHERN DISTRICT OF GEORGIA, U.S. DEP'T OF JUSTICE, UNDERSTANDING RESTITUTION (Apr. 17, 2015), <https://www.justice.gov/usao-ndga/victim-witness-assistance/understanding-restitution> [hereinafter UNDERSTANDING RESTITUTION].

³³ See U.S. DEP'T OF JUSTICE, JUSTICE MANUAL, tit. 9, 9-16.000, <https://www.justice.gov/jm/jm-9-16000-pleas-federal-rule-criminal-procedure-11>.

³⁴ See John Christoffersen, *CT Sets New Precedent for Child Porn Cases*, NBC (July 19, 2009), <https://www.nbcconnecticut.com/news/local/Man-With-Child-Porn-Must-Pay-Victim/1861936/>.

³⁵ *Id.*

³⁶ John Schwartz, *Child Pornography, and an Issue of Restitution*, NEW YORK TIMES (Feb. 2, 2010), <https://www.nytimes.com/2010/02/03/us/03offender.html>.

³⁷ *Id.*

million in restitution from Hesketh to pay for her therapy costs and to compensate her for any future loss of wages under a provision of the Violence Against Women Act.³⁸

Amy's restitution claim "challenged the generally accepted distinction between a 'hands on' or 'contact' offense, such as the sexual exploitation of children, and a 'non-contact' offense, such as the downloading, viewing, or trading of pornography."³⁹ Amy's counsel explained that victims of child pornography are harmed first by the sexual abuse committed against them and harmed again by the subsequent distribution and collection of videos and images depicting their abuse. During the restitution hearing, Senior U.S. District Court Judge Warren Eginton recognized the novelty of Amy's claim:

[I]t does not appear that any court has ever awarded restitution for offenses involving sexual exploitation of children or child pornography, when the defendant did not also participate in this sexual exploitation of the children. On the contrary, in every case in which a court awarded restitution, the defendant also participated in the sexual exploitation that produced the material⁴⁰

Judge Eginton ordered the defendant to pay Amy about \$200,000 in restitution, making this the first case in which an offender convicted of possessing child pornography—but not creating it—was required to pay restitution.⁴¹ Many courts have since followed suit, awarding survivors with restitution in cases in which the offender did not create the images, but traded them online.⁴²

D. FEDERAL STATUTORY SCHEMES IN THE CRIMINAL CONTEXT

Since Amy's groundbreaking case, children whose sexually abusive images have been circulated online have sought mandatory restitution under three statutory schemes: (1) the Mandatory Restitution for Sexual Exploitation of Children Act, 18 U.S.C. § 2259 (section 2259); (2) the Mandatory Victims Restitution Act of 2000, 18 U.S.C. § 3663 (MVRA); and (3) the Trafficking Victims Protection Act, 18 U.S.C. § 1593 (TVPA).⁴³ In seeking restitution for your

³⁸ *Id.*

³⁹ Cortney E. Lollar, *Child Pornography and the Restitution Revolution*, 103 J. CRIM. L. & CRIMINOLOGY 343, 346 (2013).

⁴⁰ Transcript of Restitution Hearing at 23, *United States v. Hesketh*, No. 3:08-CR-00165 (WWE) (D. Conn. Feb. 23, 2009), ECF No. 52.

⁴¹ Christoffersen, *supra* note 34. Amy and Hesketh ultimately settled the case for \$130,000. *Id.*

⁴² See, e.g., *United States v. Knapp*, 695 F. App'x 985, 988 (8th Cir. 2017) (holding "the district court did not abuse its discretion in ordering \$11,000 in restitution for the four victims proximately harmed by [the defendant]'s possession and distribution of child pornography"); *United States v. DiLeo*, 58 F. Supp. 3d 239, 241 (E.D.N.Y. 2014) (ordering defendant, who had pled guilty to possession of child pornography materials depicting the victim, to pay her a restitution award in the amount of \$2,000).

⁴³ *United States v. Kearney*, 672 F.3d 81, 92–93 (1st Cir. 2012) (stating that "[l]ike the MVRA . . . restitution under [section 2259] is *mandatory*, if the requirements of the section are satisfied"); *United States v. Whitley*, 354 F. Supp. 3d 930, 932 (N.D. Ill. 2019) (stating that "[u]nder the [TVPA] and MVRA, the defendant must pay for 'the full amount of the victim's losses,' including medical services, therapy and rehabilitation, transportation, housing, child

client in a federal criminal case, you should be familiar with each of these statutes and engage with the prosecutor to position your client for the highest recovery amount.

Of these three statutes, section 2259 is most frequently used by survivors of child pornography distribution to seek restitution. However, as discussed below, a recent holding by the U.S. Supreme Court has complicated survivors' paths to seeking restitution under section 2259 by imposing a strict proximate-causation standard. Unlike the MVRA, which is a general restitution statute, section 2259's restitution mandate is specifically geared towards child victims of sex crimes. The TVPA is also limited and applies only when the defendant is charged with trafficking in persons.⁴⁴ Despite this limitation, the TVPA can provide recourse in both the civil and criminal contexts,⁴⁵ whereas restitution under section 2259 and the MVRA is limited to the criminal context.⁴⁶

1. The Mandatory Restitution for Sexual Exploitation of Children Act (18 U.S.C. § 2259)

Section 2259, mandates an award of restitution for victims of offenses under Title 18, Chapter 110 (Sexual Exploitation and Abuse of Children) for the “full amount” of the victim's losses.⁴⁷ The full amount includes “any costs incurred, or that are reasonably projected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim, . . . including—

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) reasonable attorney's fees, as well as other costs incurred; and

care, and ‘any other losses suffered by the victim as a proximate result of the offense’”); *United States v. Jackson*, No. 2:16-CR-00054-DCN, 2018 WL 3127241, at *1 (D.S.C. June 26, 2018) (stating that “restitution is mandatory under the [TVPA] and the [MVRA]”).

⁴⁴ See 18 U.S.C. § 1593(a) (“[T]he court shall order restitution for any offense under [Chapter 77—Peonage, Slavery, and Trafficking in Persons].”).

⁴⁵ See *id.* § 1595.

⁴⁶ See *United States v. Leahy*, 438 F.3d 328, 333–35 (3d Cir. 2006) (finding that although restitution under the MVRA “combines features of both criminal and civil penalties,” the restitution is criminal, rather than civil, in nature because it is ordered as part of a criminal sentence). However, if a civil action is filed under the TVPA while a criminal action arising out of the same occurrence in which the claimant is a victim is pending, the civil action will be stayed during the pendency of the criminal action. 18 U.S.C. § 1595(b).

⁴⁷ 18 U.S.C. § 2259(b)(1).

(F) any other relevant losses incurred by the victim.⁴⁸

By its terms, section 2259 is limited to child pornography crimes, including possession of child pornography.⁴⁹ To recover under section 2259, a victim must have been harmed as a result of a crime committed under Chapter 110.⁵⁰ The procedures set forth in 18 U.S.C. § 3664 apply to awards made under section 2259. A court does not have discretion to decline to impose restitution under section 2259 for any reason, including the defendant’s “economic circumstances” or the fact that the victim has otherwise been compensated for his or her injuries, through insurance proceeds or otherwise.⁵¹ A copy of section 2259 can be found in Appendix M.

a) Determining Proximate Cause in Cases Involving Possession of Child Pornography—*Paroline v. United States*

A 2014 U.S. Supreme Court case, *Paroline v. United States*,⁵² limited section 2259’s effectiveness in securing compensation for victims of child pornography and also paved the way for new federal legislation to remedy certain vagueness in how section 2259 restitution should be calculated. In *Paroline*, the Supreme Court granted certiorari to resolve a circuit split as to the “proper causation inquiry for purposes of determining the entitlement to and amount of restitution under § 2259.”⁵³ Specifically, the issue was whether section 2259 restitution is limited to losses proximately caused by the offense.⁵⁴ Nearly every court of appeals to consider the question held section 2259 did contain such a proximate-cause requirement, with the Fifth Circuit being the only outlier.⁵⁵

Critically for victims, the Supreme Court recognized the perpetual nature of the harm child pornography imposes, calling it “common ground” that “the victim suffers *continuing and grievous harm* as a result of her knowledge that a large, *indeterminate* number of individuals have viewed and will view in the future images of the sexual abuse she endured.”⁵⁶ Because child pornography images are frequently transmitted and downloaded thousands of times, by thousands of possible defendants who continue to emerge as time passes, it is particularly difficult to demonstrate a causal link between an individual defendant’s criminal conduct and a victim’s actual losses (i.e., proximate cause). This difficulty left courts with no clear way to calculate the fraction of losses for which an individual defendant is responsible to a given child pornography victim.

⁴⁸ *Id.* § 2259(c)(2).

⁴⁹ *U.S. v. DiLeo*, 58 F. Supp. 3d 239, 241 (E.D.N.Y. 2014) (ordering defendant who pled guilty to one count of possession of child pornography to pay \$2,000 in restitution to the victim pursuant to 18 U.S.C. § 2259).

⁵⁰ 18 U.S.C. § 2259(c)(4).

⁵¹ *Id.* § 2259(b)(4)(B)(i)–(ii).

⁵² 572 U.S. 434 (2014).

⁵³ *Id.* at 443.

⁵⁴ *Id.* at 446. “Proximate cause” is the causal link between a defendant’s criminal conduct and the victim’s actual losses.

⁵⁵ *Id.* at 443–44 (listing cases).

⁵⁶ *Id.* at 457 (emphasis added).

The underlying facts in *Paroline* illustrate why this is such a complex calculation. The victim was eight and nine years old when she was sexually abused to create child pornography.⁵⁷ While she made progress in her recovery in the years immediately following the abuse, she was forced to relive this trauma at the age of 17 when she learned that the same materials depicting her sexual abuse had been heavily circulated online.⁵⁸ For this one victim, there were thousands of defendants who possessed her sexually abusive images and potentially thousands more defendants in the future who would trade and distribute her images. With no ascertainable number of defendants, there is no obvious way for courts to calculate the fraction of a victim's losses for which an individual defendant is responsible, and the Supreme Court's analysis in *Paroline* does not provide much clarity. Ultimately, there is no way to gauge the number of future offenders that will possess images or videos of a certain victim.

The *Paroline* Court began its analysis by considering the application of a traditional "but for" causation test.⁵⁹ Although that showing "could be made with ease" for some defendants, such as "producers" of child pornography, the Court explained that a showing of but-for causation could not be made in cases like *Paroline* involving only one of many possessors.⁶⁰ The Court considered several alternative causal tests but found that the available options under criminal and tort law were "an ill fit here."⁶¹ The Court also rejected the victim's proposal of joint and several liability, because "the victim's suggested approach would amount to holding each possessor of her images liable for the conduct of thousands of other independently acting possessors and distributors, with no legal or practical avenue for seeking contribution."⁶² The Court viewed this approach as "so severe it might raise questions under the Excessive Fines Clause of the Eighth Amendment."⁶³

The Court ultimately determined that courts awarding restitution under section 2259 "should order restitution in an amount that comports with *the defendant's relative role* in the causal process that underlies the victim's general losses."⁶⁴ But the decision did little to clarify this seemingly new standard. The majority instructed district courts to "assess as best it can from available evidence the significance of the individual defendant's conduct in light of the broader causal process that produced the victim's losses."⁶⁵ Because there was no formula for this assessment, the Court identified several factors for lower courts to consider when fashioning a restitution award, while cautioning that the factors "need not be converted into a rigid formula, especially if doing so would result in trivial restitution orders."⁶⁶ For instance:

⁵⁷ *Id.* at 440.

⁵⁸ *Id.*

⁵⁹ *Id.* at 449–50.

⁶⁰ *Id.* at 450.

⁶¹ *Id.* at 451–52.

⁶² *Id.* at 455.

⁶³ *Id.*

⁶⁴ *Id.* at 458 (emphasis added).

⁶⁵ *Id.* at 459.

⁶⁶ *Id.* at 459–60.

district courts might, as a starting point, determine the amount of the victim's losses caused by the continuing traffic in the victim's images . . . then set an award of restitution in consideration of factors that bear on the relative causal significance of the defendant's conduct in producing those losses. These could include the number of past criminal defendants found to have contributed to the victim's general losses; reasonable predictions of the number of future offenders likely to be caught and convicted for crimes contributing to the victim's general losses; any available and reasonably reliable estimate of the broader number of offenders involved (most of whom will, of course, never be caught or convicted); whether the defendant reproduced or distributed images of the victim; whether the defendant had any connection to the initial production of the images; how many images of the victim the defendant possessed; and other facts relevant to the defendant's relative causal role.⁶⁷

What emerged following the Supreme Court's decision in *Paroline* was an array of methodologies that, far from creating clarity around how restitution should be calculated, further muddled the issue for courts handling restitution issues. A sampling of common methodologies includes:

- **1/n Method.** This method divides total losses caused by distribution of images by the number of defendants ordered to pay restitution thus far plus one—to account for the current defendant.⁶⁸ Courts may then increase or reduce that number for aggravating or mitigating factors.⁶⁹ This method has been criticized for treating all offenders alike, regardless of their relative causal role in the defendant's harm.⁷⁰
- **Future Offenders Method.** This method examines how many offenders have paid restitution and attempts to make the defendant pay a proportional amount. Some courts also consider the number of future offenders who will pay restitution and use a formula

⁶⁷ *Id.* at 460.

⁶⁸ See, e.g., *United States v. Sainz*, 827 F.3d 602, 605 (7th Cir. 2016); *United States v. DiLeo*, 58 F. Supp. 3d 239 (E.D.N.Y. 2014).

⁶⁹ See *DiLeo*, 58 F. Supp. 3d at 249 (reducing the award for additional defendants that are likely going to pay and the court's perception that the defendant had a relatively minor role); see also *United States v. Reddick*, No. 2:17-CR-208-WKW, 2018 WL 445112 (M.D. Ala. Jan. 16, 2018) (following the *DiLeo* approach). This additional step is taken because the 1/n method, if used exclusively, "would effectively nullify other *Paroline* factors." *DiLeo*, 58 F. Supp. 3d at 248.

⁷⁰ See, e.g., *Sainz*, 827 F.3d at 606 ("Sainz argues that the 1/n method treats all defendants convicted of possessing or distributing any images of Cindy as equals."). Note that this is true only when the 1/n method is the only method used. The 1/n method can also be used as a baseline to arrive at a rough estimate of the amount of damages. See, e.g., *DiLeo*, 58 F. Supp. 3d at 249. The court can then adjust that baseline number for aggravating or mitigating circumstances.

to calculate restitution.⁷¹ Some courts have rejected this approach, arguing that predicting the future number of offenders is an “unworkable standard.”⁷²

- **Relationship to Other Awards.** Some courts award restitution commensurate with other restitution awards made to the victim or other restitution amounts awarded to different victims. For example, in *United States v. Miner*, the Second Circuit affirmed an award that was calculated by picking the median of restitution orders previously awarded to the two victims.⁷³ In *United States v. Monzel*, the district court awarded \$7,500 in restitution after reviewing the restitution awards in post-*Paroline* decisions and prior restitution awards to the victim.⁷⁴ It appears that this method has been used by several district courts; typically courts will follow this approach if a different court used it in a prior case involving the same victim, but a different offender.⁷⁵
- **Rogers Approach.** Other courts measure the amount of restitution by trying to isolate a specific portion of damages caused by the defendant’s conduct. In *United States v. Rogers*, the First Circuit affirmed a district court’s restitution award that “represent[ed] the cost of 18 therapy visits,” although the district court noted that “50 visits would have also been a reasonable conclusion.”⁷⁶
- **No Formula.** Instead of using a formula, other courts pick an appropriate amount using the *Paroline* factors without elaborating on the calculation.⁷⁷ In these cases it is difficult to tell how the court arrived at a specific number or how much each *Paroline* factor weighed into the calculation.⁷⁸

⁷¹ See, e.g., *United States v. Crisostomi*, 31 F. Supp. 3d 361, 365 (D.R.I. 2014).

⁷² See *United States v. Bellah*, No. 13-10169-EFM, 2014 WL 7073287, at *3 (D. Kan. Dec. 12, 2014); see also *United States v. Monzel*, 209 F. Supp. 3d 73, 76 (D.D.C. 2016) (“As to a reasonable estimate of future offenders, whether or not they are caught or convicted, the Government has stated that there is no way to calculate such an estimate, which the Court also accepts.”).

⁷³ 617 F. App’x 102, 103 (2d Cir. 2015).

⁷⁴ 209 F. Supp. 3d 73, 77 (D.D.C. 2016).

⁷⁵ See, e.g., *United States v. Hicks*, No. CRIM.A. 1:09-CR-150, 2009 WL 4110260, at *6 (E.D. Va. Nov. 24, 2009) (determining the appropriate amount of restitution to award by considering how many defendants had already been prosecuted and how many are likely to be prosecuted in the future for the same Vicky series); *United States v. Ferenci*, No. 1:08-CR-0414 AWI, 2009 WL 2579102, at *6 (E.D. Cal. Aug. 19, 2009) (reasoning that the windfall argument against restitution is unpersuasive because the court “may not decline to order restitution based on the fact the victim has or is entitled to receive compensation from” defendants in other cases). Note that, although these cases predate *Paroline*, some courts have continued to follow the same methodologies.

⁷⁶ 758 F.3d 37, 39 (1st Cir. 2014); cf. *United States v. Neuhard*, No. 15-cr-20425, 2018 WL 1556232, at *2–3 (E.D. Mich. Mar. 30, 2018) (awarding damages based on the cost of therapy sessions for the victim).

⁷⁷ See, e.g., *United States v. Franco*, No. 14-10205-01-EFM, 2016 WL 492752, at *2–3 (D. Kan. Feb. 8, 2016); *United States v. Bellah*, No. 13-10169-EFM, 2014 WL 7073287, at *3–4 (D. Kan. Dec. 12, 2014); see also Isra Bhatti, *Navigating Paroline’s Wake*, 63 UCLA L. REV. 2, 36 (2016).

⁷⁸ See, e.g., *United States v. Mentzer*, 760 F. App’x 90, 95 (3d Cir. 2019) (affirming restitution award of \$1,000 where victim sought a total of \$58,415, because \$1,000 represented the district court’s view regarding the defendant’s “more limited causal role in the continued dissemination and use of child pornography”).

The *Paroline* rationale has now, not surprisingly, been applied to restitution awards under the MVRA as well. As will be discussed in Part II.D.2, the Third Circuit took this approach in *United States v. Mentzer*, where it determined the appropriate restitution award in accordance with the MVRA.⁷⁹ After reviewing the Supreme Court’s guidance in *Paroline*, the *Mentzer* court determined that the lower court’s award of \$1,000 was not an abuse of discretion because it “reflect[ed] its view about [the defendant]’s more limited role in the continued dissemination and use of the child pornography.”⁸⁰

Following *Paroline*, lower courts have used various methods to calculate restitution awards, but overall *Paroline* has made it more difficult for victims to recover. Given the proximate-cause requirement, victims must demonstrate more than a factual link between an offender’s conduct and their loss in order to recover. Further, the Court’s unclear standard for determining the proper amount of restitution has given lower courts the discretion to make paltry awards, forcing victims to try to recover from a wide range of defendants to receive any meaningful sum of money.

Case law in the wake of *Paroline* has created additional problems. In *United States v. Galan*, the Ninth Circuit reviewed a restitution award under the MVRA that did not disaggregate losses where the defendant was not the original abuser of the victim.⁸¹ The district court awarded restitution based on a calculation that “included future lost earnings, medical expenses incurred after the date of the earliest crimes for which Galan was convicted . . . , vocational rehabilitation, and the cost of an economic report.”⁸² The defendant appealed “on the basis that no attempt was made to disaggregate the losses resulting from the original abuse from the losses resulting from Galan’s own activities.”⁸³

After acknowledging that restitution is mandatory for the full amount of a victim’s losses caused as a proximate result of Galan’s offenses, the Ninth Circuit’s analysis turned on whether it could “make the restitution calculation without excluding the ongoing losses to the victim due to the actions of the original abuser.”⁸⁴ The court concluded that it was logical to separate harms caused by the original abuser and harms caused by distributors and possessors of images. The court reasoned that adding distribution of images to the initial acts of the abuser “put[s] in motion a whole different set of abuses”; subsequent participants, whether distributors or possessors, are part of the crime of distribution, but not the physical abuse crime. The court further concluded that the defendant “should not be required to pay for losses caused by the original abuser’s actions,” because the defendant “had nothing to do with the original abuse.”⁸⁵ Ongoing losses arising from the original abuse of the victim should be disaggregated from losses caused by the

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ 804 F.3d 1287 (9th Cir. 2015). The defendant in *Galan* was convicted of distribution and possession of child pornography that had been manufactured a decade earlier by a different offender. *Id.* at 1288.

⁸² *Id.* at 1289.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 1290.

ongoing distribution and possession of images of that abuse, to the extent possible. In doing so, the court recognized that the task of determining “what portion of a victim’s ongoing loss should be” apportioned between the original abuser and subsequent possessors and distributors “will be a mix of ‘discretion and estimation,’ and . . . may result in ‘complication and prolongation of the sentencing process.’”⁸⁶ Nevertheless, the Court vacated the restitution order and remanded for the district court to disaggregate losses caused by the original abuser from the restitution awarded against later possessors and distributors.⁸⁷

b) Managing Legal and Client Setbacks

Given this complexity, it is not surprising that since *Galan*, some victims have reportedly withdrawn their restitution requests rather than take on the impossible task of trying to disaggregate losses. For those who try to disaggregate losses, psychiatrists and other experts may be useful, although apparently none have been used in these cases to date. Remember that this is a crime unlike any other—re-victimization through the circulation of images is a reality for many victims and simply knowing that images exist can create a perpetual fear of those images surfacing. Therefore, attorneys must be keenly aware that their clients will likely need ongoing access to services throughout their lifetimes.⁸⁸

As with many psychological disorders, symptoms resurface at different developmental stages in one’s life. Treatment modalities often account for those changes by offering different interventions based on the severity or resurfacing of symptoms.⁸⁹ It is imperative for you to understand the importance of therapeutic interventions for your clients, potentially throughout their lives, as the need for therapy changes over time. Clients will need representation that argues for the sustainability of such support and resources to access those services over time.

Survivors can experience various stages during their recovery, and mental health providers often need to try a variety of treatment modalities before finding something that matches a person’s needs. This dynamic is like new pieces of a puzzle being added into a person’s path of healing that must be continuously adjusted for and molded to fit a provider’s skill set and a survivor’s needs at different stages during his or her life. This moving treatment target can cause difficulty and concern for attorneys as client’s behaviors and self-care strategies change. Attorneys and therapists can work together to anticipate new challenges and prepare to deal with changes as they come.

While you will rely on your client’s therapist and mental health provider to provide the necessary care and treatment, it is helpful as background for you to understand that the role of the

⁸⁶ *Id.* at 1291.

⁸⁷ *Id.* (citing *Paroline v. United States*, 572 U.S. 434, 462 (2014); 18 U.S.C. § 3663(a)(1)(B)(ii)).

⁸⁸ In Amy’s Victim Impact Statement, she explains the ongoing and recurrent nature of this trauma as follows: “Every day of my life I live in fear that someone will see my pictures and recognize me and that I will be humiliated all over again When my pictures were first discovered, I went to therapy and thought I was getting over it. But I was very wrong. The full impact of what happened to me has only become clearer as I have gotten older. The full impact of what happened worsened because the crime has never really stopped.”

⁸⁹ For instance, at a mental health roundtable sponsored by NCMEC in November 2018, a CSAM survivor explained that she had needed extensive “maintenance therapy” from six different therapists in her lifetime.

mental health professional is not only to promote healing from your client's trauma but also to surround your client with appropriate and healthy influences. Healing happens in stages and over time. For survivors of CSAM, these stages can take the form of "one step forward, two steps backward," depending on their situations. Triggers (a psychological term describing stimulus such as a sight, sound, or smell that can remind someone of a past trauma) for this population can be as simple as a click of a camera or a cell phone being used, because their trauma is related to the existence of images. Being aware of these often inconsequential and everyday occurrences during your interactions with your clients can help you support them more holistically.

You should also be prepared to recognize the signs of a trauma response, which might include going blank, showing a physical response (sweating, going pale, etc.), or expressing an emotional outburst (anger, fear, shame, etc.). All these signs are ways for you to stay in tune with your client's emotional state, help them recognize the trigger, and create a safe response. It is not uncommon for trauma survivors to retreat and escape as a coping mechanism. During sexual abuse, many survivors describe a phenomenon called "dissociation"—a psychological separation of self as a survival technique. Dissociation allows for the victim to endure painful and traumatic experiences while protecting his or her psyche by disconnecting and detaching from the traumatic experience. This coping mechanism during abuse often arises after the abuse has stopped, particularly when images are created and the survivor must come to terms with others viewing those images. Because the trauma and abuse your client suffered is at the center of your interactions with the client, you may witness dissociative episodes or trauma responses as you interact with your client. It can be tremendously helpful in your case to work with mental health professionals to not only support your client therapeutically but also to identify and mitigate these emotional states so that your client can testify effectively.

While you are seeking legal redress and restitution for your client, their therapist should be helping them learn how to take control of their recovery progress by recognizing small steps forward as healing and empowering opportunities. Your client may undergo a cyclical healing process, in which the trauma-informed therapy the client receives takes the client through multiple treatment modalities as part of the recovery process. This process may include periods of more outward recovery, followed by relapses at different life stages. While you will not be part of the treatment process, it is beneficial for you to understand this process at some level, as it may impact your interactions with your client and the client's ability to be more or less interactive with the representation during recovery.⁹⁰

c) The Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018

In response to *Paroline* and subsequent courts' varying interpretations of individual defendants' liability, Congress passed the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018 (AVAA), which was enacted on December 7, 2018. The AVAA largely

⁹⁰ See NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, BE THE SOLUTION, HELPING VICTIMS OF CHILD SEXUAL ABUSE MATERIAL: A GUIDE FOR LAW ENFORCEMENT (2020), <https://go.missingkids.org/l/808593/2020-11-24/21bhf2>; NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, CAPTURED ON FILM: SURVIVORS OF CHILD SEXUAL ABUSE MATERIAL ARE STUCK IN A UNIQUE CYCLE OF TRAUMA (2019), <https://www.missingkids.org/content/dam/missingkids/pdfs/Captured%20on%20Film.pdf> [hereinafter CAPTURED ON FILM].

preserves *Paroline*'s proximate-causation standard, but it puts safeguards in place to ensure that victims of child pornography crimes obtain full restitution. A copy of the AVAA can be found in Appendix N, and an article from the Federal Sentencing Reporter summarizing the impact of this legislation can be found in Appendix O. It should be noted from the outset that, on its face, the AVAA purports not to apply retroactively to possession or distribution offenses committed prior to the date of enactment, even if sentencing occurs after that date.⁹¹ The original abuse and production of the sexually abusive imagery, however, could have occurred long before the AVAA was enacted.

Under the AVAA, child pornography victims are entitled to “restitution in an amount that reflects the defendant’s relative role in the causal process that underlies the victim’s losses, *but which is no less than \$3,000.*”⁹² Significantly, the AVAA recognizes the continued harm in forcing victims to recover piecemeal from individual defendants, and also provides that victims may choose to initially receive a lump sum from the Child Pornography Victims Reserve.⁹³ This sum is \$35,000 in the first year of the statute,⁹⁴ with annual increases based on the Consumer Price Index.⁹⁵

By setting a minimum restitution amount and providing for the lump sum option, the AVAA should theoretically ensure that more victims receive full restitution from the offenders who have harmed them. However, since the passage of the AVAA, there have been at least eight cases in which victims of child pornography received only the token, minimum award from a particular defendant.⁹⁶ Because the AVAA also retains *Paroline*'s proximate-cause requirement,

⁹¹ 18 U.S.C. § 2259B(d) (“It is the sense of Congress that individuals who violate this chapter prior to the date of the enactment of the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, but who are sentenced after such date, shall be subject to the statutory scheme that was in effect at the time the offenses were committed.”); *see also* OFFICE OF GEN. COUNSEL, U.S. SENTENCING COMM’N, Primer on Crime Victims’ Rights at 9 (January 2019). Note that at least one court has determined that section 2259B’s “sense of Congress” language is not binding. *See United States v. Berry*, No. 1:18-CR-00107-AA, 2020 WL 86194, at *2 n.2 (D. Or. Jan. 6, 2020) (holding that an order of restitution under the AVAA—even a retroactive one—was appropriate because the “‘sense of Congress’ language is considered legislative dicta and not binding on the Court”); *United States v. Johnson*, 438 F. Supp. 3d 1185, 1191 (D. Idaho 2020) (citing *Berry*, but ultimately determining that the question of whether the AVAA is retroactive is “irrelevant” because “there is authority outside the AVAA under which the Court could award restitution in this matter”).

⁹² 18 U.S.C. § 2259(b)(2)(B) (emphasis added).

⁹³ *Id.* § 2259(d)(1)(A); *see also United States v. Mentzer*, 760 F. App’x 90, 95 (3d Cir. 2019).

⁹⁴ 18 U.S.C. § 2259(d)(1)(D)(i).

⁹⁵ *Id.* § 2259(d)(1)(D)(i)(I)–(II).

⁹⁶ *See United States v. Urfer*, 833 F. App’x 33, 25 (8th Cir. 2020) (affirming award of \$3,000 in restitution per victim for pre-AVAA conduct); *Mentzer*, 760 F. App’x at 95 (holding district court did not abuse its discretion in calculating \$1,000 as an appropriate restitution award); *United States v. Guardiola*, No. 18-cr-3167 (S.D. Cal. Oct. 26, 2020) (No. 86) (ordering \$3,000 in restitution for one victim, and \$1,000 in restitution for all other victims for pre-AVAA conduct); *United States v. Berry*, No. 1:18-CR-00107-AA, 2020 WL 86194, at *5 (D. Or. Jan. 6, 2020) (ordering defendant to pay the minimum amount of restitution (\$3,000 each) to Pia, Ava, and Mya because the government did not prove the total amount of losses incurred by the victims); *United States v. Collier*, No. 3:16-CR-348-SI, 2019 WL 6213155, at *1 (D. Or. Nov. 21, 2019) (Awarding \$2,000–\$3,5000 to each victim and noting that the AVAA “does not apply retroactively to criminal conduct that pre-dates the Act’s effective date. Accordingly, it does not apply in either of the pending cases.”); *United States v. Levi*, No. 17-13942, 2019 WL 993340, at *6 (11th

it remains to be seen whether these new safeguards will actually allow victims to recover the full restitution to which they are entitled as they still face the disaggregation issues described above.⁹⁷

While the AVAA's proximate-cause requirement may complicate full recovery, the initial \$35,000 lump sum aggregate payment has no downside from a practical standpoint. Accepting the aggregate amount does not prevent your client from seeking restitution at the minimum \$3,000 amount in future cases based on disaggregated losses. The \$35,000 amount previously obtained will simply be subtracted from the total amount of losses calculated. For heavily traded images, the amount of total losses will almost certainly exceed that amount, and your clients should be able to obtain additional money. For lightly traded images, your client will receive a baseline amount of restitution which is often greater than they otherwise may have received in total from separate loss requests.

A victim must still qualify for the lump sum amount by demonstrating that his or her image was included in the *charged conduct* in the defendant's indictment.⁹⁸ The AVAA defines the requirement of charged conduct to include advertisement, distribution, receipt, reproduction, and possession of child pornography.⁹⁹ It is less difficult to meet this requirement in a child pornography possession case because the prosecution is based on the possession itself.¹⁰⁰ As a result, most indictments charging possession allege the defendant possessed a particular electronic device (i.e., computer, tablet, phone) that contained child pornography. For these cases, your client's images will qualify as "charged" if found on the device charged in the possession count.

Cir. Feb. 28, 2019) (affirming total award of \$8,700 in restitution to nine victims based on the Supreme Court's guidance in *Paroline*); *United States v. Quignon*, No. 8:18CR43, 2018 WL 681163, at *2–3 (D. Neb. Dec. 27, 2018) (ordering defendant to pay restitution in the amount of \$1,000); *see also* *United States v. Gifford*, No. 2:19-CR-20008, 2020 WL 1271370, at *3 (W.D. Ark. Mar. 17, 2020) (awarding two victims \$2,000 in restitution, one victim \$2,500, one victim \$3,000, one victim \$1,500, and the final victim \$1,000 in case involving conduct that occurred approximately two months before AVAA).

⁹⁷ *See, e.g.*, *United States v. Hollman*, No. 1:18-cr-10037-JBM-JEH-1, 2019 WL 418208, at *4, 6–7 (C.D. Ill. Jan. 14, 2019) (denying award of restitution because the government had failed to meet its burden of demonstrating what the victim's total losses were), *report not adopted by* No. 1:18-cr-10037, 2019 WL 418404, at *2 (C.D. Ill. Feb. 1, 2019).

⁹⁸ 18 U.S.C. § 2259(d)(1)(B).

⁹⁹ "[T]he term 'trafficking in child pornography' means conduct proscribed by section 2251(d), 2252, 2252A(a)(1) through (5), [and] 2252A(g)." *Id.* § 2259(c)(3).

¹⁰⁰ *See, e.g.*, *United States v. Benoit*, 713 F.3d 1, 16 (10th Cir. 2013) (finding that although possession is a lesser included offense of receipt, a defendant could be convicted and sentenced for both offenses if the underlying conduct for each charge involved distinct actions or transactions); *United States v. McDaniel*, 631 F.3d 1204, 1208 (11th Cir. 2011) (declaring "possessors of child pornography victimize the children depicted within [by providing] the economic incentive for the creation and distribution of the pornography"); *United States v. Hernandez*, No. 2:11-cr-00026-GEB, 2014 WL 2987665, at *5 (E.D. Cal. 2014) (determining opening and/or viewing an image is not required to demonstrate possession when defendant downloaded images to his computer); *United States v. Covert*, No. 09-332, 2011 WL 134060, at *4 (W.D. Pa. Jan. 14, 2011) (upholding restitution order against defendant by reasoning "the harm to the child is enhanced by the mere possession of the image").

For production and distribution, however, the basis for prosecution is by image and each charge in the indictment will include only one image.¹⁰¹ Most federal indictments include only between five and ten counts. For these cases, then, if your client's image is not "charged," the client will not be eligible for the aggregated fund amount.¹⁰² This underscores how imperative it is for you to connect early in the notification process with the prosecutor to ensure your client's image is actually included as a charged count. Experienced practitioners have emphasized each of these points. They suggest that during your first contact with the prosecutor, it can be effective to encourage the prosecutor to contemplate the harm suffered by your client when considering the standard practice of dismissing some counts to encourage a defendant to plead to others. They also encourage directly asking the prosecutor to include charges involving your client's images.

Also note that relief from the aggregate fund is available only for victims as defined by federal law. Thus, for example, if your client is depicted in images classified as child erotica, which are not illegal under federal law, he or she will not be eligible for the aggregated fund payment.¹⁰³ The First Amendment does protect an individual's right to view erotic materials or engage in erotic acts, within the bounds of statutory definition and judicial interpretation.¹⁰⁴ Finally, keep in mind that the aggregated fund is applicable only in federal cases, so if your client's image is being distributed only in state or local cases, the client will not be eligible for fund relief but can still seek restitution otherwise.

While DOJ is currently formulating regulations and processes governing the request for and disbursement of the aggregate lump sum payment, victims will likely be able to apply online

¹⁰¹ See, e.g., *United States v. Fee*, 491 F. App'x 151, 157 (11th Cir. 2012) ("The text of section 2251(a) makes clear that Congress proscribed each [discrete] visual depiction of a minor as a separate offense."); *United States v. Esch*, 832 F.2d 531, 541 (10th Cir. 1987) ("As we construe the statute, each use of a minor to create a visual depiction constitutes a separate and distinct violation, and thus represents the correct unit of prosecution."); *United States v. Qualls*, No. 14-03519-RB, 2016 WL 9774925, at *1 (D.N.M. Dec. 19, 2016) (holding that the defendant was correctly charged with four distinct counts of production of child pornography where the four images "are still distinguishable and were taken at distinct moments in time").

¹⁰² Section 2259 limits mandatory restitution to cases where "the defendant was *convicted* of trafficking in child pornography." 18 U.S.C. § 2259(b)(2) (emphasis added). This was reiterated in *Paroline*, where the Supreme Court clarified that the statute's definition of a "victim" entitled to restitution extends only to those who are harmed by "the offense of conviction." *Paroline v. United States*, 572 U.S. 434, 435 (2014). Lower courts have reached the same conclusion. See, e.g., *United States v. Delacruz*, No. 2:12-cr-00132-GEB, 2015 WL 9260606 at *3 (E.D. Cal. Dec. 17, 2015) (four victims whose images were among the thousands possessed by the defendant were ineligible to receive restitution because there was no evidence that their images were ever distributed); *United States v. Longo*, No. 14-57, 2015 WL 251561 at *1 (W.D. Pa. Jan. 20, 2015) (victim was not entitled to restitution because the defendant pled guilty to production of child pornography relating to a different child but not possession).

¹⁰³ See, e.g., *Jacobson v. United States*, 503 U.S. 540, 551–52 (1992) (declaring defendant's "inclinations and fantasies" may choose never to cross the line from legal child erotica to prohibited child pornography whether out of "respect for legality or the fear of prosecution").

¹⁰⁴ See, e.g., *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 61 (1976) (recognizing that "the First Amendment will not tolerate the total suppression of erotic materials that have some arguably artistic value"); *United States v. Dost*, 636 F. Supp. 828, 832 (S.D. Cal. 1986), *aff'd sub nom. United States v. Wiegand*, 812 F.2d 1239 (9th Cir. 1987) (establishing the widely used multi-factor "*Dost* test" for determining whether a particular visual depiction falls under the definition of child pornography).

after receiving notice that their images have been distributed.¹⁰⁵ We expect that the application process will require a court determination that the applicant is a “victim” of the case. This will require the prosecutor to file a motion designating your client as such. In order to facilitate that process, consider providing the prosecutor with the motion and a request that it be filed. In anticipation of this yet-to-be finalized process, experienced practitioners have made a regular practice of including a statement to the prosecutor that if the count of conviction does not include their client’s images it would still be impactful emotionally, and may matter legally, to the victim if the judgment included a finding that their client is a victim of the defendant’s crime.

Another potential impact of the AVAA is that courts may begin to require victims to notify them of previous restitution amounts awarded against other defendants, so that the court may fashion a restitution amount that takes into account the recovery that a victim has already received. This is an important change to keep in mind because DOJ does not have access to complete information relating to restitution awards, and attorneys representing multiple clients in a single case sometimes receive restitution payments that do not identify which survivor has been awarded the restitution. As a result of these shortcomings, it will become more incumbent upon the victim’s lawyer to track this information and provide it to the court upon request.

The AVAA also grants victims,¹⁰⁶ their attorneys, and any expert they have retained the right to view the child’s images. Although the viewing process can be restrictive, this may be helpful while preparing for a civil case, as described in more detail below. Prior to viewing the material, any third party, including the defendant, must be redacted from the image, and professionals should prepare thoroughly to make the most legally-advantageous use of the limited viewing opportunity.¹⁰⁷ While victims are legally permitted to view their images, you should carefully consider and discuss with your client and their therapeutic support team whether this is necessary for your case, the circumstances under which such viewing would occur, and the potential impact such viewing may have on your client. The long-term effects can be substantial and detrimental to the well-being of the victim and family if not addressed comprehensively. NCMEC is available to discuss this process and the experiences NCMEC has had with survivors in this context.

d) Strategies to Maximize Restitution Under the AVAA

While the benefits of the AVAA, especially the potential for a \$35,000 one-time restitution payment, are significant, for most clients, you will still need to proceed with individual restitution cases to collect the full amount of your client’s damages. You should consider the following strategies when engaging with the prosecutor to advocate for the highest possible award for your client in the post-AVAA world:

¹⁰⁵ Once the proposed DOJ regulations are complete, they will be released for a notice-and-comment period before being finalized. This Manual will be updated with additional information regarding the proposed regulations as it becomes available later in 2021.

¹⁰⁶ In a criminal case, a victim can view his or her images only while the case is pending. 18 U.S.C. § 3509(m)(3).

¹⁰⁷ *Id.*

- **First-Known Offender Theory of Harm.** You can try to maximize recovery for your client by redefining the harm, arguing that he or she is most harmed by the first-known viewer of their sexually abusive material. Under that theory of harm, victims can seek to recover the greatest amount from the first offender they become aware of. Such a strategy for recovery is an attractive alternative to the current model, in which victims must seek piecemeal recovery through potentially hundreds of proceedings, which could be traumatic for your client.

There may be some barriers to this theory under current law. The Supreme Court in *Paroline* went to great lengths to emphasize the competing interests at stake in interpreting section 2259—the need to compensate victims on the one hand and the need for proportional sentences on the other hand.¹⁰⁸ In *Paroline*, the Court held that the restitution amount should “not be severe,” but also should not be a “token or nominal amount.”¹⁰⁹ A court could view the first-known-offender theory as too severe because two offenders could engage in the same conduct and receive very different restitution orders.

If you choose to advance this theory, you should argue that it comports with *Paroline*, which was concerned that an offender would be held liable for the conduct of *other offenders*. If the first-known offender is the one who actually causes a majority of the harm, a large restitution order would simply force the offender to account for the damage he or she caused. To prove this, expert testimony would be helpful to show the impact of an initial distribution on a survivor and the harm that this distribution causes.

- **Target Offenders with Greater Relative Causal Roles.** To maximize restitution recovery under *Paroline*, you also can target offenders with relatively significant causal roles in causing harm to your client. In *Paroline*, the Supreme Court noted that “whether the defendant reproduced or distributed images of the victim” is a factor that “bear[s] on the relative causal significance of the defendant’s conduct.”¹¹⁰ Thus, it would be prudent to bring restitution claims against convicted offenders who reproduced or distributed images of the victim.

Victims should also emphasize the reasonableness of their proposed restitution awards and how they arrived at the amounts they are requesting. Many courts, even those that use a specific formula, want to arrive at what they consider a reasonable amount. Demonstrating the reasonableness of a particular award can be done by noting, for example, the gravity of the offense at issue or by comparing it to other awards.

- **Consider Resources of the Defendant.** Litigants should also consider the resources of the defendant when bringing restitution claims. A judgment is useful only if the

¹⁰⁸ *Paroline v. United States*, 572 U.S. 434, 458–59 (2014).

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 460.

defendant has the means to pay it.¹¹¹ Therefore, victims should prioritize restitution claims against defendants who have the means to pay the proposed award. Doing otherwise could waste resources and force the victim to needlessly relive the underlying child abuse.

- **Working with NCMEC.** You should also work with NCMEC to collect information regarding the distribution of your client’s sexually abusive content so you can propose a more principled method of calculating restitution damages. One *Paroline* factor is “how many images of the victim the defendant possessed.”¹¹² Some courts have noted that “the more images are possessed by a defendant, the more damages are accountable to that defendant.”¹¹³ Data collected by NCMEC can help you calculate restitution damages on that basis. NCMEC also may have specific information provided by law enforcement regarding how many images of your client a given defendant possessed, which can help inform a court’s analysis of the proper amount of restitution.

Distribution is another *Paroline* factor.¹¹⁴ Courts have recognized that distribution of child pornography is “more serious” than receipt of child pornography.¹¹⁵ Information regarding distribution can therefore help to maximize a victim’s recovery under section 2259.

In proposing an approach that takes into account the number of images possessed and distributed, you can benefit from the wide discretion district courts have in fashioning restitution orders.¹¹⁶

2. The Mandatory Victims Restitution Act of 2000 (18 U.S.C. § 3663)

The MVRA, enacted in 1996 and reauthorized in 2000, provides that a victim of most federal offenses described in Title 18 (housing most crimes in the U.S. Code) may be entitled to restitution.¹¹⁷ The Act also provides that a sentencing court may “order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.”¹¹⁸ When the federal crime at issue

¹¹¹ Victim’s counsel in *Paroline* may have followed this advice, as Amy sought close to \$3.4 million against the defendant in her case. *Id.* at 486–87.

¹¹² *Id.* at 460.

¹¹³ *United States v. Bellah*, No. 13-10169-EFM, 2014 WL 7073287, at *4 (D. Kan. Dec. 12, 2014).

¹¹⁴ *Paroline*, 572 U.S. at 460 (noting that “whether the defendant reproduced or distributed images of the victim” is a factor a district court could consider).

¹¹⁵ *See United States v. Franco*, No. 14-10205-01-EFM, 2016 WL 492752, at *3 (D. Kan. Feb. 8, 2016).

¹¹⁶ *See, e.g., Paroline*, 572 U.S. at 462; *United States v. Grovo*, 826 F.3d 1207, 1221 (9th Cir. 2016); *United States v. Miltier*, No. 2:15cr151, 2016 WL 6821087, at *4 (E.D. Va. Nov. 17, 2016).

¹¹⁷ 18 U.S.C. § 3663(a)(1)(A) (“The court, when sentencing a defendant convicted of an offense . . . may order . . . that the defendant make restitution to any victim of such offense.”). The Act defines a “victim” as “a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered.” *Id.* § 3663(a)(2).

¹¹⁸ *Id.* § 3663(a)(3).

is among those enumerated in the MVRA, the MVRA *requires* that the defendant pay the victim restitution.¹¹⁹ A copy of the MVRA can be found in Appendix P.

Under the MVRA, recoverable victim losses include: (1) damage, loss, or destruction of property; (2) costs of medical and related professional services and devices related to physical, psychiatric, and psychological care; (3) costs of physical and occupational therapy and rehabilitation; (4) costs of funeral and related services (when the offense results in the death of a victim); and (5) lost income, childcare, transportation, and other expenses related to participating in the investigation or prosecution of the offense.¹²⁰ The MVRA also establishes procedures for determining the amount of restitution.¹²¹

Courts rarely apply the MVRA in cases involving child pornography crimes because, unlike section 2259, the statute is not tailored to child sexual abuse crimes.¹²² In a rare exception to this general practice, the Third Circuit addressed restitution under the MVRA in *United States v. Mentzer*.¹²³ The defendant in *Mentzer* was indicted for distribution and possession of child pornography, but ultimately pled guilty to a sexual exploitation charge stemming from his sexual activity with a minor.¹²⁴ He appealed the district court’s restitution award to a victim depicted in one of his child pornography images, challenging whether the \$1,000 restitution award was permitted under law and its appropriateness.¹²⁵ The court acknowledged that the MVRA permits a court to order restitution for victims of most federal offenses, and that the Act empowers a court to order restitution to the extent agreed to by the parties in a plea agreement. Because the defendant’s plea agreement explicitly provided for restitution arising from relevant conduct, the court held, the award of restitution to a victim depicted in child pornography was thus permissible under the MVRA in a conviction for child sexual exploitation.¹²⁶ This outcome highlights the importance of working with prosecutors early in the process to advocate for restitution-friendly plea agreements, such as ones specifically providing for restitution to victims of related conduct,

¹¹⁹ *Id.* § 3663A(a)(1); *see id.* § 3663A(c)(1) (the MVRA’s mandatory restitution rule applies “in all sentencing proceedings for convictions of, or plea agreements relating to charges for” enumerated crimes—(i) a crime of violence, (ii) certain offenses against property, (iii) certain anti-doping offenses; (iv) an offense related to tampering with consumer products, or (v) an offense relating to theft of medical products—“in which an identifiable victim or victims has suffered a physical injury or pecuniary loss”).

¹²⁰ *Id.* §§ 3663(b)(1), (b)(2)(A)–(B), (b)(3)–(6).

¹²¹ *Id.* § 3663(a)(1)(B)(i) (“The court, in determining whether to order restitution under this section, shall consider—(I) the amount of loss sustained by each victim as a result of the offense; and (II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant’s dependents, and such other factors as the court deems appropriate.”).

¹²² *But see* *Manrique v. United States*, 137 S. Ct. 1266, 1272 (2017) (holding defendant had not secured appellate review of the district court’s order imposing restitution under the MVRA); *United States v. Borowski*, 589 F. App’x 640, 642 (4th Cir. 2014) (denying defendant’s appeal of restitution ordered pursuant to the MVRA because it was foreclosed by an appeal waiver in his plea agreement).

¹²³ 760 F. App’x 90 (3d Cir. 2019).

¹²⁴ *Id.* at 92.

¹²⁵ *Id.* at 94.

¹²⁶ *Id.*

and to discourage them from omitting appropriate charges from indictments and plea agreements, which will be discussed further in Part IV.G.

3. Trafficking Victims Protection Act (18 U.S.C. § 1593)

The TVPA, codified in relevant part at 18 U.S.C. § 1593, provides several methods to prosecute traffickers, prevent human trafficking, and protect victims and survivors of trafficking. When it was enacted in 2000, the Act established human trafficking and related offenses as federal crimes. Congress has subsequently reauthorized the TVPA in 2003, 2005, 2008, 2013, and 2019, each time adding new provisions to prevent human trafficking and further protect and assist victims.¹²⁷ A copy of the TVPA can be found in Appendix Q.

While not applicable in the majority of child pornography cases, you should be aware of the TVPA as a potential mechanism to recover restitution for child victims under specific factual circumstances that may benefit from the use of a novel legal argument under the TVPA. The TVPA mandates restitution for a victim of any offense under Chapter 77 of Title 18 in the U.S. Code in an amount that compensates the victim for the “full amount” of his or her losses.¹²⁸ Under the TVPA, the “full amount of a victim’s losses” has the same meaning as provided in the MVRA, and may include a value assigned to the victim’s services.¹²⁹ Any award under the TVPA is issued and enforced in accordance with 18 U.S.C. § 3664, which outlines the general procedures for issuance and enforcement of orders of restitution.¹³⁰

While use of the TVPA may avoid some of the legal hurdles associated with section 2259, note that the Act’s restitution provisions have been applied only where the defendant is charged with trafficking.¹³¹ This is a far less common scenario in cases involving distribution of child pornography. Still, you may want to explore making an argument that victims of child pornography are entitled to restitution under the statute regardless of whether the offender is charged with a trafficking offense on the ground that child pornography should be considered a “severe form of trafficking in persons” under the TVPA.¹³²

¹²⁷ See Cassondra (Cj) Murphy, *Trafficking Victims Protection Act Becomes Law*, THE HUMAN TRAFFICKING INSTITUTE (2019), <https://www.traffickingmatters.com/trafficking-victims-protection-reauthorization-act-becomes-law/> (describing the most recent reauthorization of the TVPA, which was signed into law on January 9, 2019).

¹²⁸ 18 U.S.C. § 1593(b)(1).

¹²⁹ *Id.* § 1593(b)(3).

¹³⁰ *Id.* § 1593(b)(2).

¹³¹ See, e.g., *United States v. Charles*, 895 F.3d 560, 562 (8th Cir. 2018) (affirming restitution awarded under the TVPA and the MVRA in case where the victim had been recruited to engage in prostitution and induced to “produce sexually-explicit images and videos to send to [the defendant]”); *United States v. Whitley*, 354 F. Supp. 3d 930, 938 (N.D. Ill. 2019) (holding restitution awarded under the TVPA and the MVRA in the amount of \$246,286.59 was warranted because the defendant, who had coerced minors to engage in commercial sex acts with him and taken “nude or exposed photographs” of minors, had been convicted of sex trafficking).

¹³² 22 U.S.C. § 7102(11)(A). Child pornography could constitute a “severe form of trafficking in persons” in cases in which its creation involves “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” *Id.* § 7102(11)(B).

Unlike most restitution claims (where recovery is based on the possession or distribution of the material itself), a restitution award under the TVPA could be based on the “force, threats of force, fraud, [or] coercion” that are necessarily employed to create child pornography in the first place.¹³³ The TVPA mandates restitution against anyone who “knowing . . . or, . . . in reckless disregard of the fact, that means of force, threats of force, fraud, coercion . . . , or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act.”¹³⁴ Regardless of whether a distributor or possessor was aware of the circumstances surrounding the creation of the child pornography or simply acted in reckless disregard of these facts, you could argue that the offender’s conduct should be covered by the TVPA—including its restitution mandate.

E. PROCEDURE FOR RECOVERING FEDERAL CRIMINAL RESTITUTION AND THE VICTIM’S ROLE IN THE PROCESS

The procedures for issuing restitution awards are delineated in 18 U.S.C. § 3664.¹³⁵ Many defendants lack the financial resources to pay restitution due to indigence, incarceration, and unemployment. Accordingly, collection rates are alarmingly low, especially after considering administrative expenditures and enforcement fees, such as staffing and running collection programs, litigation and enforcement costs of the United States Attorneys, and time expended by officials attempting to enforce unpaid restitution.¹³⁶ Depending on the legal arrangement you have with your client, victims who receive a full award may have to pay a portion in attorney’s fees and costs. The following guidelines set forth what you can do to help ensure the largest possible restitution award for your client.

1. Before Charges

- **Proactively reach out to the prosecutor.** CPVA will process victim notifications within a week after receiving notification from NCMEC regarding distribution. If notification is sent pre-indictment, it is important for you to speak to the prosecutor before charging decisions are made so you can advocate for your client’s images to be included in the charged counts. This must occur so that mandatory restitution will apply under the AVAA. Consider putting the evidence in writing to the prosecutor and making a written request on your client’s behalf to have the images included. If the images are not included, victims are permitted a “reasonable opportunity” to discuss

¹³³ 18 U.S.C. § 1591(a).

¹³⁴ *Id.*; *id.* § 1593(a). Under the TVPA, “sex trafficking” is defined as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” 22 U.S.C. § 7102(12). The TVPA defines a “commercial sex act” as “any sex act on account of which anything of value is given to or received by any person.” *Id.* § 7102(4).

¹³⁵ 18 U.S.C. § 3664.

¹³⁶ *See, e.g.,* Matthew Dickman, Comment, *Should Crime Pay?: A Critical Assessment of the Mandatory Victims Restitution Act of 1996*, 97 CAL. L. REV. 1687 (2009).

the charges with the prosecutors' supervisor.¹³⁷ At the very latest, the restitution request can be submitted up to 90 days after sentencing (though there are some limited exceptions).¹³⁸ If your client is seeking the \$35,000 aggregate award under the AVAA, you should also provide the prosecutor with a motion to designate your client as a "victim," and then facilitate the application process for payment.

- **Prepare your client.** During this phase, the survivor may need to interact with the prosecutor. It is your job to prepare your client, both by going through the facts of the case in detail, and by preparing the client emotionally. Understand the complexities of dealing with a survivor who has suffered trauma and seek assistance. There are many training programs focused on teaching practitioners a trauma-informed approach to interviewing techniques.¹³⁹ You also can seek assistance from mental health therapists, including those in the Family Advocacy Division of NCMEC. You should be present for all communications between the prosecutor and your client. You are your client's primary advocate and your presence provides both continuity and comfort.
- **Collaborate with NCMEC.** In addition to the case management, analytical support, outreach, and prevention education training that NCMEC provides, NCMEC also offers therapeutic and counseling support to families whose children are victims of online sexual exploitation. In a crisis situation, these services can be facilitated and offered directly through the master-level trained mental health professionals in NCMEC's Family Advocacy Division. The Family Advocacy Division can also provide local, specialized referrals for longer-term support.

NCMEC also manages two voluntary initiatives to expand the resources available to help families.¹⁴⁰ The first is the Family Advocacy Outreach Network (FAON), which

¹³⁷ 18 U.S.C. § 3771(a)(4) ("A crime victim has . . . [t]he right to be heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.").

¹³⁸ See *id.* § 3664(d)(5) ("If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victim's losses, *not to exceed 90 days after sentencing*. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief." (emphasis added)); see also *Dolan v. United States*, 560 U.S. 605 (2010) (holding that a sentencing court that missed the MVRA's 90-day deadline for a final determination of a victim's losses retains the power to order restitution, at least where that court made clear prior to the deadline's expiration that it would order restitution, leaving open for more than 90 days only the amount).

¹³⁹ See, e.g., Eva J. Klain, *Understanding Trauma and its Impact on Child Clients*, ABA (Sept. 1, 2014), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/september-2014/understanding-trauma-and-its-impact-on-child-clients/; Eliza Patten & Talia Kraemer, *Establishing a Trauma-Informed Lawyer-Client Relationship*, ABA (Oct. 1, 2014), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/october-2014/establishing-a-trauma-informed-lawyer-client-relationship/; Claudia Peña, *Trauma Abounds: A Case for Trauma-Informed Lawyering*, 26 UCLA WOMEN'S L. J. 7 (2019).

¹⁴⁰ For additional information about these NCMEC family support resources, see *Our Work: Victims & Family Support*, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, <https://www.missingkids.org/gethelpnow/support> (last visited Sept. 20, 2021).

connects victims and families with mental health service providers across the country who are available to provide services either pro bono or on a sliding scale. NCMEC recruits, trains, and supports the professionals who are part of the FAON. NCMEC also supports families through Team HOPE, a trained volunteer group of parents and family members who have experienced a missing or sexually exploited child and can provide peer counseling and support to other families. Families often say that they feel alone because no one can understand what they are going through. Knowing that there is someone available who has experienced a similar type of family trauma, as well as a therapist who is trained to work with your client on these issues, can provide great comfort.

2. Before Sentencing

Once the case is charged, in order for your client to receive restitution the government must request it. When requested, section 2259, the MVRA, the TVPA,¹⁴¹ and now the AVAA mandate a restitution award upon conviction for a relevant child pornography offense. Once the conviction is entered and restitution is requested, the probation officer must prepare a presentence investigation report (PSR).¹⁴² The PSR should contain information sufficient for the court to fashion a restitution order, including a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the defendant's economic circumstances.¹⁴³ The defendant must prepare and file an affidavit fully describing his or her financial resources.¹⁴⁴

You should be in communication with both the probation officer and the prosecutor before sentencing regarding your client's rights to restitution and notification regarding the sentencing. Before submitting the PSR, the probation officer must request a list of the amounts subject to restitution from the prosecutor.¹⁴⁵ The prosecutor must consult to the extent practicable with all identified victims.¹⁴⁶ Under the CVRA, the victim has a right to confer with the prosecutor regarding restitution.¹⁴⁷ The probation officer also should consult with the victim to gather a complete accounting of the victim's losses to include in the PSR. The probation officer must then provide notice to all identified victims.¹⁴⁸

¹⁴¹ Keep in mind that, as explained in Part II.D.3, the use of the TVPA as a restitution recovery avenue for sex trafficking is a novel approach. While it falls under the statute's definitions, child pornography has traditionally not been equated with sex trafficking under the remedial provisions of the TVPA.

¹⁴² 18 U.S.C. § 3664(a).

¹⁴³ *Id.*

¹⁴⁴ *Id.* § 3664(d)(3).

¹⁴⁵ *Id.* § 3664(d)(1).

¹⁴⁶ *Id.*

¹⁴⁷ *See Doe 1 v. United States*, No. 08-80736-CIV, 2019 WL 761702 (S.D. Fla. Feb. 21, 2019).

¹⁴⁸ 18 U.S.C. § 3664(d)(2).

After the PSR is submitted, the court must disclose to the defendant and the prosecutor all portions of the PSR that pertain to restitution.¹⁴⁹ The court may require additional documentation or hear testimony relating to the restitution. The defendant is entitled to be informed of the amount of restitution included in the PSR and to provide a response or request a hearing, which the court may grant at its discretion.¹⁵⁰

The prosecutor plays an essential role in the recovery of restitution for your client. Although victims can send their claims to the appropriate U.S. Attorney's Office and request that a prosecutor present the claim to the court, the decision whether to request restitution lies with the government, and prosecutors may decline to bring a restitution claim.¹⁵¹ Often prosecutors are so busy with the conviction itself that issues of restitution are handled at the last minute. Thus, it is imperative to engage the prosecutor from the beginning and provide the prosecutor with a reasonable, user-friendly estimate of a restitution amount. That can be done by cover letter, with an explanation for the amount requested and supporting documentation. Supporting documentation may include receipts and other information about expenses paid, and also expert projections about future losses and an expert analysis of the psychological damage sustained by the victim. A victim impact statement should also be submitted to present the emotional harm suffered by the victim in his or her own words, and to set forth information about the loss amount. Preparing and presenting a complete, well-documented restitution request can go a long way in ensuring the prosecutor will incorporate your request into the proceeding.

It is crucial that restitution materials be submitted on behalf of your client as soon as possible after conviction so that the probation officer can use them in preparing the PSR. Early disclosure of the materials also ensures the prosecutor has sufficient time to review them. Supplying restitution demands and support shortly before sentencing runs the risk that the court may never see them.

The following sets forth more specific information about working with an expert to prepare an expert report in support of your restitution request, as well as helping your client to prepare a victim impact statement.

a) Expert Reports

As described above, submitting an expert report is vital to seeking a restitution award in a criminal case. Without one, there may be no definitive basis on which the court can rely to grant your client's request. Note that because the Federal Rules of Evidence do not apply at sentencing, you do not need to be concerned with the "admissibility" of the report and should instead focus on its substance.¹⁵² In addition, note that while these reports may be expensive to procure on the front

¹⁴⁹ *Id.* § 3664(b).

¹⁵⁰ *Id.* §§ 3664(a), (b).

¹⁵¹ Dina McLeod, Note, *Section 2259 Restitution Claims and Child Pornography Possession*, 109 MICH. L. REV. 1327, 1332 (2008).

¹⁵² See, e.g., *United States v. Ocasio-Cancel*, 727 F.3d 85, 91 (1st Cir. 2013) ("The Federal Rules of Evidence do not apply in sentencing proceedings."); *United States v. Ferron*, 357 F.3d 722, 724 (7th Cir. 2004) ("[T]he Federal Rules of Evidence do not apply at sentencing.").

end, once the report is complete, it can be used for every restitution request you make on behalf of your client in the future.

Common forms of expert reports used to seek restitution include forensic reports, actuarial reports, and psychological reports. Forensic experts can testify to the victim's symptoms or diagnoses as a result of the abuse¹⁵³ and also estimate the future costs that a victim will incur as a result of the abuse.¹⁵⁴ Actuarial experts are typically used to testify as to lost future wages, lost employee benefits, and losses for future treatment and counseling, among other things.¹⁵⁵ Finally, psychological experts (who may be psychiatrists, therapists, or social workers) can testify to the harm caused by the defendant and the negative impacts the victim will continue to suffer as a result of the abuse (including academic, emotional, and interpersonal difficulties).¹⁵⁶

A forensic expert report should describe the psychological harm suffered by your client as a result of the victimization, but also project future harm and resulting losses. You should interview several experts to determine who has extensive experience in child victimization, would fit best for your particular case, and has the right perspective and demeanor to interact with your client on exceedingly sensitive and traumatic events. NCMEC has working relationships with experts who have worked on cases involving victims of CSAM distribution, and you should contact NCMEC at familysupport@ncmec.org for more information on potential experts. A sample report is attached as Appendix R.

The forensic expert will interview your client to determine details about the abuse suffered and the harm resulting from the distribution of his or her images. The expert will not only describe the actual harm suffered by the victim, but also calculate and estimate the full amount of the victim's total damages, including out-of-pocket expenses and future losses. Such a report will increase the likelihood of securing adequate restitution.¹⁵⁷ This expert opinion will also help establish for the court a causal chain between the defendant's conduct and the victim's losses.¹⁵⁸ Experts can and should also offer opinions on the effects of the abuse on the victim and the costs of future mental health services that the victim will require as a result.¹⁵⁹ Experts also can calculate lost future wages and employee benefits and costs for past and future treatment proximately caused by the defendant's conduct.¹⁶⁰ The calculation of losses should also include attorney and expert fees. The expert opinion should be provided to the prosecutor, the probation officer, and the court.

¹⁵³ See, e.g., *United States v. Olivieri*, No. 09-743 (WHW), 2012 WL 1118763, at *12 (D.N.J. Apr. 3, 2012).

¹⁵⁴ See, e.g., *United States v. Johnston*, 707 F. Supp. 2d 616 (E.D.N.C. 2010).

¹⁵⁵ See, e.g., *United States v. Staples*, No. 09-14017-CR, 2009 WL 2827204 (S.D. Fla. Sept. 2, 2009); *Olivieri*, 2012 WL 1118763, at *12.

¹⁵⁶ See, e.g., *United States v. Kearney*, 672 F.3d 81, 86 (1st Cir. 2012); *Staples*, 2009 WL 2827204, at *1–2.

¹⁵⁷ See, e.g., Warren Binford et al., *Beyond Paroline: Ensuring Meaningful Remedies for Child Pornography Victims at Home and Abroad*, 35 CHILDREN'S LEGAL RIGHTS J. 117 (2015); see also 70 A.L.R. Fed. 2d 409 (2012) (collecting cases).

¹⁵⁸ See *id.*

¹⁵⁹ See *id.*

¹⁶⁰ See *id.*

b) Victim Impact Statements, and a Victim's Right to Be Heard Under the Crime Victims' Rights Act

Victim impact statements are written, oral, or videotaped statements from crime victims, in their own words, about how a crime has affected them.¹⁶¹ If federal law applies, then the CVRA governs the rules of victim impact statements.

Prior to the CVRA's enactment, only victims of violent crimes and sexual assault were allowed to give victim impact statements.¹⁶² The CVRA greatly expanded the definition of "victim" and all "person[s] directly and proximately harmed as a result of the commission of a Federal offense" are now permitted to give victim impact statements.¹⁶³

The CVRA provides victims with several rights, including the "right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding."¹⁶⁴ This right applies before any formal charges have been filed, and thus before any formal adjudication of guilt.¹⁶⁵ The victim, the victim's lawyer, or the government can seek to enforce this right, but the court is ultimately responsible for ensuring that crime victims are afforded their CVRA rights.¹⁶⁶

Although the CVRA provides that a victim may be heard, it does not specify the format in which a victim may provide a statement, and courts have differed on the format acceptable for such a statement. Based on the legislative history, some courts have held that the CVRA gives victims the right to make an oral impact statement.¹⁶⁷ One court noted that refusing to allow oral statements "would defy the intentions of the CVRA's drafters, ignore the fact that defendants and prosecutors make oral statements at sentencing, and disregard the rationales underlying victim

¹⁶¹ For a detailed overview of victim impact statements, see DOUGLAS E. BELOOF, PAUL G. CASSELL, MEG GARVIN & STEVEN J. TWIST, *VICTIMS IN CRIMINAL PROCEDURE* 599–645 (4th ed. 2018).

¹⁶² FED. R. CRIM. P. 32(a) (2000) (limiting victim impact statements to those who were victims of crimes of violence or sexual abuse).

¹⁶³ 18 U.S.C. § 3771(e)(2)(A).

¹⁶⁴ *Id.* § 3771(a)(4).

¹⁶⁵ See, e.g., *Does v. United States*, 817 F. Supp. 2d 1337, 1342 (S.D. Fla. 2011); *United States v. Okun*, No. 08–132, 2009 WL 790042, at *2 (E.D. Va. Mar. 24, 2009) ("[T]he Fifth Circuit has noted that victims acquire rights under the CVRA even before prosecution. This view is supported by the statutory language, which gives the victims rights before the accepting of plea agreements and, therefore, before adjudication of guilt.").

¹⁶⁶ 18 U.S.C. § 3771(b)(1); see also *United States v. Stevens*, 239 F. Supp. 3d 417, 420 (D. Conn. 2017) ("[T]he CVRA imposes no less than an *affirmative* obligation on judges to ensure that the victim's rights are respected . . .").

¹⁶⁷ See *In re Brock*, 262 F. App'x 510, 512 (4th Cir. 2008) (noting that the district court allowed the victim to provide a written statement and offer further oral statements during sentencing); *Kenna v. U.S. Dist. Court for C.D. Cal.*, 435 F.3d 1011, 1016 (9th Cir. 2006) (finding that the CVRA allows victims to give oral statements because "[l]imiting victims to written impact statements, while allowing the prosecutor and the defendant the opportunity to address the court, would treat victims as secondary participants in the sentencing process."); *United States v. Degenhardt*, 405 F. Supp. 2d 1341, 1349 (D. Utah 2005) ("[T]he CVRA's right to be 'reasonably heard' gives victims the right to make an in-court statement at sentencing.").

allocation.”¹⁶⁸ On the other hand, the Northern District of Illinois held that the right to be reasonably heard under the CVRA does not mandate that the victim be allowed to present an oral impact statement.¹⁶⁹ The court instead found that providing the victim with an opportunity to give a written statement satisfied the CVRA.

A crime victim’s right to be heard may also be affected by the number of victims. If there is such a large number of victims that it might be impracticable to provide all victims the rights they would be afforded individually under the CVRA, the court must fashion a “reasonable procedure” to give effect to the CVRA that “does not unduly complicate or prolong the proceedings.”¹⁷⁰ In creating a reasonable procedure, the court must demonstrate respect for the victims’ rights and take into account considerations of judicial economy.¹⁷¹

If a victim is denied the right to be heard in violation of the CVRA, he or she can make a motion to re-open the plea or sentence if: (1) the victim had asserted the right to be heard before or during the proceeding and such right was denied; (2) the victim petitions the court of appeals for a writ of mandamus within 14 days; and (3) in a case where a guilty plea has been entered, the accused has not pled to the highest offense charged.¹⁷² A violation of the CVRA does not, however, provide a basis for a new trial.¹⁷³

(1) Considerations in Deciding Whether to Provide a Victim Impact Statement

In deciding whether to take advantage of his or her CVRA rights, your client should consider the benefits of preparing a victim impact statement. Paul Cassell, a former district court judge, current law professor, and a well-respected victim advocate, has outlined four main benefits associated with providing a victim impact statement.¹⁷⁴

First, victim impact statements provide the sentencing judge with valuable information. Without a victim impact statement, a judge may not know the full extent of the injury suffered or understand the emotional and financial impact that the crime has had on the victim.¹⁷⁵

Second, giving a statement provides victims with a “therapeutic benefit” in that it allows them to “regain a sense of dignity and respect rather than feeling powerless and ashamed.”¹⁷⁶

¹⁶⁸ *Degenhardt*, 405 F. Supp. 2d at 1345.

¹⁶⁹ See *United States v. Marcello*, 370 F. Supp. 2d 745, 748 (N.D. Ill. 2005) (“Being ‘reasonably heard’ in the ordinary legal and statutory meaning typically includes consideration of the papers alone.”)

¹⁷⁰ 18 U.S.C. § 3771(d)(2).

¹⁷¹ See, e.g., *United States v. Okun*, No. 3:08CR132, 2009 WL 790042, at *2 (E.D. Va. Mar. 24, 2009).

¹⁷² 18 U.S.C. § 3771(d)(5).

¹⁷³ *Id.*

¹⁷⁴ Paul Cassell, *In Defense of Victim Impact Statements*, 6 OHIO STATE J. CRIM. L. 611 (2009).

¹⁷⁵ *Id.* at 619–20.

¹⁷⁶ *Id.* at 621–23.

Allowing victims to speak demonstrates society's recognition both of their pain and suffering and their right to participate in the legal system.¹⁷⁷

Third, victim impact statements are a way for victims to confront defendants face-to-face and show them the pain they have caused.¹⁷⁸ In addition to helping victims, hearing a victim impact statement may also help defendants legitimize the process of punishment as they come to recognize the harm they have caused.¹⁷⁹

Fourth, allowing victim impact statements to be presented indicates to both victims and society that the process is fair. For the same reasons that the defendant has the right to speak at sentencing, so too does the victim.¹⁸⁰ When deciding whether to give a victim impact statement, it is important to consider these benefits and discuss them carefully with your client.

Some opponents of victim impact statements argue that these statements are irrelevant to sentencing and should not be allowed because they are not necessarily specific to the defendant's conduct. However, victim impact statements strongly relate to the goals of punishment under our legal system, and they provide the court with the only mechanism of calculating the actual harm caused by the defendant.

Others argue that victim impact statements are too relevant, and the emotional appeal of the statement will overwhelm the sentencing decision.¹⁸¹ However, evidence is not excluded from trial simply because it may be prejudicial. There is a difference between prejudice and unfair prejudice. As Cassell has noted, victim impact statements simply provide a fuller picture of the crime committed; they do not unfairly prejudice the defendant.¹⁸²

All 50 states allow victim impact statements at some phase of the sentencing process, and victim impact information is generally included in the pre-sentencing report presented to the judge.¹⁸³ Attached as Appendix S is a chart illustrating the victim impact statement rules in each state.

(2) Different Forms of Victim Impact Statements

Victim impact statements can describe physical and/or emotional damage caused by the crime, financial costs to the victim resulting from the crime, medical or psychological treatments required by the victim or his or her family, the need for restitution, and in some states, the victim's views on the crime, the offender, or the appropriate sentence. You and the victim advocate on the case are invaluable resources to help the victim prepare and submit the statement. Written victim

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 623–24.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 624–25.

¹⁸¹ *Id.* at 632.

¹⁸² *Id.* at 634.

¹⁸³ *Id.* at 639.

impact statements are submitted to the Executive Office for United States Attorneys (EOUSA) and subsequently forwarded to the U.S. Probation Office to be included as part of the PSR.¹⁸⁴ This report is then submitted to the judge prior to sentencing. In many courts, a victim may also choose to give an oral statement at sentencing.¹⁸⁵ Victims are given the option to share a redacted version of their statement with state or local prosecutors, and the statement is then uploaded into an internal database maintained by the Child Exploitation and Obscenity Section of DOJ's Criminal Division (CEOS).¹⁸⁶ As of the writing of this Manual, only 107 victims have victim impact statements on file with the EOUSA.

You also should consider the best format to use in submitting a victim impact statement. Most victims do not want to appear in court every time a defendant is charged with possessing or distributing their images. Audio or video-taping the statement may have a similarly meaningful impact on the judge, but also can trigger unique sensitivities for survivors given that their victimization arises from being filmed. Canada has been a leader in using video victim impact statements, and courts in the United States have started to explore this process.¹⁸⁷ While this may not always be a viable option for a victim, in cases where you would like to explore this possibility for your client, NCMEC can assist with the videotaping and can work with you and your client to find ways to shadow the victim's face so his or her features are not identifiable.

Also consider requesting that the prosecutor read aloud your client's victim impact statement during the sentencing hearing. For example, one survivor in a widely traded series has asked that her impact statement be read in court so that offenders can hear her words stated aloud. This too can be a valuable way to bring home the message to the court that your client has suffered immeasurably and deserves a significant restitution award.

Attached as Appendix T are examples of victim impact statements.

3. Sentencing

When a case proceeds to sentencing, the amount of restitution is determined at a sentencing hearing or at a separate restitution hearing within 90 days of the sentencing.¹⁸⁸ Victims have 60

¹⁸⁴ U.S. DEP'T OF JUSTICE, U.S. ATTORNEY'S OFFICE, D. OF ALASKA, VICTIM IMPACT STATEMENTS, <https://www.justice.gov/usao-ak/victim-impact-statements> (last visited Sept. 20, 2021).

¹⁸⁵ *Id.*

¹⁸⁶ NAT'L CTR. FOR VICTIMS OF CRIME, IMPROVING THE RESPONSE TO VICTIMS OF CHILD PORNOGRAPHY (Dec. 19, 2014), https://victimsofcrime.org/doc/Policy/improving-response-to-vcp_full-report.pdf?sfvrsn=2.

¹⁸⁷ See, e.g., *United States v. Clark-Bellamy*, No. ACM 39709, 2020 WL 6301347 (A.F. Ct. Crim. App. Oct. 27, 2020) (upholding the use of a pre-recorded (video) victim impact statement). For cases considering video victim impact statements in the context of other state and federal crimes, see *United States v. Allen*, 364 F. Supp. 3d 1234 (D. Kan. 2019) (involving federal charges of conspiracy to use a weapon of mass destruction, conspiracy to interfere with intended victims' civil rights, and obstruction of justice); *People v. Bell*, 439 P.3d 1102 (Cal. 2019) (state murder case); *Lopez v. State*, 181 A.3d 810 (Md. 2018) (state murder, robbery, and child kidnapping case).

¹⁸⁸ See 18 U.S.C. § 3664(d)(5); see also *supra* note 138.

days to apply to amend any restitution award after discovering any losses not included in the original award.¹⁸⁹

The court will set the restitution amount without regard to the defendant's economic circumstances.¹⁹⁰ The defendant's ability to pay is relevant only to the payment schedule, as discussed below. Compensation received (or to be received) by the victim from insurance or any other source is likewise not taken into account in setting the restitution amount.¹⁹¹

A court may order a defendant to pay the entire restitution amount immediately after sentencing if it determines the defendant has the financial means to do so. The court can also direct the defendant to make payments in accordance with a payment schedule.¹⁹² In fashioning a payment schedule, the court must set the "shortest time in which full payment can reasonably be made."¹⁹³ The court must consider: (a) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled; (b) the projected earnings and other income of the defendant; and (c) the financial obligations of the defendant, including obligations to dependents.¹⁹⁴ A defendant can be required to liquidate any assets to meet the payment schedule.

The court will ordinarily mandate equal monthly payments to be made over a prescribed time period. A restitution order may also require a defendant to make nominal payments if the court finds that the defendant is not financially able to pay the full amount "in the foreseeable future under any reasonable schedule of payments."¹⁹⁵ If the defendant experiences a material change in his or her economic circumstances (e.g., an inheritance, a settlement, or unanticipated earnings), the court may on its own motion, the motion of the government, or the motion of the victim modify the payment schedule or order immediate payment of the full restitution amount.¹⁹⁶

4. After Sentencing

If the defendant is convicted and incarcerated, he or she will generally be enrolled in the prison's Inmate Financial Responsibility Program, which requires indebted prisoners to work while incarcerated.¹⁹⁷ Generally, the prison will take a percentage of the prisoner's total income to fund the restitution payments. Payments to victims are usually made on a quarterly basis at a

¹⁸⁹ See 18 U.S.C. § 3664(d)(5).

¹⁹⁰ *Id.* § 3664(f)(1)(A).

¹⁹¹ *Id.* § 3664(f)(1)(B).

¹⁹² *Id.* § 3664(f)(3)(A). If the court proposes a drawn-out payment schedule, you may consider clarifying that recovery ends when the full amount of their losses is satisfied by a totality of payments from all defendants. This may alleviate concerns that a shortened payment schedule would disparately impact one defendant, and also would emphasize that too slow a payment schedule may result in a defendant avoiding payment of the ordered restitution.

¹⁹³ *Id.* § 3572(d)(2).

¹⁹⁴ *Id.* § 3664(f)(2).

¹⁹⁵ *Id.* § 3664(f)(3)(B).

¹⁹⁶ *Id.* § 3664(k).

¹⁹⁷ 28 C.F.R. § 545.10 *et seq.*

minimum rate of \$25 per quarter.¹⁹⁸ At this rate, full payment will rarely occur based on a prisoner's pay alone, especially because restitution must be paid equally among all victims at the same time. In cases with a large number of victims this means it is unlikely that victims will receive any restitution while the defendant is in prison.¹⁹⁹

Once the defendant is released from prison and on supervised release, the U.S. Probation Office ensures that the defendant continues to make restitution payments to the Clerk of Court, which then distributes payment to the victims.²⁰⁰ After the period of supervised release ends, the U.S. Attorney's Office's Financial Litigation Unit generally takes over that responsibility.²⁰¹ The defendant's obligation to pay restitution ends 20 years after his or her release from incarceration.²⁰²

Many attorneys handle the receipt and distribution of restitution checks for their clients.²⁰³ Particularly for survivors whose images are distributed on a regular basis by a number of offenders, it can be a tremendous relief to have their attorneys track and organize restitution payments. Not only does this remove a large organizational burden from survivors and/or their families, but it also relieves them of the constant reminders that their images are consistently being distributed online. You can work with your client to find the most comfortable level of communication around both notifications and restitution payments. Some clients prefer to discuss this process with their lawyer only once every few months, or just to receive an annual check of the restitution payments.

While some restitution payments may be for a more significant amount of money, most of the checks attorneys receive are for \$40 or less. As noted above, the receipt of these checks may be highly irregular (sometimes monthly, quarterly, etc.), and oftentimes will be split among multiple victims. Given the fact that restitution payments arrive sporadically and are generally for small amounts of money, attorneys should make clear to their clients that, in most cases, they will not be able to rely on these payments to cover the costs of their mental health treatment or other ongoing needs.

5. Collecting Restitution and Common Hurdles

You will need to help your client navigate multiple difficulties relating to his or her ability to successfully recover restitution. In most cases, the total amount of restitution awarded per victim does not accurately reflect the actual number of individuals who viewed the victim's images.²⁰⁴ Even so, victims rarely collect the full amount of the ordered restitution. The collection rate of restitution judgments is alarmingly low because defendants often lack the ability to pay due

¹⁹⁸ 28 C.F.R. § 545.11(b)(1).

¹⁹⁹ U.S. DEP'T OF JUSTICE, U.S. ATTORNEY'S OFFICE, W. DIST. OF N.Y., RESTITUTION (Nov. 18, 2014), <https://www.justice.gov/usao-wdny/restitution> (last visited Sept. 20, 2021).

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² UNDERSTANDING RESTITUTION, *supra* note 32.

²⁰³ Among attorneys who do not represent child pornography victims on a pro bono basis, general practice is to take a portion of restitution checks to cover one's own fees and to pass the remainder on to the client.

²⁰⁴ Michelle Minarcik, Note, *The Proper Remedy for Possession of Child Pornography: Shifting From Restitution to a Victims Compensation Program*, 57 N.Y. L. SCH. L. REV. 941, 955 (2013).

to incarceration, indigence, or unemployment.²⁰⁵ Administrative expenditures associated with the imposition of restitution orders, along with litigation and enforcement costs of the United States Attorneys, often result in the government expending more money than the offender is expected to pay.²⁰⁶ Finally, a victim who does ultimately collect a full award may have to pay a portion of that in attorney's fees and costs.²⁰⁷

Many states have sought to improve collection of restitution by initiating a thorough investigation of convicted offenders' assets. A complete investigation of a defendant's assets can help the court craft a workable payment plan, which should decrease the likelihood of default.²⁰⁸ Assets can be discovered through a defendant's statement of assets, interrogatories directed to the defendant, and court and public records.²⁰⁹ Once a defendant's assets have been identified, the government may levy the assets to satisfy the restitution order.²¹⁰ However, defendants may sometimes conceal or even waste assets in an attempt to avoid paying restitution. Also keep in mind that, when a defendant is represented by private counsel, defense counsel fees will often take most of an offender's assets prior to a restitution award.

6. State and Federal Forfeiture Laws

Asset forfeiture provisions may serve as a deterrent by seizing the fruits and instrumentalities of a defendant's crime. Because there is no universal statute or common law authority for forfeiture, forfeiture must always be tied to a specific statute.²¹¹ Thus, all forms of federal forfeiture hinge on the property's relationship to the crime at issue.²¹² Criminal asset forfeiture occurs after the defendant has been convicted of the underlying criminal offense.²¹³

Section 2253 of Title 18 of the U.S. Code provides for forfeiture of property relating to the sexual exploitation of children.²¹⁴ There also are statutes specific to human trafficking that provide

²⁰⁵ *Id.*

²⁰⁶ Matthew Dickman, Comment, *Should Crime Pay?: A Critical Assessment of the Mandatory Victims Restitution Act of 1996*, 97 CAL. L. REV. 1687 (2009).

²⁰⁷ Minarcik, *supra* note 204.

²⁰⁸ U.S. DEP'T OF JUSTICE, OFFICE FOR VICTIMS OF CRIMES, RESTITUTION: MAKING IT WORK (Nov. 2002), https://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin5/ncj189193.pdf.

²⁰⁹ SAN DIEGO CNTY. DIST. ATTY'S OFF., ENFORCING CRIMINAL OR JUVENILE COURT RESTITUTION ORDERS AS CIVIL JUDGMENTS, <https://www.sdcda.org/content/helping/restitution/ENFORCING%20CRIMINAL%20RESTITUTION%20ORDERS%20AS%20CIVIL%20JUDGMENT.pdf>.

²¹⁰ *Id.*

²¹¹ Elizabeth G. Wright, *Follow the Money: Financial Crimes and Forfeiture in Human Trafficking Prosecutions*, UNITED STATES ATTORNEYS' BULLETIN (Nov. 2017).

²¹² *Id.*

²¹³ Anne Teigen, *Prosecuting Human Traffickers: Recent Legislative Enactments*, NAT'L CONFERENCE OF STATE LEGISLATURES (Sept. 2018), nclsl.org/Portals/1/HTML_LargeReports/Prosecuting_Traffickers_091818_32767.pdf.

²¹⁴ *See, e.g.,* United States v. Hull, 606 F.3d 524 (8th Cir. 2010) (convicting defendant on two counts of distribution of child pornography and ordering forfeiture of the defendant's real property (19 acres in Iowa) under 18

for the criminal forfeiture of specific kinds of property derived from the trafficking. For example, the Justice for Victims of Trafficking Act of 2015 (JVTA) enables the forfeiture of property “involved in” any relevant offense, in addition to proceeds, facilitating property, and property traceable to that property.²¹⁵ It also directs that assets forfeited in a human trafficking case be used to satisfy a victim restitution order.²¹⁶ If money laundering is involved in the trafficking case, the property can be forfeitable under money laundering statutes.²¹⁷

Another tool that can be used to preserve assets is the All Writs Act, which allows federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”²¹⁸ Once a defendant has been convicted and is awaiting sentencing, the All Writs Act can be used to restrain the defendant’s assets so that such assets will be available for criminal restitution. Courts have granted post-conviction restraining orders to preserve assets to be used to satisfy a restitution order entered at sentencing.²¹⁹

Plea agreements can be creatively used to discover or recover assets for restitution. For example, plea agreements can be employed to obtain an asset preservation agreement, require a

U.S.C. § 2253(a)(3) after finding there was ample evidence that the defendant was guilty of “using” his property to commit child pornography offenses (he connected to the internet and distributed illegal content from a room in his home)); *United States v. Klipp*, No. 2:14-cr-00107, 2020 WL 5412072 (E.D. Cal. Sept. 9, 2020) (denying defendant’s motion to vacate, set aside, or correct his sentence in case where defendant pled guilty to the production and receipt of child pornography, and criminal forfeiture was alleged under 18 U.S.C. § 2253(a) as to his Apple iPhone 4 (where the CSAM was found)); *United States v. Twenty-Four Cryptocurrency Accounts*, No. 19-cv-3098, 2020 WL 4049914 (D.D.C. July 20, 2020) (finding the defendants had taken a “number of affirmative steps” to transact with a child pornography website (specifically Bitcoin payments to the website), and that, because there was a substantial connection between defendants’ properties (24 cryptocurrency accounts) and the offenses, the properties were subject to forfeiture under 18 U.S.C. § 2253(a)(3)); *United States v. Wernick*, 148 F. Supp. 3d 271 (E.D.N.Y. 2015), *aff’d*, 673 F. App’x 21 (2d Cir. 2016) (after defendant was found guilty by jury verdict of the receipt, distribution, and reproduction of child pornography, and of coercing and enticing minors to engage in sexual activity, the court denied defendant’s motion to return some of the property that was seized pursuant to 18 U.S.C. § 2253 (which included a Compaq laptop computer with power supply, Western Digital hard drive, IBM hard drive, two Generic hard drives, two CPUs, six zip disks, 48 compact disks, and 147 floppy disks)).

²¹⁵ 18 U.S.C. §§ 1594(d), (e).

²¹⁶ *Id.* § 1594(f)(1).

²¹⁷ *See, e.g., id.* §§ 1956, 1957, 1960; *id.* § 982(a)(1).

²¹⁸ 28 U.S.C. § 1651(a).

²¹⁹ *See, e.g.,* James S. Alexander, *Alternative Remedies: Statutory Remedies Available to Seize and Restrain Assets*, 67 DOJ J. FED. L. & PRAC. 181 (2019); *see also* *United States v. Fuechtener*, No. 2:16-cr-00100-GMN-CWH, 2017 WL 10243515 (D. Nev. June 2, 2017), *report and recommendation adopted*, No. 2:16-cr-00100-GMN-CWG, 2018 WL 4005176 (D. Nev. Aug. 22, 2018) (granting a restraining order for the time between the period of plea and sentencing under the All Writs Act to ensure there were sufficient funds available to satisfy a future restitution order for victims who request restitution before sentencing in connection with the defendant’s crimes of possession and distribution of child abuse sexual material); *United States v. Sullivan*, No. 5:09-CR-302-FL-1, 2010 WL 5437242 (E.D.N.C. Dec. 27, 2010) (restricting Defendant from “selling, transferring, assigning, pledging, distributing, giving away, encumbering or otherwise participating in the disposal of” the defendant’s property to ensure the property is preserved for restitution for crimes of manufacturing and possessing CSAM).

defendant to deposit assets with the clerk of court to be applied to a restitution order, require asset disclosures, or require the defendant to agree to an asset interview or deposition.²²⁰

States also have adopted various approaches to preserving or seizing the assets of convicted offenders. Attached as Appendix U is a chart describing the various state forfeiture laws for human trafficking.²²¹ Given the inter-familial nature of many of these crimes, unique forfeiture situations can arise when restitution is awarded to a child who has been victimized by a member of their household. Prior to proposing or agreeing to a particular forfeiture or restitution arrangement, a victim's attorney should consider the impact it may have on the family unit, siblings, or caregivers, particularly if their client is still a minor. A short-sighted plan could complicate matters and indirectly affect the client. For example, forfeiture of a residential or personal property held solely or jointly by a parent offender could cause longer-term instability for the family or negatively impact the victim's living situation.

F. FEDERAL CIVIL RECOVERY

In addition to criminal restitution, victims of child sexual exploitation can recover in civil actions. Civil complaints may be filed independent of, or in addition to, any criminal prosecution.²²² Where a defendant was previously convicted of a criminal offense for the same conduct contemplated by the civil statute, issue preclusion may apply such that the issue of liability need not be re-litigated²²³ and summary judgment may be proper.²²⁴

²²⁰ Alexander, *supra* note 219, at 197.

²²¹ Note that Appendix U covers both civil and criminal procedures.

²²² In *Doe v. Hesketh*, the Third Circuit determined that a restitution award for a criminal offense does not bar a later-filed civil claim by a victim under 18 U.S.C. § 2255 based on the same offense. 828 F.3d 159, 171 (3d Cir. 2016). Defendant Mancuso, Doe's adopted father, sexually abused her as a child and distributed photographs and videos that "became popular among viewers of child pornography." *Id.* at 162. When Mancuso was subsequently arrested, a federal grand jury returned a two-count indictment: "count one charged Mancuso with sexual exploitation of a minor in violation of 18 U.S.C. § 2251(a); and count two charged Mancuso with possession of material depicting sexual exploitation of a minor in violation of 18 U.S.C. § 2252(a)(4)(B)." *Id.* Mancuso agreed to plead guilty to the first count, and the sentencing court ordered him to fully fund a trust for the benefit of Doe. *Id.* When Doe later filed a civil suit against Mancuso and others under 18 U.S.C. § 2255, Mancuso argued that her claim against him "was barred by her prior receipt of restitution in his criminal case because the sentencing judge intended to fully compensate Doe for both the convicted and dismissed charges in his indictment." *Id.* at 164. After examining the text of the statute and its place in Congress's remedial scheme for child victims of sex crimes, the Third Circuit held that "18 U.S.C. § 2255 permits a victim to bring a civil claim for the violation of a predicate statute even where that victim has previously received criminal restitution for the same violation of that statute for her purported full damages." *Id.* at 171.

²²³ See, e.g., *id.* at 171–72 (finding collateral estoppel did not bar plaintiff from litigating "the question of her damages based on Mancuso's criminal conduct" because she "was neither a party to Mancuso's prior criminal proceeding nor in privity with a party, and [she] did not have a full and fair opportunity to litigate the question of her damages"); *Instituto Nacional De Comercializacion Agricola (Indeca) v. Cent'l Ill. Nat'l Bank & Trust Co.*, 858 F.2d 1264, 1271 (7th Cir. 1988) ("[I]n this circuit issues actually litigated for purposes of a criminal conviction conclusively establish those issues for later federal civil litigation.").

²²⁴ See *Aurora v. Sheely*, No. 16-cv-1358-RSM, 2017 WL 615383, at *3 (W.D. Wash. Feb. 15, 2017) (granting summary judgment for the plaintiff on the issue of liability where the defendant was previously convicted

While civil litigation may provide a path to more substantial recovery, it is also laborious, expensive, and drawn out; victims often do not receive a resolution for years. In addition, the victim may be re-traumatized through the process by having to revisit and discuss traumatic experiences and difficult memories, especially if they have already testified or otherwise participated in the criminal trial.

One way to preserve victims' privacy and avoid further trauma is to proceed anonymously. Although Federal Rule of Civil Procedure 10(a) by default requires that a complaint "name all parties," courts consistently allow litigants to sue under a fictitious name in cases involving child sex trafficking and pornography.²²⁵ Advocates should check local court rules for procedures on filing a motion to proceed pseudonymously.²²⁶

Your role as the victim's attorney in a civil restitution proceeding is the same as in civil litigation generally, but you must proceed with particular sensitivities in mind given the nature of the crime and victim. You also must discuss with your client whether to proceed in federal or state court and how to address certain other legal factors as you prepare to file a civil complaint.

1. Masha's Law (18 U.S.C. § 2255)

One of the primary vehicles for victims of child pornography related crimes to recover damages is known as Masha's Law. Enacted in 2006 and codified at 18 U.S.C. § 2255, the law creates a right of action for victims of certain predicate crimes to recover statutory or actual damages. The law is named after Masha, a young Russian girl who was adopted by a Pittsburgh businessman at the age of five. Over the course of six years, Masha's adoptive father sexually abused her and produced over 200 sexually explicit images of her. Masha's adoptive father was ultimately arrested by the FBI, and Masha was rescued from his abuse. At different points in time, this series has been very widely distributed.²²⁷

Masha's Law was enacted in Masha's name to create a "newly invigorated federal civil remedy for victims of child pornography,"²²⁸ and for victims of other child sex crimes. The law provides victims of child pornography the right to sue anyone who produces, distributes, or possesses their images.²²⁹ It also updates the Child Abuse Victims' Rights Act of 1986 by increasing the minimum civil statutory damages to \$150,000 for each violation.²³⁰ Masha's Law also permits adults who were victims of sexual exploitation as children to sue both those who committed the exploitation and those who perpetuate their exploitation by distributing and

of a criminal offense under a Washington statute that was "the equivalent of the conviction of conduct prohibited by" the civil law).

²²⁵ See, e.g., *Does I thru XXIII v. Advanced Textile*, 214 F.3d 1058, 1068 (9th Cir. 2000); *Doe v. Oshrin*, 299 F.R.D. 100, 105 (D.N.J. 2014).

²²⁶ See also *infra* Part IV.B.2(c).

²²⁷ James R. Marsh, *Masha's Law: A Federal Civil Remedy for Child Pornography Victims*, 61 SYRACUSE L. REV. 459, 460 (2011).

²²⁸ *Id.* at 467.

²²⁹ *Id.* at 461.

²³⁰ *Id.* at 472.

possessing their child sexual abuse images.²³¹ A copy of Masha’s Law can be found in Appendix V.

Victims of qualifying predicate crimes, outlined in Appendix W,²³² can bring suit for damages under section 2255. They need not show that the defendant was actually convicted of the predicate crime or prove beyond a reasonable doubt that the defendant committed the crime. Instead, victims need only show “by a preponderance of the evidence that the defendant committed the acts described in any of the listed offenses.”²³³ Victims may bring an action either (1) within 10 years of the date on which they reasonably discover the latter of the violation or the injury that forms the basis for the claim *or* (2) within 10 years of the victim turning 18 years old.²³⁴ They must also comply with venue and service-of-process rules.²³⁵

After establishing that the plaintiff was the victim of one of the specified predicate crimes, the victim is entitled to recover (1) actual damages or (2) liquidated damages in the amount of \$150,000 per cause of action.²³⁶ This choice is particularly important in cases involving child pornography in which the victim’s image or video was distributed among hundreds, if not thousands, of people. In such instances, victims need not repeatedly prove that they suffered actual damages for each transmittal of the image. Instead, they can choose to recover the \$150,000 lump sum. Victims may also be entitled to recover the cost of the action, including reasonable attorney’s fees and other litigation costs reasonably incurred, as well as punitive damages and such other preliminary and equitable relief as the court deems appropriate.

a) Collateral Estoppel

Collateral estoppel may apply when there has been a prior criminal conviction for the conduct at issue. Under this doctrine, a guilty verdict in a criminal case may be used in a subsequent civil action to prove the facts upon which the verdict was based. For instance, in *Doe v. Cotterman*,²³⁷ the court held that Cotterman was precluded from relitigating his criminal convictions under Masha’s Law in a subsequent civil suit for damages because his violation was

²³¹ *Id.*

²³² There are two additional predicate crimes: 18 U.S.C. § 1589 and 18 U.S.C. § 1590, which prohibit forced labor and trafficking with respect to peonage, slavery, involuntary servitude, or forced labor.

²³³ *Smith v. Husband*, 376 F. Supp. 2d 603, 613 (E.D. Va. 2005); *see also* *Singleton v. Clash*, 951 F. Supp. 2d 578, 584 (S.D.N.Y. 2013); *Doe v. Liberatore*, 478 F. Supp. 2d 742, 755 (M.D. Pa. 2007); Marsh, *supra* note 227, at 474 (“Although these predicate offenses are criminal in nature, a plaintiff need only prove them by a preponderance of the evidence, not the higher beyond a reasonable doubt standard required in criminal prosecutions.”).

²³⁴ 18 U.S.C. § 2255(b)(1)–(2).

²³⁵ *Id.* §§ 2255(c)(1), (2).

²³⁶ 18 U.S.C. § 2255(a). Some courts have grappled with the question of whether Masha’s Law sets “a presumptive floor of \$150,000 for each criminal *violation* or a presumptive floor of \$150,000 for each *cause of action* without regard to the number of alleged violations[.]” *Prewett v. Weems*, 749 F. 3d 454, 456 (6th Cir. 2014). In *Prewett v. Weems*, the Sixth Circuit held that the \$150,000 figure “creates a damages floor for a victim’s cause of action, not for each violation.” *Id.* The court further clarified, however, that “[a]ny victim who proves that her damages against a single defendant exceed the statutory floor will recover the full extent of the damages she suffered, not a penny less.” *Id.* at 462.

²³⁷ No. 17 C 58, 2018 WL 1235014, at *9 (N.D. Ill. Mar. 9, 2018).

litigated in the criminal case and formed the basis of the judgment against him. Because he had a full and fair opportunity to challenge the conviction, his prior conviction could be used to establish a violation of a predicate offense in the civil case. As to a separate count, however, the court, held that it had no basis to preclude litigation of his liability because the conviction did not conclusively establish Doe was a victim for purposes of that separate count.

Conversely, in *Amy v. Anderson*,²³⁸ plaintiffs seeking relief under Masha's Law, based their claims on allegations that Anderson possessed their images (not that he received or distributed child pornography). Anderson had pled guilty to possession of child pornography, but was not charged with and did not plead guilty to possessing images of any particular victim.²³⁹ Thus, Anderson's conviction did not establish that he possessed the plaintiffs' images, and plaintiffs were required to prove that they themselves were victimized by Anderson's conduct.

Note that where the criminal findings are not sufficient to establish civil liability as to a particular victim, the plaintiff will need to prove the elements of the underlying crime.²⁴⁰ Elements of predicate crimes are listed in Appendix W. For civil cases, the plaintiff must prove that the defendant (1) knowingly possessed or distributed images, (2) of the plaintiff, and (3) that the images constitute child pornography.

b) Elements to Prove

(1) Knowledge Requirement

Many of the predicate statutes for Masha's Law contain a scienter or knowledge element. The following cases demonstrate the knowledge requirement in child pornography cases to keep in mind when building a civil case:

- ***United States v. Smith*, 910 F.3d 1047 (8th Cir. 2018).** The court held that, although the government failed to prove knowing distribution beyond a reasonable doubt at trial, its burden at sentencing was to prove knowledge only by a preponderance of the evidence. The court found by a preponderance of the evidence that Smith knowingly engaged in the distribution of child pornography because he admitted that he was a sophisticated user of a file-sharing computer program, knew the program automatically shared child pornography images saved to the shared folder, and used programs designed to shred incriminating files. Further, despite extensive shredding, the forensic evidence showed a substantial number of child pornography files in the shared folder.
- ***United States v. Figueroa-Lugo*, 793 F.3d 179 (1st Cir. 2015).** The court held that the evidence was sufficient to establish that Figueroa knowingly possessed child pornography found on his computer. The court rejected all of Figueroa's arguments: (1) that none of the witnesses at trial could scientifically establish that he purposely

²³⁸ No. 5:16-CV-212 (MTT), 2018 WL 2768876, at *3 (M.D. Ga. June 8, 2018).

²³⁹ *Amy v. Anderson* is yet another case that highlights the importance of working with the prosecutor to craft indictments and plea agreements that use open language and include all relevant images. These issues will be discussed in greater detail in Part IV.G.

²⁴⁰ A list of the criminal findings that transfer over to a civil case can be found in 18 U.S.C. § 2255.

intended to download child-related pornography, and that any child pornography he did download was inadvertent; (2) that the seven videos and 18 images were only partially downloaded and were therefore inaccessible; (3) that whenever he inadvertently downloaded child pornography he deleted it; (4) that anti-virus software on his computer would have accessed and modified any child pornography on his computer; (5) that he allowed several other people to access his computer and any of them could have downloaded the child pornography; and (6) the government failed to establish that images depicted actual children.

- ***United States v. Pruitt*, 638 F.3d 763 (11th Cir. 2011).** The court held that the evidence was sufficient to establish that Pruitt “knowingly received” child pornography on his work and home computers because he (1) searched and viewed child pornography images on his work server without a job-related need to do so and admitted he knew the files contained child pornography images but opened them out of “curiosity and stupidity”; (2) had about 70 child pornography images on his home computer cache and over 200 images in the computer’s unallocated space; and (3) used search terms related to child pornography and visited websites with a child pornography connection under his own “HP Administrator” account. The court also noted that “[e]vidence that a person has sought out—and searched for—child pornography on the internet and has a computer containing child pornography images . . . can count as circumstantial evidence that a person has ‘knowingly received’ child pornography.”²⁴¹ Under the knowledge element, an intentional viewer of child pornography images sent to his computer may be convicted whether or not he saves the images to a hard drive, edits them, or otherwise exerts more control over them.

(2) Proof of the Victim’s Identity Requirement

The predicate statutes also require that you prove the identity of the victim pictured in the image. This can be accomplished by authenticating under the Federal Rules of Evidence to establish that the person is whom you purport them to be.²⁴² While you could call your client to identify him or herself in the images, such testimony is not advised (or required). Instead, you need only call a witness who knows the minor and can testify that the minor depicted in the images is that same person.²⁴³ Typically, this testimony is provided by the investigating law enforcement agent who originally identified the victim or another point of contact for that victim’s images or series. In some cases, the original investigating law enforcement agency can provide an affidavit confirming the child’s identity. In other cases, it may be necessary for the law enforcement agent contact to testify in court, an occurrence that should be planned for well in advance.

²⁴¹ *United States v. Pruitt*, 638 F.3d 763, 766 (11th Cir. 2011).

²⁴² *See* FED. R. EVID. 901.

²⁴³ *See United States v. McNair*, 439 F. Supp. 103, 105 (E.D. Pa. 1977), *aff’d*, 571 F.2d 573 (3d Cir. 1978) (finding that “the requirement for authentication may be satisfied by testimony of a witness with knowledge that a photograph is what it is claimed to be” (citing *United States v. Hobbs*, 403 F.2d 977, 978–79 (6th Cir. 1968))).

(3) Establishing that the Images Constitute Child Pornography

The final element you must establish is that the images are in fact child pornography. This can be done by expert testimony or by entering the images into evidence and arguing that the content qualifies as child pornography.²⁴⁴ As described below, it may also be possible to use evidence from the criminal case to prove the child pornography element.

c) Chain of Custody

Establishing that the defendant in fact possessed the particular images in question often involves chain-of-custody issues.²⁴⁵ In order to prove chain of custody, attorneys could consider serving a subpoena on the federal agent who originally seized the evidence, but that process would be extremely time-consuming. In addition, federal agents are subject to *Touhy* laws, which impose strict restrictions on their ability to participate in civil litigation.²⁴⁶ Alternatively, attorneys can rely on a business records affidavit from NCMEC, which will be based on the distribution reports that NCMEC can produce, to establish that a certain offender had possession of a series of images.

You can also review the public docket to determine whether an agent's search warrant or complaint affidavits are available. This may be sufficient to establish chain of custody. Another option is to move for access to grand jury materials that may establish chain of custody (and that the images recovered in fact constitute child pornography). Before pursuing this strategy, you should contact the prosecutor to obtain confirmation that the grand jury material (i.e., the testimony of the agent in front of the grand jury) would include relevant testimony. If the necessary material does exist, that material may be disclosed with good cause shown.²⁴⁷ A request for disclosure of

²⁴⁴ A person is guilty of the crime of producing child pornography if (1) that person employs, uses, persuades, induces, entices, or coerces a minor to take part in sexually explicit conduct for the purpose of producing a visual depiction of that conduct and (2) that visual depiction was produced using materials that had been transported in interstate or foreign commerce. 18 U.S.C. § 2251(a); *see* United States v. Laursen, 847 F.3d 1026, 1032 (9th Cir. 2017); United States v. Sheldon, 755 F.3d 1047, 1049 (9th Cir. 2014); *see also* United States v. Dost, 636 F. Supp. 828, 832 (S.D. Cal. 1986), *aff'd sub nom.* United States v. Wiegand, 812 F.2d 1239 (9th Cir. 1987) (establishing a six-factor test frequently applied when interpretation is necessary to determine whether a particular depiction meets the definition of "sexually explicit conduct" and ultimately child pornography).

²⁴⁵ If evidence is an object connected with the commission of a crime, the proponent must establish the chain of custody. United States v. Harrington, 923 F.2d 1371, 1374 (9th Cir. 1991). "[T]he purpose of the chain of custody rule is to insure that the item offered into evidence is in substantially the same condition as it was at the time the proponent of the evidence came into its possession." United States v. Craig, 573 F.2d 455, 478 (7th Cir. 1977).

²⁴⁶ Federal agents are generally prohibited from producing official records and information or providing testimony relating to official information without prior approval of the appropriate government official. *See* 28 C.F.R. § 16.22; United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951). Relevant factors that officials may consider in determining whether to make disclosures pursuant to a demand include, among other considerations, whether (1) the administration of justice requires disclosure; (2) disclosure is appropriate under the relevant rules of procedure and law governing privilege; and (3) disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or improperly reveal classified information or trade secrets. 28 C.F.R. § 16.26.

²⁴⁷ FED. R. CRIM. P. 6(e)(3)(E)(i). Disclosure of a grand jury matter requires court approval upon a showing of particularized need. United States v. Procter & Gamble Co., 356 U.S. 677, 682 (1958). "Parties seeking grand jury [materials] . . . must show that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is

material must be directed towards the court in the district where the grand jury was convened.²⁴⁸ The petitioner must serve written notice of the petition upon the attorney for the government, the parties to the judicial proceeding in which the materials are sought, and any other persons the court may designate.²⁴⁹ Additionally, the court must provide the persons notified with a reasonable opportunity to be heard.²⁵⁰

Finally, some practitioners have attempted to establish chain of custody by way of expert testimony. Specifically, an expert may review the NCMEC report and establish by pattern and practice that the images contained in the report had been found and documented in the way established by the report. Experts may rely on hearsay evidence in forming their opinions,²⁵¹ but they must satisfy the standards under *Daubert* for admissible expert testimony.²⁵² This approach is novel and it may be difficult to establish that the proposed testimony is properly considered “expert” testimony.

In sum, seeking civil remedies can be a viable option for potentially large judgments, but you should consider the accessibility of the evidence needed to establish the elements, as well as whether the defendant has assets, and the potential barriers to recovery before embarking on this potentially lengthy and arduous path for the client.

Attached as Appendices X and Y are a sample civil complaint and motions for summary judgment.

structured to cover only material so needed.” *Douglas Oil Co. of Cal. v. Petrol Stops Nw.*, 441 U.S. 211, 222–23 (1979). “Such a showing must be made even when the grand jury whose [materials] are sought has concluded its operations.” *Id.* at 222. Further, “disclosure is appropriate only in those cases where the need for it outweighs the public interest in secrecy, and [] the burden of demonstrating this balance rests upon the private party seeking disclosure.” *Id.* at 223.

²⁴⁸ FED. R. CRIM. P. 6(e)(3)(F). “If the petition to disclose arises out of a judicial proceeding in another district, the petitioned court must transfer the petition to the other court unless the petitioned court can reasonably determine whether disclosure is proper.” FED. R. CRIM. P. 6(e)(3)(G). “If the petitioned court decides to transfer, it must send to the transferee court the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand-jury secrecy.” *Id.* “The transferee court must afford those persons identified in Rule 6(e)(3)(F) a reasonable opportunity to appear and be heard.” *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *United States v. Mejia*, 545 F.3d 179, 197 (2d Cir. 2008); *United States v. Slocum*, No. CR 01-938(E) DOC, 2007 WL 5673959, at *2 (C.D. Cal. Feb. 6, 2007).

²⁵² An expert witness may not simply transmit hearsay to the jury. *Mejia*, 545 F.3d at 197. “When an expert is no longer applying his extensive experience and a reliable methodology, *Daubert* teaches that the testimony should be excluded.” *United States v. Dukagjini*, 326 F.3d 45, 54 (2d Cir. 2003).

2. Civil Remedies Under the Trafficking Victims Protection Reauthorization Act (18 U.S.C. § 1595)

The Trafficking Victims Protection Reauthorization Act of 2003, 18 U.S.C. § 1595 (TVPRA), established a federal civil right of action for victims of TVPA violations.²⁵³ The Act permits the recovery of damages and reasonable attorney's fees,²⁵⁴ as well as punitive damages.²⁵⁵ The victim may bring a cause of action against not only the perpetrator of the violation, but also "whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation" of the TVPA.²⁵⁶ Any civil action brought under 18 U.S.C. § 1595 is stayed pending the final outcome of any criminal action based on the same violation.²⁵⁷

As noted in Part II.D.3, the TVPA is likely inapplicable to child pornography cases absent special factual circumstances. All cases involving a damages award under the TVPRA appear to involve child sex trafficking,²⁵⁸ but there is at least a colorable argument that victims of child pornography are covered by the various provisions of the TVPA and all of its reauthorizations.

G. STATE LAW STATUTORY SCHEMES

Every state has a statutory scheme that criminalizes the knowing and/or intentional creation, possession, and distribution of child pornography. Most states define the victim of the crime of child pornography as any person under the age of 18 years old. However, other states specify the victim as any person under the age of 17 or 16 years old.²⁵⁹ Some states distinguish between victims of different age groups, with different violations or punishments applicable to

²⁵³ 18 U.S.C. § 1595. The TVPRA also added human trafficking to the list of predicate crimes under the Racketeering Influenced Corrupt Organizations (RICO) statute. *See* 18 U.S.C. § 1961(1).

²⁵⁴ 18 U.S.C. § 1595(a).

²⁵⁵ *Ditullio v. Boehm*, 662 F.3d 1091, 1096 (9th Cir. 2011).

²⁵⁶ 18 U.S.C. § 1595(a). Note that the civil remedy provision has been held not to apply retroactively to conduct occurring before its enactment in 2003. *See Velez v. Sanchez*, 693 F.3d 308, 325 (2d Cir. 2012); *Ditullio*, 662 F.3d at 1099–1100. In addition, attorneys should note that there is a ten-year statute of limitations on civil claims under the TVPRA. 18 U.S.C. § 1595(c)(1) ("No action may be maintained under this section unless it is commenced not later than 10 years after the cause of action arose."). If the victim was a minor at the time of the alleged offense, a civil action must be brought within 10 years of the victim's eighteenth birthday. *Id.* § 1595(c)(2).

²⁵⁷ *Id.* § 1595(b).

²⁵⁸ *See, e.g., M.A. v. Village Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1043–44 (E.D. Mo. 2011) (explaining that, in related action, defendant who pled guilty to criminal charges was sentenced to pay restitution in the amount of \$16,830.18 plus additional costs under the TVPA because "she photographed [the victim] displaying private body parts in sexual pornographic poses; she posted this child pornography . . . ; [and] she transported [the victim] for the purposes of multiple sexual liaisons for money with adult male customers").

²⁵⁹ *See* ALA. CODE § 13A-12-190(16) (less than 17 years old); CONN. GEN. STAT. § 53a-193(2) (less than 16 or 17 years old, depending on applicable statute); LA. STAT. ANN. § 14:81.1 (less than 17 years old); N.Y. PENAL LAW § 263.00 (less than 16 or 17 years old, depending on applicable statute); VT. STAT. ANN. tit. 13, § 2821 (less than 16 years old).

each age group.²⁶⁰ One state—North Dakota—does not even define the terms “child” or “minor” by statute.²⁶¹ Attached as Appendix Z is a chart documenting each state’s definition of a victim of child pornography.

1. State Law Criminal Restitution

Some states have statutes expressly providing for the payment of restitution to victims of child pornography crimes.

For example, Illinois’ criminal restitution statute provides that the court may order anyone who commits a child pornography crime (addressed in a separate statute) to pay “all or any portion of the financial obligations of treatment, including but not limited to medical, psychiatric, or rehabilitative treatment or psychological counseling, prescribed for the victim or victims of the offense.”²⁶²

Similarly, West Virginia law provides that, in addition to any restitution that may be ordered, the court may also order any person convicted of a child pornography offense to pay for “all or any portion of the cost of medical, psychological or psychiatric treatment of the minor” resulting from the crime, regardless of whether the minor sustained bodily injury.²⁶³

Likewise, Texas law provides that a court may order someone convicted of a child pornography crime to make restitution to a victim depicted in the material (if he or she was less than 18 years old) in an amount sufficient to cover expenses incurred by the individual arising from the offense, including: (1) medical services relating to physical, psychiatric, or psychological care; (2) physical and occupational therapy or rehabilitation; (3) necessary transportation, temporary housing, and child care expenses; (4) lost income; and (5) attorney’s fees.²⁶⁴

In other states, courts have applied general criminal restitution statutes to child pornography crimes and held that restitution is available in such cases.²⁶⁵ For example, in *State v.*

²⁶⁰ See, e.g., CONN. GEN. STAT. § 53a-193 (less than 17 years old vs. less than 16 years old); GA. CODE ANN. §§ 16-12-100, 16-12-100.2 (less than 18 years old vs. less than 16 years old); IND. CODE § 35-42-4-4 (less than 18 years old vs. less than 12 years old); KY. REV. STAT. ANN. § 531.310 (less than 18 years old vs. less than 16 years old); ME. STAT. tit. 17-A, §§ 281, 284 (less than 16 years old vs. less than 12 years old); MO. REV. STAT. § 573.010 (less than 18 years old vs. less than 14 years old); NEB. REV. STAT. § 28-1463.02(1) (less than 18 years old vs. less than 16 years old); N.Y. PENAL LAW § 263.00 (less than 17 years old vs. less than 16 years old).

²⁶¹ See N.D. CENT. CODE § 12.1-27.2-01.

²⁶² 730 ILL. COMP. STAT. 5/5-5-6(g) (citing 720 ILL. COMP. STAT. 5/11-1.20 *et seq.*).

²⁶³ W. VA. CODE § 61-8C-4.

²⁶⁴ TEX. CODE CRIM. PROC. ANN. art. 42.037(r).

²⁶⁵ See, e.g., *State v. Petty*, 925 N.W.2d 190, 197 (Iowa 2019) (vacating and remanding district court order that defendant pay restitution “due immediately” for failing to take into account the defendant’s reasonable ability to pay); *State v. Fussell*, 974 So. 2d 1223, 1238 (La. 2008) (remanding the trial court’s order for restitution to specify for which counts of possession of child pornography the restitution was being imposed); *Commonwealth v. Molina*, 71 N.E.3d 117, 136 (Mass. App. Ct. 2017) (vacating the trial court’s denial for a hearing on restitution and remanding to determine whether the interest in excluding the child pornography victim was greater than the defendant’s interest in calling her as a witness); *State v. Tarlo*, 887 N.W.2d 898, 904 (Wis. Ct. App. 2016) (denying the mother of the

Velezmoro, the Court of Appeals of Washington held that Washington’s restitution statute applied to the offense of possession of child pornography, even though the statute was separate from the state’s child pornography laws.²⁶⁶ The court reasoned that the restitution statute was not limited to specific crimes and that the state’s child pornography laws were intended to protect children from the harms of sexual exploitation and abuse.²⁶⁷

In another case, *State v. Adams*, the Court of Appeals of Oregon found that the trial court did not err in ordering the defendant to pay a “compensatory fine”²⁶⁸ when the evidence showed that the victim’s damages were caused by the defendant’s child pornography crime.²⁶⁹

At least one state (California) allows the court to order the defendant in a child pornography case to pay a “restitution fine” (not to exceed \$5,000 for felonies and \$1,000 for misdemeanors) to a fund for the purposes of child abuse prevention.²⁷⁰ The California Legislature passed a bill in 1983 that grants each county in the state the authority to establish its own County Children’s Trust Fund (CCTF). Each county that elects to create its own fund must establish a board of supervisors for the fund, which then must create a commission that is responsible for managing the local county fund. Each county’s board can set its own criteria for determining which programs are given the funds.²⁷¹ The money must be used to fund child abuse and neglect prevention and intervention programs operated by private nonprofit organizations or public institutions of higher education with recognized expertise in fields related to child welfare.²⁷² The money pooled for these grant programs cannot be used to fund individual restitution awards.

Attached as Appendix AA is a chart documenting the criminal restitution rules in each state.

When considering the availability of restitution at the state level, it is important to keep the interplay between state and federal restitution (particularly the AVAA’s one-time \$35,000 payout) in mind.²⁷³ The text of the AVAA provides that “[a] court may not decline to issue an order under this section because of the economic circumstances of the defendant; or the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any

child victim restitution because she failed to establish the requisite causation between her lost income and the defendant’s viewing and possession of the pornography).

²⁶⁶ *State v. Velezmoro*, 384 P.3d 613, 662–63 (Wash. Ct. App. 2016).

²⁶⁷ *Id.*

²⁶⁸ *See* OR. REV. STAT. § 137.101(1) (“Whenever the court imposes a fine as a penalty for the commission of a crime resulting in injury for which the person injured has a remedy by civil action . . . the court may order that the defendant pay any portion of the fine separately to the clerk of the court as compensatory fines in the case. *The clerk shall pay over to the injured victim or victims . . . moneys paid to the court as compensatory fines under this subsection.*” (emphasis added)).

²⁶⁹ *State v. Adams*, 400 P.3d 947, 950–51 (Or. Ct. App. 2017).

²⁷⁰ CAL. PENAL CODE § 294.

²⁷¹ CAL. WELF. & INST. CODE § 18967.

²⁷² *Id.*

²⁷³ As of the publication of this Manual, there do not appear to be any cases that have definitively determined whether state relief would or may be subtracted from the AVAA’s \$35,000 one-time payout.

other source.”²⁷⁴ While this sounds like a court may not look to the potential interplay between state and federal restitution relief, some scholars have suggested that a reading of the AVAA together with 18 U.S.C. § 3664 dictates that “the amount paid to a victim under a restitution order must be reduced by any amount recovered as compensatory damages for the same loss in a federal civil proceeding and any state civil proceeding, to the extent provided by that state’s law.”²⁷⁵ In cases where a victim has received compensation for the same loss from insurance or another source and all restitution required by an order has been paid, these scholars suggest that the court shall order that restitution be paid to the provider of the compensation.²⁷⁶

2. State Law Civil Remedies

Several states have statutes expressly allowing the victims of child pornography crimes to bring civil actions against perpetrators. As examples:

- **Florida, Kansas, and Oklahoma.** These states allow any person who was a victim of a child pornography crime that resulted in a personal or psychological injury to bring a civil action against the perpetrator, even if the victim is now an adult.²⁷⁷ In each of these states, a prevailing plaintiff is entitled to recover his or her actual damages plus the costs of the lawsuit, including reasonable attorney’s fees.²⁷⁸ In Oklahoma, the prevailing plaintiff is also entitled to special and punitive damages.²⁷⁹ In Florida and Kansas, any victim awarded damages is deemed to have sustained damages of at least \$150,000.²⁸⁰
- **South Dakota.** In South Dakota a victim can bring a civil action for damages against a person who commits a child pornography crime and may recover a wide variety of pecuniary and nonpecuniary damages, as well as exemplary damages, attorney’s fees, and disbursements.²⁸¹
- **New Jersey.** In New Jersey a victim can bring a civil action against a person who commits one or more of a variety of child pornography crimes.²⁸² If the plaintiff prevails, the court must award recovery of “three times the amount of damages

²⁷⁴ 18 U.S.C. § 2259(b)(4)(B).

²⁷⁵ Tsachi Keren-Paz & Richard W. Wright, *Liability for Mass Sexual Abuse*, 56 AM. CRIM. L. REV. 185, 192 (2019) (citing 18 U.S.C. § 3664(j)).

²⁷⁶ *Id.*; see also *supra* note 273.

²⁷⁷ FLA. STAT. § 847.01357(1); KAN. STAT. ANN. § 60-5001(a); OKLA. STAT. tit. 21, § 1040.56(A).

²⁷⁸ See FLA. STAT. § 847.01357(1); KAN. STAT. ANN. § 60-5001(b); OKLA. STAT. tit. 21, § 1040.56.

²⁷⁹ OKLA. STAT. tit. 21, § 1040.56.

²⁸⁰ FLA. STAT. § 847.01357(a); KAN. STAT. ANN. § 60-5001(b).

²⁸¹ S.D. CODIFIED LAWS §§ 22-24A-8, 22-24A-10.

²⁸² N.J. STAT. ANN. § 2A:30B-3(a).

consisting of financial gains to the defendant resulting from the [proscribed] conduct . . . together with full costs and reasonable attorney’s fees.”²⁸³

- **Minnesota and Washington.** These states have statutes expressly allowing victims of child pornography crimes to bring civil actions.²⁸⁴

Attached as Appendix BB is a chart documenting the civil remedy for child pornography in each state.

3. State-Sponsored Relief

In several states (Florida, Connecticut, New Mexico, Louisiana, Texas, and Wisconsin), the government may award victims of certain child pornography crimes compensation for counseling and other mental health services to treat psychological injury or trauma.²⁸⁵ Such compensation is not contingent upon a criminal investigation or prosecution.²⁸⁶ However, for the victim to qualify for an award, the crime must have directly resulted in personal, psychiatric, or psychological injury to, or death of, the victim or intervenor.²⁸⁷ In addition, the crime must have been promptly reported to the proper authorities.²⁸⁸ Any such award is granted on an “actual need” basis and is a payment of “last resort,” provided only after other sources are exhausted.²⁸⁹

Arizona, Idaho, Kentucky, New Jersey, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, and West Virginia also have similar programs for victims who suffered physical or emotional injury as a direct result of a crime.²⁹⁰

New Hampshire and Washington have similar programs for victims when the crime committed constituted a felony.²⁹¹

H. COPYRIGHT LAW

In cases where a victim’s images are being distributed online, copyright law may provide an additional, though difficult, path to recovery. It is important to note from the outset that there

²⁸³ *Id.* § 2A:30B-3(b).

²⁸⁴ MINN. STAT. § 617.245; WASH. REV. CODE § 9.68A.130.

²⁸⁵ FLA. STAT. § 960.197; *see also* CONN. GEN. STAT. § 54-201 *et seq.*; LA. STAT. ANN. § 46:1802 *et seq.*; N.M. STAT. ANN. § 31-22-3 *et seq.*; TEX. CODE CRIM. PRO. ANN. art. 56b.001 *et seq.*; WIS. STAT. § 949.01 *et seq.*

²⁸⁶ *See, e.g.*, FLA. STAT. § 960.197(2).

²⁸⁷ *See, e.g.*, FLA. STAT. § 960.13(1)(a).

²⁸⁸ *See, e.g., id.*

²⁸⁹ *See, e.g., id.* § 960.13(2), (3).

²⁹⁰ ARIZ. REV. STAT. ANN. § 41-2407; IDAHO CODE § 19-5304; KY. REV. STAT. ANN. § 421.500; N.J. STAT. ANN. § 52:4B-2; OR. REV. STAT. § 147.005; 18 PA. CONS. STAT. § 11.103; S.C. CODE ANN. § 16-3-1110; TENN. CODE ANN. § 29-13-104; UTAH CODE ANN. § 63M-7-502; VT. STAT. ANN. tit. 13, § 5451 *et seq.*; VA. CODE ANN. § 19.2-368.2; W. VA. CODE § 14-2A-1.

²⁹¹ N.H. REV. STAT. ANN. § 21-M:8-h; WASH. REV. CODE § 7.68.020.

are some inherent difficulties with this novel approach to recovery. Survivors who self-produced CSAM are the most likely to make out a viable claim for relief under copyright law.

1. Potential Legal Remedies Under Copyright Law

The Copyright Act of 1976 provides that original works of authorship, including pictorial, graphic, and sculptural works, fixed in any tangible medium of expression are subject to copyright protection.²⁹² The copyright protection vests in the author of the work—in terms of pictures or videos, this would be the photographer or videographer.²⁹³ Consequently, in cases involving child pornography where the offender is the individual taking photos or videos of the victim, the offender owns the copyright to those images. Copyright law could remedy this injustice if construed to transfer ownership of the copyright from the offender to the victim in cases of CSAM, giving the victim control over his or her image. While a novel, untested theory, this potential legal remedy has been discussed among victim rights’ lawyers as a strategy to provide victims of CSAM remedies that otherwise are unavailable.²⁹⁴ However, there are two hurdles victims must clear before having access to a copyright remedy.

First, victims seeking to recover under copyright law should be prepared to argue that, as an initial matter, CSAM *is* copyrightable.²⁹⁵ The prevailing view is that “even illegality is not a bar to copyrightability,”²⁹⁶ including when the content is obscene.²⁹⁷ However, at least one court has refused to recognize copyright protection for child pornography, reasoning that, unlike obscenity, which depends on community standards that may vary, the production and distribution of child pornography “is prohibited by federal law—a single, national standard.”²⁹⁸

²⁹² 17 U.S.C. § 102(a).

²⁹³ U.S. Copyright Office, *Copyright Registration of Photographs*, at 1 (2018), <https://www.copyright.gov/circs/circ42.pdf>; *see, e.g.*, *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989) (“As a general rule, the author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection.”); *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 60 (1884) (holding that photographers are the authors of the pictures they take).

²⁹⁴ There may be pushback from courts, copyright academics, and practitioners based on the precedent that may be set. However, using this tactic to transfer a property interest in child pornography is supported by an analogy to the government’s regular seizure of illegal contraband.

²⁹⁵ *See Malibu Media, LLC v. Doe*, No. 13 C 3648, 2014 WL 2581168, at *4 (N.D. Ill. June 9, 2014) (The Court was “not prepared to say that federal copyright law would permit one who has produced child pornography . . . to enforce a copyright relating to such material.”); *cf. Belcher v. Tarbox*, 486 F.2d 1087, 1088 (9th Cir. 1973) (“There is nothing in the Copyright Act to suggest that the courts are to pass upon the truth or falsity, the soundness or unsoundness, of the views embodied in a copyrighted work.”).

²⁹⁶ *Flava Works, Inc. v. Gunter*, 689 F.3d 754, 755 (7th Cir. 2012).

²⁹⁷ *Id.*; *Jartech, Inc. v. Clancy*, 666 F.2d 403, 406 (9th Cir. 1983); *Mitchell Bros. Film Grp. v. Cinema Adult Theater*, 604 F.2d 852, 858 (5th Cir. 1979); *see also Malibu Media, LLC v. Zumbo*, No. 2:13-cv-729-JES-DNF, 2014 WL 2742830, at *4 (M.D. Fla. June 17, 2014) (adopting prevailing view in context of child pornography).

²⁹⁸ *Malibu Media*, 2014 WL 2581168, at *4; *see also Devils Films, Inc. v. Nectar Video*, 29 F. Supp. 2d 174, 176 (S.D.N.Y. 1998) (“Once a court has determined that copyrighted material is obscene, there seems no reason to require it to expend its resources on behalf of a plaintiff who it could as readily be trying for a violation of the federal criminal law.”).

Second, the copyright property right may need to be transferred from the offender to the victim. The owner of a copyright is typically the author of the image.²⁹⁹ Therefore, the image or video's copyright holder is usually the producer of the child pornography. However, if the image is found to be a work made for hire, the person for whom the work is prepared is considered the author even if someone else created the image.³⁰⁰ Thus, before seeking a copyright transfer, the circumstances of image creation should be reviewed for any work made for hire implications.³⁰¹ While it is unlikely the offender would challenge the issuance of the copyright, as a technical matter you may need to seek a transfer of the ownership of the copyright from the offender.

Copyright transfers can be part of a plea agreement, but not sentencing. To transfer a copyright, a contract or conveyance is needed between the owner of the copyright and the transferee—in this case the victim.³⁰² These transfers do not need to be registered with the U.S. Copyright Office. However, these transfers cannot be forced by “any governmental body or organization.”³⁰³ This means that a judge cannot order the transfer of a copyright as part of an offender's sentence.

If the victim is granted the copyright, the victim would have a host of remedies as the copyright holder to protect his or her rights including the right to sue for damages for copyright infringement and takedown remedies under the Digital Millennium Copyright Act of 1998 (DMCA). Registration of the copyright is required for civil infringement actions but not for the initial DMCA takedown notice.³⁰⁴ In general, a copyright infringer is liable for either “the copyright owner's actual damages and any additional profits of the infringer,” or “statutory damages.”³⁰⁵ However, damages awarded for activity preceding the transfer of the copyright may be nominal.

“Actual damages” for copyright infringement “are usually determined by the loss in the fair market value of the copyright, measured by the profits lost due to the infringement *or* by the

²⁹⁹ 17 U.S.C. § 201(a). Copyright ownership immediately vests with the creation of the work. Registration is not required for copyright ownership.

³⁰⁰ *Id.* § 201(b). The Supreme Court has not adopted a strict employee-employer relationship. When determining if a work was made for hire, agency principles apply and independent contractor relationships can qualify.

³⁰¹ U.S. Copyright Office, *Works Made for Hire* (2017), <https://www.copyright.gov/circs/circ30.pdf>. Possible implications of the work made for hire doctrine include delays if the transfer is sought from the wrong party and plea agreements in exchange for transfer with a party that does not actually have ownership of the copyright.

³⁰² *See* 17 U.S.C. § 201(d).

³⁰³ 17 U.S.C. § 201(e) (“When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title.”); *see also* Alice Haemmerli, *Take It, It's Mine: Illicit Transfers of Copyright by Operation of Law*, 63 WASH. & LEE L. REV. 1011, 1029 (2006) (reasoning that Congress's decision to make 17 U.S.C. § 201(e) applicable to governmental bodies means that a judicial decision to transfer an author's copyright without consent would generally violate § 201(a)).

³⁰⁴ 17 U.S.C. § 411(a). Alternatively, the DMCA requires only that the complaining party be the copyright owner or someone authorized to act on the owner's behalf. 17 U.S.C. § 512(c)(3).

³⁰⁵ 17 U.S.C. § 504(a)(1)–(2).

value of the use of the copyrighted work *to the infringer*.”³⁰⁶ In order to recover actual damages, the plaintiff must establish “a causal link between the infringement and the monetary remedy sought,” which “is akin to tort principles of causation and damages.”³⁰⁷ Once the plaintiff establishes causation, the burden shifts to the infringer to show “that the damage would have occurred had there been no taking of copyrighted expression.”³⁰⁸

The Copyright Act defines statutory damages “for all infringements involved in the action” as “a sum of not less than \$750 or more than \$30,000 as the court considers just.”³⁰⁹ Courts have wide discretion in setting the amount of statutory damages.³¹⁰ Factors that a court generally considers in determining the amount of statutory damages include: “(1) the infringer’s blameworthiness (willful, knowing, or innocent); (2) the expenses saved and the profits reaped by the defendants in connection with the infringement; (3) the revenues lost by the plaintiffs due to the defendants’ conduct; and (4) the deterrent value of the damages imposed.”³¹¹ If the infringement was committed willfully, “the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000.”³¹² To prove that the infringement was willful, the plaintiff must show “(1) that the defendant was actually aware of the infringing activity, or (2) that the defendant’s actions were the result of ‘reckless disregard’ for, or ‘willful blindness’ to, the copyright holder’s rights.”³¹³ Punitive damages, however, are not available in copyright infringement suits.³¹⁴

The court may also in its discretion award the victim his or her full costs and/or reasonable attorney’s fees as the prevailing party.³¹⁵ In a copyright infringement suit, “[t]here is no precise rule or formula for making [the determination to award attorney’s fees,] but instead equitable discretion should be exercised[.]”³¹⁶ Factors that a court should consider in determining whether to award attorney’s fees in a copyright infringement suit include “frivolousness, motivation, objective unreasonableness, . . . and the need in [the] particular circumstances to advance consideration of compensation and deterrence[.]”³¹⁷

³⁰⁶ *Polar Bear Prods., Inc. v. Timex Corp.*, 384 F.3d 700, 708 (9th Cir. 2004) (emphasis added).

³⁰⁷ *Id.* Note that it may be challenging to prove the causation element required for actual damages if the offender was the holder of the right up until the time of transfer, resulting in a nominal damage award.

³⁰⁸ *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 541 (1985).

³⁰⁹ 17 U.S.C. § 504(c)(1).

³¹⁰ *Broadcast Music, Inc. v. Evie’s Tavern Ellenton, Inc.*, 772 F.3d 1254, 1260–61 (11th Cir. 2014).

³¹¹ *Id.* at 1261.

³¹² 17 U.S.C. § 504(c)(2).

³¹³ *Island Software & Comput. Serv., Inc. v. Microsoft Corp.*, 413 F.3d 257, 263 (2d Cir. 2005). Note that proving willfulness prior to the transfer of the right to the victim is unlikely because the activity was not infringing at the time it occurred.

³¹⁴ *Budget Cinema, Inc. v. Watertown Assocs.*, 81 F.3d 729, 733 (7th Cir. 1996).

³¹⁵ 17 U.S.C. § 505.

³¹⁶ *Broadcast Music, Inc.*, 772 F.3d at 1261 (quoting *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 (1994)).

³¹⁷ *Id.* (quoting *Fogerty*, 510 U.S. at 534 n.19).

Victims as copyright holders also have a unique takedown remedy available to them under the DMCA.³¹⁸ Congress passed the Act with the goal of clarifying “the liability faced by service providers who transmit potentially infringing material over their networks.”³¹⁹ Under the Act, victims can “demand that Internet Service Providers (‘ISPs’) notify the infringer, take down the images, or lose the safe harbor protections of the [] Act.”³²⁰ Takedown notices under the DMCA can also be used to de-index images from search engines.³²¹ If the ISP does not do so, it may be liable for monetary relief,³²² including damages, costs, and attorney’s fees.³²³ This protection helps victims by giving them more autonomy over their images.³²⁴ However, seeking monetary relief requires victims to bring an enforcement action, which may require registration of the copyright.³²⁵ Also note that the victim’s “takedown notification” must comply with several requirements in order to trigger the ISP’s duty to take down the infringing material.³²⁶

Practitioners view copyright claims as a beneficial option to assist with takedown requests and obtain additional monetary recovery for their clients, particularly where they have previously received restitution orders in the criminal case. DMCA remedies provide a compliment to monetary damages by providing a mechanism for removing images that exist online. However, there are numerous hurdles that must be considered before bringing a copyright-based claim (and weighing strategies against the more direct potential relief available in a civil suit bought under Masha’s Law), as will be discussed in the following Part.

2. Potential Hurdles to a Copyright Remedy

a) Abandonment

Abandonment of a copyright requires “an intent by the copyright proprietor to surrender rights in his work,” demonstrated by “either an act, or a failure to act, from which [the court] can

³¹⁸ Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (1998). The DMCA amended various provisions of Title 17 of the United States Code, including section 512 (amended by section 202 of the DMCA).

³¹⁹ Capitol Records, LLC v. Vimeo, LLC, 826 F.3d 78, 82 (2d Cir. 2016) (quoting S. REP. NO. 105-190, at 2 (1998)).

³²⁰ Binford et al., *supra* note 157, at 153 (citing section 202 of the DMCA); *see also* Lenz v. Universal Music Corp., 815 F.3d 1145, 1151 (9th Cir. 2015) (discussing takedown remedy against ISPs under the DMCA).

³²¹ 17 U.S.C. § 512(d).

³²² *Id.*

³²³ *Id.* §§ 512(c)(1), (k)(2).

³²⁴ Binford et al., *supra* note 157, at 154.

³²⁵ While some courts have held the registration requirement in 17 U.S.C. § 411(a) applies to civil actions brought to enforce DMCA remedies, others have indicated that this requirement is at least not jurisdictional and thus can be waived. *See* Krechmer v. Tantaros, 747 F. App’x 6, 9 (2d Cir. 2018) (“plaintiff correctly argues that the copyright registration requirement imposed by 17 U.S.C. § 411(a) is not a 12(b)(1) jurisdictional bar to a DMCA action”); Schenck v. Orosz, No. 3:13-CV-0294, 2013 WL 5963557, at *10 (M.D. Tenn. Nov. 7, 2013) (“[I]n the absence of a persuasive alternative construction of the DMCA and § 411(a), the court finds that the DMCA does not displace § 411(a)’s registration requirement or the registration approach.”).

³²⁶ Lenz v. Universal Music Corp., 815 F.3d 1145, 1151 (9th Cir. 2015) (citing 17 U.S.C. § 512(c)(3)(A)).

readily infer an intent to abandon the right.”³²⁷ If the owner of the copyright—the offender—abandons the copyright, the owner loses the exclusive rights to the work, including the right to transfer ownership.³²⁸ Thus, if a court finds the offender abandoned the copyright, perhaps by posting the image online for public download, the copyright is lost forever,³²⁹ meaning the court has no ability to transfer ownership to the victim. If the owner takes some overt act that lets the public copy the work, the exclusivity—and therefore the corresponding copyright—disappear.³³⁰

On the other hand, copyrights are divisible and “there is no reason why an author could not abandon all of the copyright rights for a limited period of time such as five years, while retaining the copyright rights for the duration of the copyright term.”³³¹ However, this would require consent and affirmative action on behalf of the abuser to divide or retain his copyright.³³²

b) “Whack-a-Mole”

Even if copyright is successfully transferred to the victim, and he or she is successful in utilizing the takedown remedy to remove an image or video from the offending website, it is still probable that the victim will encounter what is commonly referred to as the “whack-a-mole” problem that plagues copyright holders generally.³³³ Once taken down, the picture reappears on the offending, or another, website, forcing the victim to initiate another takedown action. This can become a tiring and never-ending cycle that continually re-victimizes and re-traumatizes the victim.

The DMCA mitigates the whack-a-mole problem to some extent by requiring ISPs to adopt, reasonably implement, and inform subscribers and account holders on the system of a policy providing for the termination in certain circumstances of account holders who are repeat infringers.³³⁴ If the ISP fails to do so, it can lose the safe harbor protections of the Act and be held

³²⁷ *Dam Things from Denmark v. Russ Berrie & Co.*, 290 F.3d 548, 560 (3d Cir. 2002) (quoting 4 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 13.06 (2001)).

³²⁸ *See* 17 U.S.C. §§ 106, 201(d).

³²⁹ *See Warner Bros. Entm’t, Inc. v. X One X Prods.*, 644 F.3d 584, 593 (8th Cir. 2011) (“General publication” resulting in injection of work into public domain occurs “if the rights-holder demonstrate[s] an express or implied intent to abandon his right to control distribution and reproduction of his work, as determined objectively from ‘the implications of his outward actions to the reasonable outsider.’” (quoting *Nucor Corp. v. Tenn. Forging Steel Serv., Inc.*, 476 F.2d 386, 390 n.7 (8th Cir. 1973))).

³³⁰ Robert A. Kreiss, *Abandoning Copyrights to Try to Cut Off Termination Rights*, 58 MO. L. REV. 85, 93 (1993).

³³¹ *Id.* at 96.

³³² *Id.* at 94 (discussing that abandonment has occurred if the holder of the copyright freely and voluntarily gives up his copyright so that other people would look, make, and distribute copies of his work).

³³³ *See* Stephen Carlisle, *Meet the New and Improved “Whack-A-Mole”*, NOVA SE. UNIV. (Oct. 30, 2014), <http://copyright.nova.edu/blog-update-whack-a-mole/>.

³³⁴ 17 U.S.C. § 512(i)(1)(A); *see also* *Ellison v. Robertson*, 357 F.3d 1072, 1080 (9th Cir. 2004) (finding that 17 U.S.C. § 512(i)(1)(A) requires ISPs to “(1) adopt a policy that provides for the termination of service access for repeat copyright infringers in appropriate circumstances; (2) implement that policy in a reasonable manner; and (3) inform its subscribers of the policy”).

liable to the copyright holder (the victim) for damages.³³⁵ Even though the DMCA is applicable only to websites hosted in the United States, most countries in the World Intellectual Property Organization pressure ISPs to abide by DMCA takedown notices.³³⁶ In addition to the DMCA remedies, NCMEC can contact upstream registrars in certain contexts to encourage them to contact their hosted websites to remove apparent CSAM.³³⁷

Injunctions may also provide a partial remedy for the whack-a-mole problem. Under the Copyright Act, a court may “grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.”³³⁸ The whack-a-mole problem persists despite injunctions issued against only individual offenders. However, injunctions can also be issued against any ISP provider regardless of whether they enjoy DMCA safe harbor protection. The factors considered by a court when issuing an injunction are: (1) if the injunction would significantly burden the provider or operation of the provider’s network, (2) the magnitude of the harm to be suffered by the copyright owner if steps are not taken to prevent infringement, (3) technical feasibility of implementation of the injunction, and (4) whether other less burdensome and comparably effective means of restraining access are available.³³⁹ These factors are more favorable to victims than the considerations regarding damages awards.

c) Need Original Images

Another pitfall for a copyright strategy is that the original image is the only image that enjoys copyright protection.³⁴⁰ This too can present a significant problem for your client, because many images exchanged online are treated as nonoriginal for copyright purposes due to the removal of metadata. Pictures taken using a conventional or digital camera are treated no differently than paintings under copyright law.³⁴¹ This is because the placement of the subject, lighting, and other effects are expressions of the photographer. An original electronic image contains metadata, such as the camera/phone model, white balance, shutter speed, image resolution, and geographic location, among other pieces of data.³⁴² This data, called Exchangeable Image File Format (EXIF) data, can sometimes be deleted when uploading a copy of the image.³⁴³ However, unlike prints from an original negative, there is no drop in the quality of reproduction

³³⁵ *Id.*; see also Binford et al., *supra* note 157, at 154.

³³⁶ *The Ultimate Guide to Digital Millennium Copyright Act*, COPYRIGHTED.COM, <https://www.copyrighted.com/blog/dmca-guide> (last visited Sept. 20, 2021).

³³⁷ For more details on this NCMEC program, see *infra* Part II.I.3(a).

³³⁸ 17 U.S.C. § 502(a).

³³⁹ 17 U.S.C. § 512(j)(2).

³⁴⁰ 17 U.S.C. § 102(a) (providing that copyright protections subsist in “original works of authorship fixed in any tangible medium of expression”).

³⁴¹ Lee B. Burgunder, *Digital Image Processing: Copyright Infringement Analysis After Acuff-Rose*, 4 J. OF LEGAL STUDIES IN BUS. 1, 9 (1995).

³⁴² Thomas Germain, *How a Photo’s Hidden ‘Exif’ Data Exposes Your Personal Information*, CONSUMER REPORTS (Dec. 6, 2019), <https://www.consumerreports.org/privacy/what-can-you-tell-from-photo-exif-data>.

³⁴³ *Id.* (noting Facebook automatically deletes EXIF data when uploaded, but Google Photos does not).

as digital images are just binary files of “1”s and “0”s.³⁴⁴ Ultimately, even though transmitted electronic images may look identical to the original image, the original image is the only one protected by the copyright.

If you determine that a copyright claim may be a viable option, consider whether to seek the original image from the prosecutor. If the electronic image is destroyed post prosecution, it is likely that this would be taken as abandonment of the copyright, barring the opportunity for the victim to enforce his or her copyright in the image.³⁴⁵ Furthermore, copyright law protects works only from reproduction. There is no protection under copyright law against others “creating identical works from independent sources of creativity.”³⁴⁶ In the digital photo context, this means that a person could take the original photo and manipulate the digitalized information to change the shape, color, focus, or lighting without violating copyright law.³⁴⁷ However, it may be possible to argue that these types of manipulations do not qualify for the fair use limitation on what is an infringing use of a protected image.³⁴⁸

I. OTHER AVENUES FOR MONETARY RELIEF

1. Marsy’s Law and Victims’ Funds

Thirty-five states currently include some version of victims’ rights in their constitutions, but only 13 states—California, Florida, Georgia, Illinois, Kentucky, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, and Wisconsin—do so using the “Marsy’s Law” formula (named after a victims’ rights statute first enacted in California). Marsy’s Law (the California Victims’ Bill of Rights Act of 2008) is an amendment to California’s state constitution that was enacted by voters in the November 2008 general election. The law significantly expands the legal rights of crime victims, providing for the right to be notified of and present at proceedings; the right to be heard at proceedings; the right to be protected from the defendant; and the right to receive restitution from the accused, among other provisions.³⁴⁹ Efforts are underway in Idaho, Iowa, Maine, Mississippi, New Hampshire, and Tennessee to extend Marsy’s Law in those states as well.

Similarly, states across the country have enacted crime victim compensation programs. Crime victim compensation programs are government programs established to reimburse victims of violent crimes and their families for many of the associated out-of-pocket expenses. Every state has such a program, which will generally pay for medical and dental expenses, counseling costs,

³⁴⁴ See Burgunder, *supra* note 341, at 33.

³⁴⁵ See Kreiss, *supra* note 330, at 92 .

³⁴⁶ See Burgunder, *supra* note 341, at 6–7, 26.

³⁴⁷ *Id.*

³⁴⁸ See 17 U.S.C. § 107; *More Information on Fair Use*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/fair-use/more-info.html#:~:text=Fair%20use%20is%20a%20legal,protected%20works%20in%20certain%20circumstances.&text=Nature%20of%20the%20copyrighted%20work,purpose%20of%20encouraging%20creative%20expression> (last visited Sept. 20, 2021).

³⁴⁹ See STATE OF CAL. DEP’T OF JUSTICE, ATTORNEY GENERAL, VICTIMS’ BILL OF RIGHTS, https://oag.ca.gov/victimservices/content/bill_of_rights (last visited Sept. 20, 2021).

and lost wages or support.³⁵⁰ Crime victim compensation programs have a maximum that will be paid for each claim, which varies from state to state and can range from \$10,000 to \$100,000.³⁵¹

The direct victim of a violent crime is generally eligible for compensation.³⁵² Some states compensate only victims who were physically injured in the course of the crime, while others also compensate victims of violent crime who were traumatized but not physically injured by the crime.³⁵³ To apply for crime victim compensation, victims or families must file a claim form in the state where the crime occurred. The compensation program will then examine police records, receipts, and other information before deciding whether to pay a claim.

Among those attorneys we surveyed who have pursued relief through victims' compensation programs, most found the remedies to be helpful, but also challenging to pursue.³⁵⁴ On the plus side, these attorneys have been able to use funds from these programs on a regular basis to cover victims' therapy, counseling expenses, and medical costs. As each state has its own application for compensation, however, these funds were not necessarily easy to obtain. The attorneys found that relief may be limited to those states in which the crime occurred, or those states in which there is an applicable case number. In addition to the caps already mentioned, they have found the fact that these programs are reimbursement-based (i.e., you need receipts) to be challenging. Further, some states have time limits in place that restrict when an attorney can seek compensation. On the whole, the funds from victims' compensation programs have been beneficial but, unlike the singular federal system, seeking compensation from one of these programs could require an attorney to learn the intricacies of a number of different states' laws.

The National Association of State Crime Compensation Boards offers a comprehensive overview of the victims' funds in each state, including funding, eligibility requirements, procedures, and available benefits. Attached as Appendix CC is a chart briefly summarizing each state's eligibility requirements and available benefits. In order to access the relevant compensation forms for each state, you can use [this resource](#) from the Office for Victims of Crime (also attached as Appendix DD).

2. Other Government Programs

Victims may also be eligible for a variety of government programs not specifically tailored to crime victims, including Medicaid, Temporary Assistance for Needy Families (TANF), and Job Corps, among others.³⁵⁵ Presently, eligibility for these programs is determined state by state, and generally determined by income rather than by victim status. Attorneys should keep in mind that receipt of these general benefits may affect or preclude receipt of designated crime victim benefits. For example, victim compensation funds generally will not reimburse medical expenses where a

³⁵⁰ See *Victim Compensation: An Overview*, NAT'L ASSOC. OF CRIME VICTIM COMP. BDS., <https://nacvcb.org/victim-compensation/> (last visited Sept. 20, 2021).

³⁵¹ See *id.*

³⁵² See *id.*

³⁵³ See *id.*

³⁵⁴ Relief can be sought in every state in which the offender possessed CSAM.

³⁵⁵ See Binford et al., *supra* note 157, at 155.

private or public insurer (e.g., Medicaid) has already covered the cost of care. Attorneys should thoughtfully compare the various benefit programs before making a determination regarding which program may be most beneficial to the client.

Additionally, but specific to cases with facts establishing that human trafficking occurred, the U.S. Department of Health and Human Services (HHS) Per Capita Services Contract with the U.S. Conference of Catholic Bishops (USCCB) provides comprehensive case management services to minor victims of human trafficking.³⁵⁶ First, HHS must issue a “Letter of Eligibility” declaring that the child meets the TVPA definition of a victim of human trafficking. The child’s advocate can then present the letter to social services providers as proof of eligibility for assistance. These comprehensive case management services can assist victims to obtain shelter, clothing, food, health care, and other emergency services.

Depending on their overall circumstances, victims may be eligible for a variety of short and long-term educational, health, housing, or other services. Eligible services may be especially important to support the particularized needs of a victim. For example, an individualized education program from a child victim’s school may need to account for the child’s therapeutic or specialized educational needs identified in a forensic expert assessment. The American Bar Association (ABA) Center on Children and the Law has extensive guidance for attorneys in child welfare proceedings that can be relevant to helping a CSAM victim (even if the victim is not directly involved in the child welfare system as a result of his or her victimization) locate and advocate for the proper services.³⁵⁷

3. Additional Avenues of Non-Monetary Relief

a) NCMEC’s Voluntary Initiatives with the Technology Industry

NCMEC believes that each child and each adult survivor has the right to be protected from the distribution of any image, video, or online comment relating to his or her sexual abuse. To help provide these protections, NCMEC offers the tech industry three voluntary initiatives that they can participate in to help curtail the dissemination of online CSAM and exploitative imagery and commentary. Two of these initiatives involve NCMEC’s sharing of hash lists with ESPs relating to (1) confirmed CSAM, and (2) exploitative images.³⁵⁸ ESPs may choose to use the

³⁵⁶ U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, UNITED STATES WRITTEN RESPONSE TO QUESTIONS ASKED BY THE COMMITTEE ON THE RIGHTS OF THE CHILD ¶¶ 8–10 (May 13, 2008), <http://2001-2009.state.gov/g/drl/rls/105435.htm>.

³⁵⁷ See *Center on Children and the Law*, AM. BAR ASS’N, https://www.americanbar.org/groups/public_interest/child_law/ (last visited Sept. 20, 2021); see also AMERICAN BAR ASSOCIATION, AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES 9–10 (Feb. 5, 1996), https://www.americanbar.org/content/dam/aba/administrative/family_law/committees/standards_abuseneglect.pdf (listing the types of services a child’s attorney should seek in all cases and to “assure that a child with special needs receives appropriate services to address the physical, mental, or developmental disabilities”).

³⁵⁸ Hashing is a tool that creates a unique alphanumeric value for an image or video. Once an image or video is hashed, that hash will serve as a unique fingerprint that can be used to identify that exact image or video among millions of other images and videos. Hashing is used by tech companies to identify known CSAM so these files can be detected, reported to NCMEC, and removed.

confirmed CSAM hash list to help detect, remove, and report those images to NCMEC's CyberTipline. While the federal definition of child pornography does not extend to exploitative images or erotica, NCMEC knows that sexually exploitative imagery or erotica often serves as precursors to, and accompanies, abuse and can be equally traumatic for victims when shared online among offenders. ESPs can use NCMEC's exploitative hash list to voluntarily remove content that might violate their terms of service. You can contact NCMEC to determine if hash values for your client's CSAM content are included on one of the hash lists and to learn more about how this program can diminish online circulation of your client's sexually abusive imagery.

The third initiative is NCMEC's notice-tracking program. NCMEC alerts companies about images, videos, and written comments on their platforms that publicly identify CSAM victims, compile non-pornographic images or videos of these survivors (like family or social media photos), or create running online discussions about the survivor's current life as an adult and physical location. The online commentary may also contain harassing, sexually explicit comments that create real-life personal safety concerns for the survivor. Not surprisingly, this commentary is deeply disturbing to a survivor's recovery process. Tech companies notified by NCMEC of CSAM on their servers are often very responsive to removing the content. To report content concerning your client to NCMEC's notice-tracking program, you can contact NCMEC directly or through the CyberTipline.³⁵⁹

b) Processes to Work with Online Platforms to Remove Sexually Abusive or Identifying Content or Related Search Results

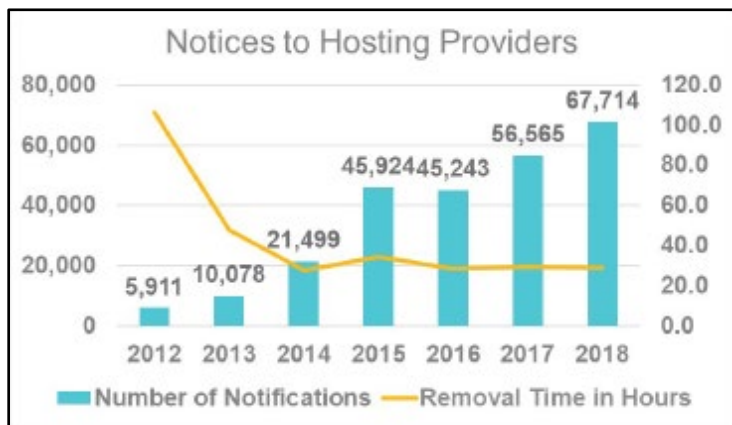
As previously discussed in Part II.H.1, the DMCA may enable survivors to file a report for copyright infringement when they find that sexually abusive images of themselves have been reposted without permission. The DMCA requires companies to provide a way for members of the public to notify them and request removal of certain online content, including images and videos. Some companies have specific DMCA websites to submit reports of sexually abusive images/videos of a child that have been posted without consent. When pursuing this avenue, keep in mind that the individual who took the images or videos is considered the owner of the copyright. This form of takedown remedy might be best utilized for those cases involving youth-produced imagery.

Individual websites also may maintain voluntary administrative processes for removing abusive or exploitive content. NCMEC provides information on its website about services it offers to victims, their families, and their counsel to communicate with online platforms about removing sexually abusive imagery and related harassment.³⁶⁰ The Cyber Civil Rights Initiative also offers a [comprehensive guide](#) to these processes for most major websites, including Facebook, Instagram, Yahoo, and Google. This guide is attached as Appendix EE.

³⁵⁹ For more information about NCMEC's CyberTipline, see *supra* Part I.C.1.

³⁶⁰ *Get Help Now: Is Your Explicit Content Out There?*, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, <https://www.missingkids.org/gethelpnow/isyorexplicitcontentoutthere> (last visited Sept. 20, 2021).

As explained briefly in Part II.I.3(a), NCMEC also operates a notice-tracking initiative to notify ESPs and hosting providers, such as registrars, when apparent CSAM is being hosted on their platforms. In 2019, NCMEC sent more than 67,000 notifications to companies, and on average, the content was voluntarily removed within just 28.8 hours.³⁶¹



NCMEC is aware that every reposting of a sexually abusive image revictimizes the child depicted in that image. Because of this harm, NCMEC’s goal is to reduce the voluntary removal time to minutes—not hours—after NCMEC’s notification. You can report URLs or website locations where you believe your client’s CSAM or sexually exploitative images are posted, or locations where offenders are posting information concerning your client, to NCMEC’s CyberTipline (www.cybertipline.org).

III. HOW TO STRUCTURE THE AWARD TO BENEFIT THE VICTIM

Victims of child pornography related crimes, particularly those who are young and inexperienced, may have difficulty understanding how to best handle the money they receive from restitution or civil recovery. There are certain things you can keep in mind when fashioning these judgments to ensure the optimal benefit to your client.

As a preliminary matter, be sure to keep the sensitivity of payment and accounting discussions in mind. Unlike traditional legal practice in which there is usually a singular settlement reached at or near the end of litigation, it is possible that an attorney may be handling restitution in dozens of criminal cases at any given time. An attorney may also receive restitution payments on a regular basis. Consequently, the amount of financial information for a victim to process can be overwhelming. Given the emotional toll of each communication about restitution, we recommend tackling this difficult subject at the beginning of the representation. Reach an understanding with the client about how they would like to receive information about settlements and restitution payments. For example, while the attorney maintains full and complete financial information about restitution, the victim could request a face-to-face accounting occur only periodically.

³⁶¹ The Manual cites 2019 data because, as a result of complications caused by the COVID-19 pandemic, NCMEC’s 2020 number was an outlier.

On a more technical note, remember that some restitution funds are awarded tax-free; your client should be advised accordingly.³⁶² Section 104(a)(2) of the Internal Revenue Code states that the amount of any damages received on account of personal physical injury or physical sickness, or from mental distress that originates from a physical injury or physical sickness in a civil case is generally not taxable.³⁶³ Note that damages from emotional distress that did not result from physical injury or sickness must be included in income,³⁶⁴ but can be reduced by the amount paid for resulting medical expenses.³⁶⁵ When the underlying recovery is included in gross income, the attorney's fees and costs are as well.³⁶⁶

Punitive damages and interest (pre- and post-judgment) are always taxable, though, regardless of the origin of the claim.³⁶⁷ This likely means that recovery from a criminal judgment can be taxed. Victim restitution awards in criminal proceedings likely fall outside the scope of section 104(a)(2), because section 104(a)(2) covers purely compensatory awards (making the victim whole); whereas victim restitution awards originate from criminal conduct and serve to punish wrongdoers (punitive) as well as restore victims.³⁶⁸ Since punitive awards are taxable, victim restitution awards have often been found to be taxable.³⁶⁹ If the underlying recovery is taxable, the attorney's fees and costs would be as well.³⁷⁰ Consult with a tax attorney to determine the appropriate classification of awards in your case.

Once you have advised your client of the tax implications, consider whether you can secure a pro bono financial advisor for your client to assist in investing the restitution funds and basic financial management. A financial advisor is particularly useful for adult victims, who cannot otherwise have safeguards placed on their spending.

Keep in mind that, oftentimes, restitution payments will not be sent directly from the defendant to the victim's attorney. Many Assistant United States Attorneys prefer that defendants make restitution payments to the court. If that is the case, be prepared for several months of delays before receiving the payment of restitution funds.³⁷¹ Alternatively, defendants can submit

³⁶² Restitution funds are also not typically counted as "income" with respect to applications for public benefits, although they can sometimes still be considered "assets."

³⁶³ 26 U.S.C. § 104(a)(2); *see also* I.R.S. Publication 4345 (Rev. 12-2019).

³⁶⁴ *See* 26 U.S.C. § 104; *see also* I.R.S. Publication 4345 (Rev. 12-2019).

³⁶⁵ *See* 26 U.S.C. § 104; *see also* I.R.S. Publication 4345 (Rev. 12-2019).

³⁶⁶ *See* I.R.S. Publication 525 (Rev. 4-6-2021).

³⁶⁷ *See generally* O'Gilvie v. United States, 519 U.S. 79 (1996).

³⁶⁸ Linda Trang, Note, *The Taxation of Crime Victim Restitution: An Unjust Penalty on the Victim*, 35 LOY. L.A. L. REV. 1319, 1337 (2002).

³⁶⁹ I.R.S. Publication 4345 (Rev. 12-2019).

³⁷⁰ I.R.S. Publication 525 (2020).

³⁷¹ Even though a restitution agreement may be entered or otherwise ordered by the court, the reality is that full funding often takes months or years. For example, in cases in which a defendant makes restitution payments during the course of incarceration, small, monthly installments are made through prison work performed by the defendant. We recommend counseling victims about the delays associated with receiving payment for restitution funds in order to manage expectations.

payments through the DOJ's Financial Litigation Unit (FLU).³⁷² If direct payment to an attorney is an option, we recommend including "funding instructions" for the victim in the restitution materials that are submitted. We further recommend establishing a trust account for each victim to hold restitution funds. A trustee will be appointed to approve payments from the trust. Practitioners familiar with this area suggest providing for an initial lump sum payment for the victim to handle existing financial needs, and to set up the remaining payments in smaller and relatively infrequent installments. If the victim is a child, consider whether a long-term trust account may be appropriate; a knowledgeable trust and estate attorney in the applicable jurisdiction should be able to assess available options.

For child victims, you should also consider seeking the appointment of a guardian ad litem (GAL). While this can be expensive and cumbersome, it is yet another way to ensure protection for the minor and the minor's money. A GAL's primary function is to represent the child's best interest and advocate for the child's legal rights.³⁷³ A GAL can fill the role of a protector against system-related trauma and make sure the child's voice is heard.³⁷⁴ They can also act as a friend to help support the child and shepherd the child throughout the case.³⁷⁵ This can be especially important in cases where the perpetrator is a parent. However, GALs may not agree with the private attorney or parent or guardian's recommendations³⁷⁶ and may also have large caseloads and not be able to dedicate the time and energy a child needs.³⁷⁷ In addition, they may not have the life experience or training needed to address the unique challenges of working with abused children.³⁷⁸

The requirements for appointment of a GAL vary by state. A chart illustrating the requirements for appointment of a GAL by state are described in Appendix FF. As a general matter, a court may appoint a GAL on its own, or the parties can file a motion for a GAL to be appointed. In criminal proceedings, the government can file a motion for a GAL to be appointed for a child victim. Federal law provides that, in federal court, a child who has been a victim of a crime of physical abuse, sexual abuse, or exploitation, or has been a witness to a crime committed against another person, has the right to a GAL.³⁷⁹ The same statute provides that courts may be responsible for providing reasonable compensation and payment of expenses for the GAL.³⁸⁰

³⁷² The FLU's primary purpose is to enforce criminal restitution orders for the benefit of victims. FLU staff work closely with prosecutors in cases involving restitution to identify assets of defendants that may be available for recovery.

³⁷³ Debra Whitcomb, U.S. Dep't of Justice, Nat'l Inst. of Justice, *Guardian Ad Litem in the Criminal Courts* (Feb. 1988), <https://www.ncjrs.gov/pdffiles1/Digitization/110006NCJRS.pdf>.

³⁷⁴ *Id.* at 15, 20–22.

³⁷⁵ *Id.* at xii.

³⁷⁶ Debra Whitcomb, U.S. Dep't of Justice, Office of Justice Programs, National Institute of Justice, *When the Victim Is a Child* (2d ed. Mar. 1992), <https://www.ncjrs.gov/pdffiles1/Digitization/136080NCJRS.pdf>.

³⁷⁷ *Id.* at 131.

³⁷⁸ *Id.*

³⁷⁹ See 18 U.S.C. § 3509(h) (providing a general description of a GAL, the duties of a GAL, and a GAL's immunities).

³⁸⁰ See 18 U.S.C. § 3509(h)(1).

Alternatively, community organizations may provide GAL services free of charge, or a community fund may be set up that will cover fees and expenses. Ultimately, it is important to understand the rules and resources available in a specific jurisdiction, as the party responsible for the GAL's fees and expenses may vary.

Once appointed, the GAL would accompany the child to court proceedings, as well as investigate the child's case in order to make recommendations directly to the court.³⁸¹ The private attorney would work with the GAL to provide information, excluding attorney work product, so that the GAL could effectively advocate for the child and assist the child with his or her victim impact statement.³⁸² The guardians or parents of the child would also provide the GAL with information about the child's situation and needs to assist with the GAL's recommendations. It is important to note that the GAL must stay within the framework provided by the judge.³⁸³ GALs are appointed to serve the child's best interests, which may not align with the plan the private attorney or the parents have decided on. It is important to set expectations with the child's guardians or parents before seeking the appointment of a GAL.

IV. ANCILLARY LEGAL ISSUES COMMONLY EXPERIENCED BY VICTIMS

A. CUSTODIAL/FAMILY LAW ISSUES WHEN OFFENDER IS A PARENT OR GUARDIAN

Unique legal challenges may arise in cases where the offender that is sexually exploiting the child is the child's parent or guardian. Laws in most states—with limited exceptions—provide that registered sex offenders cannot be awarded custody or unsupervised visitation.³⁸⁴ Additionally, if a child becomes pregnant as a result of sexual abuse, many states have specific provisions that can be used to quickly terminate the parental rights of an offender who fathers a child by sexual assault. However, a parent or guardian convicted of sexually exploiting his or her child will generally not previously have been adjudicated a sex offender. Thus, you typically must rely on other statutory provisions to modify or terminate custodial arrangements.

There are three main ways courts can remove abused children from the custody of their parents: (1) modify existing child custody arrangements; (2) commence family court child protection proceedings; or (3) grant the abused child a civil domestic violence restraining order. A more temporary measure is also available through a "no contact order," which will be discussed in more detail below in Part IV.A.1. In most states, family court will have exclusive jurisdiction over child custody matters and will follow the civil standard of proof, meaning allegations of abuse need be proven by only a preponderance of the evidence for courts to use them as a basis for custody decisions. In many states, the definition of "child abuse" specifically includes offenses related to child pornography, such as sexual exploitation, producing obscene imagery of a child, or sex trafficking.

³⁸¹ Whitcomb, *supra* note 376, at 127–28.

³⁸² *Id.* at 129.

³⁸³ *Id.* at 127.

³⁸⁴ See Rachel Prysner, Note, *Raised by a Predator: Sex Offender Parents and an Effort to Keep Them Out of the Child's Home*, 58 FAM. CT. REV. 847, 851–53 (2020).

Most state laws dictate that a family court may modify an existing custody arrangement when it is in the “best interests of the child.” Sexual abuse typically indicates that a child’s best interests would be served by preventing further contact with the abuser.³⁸⁵ Some states codify this with a rebuttable presumption that if a parent has committed child abuse or an “intra-family offense,” placing the child with that parent is not in the child’s best interests unless the parent can rebut the finding.³⁸⁶ For example, section 16-914 of the D.C. Code provides:

For the purposes of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.³⁸⁷

Attached as Appendix GG is a chart summarizing relevant aspects of each state’s child custody laws.

If there is no existing custody arrangement for the child, a court may still assert jurisdiction by adjudicating the status of the child. States use different terms to refer to the status of the child after adjudication, but many designate the child as, “in need of protection,” “abused or neglected,” or “dependent.”³⁸⁸ Generally, the state files a petition for adjudication based on a report of abuse from a third party. In many states, a private party can also file a dependency petition, including the non-abusive parent of the child who is seeking to gain sole custody.³⁸⁹ If, after investigation and a hearing, a court finds the child to be dependent, it may make custody determinations based on its findings. The court’s options range from allowing the child to stay in the home of the abusive parent to complete termination of parental rights.³⁹⁰

Finally, a court may make child custody determinations pursuant to a domestic violence restraining order. A court has wide discretion in deciding whether to issue a domestic violence

³⁸⁵ 6 CAUSES OF ACTION 2d 287 (2019).

³⁸⁶ See NAT’L COUNCIL ON JUVENILE & FAM. CT. JUDGES, NAVIGATING CUSTODY & VISITATION EVALUATIONS IN CASES WITH DOMESTIC VIOLENCE: A JUDGE’S GUIDE 9–11 (2006), https://www.ncjfcj.org/wp-content/uploads/2012/02/navigating_cust.pdf.

³⁸⁷ D.C. CODE § 16-914(a-1).

³⁸⁸ 2 HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES § 12:1 (Dec. 2018).

³⁸⁹ *Id.* § 12:4.

³⁹⁰ See *Grounds for Involuntary Termination of Parental Rights*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/groundtermin/> (last visited Sept. 20, 2021) (summarizing how certain crimes perpetuated against a child can serve as bases to terminate parental rights).

protective order if it finds that domestic abuse as defined by that state’s specific statute has occurred.³⁹¹ Usually, if a victim can present substantial evidence that they are in reasonable fear of imminent danger or harm, a court will issue an order and may allocate parenting rights within that order.³⁹²

1. No-Contact Order

In many instances, a survivor will want to seek a no-contact order against the offender, who may know how to find and contact the victim. There are both criminal and civil no-contact orders. In the criminal context, the prosecuting agency requests a no-contact order, which a criminal court judge issues. In child sexual exploitation cases, the court issues a no-contact order if it finds *prima facie* evidence that a crime involving a sexual offense has been committed.³⁹³ A criminal complaint suffices as *prima facie* evidence of the crime.³⁹⁴ Even in the absence of a pending criminal charge, a victim can request a civil no-contact order from a civil court judge. Requirements to obtain a no-contact order vary by state and by type of order. Before requesting an order, it is important to note the relationship between the victim and the offender, as a victim may be eligible for orders under different statutes depending on whether the offender is a member of the victim’s household.

If the offender is not a family member, household member, or former partner of the victim, a lawyer can request a civil no-contact order through specific statutes that govern no-contact and protective orders for victims of sexual abuse or exploitation. If the victim is currently under 18, this may require the cooperation of a parent or guardian. For example, Nevada requires that a parent or guardian of a victim of child sexual exploitation petition for a protective order on behalf of the child.³⁹⁵ Some states have specific statutory no-contact orders for sexual abuse, while others have only more general statutory no-contact orders. For example, in North Carolina courts may issue a civil no-contact order upon finding that the victim has suffered unlawful conduct committed by the respondent.³⁹⁶ In most states, a court can issue an emergency or temporary restraining order *ex parte*, without a hearing and without notifying the abuser, if the victim can show that he or she will be irreparably harmed without the order. The temporary order will last from 10 to 21 days until the court can hold a hearing and decide whether to issue a final order of longer duration. Appendix HH provides a list of more state statutes dealing with no-contact orders for victims. Please note that Appendix HH deals only with protective orders and no-contact orders issued pursuant to a statute. Even if your state does not have a specific statute that addresses the issue, the court may be willing to grant injunctive relief.

Sometimes the parent or guardian is the one who victimized the child. In these cases, it is often more straightforward to obtain a no-contact order because most states have domestic violence

³⁹¹ 28 C.J.S. DOMESTIC ABUSE AND VIOLENCE § 24 (Dec. 2019).

³⁹² *Id.* § 16.

³⁹³ 725 ILL. COMP. STAT. ANN. 5/112A-11.5(a).

³⁹⁴ A complaint charging a sexual offense or an attempt to commit a crime of sexual offense is considered *prima facie* evidence of the crime. 725 ILL. COMP. STAT. 5/112A-11.5(a)(1).

³⁹⁵ NEV. REV. STAT. § 33.400.

³⁹⁶ N.C. GEN. STAT. §§ 50C-5(a), 50C-6(a), 50C-7.

or child abuse statutes that protect victims from contact with their abusers.³⁹⁷ These domestic abuse statutes require that the victim be related to a current or former sexual partner of or a household member of the abuser. No-contact orders are common in domestic child abuse cases due to the extraordinary risk to the victim when the abuser is a member of the victim's household or a relative. These orders can require the abuser to move out of a shared residence, relinquish a firearm, and refrain from contacting the victim.³⁹⁸

B. PRIVACY ISSUES RELATING TO LITIGATION AND MEDIA EXPOSURE³⁹⁹

Sexually exploited children have unique and pronounced interests in privacy relating to their abuse. Tragically, many sexually exploited children become re-victimized not only by those who sexually abuse them or distribute their sexually exploitive images, but also by their peers and online stalkers, through cyberbullying or cyberstalking. For a victim of sexual violence, the need for autonomy and control over his or her body, the private details of his or her life, and decisions that must be made relative to the assault (including whether and how to pursue criminal or civil relief) are often essential to recovery. Safety from future exploitation is also critical.

1. Privacy Protections

The initial sexual exploitation is an inherent violation of a victim's privacy rights. The online posting and subsequent distribution of that material only perpetuates these concerns. Because all survivors will have varying concerns about the protection of their privacy while seeking restitution and thereafter, attorneys must familiarize themselves with the following key sources of privacy protections. All of the state and federal protections discussed below have been used by attorneys in the past to consider how best to protect the privacy interests of victims and their families.

a) State Law Privileges

The types of confidentiality privileges available to a sexually exploited child vary from state to state and may include their interactions with victim-counselors, psychotherapists, social workers, and medical professionals. If you are helping your client connect with any of these professionals, you should clarify whether particular licensing requirements may be required for or may narrow any of these privileges. Certain information may also be privileged based on content. For example, in many states, results of certain medical tests (e.g., HIV or STD) or alcohol/drug treatment information must be kept private. You should note that each of these privileges may apply only in certain types of proceedings. For example, the Washington Court of Appeals has

³⁹⁷ 28 C.J.S. DOMESTIC ABUSE AND VIOLENCE § 6 (Dec. 2019).

³⁹⁸ 28 C.J.S. DOMESTIC ABUSE AND VIOLENCE § 16 (Dec. 2019).

³⁹⁹ The following section is heavily excerpted from NAT'L CRIME VICTIM LAW INST., CTR. FOR LAW & PUB. POLICY ON SEXUAL VIOLENCE, CONFIDENTIALITY AND SEXUAL VIOLENCE SURVIVORS: A TOOLKIT FOR STATE COALITIONS (2005), <https://law.lclark.edu/live/files/6471-confidentiality-and-sexual-violence-survivors-a>.

held that the counselor-patient privilege does not apply in dependency proceedings where the fitness of a parent and the welfare of a child are at issue.⁴⁰⁰

b) Federal Privileges

Federal Rule of Evidence 501 “authorizes federal courts to define new privileges . . . by interpreting common law principles . . . in the light of reason and experience.”⁴⁰¹ In *Jaffee v. Redmond*, the U.S. Supreme Court examined a federal common law privilege protecting records of statements made to a psychotherapist in furtherance of diagnosis and treatment. The Court left open the question of whether a federal victim-rape crisis counselor privilege exists and acknowledged that Rule 501 was open-ended. In *United States v. Romo*,⁴⁰² the Ninth Circuit Court of Appeals further refined what may constitute “diagnosis and treatment” to find that communications between a licensed professional counselor and an inmate were not privileged because the communications were not made in the course of diagnosis or treatment. The *Romo* case thus underscores the importance of managing when, where, and in what context counseling sessions transpire.

c) State and Federal Rules of Evidence

Rules of evidence likewise protect victim privacy by enabling certain information to be excluded from court proceedings. Every state has enacted rape-shield and other laws providing protections for victims’ privacy.⁴⁰³ In federal court, rape shield protections are codified in Federal Rule of Evidence 412. In addition to rape shield statutes, which are designed specifically to protect the privacy of rape victims, other rules of evidence may also keep certain information from being disclosed. You should closely analyze evidentiary issues surrounding relevancy and prejudicial vs. probative balancing—admitting a victim’s sexual history, for example, is extremely prejudicial and usually not relevant. You also should address potential hearsay issues and diligently object to hearsay evidence that might further traumatize a victim. Evidence such as text messages or social media communications that tends to embarrass the victim may be excluded under hearsay rules. For instance, in a child pornography case prosecuted by an author of this Manual, text messages and social media posts in which the victim stated that she loved to “party” and “get dirty” were excluded from evidence as impermissible hearsay.

⁴⁰⁰ See *In re J.F.*, 37 P.3d 1227, 1233 (Wash. Ct. App. 2001) (citing *In re Welfare of Coverdell*, 696 P.2d 1241 (Wash. Ct. App. 1984)) (hospital records admissible in dependency proceeding despite records-confidentiality statute because public interest in full disclosure outweighs patient’s interest in nondisclosure); see generally Frederic G. Reamer, *Eye on Ethics; The Complexities of Client Privacy, Confidentiality, and Privileged Communication*, SOC. WORK TODAY (Feb. 2016), https://www.socialworktoday.com/news/eoe_0216.shtml.

⁴⁰¹ *Jaffee v. Redmond*, 518 U.S. 1, 8 (1996).

⁴⁰² 413 F.3d 1044 (9th Cir. 2005).

⁴⁰³ The National District Attorneys Association has compiled a chart of all states’ rape shield laws. For an overview of and links to states’ crime victim rights amendments, see NAT’L DIST. ATTORNEYS ASS’N, NAT’L CTR. FOR PROSECUTION OF CHILD ABUSE, RAPE SHIELD STATUTES AS OF MARCH 2011, <http://www.ndaa.org/wp-content/uploads/NCPCA-Rape-Shield-2011.pdf>.

d) State Constitutions and Victims' Rights Amendments

A majority of states have enacted state constitutional amendments affording victims certain basic rights throughout the criminal justice process. A number of those victims' rights amendments (VRAs) contain provisions that protect a victim's right to privacy.⁴⁰⁴ While your victim advocates may advise survivors of their general rights under the law as a crime victim, we recommend that you be prepared to utilize state constitutional provisions and remedies under state statutes and case law for potential additional measures to protect your client's privacy. For example, the Utah Supreme Court has generally recognized "that there is and should be such a right which protects against any wrongful or unseemly intrusion into what should properly be regarded as one's personal affairs."⁴⁰⁵ State statutes may explicitly require that identifying images of trafficking victims be kept confidential.⁴⁰⁶ You should likewise explore whether a state's public records law exempts certain information from disclosure, or identify whether the state offers a program to maintain address/records confidentiality for crime victims.⁴⁰⁷

e) Federal Laws

Federal laws that may provide protections for victims' privacy include, but are not limited to the following:

- **Violent Crime Control and Law Enforcement Act of 1994.** The law provides that the privacy of certain records and testimony "shall be maintained to the greatest extent possible, and such records may be filed in testimony heard in camera."
- **Health Insurance Portability and Accountability Act (HIPAA).** HIPAA prohibits the unauthorized disclosure of personal health information.
- **Victims of Crime Act (VOCA).** VOCA prohibits victim service providers from revealing personally identifying victim information.
- **The Violence Against Women Act (VAWA).** VAWA also prohibits victim services providers from revealing personally identifying victim information.

⁴⁰⁴ For an overview of and links to states' crime victim rights amendments, see *State Victim Rights Amendments*, NAT'L VICTIMS' CONSTITUTIONAL AMENDMENT PASSAGE, <http://www.nvcap.org/states/stvras.html> (last visited Sept. 20, 2021).

⁴⁰⁵ Redding v. Brady, 606 P.2d 1193, 1195 (Utah 1980).

⁴⁰⁶ See, e.g., CAL. GOV. CODE § 6250 *et seq.*; CAL. PENAL CODE § 293(e); see also N.D. CENT. CODE ANN. § 12.1-41-10 (requiring that such images remain confidential in an investigation of or a prosecution of a human trafficking offense); N.H. REV. STAT. ANN. § 633:7(V) (same); R.I. GEN. LAWS ANN. § 11-67.1-13 (same).

⁴⁰⁷ For information relating to state protections for crime victims' privacy, see *State by State Chart of Address and Voter Protection Programs*, GREATER BOSTON LEGAL SERVS. & NAT'L NETWORK TO END DOMESTIC VIOLENCE (Apr. 2020), https://nnedv.org/resources-library/h_address_voter_protection/.

- **Family Education Right to Privacy Act (FERPA).** FERPA generally prohibits disclosure of personally identifiable information (such as the name of a victim or witness) from education records.
- **Freedom of Information Act (FOIA).** FOIA precludes the release of law enforcement information about a living person where a personal privacy interest would be invaded by disclosing the information.

2. Threats to Victims' Privacy

Notwithstanding the foregoing protections, the reality is that criminal or civil litigation can create a serious threat to victims' privacy. Fortunately, there are general statutory confidentiality restrictions applicable in federal criminal cases for child victims and requirements to redact, seal, and protect their name and identity.⁴⁰⁸ However, there is more potential exposure to your client's privacy in civil proceedings.

You should be aware of and speak with your client about the broad range of litigation-related activities that may compromise a survivor's privacy and how you can both work together to protect your client's privacy as much as possible. The most common ways privacy is breached include waiver, production and discovery, public court proceedings, news media, social media, and public records.

a) Waiver

There are many situations in which your client may inadvertently or voluntarily waive his or her legal privileges relating to the abuse the client has suffered, and thereby compromise his or her privacy during the legal proceeding. A victim may voluntarily waive his or her privilege, including by reporting a crime or filing a civil lawsuit. You should advise your client that if he or she wishes to have his or her abuser(s) arrested and prosecuted, medical information related to the assault must be turned over to law enforcement and the prosecution. Likewise, plaintiffs should be informed that an exception to the psychotherapist privilege and other privileges applies where the holder of the privilege (the victim-plaintiff) puts his or her mental state into issue as a claim or defense in a lawsuit.

Often, waiver is inadvertent because a victim or his or her family are unaware of the consequences of certain actions (i.e., talking to other family members, sharing information with other service providers, talking to law enforcement, etc.). Once a privilege is lost, it is often legally and practically impossible to remedy any harm that results. For example, the media may use any information it obtains lawfully, even if someone else unlawfully or inadvertently disclosed it.⁴⁰⁹

⁴⁰⁸ See 18 U.S.C. §§ 3509 (d), (e) (laying out various privacy protections, including the protection of a child's name, and providing for the closure of the courtroom when a child testifies); FED. R. CRIM. P. 49.1(a) (when a filing contains "the name of an individual known to be a minor, . . . the party or nonparty making the filing may include only" the minor's initials).

⁴⁰⁹ See, e.g., *People v. Bryant*, 94 P.3d 624 (Colo. 2004).

b) Production and Discovery

Confusion often arises around the scope of a defendant's rights to information by production and discovery. In criminal cases, while a defendant has a right to discovery from the *government*, there are more restrictions on seeking discovery from *third parties*, such as the victim or holders of victim records.⁴¹⁰ Private records are nevertheless increasingly subpoenaed directly from record holders without notice to victims. If this occurs with records relating to your client, you should argue that victims have a due process right to notice and opportunity to be heard when privileged records are subject to a subpoena.⁴¹¹

c) Public Court Proceedings

Societal presumption strongly favors open proceedings. The Constitution affords at least two bases for open court proceedings: the Sixth Amendment right to a fair trial and the First Amendment freedom of the press.⁴¹² Accordingly, both the Federal Rules of Civil Procedure and state court rules require plaintiffs to file a suit using their own names.⁴¹³ When filing a case on behalf of a child victim, you should nonetheless make every effort to use a pseudonym in the complaint. The leading case on this subject, *Doe v. Frank*,⁴¹⁴ sets forth factors for the court to consider when determining whether a plaintiff may proceed anonymously. The balancing test set forth in *Frank* asks whether the plaintiff has a substantial privacy right which outweighs the customary and constitutional presumption of openness in judicial proceedings.⁴¹⁵ Many courts have held that, in light of the presumption of open judicial proceedings, plaintiffs may proceed using pseudonyms only where the defendant has previously threatened the plaintiff or other witnesses.⁴¹⁶ However, given the various federal and state privacy protections afforded to children (particularly those protections in 18 U.S.C. § 3509 and the Federal Rules of Criminal Procedure), courts are more likely to permit the use of pseudonyms and other protections in cases involving CSAM than other matters.⁴¹⁷

The mechanics of filing a lawsuit on behalf of an anonymous plaintiff vary between federal circuits, and some circuits provide little or no guidance on the subject. In the *John Does I–V v.*

⁴¹⁰ See FED. R. CRIM. P. 16; FED. R. CRIM. P. 17.

⁴¹¹ Notice and the opportunity to be heard are the universally understood minimal due process safeguards. The central meaning of due process is that “[p]arties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.” It is equally fundamental that the right to notice and an opportunity to be heard ‘must be granted at a meaningful time and in a meaningful manner.’” *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (first quoting *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863); then quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Attorneys should diligently uphold these safeguards, especially given the magnitude of harm a victim experiences when his or her trauma is disclosed without his or her knowledge.

⁴¹² U.S. CONST. amend. I; U.S. CONST. amend. VI.

⁴¹³ FED. R. CIV. P. 10(a).

⁴¹⁴ 951 F.2d 320 (11th Cir. 1992).

⁴¹⁵ *Id.* at 323.

⁴¹⁶ *But see Doe v. Cabrera*, 307 F.R.D. 1, 5 (D.D.C. 2014) (allowing plaintiff to litigate under a pseudonym where there were allegations of sexual assault because the case concerned highly sensitive and personal subjects).

⁴¹⁷ See *supra* note 407; see also *supra* Part IV.B.1.

Rodriguez trafficking litigation, plaintiffs’ counsel filed a motion to proceed anonymously before filing the complaint, based on Tenth Circuit guidelines.⁴¹⁸ The motion was assigned a miscellaneous case number; Plaintiffs’ counsel then referenced the motion and the miscellaneous case number in the complaint.⁴¹⁹ In the *Jane Doe No. 1 et al. v. Backpage.com, LLC* and *Javier H. et al. v. Garcia-Botello* trafficking litigation (which were pending in the First and Second Circuits, respectively), plaintiffs’ counsel filed their motion to proceed anonymously contemporaneously with the initial complaint.⁴²⁰ In other contexts, counsel may file under seal a complaint using the plaintiff’s real name but use a pseudonym in the publicly filed complaint or may make other arrangements to share the plaintiff’s identity confidentially with a defendant during the course of a proceeding.⁴²¹

State law is similarly varied on the subject. While state courts in each state have allowed plaintiffs to plead anonymously in some circumstances, many states have not reached this issue on appeal. Others have offered little guidance beyond stating that the federal courts’ precedent is instructive. Some states offer extra protection for victims in their rules of civil procedure by explicitly stating that plaintiffs may ask the court for anonymity. Some states also offer anonymity for plaintiffs who are pursuing sensitive causes of action like sexual abuse or nonconsensual distribution of explicit material. Attached as Appendix II is a list of state law statutes and precedent dealing with anonymous plaintiffs.

Regardless of whether you ultimately are able to use pseudonyms in the complaint, you should consider filing the following sorts of motions:

- Motion for Pseudonym;
- Motion to Keep Name/Image Out of Record;⁴²²
- Motion to Protect (place limitations on use of evidence and information);

⁴¹⁸ John Does I–V v. Rodriguez, No. 06-cv-00805, 2007 WL 684114 (D. Colo. Mar. 2, 2007).

⁴¹⁹ *Id.* at *1–2.

⁴²⁰ Motion to Proceed Anonymously, *Jane Doe No. 1 v. Backpage.com, LLC*, No. 1:14-cv-13870 (D. Mass. Oct. 16, 2014), ECF No. 2; Motion by Plaintiffs to Proceed Anonymously, *Javier H. v. Garcia-Botello*, No. 1:02-cv-00523-WMS-HKS (W.D.N.Y. July 22, 2002), ECF No. 2.

⁴²¹ See, e.g., Complaint, *Florida Abolitionist v. Backpage.com LLC*, No. 6:17-cv-218 (M.D. Fla Feb. 7, 2017), ECF No. 1. For additional cases laying out the mechanics of filing a lawsuit anonymously or under pseudonym, see *Doe v. Proskauer Rose LLP*, No. 1:17-cv-00901-ABJ (D.D.C., Apr. 25, 2018) (Court granted plaintiff’s motion for leave to litigate the case anonymously, citing plaintiff’s concern about the chilling effects for finding another job. Plaintiff then filed a gender discrimination claim and later revealed her name to the public.); *Doe v. Cabrera*, 307 F.R.D. 1 (D.D.C. 2014) (Plaintiff filed a complaint alleging she was sexually assaulted by the defendant at the same time as her motion to proceed under a pseudonym in state court. The defendant removed to federal court and filed a motion opposing proceeding under a pseudonym. The Court allowed the plaintiff to proceed pseudonymously throughout pretrial proceedings but held that she would have to disclose her identity if the case went to trial).

⁴²² For example, in Alaska, the portion of court or law enforcement records that contain the name of a victim of kidnapping or a sex offense are withheld from public inspection and are not a public record. ALASKA STAT. § 12.61.140(a). Alaska’s law also provides that “[i]n all written court records open to public inspection, the name of the victim [of certain offenses] . . . may not appear. Instead, the victim’s initials shall be used.” *Id.* § 12.61.140(b).

- Motion to Close the Courtroom (when certain testimony will be proffered);
- Motion to Allow for Alternative Methods of Testimony (e.g., close circuit);
- Motion for Redaction and Substitution (when something was in the court record that should not have been, or even in a court decision that should not be); and/or
- Motion to Seal Records.⁴²³

Attached as Appendix JJ are samples of some of the various motions listed above.

You also should review what type of court information is accessible on the internet in the jurisdiction you are filing in and to what extent disclosure of such information can be prevented. In a state where victim-identifying information and transcripts are readily available online, you should ask the court clerk to use initials (not full names) on internet documents.

d) Media Exposure

The protective measures discussed in the preceding section are exceptionally important because the media generally has open access to public courts. In addition, the First Amendment allows the media to reproduce any lawfully obtained information, even if the information itself was disclosed unlawfully.⁴²⁴ It is therefore critical that preemptive measures be taken to keep the media from ever securing access to information your client would not want disclosed.

Almost all states allow presiding judges to use discretion to allow or deny cameras in the courtroom, but a few states restrict the decision to the chief justice of the state supreme court. Specific procedural requirements are often imposed, including advance notice to the parties and the court. Most states also restrict coverage of cases involving juvenile victims and victims of sexual crimes. Many states provide strict guidelines for the number of cameras and equipment operators, positioning of cameras and lights, light levels, and movement in the courtroom of any media personnel.⁴²⁵

It has long been a traditional journalism practice not to name victims or possible victims in cases involving domestic violence, sexual assault, or sexual exploitation, unless the victim is willing to speak publicly. Still, in some cases a person may become high profile for other reasons (e.g., the Elizabeth Smart kidnapping), and when it ultimately turns out that she was a victim of

⁴²³ Keep in mind that the motions used in one district will not necessarily apply in another. And the motions necessary will certainly vary from case to case based on the facts. Ultimately, your goal (no different from any other case) should be to file any applicable motions that are necessary to protect your client.

⁴²⁴ See *The Florida Star v. B.J.F.*, 491 U.S. 524 (1989) (holding that a state cannot impose damages on newspaper for publishing name of rape victim which had been lawfully obtained from publicly released police report); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469 (1975) (holding that a state may not impose sanctions for the publication of truthful information obtained in official court records open to public inspection).

⁴²⁵ See, e.g., *People v. Bryant Media Information*, COLO. JUD. BRANCH, https://www.courts.state.co.us/userfiles/File/Court_Probation/5th_Judicial_District/Cases_of_Interest/People_v_Bryant/5thpressindex.htm (last visited Sept. 20, 2021) (providing a copy of the Colorado State Court Administrator's media policy in the Kobe Bryant case).

sexual assault, it may be too late to remove the victim's name from the story. In other cases, online, fast-moving news accounts may inadvertently include so much detail relating to a child victim's abuser or school affiliation that the identity of the child is basically disclosed. It is paramount that you vigilantly safeguard your client's privacy and anonymity and ensure that no sensitive or identifying information is disclosed in any way when speaking with the media.

C. ONLINE HARASSMENT AND REAL-WORLD STALKING POST DISTRIBUTION

As survivors move forward with their recovery, it is natural that they often want to establish an online presence to stay connected to friends and family, and to participate in today's world. Unfortunately, going online with their real names and/or photos can expose them to the same offenders who consume their sexual abuse imagery. There have been several cases of aggressive, offensive, and dangerous harassment of survivors as they ventured online as teenagers and young adults. This threatening activity has ranged from comments being posted on their social media profiles, sometimes with links to their sexually abusive content, to having offenders compile and share personal identifying information about the survivor with each other, putting the survivor's personal safety in jeopardy. In some instances, this harassment has expanded into actual stalking, involving in-person encounters and direct contact at a survivor's home, such as mailing items to a survivor's physical home address. For some survivors, their sexually abusive material is even repackaged later, and their identities and personal details of their lives are "outed" online. This type of activity can occur on the open internet as well as on the dark web, and is often very difficult for a survivor and their legal counsel to track and combat.

If your client is being harassed online or stalked in person, or if his or her identifying information has been posted in a context revealing the client to be a survivor, NCMEC can work with you to notify the online platform on which the information is being posted and ask the platform to try to remove any posts or comments that reveal information about the survivor's identity. These identifying comments may have been posted by classmates of the victim as well as unknown offenders who track media outlets to link together any information reported about the victim. NCMEC can also work with you and your client to gain greater awareness of the victim's online presence through publicly available social media and public records. The awareness of the volume of information available online can often help guide a more serious personal safety discussion with your client and increase awareness of how to handle creating an online presence during the recovery process.

Each state, the District of Columbia, and all U.S. territories address bullying through a different (and sometimes complicated) set of laws, policies, and regulations. While these laws generally do not prescribe specific consequences and very few classify bullying as a criminal offense, wherever possible you should use these laws as additional tools to protect your client from ongoing harassment and trauma. This [linked map](#) (also attached as Appendix KK) allows for quick access to each jurisdiction's laws, policies, and regulations regarding bullying. There is no federal law that specifically applies to bullying,⁴²⁶ but there are various federal protections that may be

⁴²⁶ Note, however, that where bullying is based on race or ethnicity, color, national origin, sex, disability, or religion, bullying overlaps with federally proscribed harassment, and attorneys should explore avenues for federal recourse. Depending on the circumstances, attorneys may also wish to explore federal Computer Fraud and Abuse Act claims. Finally, federal relief may be available if the cyberbullying is so severe as to violate 18 U.S.C. § 875

used to combat bullying for victims of child pornography, including the Children’s Internet Protection Act (CIPA), the Protect Our Children Act, Title II of the Broadband Data Improvement Act, and Federal Communications Commission rules.⁴²⁷

D. ONGOING THERAPEUTIC NEEDS—POTENTIAL NEED TO UPDATE VICTIM IMPACT STATEMENT/ASSESSMENTS AT CORE LIFE JUNCTURES

In some cases, the need may arise to update your client’s impact statement as the client progresses through life. A victim impact statement is necessarily limited by the experiences and emotional state of the child when it is written. The impact of being sexually exploited and having images of that abuse circulated on the internet will change as a sexually exploited child matures through teenage years into adulthood. Both the passage of time and the occurrence of core life events may drastically alter a survivor’s assessment of the abuse.⁴²⁸ For example, a survivor who goes on to have a consensual adult relationship or have children may experience complicated shifts in their therapeutic needs and recovery process. Not only can certain adult life experiences cause a resurgence of traumatic memories, but they can also create internal challenges as the survivor now is confronted with reframing the abuse he or she suffered from an adult perspective. For instance, many survivors who have had children have expressed struggles wondering how they can protect their children and be vigilant to potential abuse when their own mothers were unable to keep them safe.⁴²⁹ Similarly, an unexpected encounter with an early childhood friend or environment, or a memory might transport a survivor back in time.

More generally, ongoing therapy and personal growth might reveal how certain aspects of a survivor’s behavior or personality—for example, heavy drinking or sexual difficulties—stem from past sexual exploitation. As discussed in Part II.E.2(b), victim impact statements can provide powerful evidence of the harm inflicted on a child, and lead to increased restitution and/or damages awards. However, while drafting and revising a victim impact statement may empower some victims, it also may cause others to feel re-traumatized. Accordingly, you should carefully consider when, and whether, it might be appropriate to update your client’s victim impact statement. You should also consider updating expert reports, giving due consideration to whether updated expert reports may bolster a survivor’s claim without requiring them to relive traumatic memories.

E. DISTRIBUTION CASES INVOLVING YOUTH-PRODUCED CONTENT

While a considerable proportion of child pornography is produced and disseminated by adults, a growing percentage of youth-produced images are created and distributed online by children. Of more than 19,300 child sexual exploitation victims identified by law enforcement, 17

(interstate communications), 47 U.S.C. § 223 (obscene or harassing telephone calls in the District of Columbia or in interstate or foreign communications), or 18 U.S.C. § 2261A (stalking).

⁴²⁷ See 20 U.S.C. §§ 6777, 9134; 47 U.S.C. § 254; Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008).

⁴²⁸ For a compelling firsthand testimonial regarding this phenomenon, see Rebecca Makkai, *The Power and Limitations of Victim-Impact Statements*, THE NEW YORKER (June 8, 2016), <https://www.newyorker.com/culture/culture-desk/the-power-and-limitations-of-victim-impact-statements>.

⁴²⁹ See CAPTURED ON FILM, *supra* note 90, at 24–27.

percent of victims had self-produced and disseminated images online, and 31 percent had been enticed by someone online to produce imagery. This compares to 13 percent who had been victimized by a parent or guardian, and 19 percent by a neighbor or family friend.⁴³⁰

Distribution cases involving youth-produced imagery may involve a wide spectrum of conduct, ranging from voluntary youth-production and sharing of images to online enticement and sextortion. As defined by NCMEC, youth-production refers to the process in which a child willfully, knowingly, and purposefully performs and records sexual acts and shares those files online. Online enticement may produce images that appear exactly the same to youth-produced material, but the child has been coerced, tricked, or blackmailed into recording sexual acts and sharing the images. So while the images may look the same, the context and circumstances leading to their production can be quite different. Regardless, for purposes of possession and distribution, youth-produced images are treated the same under the law and for purposes of restitution.

One challenge with youth-produced material is that one type of content often leads to another. A child might believe he or she is communicating with an online “girlfriend” or “boyfriend” whom the child loves and trusts. The child may decide to self-produce images and videos in an attempt to convince the online love interest of his or her love and devotion, and suddenly, those files are manipulated and used as leverage to blackmail production and sharing of more explicit content. The child who initially thought he or she was in a consensual online sexual relationship was enticed and now is being sextorted, with the risk of public embarrassment and shame as the consequence.

Youth-production of images (or sexting) generally violates the letter of the law—when a 15-year-old sends a nude picture of herself, she is producing and/or distributing child pornography. It is important to note that except for a few high profile cases early on, most jurisdictions have clearly decided not to prosecute children who sext as though they were adult distributors of child pornography.⁴³¹ A 2011 survey of law enforcement found that only 18% of cases involving youth-created pornographic images (with no aggravating circumstances) progressed to the point of an arrest of the child involved in producing the images.⁴³² Fortunately, as a result of in-depth discussions among child-serving professionals and a more thorough understanding of the nature of youth-produced images, anecdotally NCMEC has seen this percentage relating to arrests lessen since 2011. This is an important issue to clarify with your client who may feel that he or she is to blame for the distribution of his or her sexually explicit images if he or she took and shared the images online. The fact that a child self-produced images that are later shared among offenders online has no impact on the ability to pursue restitution against offenders who possess or distribute the images.

⁴³⁰ This data is based upon information submitted to NCMEC by law enforcement as of December 31, 2020. It should be noted that when viewing the same relationships with the additional qualifier of which CSAM series are *actively traded* online, imagery that was youth-produced or produced as a result of online enticement represents a smaller percentage of the total.

⁴³¹ Miranda Jolicoeur & Edwin Zedlewski, *Much Ado About Sexting*, NAT’L INST. OF JUSTICE (June 2010), <https://www.ncjrs.gov/pdffiles1/nij/230795.pdf>.

⁴³² Janis Wolak, David Finkelhor & Kimberly J. Mitchell, *How Often Are Teens Arrested for Sexting? Data From a National Sample of Police Cases*, 129:1 PEDIATRICS 4 (Jan. 2012).

Various reforms have been proposed and in some cases passed to deal with concerns about sexting.⁴³³ Perhaps the most sweeping reform was in Vermont, which, in 2009, decriminalized some sexting behavior by adding a “Romeo and Juliet provision” to the state child pornography laws. This provision exempts minors from prosecution for child pornography provided that the sender transmitted an image of him or herself. Other states have made the self-production of sexual images by a child a misdemeanor instead of a felony, or have established diversion programs so youthful offenders can have charges dropped and criminal histories expunged. Connecticut and Nebraska created affirmative defenses for youth sexting (e.g., for minors possessing a limited number of depictions, for those who did not request the images, for those who did not forward the images or destroyed the images, or for a minor who had depictions only of himself or herself). Connecticut, Missouri, and Vermont laws exempt minors with sexting offenses from sex offender registration requirements. In Illinois, minors who distribute indecent images may be ordered to obtain counseling or perform community service, but otherwise not punished for sexting. Louisiana created a lesser offense for sexting by minors; penalties increase with second or subsequent offenses.

Plainly, various aggravating and mitigating conditions might be taken into account in deciding how sexting is handled. Legislation proposed in South Dakota, Senate Bill 179, epitomizes this approach, breaking sexting down into two levels: juvenile sexting and aggravated juvenile sexting. Aggravated juvenile sexting may be charged if the offending minor committed the offense for commercial or financial gain; the visual depiction was created or produced without the knowledge and consent of any depicted minor; the visual depiction was subsequently distributed, presented, transmitted or posted by the offending minor to more than five other persons, adult or minor; or if the offending minor has been previously referred for juvenile sexting.

F. HOW TO HANDLE WHEN YOUR CLIENT TURNS 18 (ASSUMING YOU WERE RETAINED BY THE PARENT OR GUARDIAN)

Given the nature of these crimes, your client is often a child, which means you were originally retained by a parent. Indeed, some victims who were harmed at very young ages may have no memories of their victimization and even as they age may have no awareness that their abuse was memorialized and circulated online. Many victims do not know the scope of the distribution of their images online, and others have no awareness of the legal proceedings occurring on their behalf. Under these circumstances, even though you have a legal and ethical responsibility to the child as your client, the parents will necessarily fill a significant role in interacting with you and directing the course of the representation.

When your client turns 18, your representation changes in several ways. First, you now have an attorney-client relationship only with the survivor, not with their parents. Second, some survivors upon turning 18 will for the first time gain a greater awareness of the legal proceedings occurring on their behalf and the nature of the continued distribution of their images. The now-

⁴³³ Dena T. Sacco et al., *Sexting: Youth Practices and Legal Implications*, BERKMAN CTR. FOR INTERNET & SOC’Y AT HARV. UNIV. (June 22, 2010), https://cyber.harvard.edu/sites/cyber.law.harvard.edu/files/Sacco_Argudin_Maguire_Tallon_Sexting_Jun2010.pdf; Nancy E. Willard, *Sexting & Youth: Achieving a Rational Response*, 6 J. OF SOC. SCIS. 542 (Apr. 2010). For links to each state’s latest statutory scheme, see *Sexting Laws Across America*, CYBERBULLYING RESEARCH CTR., <https://cyberbullying.org/sexting-laws> (last visited Sept. 20, 2021).

adult survivor must also determine if he or she wishes to continue seeking restitution payments and if he or she wishes to continue the attorney-client relationship with you. When you are interacting with your client for the first time after he or she reaches the age of 18, you should try to meet face to face if possible. Meeting in person could make your client feel more comfortable asking questions about the process and discussing the direction the representation will take moving forward. You will also want to determine if you need to revise your legal representation contracts and have the survivor sign a revised engagement letter with you.

Ideally, start this process as soon as possible when the child turns 18 in order to make the transition as seamless as possible. The survivor may be unaware of the scope or number of possession and distribution cases that exist involving his or her images. Much of this information can be difficult to cope with, and you should make sure your client has an adequate emotional support system in place during this time (including access to a licensed therapist or counselor). Consulting with a mental health professional could greatly assist your client in understanding and processing the notification and restitution process. NCMEC can provide victim and family support resources, including the FAON, which provides crisis intervention and referrals to appropriate healthcare professionals for long-term support.⁴³⁴ It might be difficult for your client to comprehend and absorb this process in one sitting, so consider whether you should have multiple communications over an extended period of time.

When a survivor turns 18, the notification preference entered into on his or her behalf by a parent or guardian becomes null. The default setting for the now-18-year-old victim is to opt out of notifications. A representative of FBI/CPVA is required to meet with the now-adult survivor to explain the notification process and review the notification preference form in the same way the representative did earlier with the victim's parent or guardian. Your client will need to be prepared to quickly (or even immediately) opt in and be advised of the changes once becoming an adult. Currently, when a survivor turns 18 and opts in to receive notifications, the survivor can receive retroactive notices if he or she chooses to do so. The victim specialist will advise the survivor of the total number of retroactive notices to help inform the decision.

Despite the changes that will occur when your client turns 18, the bottom line is that he or she is in control of how this process works. The idea of receiving notices can be both overwhelming and re-traumatizing, so reassure your client that his or her day-to-day life will not change because of a birthday. Explain that he or she does not need to receive these notices directly—your client can receive as much or as little information as he or she is comfortable with and may elect to have all notices and information go directly to you as his or her counsel. Ultimately, remember that there is no one-size-fits-all here. Regardless of the safeguards you describe, some clients may request that notices and restitution requests stop altogether. Others may request that you continue receiving notifications and requesting restitution, but that they not be notified every time this occurs. Some victims may find it easiest to have their parents continue handling the process. As their attorney, your job is to work with the survivor to determine which system best fits the survivor's needs and guarantees that he or she will not be re-victimized.

⁴³⁴ For victim support resources, see *Our Work: Victims & Family Support*, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, <http://www.missingkids.org/ourwork> (last visited Sept. 20, 2021).

G. HOW TO WORK EFFECTIVELY WITH PROSECUTORS

As has been highlighted throughout this Manual, a number of potential issues can be avoided if attorneys seeking restitution communicate effectively with prosecutors. Attorneys should initiate a line of communication with prosecutors as early as possible in a case. NCMEC recommends that attorneys send a letter notifying the prosecutor of their right to confer and consult immediately upon entry into the case. In order to ensure their inclusion throughout the process, attorneys should strive to submit their request for restitution as early as possible.

Attorneys can play an important role in advocating against narrow indictments and plea agreements. In order to guarantee the greatest chance of restitution recovery for your client, it is important to encourage prosecutors to include as many images as possible in an indictment. You should also do everything in your power to ensure that no appropriate charges are omitted from the indictment. In order to set the stage upfront, it could be beneficial to request that the prosecutor include your client in all counts of the indictment and/or plea agreement when you send the prosecutor your initial letter.

In terms of plea agreements, you should encourage the prosecutor to draft any plea agreement using broad language that requires restitution for victims of the charged counts as well as the relevant conduct. It could be helpful to ask the prosecutor to include restitution language to the effect of “the Defendant admits that [the victim] is a victim of his crime and was injured as a result.” Such language can help ensure victims are not precluded from seeking restitution down the line.

With respect to the restitution request itself, it can be helpful to include language along the following lines: “Under the Supreme Court’s decision in *Paroline v. United States*, 134 S. Ct. 1710, 1727 (2014), [Victim] is entitled to recover from this individual defendant restitution that is not a token or nominal amount. For reasons explained below, [Victim] respectfully requests that this court order restitution that reflects the defendant’s relative role in the causal process that underlies [Victim]’s losses, but which is no less than \$3,000.”

In order to increase their client’s chance of receiving restitution payments, attorneys have also found it helpful to request that any order regarding restitution provide the following:

- Your client is a victim of Defendant’s crime under 18 U.S.C. § 2259 because Defendant possessed, distributed, and/or transported child pornography images of the client.
- Restitution is due immediately, and notwithstanding any other provision of the Restitution Judgment, the government may enforce restitution at any time. The Defendant shall make a bona fide effort to pay restitution in full as soon as practical.
- The restitution is to be paid on a monthly basis, and in an amount no less than 25% of the Defendant’s gross income, to be changed, if needed, based on the Defendant’s changed circumstances pursuant to 18 U.S.C. § 3572(d)(3).
- If the Defendant receives any inheritance or any settlements (including divorce settlement or personal injury settlement), gifts, tax refunds, bonuses, lawsuit awards,

or any other receipt of money (including, but not be limited to, gambling proceeds, lottery winnings, and money found or discovered) the Defendant must, within five (5) days of receipt, apply 100% of such resources to any restitution still owed.

- Following entry of this Judgment, Defendant must fully and truthfully complete DOJ's Financial Statement of Debtor form, and provide whatever additional supporting documentation may be requested by the Financial Litigation Unit of the United States Attorney's Office.

In addition, we strongly encourage conversations regarding the role attorneys can play in getting a victim ready for trial and preparing a restitution request. As a prosecutor's primary focus will be on proving the guilt of the offender, he or she will be grateful to know that a team is working to build the victim into a strong witness should the case go to trial.

CONCLUSION

The path of recovery for CSAM victims and their families is not linear and is physically and emotionally challenging, as well as procedurally and financially complicated in ways that only the survivor and their family will ever fully realize. Your commitment and legal assistance, as well as the supportive efforts of other child-serving professionals, can help the survivor's path by serving as a benchmark of support and a source of trusted information.

Many legal processes are inherently complicated and can be intimidating for crime victims to navigate. The legal issues that arise when a child's sexually abusive images have been circulated online are evolving and remain especially complicated. Your role in representing these children through the restitution process and helping to advise them on related legal issues can be life-changing.

This Manual was designed to provide up-to-date resources and guidance to attorneys so they can maximize legal and support strategies and opportunities for their clients. Because it takes a team of dedicated professionals to support survivors of online sexual exploitation and their families, this Manual also provided recommendations for attorneys to work closely and effectively with prosecutors, mental health professionals, state resources, and NCMEC.

NCMEC's continuum of care to provide services and resources for CSAM survivors will continue to evolve as we learn more about how we can better serve as a resource, as laws evolve, as new notification and restitution legal procedures are put into place, and as new technological challenges emerge that threaten children's safety online. We are mindful of these evolving trends and will continue to update this Manual periodically and push out updates to our network of survivor attorneys.

As a reminder, the following is a summary of resources that are readily available to attorneys to assist with their effective representation of survivors:

- **Affidavits.** As discussed in Part I, NCMEC can provide technical assistance relating to the distribution of your client's CSAM for restitution purposes, including the notification process, and background information relating to the child's series.

NCMEC can provide three core affidavits in connection with a particular client: the ASIR, the Active Federal Case Affidavit, and the Active State Case Affidavit.

- **Roundtables, Mentorship, and Information Sharing.** NCMEC hosts roundtables where various professionals supporting CSAM survivors gather to share information and strategies. These roundtables enable NCMEC to capture valuable insights that can be shared across the continuum of care professionals. For attorneys new to this area of law, these roundtables and the related networks of professionals can also provide opportunities for mentorship and information sharing.
- **Help and Services for Survivors and Families.** One key goal of NCMEC is to dedicate its resources to helping survivors and families impacted by online child sexual exploitation. There are a number of NCMEC services that are currently available to survivors and families.⁴³⁵
- **Counseling and Community Resources for Families.** When a child is a victim of online sexual exploitation, the child's non-offending family members can experience challenges in supporting the child and coping with their own recovery process. NCMEC can provide therapeutic assessments, counseling, and community services referrals that can help families locate the appropriate professional mental health intervention to support their recovery process.⁴³⁶
- **Emotional and Peer Support.** NCMEC also provides family support through Team HOPE, a network of trained family volunteers who also have been impacted by the sexual exploitation of a child. Team HOPE volunteers can provide guidance and support to families in similar situations.
- **Removal of Content.** NCMEC can provide notice to technology companies through its direct partnership contacts to help remove online child sexual exploitation images, videos, and exploitative or harassing comments relating to child victims.
- **Locating Attorneys.** NCMEC can provide an overview of both the legal process involved in the criminal prosecution of an offender, and the process of seeking restitution in criminal and civil proceedings. NCMEC also can help survivors locate an attorney to thoroughly navigate their legal options.

For any questions about this Manual and how NCMEC can help support you and your client during the course of your legal representation, we encourage you to email

⁴³⁵ See NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, NCMEC RESOURCES FOR CHILD SEXUAL EXPLOITATION SURVIVORS & THEIR FAMILIES (2019), <https://www.missingkids.org/content/dam/missingkids/pdfs/NCMEC%20Resources%20for%20Child%20Sexual%20Exploitation%20Survivors.pdf>.

⁴³⁶ See NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, RECONNECTING WITH YOUR CHILD: BUILDING RELATIONSHIPS AFTER SUSPECTED SEXUAL EXPLOITATION (2020), <https://www.missingkids.org/content/dam/missingkids/pdfs/Reconnecting%20with%20Your%20Child%202020.pdf>.

familysupport@ncmec.org or call (877)446-2632, ext. 6117. We applaud your dedication to promoting the interests of child victims of online sexual exploitation and thank you for partnering with NCMEC in our mission to keep children safe from sexual exploitation.

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Appendix AA: State Criminal Restitution Rules Chart

Appendix BB: Civil Remedy for Child Pornography Chart

Appendix CC: State Victims’ Funds Chart

Appendix DD: Office for Victims of Crime, U.S. Resource Map of Crime Victim Services & Information

Appendix EE: Cyber Civil Rights Initiative, Online Removal Guide

Appendix FF: State Requirements for Appointing a Guardian Ad Litem Chart

Appendix GG: State Child Custody Laws Chart

Appendix HH: Civil Non-Domestic No-Contact Orders Chart

Appendix II: Pleading Anonymously for Civil Plaintiffs Chart

Appendix JJ: Sample Privacy Motions

Appendix KK: Bullying Laws, Policies, and Regulations Map

Appendix A: Index of Key Terms and Acronyms

Actively-Traded Series: A NCMEC designation referring to a child sexual abuse image series that has been seen in 5 or more CyberTipline reports and/or CVIP case reviews

AVAA: Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018

C3P: Canadian Centre for Child Protection

CEOS: U.S. Department of Justice's Child Exploitation and Obscenity Section

CIR: Child Identification Report provided by NCMEC

CPVA: FBI's Child Pornography Victim Assistance program

CP: Child Pornography

CRIS: NCMEC's Child Recognition and Identification System

CRIS Review: Case (images and videos) submitted by law enforcement to NCMEC for review of which files contain previously-identified children

CVRA: Crime Victims' Rights Act (18 U.S.C. § 3771)

CSAI or CSAM: Child Sexual Abuse Image or Child Sexual Abuse Material

CSE: Child sexual exploitation

CT: NCMEC's CyberTipline

CVIP: NCMEC's Child Victim Identification Program

ECD: NCMEC's Exploited Child Division

ESP: Electronic Service Provider

EOUSA: U.S. Department of Justice's Executive Office for United States Attorneys

FAD: NCMEC's Family Advocacy Division

ICAC: Internet Crimes Against Children task forces

Identified Series: Set of images or videos containing a child who has been identified by law enforcement. Every identified series has a law enforcement Point of Contact (POC) who can testify to the fact that the child is identified.

LE or LEA: Law Enforcement or Law Enforcement Agency

LESP: Law Enforcement Services Portal

MD5: Specific type of hash value that serves as a digital fingerprint for a file

NCMEC: National Center for Missing & Exploited Children

NCVC: National Center for Victims of Crime

NCVLI: National Crime Victim Law Institute

New Series/New Victim Submission: Case (images and videos) submitted to NCMEC by law enforcement who have identified a new victim of child sexual abuse imagery. Files are submitted to CVIP to be entered into the CRIS system.

NPF: FBI's child pornography victim Notification Preference Form

OLC: NCMEC's Office of Legal Counsel

OVC: U.S. Department of Justice's Office for Victims of Crime

Phoenix 11: Group of 11 survivors whose child sexual abuse was recorded and who have united to create an advocacy impact statement to increase public awareness and support child safety.

PhotoDNA: Type of "fuzzy" hash that can be used to match images that are visually similar, but have slight differences.

POC: Law enforcement point of contact for an identified series

SMS: NCMEC's Series Management System

TA: Technical Assistance

Team HOPE: NCMEC program providing trained peer support to families of missing and sexually exploited children

VIR: Victim Information Report (provided by CPVA)

VIS: Victim Impact Statement

VNS: U.S. Department of Justice's Victim Notification System

VRRA: Victims' Rights and Restitution Act (34 U.S.C. § 20141)

Appendix B: Victims' Rights and Restitution Act (34 U.S.C. § 20141)

§ 20141. Services to victims

(a) Designation of responsible officials. The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) at each stage of a criminal case.

(b) Identification of victims. At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall—

- (1) identify the victim or victims of a crime;
- (2) inform the victims of their right to receive, on request, the services described in subsection (c); and
- (3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c).

(c) Description of services.

(1) A responsible official shall—

- (A) inform a victim of the place where the victim may receive emergency medical and social services;
- (B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and [the] manner in which such relief may be obtained;
- (C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and
- (D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

- (A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
- (B) the arrest of a suspected offender;

- (C) the filing of charges against a suspected offender;
 - (D) the scheduling of each court proceeding that the witness is either required to attend or, under section 1102(b)(4), is entitled to attend;
 - (E) the release or detention status of an offender or suspected offender;
 - (F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and
 - (G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.
- (4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.
- (5) After trial, a responsible official shall provide a victim the earliest possible notice of—
- (A) the scheduling of a parole hearing for the offender;
 - (B) the escape, work release, furlough, or any other form of release from custody of the offender; and
 - (C) the death of the offender, if the offender dies while in custody.
- (6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.
- (7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.
- (8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) No cause of action or defense. This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c).

(e) Definitions. For the purposes of this section—

(1) the term “responsible official” means a person designated pursuant to subsection (a) to perform the functions of a responsible official under that section; and

(2) the term “victim” means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

(i) a spouse;

(ii) a legal guardian;

(iii) a parent;

(iv) a child;

(v) a sibling;

(vi) another family member; or

(vii) another person designated by the court.

HISTORY:

Act Nov. 29, 1990, P. L. 101-647, Title V, § 503, 104 Stat. 4820; Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle E, § 40503(a), 108 Stat. 1946.

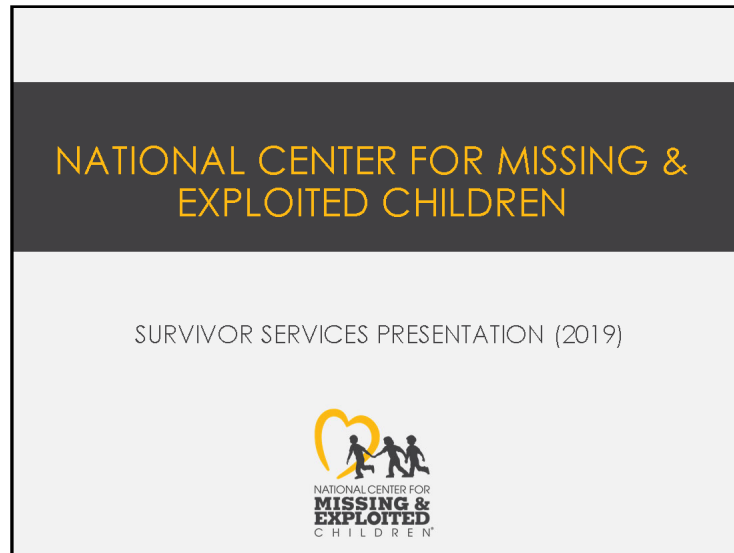
Appendix C: Core Psychological Literature

Following are some helpful guides that can assist practitioners in dealing with individuals who have suffered trauma:

- Steven Marans & Hilary Hahn, Int'l Ass'n of Chiefs of Police, Yale Med. Child Study Ctr., Off. of Juv. Just. & Delinquency Prevention, *Enhancing Police Responses to Children Exposed to Violence: A Toolkit for Law Enforcement* (2017, <https://www.theiacp.org/sites/default/files/2018-08/CEVToolkit.pdf>).
- The Nat'l Ctr. for Missing & Exploited Children, *Captured on Film: Survivors of Child Sex Abuse Material are Stuck in a Unique Cycle of Trauma* (2019), <https://www.missingkids.org/content/dam/missingkids/pdfs/Captured%20on%20Film.pdf>
- *About Child Trauma*, The Nat'l Child Traumatic Stress Network, <https://www.nctsn.org/what-is-child-trauma/about-child-trauma> (last visited Jan. 10, 2021).
- Substance Abuse & Mental Health Servs. Admin., U.S. Dep't of Health & Hum. Servs., *Trauma Training for Criminal Justice Professionals* (June 29, 2020), <https://www.samhsa.gov/gains-center/trauma-training-criminal-justice-professionals>.
- Bessel A. van der Kolk, *Developmental Trauma Disorder: Toward a Rational Diagnosis for Children with Complex Trauma Histories*, 35(5) PSYCHIATRIC ANNALS 401, https://traumaticstressinstitute.org/wp-content/files_mf/1276541701VanderKolkDvptTraumaDis.pdf.

Appendix D: NCMEC Survivor Services Presentation

EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)

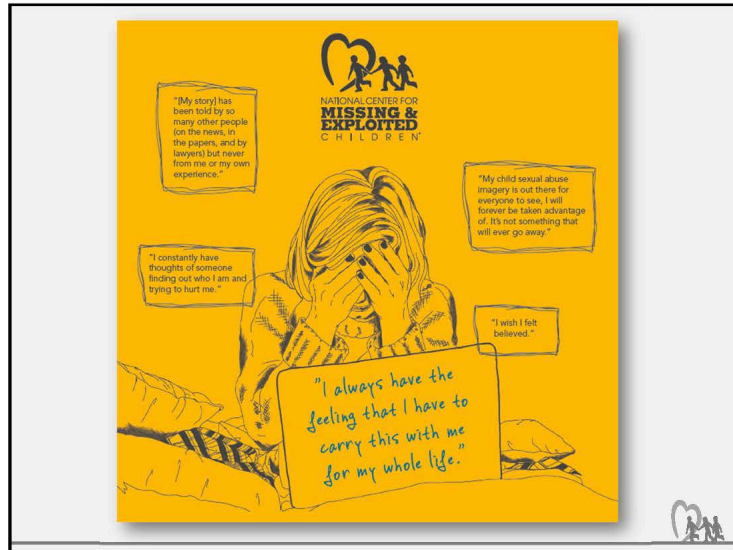


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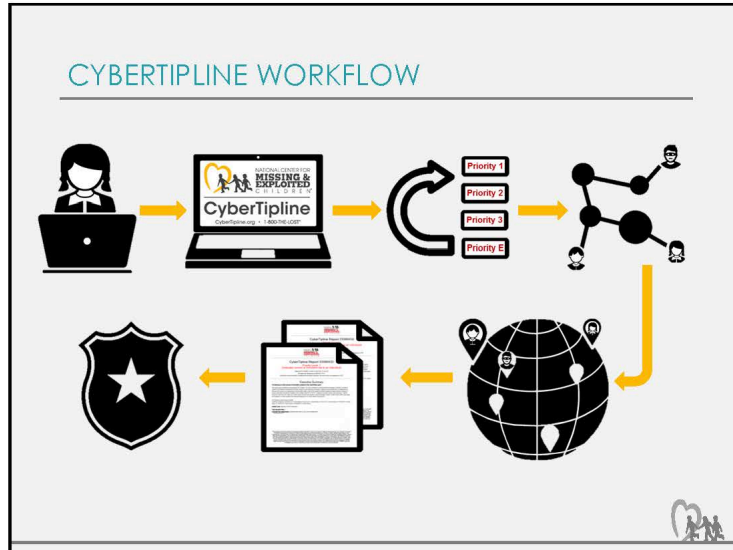


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EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)

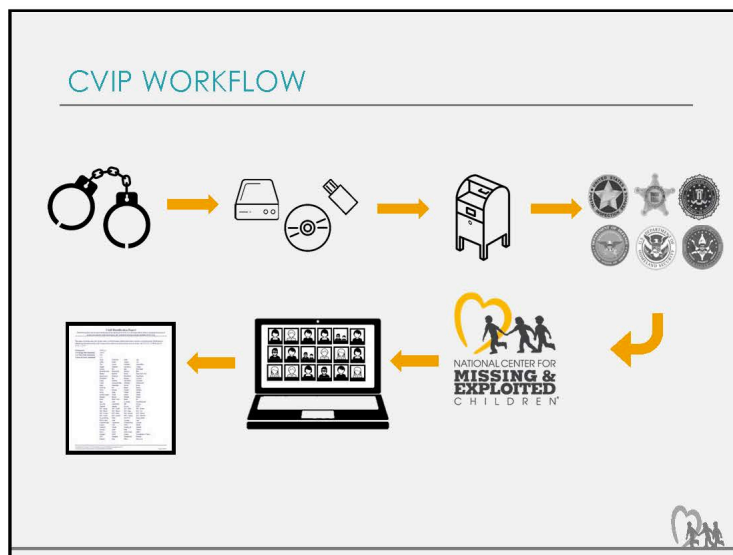


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EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)




5

HOW DOES NCMEC NAME NEWLY IDENTIFIED SERIES?

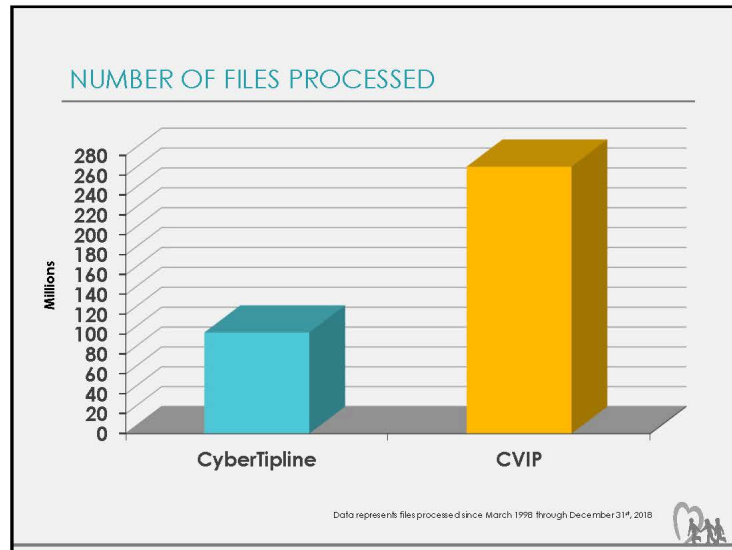
Upon series enrollment, all identified children receive a series name

- Until files are distributed, series are named with alphanumeric code
 - » _1234TA#56789
- Once distributed, series renamed to reference:
 - » How offenders are trading the files
 - » File names
 - » Visual reference or background identifier
- NCMEC never uses:
 - » Child's real name
 - » Potentially identifying information – screenname, location, offender name
 - » Trademarked names
 - » Derogatory words or phrases

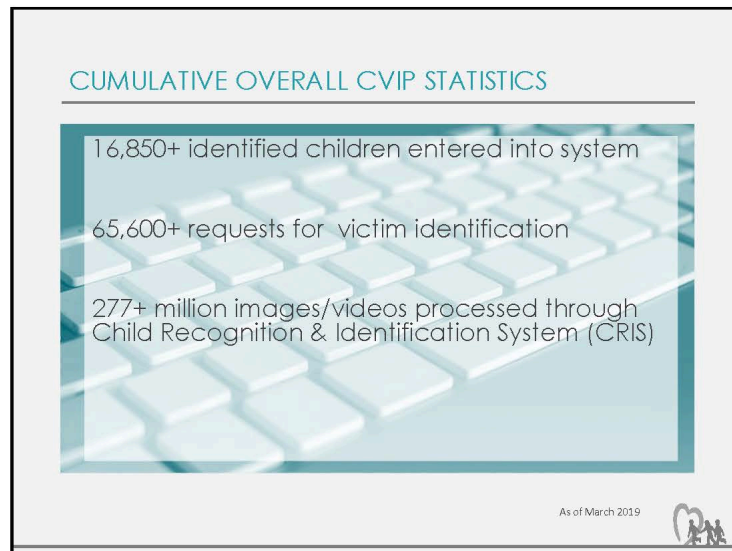


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EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)

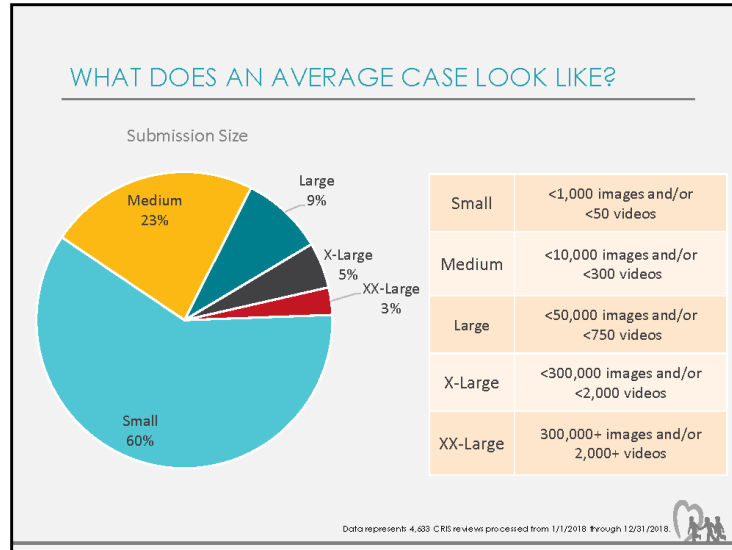


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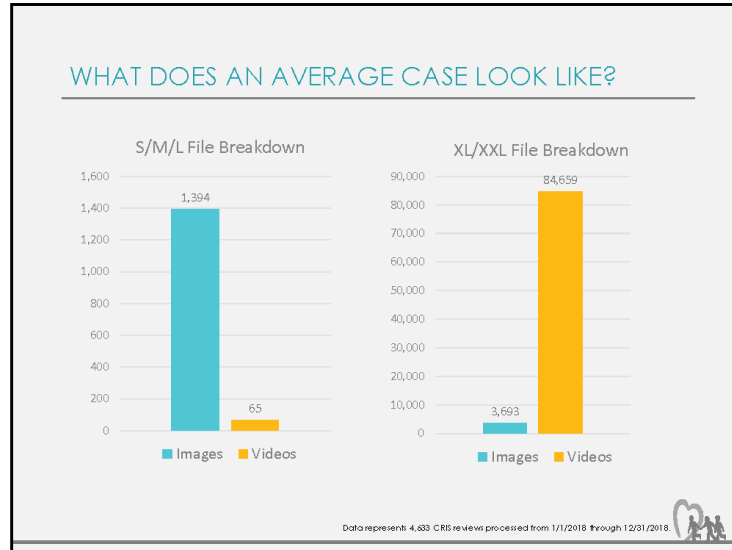


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EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)

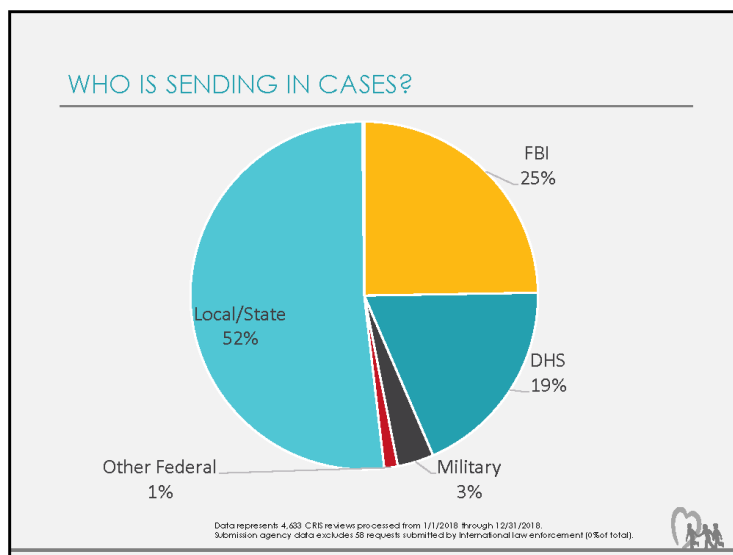


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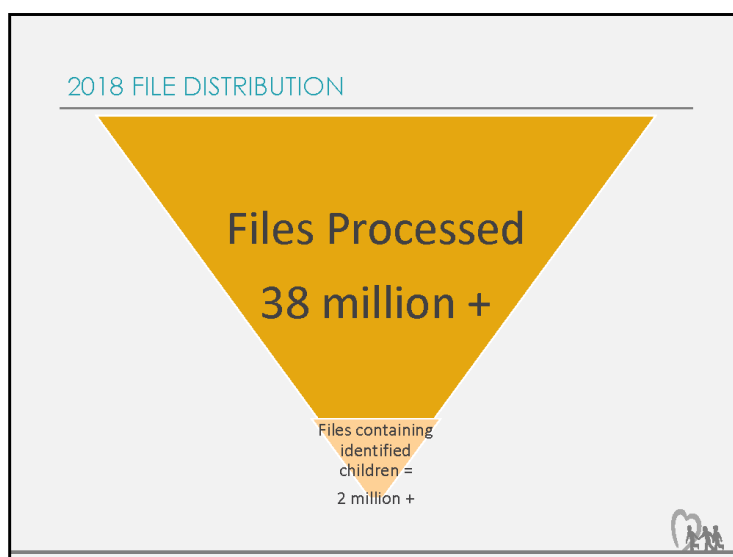


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EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)

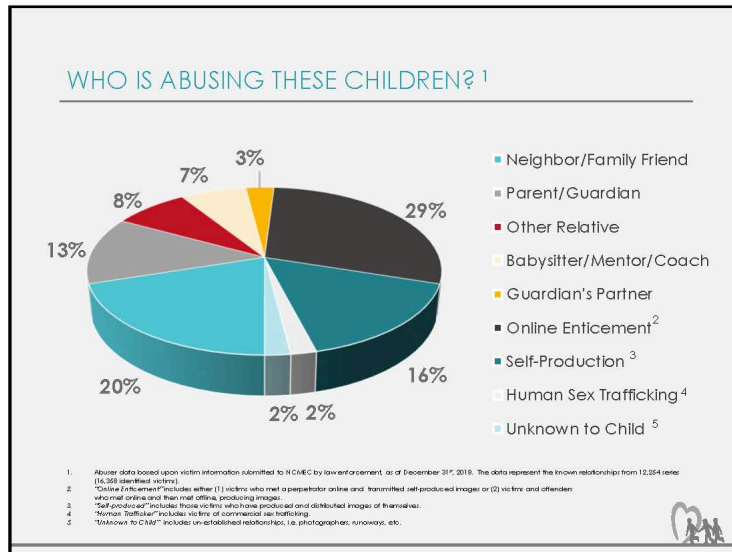


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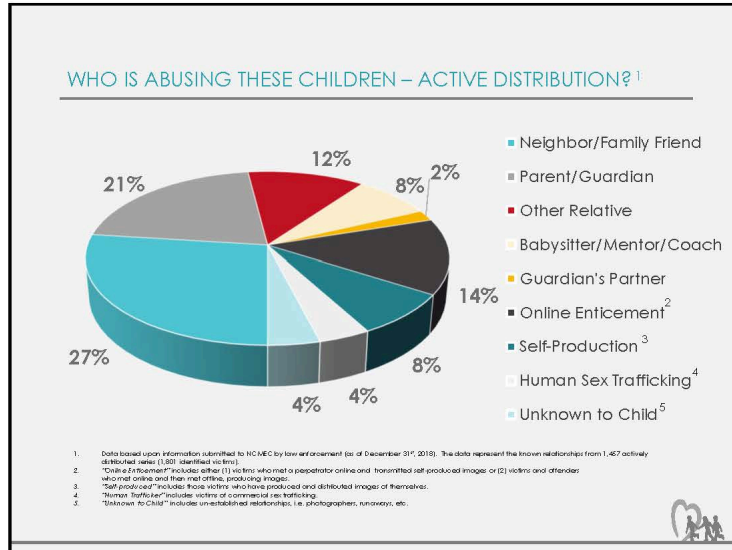


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EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)

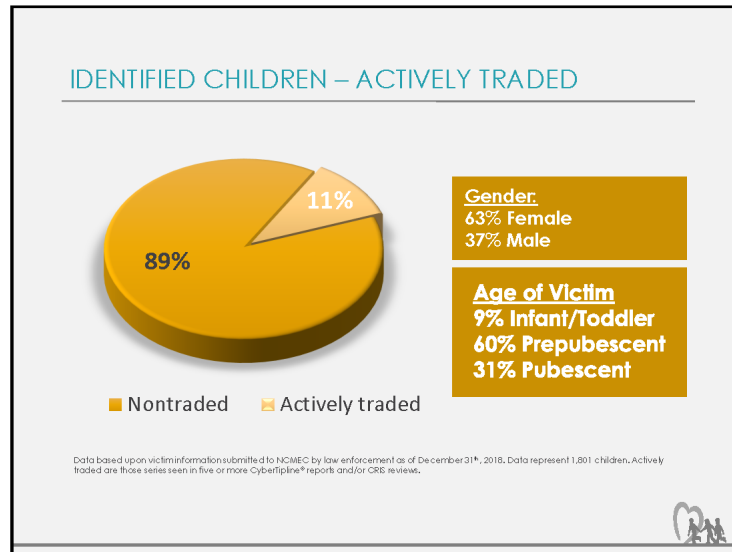


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EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)



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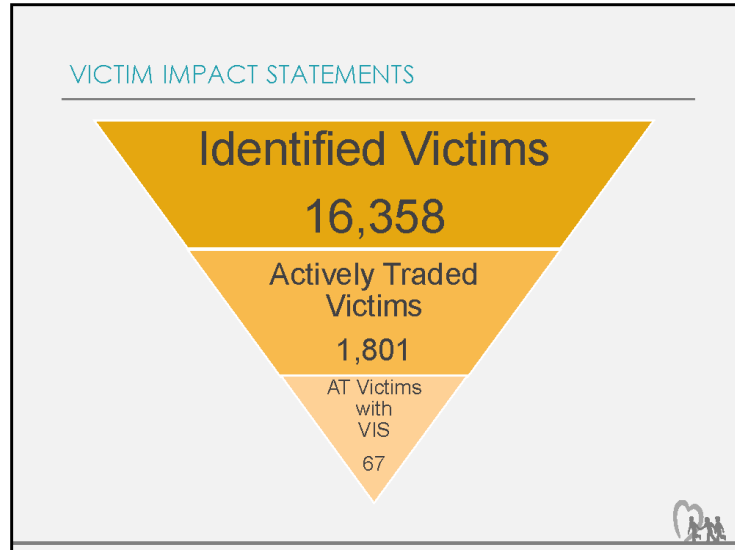
GENERAL SERIES DISTRIBUTION – BY THE NUMBERS

In 2018, NCMEC had 16,358 identified series in our systems.

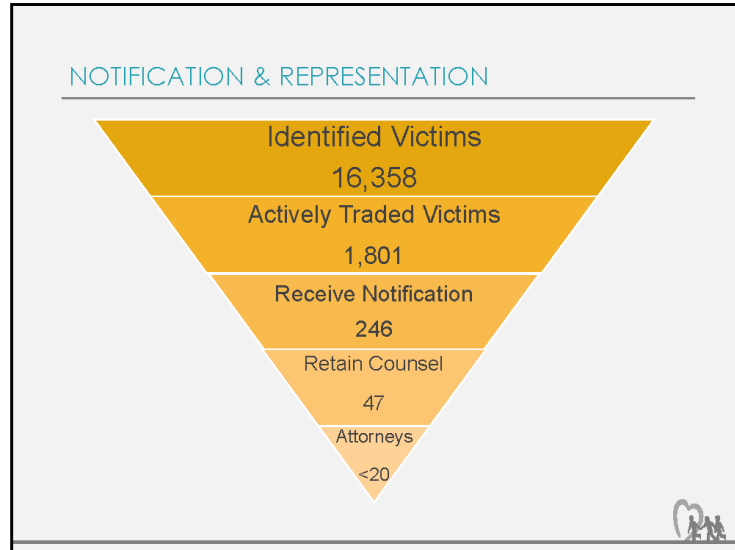
Identified Series Distribution	
Average	1,337 hashes
Lowest	1 hash
Highest	125,662 hashes

16

EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)

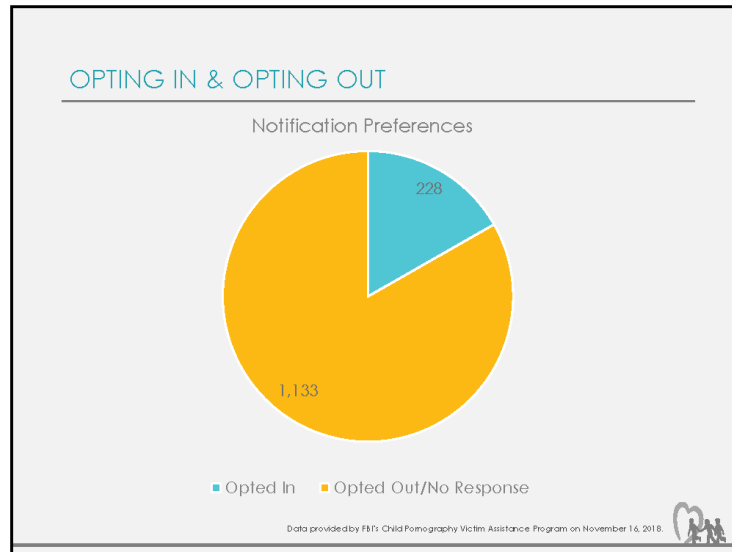


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EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)



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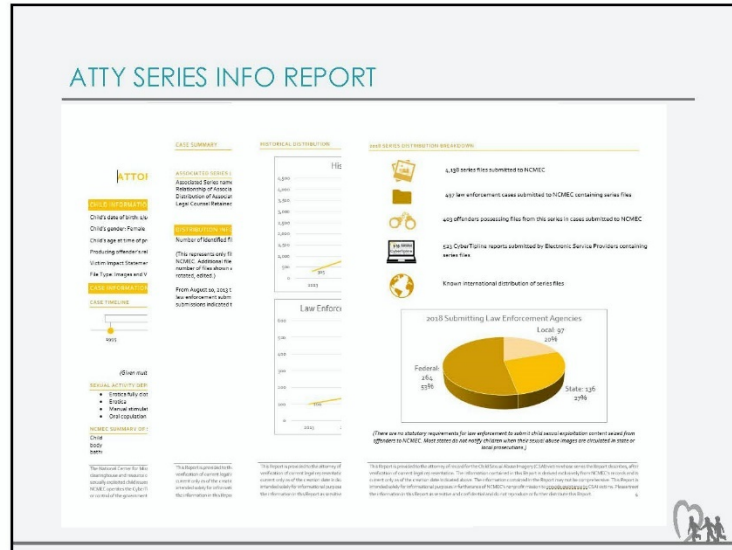
WHAT DOES NCMEC KNOW? (CURRENTLY)

WHAT WE RETAIN	WHAT WE DO NOT RETAIN
<ul style="list-style-type: none">• Child's age• Law Enforcement Contact• Case Number• Case Dates• Country and State of Abuse• Offender Name• Offender's Date of Birth• Relationship to Offender• Images and Videos	<ul style="list-style-type: none">• Child's Name• Social Security Number• Address (current or previous)• Parents' Names

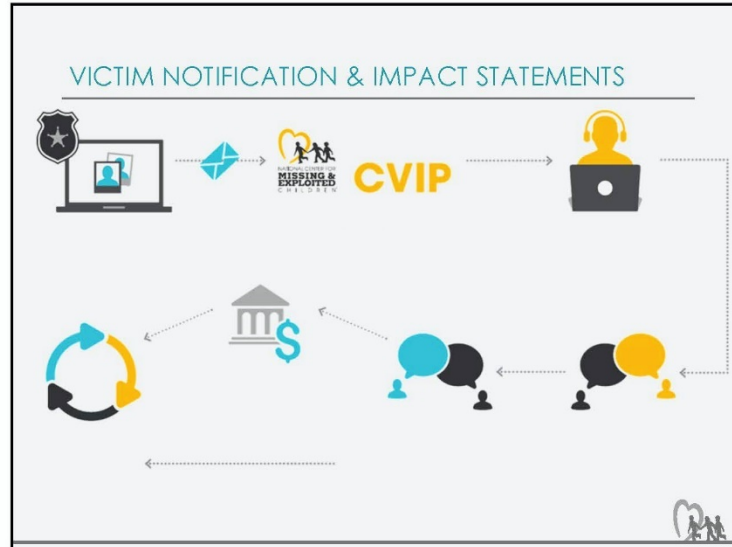
NCMEC system is populated by what law enforcement agencies provide

20

EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)

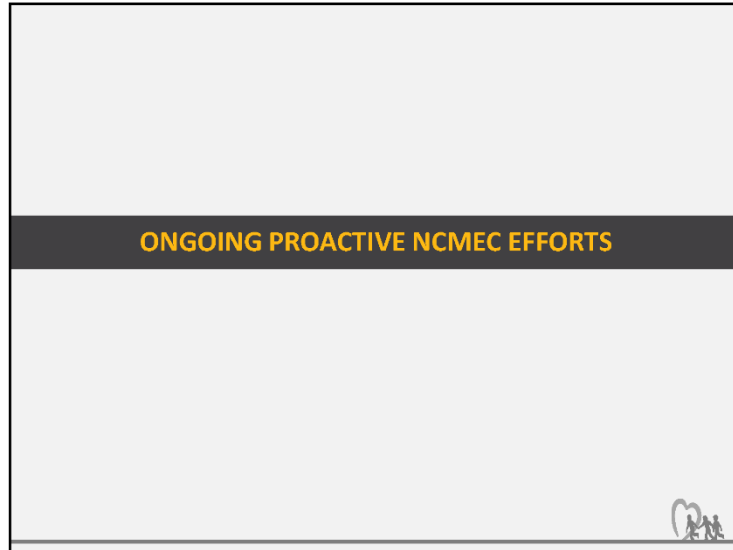


21

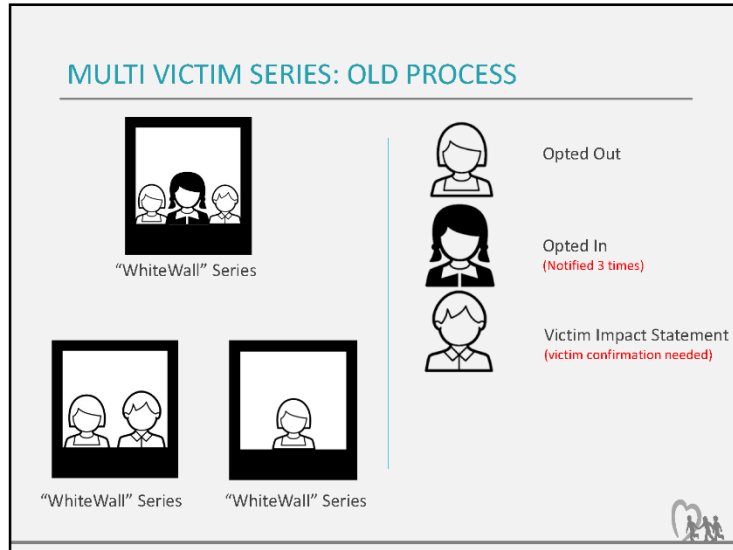


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EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)

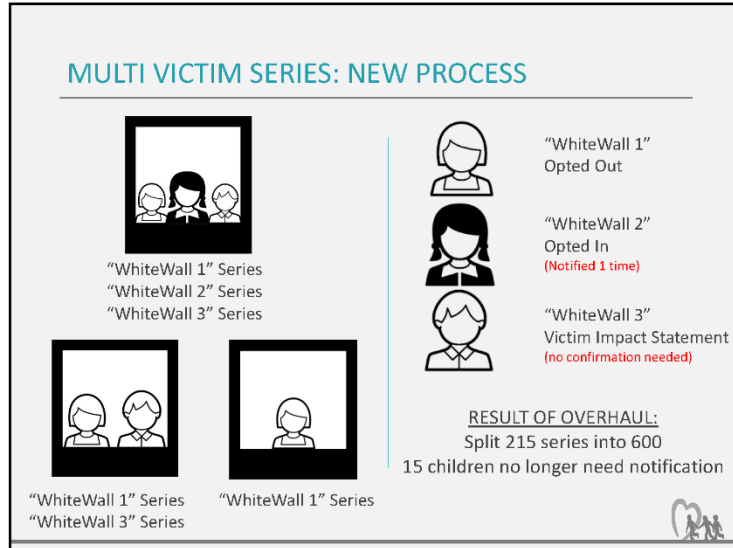


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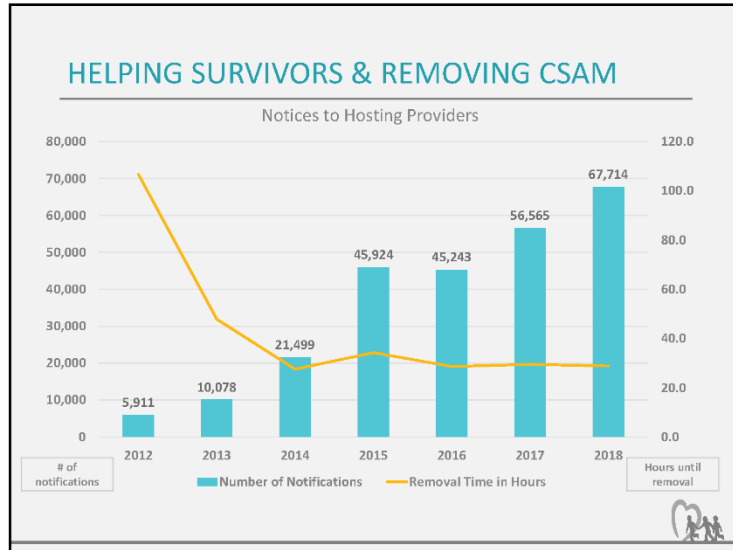


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EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)



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EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)

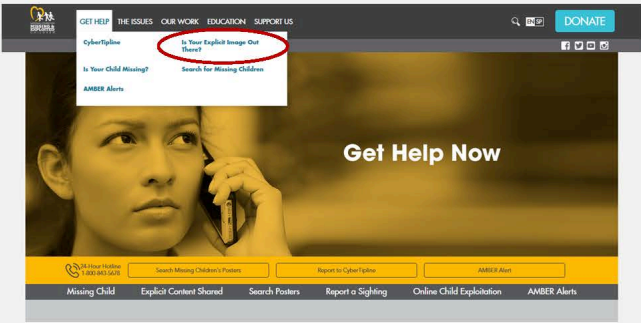
RESOURCES FOR SURVIVORS

- NCMEC's Industry Hash Sharing List
 - » Multiple companies participating
 - » Offer "worst-of-the-worst" hash value list to industry
 - » Identified and non-identified
- NCMEC's NGO Hash Sharing List
 - » Multiple companies or NGOs participating
 - » Over 1,700,000 hashes available
- Exploitative Hash List
 - » Multiple companies participating
 - » Over 4,000 hashes available
 - » Goal to have all identified images on either list




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GET HELP NOW

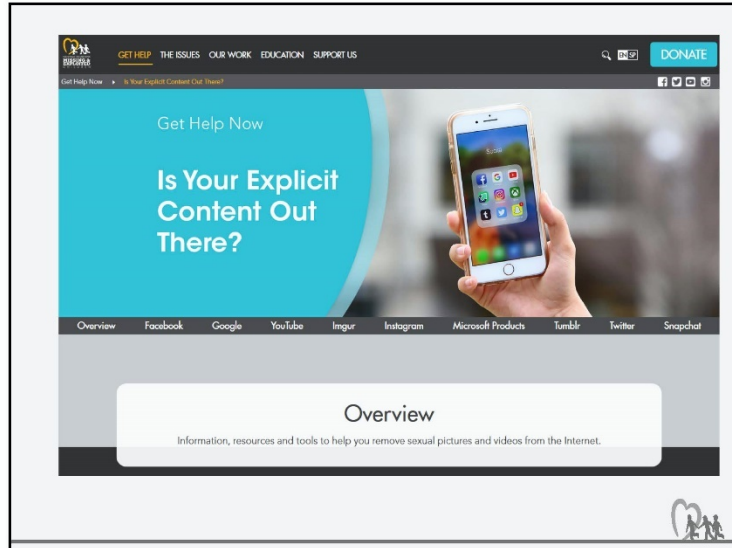


<http://www.missingkids.org/gethelpnow/isyourexplicitcontentoutthere>

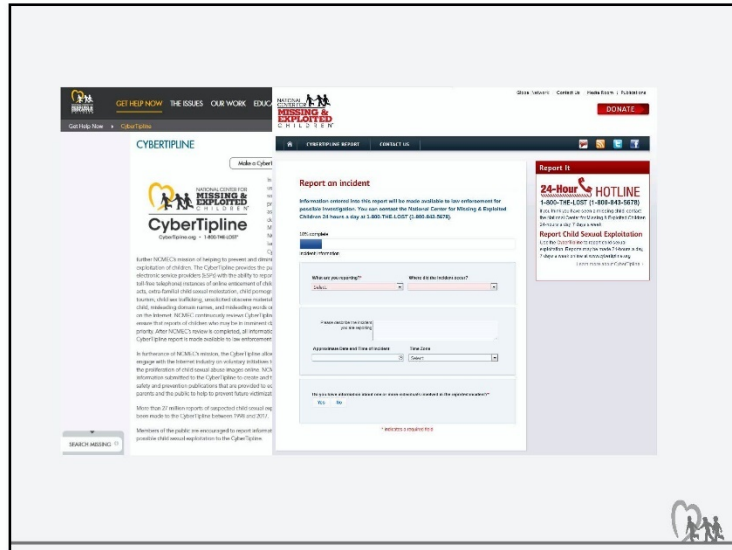


28

EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)



29



30

EXAMPLE SURVIVOR SERVICES PRESENTATION (2019)

EMPOWERING, SUPPORTING & ASSISTING FAMILIES

with the Trauma of Child Sexual Exploitation and Recovery

Support
NCMEC is on the side of families who need help navigating a complex, stressful, and painful crisis. We offer crisis intervention, information, and referrals to support professionals for longer-term support.

Legal Assistance
Crisis calls may be eligible for assistance. NCMEC's Legal Services Division provides support and professional legal representation.

Peer & Emotional Connection
Families of exploited children often feel alone in their struggle and need support from others who have experienced similar challenges. Through our online and in-person support groups, families can share their experiences, gain insight, coping skills, and connections.

Reduce Content Online
We work with families to remove the visibility of a child's identity to protect their privacy. We help families understand how to report content and how to work with law enforcement to remove content. We also help families understand how to work with social media companies to remove content.

For more information, contact:
1-877-446-2832 ext. 6117 or familiesupport@ncmec.org
<https://www.missingkids.org>

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NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

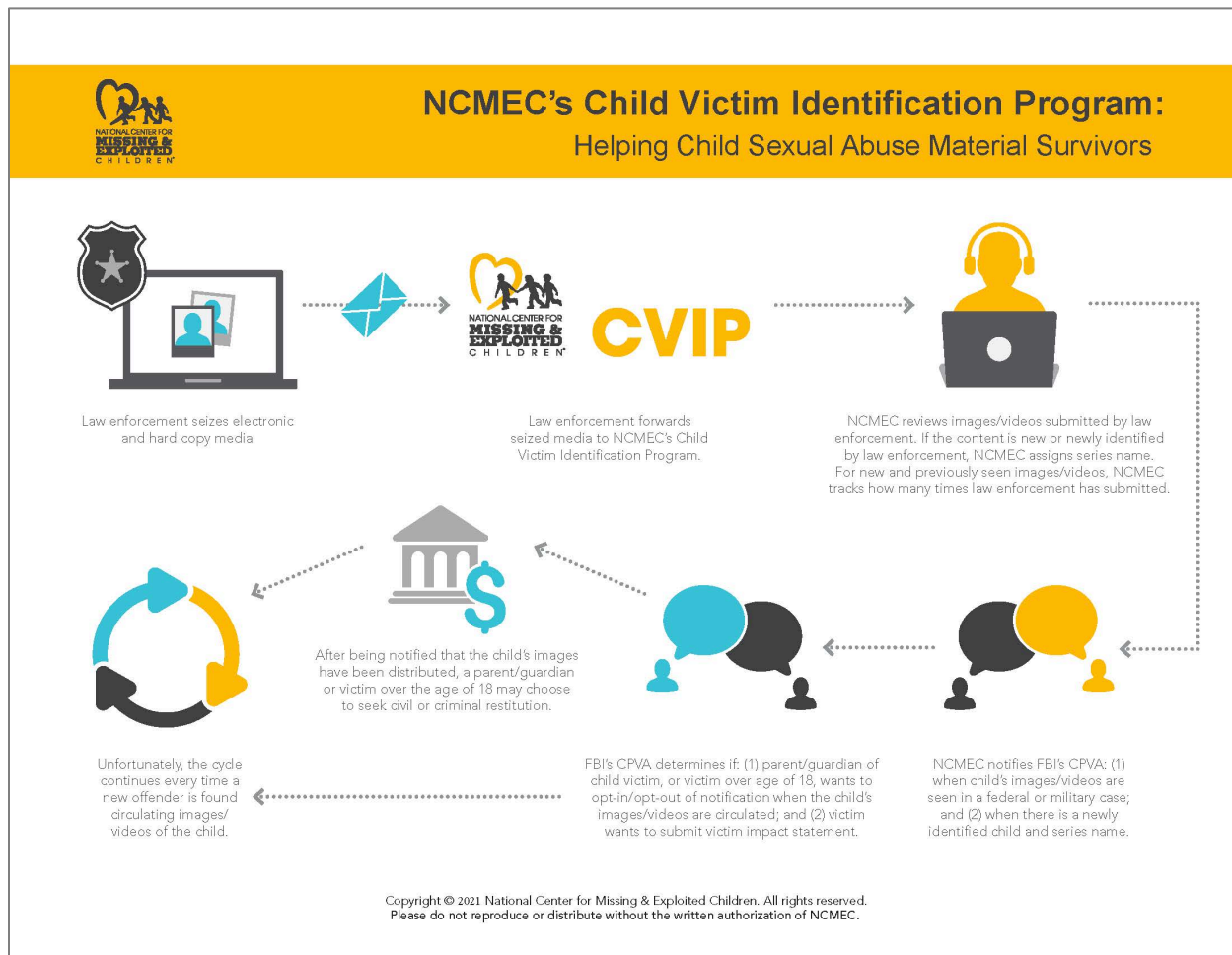
For more resources please visit
MissingKids.org

[f](#) [t](#) [i](#) [v](#)
#MissingKids

For complete copyright and grant information, visit MissingKids.com/legal
Copyright © 2021 National Center for Missing & Exploited Children. All rights reserved.

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Appendix E: NCMEC's Child Victim Identification Program: Helping Child Sexual Abuse Material Survivors



Appendix F: Template Affidavit and Sample Attorney Series Information Report



Creation Date: 1/1/2022

ATTORNEY SERIES INFORMATION REPORT

Series: Sample Series

CHILD INFORMATION

Child's date of birth: 1/1/2001

Child's gender: Female

Child's age at time of production of images: 4-7

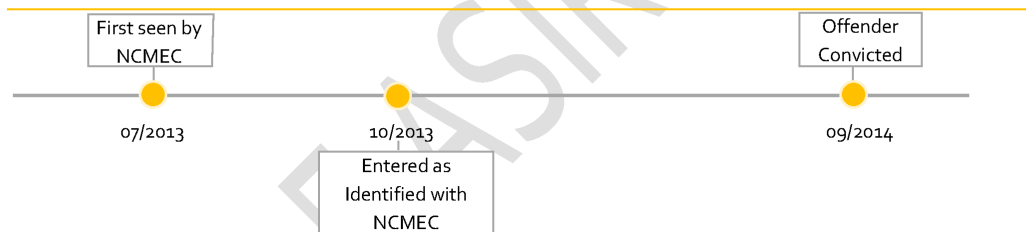
Producing offender's relationship to child: Father

Victim Impact Statement on file: Yes, all jurisdictions

File Type: Images and Videos

CASE INFORMATION

CASE TIMELINE



(Given multiple information sources some discrepancies may occur in dates shown above.)

SEXUAL ACTIVITY DEPICTED (NCMEC STANDARDIZED ELEMENTS OF SEXUAL ACTIVITY)

- | | |
|---|--|
| <ul style="list-style-type: none">• Erotica fully clothed (V)• Erotica (V)• Full nudity (V)• Kissing (O to V)• Licking (O to V)• Exposure of breast (V)• Exposure of genitals/anus (V)• Urination (V)• Defecation (V) | <ul style="list-style-type: none">• Manual stimulation (O)• Ejaculation (O)• Oral copulation (V to O)• Vaginal penetration (O to V)• Anal penetration (O to V)• Drugged/Sleeping (V)• Bestiality (V)• Bondage (V)• Other sexual content (O to V) |
|---|--|

(V indicates victim was engaged in sexual act. O indicates offender was engaged in sexual act.)

The National Center for Missing & Exploited Children (NCMEC) is a private, non-profit 501(c)(3) organization that serves as a national clearinghouse and resource center for families, victims, private organizations, attorneys, law enforcement, and the public on missing and sexually exploited child issues. To further its private, nonprofit mission to reduce child sexual exploitation, and prevent future victimization, NCMEC operates the CyberTipline and Child Victim Identification Program. NCMEC does not act in the capacity of or under the direction or control of the government or any law enforcement agency.

CASE SUMMARY

Case summary here.

ASSOCIATED SERIES (ADDITIONAL VICTIM SERIES CREATED BY SAME OFFENDER)

Associated Series Name: _1234TA#5678

Relationship of Associated Victim to Offender: Victim was niece of _1234TA#5678 offender

Distribution of Associated Series Files: None

Legal Counsel Retained by Associated Victim: No

POINT OF CONTACT

Name:

Agency:

Email:

Phone Number:

Case Number:

DISTRIBUTION INFORMATION

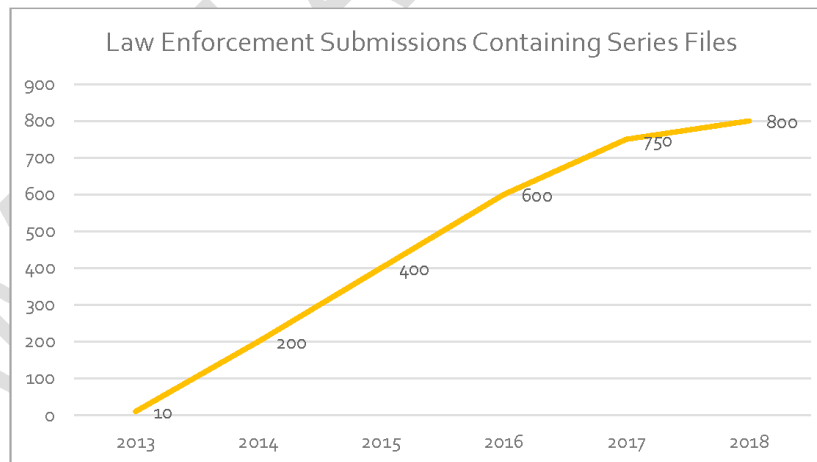
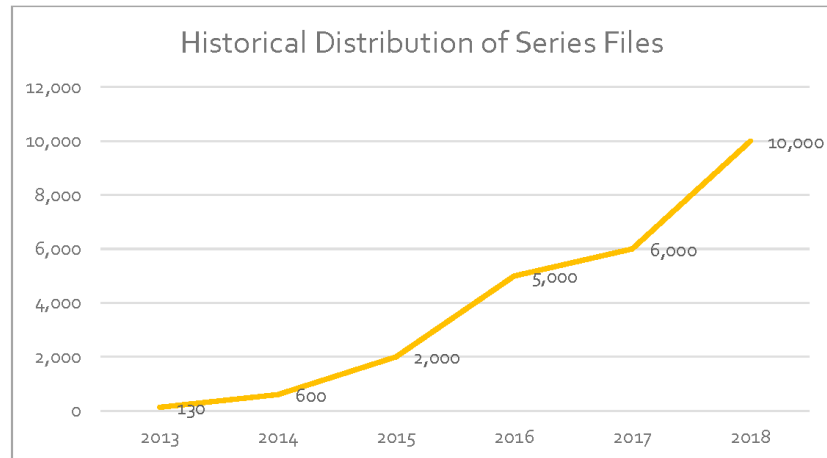
Number of identified files submitted by law enforcement: 62 (40 images and 12 videos)

(This represents only files that law enforcement seized from the producer of the series and submitted to NCMEC. Additional files that may exist, but were not in the producer's possession, are not included. The number of files shown above includes visually unique files as well as files that are visually similar, e.g., cropped, rotated, edited.)

From July 1, 2013 through December 31, 2018, files from the "Sample Series" series have been included in 2,500 law enforcement submissions of content to NCMEC that were seized from offenders. NCMEC's review of these submissions indicated that they included a total of 30,000 files from the "Sample Series" series.

This Report is provided to the attorney of record for the Child Sexual Abuse Material (CSAM) victim whose series the Report describes, after verification of current legal representation. The information contained in this Report is derived exclusively from NCMEC's records and is current only as of the creation date indicated above. The information contained in the Report may not be comprehensive. This Report is intended solely for informational purposes in furtherance of NCMEC's nonprofit mission to provide assistance to CSAM victims. Please treat the information in this Report as sensitive and confidential and do not reproduce or further distribute this Report.

HISTORICAL DISTRIBUTION



This Report is provided to the attorney of record for the Child Sexual Abuse Material (CSAM) victim whose series the Report describes, after verification of current legal representation. The information contained in this Report is derived exclusively from NCMEC's records and is current only as of the creation date indicated above. The information contained in the Report may not be comprehensive. This Report is intended solely for informational purposes in furtherance of NCMEC's nonprofit mission to provide assistance to CSAM victims. Please treat the information in this Report as sensitive and confidential and do not reproduce or further distribute this Report.

2019 SERIES DISTRIBUTION BREAKDOWN



10,000 series files submitted to NCMEC



800 law enforcement cases submitted to NCMEC containing series files



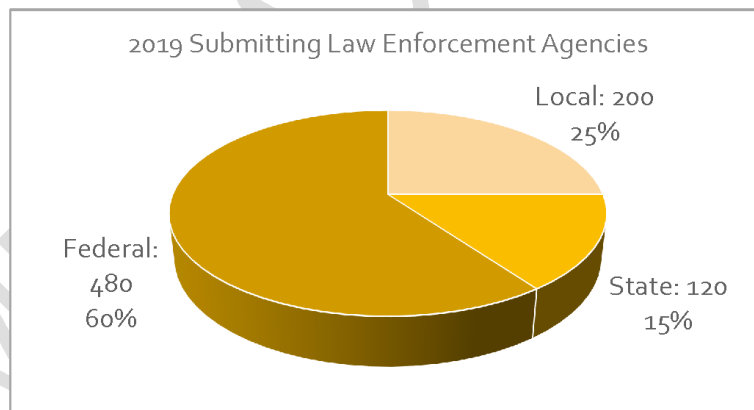
780 offenders possessing files from this series in cases submitted to NCMEC



800 CyberTipline reports submitted by Electronic Service Providers containing series files



Known international distribution of series files



(There are no statutory requirements for law enforcement to submit child sexual exploitation content seized from offenders to NCMEC. Most states do not notify children when their sexual abuse images are circulated in state or local prosecutions.)

This Report is provided to the attorney of record for the Child Sexual Abuse Material (CSAM) victim whose series the Report describes, after verification of current legal representation. The information contained in this Report is derived exclusively from NCMEC's records and is current only as of the creation date indicated above. The information contained in the Report may not be comprehensive. This Report is intended solely for informational purposes in furtherance of NCMEC's nonprofit mission to provide assistance to CSAM victims. Please treat the information in this Report as sensitive and confidential and do not reproduce or further distribute this Report.

AFFIDAVIT OF [NCMEC EMPLOYEE]

COMMONWEALTH OF VIRGINIA)
) SS
CITY OF ALEXANDRIA)

NOW COMES THE AFFIANT, [NCMEC EMPLOYEE], having been duly sworn to law, who deposes and states the following:

1. I am currently employed as the [TITLE] in the Exploited Children Division (“ECD”) at The National Center for Missing and Exploited Children (“NCMEC”). NCMEC is a private, nonprofit corporation incorporated under the laws of the District of Columbia.
2. I have been employed by NCMEC since [DATE]. I am familiar with ECD’s Child Victim Identification Program (“CVIP”) and the processing of CVIP reports by NCMEC, including the procedures used to generate and maintain reports.
3. I am aware that U.S. federal law defines child pornography as a visual depiction of sexually explicit conduct involving a person less than 18 years old. I am also aware that children are victimized by sexually exploitive visual depictions that may not meet the legal definition of child pornography. NCMEC uses the term child sexual abuse material (CSAM) to refer to child pornography and sexually exploitive visual depictions of a child to more accurately describe the content of these images and videos.

Child Victim Identification Program

4. NCMEC operates CVIP to help verify whether CSAM files seized from offenders by law enforcement and submitted to NCMEC depict children who have been identified previously by law enforcement and to help locate unidentified child victims depicted in CSAM files. CSAM files can include images and/or videos.
5. All CSAM files submitted to CVIP by law enforcement are run through NCMEC's Child Recognition and Identification System ("CRIS") for a computer analysis using hashing technologies to determine whether the files include images of identified children. CRIS will automatically indicate a match if an image or video is recognized by a hash value comparison of a file containing a known child victim within CRIS. A NCMEC analyst then visually reviews files that were not recognized automatically during the CRIS analysis and will indicate if any of these images are recognized as a file containing a known child victim within the system.
6. CSAM files may depict single or multiple child victims. Files of the same child or children are often referred to as a "series."
7. NCMEC can generate an *Attorney Series Information Report* for the attorney of record for a CSAM victim. The information contained in the *Attorney Series Information Report* is derived exclusively from NCMEC's records and publicly available court records. The *Attorney Series Information Report* is intended solely to provide assistance to CSAM victims seeking restitution and other legal assistance relating to their sexual exploitation.
8. An *Attorney Series Information Report* contains 3 sections: Child Information, Case Information, and Distribution Information.
9. The Child Information section contains personal information pertaining to the child victim depicted in the CSAM files, including date of birth, gender, age at the time the CSAM files were produced, the

relationship of the offender who produced the CSAM files to the child victim, whether a victim impact statement is on file, and the types of files (images and/or videos) that are part of the series.

10. The Case Information section contains a timeline of the case, a listing of the specific type(s) of sexual activity depicted in the files, a summary of the sexual abuse activity, a factual summary of the case, associated victim series (CSAM series of different child victims produced by the same offender), if any, and the law enforcement point of contact. The listing of the type(s) of sexual activity depicted and the summary of the sexual abuse activity is based on review by a NCMEC analyst of the CSAM files involving the child victim.

11. The Distribution Information section contains information related to the number of files relating to the child victim that law enforcement has seized from the offender who produced the files and submitted to NCMEC. Historical distribution of the series files and a breakdown of series information for [YEAR] is also included.

Information Relevant to *Attorney Series Information Report* – [NAME OF SERIES]

12. On or about [DATE], NCMEC generated an *Attorney Series Information Report* for the CSAM series identified as “[NAME OF SERIES]” and transmitted the report to the attorneys of record for the child victim.

13. NCMEC generates *Attorney Series Information Reports*, such as *Attorney Series Information Report* – [NAME OF SERIES], in the regular course of business. The report was created in the normal course of NCMEC’s regularly conducted activities and contains information from NCMEC’s business records. The information contained in this report was originally submitted by, or upon transmission of information from, a person with knowledge of the information and NCMEC contemporaneously entered the information into its business records.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

[NAME]
[TITLE]
Exploited Children Division
The National Center for Missing and Exploited Children
333 John Carlyle Street
Alexandria, VA 22314

DATE

NOTARIZED
City of Alexandria
Commonwealth of Virginia

DATE

The foregoing instrument was subscribed and sworn before me this ____ day of [MONTH/YEAR] by [NAME].

Notary Public

My commission expires: _____

AFFIDAVIT OF [NCMEC EMPLOYEE]

COMMONWEALTH OF VIRGINIA)
) SS
CITY OF ALEXANDRIA)

NOW COMES THE AFFIANT, [NCMEC EMPLOYEE], having been duly sworn to law, who deposes and states the following:

1. I am currently employed as the [TITLE] of the Exploited Children Division (“ECD”) at The National Center for Missing and Exploited Children (“NCMEC”). I have been employed by NCMEC since [DATE].

2. NCMEC is a private, nonprofit corporation, incorporated under the laws of the District of Columbia and created to help find missing children, reduce child sexual exploitation, and prevent child victimization. NCMEC serves as the national clearinghouse for families, victims, private industry, law enforcement, and other professionals on information and programs related to missing and exploited children issues.

Child Victim Identification Program

3. NCMEC’s Child Victim Identification Program (“CVIP”) serves multiple purposes to support NCMEC’s mission to assist children who have been sexually exploited. One of CVIP’s functions is to help verify whether or not child sexual exploitation files submitted by law enforcement appear to depict children who have been identified previously by law enforcement as actual (rather than virtual or computer-generated) children.

3. Each image and/or video file submitted to NCMEC is run through NCMEC’s Child Recognition and Identification System (“CRIS”) for a computer analysis using hashing technologies to determine whether an image is that of an identified child. The system will automatically indicate a match if the image is recognized by hash value as a file depicting a known child victim within NCMEC’s system. An ECD analyst will visually review images that were not recognized automatically during the CRIS analysis and will indicate if any of these images are recognized as a file containing a known child victim within the system.

4. If it is determined that a child in a particular file appears to have been previously identified, CRIS generates a *Child Identification Report*. This report includes the name assigned to the child pornography series and contact information for the law enforcement representative who initially assisted in identifying the child or can provide information on the child’s identity. An ECD analyst then provides this *Child Identification Report* to the relevant law enforcement agency.

5. Child sexual exploitation files are often referred to as a “series” and may depict both single or multiple child victims.

1

COMMONWEALTH OF VIRGINIA)
) SS
CITY OF ALEXANDRIA)

NOW COMES THE AFFIANT, [NCMEC EMPLOYEE], having been duly sworn to law, who deposes and states the following:

1. I am currently employed as the [TITLE] of the Exploited Children Division (“ECD”) at The National Center for Missing and Exploited Children (“NCMEC”). I have been employed by NCMEC since [DATE].
2. NCMEC is a private, nonprofit corporation, incorporated under the laws of the District of Columbia and created to help find missing children, reduce child sexual exploitation, and prevent child victimization. NCMEC serves as the national clearinghouse for families, victims, private industry, law enforcement, and other professionals on information and programs related to missing and exploited children issues.

3. NCMEC's Child Victim Identification Program ("CVIP") serves multiple purposes to support NCMEC's mission to assist children who have been sexually exploited. One of CVIP's functions is to help verify whether or not child sexual exploitation files submitted by law enforcement appear to depict children who have been identified previously by law enforcement as actual (rather than virtual or computer-generated) children.

3. Each image and/or video file submitted to NCMEC is run through NCMEC's Child Recognition and Identification System ("CRIS") for a computer analysis using hashing technologies to determine whether an image is that of an identified child. The system will automatically indicate a match if the image is recognized by hash value as a file depicting a known child victim within NCMEC's system. An ECD analyst will visually review images that were not recognized automatically during the CRIS analysis and will indicate if any of these images are recognized as a file containing a known child victim within the system.
4. If it is determined that a child in a particular file appears to have been previously identified, CRIS generates a *Child Identification Report*. This report includes the name assigned to the child pornography series and contact information for the law enforcement representative who initially assisted in identifying the child or can provide information on the child's identity. An ECD analyst then provides this *Child Identification Report* to the relevant law enforcement agency.
5. Child sexual exploitation files are often referred to as a "series" and may depict both single or multiple child victims.

Information Related to the “[NAME OF SERIES]”

6. Based upon my training and experience with NCMEC, I am familiar with a series of apparent child pornography images depicting [NUMBER AND GENDER OF CHILD VICTIMS], referred to as the “[NAME OF SERIES]”.

7. The child depicted in the “[NAME OF SERIES]” has authorized the release of information relating to this series to [NAME OF ATTORNEY] at [LAW FIRM] as part of their legal representation discussions.

8. NCMEC queried TA reports dated [YEAR] relating to the “[NAME OF SERIES]” and publicly available court records relating to federal criminal prosecutions concerning these TA reports.

9. NCMEC located the following information that it believes relate to [YEAR] TA reports concerning the “[NAME OF SERIES]” that have active federal criminal prosecutions:

NCMEC TA Report Number	Defendant Name	Jurisdiction	Case Number	Criminal Complaint Filed
12345	John Smith	District of [STATE]	XXXXXXX	[DATE]

10. The information provided in this affidavit represents a generalized summary of information known to NCMEC. This information is intended solely to assist the victim in seeking restitution and other legal assistance relating to her sexual exploitation. This information is current only as of the date provided and is not a comprehensive representation of all series and case information relating to the victim.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

[NAME]
[TITLE]
Exploited Children Division
The National Center for Missing and Exploited Children
333 John Carlyle Street
Alexandria, VA 22314

DATE

NOTARIZED
City of Alexandria
Commonwealth of Virginia

DATE

The foregoing instrument was subscribed and sworn before me this ____ day of [MONTH/YEAR] by [NAME].

Notary Public
My commission expires: _____

AFFIDAVIT OF [NCMEC EMPLOYEE]

COMMONWEALTH OF VIRGINIA)
) SS
CITY OF ALEXANDRIA)

NOW COMES THE AFFIANT, [NCMEC EMPLOYEE], having been duly sworn to law, who deposes and states the following:

1. I am currently employed as the [TITLE] of the Exploited Children Division (“ECD”) at The National Center for Missing and Exploited Children (“NCMEC”). I have been employed by NCMEC since [DATE].

2. NCMEC is a private, nonprofit corporation, incorporated under the laws of the District of Columbia and created to help find missing children, reduce child sexual exploitation, and prevent child victimization. NCMEC serves as the national clearinghouse for families, victims, private industry, law enforcement, and other professionals on information and programs related to missing and exploited children issues.

Child Victim Identification Program

3. One of ECD’s programs is the Child Victim Identification Program (“CVIP”), which serves multiple purposes to support NCMEC’s mission to assist children who have been sexually exploited. One of CVIP’s functions is to help verify whether sexually abusive files of children submitted for NCMEC’s review contain images/videos of children who have been identified previously by law enforcement.

4. Each image and/or video file submitted to NCMEC is run through NCMEC’s Child Recognition and Identification System (“CRIS”) for a computer analysis using hashing technologies to determine whether an image is that of an identified child. The system will automatically indicate a match if the image is recognized by hash value as a file depicting a known child victim within NCMEC’s system. An ECD analyst will visually review images that were not recognized during the CRIS analysis and will indicate if any of these images are recognized as containing a known child victim within the system.

5. Child sexual exploitation files are often referred to as a “series” and may depict both single or multiple child victims.

Information Related to the “[NAME OF SERIES]”

6. Based upon my training and experience with NCMEC, I am familiar with a series of apparent child pornography images depicting [NUMBER AND GENDER OF CHILD VICTIMS], referred to as the “[NAME OF SERIES]”.

7. The child victim depicted in the “[NAME OF SERIES]” has authorized the release of information relating to this series to [NAME OF ATTORNEY] at [LAW FIRM] as part of their legal representation discussions.

1

8. NCMEC queried its TA reports dated [YEAR] relating to the "[NAME OF SERIES]" and publicly available court records relating to state criminal prosecutions concerning these TA reports.

9. NCMEC located the following information that it believes relate to [YEAR] TA reports concerning the "[NAME OF SERIES]" that have active state criminal prosecutions:

NCMEC Technical Assistance Request Report Number	Defendant Name	Jurisdiction	Case Number	Criminal Filed	Complaint
123456	John Smith	[STATE]	XXXXXXXXXX	[DATE]	

10. The information provided in this affidavit represents a generalized summary of information known to NCMEC. This information is intended solely to assist the victim in seeking restitution and other legal assistance relating to the victim's sexual exploitation. This information is current only as of the date provided and is not a comprehensive representation of all series and case information relating to the victim.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

[NAME]
[TITLE]
Exploited Children Division
The National Center for Missing and Exploited Children
333 John Carlyle Street
Alexandria, VA 22314

DATE

NOTARIZED
City of Alexandria
Commonwealth of Virginia

DATE

The foregoing instrument was subscribed and sworn before me this ____ day of [MONTH/YEAR] by [NAME].

Notary Public
My commission expires: _____

Appendix I: Crime Victims' Rights Act (18 U.S.C. § 3771)

§ 3771. Crime victims' rights

(a) Rights of crime victims. A crime victim has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
- (10) The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice.

(b) Rights afforded.

- (1) In general. In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.
- (2) Habeas corpus proceedings.

(A) In general. In a Federal habeas corpus proceeding arising out of a State conviction, the court shall ensure that a crime victim is afforded the rights described in paragraphs (3), (4), (7), and (8) of subsection (a).

(B) Enforcement.

(i) In general. These rights may be enforced by the crime victim or the crime victim's lawful representative in the manner described in paragraphs (1) and (3) of subsection (d).

(ii) Multiple victims. In a case involving multiple victims, subsection (d)(2) shall also apply.

(C) Limitation. This paragraph relates to the duties of a court in relation to the rights of a crime victim in Federal habeas corpus proceedings arising out of a State conviction, and does not give rise to any obligation or requirement applicable to personnel of any agency of the Executive Branch of the Federal Government.

(D) Definition. For purposes of this paragraph, the term "crime victim" means the person against whom the State offense is committed or, if that person is killed or incapacitated, that person's family member or other lawful representative.

(c) Best efforts to accord rights.

(1) Government. Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

(2) Advice of attorney. The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

(3) Notice. Notice of release otherwise required pursuant to this chapter [this section] shall not be given if such notice may endanger the safety of any person.

(d) Enforcement and limitations.

(1) Rights. The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter [this section].

(2) Multiple crime victims. In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter [this section] that does not unduly complicate or prolong the proceedings.

(3) Motion for relief and writ of mandamus. The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure, unless the litigants, with the approval of the court, have stipulated to a different time period for consideration. In deciding such application, the court of appeals shall apply ordinary standards of appellate review. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter [this section]. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) Error. In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

(5) Limitation on relief. In no case shall a failure to afford a right under this chapter [this section] provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if—

(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

(B) the victim petitions the court of appeals for a writ of mandamus within 14 days; and

(C) in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.

(6) No cause of action. Nothing in this chapter [this section] shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter [this section] shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

(e) Definitions. For the purposes of this chapter [this section]:

(1) Court of Appeals. The term "court of appeals" means—

(A) the United States court of appeals for the judicial district in which a defendant is being prosecuted; or

(B) for a prosecution in the Superior Court of the District of Columbia, the District of Columbia Court of Appeals.

(2) Crime victim.

(A) In general. The term “crime victim” means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.

(B) Minors and certain other victims. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim’s estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim’s rights under this chapter [this section], but in no event shall the defendant be named as such guardian or representative.

(3) District court; court. The terms “district court” and “court” include the Superior Court of the District of Columbia.

(f) Procedures to promote compliance.

(1) Regulations. Not later than 1 year after the date of enactment of this chapter [enacted Oct. 30, 2004], the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

(2) Contents. The regulations promulgated under paragraph (1) shall—

(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.

HISTORY:

Added Oct. 30, 2004, P. L. 108-405, Title I, § 102(a), 118 Stat. 2261; July 27, 2006, P. L. 109-248, Title II, § 212, 120 Stat. 616; May 7, 2009, P. L. 111-16, § 3(12), 123 Stat. 1608; May 29, 2015, P. L. 114-22, Title I, § 113(a), (c)(1), 129 Stat. 240, 241.

Appendix J: CPVA Notification Preference Form

FD-1161
05/12/2020



FEDERAL BUREAU OF INVESTIGATION CHILD PORNOGRAPHY VICTIM ASSISTANCE EXPLANATION OF VICTIM RIGHTS & NOTIFICATION PREFERENCES

Under the *Victims' Rights and Restitution Act (VRR)*, 34 U.S.C. § 20141, victims are entitled:

- To be notified they have been the victim of a federal crime;
- To be informed of the place where they may receive medical and social services;
- To be informed of public and private programs available for counseling, treatment, and other support services;
- To receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender;
- To know the status of the investigation of the crime, to the extent it is appropriate and it will not interfere with the investigation;
- To have personal property being held for evidentiary purposes maintained in good condition and returned as soon as it is no longer needed for evidentiary purposes.

Additionally, under the *Crime Victims' Rights Act (CVRA)*, 18 U.S.C. § 3771, if federal charges are filed involving images or material depicting the victim, victims (or a parent, guardian, or other appropriate alternate contact while victim is a minor) will have the following rights:

- The right to be reasonably protected from the accused;
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused;
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding;
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding;
- The reasonable right to confer with the attorney for the Government in the case;
- The right to full and timely restitution as provided in law;
- The right to proceedings free from unreasonable delay;
- The right to be treated with fairness and with respect for the victim's dignity and privacy.
- The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
- The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (34 U.S.C. § 20141(c)) and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice. The Victims' Rights Ombudsman may be contacted at usao.VictimOmbudsman@usdoj.gov if you believe a Department of Justice employee has failed to provide you rights under the Crime Victims' Rights Act.

It is possible for a victim's images to be possessed and distributed numerous times by many individuals. As a result, those images may be involved in more than one federal investigation or prosecution. Victims may choose to be notified each time their images are involved in a case resulting in frequent notifications. If a victim chooses not to be notified, the Department of Justice (DOJ), including the FBI, will **not** provide notice when their images are involved in a federal investigation or prosecution. Victims may seek the advice of an attorney with respect to these rights. A victim represented by an attorney may elect to have the attorney receive notifications on his or her behalf.

Victims may choose at any time to discontinue notification or restart the notification process. To change notification preference, please contact the FBI's Victim Services Division at 1-877-236-8947 or CPVA@fbi.gov. The FBI and the DOJ will only provide notice based on a victim's preference. Other parties may continue to provide notification, including state and local criminal justice officials defense attorneys representing offenders, or court officials preparing a report for the judge prior to sentencing an offender.

Once a victim of a federal crime reaches age of majority (18), the FBI will take reasonable steps to contact the victim to provide him or her with notice of these rights and determine his or her notification preference.

EXPLANATION OF LOSSES SUBJECT TO POSSIBLE RESTITUTION

Under the law, as part of the criminal sentence imposed on a defendant, or as part of a plea agreement, victims may be entitled to restitution for certain losses suffered as a result of the commission of an offense.

The full amount of a victim's losses may include any costs incurred by the victim as a result of the crime, including:

- *medical services relating to physical, psychiatric, or psychological care;*
- *physical and occupational therapy or rehabilitation;*
- *necessary transportation, temporary housing, and child care expenses;*
- *lost income;*
- *attorneys' fees, as well as other costs incurred; and*
- *any other losses suffered by the victim as a proximate result of the offense.*

To assist in determining eligibility for restitution, it is important to keep a record of all expenses incurred as a result of the crime. The Victim Assistance Unit of the U.S. Attorney's Office can provide assistance regarding the submission of claims for restitution.

Privacy Act Notice

Collection of the information on this form is authorized by the VRRRA and the CVRA. The primary purpose of the information requested is to notify you, as a victim of child pornography, or your guardian if you are still a minor, of your rights under Federal law and to document your right to be notified every time the use of your image is the basis of a future federal investigation and/or court proceeding. The information collected will be used for notification purposes only by personnel who have a need for the information in the performance of their official duties. The information may also be disclosed to other federal agencies involved in the investigation and/or prosecution of child pornography cases involving your images. The information collected may also be used to document whether you wish to provide a Victim Impact Statement to be used in sentencing or parole proceedings where the defendant's offenses involved the use of your image. You are not required to provide the requested information; however, your failure to do so may result in your being notified every time your image is the basis of a federal investigation and/or court proceeding.

THIS SECTION TO BE COMPLETED BY INVESTIGATIVE AGENT OR VICTIM SPECIALIST:

Agent and/or Victim Specialist: _____

Case Number: _____ SN: _____

VICTIM PREFERENCE INFORMATION*** This section to be completed by victim or victim's guardian/alternate contact *****NOTIFICATION:**

Victims may change their notification preference, or revoke consent for an alternate contact to receive notification on their behalf, at any time by contacting the FBI's Victim Services Division at 1-877-236-8947 or CPVA@fbi.gov.

☐ **Yes**, I want to be notified when images of my victimization are the basis for future federal investigations or court proceedings.

☐ **Yes**, I want to be notified, but prefer notifications go to an alternate contact.

I provide consent for _____ to be notified when images of my victimization are the basis for future federal investigations or court proceedings.

☐ **No**, I do not want to be notified when images of my victimization are the basis for future federal investigations or court proceedings.

Waiving this right to notification means that I will not receive any information from the Department of Justice regarding new investigations and court or parole proceedings, or any information concerning the release or escape of the accused in such cases. By waiving notification, I may not have the opportunity to exercise my rights as a victim pursuant to the Crime Victims' Rights Act, including *the right to restitution and the right to be heard at any public court proceeding*.

PREFERRED NOTIFICATION METHOD:

If you choose to receive email notices only, you must "verify" an email address in the Victim Notification System (VNS) and most, if not all, future notification will be sent by email only. If you do not verify your email address, VNS may continue to send both letter and email notifications. However, email notifications will not contain details about the nature of the notification until the email address has been verified.

☐ **Letter**

☐ **Email**

*** Please note that if you elect email, you may still receive letters from some agencies according to their notification policies ***

VICTIM IMPACT STATEMENT:

☐ **Yes**, I wish to provide a Victim Impact Statement to be used in federal, state, and/or local sentencing or parole proceedings where the defendant's offenses involved images of my victimization, regardless of whether I have chosen to be notified of those proceedings. I understand that I will be contacted in the future by a Victim Assistance Specialist from the U.S. Attorney's Office and my Victim Impact Statement will be kept on file for use in future cases.

☐ **No**, I do not wish to provide a Victim Impact Statement to be used in current or future federal, state, and/or local sentencing or parole proceedings where the defendant's offenses involved images of my victimization.

RESTITUTION:

☐ **Yes**, I would like to be contacted concerning my eligibility for restitution.

☐ **No**, I would not like to be contacted concerning my eligibility for restitution.

VICTIM CONTACT INFORMATION

**** This section to be completed by victim or victim's guardian/alternate contact ****

VICTIM INFORMATION:

Victim: _____ **DOB:** _____ **Sex:** ☐ Female ☐ Male

Mailing Address: _____

City: _____ **State:** _____ **ZIP:** _____ **Country:** _____

Phone: (☐ home ☐ cell) _____

Email Address: _____

Victim Signature: _____ **Date:** _____
(If age of majority – 18)

GUARDIAN INFORMATION (if applicable):

**** Please complete if victim is currently under 18 years of age ****

Is the victim aware that images and/or video exist? ☐ Yes ☐ No

Guardian: _____ **Relationship:** _____

Mailing Address:(☐ same as above) _____

City: _____ **State:** _____ **ZIP:** _____ **Country:** _____

Phone: (☐ home ☐ cell) _____

Email Address: _____

Guardian Signature: _____ **Date:** _____

ALTERNATE CONTACT OR LEGAL REPRESENTATIVE INFORMATION (if applicable):

**** Please complete if you are an authorized alternate contact or legal representative ****

Alternate Contact / Legal Rep: _____

Agency (if applicable): _____

Mailing Address: _____

City: _____ **State:** _____ **ZIP:** _____ **Country:** _____

Office Phone: _____

Email Address: _____

Alternate Contact Signature: _____ **Date:** _____

Please return this form to:

FBI Victim Services Division
ATTN: CPVA | Room 3329 | 935 Pennsylvania Avenue NW | Washington, DC 20535
Phone: 1-877-236-8947 | Email: CPVA@fbi.gov

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Appendix K: Sample Notification Form



EXPLANATION OF VICTIM RIGHTS & NOTIFICATION PREFERENCES

Under the *Victims' Rights and Restitution Act (VRRRA)*, 42 U.S.C. §10607, victims are entitled:

- To be notified they have been the victim of a federal crime;
- To be informed of the place where they may receive medical and social services;
- To be informed of public and private programs available for counseling, treatment, and other support services;
- To receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender;
- To know the status of the investigation of the crime, to the extent it is appropriate and it will not interfere with the investigation;
- To have personal property being held for evidentiary purposes maintained in good condition and returned as soon as it is no longer needed for evidentiary purposes.

Additionally, under the *Crime Victims' Rights Act (CVRA)*, 18 U.S.C. §3771, if federal charges are filed involving images or material depicting the victim, victims (or a parent, guardian, or other appropriate alternate contact while victim is a minor) will have the following rights:

- The right to be reasonably protected from the accused;
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused;
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding;
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding;
- The reasonable right to confer with the attorney for the Government in the case;
- The right to full and timely restitution as provided in law;
- The right to proceedings free from unreasonable delay;
- The right to be treated with fairness and with respect for the victim's dignity and privacy.
- The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
- The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice. The Victims' Rights Ombudsman may be contacted at usao.VictimOmbudsman@usdoj.gov if you believe a Department of Justice employee has failed to provide you rights under the Crime Victims' Rights Act.

It is possible for a victim's images to be possessed and distributed numerous times by many individuals. As a result, those images may be involved in more than one federal investigation or prosecution. Victims may choose to be notified each time their images are involved in a case resulting in frequent notifications. If a victim chooses not to be notified, the Department of Justice (DOJ), including the FBI, will **not** provide notice when their images are involved in a federal investigation or prosecution. Victims may seek the advice of an attorney with respect to these rights. A victim represented by an attorney may elect to have the attorney receive notifications on his or her behalf.

Victims may choose at any time to discontinue notification or restart the notification process. To change notification preference, please contact the FBI Office for Victim Assistance at 1-877-236-8947 or CPVA@fbi.gov. The FBI and the DOJ will only provide notice based on a victim's preference. Other parties may continue to provide notification, including state and local criminal justice officials defense attorneys representing offenders, or court officials preparing a report for the judge prior to sentencing an offender.

Once a victim of a federal crime reaches age of majority (18), the FBI will take reasonable steps to contact the victim to provide him or her with notice of these rights and determine his or her notification preference.

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EXPLANATION OF LOSSES SUBJECT TO POSSIBLE RESTITUTION

Under the law, as part of the criminal sentence imposed on a defendant, or as part of a plea agreement, victims may be entitled to restitution for certain losses suffered as a result of the commission of an offense.

The full amount of a victim's losses may include any costs incurred by the victim as a result of the crime, including:

- *medical services relating to physical, psychiatric, or psychological care;*
- *physical and occupational therapy or rehabilitation;*
- *necessary transportation, temporary housing, and child care expenses;*
- *lost income;*
- *attorneys' fees, as well as other costs incurred; and*
- *any other losses suffered by the victim as a proximate result of the offense.*

To assist in determining eligibility for restitution, it is important to keep a record of all expenses incurred as a result of the crime. The Victim Assistance Unit of the U.S. Attorney's Office can provide assistance regarding the submission of claims for restitution.

Privacy Act Notice

Collection of the information on this form is authorized by the VRRRA and the CVRA. The primary purpose of the information requested is to notify you, as a victim of child pornography, or your guardian if you are still a minor, of your rights under Federal law and to document your right to be notified every time the use of your image is the basis of a future federal investigation and/or court proceeding. The information collected will be used for notification purposes only by personnel who have a need for the information in the performance of their official duties. The information may also be disclosed to other federal agencies involved in the investigation and/or prosecution of child pornography cases involving your images. The information collected may also be used to document whether you wish to provide a Victim Impact Statement to be used in sentencing or parole proceedings where the defendant's offenses involved the use of your image. You are not required to provide the requested information; however, your failure to do so may result in you being notified every time your image is the basis of a federal investigation and/or court proceeding.

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THIS SECTION TO BE COMPLETED BY INVESTIGATIVE AGENT OR VICTIM SPECIALIST:

Agent and/or Victim Specialist VS: _____

Case Number: _____ SN: _____

VICTIM PREFERENCE INFORMATION

**** This section to be completed by victim or victim's guardian/alternate contact ****

NOTIFICATION:

Victims may change their notification preference, or revoke consent for an alternate contact to receive notification on their behalf, at any time by contacting the FBI's Office for Victim Assistance at 1-877-236-8947 or CPVA@fbi.gov.

☐ **Yes**, I want to be notified when images of my victimization are the basis for future federal investigations or court proceedings.

☐ **XXXXX Yes**, I want to be notified, but prefer notifications go to an alternate contact.

I provide consent for [REDACTED] and [REDACTED] to be notified when images of my victimization are the basis for future federal investigations or court proceedings.

☐ **No**, I do not want to be notified when images of my victimization are the basis for future federal investigations or court proceedings.

Waiving this right to notification means that I will not receive any information from the Department of Justice regarding new investigations and court or parole proceedings, or any information concerning the release or escape of the accused in such cases. By waiving notification, I may not have the opportunity to exercise my rights as a victim pursuant to the Crime Victims' Rights Act, including *the right to restitution and the right to be heard at any public court proceeding*.

PREFERRED NOTIFICATION METHOD:

If you choose to receive email notices only, you must "verify" an email address in the Victim Notification System (VNS) and most, if not all, future notification will be sent by email only. If you do not verify your email address, VNS may continue to send both letter and email notifications. However, email notifications will not contain details about the nature of the notification until the email address has been verified.

☐ **Letter**

☐ **XXX
Email**

**** Please note that if you elect email, you may still receive letters from some agencies according to their notification policies ****

VICTIM IMPACT STATEMENT:

☐ **XXXXX Yes**, I wish to provide a Victim Impact Statement to be used in federal, state, and/or local sentencing or parole proceedings where the defendant's offenses involved images of my victimization, regardless of whether I have chosen to be notified of those proceedings. I understand that I will be contacted in the future by a Victim Assistance Specialist from the U.S. Attorney's Office and my Victim Impact Statement will be kept on file for use in future cases.

☐ **No**, I do not wish to provide a Victim Impact Statement to be used in current or future federal, state, and/or local sentencing or parole proceedings where the defendant's offenses involved images of my victimization.

RESTITUTION:

☐ **XXXXX Yes**, I would like to be contacted concerning my eligibility for restitution.

☐ **No**, I would not like to be contacted concerning my eligibility for restitution.

VICTIM CONTACT INFORMATION

**** This section to be completed by victim or victim's guardian/alternate contact ****

VICTIM INFORMATION:

Victim: [REDACTED] DOB: _____ Sex: ☒ Female ☐ Male

Mailing Address: _____

City: Costa Mesa State: California ZIP: _____ Country: _USA

☐ ☐

Phone: (cell) [REDACTED] _____

Email Address: [REDACTED] _____

Victim Signature: _____ (If age of majority – 18) Date: _____

GUARDIAN INFORMATION (if applicable):

**** Please complete if victim is currently under 18 years of age ****

Is the victim aware that images and/or video exist? ☐ Yes ☐ No

Guardian: _____ Relationship: _____

Mailing Address: (☐ same as above) _____

City: _____ State: _____ ZIP: _____ Country: _____

Phone: (☐ home ☐ cell) _____

Email Address: _____

Guardian Signature: _____ Date: _____

ALTERNATE CONTACT OR LEGAL REPRESENTATIVE INFORMATION (if applicable):

**** Please complete if you are an authorized alternate contact or legal representative ****

Alternate Contact / Legal Rep: [REDACTED] _____

Agency (if applicable): _____

Mailing Address: [REDACTED] _____

City: Seattle State: [REDACTED] ZIP: [REDACTED] Country: _USA

Office Phone: [REDACTED] _____

Email Address: [REDACTED] and [REDACTED] _____

Alternate Contact Signature: _____ Date: _____

Please return this form to:

FBI Office for Victim Assistance
ATTN: CPVA | Room 3329 | 935 Pennsylvania Avenue, NW | Washington, DC 20535
Phone: 1-877-236-8947 | Email: CPVA@fbi.gov

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Appendix L: State Victim Notification Statute Chart

State	Constitution/ Statute	Description
Alabama	ALA. CONST. art. I, § 6.01	(a) Crime victims, as defined by law or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when authorized, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the person accused of committing the crime.
	ALA. CODE § 15-23-62	<p>Within 72 hours, unless the victim is unavailable or incapacitated as a result of the crime, after the initial contact between a victim of a reported crime and the law enforcement agency either responding to the report of the crime of the victim or another person, or having responsibility for investigating the crime, the law enforcement agency shall provide to the victim in a manner and form designed and produced for the appropriate governmental agency or office, the following information:</p> <ol style="list-style-type: none"> (1) The availability of emergency and crisis services. (2) The availability of victims' compensation benefits and the name, address, and telephone number of the Alabama Crime Victims Compensation Commission. (3) The name of the law enforcement officer and telephone number of the law enforcement agency with the following statement attached: "If within 60 days you are not notified of an arrest in your case, you may call the telephone number of the law enforcement agency for the status of the case." (4) The procedural steps involved in a criminal prosecution. (5) The rights authorized by the Alabama Constitution on rights of victims, including a form to invoke these rights. (6) The existence and eligibility requirements of restitution and compensation pursuant to Section 15-18-65 <i>et seq.</i> and Section 15-23-1 <i>et seq.</i> (7) A recommended procedure if the victim is subjected to threats or intimidation. (8) The name and telephone number of the office of the prosecuting attorney to contact for further information.
Alaska	ALASKA CONST. art. I, § 24	Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right

		to be present; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; the right to restitution from the accused; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication.
Arizona	ARIZ. CONST. art. II, § 2.1	<p>(A) To preserve and protect victims' rights to justice and due process, a victim of crime has a right: . . .</p> <p>2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.</p> <p>3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.</p>
Arkansas	N/A	
California	CAL. CONST. art. I, § 28	<p>(b) In order to preserve and protect victim's rights to justice and due process, a victim shall be entitled to the following rights:</p> <p>. . .</p> <p>(6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.</p> <p>(7) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at such proceedings.</p>
	CAL. PENAL CODE § 679.02	<p>(a) The following are hereby established as the statutory rights of victims and witnesses of crimes:</p> <p>(1) To be notified as soon as feasible that a court proceeding to which he or she has been subpoenaed as a witness will not proceed as scheduled, provided the prosecuting attorney determines that the witness' attendance is not required.</p> <p>(2) Upon request of the victim or a witness, to be informed by the prosecuting attorney of the final disposition of the case, as provided by Section 11116.10.</p>

		<p>(3) For the victim . . . to be notified of all sentencing proceedings, and of the right to appear, to reasonably express his or her views, have those views preserved by audio or video means . . . and to have the court consider his or her statements</p> <p>(5) Upon request by the victim . . . to be notified of any parole eligibility hearing and of the right to appear . . . to reasonably express his or her views, and to have his or her statements considered</p> <p>(8) For the victim, to be provided with information concerning the victim's right to civil recovery and the opportunity to be compensated from the Restitution Fund pursuant to Chapter 6 (commencing with Section 13959) or Part 4 of Division 3 of Title 2 of the Government Code and Section 111191.2 of this code. . . .</p>
Colorado	COLO. CONST. art. II, § 16a	Any person who is a victim of a criminal act, or such person's designee, legal guardian, or surviving immediate family members if such person is deceased, shall have the right to be heard when relevant, informed, and present at all critical stages of the criminal justice process. All terminology, including the term "critical stages", shall be defined by the general assembly.
Connecticut	CONN. CONST. art. I, § 8	b. In all criminal prosecutions, a victim, as the general assembly may define by law, shall have the following rights: . . . (4) the right to notification of court proceedings; . . . and (10) the right to information about the arrest, conviction, sentence, imprisonment and release of the accused.
Delaware	DEL. CODE ANN. tit. 11, § 9411	<p>(a) After a prosecution is commenced by the Attorney General in the Superior Court, the Attorney General shall promptly inform the victim of: . . .</p> <p>(2) Rights under this chapter; . . .</p> <p>(8) Notice of the scheduling of court proceedings and changes including trial date, case review and sentencing hearings;</p> <p>(9) Notice of the crime or crimes of which the defendant is convicted;</p> <p>(10) Notice of the specifics of any sentencing order;</p> <p>(11) Notice of sentence modification reduction or modification order; . . .</p> <p>(b) In all other courts, the Attorney General shall give the victim:</p>

		<p>(1) Notice of the scheduling of the court proceedings and changes, including trial date, case review and sentencing hearings;</p> <p>(2) Notice of the crime or crimes of which the defendant is convicted;</p> <p>(3) Notice of the specifics of any sentencing order; and</p> <p>(4) Notice of sentence reduction or modification order.</p>
District of Columbia	N/A	
Florida	FLA. CONST. art. I, § 16	<p>(b) To preserve and protect the right of crime victims to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents, every victim is entitled to the following rights, beginning at the time of his or her victimization:</p> <p>(6) A victim shall have the following specific rights upon request:</p> <p>a. The right to reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary. A victim shall also be provided reasonable, accurate, and timely notice of any release or escape of the defendant or delinquent, and any proceeding during which a right of the victim is implicated. . . .</p> <p>f. The right to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.</p> <p>g. The right to be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole or early release authority shall extend the right to be heard to any person harmed by the offender.</p> <p>h. The right to be informed of clemency and expungement procedures, to provide information to the governor, the court, any</p>

		clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified of such decision in advance of any release of the offender.
Georgia	GA. CODE ANN. § 17-17-6	<p>(a) Upon initial contact with a victim, all law enforcement and court personnel shall make available to the victim the following information written in plain language:</p> <p>(1) The possibility of pretrial release of the accused, the victim's rights and role in the states of the criminal justice process, and the means by which additional information about these stages can be obtained;</p> <p>(2) The availability of victim compensation and, if the victim has been trafficked for labor or sexual servitude as defined in Code Section 16-5-46, compensation available through the federal government pursuant to 22 U.S.C. Section 71005; and</p> <p>(3) The availability of community based victim service programs.</p>
Hawaii	N/A	
Idaho	IDAHO CONST. art. I, § 22	<p>A crime victim, as defined by statute, has the following rights: . . .</p> <p>(3) To prior notification of trial court, appellate and parole proceedings and, upon request, to information about the sentence, incarceration and release of the defendant.</p>
Illinois	ILL. CONST. art. I, § 8.1	<p>(a) Crime victims, as defined by law, shall have the following rights . . .</p> <p>(2) The right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law.</p> <p>(3) The right to timely notification of all court proceedings. . . .</p> <p>(6) The right to be notified of the conviction, the sentence, the imprisonment, and the release of the accused.</p>
Indiana	IND. CONST. art. I, § 13	<p>(b) Victims of crime, as defined by law, shall have the right to be treated with fairness, dignity, and respect throughout the criminal justice process; and, as defined by law, to be informed of and present during public hearings and to confer with the prosecution, to the extent that exercising these rights does not infringe upon the constitutional rights of the accused.</p>

Iowa	IOWA CODE § 915.12	<p>1. A victim may register by filing a written request-for-registration form with the county attorney. The county attorney shall notify the victims in writing and advise them of their registration and rights under this subchapter. The county attorney shall provide a registered victim list to the offices, agencies, and departments required to provide information under this subchapter for notification purposes.</p> <p>2. A victim, the victim's family, or other interested person may register with the automated victim notification system established pursuant to section 915.10A by filing a registration through written, telephonic, or electronic means.</p>
Kansas	KAN. CONST. art. XV, § 15	(a) Victims of crime, as defined by law, shall be entitled to certain basic rights, including the right to be informed of and to be present at public hearings, as defined by law, of the criminal justice process, and to be heard at sentencing or at any other time deemed appropriate by the court, to the extent that these rights do not interfere with the constitutional or statutory rights of the accused.
Kentucky	N/A	
Louisiana	LA. CONST. art. I, § 25	Any person who is a victim of crime shall be treated with fairness, dignity, and respect, and shall be informed of the rights accorded under this Section. As defined by law, a victim of crime shall have the right to reasonable notice and to be present and heard during all critical stages of preconviction and postconviction proceedings; the right to be informed upon the release from custody or the escape of the accused or the offender; . . .
Maine	N/A	
Maryland	MD. CONST. Declaration of Rights, art. XLVII	(b) In a case originating by indictment or information filed in a circuit court, a victim of crime shall have the right to be informed of the rights established in this Article and, upon request and if practicable, to be notified of, to attend, and to be heard at a criminal justice proceeding, as these rights are implemented and the terms "crime", "criminal justice proceeding", and "victim" are specified by law.
Massachusetts	N/A	
Michigan	MICH. CONST. art. I, § 24	<p>(1) Crime victims, as defined by law, shall have the following rights, as provided by law: . . .</p> <p>The right to notification of court proceedings. . . .</p> <p>The right to information about the conviction, sentence, imprisonment, and release of the accused.</p>
Minnesota	N/A	
Mississippi	MISS. CONST. art. III, § 26A	(1) Victims of crime, as defined by law, shall have the right to be treated with fairness, dignity and respect throughout the criminal

		justice process; and to be informed, to be present and to be heard, when authorized by law, during public hearings.
Missouri	MO. CONST. art. I, § 32	<p>Crime victims, as defined by law, shall have the following rights, as defined by law: . . .</p> <p>(2) Upon request of the victim, the right to be informed of and heard at guilty pleas, bail hearings, sentencings, probation revocation hearings, and parole hearings, unless in the determination of the court the interests of justice require otherwise;</p> <p>(3) The right to be informed of trials and preliminary hearings; . . .</p> <p>(7) The right to information concerning the escape of an accused from custody or confinement, the defendant's release and scheduling of the defendant's release from incarceration; and</p> <p>(8) The right to information about how the criminal justice system works, the rights and the availability of services, and upon request of the victim the right to information about the crime.</p>
Montana	N/A	
Nebraska	NEB. CONST. art. I, § 28	(1) A victim of a crime, as shall be defined by law, or his or her guardian or representative shall have: The right to be informed of all criminal court proceedings; . . . and the right to be informed of, be present at, and make an oral or written statement at sentencing, parole, pardon, commutation, and conditional release proceedings. . . .
Nevada	NEV. CONST. art. I, § 8A	<p>1. Each person who is the victim of a crime is entitled to the following rights: . . .</p> <p>(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings. . . .</p> <p>(k) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody. . . .</p> <p>(n) To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender. . . .</p>
New Hampshire	N/A	
New Jersey	N/A	

New Mexico	N.M. CONST. art. II, § 24	<p>A. A victim of . . . aggravated assault, . . . kidnapping, criminal sexual penetration, criminal sexual contact of a minor, . . . or abuse of a child or that victim's representative shall have the following rights as provided by law: . . .</p> <p>(4) the right to notification of court proceedings; . . .</p> <p>(9) the right to information about the conviction, sentencing, imprisonment, escape or release of the accused; . . .</p>
	N.M. STAT. ANN. § 31-26-9	B. The district attorney's office shall provide the victim with oral or written notice, in a timely fashion, of a scheduled court proceeding attendant to the criminal offense.
New York	N/A	
North Carolina	N.C. CONST. art. I, § 37	<p>(1a) Enumerated rights. When the crime or act of delinquency is one against or involving the person of the victim or is equivalent to a felony property crime, the victim is entitled to the following rights:</p> <p>(a) The right upon request to reasonable, accurate, and timely court proceedings of the accused.</p> <p>(a1) The right upon request to be present at court proceedings of the accused.</p> <p>(b) The right upon request to be present at any court proceedings involving the plea, conviction, adjudication, sentencing, or release of the accused. . . .</p> <p>(e) The right upon request to receive information about the conviction, adjudication, or final disposition and sentence of the accused.</p> <p>(f) The right upon request to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence. . . .</p>
North Dakota	N/A	
Ohio	OHIO CONST. art. I, § 10a	<p>(A) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused: . . .</p> <p>(2) upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings; . . .</p>

		(5) upon request, to reasonable notice of any release or escape of the accused;
	OHIO REV. CODE ANN. § 2930.04	<p>(A) After its initial contact with a victim of a crime, the law enforcement agency responsible for investigating the crime promptly shall give to the victim, in writing, all of the following information:</p> <p>(1) An explanation of the victim's rights under this chapter;</p> <p>(B) As soon as practicable after its initial contact with a victim of a crime, the law enforcement agency responsible for investigating the crime shall give to the victim all of the following information:</p> <p>(1) The business telephone number of the law enforcement officer assigned to investigate the case;</p> <p>(2) The office address and business telephone number of the prosecutor in the case;</p> <p>(3) A statement that, if the victim is not notified of the arrest of the offender in the case within a reasonable period of time, the victim may contact the law enforcement agency to learn the status of the case.</p>
Oklahoma	OKLA. CONST. art. II, § 34	A. To secure justice and due process for victims throughout the criminal and juvenile justice systems, a victim of a crime shall have the following rights, which shall be protected by law in a manner no less vigorous than the rights afforded to the accused: . . . upon request, to reasonable and timely notice of and to be present at all proceedings involving the criminal or delinquent conduct; . . . upon request, to reasonable notice of any release or escape of an accused;
Oregon	OR. CONST. art. I, § 42	<p>(1) To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role in the criminal and juvenile justice systems, to accord crime victims due dignity and respect and to ensure that criminal and juvenile court delinquency proceedings are conducted to seek the truth as to the defendant's innocence or guilt, and also to ensure that a fair balance is struck between the rights of crime victims and the rights of criminal defendants in the course and conduct of criminal and juvenile court delinquency proceedings, the following rights are hereby granted to victims in all prosecutions for crimes and in juvenile court delinquency proceedings:</p> <p>(a) The right to be present at and, upon specific request, to be informed in advance of any critical stage of the proceedings held in open court when the defendant will be present, and to be heard at</p>

		<p>the pretrial release hearing and the sentencing or juvenile court delinquency disposition;</p> <p>(b) The right, upon request, to obtain information about the conviction, sentence, imprisonment, criminal history and future release from physical custody of the criminal defendant or convicted criminal and equivalent information regarding the alleged youth offender or youth offender;</p>
Pennsylvania	N/A	
Rhode Island	N/A	
South Carolina	S.C. CONST. art. I, § 24	<p>(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to: . . .</p> <p>(2) be reasonably informed when the accused or convicted person is arrested, released from custody, or has escaped;</p> <p>(3) be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present;</p> <p>(4) be reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail; . . .</p> <p>(10) be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision;</p>
South Dakota	N/A	
Tennessee	TENN. CONST. art. I, § 35	<p>To preserve and protect the rights of victims of crime to justice and due process, victims shall be entitled to the following basic rights: . . .</p> <p>5. The right to be informed of all proceedings, and of the release, transfer or escape of the accused or convicted person.</p>
Texas	TEX. CONST. art. I, § 30	<p>(b) On the request of a crime victim, the crime victim has the following rights:</p> <p>(1) the right to notification of court proceedings; . . .</p> <p>(5) the right to information about the conviction, sentence, imprisonment, and release of the accused.</p>
	TEX. CODE CRIM. PROC. ANN. art. 56.08	<p>(a) Not later than the 10th day after the date that an indictment or information is returned against a defendant for an offense, the</p>

		<p>attorney representing the state shall give to each victim of the offense a written notice containing:</p> <p>(1) a brief general statement of each procedural stage in the processing of a criminal case, including bail, plea bargaining, parole restitution, and appeal;</p> <p>(2) notification of the rights and procedures under this chapter; . . .</p> <p>(b) If requested by the victim, the attorney representing the state, as far as reasonably practical, shall give to the victim notice of any scheduled court proceedings, changes in that schedule, and the filing of a request for continuance of a trial setting.</p> <p>(b-1) The attorney representing the state, as far as practical, shall give to the victim, guardian of a victim, or close relative of a deceased victim notice of the existence and terms of any plea bargain agreement to be presented to the court. . . .</p>
Utah	UTAH CONST. art. I, § 28	<p>(1) To preserve and protect victims' rights to justice and due process, victims of crimes have these rights, as defined by law: . . .</p> <p>(b) Upon request, to be informed of, be present at, and to be heard at important criminal justice hearings related to the victim, either in person or through a lawful representative, once a criminal information or indictment charging crime has been publicly filed in court;</p>
Vermont	N/A	
Virginia	VA. CONST. art. I, § 8-A	<p>That in criminal prosecutions, the victim shall be accorded fairness, dignity and respect by the officers, employees and agents of the Commonwealth and its political subdivisions and officers of the courts and, as the General Assembly may define and provide by law, may be accorded rights to reasonable and appropriate notice, information, restitution, protection, and access to a meaningful role in the criminal justice process. These rights may include, but not be limited to, the following: . . .</p> <p>4. The right to receive timely notification of judicial proceedings; . . .</p> <p>6. The right to be advised of release from custody or escape of the offender, whether before or after disposition;</p>
Washington	WASH. CONST. art. I, § 35	<p>Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.</p>

		Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend
West Virginia	N/A	
Wisconsin	WIS. CONST. art. I, § 9m	This state shall treat crime victims, as defined by law, with fairness, dignity and represent for their privacy. This state shall ensure that crime victims have all of the following privileges and protections as provided by law: . . . notification of court proceedings; . . . and information about the outcome of the case and the release of the accused.
Wyoming	WYO. STAT. ANN. § 1-40-204	<p>(a) Victims of a criminal act shall be informed without undue delay by law enforcement about:</p> <ul style="list-style-type: none"> (i) The rights enumerated in this act; (ii) The right to be informed of the status of the case from the initial police investigation to the final appellate review; <p>(b) Victims and key witnesses or a criminal act shall be informed in writing by the prosecuting attorney about:</p> <ul style="list-style-type: none"> (i) Subject to order of the court, the right to attend all hearings and proceedings involving the case, including the right to be notified, upon request, of the date, time and place of those hearings; (ii) The right to be notified in advance, if reasonable, when a court proceeding has been rescheduled or canceled; (iii) The right to be advised of the potential for plea negotiations and, prior to sentencing, the right to be informed of the existence of a negotiated plea, the essentials of the agreement, and the reasons for the disposition; (iv) The right to know the accused has obtained a pretrial or presentence release; <p>(c) Victims . . . shall be offered the opportunity to be informed in writing by the department of corrections about:</p>

		<p>(i) The commencement of the offender's imprisonment to serve the sentence imposed and the name, official address and security classification of the place of confinement;</p> <p>(ii) The earliest date upon which the offender could be released and the date released; . . .</p> <p>(vi) The escape, recapture or death of an offender;</p> <p>(vii) Any reduction or extension of the offender's sentence.</p>
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**Appendix M: Mandatory Restitution for Sexual Exploitation of Children Act
(18 U.S.C. § 2259)**

§ 2259. Mandatory restitution

(a) In general. Notwithstanding 18 U.S.C. § 3663 or § 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter [18 U.S.C. §§ 2251 et seq.].

(b) Scope and nature of order.

(1) Directions. Except as provided in paragraph (2), the order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses.

(2) Restitution for trafficking in child pornography. If the defendant was convicted of trafficking in child pornography, the court shall order restitution under this section in an amount to be determined by the court as follows:

(A) Determining the full amount of a victim's losses. The court shall determine the full amount of the victim's losses that were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim.

(B) Determining a restitution amount. After completing the determination required under subparagraph (A), the court shall order restitution in an amount that reflects the defendant's relative role in the causal process that underlies the victim's losses, but which is no less than \$ 3,000.

(C) Termination of payment. A victim's total aggregate recovery pursuant to this section shall not exceed the full amount of the victim's demonstrated losses. After the victim has received restitution in the full amount of the victim's losses as measured by the greatest amount of such losses found in any case involving that victim that has resulted in a final restitution order under this section, the liability of each defendant who is or has been ordered to pay restitution for such losses to that victim shall be terminated. The court may require the victim to provide information concerning the amount of restitution the victim has been paid in other cases for the same losses.

(3) Enforcement. An order of restitution under this section shall be issued and enforced in accordance with 18 U.S.C. § 3664 in the same manner as an order under 18 U.S.C. § 3663A.

(4) Order mandatory.

(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

- (i) the economic circumstances of the defendant; or
- (ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Definitions.

(1) Child pornography production. For purposes of this section and 18 U.S.C § 2259A, the term “child pornography production” means conduct proscribed by subsections (a) through (c) of 18 U.S.C. § 2251, § 2251A, § 2252A(g) (in cases in which the series of felony violations involves at least 1 of the violations listed in this subsection), § 2260(a), or any offense under chapter 109A or chapter 117 [18 U.S.C. §§ 2241 et seq. or §§ 2421 et seq.] that involved the production of child pornography (as such term is defined in section 18 U.S.C. § 2256).

(2) Full amount of the victim’s losses. For purposes of this subsection, the term “full amount of the victim’s losses” includes any costs incurred, or that are reasonably projected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim, and in the case of trafficking in child pornography offenses, as a proximate result of all trafficking in child pornography offenses involving the same victim, including—

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) reasonable attorneys’ fees, as well as other costs incurred; and
- (F) any other relevant losses incurred by the victim.

(3) Trafficking in child pornography. For purposes of this section and 18 U.S.C § 2259A, the term “trafficking in child pornography” means conduct proscribed by 18 U.S.C. § 2251(d), § 2252, §2252A(a)(1) through (5), § 2252A(g) (in cases in which the series of felony violations exclusively involves violations of 18 U.S.C. § 2251(d), § 2252, § 2252A(a)(1) through (5), or § 2260(b)), or § 2260(b).

(4) Victim. For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter [18 U.S.C §§ 2251 et seq.]. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, may assume the crime victim’s rights under this section, but in no event shall the defendant be named as such representative or guardian.

(d) Defined monetary assistance.

(1) Defined monetary assistance made available at victim's election.

(A) Election to receive defined monetary assistance. Subject to paragraphs (2) and (3), when a defendant is convicted of trafficking in child pornography, any victim of that trafficking in child pornography may choose to receive defined monetary assistance from the Child Pornography Victims Reserve established under section 1402(d)(6) of the Victims of Crime Act of 1984 (34 U.S.C. § 20101(d)).

(B) Finding. To be eligible for defined monetary assistance under this subsection, a court shall determine whether the claimant is a victim of the defendant who was convicted of trafficking in child pornography.

(C) Order. If a court determines that a claimant is a victim of trafficking in child pornography under subparagraph (B) and the claimant chooses to receive defined monetary assistance, the court shall order payment in accordance with subparagraph (D) to the victim from the Child Pornography Victims Reserve established under section 1402(d)(6) of the Victims of Crime Act of 1984.

(D) Amount of defined monetary assistance. The amount of defined monetary assistance payable under this subparagraph shall be equal to—

(i) for the first calendar year after the date of enactment of this subsection, \$35,000; and

(ii) for each calendar year after the year described in clause (i), \$35,000 multiplied by the ratio (not less than one) of—

(I) the Consumer Price Index for all Urban Consumers (CPI-U, as published by the Bureau of Labor Statistics of the Department of Labor) for the calendar year preceding such calendar year; to

(II) the CPI-U for the calendar year 2 years before the calendar year described in clause (i).

(2) Limitations on defined monetary assistance.

(A) In general. A victim may only obtain defined monetary assistance under this subsection once.

(B) Effect on recovery of other restitution. A victim who obtains defined monetary assistance under this subsection shall not be barred or limited from receiving restitution against any defendant for any offenses not covered by this section.

(C) Deduction. If a victim who received defined monetary assistance under this subsection subsequently seeks restitution under this section, the court shall deduct the amount the victim received in defined monetary assistance when determining the full amount of the victim's losses.

(3) Limitations on eligibility. A victim who has collected payment of restitution pursuant to this section in an amount greater than the amount provided for under paragraph (1)(D) shall be ineligible to receive defined monetary assistance under this subsection.

(4) Attorney fees.

(A) In general. An attorney representing a victim seeking defined monetary assistance under this subsection may not charge, receive, or collect, and the court may not approve, any payment of fees and costs that in the aggregate exceeds 15 percent of any payment made under this subsection.

(B) Penalty. An attorney who violates subparagraph (A) shall be fined under this title, imprisoned not more than 1 year, or both.

HISTORY:

Added Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle A, Ch 1, § 40113(b)(1), 108 Stat. 1907; April 24, 1996, P. L. 104-132, Title II, Subtitle A, § 205(c), 110 Stat. 1231; Dec. 7, 2018, P.L. 115-299, §§ 3(a), (b), 4, 132 Stat. 4384, 4385, 4386.

Appendix N: Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018

PUBLIC LAW 115–299—DEC. 7, 2018

132 STAT. 4383

Public Law 115–299 115th Congress

An Act

To amend title 18, United States Code, to provide for assistance for victims of child pornography, and for other purposes.

Dec. 7, 2018
[S. 2152]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The demand for child pornography harms children because it drives production, which involves severe child sexual abuse and exploitation.

(2) The harms caused by child pornography begin, but do not end, with child sex assault because child pornography is a permanent record of that abuse and trafficking in those images compounds the harm to the child.

(3) In *Paroline v. United States* (2014), the Supreme Court recognized that “every viewing of child pornography is a repetition of the victim’s abuse”.

(4) The American Professional Society on the Abuse of Children has stated that for victims of child pornography, “the sexual abuse of the child, the memorialization of that abuse which becomes child pornography, and its subsequent distribution and viewing become psychologically intertwined and each compound the harm suffered by the child-victim”.

(5) Victims suffer continuing and grievous harm as a result of knowing that a large, indeterminate number of individuals have viewed and will in the future view images of their childhood sexual abuse. Harms of this sort are a major reason that child pornography is outlawed.

(6) The unlawful collective conduct of every individual who reproduces, distributes, or possesses the images of a victim’s childhood sexual abuse plays a part in sustaining and aggravating the harms to that individual victim.

(7) It is the intent of Congress that victims of child pornography be compensated for the harms resulting from every perpetrator who contributes to their anguish. Such an aggregate causation standard reflects the nature of child pornography and the unique ways that it actually harms victims.

Amy, Vicky, and
Andy Child
Pornography
Victim
Assistance Act
of 2018.
18 USC 1 note.
18 USC 2259
note.

SEC. 3. DETERMINING RESTITUTION.

(a) DETERMINING RESTITUTION.—Section 2259(b) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking “The order” and inserting “Except as provided in paragraph (2), the order”; and

(B) by striking “as determined by the court pursuant to paragraph (2)” after “of the victim’s losses”;

(2) by striking paragraph (3);

(3) by redesignating paragraph (2) as paragraph (3); and

(4) by inserting after paragraph (1) the following:

“(2) RESTITUTION FOR TRAFFICKING IN CHILD PORNOGRAPHY.—If the defendant was convicted of trafficking in child pornography, the court shall order restitution under this section in an amount to be determined by the court as follows:

“(A) DETERMINING THE FULL AMOUNT OF A VICTIM’S LOSSES.—The court shall determine the full amount of the victim’s losses that were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim.

“(B) DETERMINING A RESTITUTION AMOUNT.—After completing the determination required under subparagraph (A), the court shall order restitution in an amount that reflects the defendant’s relative role in the causal process that underlies the victim’s losses, but which is no less than \$3,000.

“(C) TERMINATION OF PAYMENT.—A victim’s total aggregate recovery pursuant to this section shall not exceed the full amount of the victim’s demonstrated losses. After the victim has received restitution in the full amount of the victim’s losses as measured by the greatest amount of such losses found in any case involving that victim that has resulted in a final restitution order under this section, the liability of each defendant who is or has been ordered to pay restitution for such losses to that victim shall be terminated. The court may require the victim to provide information concerning the amount of restitution the victim has been paid in other cases for the same losses.”.

(b) ADDITIONAL DEFINITIONS.—Section 2259(c) of title 18, United States Code, is amended—

(1) in the heading, by striking “DEFINITION” and inserting “DEFINITIONS”;

(2) by striking “For purposes” and inserting the following:

“(4) VICTIM.—For purposes”;

(3) by striking “under this chapter, including, in the case” and inserting “under this chapter. In the case”;

(4) by inserting after “or any other person appointed as suitable by the court,” the following: “may assume the crime victim’s rights under this section,”; and

(5) by inserting before paragraph (4), as so designated, the following:

“(1) CHILD PORNOGRAPHY PRODUCTION.—For purposes of this section and section 2259A, the term ‘child pornography production’ means conduct proscribed by subsections (a) through (c) of section 2251, section 2251A, section 2252A(g) (in cases in which the series of felony violations involves at

Courts.

least 1 of the violations listed in this subsection), section 2260(a), or any offense under chapter 109A or chapter 117 that involved the production of child pornography (as such term is defined in section 2256).

“(2) FULL AMOUNT OF THE VICTIM’S LOSSES.—For purposes of this subsection, the term ‘full amount of the victim’s losses’ includes any costs incurred, or that are reasonably projected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim, and in the case of trafficking in child pornography offenses, as a proximate result of all trafficking in child pornography offenses involving the same victim, including—

“(A) medical services relating to physical, psychiatric, or psychological care;

“(B) physical and occupational therapy or rehabilitation;

“(C) necessary transportation, temporary housing, and child care expenses;

“(D) lost income;

“(E) reasonable attorneys’ fees, as well as other costs incurred; and

“(F) any other relevant losses incurred by the victim.

“(3) TRAFFICKING IN CHILD PORNOGRAPHY.—For purposes of this section and section 2259A, the term ‘trafficking in child pornography’ means conduct proscribed by section 2251(d), 2252, 2252A(a)(1) through (5), 2252A(g)(in cases in which the series of felony violations exclusively involves violations of section 2251(d), 2252, 2252A(a)(1) through (5), or 2260(b)), or 2260(b).”.

(c) CLERICAL AMENDMENT.—Section 1593(b)(3) of title 18, United States Code, is amended by striking “section 2259(b)(3)” and inserting “section 2259(c)(2)”.

SEC. 4. DEFINED MONETARY ASSISTANCE.

Section 2259 of title 18, United States Code, is amended by adding at the end the following:

“(d) DEFINED MONETARY ASSISTANCE.—

Courts.

“(1) DEFINED MONETARY ASSISTANCE MADE AVAILABLE AT VICTIM’S ELECTION.—

“(A) ELECTION TO RECEIVE DEFINED MONETARY ASSISTANCE.—Subject to paragraphs (2) and (3), when a defendant is convicted of trafficking in child pornography, any victim of that trafficking in child pornography may choose to receive defined monetary assistance from the Child Pornography Victims Reserve established under section 1402(d)(6) of the Victims of Crime Act of 1984 (34 U.S.C. 20101(d)).

“(B) FINDING.—To be eligible for defined monetary assistance under this subsection, a court shall determine whether the claimant is a victim of the defendant who was convicted of trafficking in child pornography.

“(C) ORDER.—If a court determines that a claimant is a victim of trafficking in child pornography under subparagraph (B) and the claimant chooses to receive defined monetary assistance, the court shall order payment in accordance with subparagraph (D) to the victim from the Child Pornography Victims Reserve established under section 1402(d)(6) of the Victims of Crime Act of 1984.

“(D) AMOUNT OF DEFINED MONETARY ASSISTANCE.—The amount of defined monetary assistance payable under this subparagraph shall be equal to—

“(i) for the first calendar year after the date of enactment of this subsection, \$35,000; and

“(ii) for each calendar year after the year described in clause (i), \$35,000 multiplied by the ratio (not less than one) of—

“(I) the Consumer Price Index for all Urban Consumers (CPI-U, as published by the Bureau of Labor Statistics of the Department of Labor) for the calendar year preceding such calendar year; to

“(II) the CPI-U for the calendar year 2 years before the calendar year described in clause (i).

“(2) LIMITATIONS ON DEFINED MONETARY ASSISTANCE.—

“(A) IN GENERAL.—A victim may only obtain defined monetary assistance under this subsection once.

“(B) EFFECT ON RECOVERY OF OTHER RESTITUTION.—A victim who obtains defined monetary assistance under this subsection shall not be barred or limited from receiving restitution against any defendant for any offenses not covered by this section.

“(C) DEDUCTION.—If a victim who received defined monetary assistance under this subsection subsequently seeks restitution under this section, the court shall deduct the amount the victim received in defined monetary assistance when determining the full amount of the victim’s losses.

“(3) LIMITATIONS ON ELIGIBILITY.—A victim who has collected payment of restitution pursuant to this section in an amount greater than the amount provided for under paragraph (1)(D) shall be ineligible to receive defined monetary assistance under this subsection.

“(4) ATTORNEY FEES.—

“(A) IN GENERAL.—An attorney representing a victim seeking defined monetary assistance under this subsection may not charge, receive, or collect, and the court may not approve, any payment of fees and costs that in the aggregate exceeds 15 percent of any payment made under this subsection.

“(B) PENALTY.—An attorney who violates subparagraph (A) shall be fined under this title, imprisoned not more than 1 year, or both.”.

SEC. 5. ASSESSMENTS IN CHILD PORNOGRAPHY CASES.

(a) ASSESSMENTS IN CHILD PORNOGRAPHY CASES.—Chapter 110 of title 18, United States Code, is amended by inserting after section 2259 the following:

18 USC 2259A.

“§ 2259A. Assessments in child pornography cases

“(a) IN GENERAL.—In addition to any other criminal penalty, restitution, or special assessment authorized by law, the court shall assess—

“(1) not more than \$17,000 on any person convicted of an offense under section 2252(a)(4) or 2252A(a)(5);

“(2) not more than \$35,000 on any person convicted of any other offense for trafficking in child pornography; and
 “(3) not more than \$50,000 on any person convicted of a child pornography production offense.

“(b) ANNUAL ADJUSTMENT.—The dollar amounts in subsection (a) shall be adjusted annually in conformity with the Consumer Price Index.

“(c) FACTORS CONSIDERED.—In determining the amount of the assessment under subsection (a), the court shall consider the factors set forth in sections 3553(a) and 3572.

Courts.

“(d) IMPOSITION AND IMPLEMENTATION.—

“(1) IN GENERAL.—The provisions of subchapter C of chapter 227 (other than section 3571) and subchapter B of chapter 229 (relating to fines) apply to assessments under this section, except that paragraph (2) applies in lieu of any contrary provisions of law relating to fines or disbursement of money received from a defendant.

Applicability.

“(2) EFFECT ON OTHER PENALTIES.—Imposition of an assessment under this section does not relieve a defendant of, or entitle a defendant to reduce the amount of any other penalty by the amount of the assessment. Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

“(A) A special assessment under section 3013.

“(B) Restitution to victims of any child pornography production or trafficking offense that the defendant committed.

“(C) An assessment under this section.

“(D) Other orders under any other section of this title.

“(E) All other fines, penalties, costs, and other payments required under the sentence.”.

(b) CHILD PORNOGRAPHY VICTIMS RESERVE.—Section 1402(d) of the Victims of Crime Act of 1984 (34 U.S.C. 20101(d)) is amended by adding at the end the following:

“(6)(A) The Director may set aside up to \$10,000,000 of the amounts remaining in the Fund in any fiscal year after distributing the amounts under paragraphs (2), (3), and (4), in a Child Pornography Victims Reserve, which may be used by the Attorney General for payments under section 2259(d) of title 18, United States Code.

“(B) Amounts in the reserve may be carried over from fiscal year to fiscal year, but the total amount of the reserve shall not exceed \$10,000,000. Notwithstanding subsection (c) and any limitation on Fund obligations in any future Act, unless the same should expressly refer to this section, any such amounts carried over shall not be subject to any limitation on obligations from amounts deposited to or available in the Fund.”.

(c) CHILD PORNOGRAPHY VICTIMS RESERVE.—Chapter 110 of title 18, United States Code, is amended by inserting after section 2259A, as added by subsection (a), the following:

“§ 2259B. Child pornography victims reserve

18 USC 2259B.

“(a) DEPOSITS INTO THE RESERVE.—Notwithstanding any other provision of law, there shall be deposited into the Child Pornography Victims Reserve established under section 1402(d)(6) of the Victims of Crime Act of 1984 (34 U.S.C. 20101(d)) all assessments collected

under section 2259A and any gifts, bequests, or donations to the Child Pornography Victims Reserve from private entities or individuals.

“(b) AVAILABILITY FOR DEFINED MONETARY ASSISTANCE.—Amounts in the Child Pornography Victims Reserve shall be available for payment of defined monetary assistance pursuant to section 2259(d). If at any time the Child Pornography Victims Reserve has insufficient funds to make all of the payments ordered under section 2259(d), the Child Pornography Victims Reserve shall make such payments as it can satisfy in full from available funds. In determining the order in which such payments shall be made, the Child Pornography Victims Reserve shall make payments based on the date they were ordered, with the earliest-ordered payments made first.

Guidelines.
Regulations.

“(c) ADMINISTRATION.—The Attorney General shall administer the Child Pornography Victims Reserve and shall issue guidelines and regulations to implement this section.

“(d) SENSE OF CONGRESS.—It is the sense of Congress that individuals who violate this chapter prior to the date of the enactment of the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, but who are sentenced after such date, shall be subject to the statutory scheme that was in effect at the time the offenses were committed.”.

18 USC 2251
prec.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 110 of title 18, United States Code, is amended by inserting after the item relating to section 2259 the following:

“2259A. Assessments in child pornography cases
“2259B. Child pornography victims reserve”.

SEC. 6. CHILD PORNOGRAPHY VICTIM'S RIGHT TO EVIDENCE.

Section 3509(m) of title 18, United States Code, is amended by adding at the end the following:

“(3) In any criminal proceeding, a victim, as defined under section 2259(c)(4), shall have reasonable access to any property or material that constitutes child pornography, as defined under section 2256(8), depicting the victim, for inspection, viewing, and examination at a Government facility or court, by the victim, his or her attorney, and any individual the victim may seek to qualify to furnish expert testimony, but under no circumstances may such child pornography be copied, photographed, duplicated, or otherwise reproduced. Such property or material may be redacted to protect the privacy of third parties.”.

SEC. 7. CLERICAL AMENDMENTS.

(a) EXPANSION OF CIVIL REMEDIES FOR SATISFACTION OF AN UNPAID FINE.—Section 3613(c) of title 18, United States Code, is amended by inserting “an assessment imposed pursuant to section 2259A of this title,” after “pursuant to the provisions of subchapter C of chapter 227 of this title,”.

(b) CLARIFICATION OF INTERSTATE OR FOREIGN COMMERCE PROVISION REGARDING CERTAIN ACTIVITIES PERTAINING TO CHILD PORNOGRAPHY.—Section 2252A (a)(2) of title 18, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking “using any means or facility of interstate or foreign commerce” and inserting “has been”; and

(B) by inserting “using any means or facility of interstate or foreign commerce or” after “child pornography”; and

(2) in subparagraph (B)—

(A) by striking “using any means or facility of interstate or foreign commerce” and inserting “has been”; and

(B) by inserting “using any means or facility of interstate or foreign commerce or” after “child pornography”.

(c) CLARIFICATION OF THE DEFINITION OF “SEXUALLY EXPLICIT CONDUCT”.—Section 2256(2) of title 18, United States Code, is amended—

(1) in subparagraph (A)(v)—

(A) by inserting “anus,” before “genitals”; and

(B) by inserting a comma after “genitals”; and

(2) in subparagraph (B)(iii)—

(A) by inserting “anus,” before “genitals”; and

(B) by inserting a comma after “genitals”.

SEC. 8. REPORTS.

Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the progress of the Department of Justice in implementing the amendments made by sections 3 through 5, and shall include an assessment of the funding levels for the Child Pornography Victims Reserve.

Approved December 7, 2018.

Appendix O: Paul G. Cassell & James R. Marsh, *The New Amy, Vicky, and Andy Act: A Positive Step Toward Full Restitution for Child Pornography Victims*, 31 FED. SENTENCING REPORTER 187 (2019)

Forthcoming in Federal Sentencing Reporter, Feb. 2019, Vol. 31, Issue 3

THE NEW AMY, VICKY, AND ANDY ACT:
A POSITIVE STEP TOWARDS FULL RESTITUTION FOR
CHILD PORNOGRAPHY VICTIMS

Paul G. Cassell* and James R. Marsh**

I. INTRODUCTION

Providing restitution to victims of child pornography crimes has proven to be a challenge for courts across the country. Child pornography is often widely disseminated to countless thousands of criminals who have a prurient interest in such materials. While the victims of child pornography crimes often have significant financial losses from the crimes (such as the need for long term psychological counseling), allocating a victim's losses to any particular criminal defendant is problematic.

Five years ago, the Supreme Court gave its answer on how to resolve this issue with its ruling in *Paroline v. United States*.¹ Interpreting a restitution statute enacted by Congress, the Court concluded that in a child pornography prosecution, a restitution award from a particular defendant is only appropriate to the extent that it reflects "the defendant's relative role in the causal process that underlies the victim's general losses."²

In the ensuing years, lower courts have struggled to implement this holding. Just recently, Congress stepped in to ensure that victims will receive appropriate restitution. In November 2018, the Senate and House resolved their differences in how to handle the issue, passing the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018 (or "AVAA" for short). President Trump signed the legislation into law on December 7, 2018.

In this article, we describe the impact of this important new legislation. We set the stage by describing the need for restitution for child pornography victims, using the story of the lead victim in the Act ("Amy") as an illustration of why restitution is needed. We then turn to the problematic legal regime that was created by the Supreme Court's *Paroline* decision, noting some of the confusion in the lower courts following the ruling. Against this backdrop, we then discuss the AVAA, explaining how it will be a useful step forward for victims of these crimes.

* Ronald N. Boyce Presidential Professor of Criminal Law and University Distinguished Professor of Law at the S.J. Quinney College of Law at the University of Utah.

** Founder, Marsh Law Firm PLLC. The authors thank Patricia Cassell, Jennifer Freeman, Thomas Jipping, Robert Y. Lewis, and Katie Shipp for helpful suggestions in preparing this article.

¹ 572 U.S. 434 (2014).

² *Id.* at 458.

One even more important possibility is that the Act could set a precedent for expanding restitution for victims in the future.

II. AMY'S VICTIMIZATION

The *Paroline* decision involved not only the named defendant—Randall Doyle Paroline—but also his victim, a young woman whom we will refer to pseudonymously as “Amy.”³ Her circumstances illustrate the problem of restitution in child pornography cases, and so are worth briefly recounting.

When she was eight and nine years old, Amy was repeatedly raped by her uncle in order to produce child pornography.⁴ Amy’s uncle required her to perform sex acts requested by others who wanted her images for their own sexual gratification. Amy’s abuser pleaded guilty to production of child pornography and in 1999 was sentenced to a lengthy prison term. He was also ordered to pay the psychological counseling costs Amy had incurred up to that time, a total of \$6,325.

By the end of her treatment in 1999, Amy was—as reflected in her therapist’s notes—“back to normal.” Sadly, eight years later, Amy’s condition drastically deteriorated when she discovered that her child sex abuse images were at the time one of the most widely-circulated sets of child sex abuse images in the world. According to her psychologist, the global trafficking of Amy’s child sex abuse images has caused “long lasting and life changing impact[s] on her.” As Amy explained in her own, personal victim impact statement, “[e]very day of my life I live in constant fear that someone will see my pictures and recognize me and that I will be humiliated all over again.”⁵

³ The authors had the privilege of representing Amy throughout the federal court system in her effort to obtain restitution including before the Supreme Court. Unless otherwise attributed, the facts in this Part are taken from Amy’s Supreme Court brief in *Paroline*. See Respondent Amy’s Br. on the Merits, *Paroline v. United States*, 572 U.S. 434 (2014) (No. 12-8561) [hereinafter Amy’s Merits Br.].

⁴ While the legal term “child pornography” is used throughout this article, that term “contributes to a fundamental misunderstanding of the crime—one that . . . leaves the impression that what is depicted in the[se] photograph[s] is [adult] ‘pornography’ rather than images memorializing the sexual assault of children.” U.S. Dep’t of Justice, *The National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress* 8 (2010) [hereinafter DOJ REPORT TO CONGRESS]. See generally PAUL G. CASSELL, JAMES MARSH & JEREMY CHRISTIANSEN, NOT JUST “KIDDIE PORN”: THE REAL HARMS FROM POSSESSION OF CHILD PORNOGRAPHY, IN *REFINING CHILD PORNOGRAPHY LAW: CRIME, LANGUAGE, AND SOCIAL CONSEQUENCE* (Michigan Univ. Press 2014); PHILIP JENKINS, *BEYOND TOLERANCE: CHILD PORNOGRAPHY ON THE INTERNET* (2001).

⁵ Amy’s suffering is similar to that documented in various studies. See, e.g., RICHARD WORTLEY & STEPHEN SMALLBONE, *INTERNET CHILD PORNOGRAPHY: CAUSES, INVESTIGATION, AND PREVENTION* 73-79 (2012).

The ongoing victimization Amy suffers from the continued distribution and collection of her images will last throughout her entire life. She could not complete college and finds it difficult to engage in full-time employment because she fears encountering individuals who may have seen her being raped as a child. She will also require weekly psychological therapy and occasionally more intensive inpatient treatment throughout her life.

One of the criminals who joined in the collective exploitation of Amy was Doyle Randall Paroline. In 2008, law enforcement agents discovered that he had downloaded several hundred images of young children (including toddlers) engaging in sexual acts with adults and animals. In 2009, he pleaded guilty to one count of possession of material involving the sexual exploitation of children.⁶

The FBI then sent the images it discovered on Paroline's computers to the National Center for Missing and Exploited Children (NCMEC). NCMEC's analysis revealed that Amy was one of the children victimized in those images. Based on that information, the United States Attorney's Office notified Amy's counsel that Amy was an identified victim in Paroline's criminal case. Amy's counsel then submitted a detailed restitution request on Amy's behalf, describing the harm she endures from knowing that she is powerless to stop the Internet trading of her child sex abuse images. In her restitution request, Amy sought full restitution of \$3,367,854 from Paroline for lost wages and psychological counseling costs.

Later in 2009, the district court sentenced Paroline to twenty-four months in prison. During a later adversarial restitution hearing, however, the district court, declined to award Amy any restitution. Although the district court recognized that a "significant" part of Amy's losses was "attribut[able] to the widespread dissemination and availability of her images and the possession of those images by many individuals such as [Paroline]," it nonetheless refused to award her any restitution because she could not prove exactly what losses proximately resulted from Paroline's crime.

Amy sought review of the district court's denial of her restitution request, employing the appellate review provision found in the Crime Victims' Rights Act (CVRA).⁸ Ultimately the Fifth Circuit en banc held 10-5 that 18 U.S.C. § 2259 does not require a child pornography victim to establish that her losses were the proximate result of an individual defendant's crime in order to secure restitution.⁹ The Fifth Circuit concluded that § 2259 creates a system of joint and several liability, which "applies well in these circumstances, where victims like Amy are harmed by defendants acting separately who have caused her a single harm."¹⁰

⁶ See 18 U.S.C. § 2252(a)(4)(B) (2012) (made a ten-year felony by 18 U.S.C. § 2252(b)(2) (2012)).

⁷ 672 F.Supp.2d at 792.

⁸ 18 U.S.C. § 3771(d)(3) (2009).

⁹ *In re Amy Unknown*, 701 F.3d 749 (5th Cir. 2012).

¹⁰ *Id.* at 774.

Paroline sought review in the Supreme Court. Amy agreed that review was appropriate, and the Court then granted certiorari.

III. THE SUPREME COURT'S *PAROLINE* DECISION

In January 2014, Amy participated in oral argument through legal counsel, which itself was unprecedented in a criminal case, where prosecutors and defense attorneys are typically the only advocates allowed to speak. Amy became the first crime victim to have argument presented directly on her own behalf to the Supreme Court in a criminal case. A few months later, in April 2014, the Supreme Court announced its decision in *Paroline*.¹¹ Justice Kennedy wrote the majority opinion for five members of the Court, rejecting Amy's arguments. Chief Justice Roberts, joined by Justices Scalia and Thomas, dissented, as did Justice Sotomayor.

Justice Kennedy's majority opinion first held that § 2259 imposed a proximate cause requirement on victims attempting to recover restitution for their losses but that it was easily met in this scenario.¹² While that issue is complicated,¹³ the key part of the opinion for the purposes of this article is the Court's resolution of the issue of how to apply the statute's causation requirements. Justice Kennedy thought that it was "simple enough for the victim to prove the aggregate losses, including the costs of psychiatric treatment and lost income, that stem from the ongoing traffic in her images as a whole."¹⁴ He called these losses "general losses" and explained that the challenge is determining what part "of those general losses, if any, that are the proximate result of the offense conduct of a particular defendant who is one of thousands who have possessed and will in the future possess the victim's images but who has no other connection to the victim."¹⁵

Justice Kennedy then examined whether a "but for" test could be used to identify the losses suffered by a victim as the result of any particular defendant's crime. He concluded that the difficulty with this approach is that a showing of but-for causation cannot be made since "it is not possible to prove that her losses would be less (and by how much) but for one possessor's individual role in the large, loosely connected network through which her images circulate."¹⁶

Justice Kennedy next turned to the causation test identified in the *Restatement of Torts* for "[m]ultiple sufficient causal sets" causing an injury – such as when

¹¹ *Paroline v. United States*, 572 U.S. 434 (2014).

¹² *Id.* at 447.

¹³ For further discussion of the issue, see generally Paul G. Cassell & James R. Marsh, *Full Restitution for Child Pornography Victims: The Supreme Court's Paroline Decision and the Need for a Congressional Response*, 13 OHIO ST. J. CRIM. L. 5 (2015).

¹⁴ *Paroline*, 572 U.S. at 449.

¹⁵ *Id.* at 450.

¹⁶ *Id.*

three persons lean on a car and the weight of all three is necessary to propel the car off of a cliff.¹⁷ The Justice explained that such tests “though salutary when applied in a judicious manner, also can be taken too far.”¹⁸ He concluded that applying the test in the child pornography context would be “taking things too far,” because “[i]t would make an individual possessor liable for the combined consequences of the acts of not just 2, 5, or even 100 independently acting offenders; but instead, a number that may reach into the tens of thousands.”¹⁹

For all these reasons, Justice Kennedy rejected Amy’s argument that an individual possessor should be held responsible for all her losses. But Justice Kennedy also rejected the “anomalous” position that each defendant would be responsible for no restitution at all.²⁰ Instead, he held that each defendant should pay *some* amount of restitution:

In this special context, where it can be shown both that a defendant possessed a victim’s images and that a victim has outstanding losses caused by the continuing traffic in those images but where it is impossible to trace a particular amount of those losses to the individual defendant by recourse to a more traditional causal inquiry, a court applying § 2259 should order restitution in an amount that comports with the defendant’s relative role in the causal process that underlies the victim’s general losses.²¹

Chief Justice Roberts dissenting, joined by Justices Scalia and Thomas. The Chief Justice acknowledged the difficulty of deciding what share of Amy’s losses could be attributed to any particular defendant, concluding that “[r]egrettably, Congress provided no mechanism for answering that question.”²² He then examined the majority opinion and determined that it will result in tiny awards for Amy, meaning “that Amy will be stuck litigating for years to come.”²³ He acknowledged that the majority opinion had cautioned against “trivial restitution orders,” but maintained that “it is hard to see how a court fairly assessing this defendant’s relative contribution could do anything else.”²⁴ The Chief Justice concluded with a call for congressional action, explaining that “[t]he statute as written allows no recovery; we ought to say so, and give Congress a chance to fix it.”²⁵

¹⁷ *Id.* at 452.

¹⁸ *Id.*

¹⁹ *Id.* at 454.

²⁰ *Id.* at 452.

²¹ *Id.* at 458.

²² *Id.* at 467 (Roberts, C.J., dissenting).

²³ *Id.* at 470 (Roberts, C.J., dissenting).

²⁴ *Id.* at 471 (Roberts, C.J., dissenting).

²⁵ *Id.* at 471-72 (Roberts, C.J., dissenting).

Justice Sotomayor also dissented, essentially agreeing with Amy on every point. She began by arguing that § 2259 created an “aggregate causation” standard, reading the statute as “offer[ing] no safety-in-numbers exception for defendants who possess images of a child’s abuse in common with other offenders.”²⁶ Justice Sotomayor found the majority’s interpretation fundamentally flawed because the statute “directs courts to enter restitution not for a ‘proportional’ or ‘relative’ amount, but rather the ‘full amount of the victim’s losses.’”²⁷ Justice Sotomayor also concluded with a call for Congressional action, noting that “to avoid the uncertainty in the Court’s apportionment approach, Congress might wish to enact fixed minimum restitution amounts.”²⁸

IV. THE UNEVEN IMPLEMENTATION OF THE *PAROLINE* DECISION

Following the Court’s holding in 2014, lower federal courts throughout the country struggled to implement the *Paroline* decision in restitution hearings in child pornography cases. The problem with Justice Kennedy’s opinion is that it failed to provide any effective guidance on the key question in all of the case: how much restitution should victims like Amy and others should receive. The key passage in the opinion was that “a court applying § 2259 should order restitution in an amount that comports with the defendant’s relative role in the causal process that underlies the victim’s general losses.”²⁹ Justice Kennedy cautioned that “[t]hese factors need not be converted into a rigid formula, especially if doing so would result in trivial restitution orders.”³⁰

In cautioning against “trivial” restitution awards, Justice Kennedy appears to have been responding to a concern that Amy raised in the closing paragraphs of her brief. Amy warned that apportioning restitution among multiple defendants will result in “trivial” restitution award.³¹ Amy explained that her images were at that time identified in 3,200 American federal and state criminal cases. She noted that, unfortunately, cases prosecuted at the federal level represent just a fraction of the child pornography criminals who cause her injuries because law enforcement can only apprehend a small fraction of those who distribute and possess the child pornography depicting her. Based on rough calculations, Amy offered the ballpark estimate that *Paroline*’s “market share” of her harm is 1/71,000 and that any individual defendant’s restitution obligation to her would be a trifling amount: about \$47 which was calculated by taking the full amount of her losses (\$3,367,854) and then multiplying by 1/3,200 (the total number of cases where her

²⁶ *Id.* at 476 (Sotomayor, J., dissenting).

²⁷ *Id.* at 480 (Sotomayor, J., dissenting).

²⁸ *Id.* at 488 (Sotomayor, J., dissenting).

²⁹ *Id.* at 458.

³⁰ *Id.*

³¹ Amy’s Merits Br., *supra* note 3, at 65.

images had been found) and then 1/10 (the ten percent law enforcement apprehension rate) and then 45/100 (the percentage of child pornography criminals who are found in this country).³²

Chief Justice Roberts' dissenting opinion addressed these troubling numbers. After recounting the computation, Chief Justice Roberts noted the majority's disclaimer that trivial awards were inappropriate, but he concluded, "it is hard to see how a court fairly assessing this defendant's relative contribution could do anything else."³³

Because the Supreme Court offered no guidance on this essential topic, lower courts have had difficulty determining restitution awards for convicted child pornography defendants. As one summary of the caselaw concluded, "Since the *Paroline* decision, federal courts have struggled to calculate appropriate awards. The *Paroline* decision has done little to help courts clarify the amount of restitution that victims should be awarded."³⁴

For example, in the immediate wake of the opinion, the District Court in the Northern District of New York noted that "in the handful of district courts that have grappled with the matter of restitution in child pornography cases post-*Paroline*, several have expressed their concern with the lack of precise guidance from Congress and the Supreme Court in deciding restitution awards in these circumstances.... Having now grappled with the same issues, this Court finds that such concerns are well founded."³⁵ Similarly, the District Court for the District of Rhode Island found that "some of the factors the Supreme Court suggests to be considered are at best difficult, and at worst impossible to calculate in this case as in most similar cases."³⁶ The District Court for the District of Nevada agreed that "*Paroline* is of limited use because no logical starting point can be determined."³⁷ More colorfully, the District Court of the Eastern District of New York wrote that "though commentators may quarrel over the astuteness of the Supreme Court's professed confidence in the skill of the district courts to divine a true course through this thicket...the task seems akin to piloting a small craft to safe harbor in a Nor'easter..... The task of charting passage through these unknown waters is

³² Amy's Merits Br., *supra* note 3, at n.19 (calculating $3,367,854 \times 1/3,200 \times 1/10 \times 45/100 \approx \47).

³³ *Paroline*, 572 U.S. at 471 (Roberts, C.J., dissenting).

³⁴ Janet Lawrence, *The Peril of Paroline: How the Supreme Court Made It More Difficult for Victims of Child Pornography*, 2016 B.Y.U. L. REV. 325, 362 (2016).

³⁵ *United States v. Miner*, No. 1:14-CR-33 MAD, 2014 WL 4816230, at *9 (N.D.N.Y. Sept. 25, 2014), vacated in part, 617 F. App'x 102 (2d Cir. 2015).

³⁶ *United States v. Crisostomi*, 31 F. Supp. 3d 361, 364 (D.R.I. 2014).

³⁷ In *United States v. Austin*, No. 3:14-CR-0070-LRH-WGC, 2015 WL 5224917, at *2 (D. Nev. 2015).

overwhelming.”³⁸ Equally noteworthy, several courts explicitly joined Chief Justice Robert’s and Justice Sotomayor’s calls for Congressional action.³⁹

V. INNOVATIONS AND IMPLICATIONS OF THE AMY, VICKY, AND ANDY ACT

Against the backdrop of both the difficulty that lower courts were having in implement the *Paroline* decision and the decision’s express call for Congress to step in, it was perhaps inevitable that Congress would pass some sort of legislation addressing restitution in child pornography cases.⁴⁰ And in late 2018, acting by

³⁸ In *United States v. DiLeo*, 58 F. Supp. 3d 239, 244 (E.D.N.Y. 2014). Two years later, the same court employed a different metaphor to describe the difficult of the task, explaining “It should be clear by now for sure that ‘restitution’ in child pornography cases is a minefield.” *United States v. Darbasie*, 164 F. Supp. 3d 400, 406 (E.D.N.Y. 2016). Many other courts reached similar conclusions. See, e.g., *United States v. Campbell-Zorn*, No. CR 14-41-BLG-SPW, 2014 WL 7215214, at *3 (D. Mont. 2014) (“These tools provided by *Paroline*, while seemingly useful in a theoretical sense, have proven to have very difficult, and very limited, practical application.”); *United States v. Ayer*, No. 2:15-CR-86-APG-NJK, 2015 WL 7259765, at *2 (D. Nev. 2015) (“While the *Paroline* factors offer some guidance, the practical application of those factors is extraordinarily difficult.”); *United States v. Miller*, No. 13-20928, 2015 WL 6689363, at *2 (E.D. Mich. 2015) (“It is extremely difficult to quantify the loss sustained by these minor victims.”); *United States v. Reynolds*, Crim. No. 12-20843, 2014 WL 4187936, at *5-*6 (E.D. Mich. 2014), aff’d, 626 F. App’x 610 (6th Cir. 2015) (“...it is simply not possible for the Government to show, ‘as a starting point,’ the amount of losses caused by the ‘continuing trafficking’ in Cindy and Vicky’s images.”).

³⁹ *United States v. Schultz*, No. 14-10085-RGS, 2015 WL 5972421, at *3 (D. Mass. 2015) (Congressional action “would eliminate much of the present variability in victim restitution awards.”); *United States v. Galan*, No. 6:11-CR-60148-AA, 2014 WL 3474901, at *8 (D. Or. 2014), vacated and remanded, 804 F.3d 1287 (9th Cir. 2015) (“The current statutory process for restitution does not fully compensate losses suffered by child pornography victims and may, in fact, dissuade victims from seeking restitution; the end result is hardly worth yet another reminder of their continued exploitation. The court cannot remedy this problem. Rather, it is up to Congress to develop a system to truly compensate child pornography victims for the losses they continue to suffer.”); *United States v. Galan*, 804 F.3d 1287, 1291 (9th Cir. 2015) (“We do agree that this area, in which Congress has adopted a scheme that at least approaches the limits of fair adjudication, despite attempts by the courts to avoid caprice, cries out for a congressional solution.”).

⁴⁰ See Professor Richard L. Hasen, Election Law Blog, <http://electionlawblog.org/?p=60802> (visited Jan. 10, 2019, posted on April 23, 2014) (“Even though Congress rarely overrides [the Supreme Court] these days, I predict an override in this case, and probably relatively quickly.... this seems the ideal case for a Congressional override.”); Dean A. Mazzone, *Paroline v. United States: The Question of Restitution*, 16 ENGAGE, July 15, 2015 (“In the end, Congress will have to fix the statute it wrote. Well intentioned guidance by the Supreme Court is simply no substitute for the hard work of legislating.”).

way of unanimous consent, both the House and Senate approved the “Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018,” which the President then quickly signed into law. Because the Act significantly changes the way in which child pornography restitution claims are handled, it is useful to review how Congress intended the Act to operate and structured the Act’s provisions. The Act makes significant changes in four areas: determining restitution amounts, awarding restitution based on aggregate causation, establishing a fund for victims to access in lieu of individualized awards, and providing victims with access to evidence. We describe and critique the AVAA’s changes in each of these four areas in turn.

A. Determining Restitution Awards

The AVAA restructures the way in which courts will award restitution to victims in child pornography cases. Congress created an umbrella category of “trafficking in child pornography,” which includes possession of child pornography and similar crimes.⁴¹ For these trafficking crimes, a sentencing court will have to make two separate findings when a victim requests restitution. First, “[t]he court shall determine the full amount of the victim’s losses that were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim.”⁴² Second, after making this determination, the court “shall order restitution in an amount that reflects the defendant’s relative role in the causal process that underlies the victim’s losses, but which is no less than \$3,000.”⁴³ A victim can continue to seek and be awarded restitution in various federal child pornography cases until receiving the full amount of her losses, but no more.

This change, while modest, is important for child pornography victims like Amy, Vicky, and Andy, who have significant losses caused by a huge number of offenders. The AVAA clarifies that losses must be awarded not simply for past, out-of-pocket losses, but also all future losses “reasonably projected to be incurred by the victim.”

In addition, Congress establishes a minimum restitution amount of \$3,000 for trafficking in child pornography cases which can be increased depending on “the defendant’s relative role in the causal process that underlies the victim’s losses”—the so-called *Paroline* factors. By setting a guaranteed minimum restitution amount (or “floor”) of \$3,000 for child pornography possession and distribution crimes, Congress has ensured that victims with significant losses (such as Amy, Vicky, Andy and others) will be able to begin collecting a series of \$3000 awards which should ultimately allow victims to achieve full restitution for the losses they

⁴¹ 18 U.S.C. § 2259(c)(3).

⁴² 18 U.S.C. § 2259(b)(2)(A).

⁴³ 18 U.S.C. § 2259(b)(2)(B).

have suffered. By setting a specific minimum amount that must be awarded, the Act should help reduce seemingly interminable litigation about the relative causal role that a particular defendant plays in causing losses along with “trivial” restitution awards.

In light of recent simultaneous changes Congress made to federal sentencing laws in the First Step Act⁴⁴—including the repeal of some mandatory minimum sentencing laws—some observers may wonder whether the two new laws are philosophically inconsistent. Is there a conceptual conflict between establishing mandatory restitution amounts while abolishing (some) mandatory sentences? Any perceived conflict disappears when the AVAA’s specific purposes are considered. Mandatory minimum prison terms can sometimes be draconian and blunt,⁴⁵ as some of the AVAA’s key sponsors have argued.⁴⁶ But the AVAA does not specify mandatory *prison* sentences designed to *punish* offenders. Instead, the AVAA provides minimum *restitution* amounts designed to *compensate* injured victims. And defendants will still be able to pay those amounts in an appropriate way over time since nothing in the AVAA alters or supersedes the general provisions in the restitution statute which requires judges to set a reasonable and proportional payment schedule.⁴⁷

A requirement to pay such a modest amount as \$3,000 should not raise any constitutional concerns, specifically Eighth Amendment “excessive fine” concerns.⁴⁸ Most federal courts agree that restitution is remedial in nature and therefore not subject to Eighth Amendment punishment or “excessive fine” limitations, but a circuit split exists on this issue.⁴⁹ The *Paroline* decision flagged the possibil-

⁴⁴ Pub. L. 155-391.

⁴⁵ See, e.g., Erik Luna & Paul G. Cassell, *Mandatory Minimalism*, 32 CARDOZO L. REV. 1 (2010).

⁴⁶ See, e.g., Orrin G. Hatch, *The Role of Congress in Sentencing: The United States Sentencing Commission, Mandatory Minimum Sentences and the Search for a Certain and Effective Sentencing System*, 28 WAKE FOREST L. REV. 185, 192–95 (1993).

⁴⁷ 18 U.S.C. § 3664(f)(1)(A)(2).

⁴⁸ Nor is there any Sixth Amendment problem with restitution awards being made by judges rather than juries, although at least two Justices on the Court have recently indicated an interest in exploring this subject. See *Hester v. U.S.*, --- U.S. ---, 2019 WL 113622 (Jan. 7, 2019 Mem.) (Gorsuch & Sotomayor, J.J., dissenting from the denial of certiorari).

⁴⁹ Compare, e.g., *In re Amy Unknown*, 701 F.3d 749, 771–72 (5th Cir. 2012) (en banc) (holding Eighth Amendment not applicable to § 2259 because the purpose of restitution “is remedial, not punitive”), with *United States v. Dubose*, 146 F.3d 1141, 1144 (9th Cir. 1998) (“[R]estitution under the [Mandatory Victim Restitution Act (“MVRA”)] is punishment” and subject to Eighth Amendment limitations “because the MVRA has not only remedial, but also deterrent, rehabilitative, and retributive purposes.” (citation omitted)).

ity that large restitution awards could raise constitutional concerns, while not deciding the issue one way or the other.⁵⁰

The better view on this question is that restitution (at least as provided in the AVAA) is not a punitive measure subject to the Eighth Amendment's Excessive Fines Clause, but rather is a compensation regimen designed to restore crime victims.⁵¹ It is difficult to argue that restitution is a "fine" covered by the Clause, since a "fine" is a "pecuniary criminal punishment or civil penalty payable to the public treasury."⁵² Conversely, a restitution award under § 2259 is payable not to the public treasury, but to a crime victim. And the findings that are included in the AVAA make clear that these awards are designed not to punish defendants, but rather to ensure that "victims of child pornography be compensated for the harms resulting from every perpetrator who contributes to their anguish."⁵³ As Professors Tsachi Keren-Paz and Richard W. Wright have concluded in a thoughtful review of this issue, "as long as the restitution order simply compensates the victim for her actual losses, without any additional extra-compensatory element added for penal purposes, it should not give rise to any constitutional or other issues regarding appropriate punishment, despite the possible deterrent and perhaps rehabilitative effects of the restitution order."⁵⁴

In any event, even if the Constitution's prohibition on excessive "fines" can somehow be contorted to apply to the AVAA's restitution awards, a fine is only excessive if "it is grossly disproportional to the gravity of a defendant's offense."⁵⁵ Child pornography felonies are serious crimes punishable by lengthy and in some cases mandatory prison terms.⁵⁶ Against this backdrop, modest restitution awards cannot be viewed as excessive.

While the \$3,000 requirement for restitution in possession cases is not in any way excessive, the real question concerning the amount is whether it is inadequate. For example, given Amy's losses of more than \$3,000,000 (outlined earlier), the \$3,000 minimum restitution amount requires her to file for restitution in more than 1,000 cases, requires courts and probation officers to enter awards and supervise collections, and requires that Amy actually receive that amount.

⁵⁰ See 572 U.S. at 455-56.

⁵¹ See *United States v. Visinaiz*, 344 F. Supp. 2d 1310, 1318-23 (D. Utah 2004) (Cassell, J.) (explaining why restitution is not punitive. See also Amicus Brief of Vicky and Andy, *U.S. v. Paroline*, No. 12-8561 (same).

⁵² *Black's Law Dictionary* 664 (8th ed. 2004); see *United States v. Bajakajian*, 524 U.S. 321, 327-28 (1998).

⁵³ AVAA, Sec. 2(7) (findings).

⁵⁴ Tsachi Keren-Paz & Richard W. Wright, *Liability for Mass Sexual Abuse*, 56 AM. CRIM. L. REV. 185 (forthcoming 2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3141016.

⁵⁵ *Bajakajian*, 524 U.S. at 334.

⁵⁶ See, e.g., 18 U.S.C. § 2252(b); 18 U.S.C. § 2252A(b).

Chief Judge Anne L. Aiken of the District of Oregon, who joined in asking for congressional action to overturn *Paroline*, clearly pointed out this problem of awarding victims such as Amy just a few thousand dollars. Quoting Chief Justice Roberts dissent, she explained that “‘experience shows that the amount in any particular case will be quite small—the significant majority of defendants have been ordered to pay Amy \$5,000 or less. This means that Amy will be stuck litigating for years to come.’” Such piecemeal results hardly remedy the ‘continuing and grievous harm’ caused by the repeated exploitation of child pornography victims.”⁵⁷ For administrative convenience purposes alone, surely a larger amount would be better and more expeditious.

Given the complexities inherent in creating a congressional structure for child pornography restitution awards, it is perhaps understandable the first post-*Paroline* foray by Congress is somewhat limited. Perhaps district courts will treat the \$3,000 as simply a floor and begin making substantially higher awards, as Congress has explicitly authorized. But regardless of what courts do, in the future, Congress should significantly increase the minimum award that Amy and other victims can receive.

B. Recognizing the Aggregate Causation Principle

A sound legal basis now exists for Congress to significantly increase the minimum amounts established in the AVAA. In another innovation, the AVAA recognizes the important principle found in the “aggregate causation standard.” In its findings supporting the Act, Congress acknowledged that the “collective conduct” of all person involved in the reproduction, distribution, and possession of child pornography “plays a part in sustaining and aggravating the harms to that individual victim.” Congress expressed its intent that “victims of child pornography be compensated for the harms resulting from every perpetrator who contributes to their anguish. Such an *aggregate causation standard* reflects the nature of child pornography and the unique ways that it actually harms victims.”

As Amy argued before the Supreme Court, this aggregate causation standard is well recognized in modern tort law. Tort law, which is often relied upon when considering criminal restitution, has never limited liability based on an individual’s “causal relation” to a victim’s losses. Instead, tort law has typically considered whether a wrongdoer (i.e., a tortfeasor) has contributed in some way to the victim’s larger losses. For example, the American Law Institute has identified contributing cause as a general principle of tort law which is sufficiently well-established to be included in its restatement. As explicated by the American Law Institute’s most recent *Restatement*, “[w]hen an actor’s tortious conduct is not a factual cause of

⁵⁷ United States v. Galan, 6:11-cr-60148-AA, 2014 WL 3474901, at *2 (D. Or. July 11, 2014) (quoting *Paroline*, 572 U.S. at 457 (Roberts, C.J., dissenting)), *rev’d on other grounds*, 804 F.3d 1287 (9th Cir. 2015).

harm under the standard in § 26 [i.e., independently sufficient or but-for causation] only because one or more other causal sets exist that are also sufficient to cause the harm at the same time, the actor's tortious conduct is a factual cause of the harm."⁵⁸ This approach recognizes for the purposes of tort law that it is often impossible to identify a single "cause" for an event.⁵⁹ In determining tort compensation, the proper question is whether the defendant's crime was part of a "causal set" producing harm – as Paroline's surely was.⁶⁰

Justice Kennedy tacitly acknowledged that these tort law principles supported Amy's position, but maintained that "Congress gave no indication that it intended its statute to be applied in the expansive manner the victim suggests" which would result in holding offenders collectively responsible for "the conduct of thousands of geographically and temporally distant offenders acting independently, and with whom the defendant had no contact."⁶¹ Of course, whatever the propriety of Justice Kennedy's interpretation of the statute in 2014, his interpretation not longer applies in 2019 after the AVAA's enactment. Congress has, indeed, now specifically indicated that it intends to impose restitution based on an "aggregate causation" standard, as recognized by the Restatement and encouraged in Justice Sotomayor's dissent.

In doing so, Congress has corrected a mistake the Justice Kennedy made in recounting tort principles. Justice Kennedy recited passages about *negligent* tortfeasors, overlooking that for *intentional* tortfeasors "[m]ore liberal rules are applied as to the consequences for which the defendant will be held liable, the certainty of proof required, and the type of damage for which recovery is to be permitted...."⁶² Victims of intentional torts generally do not have to establish a standard proximate cause nexus because "[a]n inquiry into proximate cause has traditionally been deemed unnecessary in suits against intentional tortfeasors."⁶³

In construing § 2259 as a tort-like statute, the applicable principles are grounded in intentional torts, not negligent acts.⁶⁴ And in amending the statute, Congress has made it clear that child pornography *crimes* are like intentional

⁵⁸ RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM § 27 cmt. f, at 381 (2010) [hereinafter RESTATEMENT].

⁵⁹ See RESTATEMENT, *supra* note 58, at § 27 cmt. f, Reporters' Note at 391 (collecting authorities discussing this point).

⁶⁰ See Amy's Brief on the Merits at 50, *Paroline v. United States*, 572 U.S. 434 (2014) (No. 12-8561) (noting Petitioner Paroline effectively conceded this point).

⁶¹ 572 U.S. at 455.

⁶² W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS 37 (5th ed. 1984).

⁶³ *Ass'd Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 548 (1983) (Marshall, J., dissenting) (internal citations omitted).

⁶⁴ See Paul G. Cassell, James R. Marsh & Jeremy M. Christiansen, *The Case for Full Restitution for Child Pornography Victims*, 82 GEO. WASH. L. REV. 61, 101-06 (2013).

torts.⁶⁵ Accordingly, construing § 2259 as extending liability more broadly for child pornography crimes than standard proximate cause principles would for non-intentional acts, is consistent with, not a departure from, conventional tort theory.⁶⁶

Justice Kennedy's single-minded focus on apportionment seems to stem from the belief that the principle of "full liability" is somehow "disproportionate" to an individual defendant's crime.⁶⁷ But tort law is never proportionate to culpability. A few seconds of inattentive driving can lead to a multi-million-dollar wrongful death judgment. A small tap on an eggshell plaintiff can cause a skull to collapse with huge liability. The overarching tort rule is that a wrongdoer takes his victim as he finds her.⁶⁸ Justice Kennedy only cruelly deviated from that rule because any perceived lack of "proportionality" stems from the fact that Amy has suffered large losses.

The AVAA properly restores the focus of restitution on the victim rather than the defendant. Through its aggregate causation standard and fixed minimum awards, Congress has tried to give substance to the § 2259's promise that victims receive restitution for the "full amount" of their losses.

C. A Defendant-Financed Restitution Fund

Another Congressional innovation found in the AVAA is a fund through which child pornography victims can receive a one-time fixed amount of compensation. In a new subsection entitled "Defined Monetary Assistance," Congress provides that victims of child pornography trafficking crimes, at their election, can receive \$35,000 to help them recover.⁶⁹ (The amount is inflation-adjusted in future years.) A victim may only receive this assistance once. To be eligible for such a payment, a district court must determine that the "claimant is a victim of the defendant who was convicted of trafficking in child pornography." If a court makes such a determination, then the victim receives \$35,000 in defined monetary assistance as specified in the statute.

Payments to victims are made from the Child Pornography Victims Reserve, which is carved out of the much larger federal Crime Victim's Fund.⁷⁰ The Reserve is funded in part by special assessments imposed on convicted child pornography trafficking defendants. The reserve cannot exceed \$10 million dollars

⁶⁵ See, e.g., RESTATEMENT (SECOND) OF TORTS § 652B (1977) (intentional invasion of seclusion); *id.* § 652D (intentional invasion of privacy); RESTATEMENT, *supra* note 58, at § 46 (intentional infliction of emotional distress).

⁶⁶ For an interesting and extended discussion of the topic, see Tsachi Keren-Paz & Richard W. Wright, *Liability for Mass Sexual Abuse*, 56 AM. CRIM. L. REV. 185 (forthcoming 2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3141016.

⁶⁷ *Paroline*, 572 U.S. at 456.

⁶⁸ RESTATEMENT, *supra* note 58, at § 31.

⁶⁹ AVAA, Sec. 4 (defined monetary assistance).

⁷⁰ See 34 U.S.C. § 20101(d).

and can be maintained at that level as a set aside within the Crime Victim's Fund. The assessments imposed on defendants are graduated based on the seriousness of their crime of conviction. Defendants convicted of possession crimes can be assessed "not more than \$17,000," of any other trafficking crime "not more than \$35,000," and of production crimes "not more than \$50,000." The Attorney General will administer the fund and is directed to issue guidelines and regulations to implement this section. The Attorney General is also required to submit a report to Congress in two years, explaining how the new restitution law has been implemented and assessing the funding levels for the Child Pornography Victims Reserve.

In establishing defined monetary assistance of \$35,000 (inflation adjusted), Congress implicitly recognized that victims of child pornography face lifetime losses that might not be easily or otherwise be fully compensable. One way to address this problem is to establish or expand government funded programs such as Medicaid which already provide psychological counseling to victims.⁷¹ But rather than moving in that direction, the AVAA takes the welcome first step of simply giving victims a lump sum amount which they can use however they want.

An important aspect of the Reserve is that it will be financed through special assessments levied against defendants convicted of child pornography crimes. Given the number of federal prosecutions for these crimes, this special assessment could theoretically generate upwards of \$15,000,000 per year for the Reserve.⁷² This may turn out to be wishful thinking, however, since not all defendants have the financial resources to actually pay the full amount of the assessment. In any case, the Congressional report should answer the question about whether defendant contributions to the Reserve will alone render it self-sustaining. The \$10 million set aside within the Crime Victims Fund, along with defendant contributions, should render the Reserve capable of providing defined monetary assistance to every victim who applies. But this, too, remains uncertain at this point.

Here again, while Congress' cautiously set the defined amount victims can obtain from the Reserve at just \$35,000, in the future, armed with additional information about distributions and the viability of defendant contributions, Congress could increase the size of the awards. For example, \$35,000 is only about

⁷¹ See Warren Binford et al., *Beyond Paroline: Ensuring Meaningful Remedies for Child Pornography Victims at Home and Abroad*, 35 CHILD. LEGAL RTS. J. 117, 133 (2015) ("Despite the efforts of the United States to combat child pornography through a legal framework focused primarily on prosecution, the United States has failed to ensure that child pornography victims experience full physical and psychological recovery and social reintegration.")

⁷² Some back-of-the-envelope calculations are possible by combing the Sentencing Commission's recent report that about 1800 federal defendants are convicted of child pornography crimes each year. If we assume that these are all possession crimes and that about half will ultimately be able to pay the \$17,000 special assessment, that generates roughly \$15 million per year for the fund.

1% of Amy's losses. For other similarly situated victims, there should be a mechanism and the resources available to award substantially more than the \$35,000 defined amount. Once Congress evaluates how the fund operates, it should consider removing the hard cap of \$35,000 and allow discretion to fund administrators to award additional dollars to victims who, like Amy, have suffered more sizable losses.

More broadly, Congress should use the Reserve it established for child pornography victims as a model for victims of other federal crimes. While calculating restitution awards for child pornography victims raises some unusual and unique challenges, federal crime victims generally suffer similar difficulties obtaining full restitution for their losses.⁷³ Many federal crime victims never recover significant restitution from the offender who victimized them, even if the offender is caught and convicted.⁷⁴

The AVAA creates a compensation fund only for child pornography victims. But the basic fund concept can be easily expanded to other crimes. For serious crimes (such as violent felonies), Congress could simply require all convicted defendants to pay special assessments like those required from convicted child pornography defendants by the AVAA. There can be little doubt that, particularly for violent crimes, substantial special assessments are appropriate and proportionate to the losses that criminals cause their victims. The National Institute of Justice, for example, has derived costs of various violent crimes (in 2008 dollars) reported in the literature.⁷⁵ The figures they derived were \$8.9 million for murder, \$240,000 for sexual assault, \$107,000 for assault, \$42,000 for robbery, and \$21,000 for arson. Against this backdrop, requiring *every* federal defendant convicted of a violent crime to pay a special assessment of \$17,000 seems eminently reasonable. These assessments could then be used to provide compensation to a much broader group of federal crime victims.⁷⁶

D. A Right to Evidence Provision

⁷³ See, e.g., Alanna D. Francois, *Paroline v. United States: Mandatory Restitution an Empty Gesture, Leaving Victims of Child Pornography Holding the Bag*, 42 S.U. L. REV. 293, 336-37 (2015) (explaining how lack of restitution for child pornography victims is simply part of a larger problem).

⁷⁴ See generally U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-203, *FEDERAL CRIMINAL RESTITUTION: MOST DEBT IS OUTSTANDING AND OVERSIGHT OF COLLECTIONS COULD BE IMPROVED* (2018).

⁷⁵ Kathryn E. McCollister, *The Cost of Crime to Society: New Crime-Specific Estimates for Policy and Program Evaluation*, 108 DRUG ALCOHOL. DEPEND. 98 (2010).

⁷⁶ See generally U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-115, *FEDERAL CRIMINAL RESTITUTION: FACTORS TO CONSIDER FOR A POTENTIAL EXPANSION OF FEDERAL COURTS' AUTHORITY TO ORDER RESTITUTION* (2017).

A final crucial innovative provision in the AVAA creates a victim's "right to evidence." Congress provided that in any criminal proceeding, a victim "shall have reasonable access to any property or material that constitutes child pornography" that depicts the victim.⁷⁷ The provision allows the victim (or her attorney or an expert witness) to view the materials depicting that victim, provided that under "no circumstances may such child pornography be copied, photographed, duplicated, or otherwise reproduced."

This statute gives victims the same right to review evidence in *their* case that defendants currently possess. Defense attorneys, of course, can review the evidence involved in a child pornography prosecution. Victims now have the same right to essential information about their crime, permitting them to vindicate their rights in the criminal proceeding.

This access to evidence provision also gives victims the opportunity to pursue civil relief against defendants. Even though a criminal conviction generally estops a defendant from contesting liability in a subsequent civil case, it has sometimes been difficult for child pornography victims to prove that a defendant specifically possess pornography depicting them. The new provision should facilitate that proof, allowing victims to take advantage of civil causes of action, including the \$150,000 presumed damages provision already found in Masha's law.⁷⁸

VI. CONCLUSION

In this article, we have reviewed some of the valuable steps forward found in the AVAA, as well as the work that remains to be done. But in closing, it may be useful to remember that the legal issues swirling around restitution decisions have real world consequences, both for the defendants who must pay the restitution awards and the victims who need and deserve compensation. As between these two groups, however, the equities tip decisively in favor of victims.⁷⁹ To be sure, large restitution awards have financial consequences for criminal defendants.⁸⁰ But the stark fact remains that criminals have a choice to commit the crime or not. Having voluntarily chosen to commit a crime producing serious lifelong financial repercussions for victims, a defendant has no right to complain when courts require him to contribute to making victims whole. Victims of child pornography crimes – and, more broadly, all serious federal crimes – deserve to have their interests prioritized in federal sentencing statutes. The AVAA is a modest but useful step in that direction.

⁷⁷ AVAA, Sec. 6 (Child Pornography Victim's Right to Evidence).

⁷⁸ See James Marsh, *Masha's Law: A Federal Civil Remedy for Child Pornography Victims*, 61 SYRACUSE L. REV. 459 (2011).

⁷⁹ See generally ROBYN HOLDER, JUST INTERESTS: VICTIMS, CITIZENS AND THE POTENTIAL FOR JUSTICE 211-22 (2018). Cf. TYRONE KIRCHENGAST, VICTIMOLOGY AND VICTIMS' RIGHTS: INTERNATIONAL COMPARATIVE PERSPECTIVES 92-93 (2017) (noting increasing recognition of need for restitution in many countries).

⁸⁰ See, e.g., SHIMA BARADARAN BAUGHMAN, THE BAIL BOOK: A COMPREHENSIVE LOOK AT BAIL IN AMERICA'S CRIMINAL JUSTICE SYSTEM 126 (2018).

Appendix P: Mandatory Victims Restitution Act of 2000 (18 U.S.C. § 3663)

§ 3663. Order of restitution

(a)

(1)

(A) The court, when sentencing a defendant convicted of an offense under this title, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section), or section 5124, 46312, 46502, or 46504 of title 49, other than an offense described in section 18 U.S.C. § 3663A(c), may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate. The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(B)

(i) The court, in determining whether to order restitution under this section, shall consider—

(I) the amount of the loss sustained by each victim as a result of the offense; and

(II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

(ii) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under

this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.

(b) The order may require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of—

(i) the value of the property on the date of the damage, loss, or destruction, or

(ii) the value of the property on the date of sentencing, less the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim including an offense under chapter 109A or chapter 110 [18 U.S.C. § 2241 et seq. or 2251 et seq.]—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services;

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense;

- (5) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate; and
- (6) in the case of an offense under 18 U.S.C. § 1028(a)(7) or § 1028A(a), pay an amount equal to the value of the time reasonably spent by the victim in an attempt to remediate the intended or actual harm incurred by the victim from the offense.

(c)

(1) Notwithstanding any other provision of law (but subject to the provisions of subsections (a)(1)(B) (i)(II) and (ii)), when sentencing a defendant convicted of an offense described in section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863), in which there is no identifiable victim, the court may order that the defendant make restitution in accordance with this subsection.

(2)

(A) An order of restitution under this subsection shall be based on the amount of public harm caused by the offense, as determined by the court in accordance with guidelines promulgated by the United States Sentencing Commission.

(B) In no case shall the amount of restitution ordered under this subsection exceed the amount of the fine which may be ordered for the offense charged in the case.

(3) Restitution under this subsection shall be distributed as follows:

(A) 65 percent of the total amount of restitution shall be paid to the State entity designated to administer crime victim assistance in the State in which the crime occurred.

(B) 35 percent of the total amount of restitution shall be paid to the State entity designated to receive Federal substance abuse block grant funds.

(4) The court shall not make an award under this subsection if it appears likely that such award would interfere with a forfeiture under chapter 46 or chapter 96 of this title [18 U.S.C. §§ 981 et seq. or 1961 et seq.] or under the Controlled Substances Act (21 U.S.C. 801 et seq.).

(5) Notwithstanding section 18 U.S.C. § 3612(c) or any other provision of law, a penalty assessment under section 18 U.S.C. § 3013 or a fine under subchapter C of chapter 227 [18 U.S.C. §§ 3571 et seq.] shall take precedence over an order of restitution under this subsection.

(6) Requests for community restitution under this subsection may be considered in all plea agreements negotiated by the United States.

(7)

(A) The United States Sentencing Commission shall promulgate guidelines to assist courts in determining the amount of restitution that may be ordered under this subsection.

(B) No restitution shall be ordered under this subsection until such time as the Sentencing Commission promulgates guidelines pursuant to this paragraph.

(d) An order of restitution made pursuant to this section shall be issued and enforced in accordance with 18 U.S.C. § 3664.

HISTORY:

Added Oct. 12, 1982, P. L. 97-291, § 5(a), 96 Stat. 1253; Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 212(a)(1), (3), 98 Stat. 1987, 2010; Oct. 30, 1984, P. L. 98-596, § 9, 98 Stat. 3138; Nov. 10, 1986, P. L. 99-646, §§ 8(b), 20(a), 77(a), 78(a), 79(a), 100 Stat. 3593, 3596, 3618, 3619; Dec. 7, 1987, P. L. 100-182, § 13, 101 Stat. 1268; Dec. 11, 1987, P. L. 100-185, § 12, 101 Stat. 1285; Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle B, § 7042, 102 Stat. 4399; Nov. 29, 1990, P. L. 101-647, Title XXV, Subtitle A, § 2509, Title XXXV, § 3595, 104 Stat. 4863, 4931; July 5, 1994, P. L. 103-272, § 5(e)(12), 108 Stat. 1374; Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle E, §§ 40504, 40505, 108 Stat. 1947; April 24, 1996, P. L. 104-132, Title II, Subtitle A, § 205(a), 110 Stat. 1229; Oct. 11, 1996, P. L. 104-294, Title VI, §§ 601(r)(1), (2), 605(l), 110 Stat. 3502, 3510; Oct. 17, 2000, P. L. 106-310, Div B, Title XXXVI, Subtitle A, Part I, § 3613(c), 114 Stat. 1230; Aug. 10, 2005, P. L. 109-59, Title VII, Subtitle A, § 7128(b), 119 Stat. 1910; Sept. 26, 2008, P. L. 110-326, Title II, § 202, 122 Stat. 3561.

Appendix Q: Trafficking Victims Protection Act (18 U.S.C. § 1593)

§ 1593. Mandatory restitution

(a) Notwithstanding 18 U.S.C. § 3663 or § 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter [18 USCS §§ 1581 et seq.].

(b)

(1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court under paragraph (3) of this subsection.

(2) An order of restitution under this section shall be issued and enforced in accordance with 18 U.S.C. § 3664 in the same manner as an order under 18 U.S.C. § 3663A.

(3) As used in this subsection, the term "full amount of the victim's losses" has the same meaning as provided in 18 U.S.C. §2259(c)(2) and shall in addition include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

(4) The forfeiture of property under this subsection shall be governed by the provisions of section 413 (other than subsection (d) of such section) of the Controlled Substances Act (21 U.S.C. 853).

(c) As used in this section, the term "victim" means the individual harmed as a result of a crime under this chapter [18 USCS §§ 1581 et seq.], including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.

HISTORY:

Added Oct. 28, 2000, P. L. 106-386, Div A, § 112(a)(2), 114 Stat. 1488; Dec. 23, 2008, P. L. 110-457, Title II, Subtitle C, § 221(1), 122 Stat. 5067; Dec. 7, 2018, P.L. 115-299, § 3(c), 132 Stat. 4385.

Appendix R: Sample Expert Report

**Rule 26 Disclosure of
David Lewis Corwin, M.D.
Department of Pediatrics
295 Chipeta Way
Salt Lake City, Utah 84108**

Re: [REDACTED] (DOB: [REDACTED])

STATEMENT OF OPINIONS

I have reached the following opinions in this case with regard to [REDACTED] and the online sexual image exploitation and harassment she has experienced:

1. [REDACTED] discovered when she was 17 years old, at the beginning of her senior year of high school, that there were nude/genitally explicit photos of her circulating on the internet. She had taken the pictures herself with her cell phone at the request of a boy she met at school when she was 12 years old and in sixth grade. Their friendship was short-lived. She does not believe the boy is responsible for the photos becoming circulated on the internet. She has been told that the pictures were probably obtained from her iPhone after she had traded it in for a new phone.
2. [REDACTED] describes being summoned from school to her local police department and sitting between her parents while being shown the genitally explicit photos and asked if she was the girl in each picture. She described a number of police officers in the room and being told that because she took the photos, she was in trouble. The photos were obtained from a man who was arrested in downtown Pittsburgh for possession and distribution of child pornography. She was told that the photos had already been found in six countries around the world. The genital parts of the photos were blurred out, but [REDACTED] described the overall experience as horrendous and by far the worst thing that she has ever experienced. She rated the experience a 9 on a 10 point scale, with 0 being not stressful or upsetting to 10 being the most traumatic and upsetting experience imaginable. She rated her parents' divorce as a 2 or 3 on that scale.
3. Within that week, her mother had her hospitalized overnight at a local psychiatric facility for suicidal ideation. The humiliation and shame she experienced through the way this initial investigation was handled was similar to the impact of rape. Her psychological test results as described in the psychological testing report are similar to sexual abuse victims. Indeed, she is a sexual abuse and exploitation victim—just not a contact sexual abuse victim.
4. [REDACTED] experienced anxiety and panic attacks as young as age five, after the death of a step-grandfather with whom she had been close. She was treated with Cognitive Behavioral Therapy by several therapists during childhood. Others in her family have also suffered from anxiety problems. Because of this history, [REDACTED] was and is at an increased risk for anxiety, panic, and fear reactions as a result of the circulation, online

sexual exploitation, and ongoing sexual harassment that she has experienced due to her online genital photos, their being viewed and distributed, and her continuing to be sexually solicited and harassed. It is hard to overstate how traumatic this is to a victim of this ongoing online sexual exploitation. Some victims of this online sexual exploitation have committed suicide. Fortunately, [REDACTED] is so afraid of death that she is unlikely to kill herself.

5. The effect of these images being circulated on the internet and viewed by numerous sexual image exploiters around the world on [REDACTED] behavior is profound. She was a very social and athletic high school student participating in two different levels of cheerleading and comfortable with international travel. As a college student, she has moved twice due to the images being talked about and posted in stigmatizing and embarrassing ways that has also increased her fears for her safety. It has restricted her thinking about future job opportunities and pursuits. She now stays mostly in her apartment where she feels safest and has finished her college studies as an online student. When she is in public and notices someone looking at her she fears they have recognized her and have seen her nude photos online. She clutches her keys between her fingers to use as a potential defensive weapon and keeps her fingernails long and very hardened as another potential defensive weapon. She does not carry a gun for fear she would mistakenly spray herself and doesn't think she could shoot another person so there is only an increased risk to her if she were to carry a concealed gun.
6. The psychological assessment by Dr. Wilkerson is presented in the attached report but it includes the following excerpts: [REDACTED] demonstrated "a high number of psychological symptoms including evidence for a long standing depressive and panic disorder beginning in childhood" and post-traumatic stress symptoms, that are in my view, most likely related to the distribution, viewing and discovery of her online nude and genitally explicit photos. [REDACTED] feels "regretful and unhappy about life." [REDACTED] is usually "tense and has marked fears and worries about the future. [REDACTED] responses suggest that she has a myriad of feared objects and activities. She is likely to view the world as a threatening place and views her life and experiences through a lens of pessimism. She often perseverates on worst-case-scenario thoughts and is likely to view neutral events negatively. [REDACTED] responses suggest that she experiences significant difficulty making decisions. She often feels hopeless. [REDACTED] responses suggest the presence of both a depressive disorder, and an anxiety disorder." Her psychological symptoms and difficulties are adversely impacting her capacity for relationships by impairing her ability to trust. "She exhibits generally reclusive behavior, social introversion, and dislikes engaging in group activities. [REDACTED] responses suggest that she is not interpersonally assertive and lacks self-confidence in dealing with others."

[REDACTED] current psychological functioning is not congruent with her high school social behavior, cheer leading activities, and academic success prior to the discovery of her online nude and genitally explicit photos along with all the ensuing negative experiences and events associated with those sexually exploited images.

7. The most recent peer-reviewed publication addressing the lifetime cost of child sexual abuse, that is similar to the trauma [REDACTED] experienced and is now continuing to experience, is by Elizabeth Letourneau and colleagues. It is attached to this report along with a recently published study by Deborah Loxton and her colleagues who work with her on the Australian Longitudinal Women's Study. Both articles are attached in Appendix B. Letourneau and her colleagues calculated the lifetime cost for a female experiencing child sexual abuse at \$282,734. The Loxton et al. study shows the actual increased health care costs for women who have experienced a number of adverse childhood experiences including child sexual abuse. The graphs in the Loxton et al. article on pages 8 and 9 display the increased health care costs associated with child sexual abuse histories along with other adversities. I know both researchers and spoke briefly by phone with Dr. Letourneau to make sure that I am not aware of some other important publication or research study. I exchanged emails with Dr. Loxton for the same reason. Both assured me these are the latest relevant publications.
8. The Adverse Childhood Experiences study by Vincent Felitti and Robert Anda provides compelling evidence of the increasing association between adverse childhood experiences including child sexual abuse with a large number of major health, mental health and social problems as the number of adverse childhood experiences increases. There are more than 85 peer-reviewed publications based upon the ACE Study data and their general findings have now been replicated in a number of states using representative population samples. I served as the Executive Producer for a 4.5-hour DVD describing the methodology and findings of the ACE Study. A brief 8-minute summary of that study and its findings can be found and downloaded at: <https://vimeo.com/65361181>.
9. In order to help alleviate the lifetime suffering and increased risk for a number of other health, behavioral, and relationship problems associated with the ongoing online sexual exploitation that [REDACTED] is experiencing, she should be provided with intermittent weekly psychological therapy throughout her life. She has already seen six different therapists. One of the worst aspects of the trauma that [REDACTED] has experienced, continues to experience, and for which there is no present end in sight, is its never-ending nature. This is an emotional burden that [REDACTED] will carry for as long as those images continue to circulate and there is no currently known way to end their circulation. Although treatment can help sexual exploitation victims cope with their symptoms, it does not stop her ongoing traumatization by this online sexual exploitation.

BASIS AND REASONS FOR OPINIONS

The basis and reason supporting my opinions include my education, training and experience in treating and evaluating victims and perpetrators of child maltreatment and online sexual image exploitation; my knowledge of the research, publications, and presentations currently available on the subject of child maltreatment, adverse childhood experiences, and online sexual exploitation; and the signs, symptoms and behavioral changes exhibited by [REDACTED] during and after the discovery of her online genitally explicit images and the associated sexual harassment she has experienced.

DATA OR OTHER INFORMATION CONSIDERED IN FORMING MY OPINIONS

My opinions are based on the information I reviewed provided to me by Emma J. Lanzon of the Jones Day law firm, listed in Appendix A; my remote interview of [REDACTED] and her mother, [REDACTED], on November 27, 2019 and a second interview with [REDACTED] on December 5th, 2019 that was video recorded via Skype and reviewed by me prior to completion of this report; telephone interviews with Elizabeth Letourneau, PhD and Michael Grogan, PhD, Director of the Jeanette Prandy Children's Advocacy Center in Marin County, California who has worked with many cases of sexting by adolescents in that community. I was assisted in this evaluation by Tristyn Teel Wilkerson, PsyD, a psychologist whose report is attached as Appendix C to this disclosure. The psychological testing report is part of my overall assessment. Dr. Wilkerson's report contains a detailed summary of our joint interview with [REDACTED] and [REDACTED] on November 27th, 2019 and her findings and recommendations based upon our interview and the psychological testing of [REDACTED]. The opinions stated above are mine and are given to a reasonable degree of medical certainty. I reserve the right to amend or alter these opinions given additional information.

QUALIFICATIONS AND LIST OF PUBLICATIONS

My CV, attached as Appendix D, presents my qualifications and publications. My expert testimony over the past four years is presented in Appendix E.

COMPENSATION

The hourly charge for my time is \$600 per hour and Dr. Wilkerson's hourly charge is \$325 per hour.

Respectfully submitted,



December 12, 2019

David L. Corwin, M.D., Professor and Director of Forensic Services
Pediatrics Department
University of Utah School of Medicine

**Rule 26 Disclosure of
David Lewis Corwin, M.D.**

ATTACHMENTS

Attachments	
A	<ul style="list-style-type: none">Factual Summary for [REDACTED], prepared by Emma J. LansonVictim Impact Statement: Victim
B	<ul style="list-style-type: none">Deborah Loxton <i>et al.</i>, <i>Adverse Childhood Experiences and Healthcare Costs in Adult Life</i>, 27 J. OF CHILD SEXUAL ABUSE 1 (2018).Elizabeth J. Letourneau <i>et al.</i>, <i>The Economic Burden of Child Sexual Abuse in the United States</i>, 79 CHILD ABUSE & NEGLECT 413 (2018).
C	Report of Tristyn Teel Wilkerson, Psy.D. re: [REDACTED]
D	Curriculum Vitae of David Lewis Corwin, M.D.
E	Expert Testimony of David Lewis Corwin, M.D.

**SAMPLE EXPERT REPORT
ATTACHMENT A**

FACTUAL SUMMARY – [REDACTED] [REDACTED]

I. INTRODUCTION

[REDACTED] (currently 22 years old) is the victim depicted in the series of child pornography images referred to as the “[REDACTED]” series. [REDACTED] has retained Jones Day to assist her in obtaining restitution related to the receipt/possession of her images in the following cases: *United States v. Pennell*, 3:19-cr-00168-RNC-1 (D. Conn.), *United States v. Guardiola*, 3:18-mj-03076-WVG (S.D. Cal.), *United States v. Byrd*, 3:18-cr-00144-WHR (S.D. Ohio), *United States v. Magnuson*, 1:18-cr-00035-ABJ-1 (D. Wyo.), *United States v. Caesar*, 2:18-cr-00525-GJP-1 (D. Pa.), *United States v. Seabaugh*, 3:18-cr-05051-BCW-1 (W.D. Mo.), *United States v. Coffman*, 3:19-cr-00054-JGC-1 (N.D. Ohio), and *United States v. Chastain*, 8:19-cr-00053-TMC-1 (D.S.C.).

This factual summary is based on information learned during an in-person interview with [REDACTED] on November 22, 2019, and is created for the sole purpose of providing Dr. David Corwin with the factual background necessary to conduct his expert interview on November 27, 2019. [REDACTED] has given her consent to share the relevant factual background with Dr. Corwin in advance of the expert interview.

II. SUMMARY OF RELEVANT FACTS

When [REDACTED] was twelve years old (and in sixth or seventh grade), she was dating another twelve-year-old named [REDACTED]. [REDACTED] described their relationship as casual, and “just talking” – after all, she was in middle school at the time. One day, [REDACTED] asked [REDACTED] over text message to “send him pictures.”

Over the course of about a week, [REDACTED] sent her boyfriend pictures that were intended to remain private. Her boyfriend would give her directions, telling her to pose in certain ways. After she sent each picture, her boyfriend would encourage her to send more.

[REDACTED] sent about 12 pictures in total. These pictures depicted [REDACTED] breasts and vagina. In one of the pictures, [REDACTED] was pictured with her fingers inside her vagina. There is another photograph that is angled from below, so that the inside of [REDACTED] vagina is displayed. Additionally, there is a photo in which [REDACTED] has something in her mouth. Shortly after [REDACTED] sent the photographs, the relationship with [REDACTED] “fizzled out,” although the two remained friendly throughout high school.

In September 2015, just months before [REDACTED] eighteenth birthday, [REDACTED] was pulled out of class and told that she needed to go to the police station immediately. When [REDACTED] arrived at the station, her mother and father were waiting for her. The police told [REDACTED] and her parents that they had just arrested a man in downtown Pittsburgh who they believed possessed [REDACTED] images. The police asked [REDACTED] to flip through the images [REDACTED] took when she was twelve years old, in front of her parents, to confirm her identity. The police told [REDACTED] that her images were circulated in at least six different countries. [REDACTED] was told that the images were likely

Attorney Work Product

obtained when [REDACTED] turned in an old iPhone (apparently, [REDACTED] had been interviewed and ruled out as a suspect).

Shortly thereafter, the news spread to [REDACTED] high school, [REDACTED] ([REDACTED] described her hometown as a small community where news traveled quickly). The students at [REDACTED] began looking up [REDACTED] photographs on the internet and gossiping about her. After students at [REDACTED] high school found out about the photographs, [REDACTED] was so traumatized that she was sent to the hospital and put on suicide watch.

[REDACTED] images are now among the most highly traded images, and she has been reeling with the trauma of knowing her images are publicly available and being viewed ever since September 2015.¹ [REDACTED] has internet "fan clubs" dedicated to her, and men are constantly contacting her to ask for more pictures. Some men even send her the pornographic images from when she was twelve years old. [REDACTED] has had to delete and change her social media accounts on various occasions, including a LinkedIn account that she created for a school project. [REDACTED] has had websites made about her, featuring the pornographic images, that were circulated around the campuses of the two universities she attended. She has changed universities and cities. She becomes triggered when she sees men with their phones out who are looking at her, in constant fear that they have seen her images and recognize her. She sleeps with her balcony and door locked, although she lives on the [REDACTED] floor of her apartment building.

III. DOCUMENTATION

The following documents were sent along with this factual summary: the Plea Agreements of Brien Pennell and Adam Wayne Seabaugh.

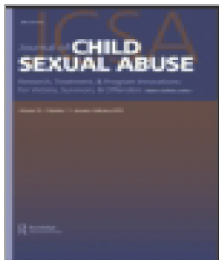
¹ According to an affidavit from the Vice President of NCMEC, there have been 144 TA reports relating to the [REDACTED] series through October 11, 2019. **PLEASE NOTE that [REDACTED] does NOT know the number of times her images have been reported and she does not want to know.** She is only aware that we are helping her obtain restitution in the eight cases listed in Section I.

Do you know what it feels like to have your privacy ripped away from you? Because I sure do. Ever since I found out that these photos existed on the internet I have been afraid. Afraid for my own safety and the safety of others around me. When I walk down the street and someone looks at me funny, my first thought is that they have seen my naked 12 year old body. It is a horrific thought to have on such a regular basis. The world is full of people and not all of them are good. The bad ones look at child pornography images of me, download them, and touch themselves. I do not know who these people are. They could walk by me on the street and I would not know it. So I am afraid. Constantly.

I have been to many different therapists. But nobody really understands what that feels like. It isn't normal to be afraid of so many people. It isn't normal to worry about your life this much. I am about to graduate from college and I am afraid to even interview for jobs because I never know who has viewed my images. Because there are people like the defendant who download and possess these images and continue to defile my name and reputation.

Nobody wants to be remembered by the worst thing that ever happened to them. And this is mine. People know my name, where I live, and what I looked like naked at age 12. I am now 22 years old and these photos from 10 years ago continue to follow me. No amount of money will ever make this go away. No amount of money will take away my fear. No amount of money will make me forget. I am seeking restitution to ensure I am reimbursed for past expenses as well as future therapy and safety precautions.

**SAMPLE EXPERT REPORT
ATTACHMENT B**



Adverse Childhood Experiences and Healthcare Costs in Adult Life

Deborah Loxton, Natalie Townsend, Xenia Dolja-Gore, Peta Forder & Jan Coles

To cite this article: Deborah Loxton, Natalie Townsend, Xenia Dolja-Gore, Peta Forder & Jan Coles (2018): Adverse Childhood Experiences and Healthcare Costs in Adult Life, Journal of Child Sexual Abuse, DOI: [10.1080/10538712.2018.1523814](https://doi.org/10.1080/10538712.2018.1523814)

To link to this article: <https://doi.org/10.1080/10538712.2018.1523814>



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Research article

The economic burden of child sexual abuse in the United States

Elizabeth J. Letourneau^{a,*}, Derek S. Brown^b, Xiangming Fang^{c,d}, Ahmed Hassan^e, James A. Mercy^{f,1}



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ARTICLE INFO

Keywords

Child sexual abuse
Economic burden
Cost analysis

ABSTRACT

The present study provides an estimate of the U.S. economic impact of child sexual abuse (CSA). Costs of CSA were measured from the societal perspective and include health care costs, productivity losses, child welfare costs, violence/crime costs, special education costs, and suicide death costs. We separately estimated quality-adjusted life year (QALY) losses. For each category, we used the best available secondary data to develop cost per case estimates. All costs were estimated in U.S. dollars and adjusted to the reference year 2015. Estimating 20 new cases of fatal and 40,387 new substantiated cases of nonfatal CSA that occurred in 2015, the lifetime economic burden of CSA is approximately \$9.3 billion, the lifetime cost for victims of fatal CSA per female and male victim is on average \$1,128,334 and \$1,482,933, respectively, and the average lifetime cost for victims of nonfatal CSA is of \$282,734 per female victim. For male victims of nonfatal CSA, there was insufficient information on productivity losses, contributing to a lower average estimated lifetime cost of \$74,691 per male victim. If we included QALYs, these costs would increase by approximately \$40,000 per victim. With the exception of male productivity losses, all estimates were based on robust, replicable incidence-based costing methods. The availability of accurate, up-to-date estimates should contribute to policy analysis, facilitate comparisons with other public health problems, and support future economic evaluations of CSA-specific policy and practice. In particular, we hope the availability of credible and contemporary estimates will support increased attention to primary prevention of CSA.

1. Introduction

The present study aims to estimate the U.S. economic impact of child sexual abuse (CSA), defined by the World Health Organization (WHO) as the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. [CSA] is evidenced by this activity between a child and an adult or another child who by age or development

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¹ The findings and conclusions in this report are those of the author and do not necessarily represent the official position of the Centers for Disease Control and Prevention.

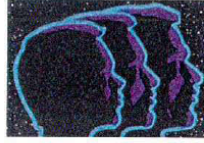
<https://doi.org/10.1016/j.chiabu.2018.02.020>

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Available online 20 March 2018

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**SAMPLE EXPERT REPORT
ATTACHMENT C**



Tristyn Teel Wilkerson, Psy.D.
Licensed Psychologist
Psychology - Neuropsychology

December 2, 2019

Re: [REDACTED]

DOB: [REDACTED]

To Whom It May Concern:

I observed and participated in an interview with [REDACTED] and her mother, [REDACTED] with Dr. David Corwin remotely on November 27, 2019. [REDACTED] completed some questionnaires for me on that day. This letter outlines the information provided via interview and the results of those tests.

[REDACTED] was the product a full-term pregnancy and uncomplicated gestation and delivery. [REDACTED] parents were together for three years before [REDACTED] was born. Once she was born, her parents split childcare for 6 months, then she was cared for during the day by a nanny. [REDACTED] brother was born 3 years later. Her grandparents were heavily involved in her life. Both of [REDACTED] grandmothers are child psychologists. [REDACTED] reported she was close with her step grandpa who died when she was 4 or 5. [REDACTED] has an extended family history of anxiety.

[REDACTED] attended public school. Her mother described her as a model student and incredibly bright. She was not involved in any problems with the law and did not have any problems with drugs. She was reportedly on target for developmental milestones.

[REDACTED] mother's perspective is that as a child, [REDACTED] was very social. She was a cheerleader, part of competitive cheer, and traveled all over. [REDACTED] described [REDACTED] as an adventurous adolescent. [REDACTED] parents divorced when [REDACTED] was 14.

[REDACTED] currently lives in [REDACTED]. She is soon to graduate from college with a bachelor's degree in sociology and public administration from an online school. [REDACTED] reported that she lives in an apartment with a roommate, [REDACTED], whom she met when she was attending Florida State. [REDACTED] is currently unemployed. She stated that "I don't leave my apartment very often. I set my life up so I never leave my apartment." [REDACTED] stated that she has "always been a homebody." [REDACTED] sleep at present is poor. [REDACTED] keeps a flexible schedule without set bedtime or wake up time. [REDACTED] reported that she wakes during the night. She experiences nightmares 3 days per week.

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[REDACTED] reported that she was employed as a camp counselor in the past. She has also worked at a diner, worked in a bar, and interned at the National Center for Missing and Exploited Children. At NCMEC, "I was an intern in the missing children's division. Case assistant. I would work on cases, intakes, getting pictures for missing posters, in an office." [REDACTED] stated she has "no idea" what she wants to do after graduation.

[REDACTED] described her earliest memories. She stated that she had a fear of death and dying. "I wasn't able to sleep at night. I would see a picture of the earth and think about death and have a panic attack." [REDACTED] stated that she woke up parents and needed a hug. [REDACTED] stated that she attended therapy as a child for panic attack symptoms. She participated in "CBT on and off" but never for more than four months at a time. [REDACTED] panic symptoms included shortness of breath, pacing, and rapid heartbeat. As time went on [REDACTED] developed her own strategies to handle panic. Panic attacks have diminished over time. [REDACTED] learned to calm herself down faster.

[REDACTED] discussed her memories of childhood. [REDACTED] grew up in [REDACTED]. She spent every summer at a sleepaway camp in West Virginia. As a result, [REDACTED] did not have one consistent set group of friends throughout school. She stated that she missed out a lot being gone all summer. [REDACTED] enjoyed camp and she saw the same people every year.

[REDACTED] recalled that her father fell off a roof and broke his arm when [REDACTED] was in 6th or 7th grade and he was out of work for a while. [REDACTED] recalled that her parents "didn't fight in front of us". She was surprised when they got divorced. [REDACTED] stated that she got along well with brother. They are "good friends now." [REDACTED] recalled that in 8th grade she had a surgery to have an abscess removed from her chest. [REDACTED] also reported that she sustained a mild concussion while cheerleading in high school.

[REDACTED] stated that when she was twelve in her first year of middle school in the 6th grade, she began dating a boyfriend. He asked her to send sexual pictures and she complied. [REDACTED] stated that she did not think about the consequences of sending those pictures. "While it was happening, I never thought that I would think about it again. I didn't think about the consequences. He told me how to pose, what areas of body he wanted to see. He was also 12." [REDACTED] stated that she felt no particular distress about it at that time. She stated that she "didn't know that people shared photos like that".

[REDACTED] discussed her sexual education. She stated that her mother gave her the "birds and the bees talk". She also learned some information about sex in health class. She also saw some explicit images on the internet.

[REDACTED] described middle school as "pretty normal". "I went to school. Did cheerleading. Traveled abroad. Israel for a month. Italy for a month." At age seventeen [REDACTED] learned the images described previously had been circulated. Local police called [REDACTED] parents and told

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December 2, 2019

Re: [REDACTED] [REDACTED]
Page 3

them to bring her in. [REDACTED] stated that she sat down between mom and dad. The male detectives then opened a portfolio of images of her at age 12 and proceeded to go through all the pictures. [REDACTED] stated there was a collage at the end which showed pictures of [REDACTED] clothed and unclothed, and which included [REDACTED] full name, hometown, and high school. [REDACTED] described this experience as "literally the worst thing I have ever done." She reported that she was mortified at her parents seeing the pictures. There were "10 police officers standing around. They're saying I took the pictures, so I am going to get in trouble. Worst thing I have ever experienced." [REDACTED] stated that "within that week my mom put me on suicide watch at the hospital. I was suicidal." She continued: "I immediately feared for my safety and that hasn't stopped. People go out of their way to harass me ask me for more photos. 3 days ago, a man sent me the pictures on my Facebook." [REDACTED] stated that after she knew the photos had been circulated, she began asking herself questions such as: "How am I going to have a normal life after this? How am I going to have a job? How am I going to go to school after this?"

[REDACTED] reported that the information got out. "The actual photos got out to everyone at the high school." The pictures are not taken down yet. "We pay a lot of money for companies to take down these photos and redirect traffic."

When [REDACTED] was attending [REDACTED], someone made a website about her and circulated it amongst the students. [REDACTED] stated that the website included the naked pictures of her. The website had personal information about [REDACTED] as well. For example, the website talked about her parents' divorce, but the information was "skewed." "Whoever wrote that had to have known me or stalked me." "Somebody made a website, specific information that was false, like it was trying to get me to kill myself." [REDACTED] reported that the website was sent via Instagram to "everyone in the school." She reported it to [REDACTED] police. The next day [REDACTED] police called her. [REDACTED] reported that they were unable to find the person who created the website because "whoever made the website used a fake IP address from China." [REDACTED] reported that she is "very angry about this. This was the most personal attack."

[REDACTED] discussed current effects on her mental health. [REDACTED] stated that she has recurrent depressive episodes. "2-week spells." She denied suicidality. "I fear death too much" She tends to obsess about the person who created the website. She also described paranoia in public if someone looks at her funny. [REDACTED] stated that she experiences fear for her personal safety. She describes herself as "distractible." She is not very good at turning off her phone when she must do something else. [REDACTED] denied voices, hallucinations, suicidal thoughts, or compulsions. She denied multiple personality, delusions.

[REDACTED] described how this affected her relationship with others. "I don't talk to anyone. I don't trust anyone." [REDACTED] stated that she has a good best friend. "She knows everything. Other than that, I am not close with a ton of people." [REDACTED] reported she is scared for her

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Re: [REDACTED]
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personal safety. People contact [REDACTED] via social media to harass her once to several times per week. [REDACTED] stated that she can establish relationships but not maintain. She has not had romantic relationships which last longer than a couple months. [REDACTED] stated she is ready to have a serious long-term relationship. "Every time I try that is not what happens." [REDACTED] stated that she has the capacity for love."

[REDACTED] stated that the pictures have affected her employment. [REDACTED] was threatened with termination at the sleepaway camp she attended and later worked at as a camp counselor. "They said I shouldn't be working with children." Once they were informed as to the specifics of the situation, they apologized. [REDACTED] stated that the pictures have affected her job choices and career path. She stated that when she was young, she wanted to be a news anchor but knows she can't do it now. "It's not difficult to find this out about me. I can't ever do anything in the public eye because people could find this out about me."

[REDACTED] described her goals in life: "Be happy. Make money. Have a family." [REDACTED] discussed her fears for the future. She stated, "I have no idea what I am doing" [REDACTED] stated she is afraid of "ending up alone" and she is afraid of dying.

[REDACTED] mother [REDACTED] was also interviewed. She reported that [REDACTED] is often irritable and angry now, but she didn't used to be when she was little. [REDACTED] has "always been a leader, organized, driven." She described [REDACTED] as "Angrier, quick to react, fearful but doesn't want to be. Really wants to live a normal life. She's afraid of that too." [REDACTED] mother reported that [REDACTED] is graduating college with a 3.5 and graduated high school with a 3.9. She reports that [REDACTED] is unclear about future. [REDACTED] mother has also observed that [REDACTED] cannot keep a relationship for long. Mom has no observation of her in a relationship. [REDACTED] mother reported that [REDACTED] relationship with family is "good." She and her brother are closer now they were in college. She is close with her dad and close with grandmothers.

[REDACTED] mother described ongoing recurrent periods of depression- "It's gotten to the point where she won't leave her bed, won't go to family functions, and won't do things she enjoys. However, "even when she is down, she tries to rally and move forward."

Current Evaluation

Tests Administered

Trauma Symptom Inventory 2nd edition (TSI-2)
Minnesota Multiphasic Personality Inventory 2nd edition (MMPI-2)
Millon Clinical Multiaxial Inventory 4th edition (MCMI-IV)

To Whom it May Concern
December 2, 2019

Re: [REDACTED]
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Test Results and Interpretation

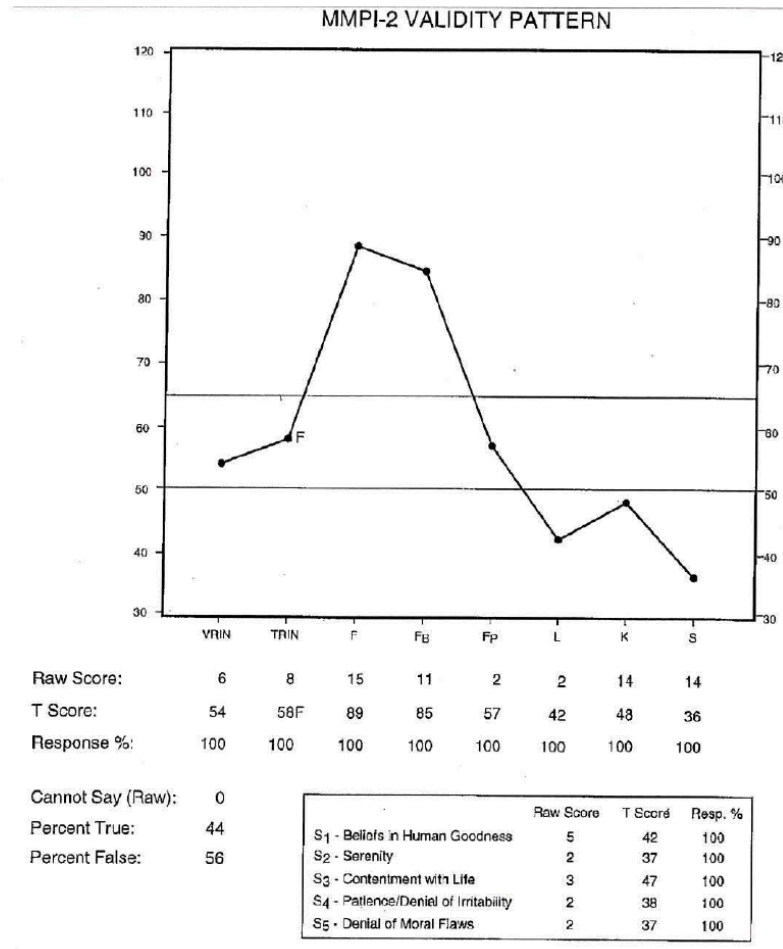
Trauma Symptom Inventory - 2

	T-Scores (mean = 50; s.d. = 10)
Validity Scales	
Response Level	45
Atypical Response	66
Factor	
Self-Disturbance	57
Posttraumatic Stress	64
Externalization	58
Somatization	47
Clinical Scale/ Subscale	
Anxious Arousal	64
Anxiety	72
Hyperarousal	55
Depression	53
Anger	57
Intrusive Experiences	72
Defensive Avoidance	58
Dissociation	54
Somatic Preoccupations	47
Pain	42
General	52
Sexual Disturbance	64
Sexual Concerns	58
Dysfunctional Sexual Behavior	67
Suicidality	49
Ideation	50
Behavior	47
Insecure Attachment	64
Relational Avoidance	65
Rejection Sensitivity	60
Impaired Self-Reference	55
Reduced Self-Awareness	60
Other-Directedness	48
Tension-Reduction Behavior	55

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Re: [REDACTED]
Page 6

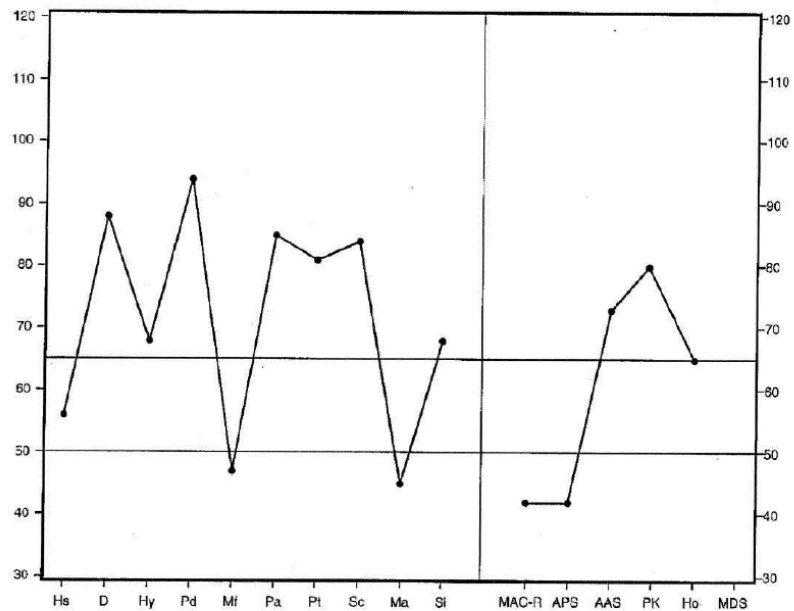
Minnesota Multiphasic Personality Inventory - 2



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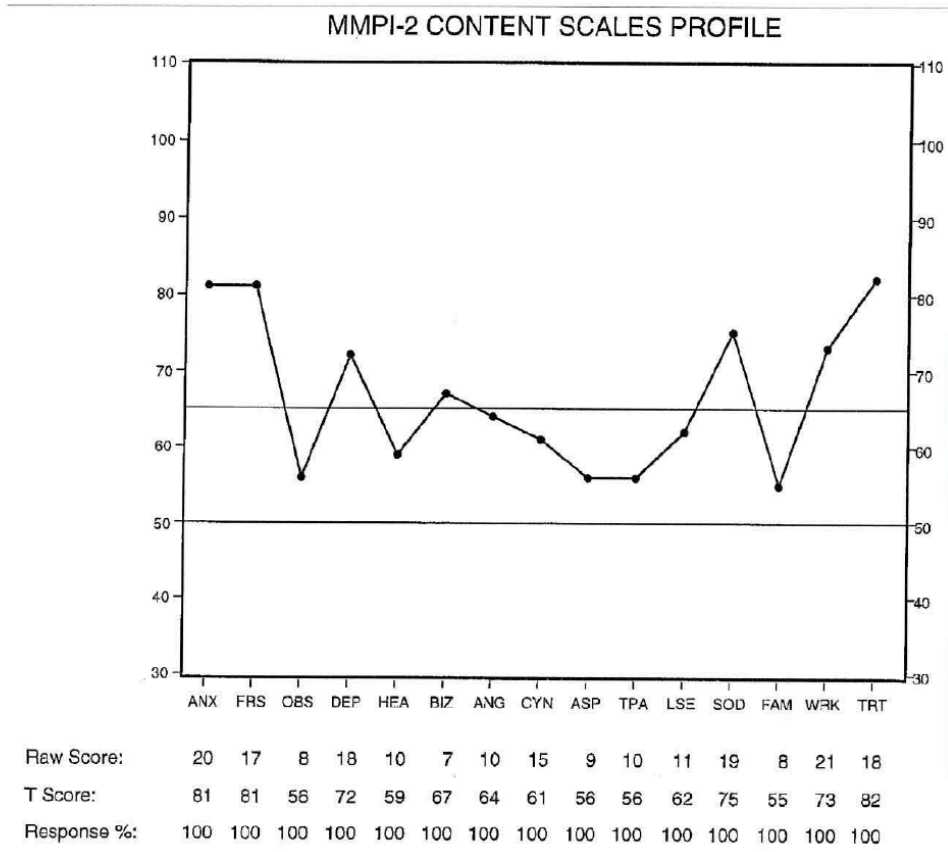
MMPI-2 CLINICAL AND SUPPLEMENTARY SCALES PROFILE



Raw Score:	9	38	30	34	37	20	30	34	14	44	16	20	6	28	29	*
K Correction:	7			6			14	14	3							
T Score:	56	88	68	94	47	85	81	84	45	68	42	42	73	80	65	*
Response %:	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	*

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Re: [REDACTED]
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Millon Multiaxial Clinical Inventory - 2

MILLON CLINICAL MULTIAXIAL INVENTORY-IV									
PROFILE SUMMARY									
HIGH-POINT CODE =		8A 2A 3				INVALIDITY (V) =		0	
BR ADJUSTMENTS =		A/C				INCONSISTENCY (W) =		5	

VALIDITY		Score		Profile of BR Scores			
		Raw	BR	0	35	75	100
Modifying Indices				Low Average High			
Disclosure	X	43	55				
Deceitability	Y	5	25				
Debasement	Z	17	75				

PERSONALITY		Score		Profile of BR Scores					
		Raw	PR	BR	0	60	75	85	115
Clinical Personality Patterns									
Schizoid	1	12	76	71					
Avoidant	2A	12	67	75					
Manic	2B	14	67	74					
Dependent	3	10	74	75					
Histrionic	4A	6	23	31					
Turbulent	4B	3	15	18					
Narcissistic	5	3	30	36					
Antisocial	6A	2	32	40					
Sadistic	6B	7	67	65					
Compulsive	7	11	24	47					
Negativistic	8A	17	91	80					
Masochistic	8B	10	66	68					
Severe Personality Pathology									
Schizotypal	S	12	73	67					
Bordeline	C	7	50	59					
Paranoid	P	12	66	76					

PSYCHOPATHOLOGY		Score		Profile of BR Scores					
		Raw	PR	BR	0	60	75	85	115
Clinical Syndromes									
Generalized Anxiety	A	11	81	91					
Somatic Symptom	H	12	89	82					
Bipolar Spectrum	N	5	43	60					
Persistent Depression	D	17	73	74					
Alcohol Use	B	1	48	60					
Drug Use	T	5	78	69					
Post-Traumatic Stress	R	13	89	85					
Severe Clinical Syndromes									
Schizophrenic Spectrum	SS	7	50	60					
Major Depression	CC	10	65	77					
Delusional	PP	7	91	72					

Impressions

[REDACTED] responses on the MMPI and the Millon suggest that she is presenting with an unusually high number of psychological symptoms. This could be due to several factors. First, [REDACTED] has a history of severe psychopathology including suicidal ideation. She exhibits symptoms of a long-standing depressive disorder, panic disorder beginning in childhood, and shows symptoms of post-traumatic stress. It is therefore unsurprising that [REDACTED] reports more psychological symptoms than is typical.

[REDACTED] responses to these measures are characteristic of individuals who are experiencing marked depression. These individuals often experience a low sense of self-esteem and are preoccupied with feeling guilty and unworthy. [REDACTED] responses indicate that she feels regretful and unhappy about life. She is typically tense and has marked fears and worries about the future. [REDACTED] responses suggest that she has a myriad of feared objects and activities. She is likely to view the world as a threatening place and views her life and experiences through a lens of pessimism. She often perseverates on worst-case-scenario thoughts and is likely to view neutral events negatively. [REDACTED] responses suggest that she experiences significant difficulty making decisions. She often feels hopeless. [REDACTED] responses suggest the presence of both a depressive disorder, and an anxiety disorder.

Regarding relationships, [REDACTED] relationships tend to be somewhat superficial. She does not easily trust others and may avoid others for fear of being hurt. She is suspicious of the motives of others and often believes that others are likely to act with malevolence. She is likely to sabotage relationships as a defense before the person in question can get close enough for [REDACTED] to develop trust. She exhibits generally reclusive behavior, social introversion, and dislikes engaging in group activities. [REDACTED] responses suggest that she is not interpersonally assertive and lacks self-confidence in dealing with others.

[REDACTED] responses suggest that she has experienced trauma and exhibits symptoms of post-traumatic stress. She reports intrusive experiences. [REDACTED] reports symptoms of hyperarousal and anxiety. [REDACTED] avoids close relationships and keeps others at a distance. She reports anhedonia. [REDACTED] responses to measures completed as well as self-report during interview suggest that she experiences post-traumatic stress symptoms at present.

With regards to treatment, it appears based on [REDACTED] responses that she does not feel therapy is likely to be helpful. Her negative attitudes towards treatment may have originated in her early therapy experiences and will need to be explored for her to make any significant gains in therapy. In addition, [REDACTED] is likely to feel resentful of people in her life who suggest that she should change, as she feels unfairly treated by life, and as a result often feels as if her complaints and symptoms are misunderstood. It is likely to take [REDACTED] a considerable amount of time to place trust in her therapist, and her defensiveness regarding this matter

To Whom it May Concern
December 2, 2019

Re: [REDACTED]
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should be honored, with therapy proceeding at a slow pace, never pushing [REDACTED] beyond her tolerable limits. Symptoms may increase during stressful periods in her life, and especially those periods which involve relationship milestones or sexual behavior (e.g.- job or housing changes, conceiving a child, etc.). Given the severity of [REDACTED] symptoms, she is likely to require periodic therapy services throughout her lifetime. Psychopharmaceutical intervention may also be indicated.

Affirmation

The examiner's signature below affirms that all tests were administered and scored in accordance with standardized procedures and guidelines provided by the test authors. Test protocols and their results were not in any way altered by this examiner. The opinions and diagnoses offered are solely and completely the result of the examiner's review of records, tests performed with [REDACTED] and the history obtained during the course of the examination.



Tristyn Teel Wilkerson, Psy.D.
Licensed Psychologist

TTW/kg

**SAMPLE EXPERT REPORT
ATTACHMENT D**

Curriculum Vitae

PERSONAL DATA

Name: DAVID LEWIS CORWIN, M.D.
Birthplace: Jackson, Michigan
Citizenship: United States of America

BUSINESS ADDRESS

Pediatrics Department
295 Chipeta Way
Salt Lake City, Utah 84108

CONTACT INFORMATION

Work Phone: [REDACTED]

E-mail Address: [REDACTED]

EDUCATION

1969-1972 Baccalaureate Degree: B.S. with high distinction, Zoology, University of Michigan, Ann Arbor, Michigan
1972-1976 Advanced Degrees: M.D., College of Human Medicine, Michigan State University, East Lansing, Michigan
1976-1977 Psychiatry/Medicine Internship, UCLA-V.A. Medical Center, Sepulveda, California, University of California School of Medicine, Los Angeles, California
1977-1979 Psychiatry Residency, UCLA-V.A. Medical Center, Sepulveda, California, University of California School of Medicine, Los Angeles, California
1979-1981 Child Psychiatry Fellowship, UCLA Neuropsychiatric Institute, University of California School of Medicine, Los Angeles, California
2001 Administration for Physician Executives - a 12-day medical leadership training program, certificate of successful completion, May, University of Utah, David Eccles School of Business, Governor Scott M. Matheson Center for Health Care Studies, and the School of Medicine
2005 Advanced Training Program in Health Care Delivery Improvement – a 20-day training program for health care leaders, Brent James, M.D., M.Stat., Course Director, certificate of completion, Intermountain Health Care Institute for Health Care Delivery Research
2012 Conflict Resolution Training, A two semester certificate program in mediation with Professor Michele Hawes at the University of Utah

BOARD CERTIFICATIONS

01/1981 Diplomate in Psychiatry, American Board of Psychiatry and Neurology
10/1982 Diplomate in Child Psychiatry, American Board of Psychiatry and Neurology
1998-2008 Diplomate in Forensic Psychiatry, American Board of Psychiatry and Neurology
2009-2019 Diplomate in Forensic Psychiatry, American Board of Psychiatry and Neurology

CURRENT LICENSES

1999-present Licensed Physician and Surgeon, Utah, No. 99-378965-1205
1999-present Controlled Substances Registration, Utah, No. 99-378965-9915
1977-present Controlled Substances Registration, Drug Enforcement Administration

**SAMPLE EXPERT REPORT
ATTACHMENT E**

2016

Case	Primary Attorney	Type of Case	Court or Agency	Side	Type of Testimony	Date
[REDACTED]	[REDACTED]	Criminal Prosecution	3 rd District Court, Salt Lake Dept. in and for the County of Salt Lake, Utah	Prosecution	Trial	[REDACTED]
[REDACTED]	[REDACTED]	Civil	Circuit Court of Bradley County, Tennessee	Plaintiff	Deposition	[REDACTED]
[REDACTED]	[REDACTED]	Medical Board Hearing	State of Colorado Office of the Administrative Courts	Respondent	Deposition Hearing	[REDACTED]
[REDACTED]	[REDACTED]	Criminal Prosecution	Eighth Judicial District Court in and for Uintah County, Utah	Prosecution	Trial	[REDACTED]

Appendix S: State Victim Impact Statement Rules Chart

State	Statute	Description
Alabama	ALA. CONST. art. I, § 601	Crime victims are entitled to be heard, when authorized, at all crucial stages of criminal proceedings to the extent that it does not interfere with the constitutional rights of the accused.
Alaska	ALASKA CONST. art. I, § 24	Crime victims have the right to be heard, upon request, at sentencing, before or after conviction, and at any proceeding where the accused's release from custody is considered.
Arizona	ARIZ. CONST. art. II, § 2.1	Crime victims have the right to be heard at any proceeding involving a post-arrest release decision, a negotiated plea, sentencing, and any proceeding when post-conviction release is being considered.
Arkansas	ARK. CODE ANN. §§ 16-90-1112, 16-90-1113	Before sentencing, crime victims are permitted to present a victim impact statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, and the manner in which the crime was perpetrated. The statement may be presented in writing before the proceeding, or orally while under oath at the sentencing proceeding. Crime victims may also give a written or oral victim impact statement prior to or at parole hearings.
California	CAL. CONST. art. I, § 28	Crime victims have the right to be heard, upon request, at any proceeding, including any delinquency proceeding, post-arrest release decision proceedings, plea, sentencing, post-conviction release decision, or any proceeding in which a right of a victim is at issue.
Colorado	COLO. CONST. art. II, § 16(a)	Crime victims have the right to be heard when relevant, informed, and present at all critical stages of the criminal justice process.
Connecticut	CONN. CONST. art. I, § 8	Crime victims have the right to make a statement to the court prior to the acceptance of a guilty or nolo contendere plea and at sentencing.
Delaware	DEL. CODE ANN. tit. 11, § 4331	<p>A victim impact statement shall be presented to the court prior to the sentencing of a convicted person, where such person has been convicted of: (1) a felony; (2) an offense under subchapter V, Chapter 5 of this title or subpart D, subchapter II, Chapter 5 of this title; or (3) a misdemeanor which resulted in physical injury or death.</p> <p>The victim impact statement shall: (1) identify, to such extent as can be reasonably ascertained, those victims (except persons involved in the commission of the offense) who received physical, psychological or economic injury as a result of the offense; (2) describe, to the extent possible, such physical, psychological or economic injury; (3) identify any physical injury suffered by the victim, together with a description of the seriousness and permanence of such injury; (4) contain a description of any change in the victim's personal welfare or familial relationships which can</p>

		<p>reasonably be attributed to the offense; (5) identify any request for psychological services or counselling services initiated by any person identified under paragraph (e)(1) of this section, if such request or need for such services can reasonably be determined to have resulted from the offense; (6) determine any fees or costs for psychological or counselling services; and (7) any other information relating to the impact of the offense upon the victim or other person.</p> <p>These sections apply only to those victims who have cooperated with the court and with Investigative Services officers. The provisions of this section relating to victim impact statements shall apply to all courts having original jurisdiction to hear, try, and finally determine criminal offenses. However, these provisions shall not apply to Justices of the Peace Courts.</p>
District of Columbia	D.C. CODE § 23-1904; 18 U.S.C. § 3771	Prior to the imposition of a sentence, crime victims have the right to submit, a written victim impact statement containing information concerning any emotional, psychological, financial, or physical harm done to or loss suffered by the victim. At a defendant's release or parole hearing, crime victims have the right to offer a written statement of the victim's opinion of whether the defendant should be granted release or parole. Crime victims also have the right to make a statement at the defendant's sentencing and record-sealing hearings.
Florida	FLA. CONST. art. I, § 16	Crime victims have the right to be heard, when relevant, at all crucial stages of criminal proceedings to the extent that it does not interfere with the constitutional rights of the accused.
Georgia	GA. CODE ANN. §§ 17-17-1, 17-17-11, 17-17-13	<p>Crime victims have the right to be heard at any scheduled court proceedings involving the release, plea, or sentencing of the accused. Crime victims may express an opinion on the disposition of an accused's case, including views on the plea or sentence negotiations and participation in pretrial or post-conviction diversion programs.</p> <p>When the State Board of Pardons and Paroles considers making a final decision to grant parole or release, they shall provide the crime victim with the opportunity to file a written objection. In capital cases, the State Board must provide notification to the crime victim within 72 hours of receiving a request to commute a death sentence. The crime victim shall then have an opportunity to file a written response to such request.</p>
Hawaii	HAW. REV. STAT. § 706-604	In all circuit court cases, regardless of whether a pre-sentence report has been prepared or waived, the court shall afford a fair opportunity to the victim to be heard on the issue of the defendant's disposition before imposing a sentence.

Idaho	IDAHO CONST. art. I, § 22	Crime victims have the right to be heard, upon request, at all proceedings considering a plea of guilty, sentencing, incarceration, or release of the defendant unless manifest injustice would result.
Illinois	ILL. CONST. art. I, § 8.1	Crime victims have the right to be heard at any post-arraignment proceeding in which a right of the victim is at issue, and at any court proceeding involving a post-arraignment release decision, plea, or sentencing.
Indiana	IND. CODE. ANN. §§ 35-40-5-5, 35-40-5-6, 35-40-11-2	<p>Crime victims have the right to be heard at any proceeding involving sentencing, a post-conviction release decision, or a pre-conviction release decision under a forensic diversion program.</p> <p>Crime victims have the right to make a written or oral statement for use in preparation of the presentence report.</p> <p>Except as provided in section 3 of this chapter, a victim's right to be heard may be exercised, at the victim's discretion, through an oral statement, submission of a written statement, or submission of a statement through audiotape or videotape.</p>
Iowa	IOWA CODE § 915.21	<p>A crime victim may present a victim impact statement to the court using one or more of the following methods:</p> <p>(a) A victim may file a signed victim impact statement with the county attorney, and a filed impact statement shall be included in the presentence investigation report. If a presentence investigation report is not ordered by the court, a filed victim impact statement shall be provided to the court prior to sentencing. Unless requested otherwise by the victim, the victim impact statement shall be presented at the sentencing hearing in the presence of the defendant, and at any hearing regarding reconsideration of sentence. The victim impact statement may be presented by the victim or the victim's attorney or designated representative.</p> <p>(b) A victim may orally present a victim impact statement at the sentencing hearing, in the presence of the defendant, and at any hearing regarding reconsideration of sentence.</p> <p>(c) A victim may make a video recording of a statement or, if available, may make a statement from a remote location through a video monitor at the sentencing hearing, in the presence of the defendant, and at any hearing regarding reconsideration of sentence.</p> <p>(d) A victim may make an audio recording of the statement or appear by audio via a speakerphone to make a statement,</p>

		<p>to be delivered in court in the presence of the defendant, and at any hearing regarding reconsideration of sentence.</p> <p>(e) If the victim is unable to make an oral or written statement because of the victim's age, or mental, emotional, or physical incapacity, the victim's attorney or a designated representative shall have the opportunity to make a statement on behalf of the victim.</p> <p>The victim impact statement may include itemization of any economic loss, the seriousness and permanence of any physical injury, any change in the victim's personal welfare or familial relationships as a result of the offense, descriptions of any requests for psychological services, and any other information related to the impact of the offense.</p> <p>The victim will not be placed under oath or subjected to cross-examination.</p>
Kansas	KAN. CONST. art. 15, § 15	Crime victims have the right to be heard at sentencing or at any other time deemed appropriate by the court to the extent that it does not interfere with the constitutional or statutory rights of the accused.
Kentucky	KY. REV. STAT. ANN. §§ 421.500, 421.300	Crime victims have the right to submit a victim impact statement after conviction, but prior to or at sentencing. Crime victims also have the right to submit a statement to the parole board when the offender becomes eligible for parole.
Louisiana	LA. CONST. art. I, § 25	Crime victims have the right to be heard at all critical stages of pre-conviction and post-conviction proceedings.
Maine	ME. STAT. tit. 15 §§ 1174, 1174A	<p>The victim must be provided the opportunity to participate at sentencing by making an oral statement in open court or submitting a written statement. The written statement must be made part of the record and must be made either to the court directly or through the attorney for the state.</p> <p>If there is a hearing on a motion seeking early termination of probation or early termination of administrative release or seeking to convert probation to administrative release, then the victim may address the court at that time provided the victim is present in court.</p>
Maryland	MD. CONST. art. 47	Crime victims have the right, upon request and if practicable, to be heard at criminal justice proceedings.
Massachusetts	MASS. GEN. LAWS ch. 258B, § 1	Crime victims have the right to be heard through an oral and written victim impact statement at sentencing or the disposition of the case against the defendant about the effects of the crime on the victim and as to a recommended sentence, pursuant to section four

		<p>B of chapter two hundred and seventy-nine, and to be heard at any other time deemed appropriate by the court.</p> <p>The victim also has a right to submit the victim impact statement to the parole board for inclusion in its records regarding the perpetrator of the crime.</p>
Michigan	MICH. CONST. art. I, § 24	Crime victims have the right to make a statement to the court at sentencing.
Minnesota	MINN. STAT. §§ 611A.03, 611A.038	<p>A victim has the right to submit an impact statement to the court at the time of sentencing or disposition hearing. The impact statement may be presented to the court orally or in writing, at the victim's option. If the victim requests, the prosecutor must orally present the statement to the court. Statements may include the following: a summary of the harm or trauma suffered by the victim as a result of the crime, a summary of the economic loss or damage suffered by the victim as a result of the crime, and a victim's reaction to the proposed sentence or disposition. The statement is subject to reasonable limitations as to time and length.</p> <p>Crime victims also have the right to express orally or in writing, at the victim's option, any objection to the agreement or to the proposed disposition at a hearing during which a plea is presented.</p>
Mississippi	MISS. CONST. art. III, § 26(a)	Crime victims have the right to be heard, when authorized by law, during public hearings.
Missouri	MO. CONST. art. I, § 32	Crime victims have, upon request, the right to be heard at guilty pleas, bail hearings, sentencings, probation revocation hearings, and parole hearings, unless, in the determination of the court, the interests of justice require otherwise.
Montana	MONT. CONST. art. II, § 36	Crime victims have the right to be heard in any proceeding involving the release, plea, sentencing, disposition, adjudication, or parole of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim. Crime victims also have the right to provide information regarding the impact the offender's conduct had on the victim for inclusion in the presentence or predisposition investigation report and to have the information considered in any sentencing or disposition recommendations submitted to the court. Additionally, crime victims have the right to provide information to the governor, the court, any clemency board, or any other authority and to have that information considered before a decision on clemency or expungement is made.
Nebraska	NEB. CONST. art. I, § 28	Crime victims have the right to make a written or oral statement at sentencing, parole, pardon, commutation, and conditional release proceedings.
Nevada	NEV. CONST. art. 1, § 8	Crime victims have the right to be heard at all proceedings for the sentencing or release of a convicted person after trial.

New Hampshire	N.H. REV. STAT. ANN. § 21-M:8-k	<p>Crime victims have the right to have input in the probation presentence report impact statement, and the right to appear and make a written or oral victim impact statement at the sentencing of the defendant or, in the case of a plea bargain, prior to any plea bargain agreement. Crime victims also have the right to make a written or oral victim impact statement at the sentence review hearings and sentence reduction hearings. No victim shall be subject to questioning by counsel when giving an impact statement. Crime victims have the right to address or submit a written statement for consideration by the parole board on the defendant's release.</p>
New Jersey	N.J. STAT. ANN. §§ 52:4B-36, 2C:44-6	<p>Crime victims have the right to submit a written statement, within a reasonable amount of time, about the impact of the crime to a representative of the prosecuting agency which shall be considered prior to the prosecutor's final decision concerning whether formal criminal charges will be filed, whether the prosecutor will consent to a request by the defendant to enter into a pre-trial program, and whether the prosecutor will make or agree to a negotiated plea. Crime victims also have the right to make, prior to sentencing, an in-person statement directly to the sentencing court concerning the impact of the crime.</p> <p>Crime victims may also submit a statement to be included in the presentence report. The statement may include the nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss to include loss of earnings or ability to work suffered by the victim and the effect of the crime upon the victim's family.</p>
New Mexico	N.M. CONST. art. II, § 24	<p>Crime victims have the right to make a statement to the court at sentencing and at any post-sentencing hearings for the accused.</p>
New York	N.Y. CRIM. PROC. LAW §§ 380.50, 390.30, 440.50	<p>If a defendant is being sentenced for a felony the court, if requested at least ten days prior to the sentencing date, shall accord the victim the right to make a statement with regard to any matter relevant to the question of sentence. Any statement by the victim must precede any statement by counsel to the defendant or the defendant made pursuant to subdivision one of this section. The defendant shall have the right to rebut any statement made by the victim.</p> <p>The pre-sentence investigation report shall contain a victim impact statement, unless it appears that such information would be of no relevance to the recommendation or court disposition, which shall include an analysis of the victim's version of the offense, the extent of injury or economic loss and the actual out-of-pocket loss to the victim and the views of the victim relating to disposition including the amount of restitution and reparation sought by the victim after the victim has been informed of the right to seek restitution and</p>

		<p>reparation, subject to the availability of such information. Nothing contained in this section shall be interpreted to require that a victim supply information for the preparation of this report.</p> <p>If a final disposition results in the commitment of the defendant to the custody of the department of corrections and community supervision for an indeterminate sentence, crime victims shall receive notice informing them of their right to submit a written, audiotaped, or videotaped victim impact statement to the department of corrections and community supervision, or to meet personally with a member of the state board of parole at a time and place separate from the personal interview between a member or members of the board and the inmate and make such a statement, subject to procedures and limitations contained in rules of the board, both pursuant to subdivision two of section two hundred fifty-nine-i of the executive law.</p>
North Carolina	N.C. CONST. art. I, § 37	Crime victims have the right to be heard at sentencing in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court. They also have the right, as prescribed by law, to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.
North Dakota	N.D. CENT. CODE §§ 12.1- 34-02, 12.1-34- 02	<p>15. The victim must be informed by the prosecuting attorney, prior to sentencing, of the victim's right to submit or make a written impact statement to the court in any criminal case. If a presentence investigation is ordered, the probation officer assigned the report shall include this information in the report. This statement may include an explanation by the victim of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim; an explanation of the extent of any economic loss or property damage suffered by the victim; an opinion of the need for and extent of restitution; and the victim's recommendation for an appropriate sentence. If the sentencing court does not order a presentence investigation, the victim may submit a written impact statement, under oath, to the office of the state's attorney which statement must be submitted to the sentencing court. The victim of violent crime may appear in court to make an oral crime impact statement at the sentencing of the defendant in appropriate circumstances at the discretion of the judge. This oral statement must be made under oath and is subject to cross-examination.</p> <p>18. Victims may submit a written statement for consideration by the parole board, the governor, or the pardon advisory board, if one has been appointed, prior to the parole board, the governor, or the pardon advisory board taking any action on a defendant's request for parole or pardon. A victim statement made under this</p>

		subsection is a confidential record and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. Victims of violent crimes may at the discretion of the parole board, the governor, or the pardon advisory board personally appear and address the parole board, the governor, or the pardon advisory board. Victim testimony and written statements under this subsection are confidential and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative.
Ohio	OHIO CONST. art. I, § 10a	Crime victims have the right to a meaningful role in the criminal justice system.
Oklahoma	OKLA. CONST. art. II, § 34	Crime victims have the right to be heard at any sentencing or parole hearing.
Oregon	OR. CONST. art. I, § 42	Crime victims have a right to a meaningful role in the criminal and juvenile justice systems. In particular, this guarantees crime victims the right to be heard at the pretrial release hearing and the sentencing or juvenile court delinquency disposition.
Pennsylvania	18 PA. CONS. STAT. § 11.201	Crime victims have the right to have an opportunity to offer prior comment on the sentencing of a defendant or the disposition of a delinquent child, and to include the submission of a written and oral victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. The written statement shall be included in any predisposition or presentence report submitted to the court. Moreover, in personal injury crimes where the defendant was sentenced to a state correctional facility, crime victims have the right to be given an opportunity to provide comment on post-sentencing release decisions, including work release, furlough, parole, pardon, or community treatment center placement.
Rhode Island	R.I. CONST. art. I, § 23	Crime victims have the right to address the court regarding the impact of the perpetrator's conduct upon the victim before sentencing.
South Carolina	S.C. CONST. art. I, § 24	Crime victims are allowed to submit either a written or oral statement at all hearings affecting bail or bond, and they have the right to be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing.
South Dakota	S.D. CODIFIED LAWS § 23A- 28C-1	Crime victims have the right to testify at scheduled bail or bond hearings regarding any evidence indicating whether the offender represents a danger to the victim or the community if released and the right to offer written input into whether plea bargaining or sentencing bargaining agreements should be entered into. Crime victims also have the right to provide to the court a written or oral victim impact statement prior to sentencing regarding the financial and emotional impact of the crime on the victim and his or her family as well as recommendations for restitution and sentencing. At parole or clemency hearings, crime victims have the right to

		provide written input. In capital cases, crime victims have the right to provide to the court or to the jury, as appropriate, testimony about the victim and the impact of the crime on the victim's family.
Tennessee	TENN. CONST. art. I, § 35	Crime victims have the right to be heard, when relevant, at all critical stages of the criminal justice process as defined by the General Assembly.
Texas	TEX. CODE CRIM. PROC. art. §§ 56.02, 56.03, 42.03	<p>Crime victims have the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system, to complete the victim impact statement, and to have the victim impact statement considered: (A) by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and (B) by the Board of Pardons and Paroles before an inmate is released on parole.</p> <p>Prior to the imposition of a sentence, the court will consider a victim impact statement that a crime victim has returned to the attorney representing the state.</p> <p>After a sentence is pronounced, a crime victim may present a statement of the person's views about the offense, the defendant, and the effect of the offense on the victim.</p>
Utah	UTAH CONST. art. I, § 28	Upon request, crime victims have the right to be heard at important criminal justice hearings related to the victim once a criminal information or indictment charging a crime has been publicly filed in court.
Vermont	VT. STAT. ANN. tit. 13, §§ 5321, 7041, 7608	<p>Crime victims have the right to be heard regarding sentencing or the proposed deferral of sentencing. If the crime victim is not present in court, the court shall ask whether the victim has expressed, either orally or in writing, views regarding sentencing or the proposed deferral of sentencing and shall take those views into consideration.</p> <p>Crime victims have the right to testify before the parole board. Crime victims also have the right to offer a statement prior to any expungement or sealing of criminal history records.</p>
Virginia	VA. CONST. art. I, § 8-A	Crime victims have the right to address the circuit court at the time the sentence is imposed.
Washington	WASH. CONST. art. I, § 35	Crime victims have the right to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights.
West Virginia	W. VA. CODE §§ 61-11A-2, 61-11A-3	Crime victims are permitted to make an oral or written statement related solely to the facts of the case and the extent of injuries, financial losses and loss of earnings directly resulting from the crime for which the defendant is being sentenced. This statement is

		<p>in addition to, not in lieu of the victim impact statement required in section 3 (below).</p> <p>In every case in which a presentence report is ordered by the court, such presentence report shall contain a victim impact statement unless the court orders otherwise, if the defendant, in committing a felony or misdemeanor, caused physical, psychological or economic injury or death of the victim. If the court does not order a presentence investigation and report, the prosecuting attorney may request that the probation officer prepare a victim impact statement. The victim impact statement shall be considered by the court as a factor in determining the appropriate sentence. Additionally, the statement may be utilized for the determination of claims by victims of crimes pursuant to the provisions of article two-a, chapter fourteen of this code.</p>
Wisconsin	WIS. CONST. art. I, § 9m	Crime victims have the opportunity to make a statement to the court at disposition.
Wyoming	WYO. STAT. ANN. § 7-21-103	Crime victims have the right to submit orally, in writing or both a victim impact statement at any hearing to determine, correct, or reduce a sentence.

Appendix T: Sample Victim Impact Statements

IDENTIFIED VICTIM [REDACTED] OF THE "[REDACTED]" SERIES
CONFIDENTIAL VICTIM IMPACT STATEMENT

VICTIM IMPACT STATEMENT

I have lost emotional trust of men. This has affected my ability to have healthy and happy relationships, including a romantic relationship and friendships. I struggle with depression, my diagnosis of PTSD, anxiety and I am paranoid. My paranoia creeps-in when I think people are looking at me and have seen the videos of me. I worry that people, especially men, have seen me naked as a child and recognize me when I am out in public. When I am alone at home, I triple check the door locks and am fearful of being raped. My sexuality and sex-life has been damaged because of the videos. I cannot even touch myself (masturbate) because I feel weird and it makes me sad and cry. I have lots of trouble sleeping and I often have nightmares. In my nightmares, I am being raped by men who watched the videos of me. I have problems with kleptomania, shop lifting. I think this is because I want to try and make things feel better. Because of the videos and what those men did, I think I will need a lifetime of therapy for all of my emotional problems.

I think that having sex at a very young age, 13, because of the video's and the men wanting to see me sexual and naked caused physical harm to me. Because it made me so sexual, I got an STD when I was 15, I got herpes. Related, the videos added to my poor judgement of boyfriends, so I had sex with boys I shouldn't have, and got STD's. I also pull-out my hair and have trichotillomania, this hurts my scalp and hair, hurts my looks. The hair pulling started with the videos and the things the men wanted me to do, to be naked and sexual. I started using drugs to cope, the men liked this idea too. I started having eating problems and would stop eating. Now that I am older, I am disgusted when I look in the mirror and I still have problems with eating and not taking care of myself physically.

I have had probably 100 or more sessions over the years. Because of my issues, I cannot work as much as I need, I must take time-off because of therapy, Dr. appointments and due to my depression, anxiety and PTSD, all because of the videos and those men. Some days I cannot even get out of bed, maybe twice or more a week. I have chronic pain, aches, headaches, which my therapist and Dr's think is the PTSD and depression. I must drive an hour, each way, to go to my psychiatrist and for my medications. I can't go onto a computer and go online, fear overwhelms me that I am being watched. This causes me problems with applying for jobs. I also think the computer camera's, like on laptops, are recording me and I don't even know it. That is crazy, but I am afraid.

This is huge and has caused so many problems, like the choices I have made in boyfriends, unable to have good judgement, using drugs and getting attention and feeling

good in all the wrong ways socially. I cannot attend regular school, I think boys and male teachers are all staring at me and have seen the videos. All they want is to have sex with me. So, I go to an alternative school. It is hard enough for me to go there and it is only 9 hours a week of school. I also must drive to school, no bus picks me up. So, I am always struggling to borrow a car and pay for gas. I don't have a car and can't afford one, but I can't go to regular school, no way. So, I must find a way to drive to school.

Socially, I guess I also lost good judgement, especially with friends and using drugs. I had awful boyfriends, did drugs and had lots of sex because of the videos and what those men did to me. Poor lifestyle choices and poor self-care was constant following the videos. I think this affects my view of the future, I think my future is messed-up and limited because of the videos and what happened. I don't even want to ever have children because of what happened to me ... never, ever.

[REDACTED]

1/16/17

Victim Impact Statement of [REDACTED] - the Victim in the [REDACTED] Series

I am a survivor of child sexual abuse and internet child sex abuse images. I am still discovering all the profound ways that the abuse and exploitation that I suffered has hurt me, has sent my life in the wrong course and disrupted my childhood, teenage years and early adulthood that everyone deserves. There is a lot I don't remember, but the disgusting images of what happened to me are out there on the internet today.

I continue to practice putting these terrible memories away in my mind, thinking about them still is too painful. Sometimes I go into staring spells when I am caught thinking about what happened and not paying any attention to my surroundings.

Every day of my life I live in fear that someone will see my pictures and recognize me and that I will be humiliated all over again. It hurts just to know someone is looking. I did not choose to be abused, but I am there in pictures and people are still using them to do sick things tied to my abuse.

I want it all erased. I want it all stopped. But I am powerless to stop it just like I was powerless to stop my abuse. When my pictures were first discovered, I went to therapy and thought I was getting over it. But I was very wrong. The full impact of what happened to me has only become clearer as I have gotten older. The full impact of what happened worsened because the crime has never really stopped.

It is hard to describe what it feels like to know that at any moment, anywhere, someone will be looking at my pictures, of me as a child being sexually abused and getting sick gratification from it. It's like I am being abused over and over and over again.

I find myself unable to do simple tasks that other people handle easily. For years I couldn't get a driver's license. Every time I was going to do it, I couldn't. Planning was and continues to be difficult. My mind skips out on me when I think about moving forward with my life.

Through the years finding employment has been challenging. Forgetting is second nature to me since I was forced as a young child to live a double life and "forget" what was happening to me. Before I realize it, I was missing out on taking control on things and events that most people would do naturally.

I failed anatomy in high school. I just found myself unable to think about the body because of my own experiences. The same thing happened in college. I went to a psychology class where we watched a video about child abuse. Without realizing why, I just stopped going to class. I failed my freshman year and never went back.

It's easy for me to block out my feelings and just avoid things that make me uncomfortable. I don't know when I will be ready to go back to college but I definitely need to get over this problem with avoidance because anything that makes me uncomfortable triggers feelings of helplessness and despair.

I have a constant fear that people will look at me and tell me that I am a victim because it feels like my abuse is a public fact. I fear that when my friends are on the internet they are going to come across a picture of me and it fills me with humiliation and embarrassment. I am humiliated to have

been photographed doing obscene things. Everywhere (I go) I feel judged.

I am embarrassed to tell people what happened to me because I fear that they will judge me and blame me for it. I'm living in fear of one day someone seeing my pictures and "the secret" about me would be out. It's like my life is on hold for that day and I will be frozen in time. It's like the disturbing pictures of me are stuck in time and forever for all to see.

Trust has been a hard thing in my life and certain people just make me uncomfortable. I have had to quit a number of jobs over the years because of the fear that I was being recognized or noticed by someone who had seen my images.

Because I've had a history of bad dreams, I have had a difficult time sleeping, particularly if it's in the dark. I like to keep the lights on thinking that will protect me from my bad dreams. I react badly to scary movies and can end up having nightmares for days.

I have had trouble saying "no" to people since I learned at a very young age that I really don't have control over what was happening to me, just like I really don't have any control over the images.

Because of the way I was bribed to perform sexual acts on camera, I have trouble taking gifts from anyone. I always feel people will expect something from me if they give me a present. This interferes with my relationships and friends.

I fear that I will be abused or harmed again by my original abuser or someone else who has seen my pictures and wants to harm or hurt me for coming forward about these crimes.

I was very confused for a long time about what love really is. My abuser said he loved me and I wanted that love. But I know now that love was not real. I still feel that I am being used and exploited every day, all the time somewhere in the world someone is viewing my images and re-victimizing me.

How can I get over this when this crime is happening to me over and over again? When will it end? How can I get over this when the acts of abuse I suffered are out there forever for sick people and I have to bear the knowledge that other children are likely to be abused because of the pictures that some sick person is using to victimize other children? I know I was little, but as ridiculous as it sounds, I still question why I didn't say anything.

I have a terrible fear of failure. I often feel that I am unworthy and find myself self-sabotaging, since I feel that I do not deserve happiness. I've experienced enough disappointment for a lifetime and I simply don't want it any more.

I feel like I've always led a double life. First I had to lie about what my abuser was doing, then to act like it didn't happen because I was too embarrassed to tell anyone. Now I am always aware that there is another little me being seen by abusers on the internet, and I do not want to be there, but I have no choice. I want every person who downloads my pictures to be punished. Why should they be free when I am not? They are as bad as my abuser. Child pornography is not a victimless crime. I am a victim. And I still suffer every day and every time someone sees me being abused.

I ask that you think about me and everything I have gone through when you sentence this person. Think about the abuse I and others endured to create those images which the defendant in this case wanted so badly that he risked his freedom, and give this person a sentence which will make him realize the harm he caused me from taking pleasure in my pain.

The name I go by is Anna. I am a victim of child sex abuse and child pornography. I was sexually abused at a very young age, starting when I was 4 and ending when I was 6. I was abused at the hands of my father. He was part of an international child pornography trading ring. He shared the horror he inflicted on me and because of that, people are still viewing my abuse for their pleasure.

When I started receiving the email notifications from the U.S. Department of Justice I was 18, and only then did I start to understand the full extent of what my father had done to me. I had always known the images were out there, but it wasn't until I was older that I was finally able to understand that what he had done was wrong. Not only had he abused me but he had allowed others to share in that pleasure he got from abusing me. They love what is being done to me, they want more. They wish they had me.

There are and will be so many people out there taking pleasure in watching me suffer, in watching the most terrifying and humiliating moments of my life. Not knowing who has seen you in your most vulnerable moments is a horrifying thing. I can't help but wonder when men look at me if they've seen me like that. When men look at me in a certain way, it reminds me that there are still people looking at my images forcing me to remember that I am still vulnerable and exposed. It will never stop. I can't move on. I am helpless to do anything about it.

There's a constant feeling of violation, distrust, and anxiety. The extent of my sexual abuse being shared constantly affects my life. When I was in high school, I was a great student. I was in the top of my class, captain of my sports team. An ambitious student. Then at 18, my past resurfaced when the FBI agent reached out to me. My world started to change, I started doing poorly in school, eventually failing out of University. I started engaging in unhealthy relationships with much older men. I have and still struggle immensely with insomnia. At night

the anxiety becomes unbearable and I struggle every night to fall asleep. I started drinking to cope with this newfound understanding of my situation. I stopped moving forward, and was stuck in this place. I want to emphasize that these behaviors are completely uncharacteristic of who I believe myself to be.

I had finally come to understand that the pictures of my abuse were going to be out there forever. My past continuously haunts me and is much harder to leave in the past when I know others are still watching.

My childhood was stolen from me, but because there is this record of my abuse, it continues and will forever affect my life in ways words cannot express. My images will probably always be circulating the internet, but this person is perpetuating this. This person chose to view the images of my abuse for their pleasure. By having done this they are allowing and encouraging more young victims to be groomed, they are normalizing the sexualization of children, and they are watching the abuse a non-consenting child had to suffer.

I implore you to understand that this person is primarily why I continue to suffer. I ask the court to order restitution in addition to other punishment so that they are held fully accountable for what they've done to me. Also, that I may begin to build a life where I can be healthy, strong, and safe.

Sincerely,

Anna

*Anna is my pseudonym to keep my identity private; my true identity can be confirmed by speaking with my attorneys

Appendix U: State Forfeiture Laws for Human Trafficking Chart

State	Statute	Description
Alabama	ALA. CODE § 13A-6-156	Requires forfeiture of “any profits or proceeds and any interest in property that [defendant] has acquired or maintained that the sentencing court determines to have been acquired or maintained” as a result of committing human trafficking violations.
Alaska	ALASKA STAT. § 11.41.468	Property used to aid in the violation of various sexual offenses, including sexual abuse of a minor or unlawful exploitation of a minor, may be forfeited to the state upon the conviction of the offender.
Arizona	ARIZ. REV. STAT. ANN. § 13-3557	Requires forfeiture of equipment used for sexual exploitation of a minor.
Arkansas	ARK. CODE ANN. § 5-5-101	Does not specifically apply to trafficking crimes. Requires the forfeiture of contraband only (including pornography).
California	CAL. PENAL CODE § 312.3	Applies to the forfeiture of contraband.
Colorado	COL. REV. STAT. § 16-13-303	Applicable to buildings, land, vehicles and any real property that were used as a public or private place of various prostitution offenses. Applicable to buildings, land, vehicles and real property used for the sexual exploitation of children.
Connecticut	CONN. GEN. STAT. § 54-36p	Applicable to the forfeiture of money and property related to sexual exploitation and human trafficking.
Delaware	N/A	
District of Columbia	D.C. CODE § 22-1838	Requires forfeiture of any interest in any property that was used or intended to be used to commit or to facilitate the commission of human trafficking (or any property deriving from the violation).
Florida	FLA. STAT. § 932.701	Any personal property used in the commission of any felony is subject to forfeiture.
Georgia	GA. CODE ANN. § 16-5-46	Any property which is used or intended to be used to traffic a person for labor or sexual servitude, and any proceeds, are contraband and “no person shall have a property right in them.”
Hawaii	HAW. REV. STAT. § 712A	Offenses for which property is subject to forfeiture include promoting child abuse, electronic enticement of a child, promoting pornography, promoting pornography for minors, or promoting prostitution.
Idaho	IDAHO CODE § 52-415	Lewd matter is contraband, and “there are no property rights therein.” All personal property declared to be a “moral nuisance” and all “monies and other considerations declared to be a moral nuisance” are subject to forfeiture.
Illinois	725 ILL. COMP. STAT. § 5/124B <i>et seq.</i>	Applies to forfeiture of property in connection with human trafficking and child pornography offenses.

Indiana	IND. CODE § 34-24-1-1	Applicable to “[a]ny portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.”
Iowa	IOWA CODE § 809A	Applicable to “[a]n act or omission which is a public offense and which is a serious or aggravated misdemeanor or felony.”
Kansas	KAN. STAT. ANN. § 60- 4105	Applies to “[a]ll property[] of every kind” that is used or intended to be used in any manner to facilitate certain proscribed conduct; specifically covers human trafficking.
Kentucky	KY. REV. STAT. ANN. § 500.092	Applies to forfeiture of personal property not used as a residence triggered by the violation or attempted violation of certain enumerated offenses.
Louisiana	LA. STAT. ANN. § 14:46.2	“The court shall order that the personal property used in the commission of [human trafficking], or the proceeds of any such conduct, shall be seized and impounded.” There are similar provisions for trafficking of children for sexual purposes, felony carnal knowledge of a juvenile, indecent behavior with juveniles, pornography involving juveniles, molestation of a juvenile, computer-aided solicitation of a minor, and enticing persons into prostitution.
Maine	ME. STAT. tit. 15, § 5821	“All assets, including money instruments, personal property and real property, used or intended for use in or traceable to a human trafficking offense” are subject to forfeiture.
Maryland	N/A	
Massachusetts	MASS. GEN. LAWS ch. 265, §§ 55, 56	“All monies furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, and all monies used or intended to be used to facilitate [such a violation]” are subject to forfeiture.
Michigan	MICH. COMP. LAWS §§ 600.3801, 3830	“Any building, vehicle, boat, aircraft, or place used for the purpose of lewdness, assignation or prostitution . . . or used by, or kept for the use of prostitutes or other disorderly persons” is subject to forfeiture.
Minnesota	MINN. STAT. § 609.5312	All money and other property, real and personal, that represent proceeds of a designated offense, and all contraband property, are subject to forfeiture. Designated offenses include solicitation of children to engage in sexual conduct, possession of pornographic work involving minors, use of minors in sexual performance, and solicitation, inducement, and promotion of prostitution.
Mississippi	N/A	
Missouri	MO. REV. STAT. § 513.607	Forfeiture provision is applicable to Chapters 566 (Sexual offenses, including Sexual trafficking of a child, Promoting online sexual solicitation, Enticement of a child, Statutory rape, Sexual misconduct involving a child), 568 (Offenses against the family, including Child used in sexual performance, Promoting sexual performance by a child, Abuse of a child), 567 (Prostitution), 573 (Pornography and related offenses, including Sexual exploitation of a minor).

Montana	N/A	
Nebraska	N/A	
Nevada	NEV. REV. STAT. § 200.760	Applies to all assets derived from or relating to any violation of certain offenses, including sexual assault, unlawful use of minor in producing pornography or as subject of sexual portrayal in performance, promotion of sexual performance of minor, preparing, advertising or distributing materials depicting pornography involving minor, possession of visual presentation depicting sexual conduct of person under 16 years of age, and trafficking in persons.
New Hampshire	N.H. REV. STAT. ANN. § 633:8	Governs the forfeiture of items used in connection with trafficking in persons.
New Jersey	N.J. STAT. ANN. § 2C:64-1	Applicable to all property which has been, or is intended to be, utilized in furtherance of an unlawful activity.
New Mexico	N/A	
New York	N.Y. PENAL LAW § 410.00(1)	Governs the seizure and forfeiture of equipment used in photographing, filming, producing, manufacturing, projecting or distributing pornographic still or motion pictures.
North Carolina	N.C. GEN. STAT. § 14-2.3	Governs forfeiture of “gain” acquired through criminal activity.
North Dakota	N.D. CENT. CODE § 29-31.1-04	Applicable to property that is “acquired as or from the proceeds of a criminal offense.”
Ohio	OHIO REV. CODE ANN. § 2981.02	Applicable to contraband involved in an offense or proceeds derived from or acquired through the commission of an offense.
Oklahoma	OKLA. STAT. tit. 21, § 1738	Governs seizure and forfeiture proceedings of vehicles, airplanes, vessels, or any other conveyance used in an attempt or commission of certain crimes (including human trafficking).
Oregon	OR. REV. STAT. § 131.553	Section 131.553(1)(e) makes property subject to forfeiture for “prohibited conduct,” including felonies and class A misdemeanors.
Pennsylvania	18 PA. CONS. STAT. § 3021	Assets derived from human trafficking offenses are subject to forfeiture.
Rhode Island	R.I. GEN. LAWS § 11-67.1-11	On motion, the court shall order a person convicted of a human trafficking offense to forfeit any interest in certain real or personal property.
South Carolina	S.C. CODE ANN. § 16-15-445	All equipment used in committing a violation of certain offenses (including obscenity, child exploitation, and child prostitution) may be ordered forfeited after conviction.
South Dakota	S.D. CODIFIED LAWS § 22-24A-15	Upon conviction of a child pornography offense, certain property is subject to forfeiture.
Tennessee	TENN. CODE ANN. § 39-11-703	Any property, real or personal, directly or indirectly acquired by or received in violation of any statute or as an inducement to violate

		any statute, or any property traceable to the proceeds from the violation, is subject to judicial forfeiture.
Texas	TEX. CODE CRIM. PROC. ANN. art. 59.02	Contraband is subject to forfeiture.
Utah	N/A	
Vermont	N/A	
Virginia	VA. CODE ANN. § 19.2-386.31	Governs seizure and forfeiture of property used in connection with the exploitation and solicitation of children.
Washington	WASH. REV. CODE § 10.105.010	All personal property involved in a felony is subject to forfeiture. Applies to most felonies, including trafficking, promoting commercial sexual abuse of a minor, and sending depictions of minors engaged in sexually explicit conduct.
West Virginia	W. VA. CODE § 61-8C-7	Certain property relating to the filming of sexually explicit conduct of minors is subject to forfeiture.
Wisconsin	WIS. STAT. § 973.075	All property, real or personal, including money, used in the course of, intended for use in the course of, or directly or indirectly derived from or realized through the commission of any crime is subject to forfeiture.
Wyoming	WYO. STAT. ANN. § 6-4-303	Any real or personal property constituting or traceable to gross proceeds obtained from the sexual exploitation of children (or any property used or intended to be used to commit such an offense) must be forfeited upon conviction.

Appendix V: Masha’s Law (18 U.S.C. § 2255)

§ 2255. Civil remedy for personal injuries

(a) In general. Any person who, while a minor, was a victim of a violation of 18 U.S.C. § 1589, § 1590, § 1591, § 2241(c), § 2242, § 2243, § 2251, § 2251A, § 2252, § 2252A, § 2260, § 2421, § 2422, or § 2423 and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains or liquidated damages in the amount of \$150,000, and the cost of the action, including reasonable attorney’s fees and other litigation costs reasonably incurred. The court may also award punitive damages and such other preliminary and equitable relief as the court determines to be appropriate.

(b) Statute of limitations. Any action commenced under this section shall be barred unless the complaint is filed—

(1) not later than 10 years after the date on which the plaintiff reasonably discovers the later of—

(A) the violation that forms the basis for the claim; or

(B) the injury that forms the basis for the claim; or

(2) not later than 10 years after the date on which the victim reaches 18 years of age.

(c) Venue; service of process.

(1) Venue. Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under 28 U.S.C. § 1391.

(2) Service of process. In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

HISTORY:

Added Oct. 18, 1986, P. L. 99-500, Title I, § 101(b), 100 Stat. 1783-74, and; Oct. 30, 1986, P. L. 99-591, Title I, § 101(b), 100 Stat. 3341-74; Oct 30, 1998, P. L. 105-314, Title VI, § 605, 112 Stat. 2984; July 27, 2006, P. L. 109-248, Title VII, § 707(b), (c), 120 Stat. 650; March 7, 2013, P. L. 113-4, Title XII, Subtitle B, Part I, § 1212(a), 127 Stat. 143; Feb. 14, 2018, P. L. 115-126, Title I, § 102, 132 Stat. 319.

Appendix W: Qualifying Predicate Crimes Chart

Statute	Predicate Crimes Provision
<p><u>18 U.S.C. § 1591</u>: Sex trafficking of children <i>or</i> by force, fraud, or coercion</p>	<ul style="list-style-type: none"> • Whoever knowingly, in or affecting interstate commerce or within the jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person OR benefits financially or receives something of value by participating in such a venture; <ul style="list-style-type: none"> ○ Knowing (unless the relevant act is advertising, then in reckless disregard of the fact) that means of force, threats of force, fraud, or coercion will be used to cause the person to engage in a commercial sex act; OR that the person has not yet attained the age of 18 and will be caused to engage in a commercial sex act.
<p><u>18 U.S.C. § 2241(c)</u>: Aggravated sexual abuse . . . With children</p>	<ul style="list-style-type: none"> • Whoever crosses a state line with the intent to engage in a sexual act with a person who has not attained the age of 12 years; OR • Whoever, in the jurisdiction of the United States, knowingly engages in a sexual act with another person who has not attained the age of 12 years; OR • Whoever knowingly engages in a sexual act under the circumstances described above with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging) or attempts to do so.
<p><u>18 U.S.C. § 2242</u>: Sexual abuse</p>	<ul style="list-style-type: none"> • Whoever, in the jurisdiction of the United States, knowingly: <ul style="list-style-type: none"> ○ Causes another person to engage in a sexual act by threatening or placing that other person in fear; OR ○ Engages in a sexual act with another person if that other person is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act or attempts to do so.
<p><u>18 U.S.C. §§ 2243(a), (b)</u>: Sexual abuse of a minor</p>	<ul style="list-style-type: none"> • Whoever, in the jurisdiction of the United States, knowingly* engages in a sexual act with another person who: <ul style="list-style-type: none"> ○ Has attained the age of 12 years but has not attained the age of 16 years; and ○ Is at least four years younger than the person so engaged or attempts to do so. <p>* It is a defense that the defendant reasonably believed the other person was at least 16. Burden on defendant to prove by a preponderance.</p> <ul style="list-style-type: none"> • Whoever, in the jurisdiction of the United States, knowingly engages in a sexual act with another person who: <ul style="list-style-type: none"> ○ Is official detention; and

	<ul style="list-style-type: none"> ○ Under the custodial, supervisory, or disciplinary authority of the person so engaging, or attempts to do so.
<p><u>18 U.S.C. § 2251:</u> Sexual exploitation of children (Production of child pornography)</p>	<ul style="list-style-type: none"> • 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 or affecting interstate or foreign commerce with the intent that the minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct (including a live visual depiction of the conduct) if such person knows or has reason to know that the visual depiction will have some connection to interstate or foreign commerce. • Any parent, legal guardian, or person having custody or control of a minor who knowingly permits the minor to engage in, or to assist any other person to engage in, the above activities. • 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, any sexually explicit conduct outside of the United States for the purpose of producing a visual depiction of such conduct if: <ul style="list-style-type: none"> ○ The person intends that the visual depiction be transported to the United States through interstate or foreign commerce; OR ○ The person transports the visual depiction to the United States by interstate or foreign commerce. • Any person who knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering to: <ul style="list-style-type: none"> ○ 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 participate in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct. <ul style="list-style-type: none"> ▪ And the person must intend that the notice or advertisement be transported to the United States through interstate or foreign commerce; OR ▪ Such notice or advertisement is transported to the United States by through interstate or foreign commerce.
<p><u>18 U.S.C. § 2251A:</u> Selling or buying of children</p>	<ul style="list-style-type: none"> • Any person who has custody or control of a minor, who sells, or otherwise transfers custody or control, or offers to do so, OR whoever purchases or otherwise obtains custody or control of a minor, or offers to do so, either:

	<ul style="list-style-type: none"> ○ With the knowledge that, as a consequence of the sale/transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; OR ○ With the intent to promote either: <ul style="list-style-type: none"> ▪ The engaging in or sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; OR ▪ 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.
<p><u>18 U.S.C. § 2252:</u> Certain activities relating to material involving the sexual exploitation of minors</p>	<ul style="list-style-type: none"> • Any person who knowingly transports or ships, using interstate or foreign commerce, any visual depiction if the production of the depiction involves the use of a minor engaging in sexually explicit conduct and the visual depiction is of that conduct. • Any person who knowingly receives or distributes the visual depiction using interstate or foreign commerce if the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct and the visual depiction is of that conduct. • Any person in the United States who knowingly sells, or possesses with the intent to sell, any visual depiction of a minor engaged in sexually explicit conduct that has been shipped in interstate or foreign commerce or was made with materials sent in interstate or foreign commerce. • Any person who knowingly sells, or possesses with the intent to sell, any visual depiction of a minor engaged in sexually explicit conduct shipped in interstate or foreign commerce, or produced using materials mailed or shipped by any means, including by computer where the production involved the use of a minor engaged in sexually explicit conduct and the visual depiction of such conduct. • Any person who knowingly possesses or knowingly accesses* one or more books, magazines, periodicals, films, video tapes, or other matter containing any visual depiction of a minor engaging in sexually explicit conduct, which was shipped or transported or made with materials shipped or transported in interstate or foreign commerce, including by computer. <p>* It is an affirmative defense to the knowing possession or accessing of illicit materials (bullet point #5) that the defendant possessed less than three items containing such visual depictions and promptly and in good faith, and without allowing anyone other than law enforcement to access the visual depiction, took reasonable steps to destroy such visual depiction or reported the matter to a law enforcement agency.</p>

<p><u>18 U.S.C. § 2252A(a)</u>: Certain activities relating to material constituting or containing child pornography</p>	<ul style="list-style-type: none"> • Whoever knowingly mails, transports or ships child pornography using interstate commerce. • Whoever knowingly receives or distributes any child pornography, or any material that contains child pornography, using interstate commerce. • Whoever knowingly reproduces child pornography for distribution through interstate commerce or advertises, promotes, presents, distributes, or solicits through interstate commerce, any material in a manner that reflects the belief, or that is intended to cause another to believe that the material contains an obscene visual depiction of a minor engaging in sexually explicit conduct or a visual depiction of an actual minor engaging in sexually explicit conduct. • Whoever knowingly sells, or possesses with the intent to sell, child pornography within the United States, OR whoever knowingly sells or possesses with the intent to sell, such material if it has been mailed, shipped, or transported via interstate commerce. • Whoever knowingly possesses or knowingly accesses* with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any material that contains an image of child pornography within the United States OR whoever knowingly possesses or knowingly accesses with intent to view such material that has been mailed, shipped, or transported via interstate commerce. • Whoever knowingly distributes, offers, sends, or provides to a minor any visual depiction of a minor engaging in sexually explicit conduct if affecting interstate commerce. <p>* It is an affirmative defense to the knowing possession or accessing of illicit materials (bullet point #5) that the defendant possessed less than three items containing such visual depictions and promptly and in good faith, and without allowing anyone other than law enforcement to access the visual depiction, took reasonable steps to destroy such visual depiction or reported the matter to a law enforcement agency.</p>
<p><u>18 U.S.C. § 2260</u>: Production of sexually explicit depictions of a minor for importation into the United States</p>	<ul style="list-style-type: none"> • A person who, outside of the United States, 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 with the intent that the minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, intending that the visual depiction will be imported or transmitted into the United States or into waters within 12 miles of the coast of the United States. • A person who, outside the United States, knowingly receives, transports, ships, distributes, sells, or possesses with intent to transport,

	<p>ship, sell, or distribute any visual depiction of a minor engaging in sexually explicit conduct (if the production of the visual depiction involved the use of a minor engaging in sexually explicit conduct), intending that the visual depiction will be imported into the United States or into waters within a distance of 12 miles of the coast of the United States.</p>
<p><u>18 U.S.C. § 2421:</u> Transportation generally</p>	<ul style="list-style-type: none"> • Whoever knowingly transports any individual in interstate or foreign commerce with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so.
<p><u>18 U.S.C. § 2422:</u> Coercion and enticement</p>	<ul style="list-style-type: none"> • Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so. • Whoever, using the mail or interstate or foreign commerce, or within the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so.
<p><u>18 U.S.C. § 2423:</u> Transportation of minors</p>	<ul style="list-style-type: none"> • A person who knowingly* transports a minor in interstate or foreign commerce with intent that the minor engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense. • A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person. • Any United States citizen or alien admitted for permanent residence who travels in foreign commerce or resides, either temporarily or permanently, in a foreign country, and engages in any illicit sexual conduct with another person. • Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct. <p>* It is a defense, which the defendant must establish by clear and convincing evidence, that the defendant reasonably believed that the person with whom he/she engaged in the commercial sex act with was an adult.</p>

Appendix X: Sample Civil Complaint

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

“		Case No:
”	Plaintiffs,	COMPLAINT
v.		Jury Trial Demanded
’	Defendant.	

The Plaintiffs, on their own behalf and by and through their attorneys of record allege for their complaint as follows:

NATURE OF THE ACTION

1. This is a suit for damages arising out of the Defendant’s violations of federal criminal child pornography statutes 18 U.S.C. § 2252 (a)(4)(B).
2. 18 U.S.C. § 2255(a) allows victims of child pornography crimes under section 2252 to recover the actual damages such person sustains or liquidated damages in the amount of \$150,000, and the cost of the action, including reasonable attorney’s fees and other litigation

costs reasonably incurred. The Court may also award punitive damages and grant such other preliminary and equitable relief as the Court determines to be appropriate.

PARTIES

3. “_____” is currently an adult and resides outside of the state of _____.

4. “_____” is a pseudonym for the victim depicted in the _____ child pornography series.

5. “_____” is currently an adult and resides outside the state of _____.

6. “_____” is a pseudonym for a victim depicted in _____ child pornography series.

7. Jane Smith is a pseudonym for “_____’s” mother and acts as Next Friend for _____ who is a minor

8. _____ and resides outside the state of California.

9. “_____” is a pseudonym for a victim depicted in _____ child pornography series.

10. The Defendant is an adult currently in the custody of the United States Bureau of Prisons.

11. On information and belief, the defendant resided in this district prior to his incarceration.

JURISDICTION AND VENUE

12. Federal subject matter jurisdiction is proper pursuant to 28 U.S.C. § 1331 because this is a civil action arising under 18 U.S.C. § 2255.

13. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and (2) because (i) this is a civil action brought in the judicial district where the Defendant resides and (ii) a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred in this judicial district.

FACTS

The Defendant Was Convicted of Possession of Child Pornography
in Violation of 18 U.S.C. § 2252(a)(4)(B)

14. Defendant was charged in the United States District Court,
_____ District of _____, in the matter denominated *United States*
v. _____, _____ Case No., with the crimes of Possession of Child Pornography
in violation of 18 USC 2252(a)(4)(B) and Transportation of Child Pornography in violation of 18
USC 2252(s)(1). These crimes were alleged to have been committed on date(s) ending on
_____.

15. On _____, Defendant pleaded guilty to these two child
pornography offenses and was sentenced via entry of a Judgment against him on
_____.

16. As a part of the sentencing procedure in that matter the Defendant and the
Government entered a Stipulation which provided for restitution to be paid to each of the
Plaintiffs herein.

Plaintiffs are Victims of Defendant's Crime of Possession of Child Pornography.

17. Plaintiffs, and each of them, have elected to receive notices via the United States
Department of Justice Victim Notification System of their status as victims in crimes being
prosecuted by the Department of Justice.

18. On information and belief, Child Victim Identification Program (CVIP) analysts
at the National Center for Missing and Exploited Children (NCMEC) matched child pornography

images on the Defendant's computer to child pornography images of Plaintiffs in NCMEC's database and notified the government of its findings in a CVIP report.

19. Upon information and belief, this CVIP report was supplied to the Defendant's criminal defense attorney.

20. On _____ Plaintiffs first received notice from the United States Department of Justice of their child sex abuse images having been among those possessed by Defendant.

FIRST CLAIM FOR RELIEF
18 U.S.C. § 2255(a)

21. The Plaintiffs repeat and re-allege all prior paragraphs.

22. 18 U.S.C. § 2255, entitled "Civil Remedy for Personal Injuries," provides that any person who is a victim of a violation of 18 U.S.C. § 2252(a)(4)(B) and who suffers personal injury as a result of such violation shall recover the actual damages such person sustains or liquidated damages in the amount of \$150,000, and the cost of the action, including reasonable attorney's fees and other litigation costs reasonably incurred.

23. The Defendant pleaded guilty to committing the federal child pornography crime found at 18 U.S.C. § 2252(a)(4)(B).

24. 18 U.S.C. § 2252(a)(4)(B) provides that any person commits a federal crime who:

knowingly possesses, or knowingly accesses with intent to view, 1 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 using any means or facility of interstate commerce or in or affecting interstate or foreign commerce, or which was produced using material 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.

25. Plaintiffs, and each of them, are victims of Defendant's violation of 18 U.S.C. § 2252(a)(4)(B).

26. The United States Supreme Court in *Paroline v. United States*, 572 U.S. 464, 134 S. Ct. 1710 (2014), *Osborne v. Ohio*, 494 U.S. 103, 110 S.Ct. 1691 (1990), and *New York v. Ferber*, 458 U.S. 757, 102 S. Ct. 3348 (1982), has held that victims of child pornography crimes necessarily suffer personal injury. Plaintiffs are such victims, and therefore, as a matter of law, have suffered personal injury.

27. The Plaintiffs each elect liquidated damages in the amount of \$150,000 and the cost of the action, including reasonable attorney's fees and other litigation costs reasonably incurred, prejudgment and post-judgment interest, and such other relief as the Court deems appropriate.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs each request judgment against the Defendant as follows:

28. Liquidated damages in the amount of \$150,000 each pursuant to 18 U.S.C. § 2255(a);

29. Reasonable attorney's fees pursuant to 18 U.S.C. § 2255(a);

30. Pre-judgment and post-judgment interest;

31. Such other preliminary and equitable relief as the Court determines to be appropriate pursuant to 18 U.S.C. § 2255(a);

32. Any relief within the Court's jurisdiction appropriate to the proof, whether or not demanded; and

33. Such other and further relief as the Court deems just and proper.

Dated this ____ day of _____, 2020.

By s/ _____
Attorney(s) for Plaintiff

Appendix Y: Sample Motions for Summary Judgment

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19		HONORABLE _____
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21		UNITED STATES DISTRICT COURT
22		DISTRICT OF _____
23		
	"AAA", AND "BBB"	Case No.:
	Plaintiffs,	PLAINTIFFS' MOTION FOR
	v.	PARTIAL SUMMARY JUDGMENT
	XXX,	NOTE ON MOTION CALENDAR:
	Defendant.	WITHOUT ORAL ARGUMENT
24	I. RELIEF REQUESTED AND PRELIMINARY STATEMENT	
25		
26	Plaintiffs AAA and BBB, file this motion under FRCP 56 for partial summary judgment	
27	against Defendant ("Defendant" or "XXX"). AAA and BBB each seek judgment for the	
28	statutory amount of \$150,000 plus their fees and costs under 18 U.S.C. § 2255 ("Masha's Law"	
29	or "Section 2255").	
	Plaintiff's Motion for Partial Summary Judgment - 1	

There should be no genuine dispute as to any material fact since BBB and AAA need only prove that:

1. XXX violated one of the child pornography statutes; and
2. Plaintiffs were XXX's victims.

In light of XXX's guilty plea and conviction, his stipulation to restitution to each of the plaintiffs herein and his actual payment of restitution to each, the provisions of 18 U.S.C. § 2252A and the jurisprudence, including the Supreme Court's decision in *Paroline v. United States*, 134 S.Ct. 1710 (2014), BBB and AAA can readily demonstrate both of these elements. Partial summary judgment should be granted to BBB and AAA under Masha's Law.

II. STATEMENT OF FACTS

**AAA AND BBB ARE BOTH VICTIMS OF CHILD SEXUAL EXPLOITATION CRIMES
WHOSE IMAGES ARE “KNOWN SERIES” OF CHILD PORNOGRAPHY**

AAA

AAA was sexually exploited when he was a minor child in order to produce child sex abuse images for consumers and collectors of child pornography such as the defendant in this case, Edward Charles XXX. The child pornography series featuring images of AAA's childhood sexual abuse is known as the _____ series. See Declaration of EXPERT WITNESS, Ex. _____. AAA's exploitation continues through worldwide distribution of his child sex abuse images; his exploitation is ongoing. As a result of the continued distribution and possession of his child sex abuse images by XXX and others, AAA has suffered personal injuries, including injuries to his privacy interests, to his reputation, and emotional and psychic injuries related to the distribution of the images of his abuse.

BBB

1 BBB was 11 years old when he was exploited by William Clyde Thompson, a pedophile
2 posing as a photographer who claimed that the photos were required to promote BBB's interests
3 in becoming a professional skateboarder. William Thompson was convicted of creating the
4 images and videos of BBB that are now circulated, traded and known as the
5 "_____ " series of child pornography. See Declaration of Expert Witness, Ex.
6 _____. The sexual abuse materials containing BBB's images continue to be actively traded
7 among pedophiles. BBB suffers personal injuries as a result of the trafficking in his child sexual
8 abuse images, including injuries to his privacy interests, to his reputation, and emotional and
9 psychic injuries related to the distribution of the images of his abuse.

10 **BBB AND AAA ARE VICTIMS OF DEFENDANT'S CHILD PORNOGRAPHY**
11 **CRIMES UNDER 18 U.S.C. SECTION 2252**
12

13 The defendant pled guilty to Receipt of Child Pornography in violation of 18 U.S.C. §
14 2252(a)(5)(B), (b)(2), as charged in Count two of the Information. *United States v. XXX*, Case
15 2:17-cr-00482-R Document 40.

16 The child pornography that the Defendant received included images of BBB and AAA,
17 nude and/or partially undressed, displaying their genitalia, engaging in sexual acts, and in
18 sexually suggestive poses.

19 XXX acknowledged that he possessed child pornography images of both AAA and BBB
20 in the Stipulation Regarding Restitution entered in the criminal matter, and by which XXX
21 agreed to pay \$2,500 each to AAA and BBB as restitution to each of them for his crimes against
22 them. *U.S. v. XXX*, Case 2:17-cr-00482-R Document 78.

23 The Court sentenced XXX to 100 months imprisonment and a lifetime of supervised
24 release, and ordered him to pay \$2,500 to each of plaintiffs as criminal restitution. *United States*
25 *v. XXX*, Case 2:17-cr-00482-R Document 76.

1 **AAA’S AND BBB’S RESTITUTION REQUESTS, THEIR PERSONAL INJURIES, AND**
2 **XXX’S ADMISSION THAT HE POSSESSED THE IMAGES OF PLAINTIFFS.**
3

4 Following defendant’s conviction, the Court considered requests by AAA and BBB for
5 mandatory restitution under the Mandatory Restitution for Sex Crimes section of the Violence
6 Against Women Act of 1994, 18 U.S.C. § 2259.

7 **AAA**

8 In support of his request for restitution, AAA stated that he had been sexually exploited
9 for the purpose of producing child pornography, the distribution of his child sex abuse images
10 continues, resulting in personal injury to him. AAA also presented a forensic psychological
11 report from Dr. Forensic Psychologist in support of his restitution request. Dr. Green described
12 the ongoing, traumatic injuries AAA suffered as a result of the trafficking of his child sex abuse
13 images. Ex. _____. AAA continues to be injured by his awareness and knowledge that XXX and
14 others continue to view images of AAA’s childhood sexual abuse. The personal injuries which
15 AAA suffers as a result of defendant’s criminal acts include violation of privacy interests, fear,
16 shame, humiliation, emotional and psychic pain, and injury to reputation and well-being.

17 **BBB**

18 In support of his request for restitution, BBB presented the Victim Impact Statement
19 (VIS) of his mother, together with reports of forensic psychological evaluation. The VIS and
20 forensic evaluation by Dr. Forensic Psychologist were submitted in support of BBB’s restitution
21 request. Forensic Psychologist, Ph.D. stated under oath that:

22 It is my professional opinion to a reasonable psychological certainty that the data is
23 sufficient both concerning BBB and generally based upon the experiences of other
24 survivors of child pornography crimes, to predict that BBB will more probably than not,
25 suffer psychologically and emotionally as a result of being a victim of the crimes related

1 to the distribution of his images and videos. Forensic Expert Aff. Ex. _____. The
2 personal injuries which BBB suffers as a result of defendant's criminal acts include
3 violation of privacy interests, fear, shame, humiliation, emotional and psychic pain, and
4 injury to reputation and well-being.

5 **BBB AND AAA ARE VICTIMS OF XXX'S CRIMES.**

6 The child pornography that the Defendant received included images of children,
7 including BBB and AAA, nude and/or partially undressed, displaying their genitalia, engaging in
8 sexual acts, and in sexually suggestive poses. XXX acknowledged that BBB and AAA were each
9 individuals harmed as a result of his crimes, and he paid each of them \$2,500.00 in restitution as
10 part of the Judgment and Sentence in the criminal matter. _____, Document ____.

11 Pursuant to 18 U.S.C. § 2252A(f), any person aggrieved by reason of the conduct
12 prohibited in Section 2252A(a) or (b) is entitled to "appropriate relief," including compensatory
13 and punitive damages, the costs of the action, and reasonable fees for attorneys and expert
14 witnesses.

15 Under 18 U.S.C. § 2252A BBB and AAA are entitled to, including without limitation,
16 damages of at least \$150,000, the costs of suit including a reasonable attorney's fee, prejudgment
17 and post-judgment interest, any other losses in an amount to be ascertained according to proof at
18 trial, and such other relief as the Court deems appropriate.

19 XXX was convicted under Section 2252A; AAA and BBB were victims of XXX's
20 offense, and XXX was part of the child pornography market which injured victims. Mr. XXX
21 was found guilty of receipt of pornographic images of AAA and BBB; (2) AAA and BBB are
22 'victims' of defendant's criminal offense within the meaning of the applicable criminal statute;

1 and (3) AAA and BBB have been damaged by the sexual exploitation they suffered as a result of
2 XXX's acknowledged receipt of their child pornography images.

3 **III. ARGUMENT**

4 **AAA AND BBB ARE ENTITLED TO PARTIAL SUMMARY JUDGMENT** 5 **UNDER MASHA'S LAW**

6
7
8 AAA and BBB have submitted sufficient evidence for the court to find XXX liable to them
9 under Masha's Law (18 U.S.C. § 2252A) and the Amy, Vicky and Andy Child Pornography
10 Assistance Act of 2018. There is no genuine dispute as to any material fact otherwise. XXX has
11 been convicted of receipt of images of their sexual abuse as children, and his victims have
12 suffered personal injury. Defendant is therefore liable for at least statutorily mandated minimum
13 damages of \$150,000 for each of them, together with reasonable attorney's fees and costs.

14 **A. The Summary Judgment Standard**

15 Summary judgment will be granted when "there is no genuine dispute as to any material
16 fact." Fed. R. Civ. Pro. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct.
17 2505, 91 L.Ed.2d 202 (1986). *Parapluiie, Inc. v. Mills*, 555 Fed.Appx. 679, 680 (9th Cir.
18 2014). Once the movant has met his initial burden of showing "an absence of evidence"
19 supporting the nonmoving party's case, the burden is on the nonmoving party to show with
20 "specific facts" that there is a genuine issue of fact suitable for trial. *Celotex Corp. v.*
21 *Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson*, 477 U.S. at 250,
22 106 S.Ct. 2505; *Parapluiie, Inc.*, 555 Fed. Appx. at 680.

23 **B. There is no genuine issue of material fact that would preclude the issuance of partial** 24 **summary judgment, and partial summary judgment should be awarded to AAA and** 25 **BBB.**

26
27 AAA and BBB have satisfied Masha's Law. That statute provides:

1 Any person who, while a minor, was a victim of a violation of section . . . 2252A . . . of
2 this title and who suffers personal injury as a result of such violation, regardless of
3 whether the injury occurred while such person was a minor, may sue in any appropriate
4 United States District Court....
5

6 18 U.S. C. § 2255. Under Section 2255, two elements must be shown: (1) the defendant violated
7 Section 2252A or other specified statute, and (2) the plaintiff was a victim of that violation and
8 suffered personal injury as a result. A defendant is liable regardless of whether the victim was an
9 adult when the injury occurred. 18 U.S. C. § 2255 Once liability is shown, the victim “shall
10 recover the actual damages such person sustains and the cost of the suit, including reasonable
11 attorney’s fee. Any person as described in the proceeding sentence shall be deemed to have
12 sustained damages of no less than \$150,000 in value.” *Id.* As detailed below, AAA and BBB
13 meet both elements.

14 **C. XXX Violated Section 2252A**

15 There is no question that XXX violated Section 2252A. He was convicted of receipt of
16 child pornography in violation of 18 U.S. C. § 2252A and in his restitution stipulation he
17 specifically acknowledged receiving images of both AAA and BBB .

18 **D. Courts and Congress have long recognized the unique injuries to victims of child**
19 **pornography crimes**
20

21 There is no question that AAA and BBB are victims of XXX’s violation of Section
22 2252A who suffered personal injury as a result of the offense. A “victim” is a “person harmed
23 by criminal acts.” Black’s Law Dictionary, <http://thelawdictionary.org/victim/>. See also *Boland*,
24 698 F.3d at 881 (children who were the subjects of the child sex abuse images were victims);
25 *United States v. Blinkinsop*, 606 F.3d 110, 117-18 (9th Cir. 2010) (“[T]he children depicted in the
26 pornography that [the defendant] received, viewed, stored, and transmitted are the real victims of
27 his crime.”). “[T]he fact of being a victim [of a child pornography crime] necessarily means that

1 she was injured.” *Doe v. Boland*, 698 F.3d 877, 881-82 (6th Cir. 2012), *cert. denied*, 133 S.Ct.
2 2825 (2013) (Masha’s Law case).

3 *Boland* is illustrative. There, the Sixth Circuit affirmed a defendant’s liability to his
4 victims under Masha’s Law where he created child pornography by digitally affixing the faces of
5 two children on adults performing sex acts. *Id.* The appellate court upheld an award to each
6 victim of statutory damages of \$150,000, even though there was no underlying sexual abuse of
7 the victims, the defendant had altered existing images to create child pornography, the victims
8 had no knowledge of the existence of those images, there was no showing that the images had
9 reached the internet, and there was no specific, direct evidence that the victims had suffered
10 personal injury. *Id.* See also 18 U.S.C. § 2259 (“Victim” is defined as “the individual harmed as
11 a result of a commission of a crime under this chapter....”). “There is no requirement that a
12 victim separately prove that he was personally injured....” *Boland*, 698 F.3d at 881.

13 The Supreme Court has repeatedly recognized the unique harms that victims of child
14 pornography crimes suffer. In *New York v. Ferber*, 458 U.S. 747 (1982) the Supreme Court first
15 considered the harms suffered by victims of child pornography crimes. In that case, the court
16 recognized the psychological, emotional and mental injuries suffered by victims of child
17 pornography. The court wrote, that the harm from trafficking abuse images of a child “poses an
18 even greater threat to the child victim than does sexual abuse or prostitution,” because the victim
19 must “go through life knowing that the recording is circulating within the mass distribution
20 system for child pornography.” *N.Y. v. Ferber* at 759.

21 In *Osborne v. Ohio*, 495 U.S. 103, 110 S. Ct. 1691, 109 L.Ed. 2d 98 (1990) the Supreme
22 Court was asked to evaluate the constitutionality of an Ohio statute prohibiting possession of
23 child pornography. The Supreme Court upheld the Ohio statute, and again recognized the

1 significant harms posed by “such materials, which permanently record the victim’s abuse and
2 thus may haunt him for years to come, and which available evidence suggests, may be used by
3 pedophiles to seduce other children.” (*Osborne v. Ohio*, at 103-104).

4 As the U.S. Supreme Court again acknowledged in *Paroline v. U.S.* 134 S.Ct. 1710
5 (2014), child pornography injures the victim’s reputation, emotional well-being and privacy,
6 inflicting personal injury on the victim, and that injury is ongoing. *Paroline*, 134 S.Ct.at [1726]
7 (“[T]he victim suffers continuing and grievous harm as a result of her knowledge that a large,
8 indeterminate number of individuals have viewed and will in the future view images of the
9 sexual abuse she endured.”); *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 249 (2002) (“[A]s
10 a permanent record of a child’s abuse, the continued circulation [of child pornography] itself
11 would harm the child who had participated. Like a defamatory statement, each new publication
12 of the speech would cause new injury to the child’s reputation and emotional well-being.”).

13 In *Paroline* the Supreme Court held that the victim, Amy, was harmed as a result of that
14 defendant’s offense, and suffered losses as a result of defendant Paroline’s possession of two
15 images of her child sexual abuse, even though she knew nothing about Paroline or his offense.

16 The cause of the victim’s general losses is the trade in her images. And Paroline is a part
17 of that cause, for he is one of those who viewed her images. While it is not possible to
18 identify a discrete, readily definable incremental loss he caused, it is indisputable that he
19 was a part of the overall phenomenon that caused her general losses. Just as it undermines
20 the purposes of tort law to turn away plaintiffs harmed by several wrongdoers, it would
21 undermine the remedial and penological purposes of §2259 to turn away victims in cases
22 like this.

23
24 *Paroline*, 134 S. Ct. at 1726.

25 Congress has repeatedly and unequivocally recognized and declared that individual child
26 pornography victims are harmed by the receipt, distribution or possession of child pornography.

27 *See, e.g.*, Congressional Findings regarding the Child Pornography Prevention Act of 1996,

1 Public Law 104–208, Section 121, Subsection 1; Hon. Christopher H. Smith, *Congressional*
2 *Record*, Extension of Remarks, p. E2494 (10-20-1992) (child pornography is an “affront to the
3 dignity and privacy of the child and the invasion of the child’s vulnerability.”).

4 In 2018, Congress made the following findings in passing the Amy, Vicky and Andy
5 Child Pornography Victims Assistance Act:

6 (1) The demand for child pornography harms children because it drives
7 production, which involves severe child sexual abuse and exploitation.

8 (2) The harms caused by child pornography begin, but do not end, with child sex
9 assault because child pornography is a permanent record of that abuse and
10 trafficking in those images compounds the harm to the child.

11 (3) In *Paroline v. United States* (2014), the Supreme Court recognized that “every
12 viewing of child pornography is a repetition of the victim’s abuse”.

13 (4) The American Professional Society on the Abuse of Children has stated that
14 for victims of child pornography, “the sexual abuse of the child, the
15 memorialization of that abuse which becomes child pornography, and its
16 subsequent distribution and viewing become psychologically intertwined and each
17 compound the harm suffered by the child-victim”.

18 (5) Victims suffer continuing and grievous harm as a result of knowing that a
19 large, indeterminate number of individuals have viewed and will in the future
20 view images of their childhood sexual abuse. Harms of this sort are a major
21 reason that child pornography is outlawed.

22 (6) The unlawful collective conduct of every individual who reproduces,
23 distributes, or possesses the images of a victim’s childhood sexual abuse plays a
24 part in sustaining and aggravating the harms to that individual victim.

25 (7) It is the intent of Congress that victims of child pornography be compensated
26 for the harms resulting from every perpetrator who contributes to their anguish.
27 Such an aggregate causation standard reflects the nature of child pornography and
28 the unique ways that it actually harms victims.

29 **E. Masha’s Law does not require plaintiffs to prove personal injuries; the statute**
30 **establishes minimum damages of \$150,000. XXX is liable to each of Plaintiffs for**
31 **\$150,000 plus attorneys’ fees and costs**
32

Once liability under Masha’s Law has been established, a victim “shall recover” his actual damages or “shall be deemed to have sustained damages of no less than \$150,000 in value.” In order to recover the “statutory minimum” of \$150,000, there is no need for a victim to prove any actual damages, and courts need not submit victims to so proving. *Boland*, 698 F.3d at [881-82].

The point of a minimum-damages requirement is to allow victims of child pornography to recover *without* having to endure potentially damaging damages hearings. Were it otherwise, a fresh damages hearing might inflict fresh wounds, *increasing* the child's suffering *and* increasing the compensatory damages to which she is entitled. "Congress could rationally conclude" that all children depicted in morphed pornography "are seriously injured and deserve a high threshold amount of damages." *Boland*, 630 F.3d at 498. Once a child has shown she was the victim of a sex crime, there is little point in forcing her to prove an amount of damages, only to have the court disregard that figure and award the statutory minimum.

Boland, 698 F.3d at 882. The Sixth Circuit noted the seriousness of Congress' intent to compensate victims through \$150,000 damage awards.

Congress has shown that it "means business" in addressing this problem by creating sizeable damages awards for victims of this conduct.

Boland, 630 F.3d at 884.

This Court should grant partial summary judgment to AAA and BBB in the amount of \$150,000 each plus his attorneys' fees and costs.

IV. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for partial summary judgment holding Defendant XXX liable to AAA and BBB under 18 U.S.C. § 2255 for \$150,000 each, plus attorneys' fees and costs.

Dated: June _____, 2019.

By: _____
Attorney for Petitioners

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

█████, a Minor, by and through Timothy
Marble, her Conservator,

Plaintiff,

v.

STEVEN DOUGLAS ROCKETT,

Defendant.

Case No. 3:16-cv-2171-AC

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Pursuant to FRCP 56(f)(2)

Oral Argument Requested

LR 7-1 CERTIFICATION

Counsel for Plaintiff █████ certifies that the opposing party is a prisoner not represented by counsel, and so conferral is not required.

MOTION

Plaintiff moves pursuant to FRCP 56 for summary judgment in her favor on her sole claim for relief because there is no genuine dispute as to any material fact since the defendant has been convicted of the predicate offense in *United States v. Steven Douglas Rockett*, Case No. 3:13-CR-00557-SI, and the evidence and █████'s undisputed testimony demonstrate that the

defendant's offense caused her personal injury in the form of mental anguish and emotional distress.

This motion is supported by the accompanying "Declaration of [REDACTED]" and "Declaration of Erin K. Olson" and its accompanying exhibits, as well as the evidence subject to judicial notice that is referenced herein.

REQUEST FOR JUDICIAL NOTICE

Pursuant to Rule 201 of the Federal Rules of Evidence, plaintiff requests that the court take judicial notice of the following documents filed in *United States v. Steven Douglas Rockett*, Case No. 3:13-CR-00557-SI:

- (1) Second Superseding Indictment (Dkt. #58);
- (2) Government's Trial Memorandum (Dkt. # 101);
- (3) Trial Exhibits Received:
 - (i) Pltf. Exh. 2 (Facebook Communications Defendant to [REDACTED]);
 - (ii) Pltf. Exh. 7 (Screen capture of Defendant's Facebook Messages to [REDACTED]);
 - (iii) Pltf. Exh. 24 (CARES NW Recording of interview with [REDACTED]);
 - (iv) Pltf. Exh. 26 (Certified copy of Judgment of Conviction, State v. Steven Douglas Rockett, Washington County Circuit Court Case No. C131929CR).
- (4) Transcripts of Trial Testimony:
 - (i) Matt Smith, Forest Grove Police, May 17, 2016 (9:45am-Noon), Dkt. #167;
 - (ii) Jennifer Wheeler, LPC, CARES Northwest, May 18, 2016, (1:03pm-3:40pm), Dkt. #168;

- (iii) ■■■, Mother of ■■■, May 20, 2016 (9:34am-10:12am), Dkt. #170;
- (iv) ■■■, May 20, 2016 (10:35am-11:18am), Dkt. #170;
- (5) Jury Verdict (Dkt. #137);
- (6) Government's Sentencing Memorandum (Dkt. #147)
- (8) Judgment of Conviction and Sentence (Dkt. #151).

It is well established that a federal district court can take judicial notice of its own records. *See Chandler v. United States*, 378 F.2d 906, 909 (9th Cir. 1967) (citations omitted) (proper for court to take judicial notice of judgment and commitment entered in earlier case in the same court). Pleadings and transcripts are proper subjects of judicial notice and therefore available to the court. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (a court may "take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue" (citations omitted)); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) (court may take judicial notice of "matters of public record.").

STATEMENT OF RELEVANT FACTS

(1) In 2013 when ■■■ was fourteen years old, Steven Douglas Rockett sent her messages using Facebook and asked her to send him some "high quality" photos of her that showed "how you have grown and changed since the last time we see [sic] you." Defendant insisted that the pictures be "good quality," "front and back," and "no shy." He instructed her to "stand back and hold the camera higher up and point it downwards to get full picture." When plaintiff responded in later conversations that she no longer had the cell phone defendant had purchased for her, defendant offered to replace it, but told plaintiff she would have to come over and "work for a replacement phone." *United States v. Rockett*, Testimony of Det. Matt Smith

(Dkt. #167), Testimony of Plaintiff (Dkt. #170); Pltf. Exhs. 2, 7, summarized in Government's Trial Memorandum p. 17 (Dkt. #101) and Government's Sentencing Memorandum, p. 4 (Dkt. #147). Plaintiff understood from her past experiences with defendant that she would have to engage in sex acts with him, and so she responded, "ill just go without one I don't want to do that stuff again. . . I have nightmares cus of it and I cry my self to sleep a lot sense then. . ." [sic]. *Id.*; Decl. of [REDACTED], ¶¶ 2-3.

(2) On March 11, 2015, in *State of Oregon v. Steven Douglas Rockett*, Washington County Case No. C131929CR, a criminal jury in Washington County, Oregon, convicted Steven Douglas Rockett of Sodomy in the Second Degree (two counts), Rape in the Second Degree (two counts), Sexual Abuse in the Second Degree (two counts), and Using a Child in a Display of Sexually Explicit Conduct (two counts) for criminal acts committed against [REDACTED] when she was under the age of 14. Decl. of Erin K. Olson, Exh. 1 (State Court Indictment), Exh. 2 (State Court Judgment of Conviction and Sentence); *United States v. Rockett*, Pltf. Exh. 26.

(3) On May 24, 2016, in *United States of America v. Steven Douglas Rockett*, D. Or. Case No. 3:13-cr-00557-SI, a federal criminal jury convicted Steven Douglas Rockett of Attempted Production of Child Pornography in violation of 18 U.S.C. § 2251(a) and (e) for his actions against [REDACTED] as described in paragraph (1). Decl. of Erin K. Olson, Exh. 3 (Second Superseding Indictment), Exh. 4 (Verdict), Exh. 5 (Judgment in a Criminal Case); *United States v. Rockett*, Dkt. #s 137 and 151.

(4) Defendant's actions caused plaintiff personal injury in the form of "anxiety, fear, and emotional pain." Decl. of [REDACTED], ¶ 4; *see also United States v. Rockett*, Pltf. Exh. 24 and Trial Testimony of [REDACTED] and [REDACTED] (Dkt. #170).

ARGUMENT

PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT UNDER MASHA’S LAW (18 U.S.C. § 2255)

A. Introduction.

Plaintiff is entitled to summary judgment on her sole claim for relief under Masha’s Law because defendant has been convicted of a predicate offense (18 U.S.C. § 2251(a) and (e)), and plaintiff suffered personal injury as a result of defendant’s commission of the predicate offense.

Having established the defendant’s liability for a violation of Masha’s Law, plaintiff is entitled to the statutorily-mandated minimum damages of \$150,000 together with attorney fees and costs. 18 U.S.C. § 2255(a).

B. The Summary Judgment Standard.

Summary judgment will be granted when the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

Once the movant has met her initial burden of showing “an absence of evidence” supporting the nonmoving party’s case, the burden is on the nonmoving party to show with “specific facts” that there is a genuine issue of fact suitable for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson*, 477 U.S. at 250.

If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must go beyond the pleadings and identify facts which show a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. at 324. A nonmoving party cannot defeat summary judgment by relying on the allegations in the complaint, or with unsupported conjecture or conclusory statements. *Hernandez v. Spacelabs Medical, Inc.*, 343 F.3d 1107, 1112 (9th Cir. 2003).

C. Masha's Law Overview.

Masha's Law provides in its entirety as follows:

- (a) In General.— Any person who, while a minor, was a victim of a violation of section 1589, 1590, 1591, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney's fee. Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than \$150,000 in value.
- (b) Statute of Limitations.— Any action commenced under this section shall be barred unless the complaint is filed within 10 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.

18 U.S.C. § 2255.

Masha's Law is named after Masha Allen, a Russian girl adopted at age five from a Russian orphanage by a wealthy Pittsburgh man who took sexually explicit photographs of her and widely distributed them online. See Marsh, James R., *Masha's Law: A Federal Civil Remedy for Child Pornography Victims*, 61 Syracuse L. Rev. 459, 460 (2011). Masha's Law was enacted in 2006 as part of the Adam Walsh Child Protection and Safety Act of 2006, and was an update to a 1986 law that provided for civil statutory damages of \$50,000 for victims of child sexual exploitation. *Id.* at 472. Masha's Law tripled the amount of the statutory damages to \$150,000, reflecting the fact that up until that time, the penalties for downloading child abuse images were less severe than the penalties for downloading unlicensed music files. *Id.* As noted in the testimony of one of the sponsors of Masha's Law:

Under current law, a victim of child exploitation is entitled to civil statutory damages in U.S. District Court in the amount of \$50,000 -- less than the civil penalty for illegally downloading music off the Internet. This penalty is far too low to effectively deter would-be child pornographers. This legislation increases the civil penalties recoverable by victims of child sexual exploitation, including internet child pornography, to at least \$150,000. This increased penalty will serve as a deterrent to those who disseminate and

possess child pornography, as well as a means of compensating victims of this terrible abuse. If someone downloads a song off the Internet, Federal copyright law provides for statutory damages to be awarded to the copyright holder in the amount of \$150,000. Downloading child pornography is far more detrimental to the victim than downloading copyrighted music and, as a result, the penalty should reflect that.

151 Cong. Rec. S14194 (daily ed. Dec. 20, 2005) (statement of Sen. John Kerry).

To establish liability under Masha's Law, a plaintiff must prove she was a victim of the defendant's violation of one of the specified federal criminal child pornography or child exploitation statutes,¹ and that she suffered personal injury as a result of the violation. 18 U.S.C. 2255(a).

C. There Are No Genuine Issues of Material Fact Since Defendant is Estopped from Relitigating Whether He Committed the Predicate Crime and Plaintiff Indisputably Suffered Personal Injury as a Result of the Crime.

(i) Plaintiff is a Victim of Defendant's Violation of 18 U.S.C. § 2251(a) and(e).

There is no question that defendant committed the crime of Attempted Production of Child Pornography in violation of 18 U.S.C. § 2251(a) and (e) for his actions against [REDACTED] because a federal jury found him guilty and a federal judge sentenced him to 15 years in prison for the crime. Decl. of Erin K. Olson, Exh. 3 (Second Superseding Indictment), Exh. 4 (Verdict), Exh. 5 (Judgment in a Criminal Case); *see also United States v. Rockett*, Dkt. #s 58, 137, & 151.

Defendant is estopped from relitigating the element of Masha's Law that is based upon his predicate offense, i.e. his violation of 18 U.S.C. § 2251(a) and (e), because a criminal conviction has preclusive effect in a later civil proceeding. *State Farm Fire & Cas. Co. v. Sallak*, 140 Or. App. 89, 94, 914 P.2d 697 (1996) (citing *United States v. Bejar-Matrecios*, 618 F.2d 81, 83 (9th Cir. 1980)); *see also State Farm Fire and Cas. Co. v. Reuter*, 299 Or. 155, 163, 700 P.2d 236, 241 (1985).

¹ A criminal conviction is not required. *E.g. Smith v. Husband*, 376 F. Supp. 2d 603, 613 (E.D. Va. 2005). *See also* Marsh, 61 Syracuse L. Rev. at 474-475 and n. 75.

(ii) Plaintiff Suffered Personal Injury as a Result of Defendant's Commission of a Predicate Offense.

Plaintiff acknowledges that a prior proceeding will preclude reconsideration of an issue "only as to those matters in issue or points controverted, upon determination of which the finding or verdict was rendered." *Sea-Land Serv. v. Gaudet*, 414 U.S. 573, 593, 39 L. Ed. 2d 9, 94 S. Ct. 806 (1974). Therefore, plaintiff must demonstrate that she suffered "personal injury" as a result of defendant's violation of 18 U.S.C. § 2251(a) and (3). She has done so by specifically attesting to suffering personal injury as a direct result of defendant's commission of the predicate offense. Decl. of [REDACTED], ¶ 4. Her statements are supported by the exchange of messages submitted at trial that referred to the nightmares and crying spells she still suffered as a result of his past abuse of her. *United States v. Rockett*, *United States v. Rockett*, Pltf. Exhs. 2, 7, 24 and Trial Transcript of Jennifer Wheeler, [REDACTED], and [REDACTED] (Dkt. #s 168 and 170).

While defendant argues in his Motion to Dismiss that he cannot be found liable under Masha's Law for an *attempted* violation of a predicate offense, he does not dispute that his violation of 18 U.S.C. § 2251(a) and (e) *is* a predicate offense for purposes of Masha's Law. Additionally, he ignores the context of his effort to obtain a sexually explicit photograph of the victim, which includes the rapes and other forcible sexual contact he perpetrated against her as a younger child, as well as his photographing some of those acts. Decl. of Erin K. Olson, Exh. 1 (State Court Indictment), Exh. 2 (State Court Judgment of Conviction and Sentence).

Doe v. Boland, 698 F.3d 877, 882 (6th Cir. 2012), *cert. denied*, 133 S.Ct. 2825 (2013), is illustrative of why no completed act of photography or distribution is necessary for liability under Masha's Law. Dean Boland was a technology expert retained by the defense as an expert witness in two state court criminal matters and a federal criminal case involving child pornography. To demonstrate that the defendants in the criminal cases may not have known they were viewing child pornography, Boland downloaded photographs of two children from a stock photography website

and digitally imposed the children's faces onto the bodies of adults performing sexual acts. *Id.* at 879. The children's parents found out about the digitally-created images, and sued Boland under Masha's Law. The district court granted summary judgment to the parents and awarded each of them \$150,000 in damages. On appeal, the Sixth Circuit affirmed the district court's ruling, even though there was no underlying sexual abuse of the victims, the victims had no knowledge of the existence of the images, there was no showing that the images had reached the internet, and there was no specific, direct evidence that the victims had suffered personal injury. *Id.* at 880-884.

In this case, there was prior sexual abuse of plaintiff by the defendant, and his previous crimes involved taking photographs of her while he sexually abused her. Defendant's request that plaintiff photograph herself triggered in plaintiff the fears defendant had instilled in her through his prior acts of abuse. This is more than enough "personal injury" to warrant relief under Masha's Law. *Id.*

(iii) Defendant is Liable to Plaintiff for \$150,000 Plus Attorney's Fees and Costs.

Once liability under Masha's Law has been established, a victim "shall recover" her actual damages or "shall be deemed to have sustained damages of no less than \$150,000 in value." 18 U.S.C. § 2255(a). Plaintiff has pled only the statutory minimum damages amount, so additional evidence is unnecessary.

In order to recover the "statutory minimum" of \$150,000, there is no need for a victim to prove any actual damages, and courts need not submit victims to so proving. *Boland*, 698 F.3d at 882-83. The point of a minimum-damages requirement is to allow victims of child pornography to recover *without* having to endure potentially damaging discovery² and damages hearings. Were it

² The harm the statutory minimum is intended to avoid is exemplified by the discovery requests defendant recently submitted to plaintiff in violation of Fed.R.Civ.P. 26 and LR 26-1 to 26-3. The numerous discovery demands include "Defendant's Deposition Upon Written Questions to Plaintiff" that lists 195 questions. A motion to address the rule breach and to seek a protective order is forthcoming.

otherwise, a fresh damages hearing might inflict fresh wounds, *increasing* the child's suffering *and* increasing the compensatory damages to which she is entitled. "Congress could rationally conclude" that all children depicted in morphed pornography "are seriously injured and deserve a high threshold amount of damages... Once a child has shown she was the victim of a sex crime, there is little point in forcing her to prove an amount of damages, only to have the court disregard that figure and award the statutory minimum. *Boland*, 698 F.3d at 882-83. The Sixth Circuit noted the seriousness of Congress' intent to compensate victims through \$150,000 damage awards -- Congress has shown that it "means business" in addressing this problem by creating sizeable damages awards for victims of this conduct. *Boland*, 630 F.3d at 885.

CONCLUSION

Plaintiff This Court should grant summary judgment to plaintiff and enter a money award in the amount of \$150,000 plus her attorney's reasonable fees and costs.

DATED this 15th day of May, 2017.

s/ Erin K. Olson

Erin K. Olson, OSB No. 934776

Attorney for Plaintiff [REDACTED]

Appendix Z: State Definitions of a Victim of Child Pornography Chart

State	Statute	Definition
Alabama	ALA. CODE §§ 13A-12-191, 13A-12-192, 13A-12-193	Any obscene matter containing a visual depiction of a person under the age of 17 years.
Alaska	ALASKA STAT. §§ 11.61.116, 11.61.124, 11.61.127	<p>A person commits the offense of sending an explicit image of a minor if the image was taken when that person was under 16 years of age.</p> <p>A person commits the offense of solicitation or production of child pornography if the person shown in the picture is, or the offender believes that the person is, under 16 years of age and at least four years younger than the offender.</p> <p>A person commits the offense of possession of child pornography knowing that the production of the material involved the use of a child under 18 years of age.</p>
Arizona	ARIZ. REV. STAT. ANN. § 13-3551	“Minor” means a person who was under 18 years of age at the time the visual depiction was created, adapted, or modified.
Arkansas	ARK. CODE ANN. § 5-27- 302	“Child” means any person under 18 years of age.
California	CAL. PENAL CODE § 311.1	Matter depicting a person under 18 years of age engaging in or simulating sexual conduct is child pornography.
Colorado	COLO. REV. STAT. §§ 18-6- 403, 18-7-101, 18-7-109	<p>“Child” means anyone who is less than 18 years of age.</p> <p>“Minor” means anyone under 18 years of age.</p> <p>A juvenile commits the offense of posting, possessing, or exchanging a private image if the image depicts a person who is at least 14 years of age or is less than four years younger than the juvenile.</p>
Connecticut	CONN. GEN. STAT. §§ 53a- 193, 53a-196, 531-196a, 53a- 196b	<p>“Minor” means any person less than 17 years old as it relates to a Class D felony for obscenity as to minors.</p> <p>“Minor” means any person less than 16 years old as it relates to a Class A felony for employing a minor in an obscene performance or a Class B felony for promoting a minor in an obscene performance.</p>
Delaware	DEL. CODE ANN. tit. 11, §§ 1100, 1108– 1111	<p>“Child” means any individual less than 18 years of age.</p> <p>“Child” means anyone intended by the defendant to appear to be 14 years of age or less for the purposes of the Class F felony of</p>

		possession of child pornography, the Class B felony of dealing in child pornography, or the Class B felony of sexual exploitation of a child.
District of Columbia	D.C. CODE § 22-3102	A minor is a person under 18 years of age for the purposes of prohibited acts involving sexual performance using minors.
Florida	FLA. STAT. § 847.001(3), (8)	Child pornography is any image depicting any person under the age of 18 years.
Georgia	GA. CODE ANN. §§ 16-12-100, 16-12-100.2	<p>“Minor” means an individual who is under the age of 18 years for the purpose of identifying a minor as the individual in an obscene depiction.</p> <p>For the crimes related to the sexual exploitation of children, including for the purpose of producing any visual medium depicting this, a minor is an individual under the age of 18 years.</p> <p>Under the “Computer or Electronic Pornography and Child Exploitation Act of 2007, a “child” means any person under the age of 16 years.</p>
Hawaii	HAW. REV. STAT. §§ 707-750, 707-751, 712-1215.5, 712-1215.6	<p>“Minor” means any person less than 18 years old for the crimes of promoting child abuse, including producing, disseminating, or possessing child pornography.</p> <p>“Minor” means any person under 18 years of age for promoting minor-produced sexual images.</p>
Idaho	IDAHO CODE § 18-1507	“Child” means a person who is less than 18 years of age.
Illinois	720 ILL. COMP. STAT. ANN. 5/11-20.1(a)–(c-5)	<p>Child pornography is any image that portrays any child whom the defendant knows or reasonably should know is under the age of 18 or any person with a severe intellectual disability if certain conditions are satisfied.</p> <p>If the child depicted is under the age of 13, there are harsher penalties available.</p>
Indiana	IND. CODE § 35-42-4-4	<p>Child pornography is an image that depicts sexual conduct by a child who is less than 18 years of age.</p> <p>There are distinct violations when the child is less than 12 years of age.</p>
Iowa	IOWA CODE § 728.1	“Minor” means any person under the age of 18.
Kansas	KAN. STAT. ANN. §§ 21-5510, 21-5514	<p>Possessing any depiction of a child under 18 years of age engaging in sexual conduct is child pornography.</p> <p>Aggravated internet trading in child pornography provisions apply when the child is under 14 years of age.</p>

Kentucky	KY. REV. STAT. ANN. §§ 531.310, 531.330	<p>It is a Class C felony if the minor used is less than 18 years old at the time the minor engages in the activity.</p> <p>It is a Class B felony if the minor used is less than 16 years old at the time the minor engages in the activity.</p> <p>It is a Class A felony if the minor incurs physical injury thereby.</p> <p>Any person who appears to be under the age of 18 or 16 shall be presumed to be under that respective age. The presumption may be rebutted by any competent evidence or that the defendant in good faith believed that the person was not a minor.</p>
Louisiana	LA. STAT. ANN. § 14:81.1(B)(8)	“Pornography involving juveniles” is defined as any reproduction of any sexual performance involving a child under the age of 17.
Maine	ME. STAT. tit. 17-A, §§ 284, 283	<p>A person is guilty of Class D possession of child pornography if the person depicted has not attained 16 years of age.</p> <p>A person is guilty of Class C dissemination of child pornography if the person depicted has not attained 16 years of age.</p> <p>A person is guilty of Class C possession of child pornography if the person depicted has not attained 12 years of age.</p> <p>A person is guilty of Class B dissemination of child pornography if the person depicted has not attained 12 years of age.</p>
Maryland	MD. CODE ANN., CRIM. LAW §§ 1-101(g), 11-207, 11-208	<p>Child pornography depicts an individual under the age of 18 years.</p> <p>There is a separate section defining a separate offense with penalties if the image is indistinguishable from an actual and identifiable child under the age of 16 years.</p>
Massachusetts	MASS. GEN. LAWS ch. 272, § 29A	A person is a child under 18 years of age.
Michigan	MICH. COMP. LAWS ANN. §§ 750.145c (1)(c), (7)	“Child” means a person who is less than 18 years of age, but an affirmative defense exists when the child is a person who is emancipated by law.
Minnesota	MINN. STAT. § 617.292	“Minor” means any person under the age of 18 years.
Mississippi	MISS. CODE ANN. § 97-5-31	“Child” means any individual who has not attained the age of 18 years.
Missouri	MO. REV. STAT. §§ 573.010(3), 573.010(9), 573.025,	“Child” means any person under the age of 14. This definition applies to the crime of promoting child pornography in the first degree.

	573.035, 573.037	“Minor” means any person less than 18 years of age. This definition applies to the crime of possession of child pornography. This also applies to the offense of promoting child pornography in the second degree.
Montana	MONT. CODE ANN. § 45-5- 625	There is no explicit definition for a victim of child pornography. However, all crimes involving sexual abuse of children are defined as involving a child under 16 years of age.
Nebraska	NEB. REV. STAT. § 28- 1463.02	Child means any person under the age of 18 years in the case of a participant in child pornography. Child means any person under the age of 16 years in the case of a portrayed observer.
Nevada	NEV. REV. STAT. § 200.730	Any visual representation depicting sexual conduct of a person under the age of 16 years.
New Hampshire	N.H. REV. STAT. ANN. § 649-A:2	“Child” means any person under the age of 18 years.
New Jersey	N.J. STAT. ANN. § 2C:24-4	“Child” means any person under 18 years of age.
New Mexico	N.M. STAT. ANN. § 30-6A- 2	Any visual depicting any prohibited sexual act if one or more of the participants in that act is a child under 18 years of age.
New York	N.Y. PENAL LAW §§ 263.00, 236.05, 263.15, 263.16	A person is guilty of possessing a sexual performance by a child when the child is less than 16 years of age. A person is guilty of the use of a child in a sexual performance if the child is less than 17 years of age. A person is guilty of promoting a sexual performance by a child when the child is less than 17 years of age.
North Carolina	N.C. GEN. STAT. § 14- 190.13(3), 14- 190.6	A minor is an individual who is less than 18 years old and is not married or judicially emancipated. Any person who uses a minor under the age of 16 years to do any offense under the statute that regulates child pornography crimes will be guilty of a Class I felony.
North Dakota	N.D. CENT. CODE § 12.1- 27.2-05	The statute does not contain an explicit definition of a victim of child pornography. However, an available affirmative defense is that the defendant reasonably believed in good faith that the person appearing in child pornography was 18 years of age or older, if the minor was in fact 15 years of age or older.

Ohio	OHIO REV. CODE ANN. § 2907.01	“Minor” means a person under the age of 18.
Oklahoma	OKLA. STAT. tit. 21, § 1024.1	“Child pornography” means any visual depiction involving a minor under the age of 18 years in any act with a person, other than his or her spouse.
Oregon	OR. REV. STAT. § 163.665	“Child” means a person who is less than 18 years of age at the time the original image in the visual recording was created.
Pennsylvania	18 PA. CONS. STAT. § 6312	Material depicting a child under the age of 18 years engaged in a sexual act constitutes child pornography.
Rhode Island	11 R.I. GEN. LAWS §§ 11-9- 1(b), 11-9-1.3	“Minor” means any person not having reached 18 years of age.
South Carolina	S.C. CODE ANN. § 16-15- 375	“Minor” means an individual who is less than 18 years old.
South Dakota	S.D. CODIFIED LAWS § 22- 24A-2	“Child” or “minor” is any person under the age of 18 years.
Tennessee	TENN. CODE ANN. § 39-17- 1002	“Minor” means any person who has not reached 18 years of age.
Texas	TEX. PENAL CODE ANN. § 43.26	Child pornography is material that visually depicts a child younger than 18 years of age at the time the image was made.
Utah	UTAH CODE ANN. § 76-5b- 103	“Minor” means a person younger than 18 years of age.
Vermont	VT. STAT. ANN. tit. 13, § 2821	“Child” means any person under the age of 16 years.
Virginia	VA. CODE ANN. § 18.2-374.1	A minor is a person less than 18 years of age. There is a separate structure for sentences based on whether the victim is less than 18 years of age or less than 15 years of age.
Washington	WASH. REV. CODE § 9.68A.011	“Minor” means any person under 18 years of age.
West Virginia	W. VA. CODE § 61-8C-1	“Minor” means any child under 18 years of age.
Wisconsin	WIS. STAT. § 948.01	“Child” means a person who has not attained the age of 18 years.
Wyoming	WYO. STAT. ANN. § 6-4-303	“Child” means a person under the age of 18 years.

Appendix AA: State Criminal Restitution Rules Chart

State	Statute	Description
Alabama	ALA. CODE §§ 15-18-67, 15-18-68	<p>When a defendant is convicted of a criminal activity or conduct which has resulted in pecuniary damages or loss to a victim, the court shall hold a hearing to determine the amount or type of restitution due the victim or victims of such defendant's criminal acts. Such restitution hearings shall be held as a matter of course and in addition to any other sentence which it may impose, the court shall order that the defendant make restitution or otherwise compensate such victim for any pecuniary damages.</p> <p>In determining the manner, method, or amount of restitution to be ordered, the court may take into consideration all of the following:</p> <ol style="list-style-type: none"> (1) The financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant. (2) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court. (3) The anticipated rehabilitative effect on the defendant regarding the manner of restitution or the method of payment. (4) Any burden or hardship upon the victim as a direct or indirect result of the defendant's criminal acts. (5) The mental, physical, and financial well-being of the victim.
Alaska	ALASKA STAT. §§ 12.55.045 (a), (g), (h)	<p>The court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law. The court shall, when presented with credible evidence, unless the victim expressly declines restitution, also order a defendant convicted of an offense to compensate a victim that is a nonprofit organization for the value of labor or goods provided by volunteers if the labor or goods were necessary to alleviate or mitigate the effects of the defendant's crime. In determining the amount and method of payment of restitution or compensation, the court shall take into account the</p> <ol style="list-style-type: none"> (1) public policy that favors requiring criminals to compensate for damages and injury, including loss of income, to their victims; and (2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.

		The court may not, in ordering the amount of restitution, consider the defendant's ability to pay restitution. In imposing restitution under this section, the court may require the defendant to make restitution by means other than the payment of money.
Arizona	ARIZ. REV. STAT. ANN. §§ 13-603, 13-804	<p>If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court and in the manner as determined by the court.</p> <p>On a defendant's conviction for an offense causing economic loss to any person, the court, in its sole discretion, may order that all or any portion of the fine imposed be allocated as restitution to be paid by the defendant to any person who suffered an economic loss caused by the defendant's conduct.</p>
Arkansas	ARK. CODE ANN. § 5-4-205(a)(1), (b)(2), (b)(3)	<p>A defendant who is found guilty or who enters a plea of guilty or nolo contendere to an offense may be ordered to pay restitution.</p> <p>When an offense has resulted in bodily injury to a victim, a restitution order entered under this section may require that the defendant:</p> <p>(A) Pay the cost of a necessary medical or related professional service or device relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing;</p> <p>(B) Pay the cost of necessary physical and occupational therapy and rehabilitation;</p> <p>(C)(i) Reimburse the victim for income lost by the victim as a result of the offense. (ii) The maximum recovery that a victim may recover for lost income is fifty thousand dollars (\$50,000); and</p> <p>(D) Pay an amount equal to the cost of a necessary funeral and related services in the case of an offense that resulted in bodily injury that also resulted in the death of a victim.</p> <p>When an offense has not resulted in bodily injury to a victim, a restitution order entered under this section may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.</p>
California	CAL. CONST. art. I, § 28(13); CAL. PENAL CODE § 294(a)	<p>It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.</p> <p>Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.</p>

		<p>All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.</p> <p>The defendant may be ordered to pay a restitution fine based on the defendant's ability to pay not to exceed five thousand dollars (\$5,000), upon a felony conviction, or one thousand dollars (\$1,000), upon a misdemeanor conviction.</p>
Colorado	COLO. REV. STAT. §§ 18-1.3-603(1), (2), (3)	<p>Every order of conviction of a felony, misdemeanor, or petty offense shall include consideration of restitution. The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims.</p> <p>Any order for restitution may be increased if additional victims or additional losses not known to the judge or the prosecutor at the time the order of restitution was entered are later discovered and the final amount of restitution due has not been set by the court; or decreased with the consent of the prosecuting attorney and the victim or victims to whom the restitution is owed; or if the defendant has otherwise compensated the victim or victims for the pecuniary losses suffered.</p>
Connecticut	CONN. GEN. STAT. § 53a-28(c)	<p>The court shall inquire on the record whether there are any requests by a victim for restitution, and if (1) a person is convicted of an offense that resulted in injury to another person or damage to or loss of property, (2) the victim requests financial restitution, and (3) the court finds that the victim has suffered injury or damage to or loss of property as a result of such offense, the court shall order the offender to make financial restitution under terms that it determines are appropriate.</p> <p>In determining the appropriate terms of financial restitution, the court shall consider: (A) The financial resources of the offender and the burden restitution will place on other obligations of the offender; (B) the offender's ability to pay based on installments or other conditions; (C) the rehabilitative effect on the offender of the payment of restitution and the method of payment; and (D) other circumstances, including the financial burden and impact on the victim, that the court determines make the terms of restitution appropriate.</p> <p>Restitution ordered by the court pursuant to this subsection shall be based on easily ascertainable damages for injury or loss of property, actual expenses incurred for treatment for injury to</p>

		<p>persons and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses, but may include the costs of counseling reasonably related to the offense.</p>
Delaware	<p>DEL. CODE ANN. tit. 11, §§ 9011, 9014, 9021</p>	<p>All persons, including nonresidents of Delaware, who are victims of crimes committed within the State of Delaware may apply for compensation pursuant to chapter 90 of title 11, Compensation for Innocent Victims of Crime.</p> <p>An award of compensation may be reduced by any payments received by the victim from the offender.</p> <p>Whenever any person is convicted of an offense and a payment of compensation is, or has been, made under the chapter 90 of title 11, Compensation for Innocent Victims of Crime, for a personal injury or death resulting from the act constituting such offense, the State may institute an action against such person for the recovery of the whole or any specified part of the compensation in any Superior Court within the State, or in any other court, either state or federal, if such court has custody or control of funds of the criminal or which may be awarded to the criminal.</p>
District of Columbia	<p>D.C. CODE § 16-711</p>	<p>In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.</p> <p>When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant's ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the defendant's ability to make restitution or reparation.</p> <p>The court shall fix the manner of performing restitution or reparation.</p>
Florida	<p>FLA. STAT. §§ 775.089(1) (a), (2)(a), (2)(b)</p>	<p>In addition to any punishment, the court shall order the defendant to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode.</p> <p>When an offense has resulted in bodily injury to a victim, a restitution order entered under subsection (1) shall require that the defendant:</p> <ol style="list-style-type: none"> 1. Pay the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and

		<p>psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing.</p> <p>2. Pay the cost of necessary physical and occupational therapy and rehabilitation.</p> <p>3. Reimburse the victim for income lost by the victim as a result of the offense.</p> <p>When an offense has not resulted in bodily injury to a victim, a restitution order may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.</p>
Georgia	GA. CODE ANN. §§ 17-14-3, 17-14-9, 17-14-10	<p>In addition to any other penalty imposed by law, a judge of any court of competent jurisdiction shall, in sentencing an offender, make a finding as to the amount of restitution due any victim, and order an offender to make full restitution to such victim. However, the amount of restitution ordered shall not exceed the victim's damages.</p> <p>In determining the nature and amount of restitution, the ordering authority shall consider:</p> <ol style="list-style-type: none"> (1) The financial resources and other assets of the offender or person ordered to pay restitution including whether any of the assets are jointly controlled; (2) The earnings and other income of the offender or person ordered to pay restitution; (3) Any financial obligations of the offender or person ordered to pay restitution, including obligations to dependents; (4) The amount of damages; (5) The goal of restitution to the victim and the goal of rehabilitation of the offender; (6) Any restitution previously made; (7) The period of time during which the restitution order will be in effect; and (8) Other factors which the ordering authority deems to be appropriate.
Hawaii	HAW. REV. STAT. § 706-646(1), (2), (3)	<p>The court shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victims as a result of the defendant's offense when requested by the victim. In ordering restitution, the court shall not consider the defendant's financial ability to make restitution in determining the amount of restitution to order. Restitution shall be a dollar amount that is sufficient to reimburse any victim fully for losses, including but not limited to: (a) Full value of stolen or damaged property, as determined by replacement costs of like property, or the actual or estimated cost of repair, if repair is possible; (b) Medical expenses; and (c) Funeral and burial expenses incurred as a result of the crime.</p>

Idaho	IDAHO CODE § 19-5304(2), (7), (11)	<p>Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim.</p> <p>The court, in determining whether to order restitution and the amount of such restitution, shall consider the amount of economic loss sustained by the victim as a result of the offense, the financial resources, needs and earning ability of the defendant, and such other factors as the court deems appropriate. The immediate inability to pay restitution by a defendant shall not be, in and of itself, a reason to not order restitution.</p> <p>An order of restitution shall not preclude the victim from seeking any other legal remedy.</p>
Illinois	730 ILL. COMP. STAT. 5/5-5- 6(g)	The court may order any person who is convicted of the crime of child pornography or who was charged with the crime of child pornography and which charge was reduced to another charge as a result of a plea agreement to meet all or any portion of the financial obligations of treatment, including but not limited to medical, psychiatric, or rehabilitative treatment or psychological counseling, prescribed for the victim or victims of the offense.
Indiana	IND. CODE § 35-50-5-3(a), (e)	<p>The court may order restitution to the victim of a crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:</p> <ol style="list-style-type: none"> (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate); (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime; (3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition; (4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and (5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime. <p>An order of restitution does not bar a civil action for: (1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court and (2) other damages suffered by the victim.</p>
Iowa	IOWA CODE § 910.2(1)	In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is

		rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities.
Kansas	KAN. STAT. ANN. § 22-3424(d)(1)	<p>In criminal cases, if the verdict or finding is guilty, upon request of the victim or the victim's family and before imposing sentence, the court shall hold a hearing to establish restitution.</p> <p>The court shall order a person convicted of commercial sexual exploitation of a child, K.S.A. 21-6422, and amendments thereto, to pay restitution to the victim of the offense for:</p> <p>(i) Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney's fees and costs; and</p> <p>(ii) an amount equal to three times the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:</p> <ul style="list-style-type: none"> (a) The gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity; (b) the amount the defendant contracted to pay the victim; or (c) the value of the victim's labor or services or sexual activity, calculated under the minimum wage and overtime provisions of the federal fair labor standards act, 29 U.S.C. § 201 <i>et seq.</i>, or under K.S.A. 44-1203, and amendments thereto, whichever is higher, even if the provisions do not apply to the victim's labor or services or sexual activity.
Kentucky	KY. REV. STAT. ANN. § 532.032	If pretrial diversion is granted, restitution shall be a part of the diversion agreement. If probation, shock probation, conditional discharge, or other alternative sentence is granted, restitution shall be a condition of the sentence. If a person is sentenced to incarceration and paroled, restitution shall be made a condition of parole.
Louisiana	LA. CODE CRIM. PROC. ANN. art. 883.2(A)	In all cases in which the court finds an actual pecuniary loss to a victim, or in any case where the court finds that costs have been incurred by the victim in connection with a criminal prosecution, the trial court shall order the defendant to provide restitution to the victim as a part of any sentence that the court shall impose.
Maine	ME. STAT. tit. 17-A, §§ 2003, 2005	The court shall, whenever practicable, inquire of a prosecutor, law enforcement officer or victim with respect to the extent of the victim's financial loss and shall order restitution when appropriate. The order for restitution must designate the amount of restitution to be paid and the person or persons to whom the restitution must be paid.

		<p>Restitution may be authorized, in whole or in part, as compensation for economic loss. In determining the amount of restitution authorized, the following must be considered:</p> <p>A. The contributory misconduct of the victim;</p> <p>B. Failure to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time; and</p> <p>C. The present and future financial capacity of the offender to pay restitution.</p>
Maryland	MD. CODE ANN., CRIM. PROC. § 11-603(a)	<p>A court may enter a judgment of restitution that orders a defendant to make restitution in addition to any other penalty for the commission of a crime or delinquent act, if as a direct result of the crime or delinquent act, the victim suffered: (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses; (ii) direct out-of-pocket loss; (iii) loss of earnings; or (iv) expenses incurred with rehabilitation.</p>
Massachusetts	MASS. GEN. LAWS ch. 258B, § 3(o)	<p>Victims have the right to request that restitution be an element of the final disposition of a criminal case and to obtain assistance from the prosecutor in the documentation of the victim's losses. If restitution is ordered as part of a case disposition, the victim has the right to receive from the probation department a copy of the schedule of restitution payments and the name and telephone number of the probation officer or other official who is responsible for supervising the defendant's payments. If the offender seeks to modify the restitution order, the offender's supervising probation officer shall provide notice to the victim and the victim shall have the right to be heard at any hearing relative to the proposed modification.</p>
Michigan	MICH. CONST. art. I, § 24; MICH. COMP. LAWS §§ 769.1a(2), (4)	<p>Crime victims, as defined by law, shall have the right to restitution, as provided by law.</p> <p>When sentencing a defendant convicted of a felony, misdemeanor, or ordinance violation, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate.</p> <p>If a felony, misdemeanor, or ordinance violation results in physical or psychological injury to a victim, the order of restitution may require that the defendant do 1 or more of the following, as applicable:</p> <p>(a) Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care.</p>

		<p>(b) Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation.</p> <p>(c) Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the felony, misdemeanor, or ordinance violation.</p> <p>(d) Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family that has been incurred as a result of the felony, misdemeanor, or ordinance violation.</p> <p>(e) Pay an amount equal to the cost of actual homemaking and child care expenses incurred as a result of the felony, misdemeanor, or ordinance violation.</p>
Minnesota	MINN. STAT. §§ 609.10 (a)(5), 611A.04(a)	<p>Upon conviction of a felony and compliance with the other provisions of this chapter the court, if it imposes sentence, may sentence the defendant to the extent authorized by law to payment of court-ordered restitution in addition to either imprisonment or payment of a fine, or both.</p> <p>A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge against the offender if the offender is convicted. The court, or a person or agency designated by the court, shall request information from the victim to determine the amount of restitution owed. The court or its designee shall obtain the information from the victim in affidavit form or by other competent evidence. Information submitted relating to restitution must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts, if restitution is in the form of money or property. A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 to the child's parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim's right to obtain court-ordered restitution under this section. In order to be considered at the sentencing or dispositional hearing, all information regarding restitution must be received by the court administrator of the appropriate court at least three business days before the sentencing or dispositional hearing. The court administrator shall provide copies of this request to the prosecutor and the offender or the offender's attorney at least 24 hours before the sentencing or dispositional hearing. The issue of restitution is reserved or the sentencing or dispositional hearing or hearing on the restitution request may be continued if the victim's affidavit or other competent evidence submitted by the victim is not received in time.</p>

Mississippi	MISS. CODE ANN. §§ 99-37-3(1), (2)	<p>When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim; provided, however, that the justice court shall not order restitution in an amount exceeding Five Thousand Dollars (\$5,000.00).</p> <p>In determining whether to order restitution which may be complete, partial or nominal, the court shall take into account:</p> <p>(a) The financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant;</p> <p>(b) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; and</p> <p>(c) The rehabilitative effect on the defendant of the payment of restitution and the method of payment.</p>
Missouri	MO. CONST. art. I, § 32(4)	Crime victims, as defined by law, shall have the right to restitution, which shall be enforceable in the same manner as any other civil cause of action, or as otherwise provided by law.
Montana	MONT. CODE ANN. §§ 46-18-201(5), 46-18-241(1)	<p>In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim whether or not any part of the sentence is deferred or suspended.</p> <p>A sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained pecuniary loss, including a person suffering an economic loss.</p>
Nebraska	NEB. REV. STAT. §§ 29-2280, 29-2281	<p>A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. With the consent of the parties, the court may order restitution for the actual physical injury or property damage or loss sustained by the victim of an uncharged offense or an offense dismissed pursuant to plea negotiations. Whenever the court believes that restitution may be a proper sentence or the victim of any offense or the prosecuting attorney requests, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the actual damages sustained by the victim.</p> <p>To determine the amount of restitution, the court may hold a hearing at the time of sentencing. The amount of restitution shall be based on the actual damages sustained by the victim and shall be supported by evidence which shall become a part of the court</p>

		record. The court shall consider the defendant's earning ability, employment status, financial resources, and family or other legal obligations and shall balance such considerations against the obligation to the victim. In considering the earning ability of a defendant who is sentenced to imprisonment, the court may receive evidence of money anticipated to be earned by the defendant during incarceration.
Nevada	NEV. REV. STAT. § 176.033(1)(c)	If restitution is appropriate and if a sentence of imprisonment is required or permitted by statute, the court shall set an amount of restitution for each victim of the offense.
New Hampshire	N.H. REV. STAT. ANN. §§ 651:63(I), (III), (IV)	<p>Any offender may be sentenced to make restitution in an amount determined by the court. In any case in which restitution is not ordered, the court shall state its reasons therefor on the record or in its sentencing order. Restitution may be ordered regardless of the offender's ability to pay and regardless of the availability of other compensation; however, restitution is not intended to compensate the victim more than once for the same injury. A restitution order is not a civil judgment.</p> <p>The making of a restitution order shall not affect the right of a victim to compensation under RSA 21-M:8-h, except to the extent that restitution is actually collected pursuant to the order.</p> <p>The court's determination of the amount of restitution shall not be admissible as evidence in a civil action. The court shall reduce any civil damage awards by restitution ordered and paid to the victim. Restitution orders shall survive bankruptcy.</p>
New Jersey	N.J. STAT. ANN. §§ 2C:44-2(a), (c)(2)	<p>The court shall sentence a defendant to pay restitution in addition to a sentence of imprisonment or probation that may be imposed if: (1) The victim suffered a loss; and (2) The defendant is able to pay or, given a fair opportunity, will be able to pay restitution.</p> <p>In determining the amount and method of payment of restitution, the court shall take into account all financial resources of the defendant, including the defendant's likely future earnings, and shall set the amount of restitution so as to provide the victim with the fullest compensation for loss that is consistent with the defendant's ability to pay.</p>
New Mexico	N.M. STAT. ANN. § 31-17-1	If the trial court suspends or defers the offender's sentence, the court shall require as a condition of probation or parole that the defendant, in cooperation with the probation or parole officer assigned to the defendant, promptly prepare a plan of restitution, including a specific amount of restitution to each victim and a schedule of restitution payments.
New York	N.Y. PENAL LAW § 60.27	The court shall consider restitution or reparation to the victim of the crime and may require restitution or reparation as part of the

		<p>sentence imposed upon a person convicted of an offense, and after providing the district attorney with an opportunity to be heard in accordance with the provisions of this subdivision, require the defendant to make restitution of the fruits of his or her offense or reparation for the actual out-of-pocket loss caused thereby.</p>
North Carolina	<p>N.C. GEN. STAT. §§ 15A-1340.34, 15A-1340.35, 15A-1340.36</p>	<p>When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term “victim” means a person directly and proximately harmed as a result of the defendant's commission of the criminal offense. If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.</p> <p>In determining the amount of restitution to be made, the court shall take into consideration the resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay. If the court orders partial restitution, the court shall state on the record the reasons for such an order.</p> <p>In determining the amount of restitution in the case of an offense resulting in bodily injury to a victim, the court shall consider the following: the cost of necessary medical and related professional services and devices or equipment relating to physical, psychiatric, and psychological care required by the victim; the cost of necessary physical and occupational therapy and rehabilitation required by the victim; and income lost by the victim as a result of the offense.</p>
North Dakota	<p>N.D. CENT. CODE § 12.1-32-08</p>	<p>The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court.</p>

		<p>In determining the amount of restitution, the court shall take into account:</p> <ul style="list-style-type: none"> a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of child pornography. b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property. c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered. <p>The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay.</p>
Ohio	OHIO REV. CODE ANN. § 2929.18	<p>Financial sanctions that may be imposed pursuant to this section for felony sentencing includes restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.</p>
Oklahoma	OKLA. STAT. tit. 22, § 991f	<p>Upon conviction for any crime wherein the crime victim suffered injury, loss of income, or out-of-pocket loss, the individuals criminally responsible shall be sentenced to make restitution.</p>

		<p>Restitution may be ordered in addition to the punishments prescribed by law.</p> <p>“Restitution” means the sum to be paid by the defendant to the victim of the criminal act to compensate that victim for up to three times the amount of the economic loss suffered as a direct result of the criminal act of the defendant.</p> <p>The court shall order full restitution based upon the following considerations: a. the nature and amount of restitution shall be sufficient to restore the crime victim to the equivalent economic status existing prior to the losses sustained as a direct result of the crime, and may allow the crime victim to receive payment in excess of the losses sustained; provided, the excess amount of restitution shall not be more than treble the actual economic loss incurred, and b. the amount of restitution shall be established regardless of the financial resources of the offender.</p>
Oregon	OR. REV. STAT. § 137.106(1)(a)	<p>When a person is convicted of a crime, or a violation as described in ORS 153.008, that has resulted in economic damages, the district attorney shall investigate and present to the court, at the time of sentencing or within 90 days after entry of the judgment, evidence of the nature and amount of the damages. The court may extend the time by which the presentation must be made for good cause. If the court finds from the evidence presented that a victim suffered economic damages, in addition to any other sanction it may impose, the court shall enter a judgment or supplemental judgment requiring that the defendant pay the victim restitution in a specific amount that equals the full amount of the victim's economic damages as determined by the court.</p>
Pennsylvania	PA. R. CRIM. P. 705.1(A); 18 PA. CONS. STAT. §§ 1106(a)(2), (c)(1)(i), (c)(2), (g)	<p>At the time of sentencing, the judge shall determine what restitution, if any, shall be imposed.</p> <p>Upon conviction for any crime wherein the victim, if an individual, suffered personal injury directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.</p> <p>The court shall order full restitution regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss. The court shall not reduce a restitution award by any amount that the victim has received from the Crime Victim's Compensation Board or other government agency but shall order the defendant to pay any restitution ordered for loss previously compensated by the board to the Crime Victim's Compensation Fund or other designated account when the claim involves a government agency in addition to or in</p>

		<p>place of the board. The court shall not reduce a restitution award by any amount that the victim has received from an insurance company but shall order the defendant to pay any restitution ordered for loss previously compensated by an insurance company to the insurance company.</p> <p>In determining the amount and method of restitution, the court shall consider the extent of injury suffered by the victim, the victim's request for restitution as presented to the district attorney and such other matters as it deems appropriate.</p> <p>No judgment or order of restitution shall debar the victim, by appropriate action, to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment.</p>
Rhode Island	12 R.I. GEN. LAWS § 12-19-32	In addition to or in lieu of any non-mandatory sanction imposed as part of a sentence or as a condition of probation, a judge at the time of sentencing may order restitution which may be in the form of monetary payment or some type of community restitution.
South Carolina	S.C. CODE ANN. § 17-25-322	<p>When a defendant is convicted of a crime which has resulted in pecuniary damages or loss to a victim, the court must hold a hearing to determine the amount of restitution due the victim or victims of the defendant's criminal acts. The restitution hearings must be held unless the defendant in open court agrees to the amount due, and in addition to any other sentence which it may impose, the court shall order the defendant make restitution or compensate the victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the victim's legal representative as well as the Attorney General and the solicitor have the right to be present and be heard upon the issue of restitution at any of these hearings.</p> <p>In determining the manner, method, or amount of restitution to be ordered, the court may take into consideration the following:</p> <ol style="list-style-type: none"> (1) the financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant; (2) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; (3) the anticipated rehabilitative effect on the defendant regarding the manner of restitution or the method of payment; (4) any burden or hardship upon the victim as a direct or indirect result of the defendant's criminal acts; (5) the mental, physical, and financial well-being of the victim.
South Dakota	S.D. CODIFIED LAWS §§ 23A-	It is the policy of this state that restitution shall be made by each violator of the criminal laws to the victims of the violator's criminal

	28-1, 23A-28-3, 23A-28-5	<p>activities to the extent that the violator is reasonably able to do so. An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.</p> <p>If the sentencing court orders the defendant to the county jail, suspended imposition of sentence, suspended sentence, or probation, the court may require as a condition that the defendant, in cooperation with the court services officer assigned to the defendant, promptly prepare a plan of restitution, including the name and address of each victim, a specific amount of restitution to each victim, and a schedule of restitution payments.</p> <p>The court services officer when assisting the defendant in preparing the plan of restitution and the court before approving or modifying the plan of restitution shall consider the physical and mental health and condition of the defendant, the defendant's age, the defendant's education, the defendant's employment circumstances, the defendant's potential for employment and vocational training, the defendant's family circumstances, the defendant's financial condition, the number of victims, the pecuniary damages of each victim, what plan of restitution will most effectively aid the rehabilitation of the defendant, and each victim, and such other factors as may be appropriate.</p>
Tennessee	TENN. CODE ANN. §§ 39-11-118, 40-35-304	<p>It is a part of the punishment for the offense of sexual exploitation against minors that the defendant be sentenced by the court to pay restitution to the victim or victims.</p> <p>In determining the amount and method of payment or other restitution, the court shall consider the financial resources and future ability of the defendant to pay or perform.</p>
Texas	TEX. CODE CRIM. PROC. ANN. art. 42.037(r)	Restitution may be ordered in the amount equal to the expenses incurred by the individual as a result of the offense, including: (1) medical services relating to physical, psychiatric, or psychological care; (2) physical and occupational therapy or rehabilitation; (3) necessary transportation, temporary housing, and child care expenses; (4) lost income; and (5) attorney's fees.
Utah	UTAH CODE ANN. §§ 77-38a-301, 77-38a-302(1), 77-38a-302(5)(b)	<p>In a criminal action, the court may require a defendant who enters into a plea disposition or is convicted to make restitution.</p> <p>When a defendant enters into a plea disposition or is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence or term of a plea in abeyance it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the</p>

		<p>defendant has agreed to make restitution as part of a plea disposition.</p> <p>In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:</p> <ul style="list-style-type: none"> (i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense; (ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment; (iii) the cost of necessary physical and occupational therapy and rehabilitation; (iv) the income lost by the victim as a result of the offense; and (vi) the cost of necessary funeral and related services if the offense resulted in the death of a victim.
Vermont	VT. STAT. ANN. tit. 13, §§ 7043(a)(1), (c)(1), (g)(2)(A)	<p>Restitution shall be considered in every case in which a victim of a crime has suffered uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.</p> <p>Unless the amount of restitution is agreed to by the parties at the time of sentencing, the court shall set the matter for a restitution hearing.</p> <p>If restitution was not requested at the time of sentencing as the result of an error by the State, or if expenses arose after the entry of a restitution order, the victim may request restitution payable from the Restitution Fund. Restitution paid under this subdivision shall be payable from the Restitution Fund and shall not be payable by the offender. If the restitution is for expenses that arose after the entry of a restitution order, the restitution shall be capped at \$1,000.00.</p>
Virginia	VA. CODE ANN. §§ 19.2-305, 19.2-305.1	<p>Any person who commits, and is convicted of, a crime of child pornography shall make at least partial restitution for any property damage or loss caused by the crime or for any medical expenses or expenses directly related to funeral or burial incurred by the victim or his estate as a result of the crime.</p> <p>A defendant placed on probation following conviction may be required to make at least partial restitution or reparation to the aggrieved party or parties for damages or loss caused by the offense for which conviction was had.</p>
Washington	WASH. REV. CODE § 9.94A.753	Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such

		<p>circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.</p>
West Virginia	W. VA. CODE §§ 61-8C-4, 61-11A-4	<p>The court may order any person convicted under the provisions of this article to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the minor resulting from the act or acts for which the person is convicted, whether or not the minor is considered to have sustained bodily injury.</p> <p>The court, when sentencing a defendant convicted of a felony or misdemeanor causing physical, psychological or economic injury or loss to a victim, shall order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense, unless the court finds restitution to be wholly or partially impractical.</p> <p>In the case of an offense resulting in bodily injury to a victim:</p> <p>(A) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;</p> <p>(B) Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and</p> <p>(C) Reimburse the victim for income lost by the victim as a result of the offense.</p>
Wisconsin	WIS. STAT. §§ 973.20(3), (4m)	<p>If a crime considered at sentencing resulted in bodily injury, the restitution order may require that the defendant do one or more of the following:</p> <p>(a) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric and psychological care and treatment.</p> <p>(b) Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation.</p> <p>(c) Reimburse the injured person for income lost as a result of a crime considered at sentencing.</p> <p>(d) If the injured person's sole employment at the time of the injury was performing the duties of a homemaker, pay an amount sufficient to ensure that the duties are continued until the person is able to resume performance of the duties.</p> <p>If the defendant committed the crime of child pornography, if the court finds that the crime was sexually motivated, as defined in</p>

		<p>s. 980.01(5), and the above paragraph does not apply, the restitution order may require that the defendant pay an amount, not to exceed \$10,000, equal to the cost of necessary professional services relating to psychiatric and psychological care and treatment. The \$10,000 limit under this subsection does not apply to the amount of any restitution ordered in the paragraphs above and below for the cost of necessary professional services relating to psychiatric and psychological care and treatment.</p> <p>In any case, the restitution order may require that the defendant do one or more of the following:</p> <p>(a) Pay all special damages, but not general damages, substantiated by evidence in the record, which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing.</p> <p>(b) Pay an amount equal to the income lost, and reasonable out-of-pocket expenses incurred, by the person against whom a crime considered at sentencing was committed resulting from the filing of charges or cooperating in the investigation and prosecution of the crime.</p> <p>(c) Reimburse any person or agency for amounts paid as rewards for information leading to the apprehension or successful prosecution of the defendant for a crime for which the defendant was convicted or to the apprehension or prosecution of the defendant for a read-in crime.</p> <p>(d) If justice so requires, reimburse any insurer, surety or other person who has compensated a victim for a loss otherwise compensable under this section.</p>
Wyoming	WYO. STAT. ANN. §§ 7-9-102, 7-9-103, 7-9-106, 7-9-114	<p>In addition to any other punishment prescribed by law the court shall, upon conviction for any misdemeanor or felony, order a defendant to pay restitution to each victim unless the court specifically finds that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay.</p> <p>In determining the amount of restitution, the court shall consider and include as a special finding, each victim's reasonably foreseeable actual pecuniary damage that will result in the future as a result of the defendant's criminal activity.</p> <p>The probation and parole officer or other person directed by the court when assisting the defendant in preparing the plan of restitution, and the court before approving or modifying the plan of restitution, shall consider:</p> <p>(i) The number of victims;</p>

		<p>(ii) The pecuniary damages of each victim including, if applicable, the long-term physical health care cost of the victim;</p> <p>(iii) The defendant's: (A) Physical and mental health and condition; (B) Age; (C) Education; (D) Employment circumstances; (E) Potential for employment and vocational training; (F) Family circumstances; and (G) Financial condition and whether the defendant has an ability to pay or whether a reasonable probability exists that the defendant will have an ability to pay.</p> <p>(iv) Whether compensation has been paid to any victim under the Crime Victims Compensation Act [§§ 1-40-101 through 1-40-119];</p> <p>(v) What plan of restitution will most effectively aid the rehabilitation of the defendant; and</p> <p>(vi) Other appropriate factors.</p> <p>In determining the amount of restitution to be ordered for long-term physical health care, the court shall consider the factors stated above together with an estimated monthly cost of long-term physical health care of the victim provided by the victim or his representative.</p>
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Appendix BB: Civil Remedy for Child Pornography Chart

State	Statute	Description
Alabama	N/A	
Alaska	ALASKA STAT. § 09.55.650	A person who, as a minor under age 16, was the victim of sexual abuse may maintain an action for recovery of damages against the perpetrator of the act based on the perpetrator's intentional conduct for an injury or condition suffered as a result of the sexual abuse. "Sexual abuse" encompasses unlawful exploitation of a minor, which in turn encompasses producing certain forms of child pornography (<i>see</i> ALASKA STAT. § 11.41.455).
Arizona	N/A	
Arkansas	N/A	
California	N/A	
Colorado	N/A	
Connecticut	N/A	
Delaware	N/A	
District of Columbia	N/A	
Florida	FLA. STAT. § 847.01357	Allows any person who was a victim of a child pornography crime while under the age of 18 and suffered "personal or psychological injury" as a result to bring a civil action against the perpetrator, even if the victim is now an adult. A prevailing plaintiff is entitled to recover actual damages plus the costs of the lawsuit, including reasonable attorney's fees. Any victim who is awarded damages is deemed to have sustained damages of at least \$150,000.
Georgia	N/A	
Hawaii	N/A	
Idaho	N/A	
Illinois	N/A	
Indiana	N/A	
Iowa	N/A	
Kansas	KAN. STAT. ANN. § 60-5001	Allows any person who was a victim of a child pornography crime while under the age of 18 and suffered "personal or psychological injury" as a result to bring a civil action against the perpetrator. A prevailing plaintiff is entitled to recover actual damages plus the costs of the lawsuit, including reasonable attorney's fees. Any victim who is awarded damages is deemed to have sustained damages of at least \$150,000.
Kentucky	N/A	
Louisiana	N/A	
Maine	N/A	
Maryland	N/A	
Massachusetts	MASS. GEN. LAWS ch. 265, § 50	A victim subjected to the production of unlawful pornography may bring an action in tort "in the superior court in any county wherein

		a violation . . . occurred, where the plaintiff resides or where the defendant resides or has a place of business.”
Michigan	N/A	
Minnesota	MINN. STAT. § 617.245	A cause of action exists for injury caused by the use of a minor in a sexual performance. The cause of action exists against a person who “promotes, employs, uses, or permits a minor to engage or assist others to engage in posing or modeling alone or with others in a sexual performance, if the person knows or has reason to know that the conduct intended is a sexual performance.” This person is liable to the minor for damages.
Mississippi	N/A	
Missouri	MO. REV. STAT. § 537.047	Any person who, while a child or minor, was a victim of child pornography and who suffers physical or psychological injury or illness as a result is entitled to bring a civil action to recover the actual damages sustained as a result of the violation. The victim is also entitled to recover the costs of the civil action and reasonable fees for attorneys and expert witnesses.
Montana	MONT. CODE ANN. § 27-2- 216	A victim of “childhood sexual abuse,” which includes victims of child pornography, can bring a tort action for recovery of damages for injury suffered as a result.
Nebraska	NEB. REV. STAT. § 25- 21,292	“Any participant or portrayed observer in a visual depiction of sexually explicit conduct” who suffered personal or psychological injury as a result may bring a civil action against any person who knowingly and willfully (a) created, distributed, or actively acquired such visual depiction while in the state or (b) aided or assisted with the creation, distribution, or active acquisition of such visual depiction while such person or the person who aided or assisted was in the state.
Nevada	NEV. REV. STAT. § 41.1396	Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully promoted, possessed, or used the internet to control the presentation. A plaintiff who prevails in an action may recover actual damages, which shall be deemed to be at least \$150,000, plus attorney's fees and costs.
New Hampshire	N.H. REV. STAT. ANN. § 633:11	A victim who was compelled to perform a “sexually-explicit performance,” which includes photographs or videotapes “involving one or more sex acts,” may bring a civil action against a person that commits the offense for damages, injunctive relief, or other appropriate relief if the compulsion was accomplished by one of a variety of specified means.
New Jersey	N.J. STAT. ANN. § 2A:30B-3	A child can bring a civil action against a person who commits one or more of a variety of child pornography acts. If the plaintiff prevails, the court must award recovery of “three times the amount of damages consisting of financial gains to the defendant resulting

		from the [proscribed] conduct . . . together with full costs and reasonable attorney’s fees.”
New Mexico	N/A	
New York	N/A	
North Carolina	N.C. GEN. STAT. § 14-190.5A	In addition to any other remedies at law or in equity, including an order by the court to destroy any image disclosed in violation of this section, any person whose private image is disclosed or used in the manner described has a civil cause of action against any person who discloses or uses the image and is entitled to recover from the other person any of the following: (1) actual damages, but not less than liquidated damages, to be computed at the rate of one thousand dollars per day for each day of the violation or in the amount of ten thousand dollars, whichever is higher; (2) punitive damages; (3) reasonable attorney’s fees and other litigation costs reasonably incurred.
North Dakota	N/A	
Ohio	N/A	
Oklahoma	OKLA. STAT. tit. 21, § 1040.56	Allows any person who was a victim of a child pornography crime while under the age of 18 and suffered personal or psychological injury as a result to bring a civil action against the perpetrator, even if the victim is now an adult. A prevailing plaintiff is entitled to recover actual damages plus the costs of the lawsuit, including reasonable attorney’s fees. The prevailing plaintiff is also entitled special and punitive damages.
Oregon	N/A	
Pennsylvania	18 PA. CONS. STAT. § 3051	A victim of human trafficking or the sex trade (which includes victims of child pornography) can bring a civil action against a participant of the crime. The court may award any of the following forms of relief: actual damages; compensatory damages; punitive damages; injunctive relief; any other appropriate relief.
Rhode Island	R.I. GEN. LAWS § 9-1-2	General provision cross-referenced in exploitation statute: “Whenever any person shall suffer any injury to his or her person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender.”
South Carolina	N/A	
South Dakota	S.D. CODIFIED LAWS §§ 22-24A-7, 22-24A-10	A victim can bring a civil action for damages against a person who commits a child pornography crime, and may recover a wide variety of pecuniary and nonpecuniary damages, as well as exemplary damages, attorney’s fees, and disbursements.
Tennessee	N/A	
Texas	N/A	
Utah	UTAH CODE ANN. § 77-38-15	Victims of human trafficking (which includes forced participation in the production of pornography) may pursue a civil action against the perpetrator or anyone who knowingly benefitted from the trafficking. The court may award actual, compensatory, or punitive

		damages; injunctive relief; or any other appropriate relief. It may also treble damages upon finding that the person's acts were willful and malicious.
Vermont	N/A	
Virginia	VA. CODE ANN. § 8.01-42.4	Victims of trafficking in persons, which includes victims of a manufacturer of child pornography, can bring a civil action and recover compensatory damages, punitive damages, and reasonable attorney's fees and costs.
Washington	WASH. REV. CODE § 9.68A.130	A minor prevailing in a civil action arising from the sexual exploitation of a child is entitled to recover the costs of the suit, including an award of reasonable attorney's fees.
West Virginia	N/A	
Wisconsin	WIS. STAT. § 948.051	Any person who incurs an injury or death as a result of child trafficking may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney's fees.
Wyoming	N/A	

Appendix CC: State Victims' Funds Chart

State	Eligibility	Coverage
Alabama	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Requirements may be waived for good cause</p>	<p><u>Maximum Award:</u> \$20,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Moving expenses • Replacement services • Crime-scene cleanup/evidence • Travel • Emergency
Alaska	<p><u>Law Enforcement Reporting Period:</u> 5 days or a reasonable period of time</p> <p><u>Filing Period:</u> 2 years</p> <p><u>Exceptions:</u> Board weighs reasonableness of requests to waive reporting requirements</p>	<p><u>Maximum Award:</u> \$40,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Moving expenses • Travel • Rehabilitation • Crime-scene cleanup • Attorney's fees • Emergency
Arizona	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 2 years</p> <p><u>Exceptions:</u> Exceptional circumstances</p>	<p><u>Maximum Award:</u> \$25,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Travel • Crime-scene cleanup • Emergency
Arkansas	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Requirements can be waived for good cause</p>	<p><u>Maximum Award:</u> \$10,000, with additional \$15,000 in catastrophic-injury cases</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Replacement services

		<ul style="list-style-type: none"> • Crime-scene cleanup • Travel • Rehabilitation • Attorney's fees
California	<p><u>Law Enforcement Reporting Period:</u> No set limit; crime must be reported within a reasonable period of time so that the investigation is not hindered</p> <p><u>Filing Period:</u> 3 years; until age 19 for crimes occurring while minors if crimes occurred more than 3 years prior, with limit extended to age 28 if the crime involves sex with a minor</p> <p><u>Exceptions:</u> Good cause exception to the filing period</p>	<p><u>Maximum Award:</u> \$70,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Moving expenses • Crime-scene cleanup • Rehabilitation • Attorney's fees • Emergency
Colorado	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Good cause; most boards may waive requirements</p>	<p><u>Maximum Award:</u> \$20,000 (district may set lower maximum)</p> <p><u>Compensable Costs (limits determined by district):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Moving expenses (some districts) • Replacement services • Expenses to replace locks and secure residence • Travel • Rehabilitation • Emergency
Connecticut	<p><u>Law Enforcement Reporting Period:</u> Within 5 days of crime or within 5 days of when crime reasonably can be reported; or for sexual assault victims, absent a police report, a sexual assault medical examination and evidence collection was completed within 72 hours of the assault</p> <p><u>Filing Period:</u> 2 years</p>	<p><u>Maximum Award:</u> \$15,000 personal injury claim; \$25,000 homicide claim</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Attorney's fees • Emergency • Crime-scene cleanup • Certain expenses relating to injury to guide dog or assistance dog

	<p><u>Exceptions:</u> Waiver possible for medical, emotional, and psychological reasons</p> <p><u>Deductible:</u> \$100 (discretionary)</p> <p><u>Minimum Loss:</u> \$100</p>	
Delaware	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Extensions to filing period may be granted by board. Board may waive reporting requirement if unreasonable under circumstances of crime.</p> <p><u>Minimum Loss:</u> \$25</p>	<p><u>Maximum Award:</u> \$25,000; additional \$25,000 in catastrophic cases</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/lost support • Moving/relocation • Travel • Crime-scene cleanup • Replacement of items seized as evidence • Attorney's fees
District of Columbia	<p><u>Law Enforcement Reporting Period:</u> 7 days</p> <p><u>Filing Period:</u> 1 year from crime, or within 1 year of learning of the program with adequate showing that the delay was reasonable</p> <p><u>Exceptions:</u> Victims of sexual assault may satisfy reporting requirement by obtaining a sexual assault examination; victims of domestic violence may satisfy requirement by obtaining civil protection order; child-cruelty victims may satisfy reporting requirement by the filing of a neglect petition</p>	<p><u>Maximum Award:</u> \$25,000</p> <p><u>Compensable costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Relocation (temporary emergency food and housing) • Moving expenses • Transportation • Crime-scene cleanup/replacement of items seized as evidence • Attorney's fees (for appeals proceedings only) • Emergency
Florida	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> For good cause, reporting period may be waived, and filing period can be extended to 2</p>	<p><u>Maximum Award:</u> \$15,000, with additional \$15,000 in catastrophic-injury cases. Total treatment costs, including medical, dental, and mental health, cannot exceed \$7,500 per claim. Coverage is limited to losses incurred within 3 years from date of</p>

	<p>years. For crimes against minors occurring after October 1, 1993, applications can be filed up to 1 year following victim's 18th birthday, or within 2 years for good cause.</p>	<p>crime, except mental health counseling for minors.</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Funerals • Moving/relocation • Replacement services • Travel • Rehabilitation • Emergency
Georgia	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Good cause exception; requirements liberally applied to child victims</p> <p><u>Financial Hardship:</u> Program currently does not enforce statutory financial hardship provision</p>	<p><u>Maximum Award:</u> \$25,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene sanitation • Rehabilitation
Hawaii	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 18 months</p> <p><u>Exceptions:</u> Requirements may be waived for good cause</p>	<p><u>Maximum Award:</u> \$10,000; in catastrophic cases, up to \$20,000 in medical/mental health expenses; but only medical/mental health expenses may exceed \$10,000 limit</p> <p><u>Compensable Costs:</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Moving expenses • Replacement services • Crime-scene cleanup/replacement of items seized as evidence • Travel • Rehabilitation • Attorney's fees • Pain and suffering
Idaho	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p>	<p><u>Maximum Award:</u> \$25,000</p>

	<p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Good-cause exception construed liberally, especially in cases involving minors, domestic violence, sexual assault or abuse</p>	<p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Replacement services • Travel • Attorney's fees • Emergency awards available
Indiana	<p><u>Law Enforcement Reporting Period:</u> 48 hours</p> <p><u>Filing Period:</u> 180 days; may be extended to two years</p> <p><u>Exceptions:</u> For sex crimes, time periods are extended to 2 years</p> <p><u>Minimum Loss:</u> \$100</p>	<p><u>Maximum Award:</u> \$15,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Attorney's fees • Emergency
Iowa	<p><u>Crime Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 2 years</p> <p><u>Exceptions:</u> Interfamilial child victims have 2 years to file a claim after a report is filed with the Department of Human Services (there is no time limit for reporting to DHS); adults allowed good-cause exception to filing requirement</p>	<p><u>Maximum Award:</u> No established maximum; each benefit has its own limit.</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene cleanup • Travel • Attorney's fees
Kansas	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 2 years; for child sexual assault, period begins on date crime reported to police</p> <p><u>Exceptions:</u> Good cause exception for reporting period only</p> <p><u>Minimum Loss:</u> \$100 except in sexual assaults</p> <p><u>Financial Hardship:</u> May consider hardship</p>	<p><u>Maximum Award:</u> \$25,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Moving expenses • Replacement services • Replacement of clothing or bedding seized as evidence • Travel • Rehabilitation • Attorney's fees

Kentucky	<p><u>Law Enforcement Reporting Period:</u> 48 hours</p> <p><u>Filing Period:</u> 5 years for crimes occurring after July 15, 1998; 1 year for crimes prior to July 15, 1998</p> <p><u>Exceptions:</u> Good cause</p>	<p><u>Maximum Award:</u> \$25,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Travel • Emergency
Louisiana	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Good cause; routinely waived for child victims</p>	<p><u>Maximum Award:</u> \$10,000; up to \$25,000 may be awarded when injuries are total and permanent</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene property damage • Replacement services • Travel • Attorney's fees (not compensable unless hearing is called by board) • Emergency
Maine	<p><u>Law Enforcement Reporting Period:</u> 5 days</p> <p><u>Filing Period:</u> 3 years or within 60 days of discovery of injury or compensable loss, whichever is later</p> <p><u>Exceptions:</u> Good cause, with specific exception for child victims</p>	<p><u>Maximum Award:</u> \$15,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Travel • Crime-scene cleanup
Maryland	<p><u>Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 3 years</p> <p><u>Exceptions:</u> For good cause, requirements may be waived; requirements will be waived for child victims</p> <p><u>Minimum Loss:</u> \$100</p>	<p><u>Maximum Award:</u> \$45,000; additional \$25,000 in cases of permanent and total disability</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene cleanup • Attorney's fees • Emergency
Massachusetts	<p><u>Law Enforcement Reporting Period:</u> 5 days</p>	<p><u>Maximum Award:</u> \$25,000; additional \$25,000 for catastrophic injuries</p>

	<p><u>Filing Period:</u> 3 years; to age 21 for minors</p> <p><u>Exceptions:</u> Good-cause exception for reporting period</p>	<p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Replacement services • Travel • Crime-scene cleanup • Attorney's fees
Michigan	<p><u>Law Enforcement Reporting Period:</u> 48 hours</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Good-cause extension for reporting period. Child victims have one year from their majority or, if a minor, from the report of the crime to file application; discretion to extend indefinitely for good cause.</p> <p><u>Minimum Loss:</u> \$200 or 2 weeks' lost wages</p>	<p><u>Maximum Award:</u> \$25,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene cleanup (homicides only) • Replacement services • Rehabilitation • Travel • Attorney's fees • Emergency
Minnesota	<p><u>Law Enforcement Reporting Period:</u> 30 days</p> <p><u>Filing Period:</u> 3 years</p> <p><u>Exceptions:</u> Reporting requirement waived for child abuse and sexual assault victims. Domestic child abuse victim must file claim within three years of report of crime. Filing requirement also may be waived where injury not "reasonably discoverable."</p> <p><u>Minimum Loss:</u> \$50</p>	<p><u>Maximum Award:</u> \$50,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Replacement services • Crime-scene cleanup • Travel • Rehabilitation • Emergency
Mississippi	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 36 months</p> <p><u>Exceptions:</u> Reporting requirement may be waived for good cause. In cases of child sexual abuse;</p>	<p><u>Maximum Award:</u> \$20,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene cleanup • Relocation

	<p>application must be filed within 36 months after report is made. Filing requirement may be extended for up to 12 additional months for good cause.</p>	<ul style="list-style-type: none"> • Travel • Rehabilitation • Emergency
Missouri	<p><u>Law Enforcement Reporting Period:</u> 48 hours</p> <p><u>Filing Period:</u> 2 years</p> <p><u>Exceptions:</u> Child victims have up to 2 years from their 18th birthday within which to file</p>	<p><u>Maximum Award:</u> \$25,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Travel • Attorney's fees
Nebraska	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 2 years</p> <p><u>Exceptions:</u> Good cause</p> <p><u>Financial Hardship:</u> Most victims meet financial need test based on financial resources (cash on hand, earnings, stocks, equity, autos, farm equipment)</p>	<p><u>Maximum Award:</u> \$10,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene cleanup • Attorney's fees • Emergency
Nevada	<p><u>Law Enforcement Reporting Period:</u> 5 days, or within 5 days of when crime can reasonably be reported</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Good cause exception to extend filing period up to 18 months more; child sexual crime victim has until age of 21 to file claim, if crime is reported</p>	<p><u>Maximum Award:</u> \$35,000; \$150,000 for catastrophic injuries</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene cleanup • Travel • Attorney's fees
New Hampshire	<p><u>Law Enforcement Reporting Period:</u> 5 days</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Good cause waiver applied in some cases (e.g., sex assault)</p> <p><u>Minimum Loss:</u> \$100</p>	<p><u>Maximum Award:</u> \$25,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Relocation expenses • Crime-scene cleanup

		<ul style="list-style-type: none"> • Travel to obtain medical assistance
New Jersey	<p><u>Law Enforcement Reporting Period:</u> 9 months</p> <p><u>Filing Period:</u> 3 years</p> <p><u>Exceptions:</u> Good cause waiver; child victims may have up to 3 years after age of 18</p>	<p><u>Maximum Award:</u> \$25,000; supplemental \$35,000 for victims with catastrophic injuries, for all forms of rehabilitative assistance</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene cleanup • Moving expenses • Domestic services • Travel • Rehabilitation • Attorney's fees • Emergency
New Mexico	<p><u>Law Enforcement Reporting Period:</u> 30 days; 180 days for sexual assault and domestic violence victims</p> <p><u>Filing Period:</u> 2 years</p> <p><u>Exceptions:</u> Child victims must file application within two years of date reported to law enforcement or 18th birthday, whichever comes first</p>	<p><u>Maximum Award:</u> \$20,000; up to \$50,000 in catastrophic physical injury cases</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Travel • Rehabilitation
New York	<p><u>Law Enforcement Reporting Period:</u> 7 days</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Good cause waiver; in claims involving sex offenses or family offenses, police report must be filed within reasonable time considering all circumstances, including victim's condition and family situation</p> <p><u>Financial Hardship:</u> Means test applied only if claimed expenses exceed \$5,000</p>	<p><u>Maximum Award:</u> No maximum for medical expenses; various maximums for other expenses</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Moving expenses (if medically necessary) • Crime-scene cleanup • Property loss/security • Travel • Vocational rehabilitation • Attorney's fees • Emergency

North Carolina	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 2 years</p> <p><u>Exceptions:</u> Good cause exception for reporting</p>	<p><u>Maximum Award:</u> \$30,000, plus an additional \$5,000 in homicide cases</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Replacement services • Crime-scene cleanup • Travel
North Dakota	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Good cause; for child abuse and molestation victims, report must be made within 3 years after 18th birthday</p>	<p><u>Maximum Award:</u> \$25,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Replacement services • Travel • Rehabilitation • Attorney's fees • Emergency
Ohio	<p><u>Law Enforcement Reporting Period:</u> No limit within which to report</p> <p><u>Filing Period:</u> No filing limit</p> <p><u>Exceptions:</u> Waiver for good cause</p>	<p><u>Maximum Award:</u> \$50,000 per victim per incident</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Moving expenses • Replacement services • Crime-scene cleanup/replacement of items seized as evidence • Travel • Rehabilitation • Attorney's fees • Emergency
Oklahoma	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> For good cause, filing period may extend no longer than 1 additional year</p>	<p><u>Maximum Award:</u> \$20,000; \$40,000 for catastrophic injuries and in homicides</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Moving expenses

		<ul style="list-style-type: none"> • Replacement services • Crime-scene cleanup • Travel • Rehabilitation
Oregon	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 6 months, with good-cause waiver</p> <p><u>Exceptions:</u> For child victims, time periods begin at date of disclosure</p>	<p><u>Maximum Award:</u> \$44,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Replacement services • Travel • Rehabilitation • Emergency
Pennsylvania	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 2 years</p> <p><u>Exceptions:</u> For child victims only</p> <p><u>Minimum Loss:</u> A combined minimum out-of-pocket loss, loss of earnings, or loss of support of \$100; no minimum out-of-pocket loss for applicants aged 60 or older</p>	<p><u>Maximum Award:</u> \$35,000 plus an additional \$10,000 for counseling, \$1,000 in relocation costs for each direct victim, and \$500 crime-scene cleanup</p> <p><u>Compensable costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Relocation expenses • Replacement services • Crime-scene cleanup • Travel • Rehabilitation • Replacement of stolen cash, if primary source of income is Social Security, pension, retirement, disability, or court-ordered child/spousal support; up to one month's entitlement • Attorney's fees • Emergency
Rhode Island	<p><u>Law Enforcement Reporting Period:</u> 10 days</p> <p><u>Filing Period:</u> 3 years</p> <p><u>Exceptions:</u> Time limits are stayed until child victim reaches age of</p>	<p><u>Maximum Award:</u> \$25,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene cleanup • Rehabilitation

	majority. For adults, good-cause exception to time limits.	<ul style="list-style-type: none"> • Attorney's fees (only for successful appeals) • Emergency
South Carolina	<p><u>Law Enforcement Reporting Period:</u> 48 hours</p> <p><u>Filing Period:</u> 180 days</p> <p><u>Exceptions:</u> For good cause, reporting period can be waived; and applicants may file up to 4 years from the crime or the date of its discovery</p> <p><u>Minimum Loss:</u> \$100; must have two weeks' continuous lost wages to qualify for lost-wage benefit</p>	<p><u>Maximum Award:</u> \$15,000; the Advisory Board may approve an additional \$10,000 with proper documentation demonstrating financial hardship</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Travel • Rehabilitation • Attorney's fees (only for appealed cases) • Emergency
South Dakota	<p><u>Law Enforcement Reporting Period:</u> 5 days</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Good cause waiver applied for children, elderly, domestic violence and sexual assault victims</p>	<p><u>Maximum Award:</u> \$15,000</p> <p><u>Compensable costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Replacement services • Crime-scene cleanup/replacement of items seized as evidence • Travel • Rehabilitation • Emergency
Tennessee	<p><u>Law Enforcement Reporting Period:</u> 48 hours</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Reporting and filing periods may be waived</p> <p><u>Minimum Loss:</u> \$100 or 2 weeks' continuous lost wages; may be waived</p>	<p><u>Maximum Award:</u> \$30,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene cleanup • Moving expenses • Travel • Rehabilitation • Pain and suffering • Attorney's fees • Emergency

Texas	<p><u>Law Enforcement Reporting Period:</u> Reasonable time period</p> <p><u>Filing Period:</u> 3 years</p> <p><u>Exceptions:</u> Reporting and filing periods do not apply to child victims; good cause waiver may apply to other cases</p>	<p><u>Maximum Award:</u> \$50,000, with additional \$75,000 for permanent injuries</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Moving/relocation • Replacement services • Crime-scene cleanup/replacement of items seized as evidence • Travel • Moving expenses • Physical rehabilitation • Attorney's fees • Emergency
Utah	<p><u>Law Enforcement Reporting Period:</u> No time limit but police report required</p> <p><u>Filing Period:</u> No time limit but crime must have occurred after 1986</p>	<p><u>Maximum Award:</u> \$25,000; \$50,000 for medical expenses in homicide, attempted homicide, aggravated assault or drunk-driving</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Relocation • Replacement services • Crime scene cleanup/property damage • Travel • Rehabilitation • Attorney's fees (only when minors require assistance in establishing trust or determining guardianship) • Emergency
Vermont	<p><u>Law Enforcement Reporting Period:</u> No set period</p> <p><u>Filing Period:</u> No set period</p>	<p><u>Maximum Award:</u> \$10,000; in homicides, \$10,000 for each eligible person</p> <p><u>Compensable Costs:</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support

		<ul style="list-style-type: none"> • Moving expenses • Replacement services • Crime-scene cleanup • Travel • Rehabilitation
Virginia	<p><u>Law Enforcement Reporting Period:</u> 5 days</p> <p><u>Filing Period:</u> 1 year; child sexual assault victims have 10 years past 18th birthday</p> <p><u>Exceptions:</u> For just cause, filing period may be extended indefinitely for crimes occurring on or after July 1, 2001</p> <p><u>Minimum Loss:</u> \$100</p>	<p><u>Maximum Award:</u> \$25,000</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene cleanup • Moving expenses • Replacement services • Travel • Emergency
Washington	<p><u>Law Enforcement Reporting Period:</u> 1 year from crime or within 1 year of time report could reasonably have been made</p> <p><u>Filing Period:</u> 2 years from report to police; 5 years with good cause</p> <p><u>Exceptions:</u> Filing period for child victims does not start until 18th birthday</p>	<p><u>Maximum Award:</u> \$190,000, with \$150,000 in medical benefits and \$40,00 in other benefits</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Travel • Forensic exams in sexual assaults paid for through separate procedure
West Virginia	<p><u>Law Enforcement Reporting Period:</u> 72 hours</p> <p><u>Filing Period:</u> 2 years</p> <p><u>Exceptions:</u> Requirements may be waived for good cause; time periods begin when child victims attain age of majority</p>	<p><u>Maximum Award:</u> \$35,000 in personal injury cases; \$50,000 in homicides; \$100,000 for victims left permanently and totally disabled</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Relocation • Replacement services • Travel • Crime-scene cleanup • Rehabilitation • Attorney's fees

Wisconsin	<p><u>Law Enforcement Reporting Period:</u> 5 days</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> For child victims, reporting deadline is 5 days from disclosure, or 18th birthday if adult fails to report on victim's behalf within 5 days of disclosure; filing deadline is 1 year from 18th birthday. Report deadline may be extended.</p>	<p><u>Maximum Award:</u> \$40,000; plus additional \$2,000 for funeral expenses</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Replacement services • Crime-scene cleanup/replacement of items seized as evidence • Attorney's fees • Emergency
Wyoming	<p><u>Law Enforcement Reporting Period:</u> Reasonable period of time after crime</p> <p><u>Filing Period:</u> 1 year</p> <p><u>Exceptions:</u> Children are given 1 year after the report of the crime to file</p>	<p><u>Maximum Award:</u> \$15,000, with additional \$10,000 available for catastrophic injuries</p> <p><u>Compensable Costs (with limits):</u></p> <ul style="list-style-type: none"> • Medical expenses • Mental health counseling • Lost wages/support • Crime-scene cleanup/replacement of items seized as evidence • Travel • Relocation • Emergency

Appendix DD: Office for Victims of Crime, U.S. Resource Map of Crime Victim Services & Information

For relevant compensation forms and additional information for each state, see *State Support*, OFF. FOR VICTIMS OF CRIME, <https://ovc.ojp.gov/states> (last visited September 20, 2021).



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State Support

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Support for the States

Select a state or territory on the map below to learn more about that state's efforts working with OVC.







Access the Office on Violence Against Women Local Resources Map for [state sexual assault, domestic violence, and tribal coalitions.](#)

Appendix EE: Cyber Civil Rights Initiative, Online Removal Guide

For the Cyber Civil Rights Initiative's guide to the removal of abusive material from most major websites, see *Online Removal Guide*, CYBER CIV. RTS. INITIATIVE, <https://www.cybercivilrights.org/online-removal/> (last visited September 20, 2021).

Appendix FF: State Requirements for Appointing a Guardian Ad Litem Chart

State	Statute	Description
Alabama	ALA. CODE § 26-2A-52	<p>At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor or other person if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests.</p> <p>The court, under this section, has very broad discretion in appointing a guardian ad litem to represent the interest of any party before the court. Appointment can be made at any time and for virtually any reason. The court is not required to set out its reasons for appointing a guardian ad litem as a part of the record, but the court is encouraged to do so when such statement will be helpful to identify and to focus on particular concerns the court may have.</p>
	ALA. R. CIV. P. 17	<p>Whenever a guardian ad litem shall be necessary, the court in which the action is pending shall appoint to serve in that capacity some person who is qualified to represent the minor or incompetent person in the capacity of an attorney or solicitor, and must not select or appoint any person who is related, either by blood or marriage within the fourth degree, to the plaintiff or the plaintiff's attorney, or to the judge or clerk of the court, or who is in any manner connected with such plaintiff or such plaintiff's attorney, or who has been suggested, nominated, or recommended by the plaintiff or the plaintiff's attorney or any person for the plaintiff. If the guardian ad litem is to be appointed for a minor fourteen (14) years of age or over, such minor may, within thirty (30) days after perfection of service upon the minor in such cause, have the minor's choice of a guardian ad litem to represent the minor in said cause certified by an officer authorized to take acknowledgments, but if such minor fails to nominate a guardian ad litem within the thirty- (30-) day period or before any hearing set in the action, whichever is earlier, the court shall appoint a guardian ad litem as before provided. In all cases in which a guardian ad litem is required, the court must ascertain a reasonable fee or compensation to be allowed and paid to such guardian ad litem for services rendered in such cause, to be taxed as a part of the costs in such action, and which is to be paid when collected as other costs in the action, to such guardian ad litem.</p>
Alaska	ALASKA R. CIV. P. 90.7; ALASKA STAT. § 25.24.310	<p>Instead of, or in addition to, appointment of an attorney . . . the court may, upon motion of either party or upon its own motion, appoint an attorney or other person or the office of public advocacy to provide guardian ad litem services to a child in any legal proceeding involving the child's welfare. The court shall require a guardian ad litem when, in the opinion of the court, representation of the child's</p>

		best interests, to be distinguished from preferences, would serve the welfare of the child.
Arizona	ARIZ. SUP. CT. R. 42, E.R. 1.14(b)	A lawyer may seek the appointment of a guardian or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.
	ARIZ. JUV. CT. R. P. 40	The court may appoint a guardian ad litem to protect the interest of the child. The guardian ad litem may be an attorney, volunteer special advocate or other qualified person. The guardian ad litem shall meet with the child before the preliminary protective hearing, if possible, or if not possible, within fourteen (14) days after the preliminary protective hearing. The guardian ad litem shall also meet with the child before all substantive hearings. Upon a showing of extraordinary circumstances, the judge may modify this requirement for any substantive hearing.
Arkansas	ARK. R. CIV. P. 17	The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent. No judgment shall be rendered against an infant or incompetent until after a defense by a guardian or guardian ad litem, who shall be appointed by the court upon application of any interested party and who shall promptly respond to the claim against the infant or incompetent as provided by these Rules.
California	CAL. CIV. PROC. CODE § 372	(a)(1) When a minor, a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to appoint a guardian ad litem to represent the minor, person lacking legal capacity to make decisions, or person for whom a conservator has been appointed, notwithstanding that the person may have a guardian or conservator of the estate and may have appeared by the guardian or conservator of the estate. . . .
	CAL CIV. PROC. CODE § 373	When a guardian ad litem is appointed, he or she shall be appointed as follows: (a) If the minor is the plaintiff the appointment must be made before the summons is issued, upon the application of the minor, if the minor is 14 years of age or older, or, if under that age, upon the application of a relative or friend of the minor. (b) If the minor is the defendant, upon the application of the minor, if the minor is 14 years of age or older, and the minor applies within 10 days after the service of the summons, or, if under that age or if the minor neglects to apply, then upon the application of a relative or

		<p>friend of the minor, or of any other party to the action, or by the court on its own motion.</p> <p>(c) If the person lacking legal competence to make decisions is a party to an action or proceeding, upon the application of a relative or friend of the person lacking legal competence to make decisions, or of any other party to the action or proceeding, or by the court on its own motion.</p>
Colorado	COLO. R. CIV. P. 17	<p>(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, or such representative fails to act, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person, provided, that in an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown person who might be an infant or incompetent person.</p>
Connecticut	CONN. GEN. STAT. § 46b-129a	<p>(D) If the court, based on evidence before it, or counsel for the child, determines that the child cannot adequately act in his or her own best interests and the child's wishes, as determined by counsel, if followed, could lead to substantial physical, financial or other harm to the child unless protective action is taken, counsel may request and the court may order that a separate guardian ad litem be assigned for the child, in which case the court shall either appoint a guardian ad litem to serve on a voluntary basis or notify the office of Chief Public Defender who shall assign a separate guardian ad litem for the child. The guardian ad litem shall perform an independent investigation of the case and may present at any hearing information pertinent to the court's determination of the best interests of the child. The guardian ad litem shall be subject to cross-examination upon the request of opposing counsel. The guardian ad litem is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children and relevant court procedures. If a separate guardian ad litem is assigned, the person previously serving as counsel for the child shall continue to serve as counsel for the child and a different person shall be assigned as guardian ad litem, unless the court for good cause also determines that a different person should serve as counsel for the child, in which case the court shall notify the office of Chief Public Defender who shall assign a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem.</p>

Delaware	DEL. FAM. CT. R. CIV. P. 17(b)	<p>(1) Except as otherwise provided by statute or rule, every child properly named as a petitioner or respondent shall be appointed a guardian ad litem.</p> <p>(2) A person proposing himself or herself as a guardian ad litem for a child petitioner may sign and file a petition conditional upon subsequent appointment. However, only a custodial parent, legal guardian or duly appointed guardian ad litem may seek ex parte or expedited relief on behalf of a child. A person filing a petition against a child as a respondent has the burden of initiating the appointment of a guardian ad litem for that child.</p> <p>(3) A parent of a child who holds joint or sole custody or a child's court ordered guardian of the person shall be presumed a qualified guardian ad litem unless such person has an interest in the case which is inconsistent with the child's interests. If the child's custodial status is unknown, joint natural custody by both parents shall be presumed.</p> <p>(4) If no disinterested custodial parent or legal guardian is available, then another person known to the child may be appointed. However, if such person is not a noncustodial parent, grandparent, great-grandparent, or adult sibling of the child, then appointment may only occur after a hearing.</p> <p>(5) The appointment of a guardian ad litem may be sought by motion of:</p> <ul style="list-style-type: none"> (A) The person seeking appointment; (B) Another party to the action; (C) The child; (D) A custodial parent or legal guardian; or (E) The Department of Services for Children, Youth and their Families. <p>(6) The motion shall set out:</p> <ul style="list-style-type: none"> (A) The child's minority; (B) The identity of all persons holding parental or custodial rights or guardianship, and whether each is available for appointment or has an interest in the case; and (C) A proposed guardian ad litem or explanation why a guardian ad litem should be selected by the court. <p>(7)</p> <ul style="list-style-type: none"> (A) The motion may be served with the underlying petition and shall be served upon: <ul style="list-style-type: none"> (i) All persons or entities holding parental or custodial rights or guardianship, and (ii) The child, if age 14 or older, but otherwise, upon the adult with whom the child resides; and (iii) All other parties to the action. (B) If the motion is served with the underlying petition, any written response must be filed and served within the time permitted for an answer as provided in Rule 12.
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		<p>(8)</p> <p>(A) If no appropriate guardian ad litem can be identified, the Court may:</p> <ul style="list-style-type: none"> (i) Appoint an attorney to represent the child; (ii) Permit the child to proceed on his or her own; or (iii) Dismiss the action. <p>(B) Whether an attorney can adequately represent a child's interests with or without a separately appointed guardian ad litem will be determined on a case by case basis. Attorney's fees may be assessed against any or all parties.</p>
District of Columbia	D.C. SUPER. CT. R. CIV. P. 17	(2) Without a Representative. A minor or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.
Florida	FLA. R. CIV. P. 1.210	<p>(b) Minors or Incompetent Persons. When a minor or incompetent person has a representative, such as a guardian or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. A minor or incompetent person who does not have a duly appointed representative may sue by next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person.</p> <p>NOTE: Each Judicial Circuit publishes Administrative Orders regarding the appointment of a guardian ad litem within the Circuit.</p>
Georgia	GA. CODE ANN. § 9-11-17	<p>(c) Infants or incompetent persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may bring or defend an action on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, he may bring an action by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.</p> <p>The powers enjoyed by a guardian ad litem under Georgia law are delineated at GA. CODE ANN. § 29-2-22.</p>
Hawaii	HAW. FAM. CT. R. 17	(c) Minors or Incompetent Persons. The court may appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person.
Idaho	IDAHO CODE § 5-306	When an infant or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian ad litem

		appointed by the court in which the action is pending in each case. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient, to represent the infant, insane or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him.
	IDAHO R. CIV. P. 17	(2) Without a Representative. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem, or issue another appropriate order, to protect a minor or incompetent person who is unrepresented in an action.
Illinois	N/A	Illinois law sets forth specific procedures for the appointment of a guardian ad litem in family law court, juvenile court, and probate proceedings. Advocates should examine the specific rules of each Judicial Circuit.
Indiana	IND. CODE § 34-9-2-1	Sec. 1. All courts have the authority to: (1) appoint a guardian ad litem to defend the interests of any person under eighteen (18) years of age impleaded in a suit; and (2) permit any person, as next friend, to prosecute a suit in a minor's behalf.
	IND. R. TRIAL P. 17	An infant or incompetent person may sue or be sued in any action: (1) in his own name; (2) in his own name by a guardian ad litem or a next friend; (3) in the name of his representative, if the representative is a court-appointed general guardian, committee, conservator, guardian of the estate or other like fiduciary. The court, upon its own motion or upon the motion of any party, must notify and allow the representative named in subsection (3) of this subdivision, if he is known, to represent an infant or incompetent person, and be joined as an additional party in his representative capacity. If an infant or incompetent person is not represented, or is not adequately represented, the court shall appoint a guardian ad litem for him.
Iowa	IOWA R. CIV. P. 1.210	An action of a minor or any person adjudged incompetent shall be brought by the person's conservator if there is one or, if not, by the person's guardian if there is one; otherwise the minor may sue by a next friend, and the incompetent by a conservator or guardian appointed by the court for that purpose. If it is in the person's best interest, the court may dismiss such action or substitute another conservator, guardian or next friend.
Kansas	KAN. STAT. ANN. § 60-217	(2) Without a representative. A minor or an incapacitated person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem, or issue another appropriate order, to protect a minor or incapacitated person who is unrepresented in an action.

	KAN. STAT. ANN. § 38-2205	<p>(a) Appointment of guardian ad litem and attorney for child; duties. Upon the filing of a petition, the court shall appoint an attorney to serve as guardian ad litem for a child who is the subject of proceedings under this code. The guardian ad litem shall make an independent investigation of the facts upon which the petition is based and shall appear for and represent the best interests of the child.</p> <p>When the child's position is not consistent with the determination of the guardian ad litem as to the child's best interests, the guardian ad litem shall inform the court of the disagreement. The guardian ad litem or the child may request the court to appoint a second attorney to serve as attorney for the child, and the court, on good cause shown, may appoint such second attorney. The attorney for the child shall allow the child and the guardian ad litem to communicate with one another but may require such communications to occur in the attorney's presence.</p>
Kentucky	N/A	<p>Kentucky law sets forth specific procedures for the appointment of a guardian ad litem in probate and other special proceedings. Advocates should examine the specific rules of each Judicial Circuit.</p>
Louisiana	N/A	<p>Title VIII of Book I of the Louisiana Civil Code applies generally to tutorship—the equivalent to guardianship in Louisiana.</p>
Maine	ME. R. CIV. P. 17	<p>(b) Guardians and Other Representatives. Whenever a minor or incompetent person has a representative, such as a general guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. A minor or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person. In any action in which there are or may be defendants who have been served only by publication and who have not appeared, the court may appoint an agent, guardian ad litem, or next friend to represent them.</p>
	ME. R. GUARDIANS AD LITEM 4	<p>(a) Appointment to a Case. An individual shall act in a case as a guardian ad litem only as authorized by</p> <ol style="list-style-type: none"> (1) A limited purpose appointment order issued pursuant to Rule 4(b)(4)(D)(i), 4 M.R.S. § 1555, and either 19-A M.R.S. § 1507 or 18-A M.R.S. § 1-112; (2) A standard appointment order issued pursuant to Rule 4(b)(4)(D)(ii), 4 M.R.S. § 1555, and either 19-A M.R.S. § 1507 or 18-A M.R.S. § 1-112; (3) An expanded appointment order issued pursuant to Rule 4(b)(4)(D)(iii), 4 M.R.S. § 1555, and either 19-A M.R.S. § 1507 or 18-A M.R.S. § 1-112; or

		(4) An appointment order issued pursuant to Rule 4(c), 4 M.R.S. § 1556, and 22 M.R.S. § 4005.
Maryland	MD. CODE ANN., FAM. LAW § 1-202	<p>In an action in which custody, visitation rights, or the amount of support of a minor child is contested, the court may:</p> <p>(1)(i) appoint a lawyer who shall serve as a child advocate attorney to represent the minor child and who may not represent any party to the action; or</p> <p>(ii) appoint a lawyer who shall serve as a best interest attorney to represent the minor child and who may not represent any party to the action; and</p> <p>(2) impose counsel fees against one or more parties to the action.</p>
Massachusetts	MASS. R. CIV. P. 17	(b) Infants or Incompetent Persons or Incapacitated Persons. Whenever an infant or incompetent person, or an incapacitated person as defined in G.L. c.190B has a representative, such as a guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person, or incapacitated person as defined in G.L. c.190B. If an infant or incompetent person, or an incapacitated person as defined in G.L. c.190B does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person, or an incapacitated person as defined in G.L. c.190B not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person, or an incapacitated person as defined in G.L. c.190B.
	MA. PROB. AND FAM. CT. SUPP. R. 5	In cases in probate or family court, in addition to making appointments of guardians ad litem in cases required by statute, whenever it shall appear that a minor, intellectually disabled person, a person under disability, an incapacitated person, a person to be protected or a person not ascertained or not in being is interested in any matter pending, a guardian ad litem for said person may be appointed by the court at its discretion.
Michigan	MICH. CT. R. 2.201(E)(2)	<p>(a) Appointment of a next friend or guardian ad litem shall be made by the court as follows:</p> <p>(i) if the party is a minor 14 years of age or older, on the minor's nomination, accompanied by a written consent of the person to be appointed;</p> <p>(ii) if the party is a minor under 14 years of age or an incompetent person, on the nomination of the party's next of kin or of another relative or friend the court deems suitable, accompanied by a written consent of the person to be appointed; or</p> <p>(iii) if a nomination is not made or approved within 21 days after service of process, on motion of the court or of a party.</p>

		<p>(b) The court may refuse to appoint a representative it deems unsuitable.</p> <p>(c) The order appointing a person next friend or guardian ad litem must be promptly filed with the clerk of the court.</p>
Minnesota	MINN. R. CIV. P. 17.02	<p>Whenever a party to an action is an infant or is incompetent and has a representative duly appointed under the laws of this state or the laws of a foreign state or country, the representative may sue or defend on behalf of such party. A party who is an infant or is incompetent and is not so represented shall be represented by a guardian ad litem appointed by the court in which the action is pending or is to be brought. The guardian ad litem shall be a resident of this state, shall file a consent and oath with the court administrator, and shall give such bond as the court may require.</p> <p>A guardian ad litem appointed under this Rule is not a guardian ad litem within the meaning of the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court and is not governed by those Rules.</p> <p>Any person, including an infant party over the age of fourteen (14) years and under no other legal disability, may apply under oath for the appointment of a guardian ad litem. The application of the party or the party's spouse or parents or testamentary or other guardian shall have priority over other applications. If no such appointment is made on behalf of a defendant party before answer or default, the adverse party or a party's attorney may apply for such appointment, and in such case the court shall allow the guardian ad litem a reasonable time to respond to the complaint.</p> <p>The application for appointment shall show (1) the name, age and address of the party, (2) if the party is a minor, the names and addresses of the parents, and, in the event of their death or the abandonment of the minor, the name and address of the party's custodian or testamentary or other guardian, if any, (3) the name and address of the party's spouse, if any, and (4) the name, age, address, and occupation of the person whose appointment is sought.</p> <p>If the appointment is applied for by the party or by a spouse, parent, custodian or testamentary or other guardian of the party, the court may hear the application with or without notice. In all other cases written notice of the hearing on the application shall be given at such time as the court shall prescribe, and shall be served upon the party, the party's spouse, parent, custodian and testamentary or other guardian, if any, and if the party is an inmate of a public institution, the chief executive officer thereof. If the party is a nonresident or, after diligent search, cannot be found within the state, notice shall be given to such persons and in such manner as the court may direct.</p>

Mississippi	MISS. R. CIV. P. 17	<p>(c) Infants or Persons Under Legal Disability. Whenever a party to an action is an infant or is under legal disability and has a representative duly appointed under the laws of the State of Mississippi or the laws of a foreign state or country, the representative may sue or defend on behalf of such party. A party defendant who is an infant or is under legal disability and is not so represented may be represented by a guardian ad litem appointed by the court when the court considers such appointment necessary for the protection of the interest of such defendant. The guardian ad litem shall be a resident of the State of Mississippi, shall file his consent and oath with the clerk, and shall give such bond as the court may require. The court may make any other orders it deems proper for the protection of the defendant. When the interest of an unborn or unconceived person is before the court, the court may appoint a guardian ad litem for such interest. If an infant or incompetent person does not have a duly appointed representative, he may sue by his next friend.</p> <p>(d) Guardian Ad Litem; How Chosen. Whenever a guardian ad litem shall be necessary, the court in which the action is pending shall appoint an attorney to serve in that capacity. In all cases in which a guardian ad litem is required, the court must ascertain a reasonable fee or compensation to be allowed and paid to such guardian ad litem for his service rendered in such cause, to be taxed as a part of the cost in such action.</p>
Missouri	MO. SUP. CT. R. 52.02	<p>(a) Civil Actions by Minors, Prosecuted by Whom. Civil actions by minors may be commenced and prosecuted only by a duly appointed guardian of such minor or, if there is no such guardian, by a next friend appointed in such civil action; if asserted by counterclaim, cross-claim or third party pleadings, such civil action may only be prosecuted by a duly appointed guardian of such minor or, if there is no such guardian, by a guardian ad litem appointed for such civil action.</p> <p>(b) Next Friend, by Whom Appointed. The appointment of a next friend for a minor shall be made by the judge of the court in which the civil action is intended to be brought, or by the clerk thereof.</p> <p>(c) How Appointed. Such appointment shall be made on the petition in writing of such minor if of the age of fourteen years and the written consent of the person proposed to be next friend. If such minor be under the age of fourteen years, the appointment of a next friend may be made upon the written application of a relative or friend of the minor, in which case a notice thereof must be given to the person with whom such minor resides.</p>

		<p>(d) Petition and Appointment to be Filed Before Further Proceedings. The petition for the appointment of a next friend, the written consent of the person proposed to be next friend, and the order of appointment, shall be filed in the office of the clerk of the court where the civil action is proposed to be brought before any proceedings shall be had in the cause.</p> <p>(e) Civil Actions Against Minors Not to Proceed Without Guardian. After the commencement of a civil action against a minor defendant, and the service of process upon him, the civil action shall not be prosecuted any further until a guardian or guardian ad litem for such minor defendant be appointed, except for such discovery proceedings as may be necessary to determine whether a defendant is a minor or has a duly appointed guardian.</p> <p>(f) Appointment of Guardian Ad Litem. The appointment of a guardian ad litem shall be made by the court in which the civil action is pending upon the written request of the minor defendant, if of the age of fourteen years or more, or, if such minor be under said age, on the written request of a relative or friend of the minor, and on the written consent of any competent person proposed as guardian ad litem. Such request shall be filed in the office of the clerk of the court before any answer by such minor shall be filed.</p> <p>(g) Guardian Ad Litem, When Appointed. If such minor defendant neglect, for one day after the expiration of the time within which the minor defendant is summoned to appear to the suit to procure the appointment of a guardian ad litem to defend the civil action, the court shall appoint some competent person to be guardian ad litem for such minor in the defense of such civil action.</p>
Montana	MONT. R. CIV. P. 17	(2) Without a Representative A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.
	MONT. CODE ANN. § 25-5- 301	<p>When a guardian ad litem is appointed by the court, the guardian ad litem must be appointed as follows:</p> <ol style="list-style-type: none"> (1) when the minor is plaintiff, upon the application of the minor if the minor is 14 years of age or, if under that age, upon the application of a relative or friend of the minor; (2) when the minor is defendant, upon the application of the minor if the minor is 14 years of age and applies within 10 days after the service of the summons or, if under that age or if the minor neglects to apply, upon the application of a relative or friend of the minor or of any other party to the action;

		(3) when an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of the insane or incompetent person or of any other party to the action or proceeding.
Nebraska	NEB. REV. STAT. § 25-307	Except as provided by the Nebraska Probate Code and sections 43-4801 to 43-4812, the action of an infant shall be commenced, maintained, and prosecuted by his or her guardian or next friend. Such actions may be dismissed with or without prejudice by the guardian or next friend only with approval of the court. When the action is commenced by his or her next friend, the court has power to dismiss it, if it is not for the benefit of the infant, or to substitute the guardian of the infant, or any person, as the next friend. Any action taken pursuant to this section shall be binding upon the infant.
	NEB. REV. STAT. § 25-309	Except as provided by the Nebraska Probate Code, the defense of an infant must be by a guardian for the suit, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or by a county judge. The appointment cannot be made until after service of the summons in the action as directed by this code.
	NEB. REV. STAT. § 25-310	The appointment may be made upon the application of the infant, if he be of the age of fourteen years, and apply within twenty days after the return of the summons. If he be under the age of fourteen or neglect so to apply, the appointment may be made upon the application of any friend of the infant, or on that of plaintiff in the action.
Nevada	NEV. REV. STAT. § 12.050	When a guardian ad litem is appointed by the court, the guardian ad litem must be appointed as follows: <ol style="list-style-type: none"> 1. When the infant is plaintiff, upon the application of the infant if the infant be of the age of 14 years, or, if under that age, upon the application of a relative or friend of the infant. 2. When the infant is defendant, upon the application of the infant if the infant be of the age of 14 years and apply within 10 days after the service of the summons, or, if under that age or if the infant neglect to so apply, then upon the application of a relative or friend of the infant, or any other party to the action. 3. When an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.
New Hampshire	N.H. REV. STAT. ANN. § 464-A:41	When before or during the hearing on any proceeding in any court it appears to the court that the interest or rights of a legally incapacitated person by age or other cause or circumstance are not fully represented or upon the request of any interested person, the court may appoint a competent and disinterested person to act as guardian ad litem for such legally incapacitated person and to

		<p>represent such person's interest in the case. The guardian ad litem shall have none of the rights of the general guardian. The person appointed guardian ad litem shall make oath to perform such duty faithfully and impartially. A bond may be required of the guardian ad litem at the discretion of the court.</p>
New Jersey	N.J. CT. R. 4:26-2	<p>(b) Appointment of Guardian Ad Litem.</p> <p>(1) Appointment of Parent in Negligence Actions. In negligence actions, unless the court otherwise directs, a parent of a minor or mentally incapacitated person shall be deemed to be appointed guardian ad litem of the child without court order upon the filing of a pleading or certificate signed by an attorney stating the parental relationship, the child's status and, if a minor, the age, the parent's consent to act as guardian ad litem and the absence of a conflict of interest between parent and child.</p> <p>(2) Appointment on Petition. The court may appoint a guardian ad litem for a minor or an alleged mentally incapacitated person, upon the verified petition of a friend on his or her behalf. In an action in which the fiduciary seeks to have the account settled or has a personal interest in the matter, the petition shall state whether or not the guardian ad litem therein nominated was proposed by the fiduciary or the fiduciary's attorney. Each petition shall be accompanied by the sworn consent of the proposed guardian ad litem, stating his or her relationship to the minor or alleged mentally incapacitated person and certifying that he or she has no interest in the litigation, or if such interest exists, setting forth the nature thereof, and that he or she will with undivided fidelity perform the duties of guardian ad litem, if appointed. The court shall appoint the guardian ad litem so proposed unless it finds good cause for not doing so, in which case it shall afford the petitioner opportunity to file a new petition seeking the appointment of another person within 10 days of the rejection. If such new petition is not filed within such time, or if filed, is not granted, the court, when designating some other person as guardian ad litem, shall state for the record its reasons for rejecting petitioner's nominee. A conflict of interest between the petitioner and the minor or alleged mentally incapacitated person shall be good cause for rejection of the petitioner's nominee. Only one guardian ad litem shall be appointed for all minors or alleged mentally incapacitated persons unless a conflict of interest exists.</p>

		<p>(3) Appointment on Party's Motion. On motion by a party to the action, the court may appoint a guardian ad litem for a minor or alleged mentally incapacitated person if no petition has been filed and either default has been entered by the clerk or, in a summary action brought pursuant to R. 4:67 or in a probate action, 10 days have elapsed after service of the order. Notice of the motion shall be served at least 10 days before the return date fixed therein upon the appropriate persons designated in R. 4:4-4(a)(1)(2)(3) or (c) either personally, at the time of service of process or thereafter, or by registered or certified mail, return receipt requested. The court on ex parte motion may, in lieu thereof, fix such notice of the motion, given to such persons in such manner as it deems appropriate.</p> <p>(4) Appointment on Court's Motion. The court may appoint a guardian ad litem for a minor or alleged mentally incapacitated person on its own motion.</p>
New Mexico	N.M. STAT. ANN. § 38-4-10	Appointment of a guardian ad litem may be made by the court in which the suit is pending, or by the judge thereof in vacation, upon the written request of the infant <i>defendant</i> , if the age of fourteen years or more, or, if said infant is under the age of fourteen, on the written request of a relative or friend of the infant, or on the written consent of any competent person proposed as guardian ad litem, and such request and consent shall be filed in the office of the clerk of the court before any answers by such infant shall be filed.
	N.M. R. CIV. P. DIST. CT. 1-053.3	<p>Guardians ad litem may also be appointed in child custody cases.</p> <p>There are no New Mexico laws that apply to the appointment of a guardian ad litem in non-custody cases where the infant is a plaintiff.</p>
New York	N.Y. C.P.L.R. 1201	Unless the court appoints a guardian ad litem, an infant shall appear by the guardian of his property or, if there is no such guardian, by a parent having legal custody, or, if there is no such parent, by another person or agency having legal custody, or, if the infant is married, by an adult spouse residing with the infant, a person judicially declared to be incompetent shall appear by the committee of his property, and a conservatee shall appear by the conservator of his property. A person shall appear by his guardian ad litem if he is an infant and has no guardian of his property, parent, or other person or agency having legal custody, or adult spouse with whom he resides, or if he is an infant, person judicially declared to be incompetent, or a conservatee as defined in section 77.01 of the mental hygiene law and the court so directs because of a conflict of interest or for other cause, or if he is an adult incapable of adequately prosecuting or defending his rights.

	N.Y. C.P.L.R. 1202	<p>(a) By whom motion made. The court in which an action is triable may appoint a guardian ad litem at any stage in the action upon its own initiative or upon the motion of:</p> <ol style="list-style-type: none"> 1. an infant party if he is more than fourteen years of age; or 2. a relative, friend or a guardian, committee of the property, or conservator; or 3. any other party to the action if a motion has not been made under paragraph one or two within ten days after completion of service. <p>(b) Notice of motion. Notice of a motion for appointment of a guardian ad litem for a person shall be served upon the guardian of his property, upon his committee or upon his conservator, or if he has no such guardian, committee, or conservator, upon the person with whom he resides. Notice shall also be served upon the person who would be represented if he is more than fourteen years of age and has not been judicially declared to be incompetent.</p> <p>(c) Consent. No order appointing a guardian ad litem shall be effective until a written consent of the proposed guardian has been submitted to the court together with an affidavit stating facts showing his ability to answer for any damage sustained by his negligence or misconduct.</p>
North Carolina	N.C. GEN. STAT. § 1A-1, R. 17	<p>(b) Infants, incompetents, etc.—</p> <p>(1) Infants, etc., Sue by Guardian or Guardian Ad Litem.—In actions or special proceedings when any of the parties plaintiff are infants or incompetent persons, whether residents or nonresidents of this State, they must appear by general or testamentary guardian, if they have any within the State or by guardian ad litem appointed as hereinafter provided; but if the action or proceeding is against such guardian, or if there is no such known guardian, then such persons may appear by guardian ad litem.</p> <p>(3) Appointment of Guardian Ad Litem Notwithstanding the Existence of a General or Testamentary Guardian.—Notwithstanding the provisions of subsections (b)(1) and (b)(2), a guardian ad litem for an infant or incompetent person may be appointed in any case when it is deemed by the court in which the action is pending expedient to have the infant, or insane or incompetent person so represented, notwithstanding such person may have a general or testamentary guardian.</p>

		<p>(c) Guardian ad litem for infants, insane or incompetent persons; appointment procedure.—When a guardian ad litem is appointed to represent an infant or insane or incompetent person, he must be appointed as follows:</p> <p>(1) When an infant or insane or incompetent person is plaintiff, the appointment shall be made at any time prior to or at the time of the commencement of the action, upon the written application of any relative or friend of said infant or insane or incompetent person or by the court on its own motion.</p> <p>(2) When an infant is defendant and service under Rule 4(j)(1)a is made upon him the appointment may be made upon the written application of any relative or friend of said infant, or, if no such application is made within 10 days after service of summons, upon the written application of any other party to the action or, at any time by the court on its own motion.</p> <p>(3) When an infant or insane or incompetent person is defendant and service can be made upon him only by publication, the appointment may be made upon the written application of any relative or friend of said infant, or upon the written application of any other party to the action, or by the court on its own motion, before completion of publication, whereupon service of the summons with copy of the complaint shall be made forthwith upon said guardian so appointed requiring him to make defense at the same time that the defendant is required to make defense in the notice of publication.</p> <p>(4) When an insane or incompetent person is defendant and service by publication is not required, the appointment may be made upon the written application of any relative or friend of said defendant, or upon the written application of any other party to the action, or by the court on its own motion, prior to or at the time of the commencement of the action, and service upon the insane or incompetent defendant may thereupon be dispensed with by order of the court making such appointment.</p>
North Dakota	N.D. CENT. CODE § 28-03-01	When an infant is plaintiff, a guardian ad litem may be appointed upon the application of the infant if the infant is at least fourteen years of age. If the infant is under that age, the application may be made by the infant's guardian or conservator, if the infant has one, or by a relative or friend of the infant. If the application is made by a

		relative or friend, notice thereof must be given to the guardian or conservator, if there is one, and if not, then to the person with whom the infant resides.
	N.D. R. CIV. P. 17	(2) Without a Representative. A minor or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem, or issue another appropriate order, to protect a minor or incompetent person who is self-represented in an action. The court may appoint a guardian ad litem to represent a minor or incompetent person, even though the minor or incompetent person may have a general guardian and may have appeared.
Ohio	OHIO R. CIV. P. 17	(B) Minors or incompetent persons. Whenever a minor or incompetent person has a representative, such as a guardian or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative the minor may sue by a next friend or defend by a guardian ad litem. When a minor or incompetent person is not otherwise represented in an action the court shall appoint a guardian ad litem or shall make such other order as it deems proper for the protection of such minor or incompetent person.
	OHIO R. SUPERINTENDENCE 48	The court may appoint a guardian ad litem in domestic relations and juvenile cases in courts of common pleas. <i>See</i> OH. R. ALLEN CTY JUV. DIV. 21; OH. R. ALLEN CTY. CT. 20.06.
Oklahoma	OKLA. STAT. tit. 12, § 2017	C. INFANTS OR INCOMPETENT PERSONS. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person. NOTE: OKLA. STAT. tit. 12, § 83 applies to conserving monies obtained for or on behalf of persons under eighteen years of age.
Oregon	N/A	Guardians ad litem may be appointed for dependency proceedings in juvenile court. <i>See</i> OR. REV. STAT. § 419B.231. Check Oregon County Local rules for specific rules relevant to each county.
Pennsylvania	PA. CODE R. 2031	(a) A minor plaintiff may select a guardian, but such selection shall not bar the court from removing the guardian for cause in accordance with these rules.

		<p>(b) If a minor party to an action is not represented, the court shall appoint a guardian for the minor either upon its own motion or upon the petition of (1) the minor party, (2) a guardian of the minor appointed by any court of competent jurisdiction, or by a will duly probated, (3) any relative of the minor, or (4) any other party to the action.</p> <p>(c) The petition shall state the name and address of the person proposed as guardian, and the guardian's relationship, if any, to the subject matter of the action or to any of the parties thereto. In case the person proposed as guardian is a guardian appointed by any court of competent jurisdiction or by a will duly probated, the petition shall contain a reference to the record of such appointment.</p> <p>(d) When the petition is filed by the minor the court may make the appointment ex parte.</p> <p>(e) When the petition is filed by a person other than the minor, the court shall direct a rule to be served upon the minor or upon such other person as the court may designate to show cause why the prayer of the petition should not be granted.</p>
Rhode Island	R.I. SUPER. CT. R. CIV. P. 17	<p>(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, the infant or incompetent person may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as the court deems proper for the protection of the infant or incompetent person.</p> <p>Minors are entitled to guardians ad litem in suits between the minors and their parents, <i>see</i> 9 R.I. GEN. LAWS § 9-1-3.1, and guardians <i>must</i> be appointed in cases where the minor is alleged to have been abused or neglected. <i>See</i> 40 R.I. GEN. LAWS § 40-11-14.</p>
South Carolina	S.C. CIV. CT. R. 17	<p>(c) Minor or Incompetent Persons. Whenever a minor or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative he may sue by his next friend or by guardian ad litem. The court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall</p>

		<p>make such order as it deems proper for the protection of the minor or incompetent person.</p> <p>A person imprisoned outside this State shall appear by guardian ad litem in an action by or against him; but if imprisoned in this State, and not a minor or incompetent, the court may, in its discretion appoint a guardian ad litem or order him to be brought personally to the trial to testify in accordance with Rule 43(a).</p> <p>(d) Guardians Ad Litem. Guardians ad litem appearing in the courts of this State, or before any agency, board or commission from which an appeal to the courts of this State shall lie, shall be qualified and appointed in accordance with the provisions of this rule.</p> <p>(1) Who May Appoint. Guardians ad litem may be appointed by the court in which the action is pending, the judge of probate, the clerk of court, or the master-in-equity of the county wherein the minor, or incompetent or imprisoned person resides, or in the county in which the action is pending or is to be filed.</p> <p>(2) Who May Be Appointed. The general guardian of a minor or incompetent person may be appointed guardian ad litem, if he has no interest adverse to that of the person whom he represents in the action. No other person may be appointed guardian ad litem of a minor or incompetent or imprisoned person unless he be fully competent to understand and protect the rights of the person whom he represents, has no interest adverse to that of the person whose interest he represents, is not connected or associated with the attorney or counsel of the adverse party, and is not the attorney for the adverse party.</p> <p>If the guardian ad litem is an attorney, it shall not be necessary that he be represented by an additional attorney; but the attorney of the adverse party shall not represent the guardian ad litem.</p> <p>(3) Minors. The guardian ad litem for a minor party shall be appointed upon the application of the minor, if he be of the age of 14 years or over; if under that age upon the application of his parent, general or testamentary guardian; or of a relative or friend. If application be made by a relative or friend, other than a parent, notice thereof must first be given to the minor's general or testamentary</p>
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		guardian, if he has one; if he has none, then to the person with whom such minor resides.
South Dakota	S.D. CODIFIED LAWS § 15-6-17(c)	Whenever a minor or incompetent person has a guardian or conservator, such guardian or conservator may sue or defend on behalf of the minor or incompetent person. If the minor or incompetent person does not have a guardian or conservator, he may sue by a guardian ad litem. The court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person and may make such appointment notwithstanding an appearance by a guardian or conservator. Unless the court otherwise orders, no guardian ad litem shall be permitted to receive any money or other property of his ward except costs and expenses allowed to such guardian ad litem by the court or recovered by the ward in the action until such guardian ad litem has given sufficient security approved by the court to account for and apply such money or property under direction of the court. Such guardian ad litem may with the approval of the court settle or compromise in behalf of his ward, the case in which he is appearing and any judgment entered therein.
Tennessee	TENN. CODE ANN. § 34-1-107	<p>(a)</p> <ol style="list-style-type: none"> (1) The court may appoint a guardian ad litem in any proceeding and, except as provided in this section, shall appoint a guardian ad litem on filing of a petition for appointment of a fiduciary. If the respondent is represented by counsel who has made an appearance for the respondent, the court may appoint or continue the services of a guardian ad litem or may waive appointment or terminate the services of a guardian ad litem in the best interests of the respondent. (2) The court may waive the appointment of a guardian ad litem if the petitioner or at least one (1) of the petitioners for the appointment is: <ol style="list-style-type: none"> (A) A parent of the minor for whom a guardian is sought; (B) A minor who has attained fourteen (14) years of age; or (C) An adult respondent. (3) The court may waive the appointment of a guardian ad litem if the court determines the waiver is in the best interests of the minor or person with a disability. <p>(b) If the guardian ad litem is to be appointed, the appointment shall be made no later than ten (10) days from the date the petition for the appointment of the fiduciary was filed.</p>

		<p>(c) The person appointed guardian ad litem shall be a lawyer licensed to practice in the state of Tennessee. If there are insufficient lawyers within the court's jurisdiction for the appointment of a lawyer as guardian ad litem, the court may appoint a nonlawyer.</p> <p>(d)</p> <ol style="list-style-type: none"> (1) The guardian ad litem owes a duty to the court to impartially investigate the facts and make a report and recommendations to the court. The guardian ad litem serves as an agent of the court, and is not an advocate for the respondent or any other party. (2) In each proceeding, the guardian ad litem shall: <ol style="list-style-type: none"> (A) Verify that the respondent and each other person required to be served or notified was served or notified; (B) Consult with the respondent in person as soon as possible after appointment; (C) If possible, explain in language understandable to the respondent the: <ol style="list-style-type: none"> (i) Substance of the petition; (ii) Nature of the proceedings; (iii) Respondent's right to protest the petition; (iv) Identity of the proposed fiduciary; and (v) Respondent's rights as set forth in § 34-3-106; and (D) Make a report and recommendations to the court concerning the issues of: <ol style="list-style-type: none"> (i) Whether a fiduciary should be appointed for the respondent; (ii) If a fiduciary should be appointed, whether the proposed fiduciary is the appropriate person to be appointed; and (iii) Any other matters as directed by the court. (3) In a proceeding for the appointment of a conservator, the guardian ad litem shall investigate the physical and mental capabilities of the respondent. The guardian ad litem's investigation shall include: <ol style="list-style-type: none"> (A) An in-person interview with the respondent; and (B) A review of the sworn report required by § 34-3-105 to verify that the sworn statement contains: <ol style="list-style-type: none"> (i) A detailed description of the respondent's physical or mental conditions or both that may render the respondent a person with a disability; and (ii) A detailed description of how the respondent's physical or mental conditions
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		<p>or both may impair the respondent's ability to function normally.</p> <p>(4) In a proceeding seeking the appointment of a fiduciary to manage the respondent's property, the guardian ad litem shall investigate the:</p> <ul style="list-style-type: none"> (A) Nature and extent of the respondent's property; and (B) Financial capabilities and integrity of the proposed fiduciary. <p>In evaluating the financial capabilities of the proposed fiduciary, the guardian ad litem may take such actions as directed by the court and as the guardian ad litem deems necessary, which may include but are not limited to:</p> <ul style="list-style-type: none"> (i) Obtaining and reviewing the proposed fiduciary's credit report; (ii) Inquiring into whether and to what extent the proposed fiduciary has previous experience in managing assets of the same or similar type and value as the respondent's assets; (iii) Inquiring into how the proposed fiduciary plans to manage the respondent's assets; (iv) Inquiring into whether the proposed fiduciary has previously borrowed funds from the respondent or received any financial assistance or benefits from the respondent; and (v) Interview any persons with knowledge and review any documents pertinent to the financial capabilities and integrity of the proposed fiduciary. <p>(e) The order appointing the guardian ad litem shall authorize the guardian ad litem access to records of the respondent in any financial institution and to review medical records, and permit the guardian ad litem to discuss the respondent's physical and mental conditions with any physician, psychologist or other health care provider who may have pertinent information.</p> <p>(f) The guardian ad litem shall make a written report to the court at least three (3) days prior to the date set for hearing the matter, which time period may be waived in the judge's discretion. The written report shall provide the court with the results of the guardian ad litem's investigation. The guardian ad litem's report shall specifically state whether:</p>
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		<p>(1)</p> <p>(A) The respondent wants to contest:</p> <p>(i) The need for a fiduciary;</p> <p>(ii) Merely the person to be the fiduciary; or</p> <p>(iii) Neither;</p> <p>(B) If the respondent wants to contest any portion of the proceeding and the guardian ad litem's opinion is that there should be a fiduciary appointed, the guardian ad litem shall identify the adversary counsel or indicate there is none and request the appointment of an attorney ad litem;</p> <p>(2) A fiduciary should be appointed and, if so, whether:</p> <p>(A) The proposed fiduciary should be appointed; or</p> <p>(B) Someone else, identified by the guardian ad litem, should be appointed;</p> <p>(3) The proposed property management plan should be adopted and, if not, what changes should be considered.</p> <p>(4) The respondent will attend the hearing and, if, in the opinion of the guardian ad litem, it is not in the respondent's best interest to attend, why.</p> <p>(g) Unless the court orders otherwise, the guardian ad litem has no continuing duty once an order has been entered disposing of the petition that caused the guardian ad litem's appointment.</p> <p>(h) When investigating financial records of a respondent, the guardian ad litem shall be the customer within the meaning set forth in title 45, chapter 10, known as the Financial Records Privacy Act.</p>
Texas	TEX. R. CIV. P. 44	<p>Minors, lunatics, idiots, or persons non compos mentis who have no legal guardian may sue and be represented by "next friend" under the following rules:</p> <p>(1) Such next friend shall have the same rights concerning such suits as guardians have, but shall give security for costs, or affidavits in lieu thereof, when required.</p> <p>(2) Such next friend or his attorney of record may with the approval of the court compromise suits and agree to judgments, and such judgments, agreements and compromises, when approved by the court, shall be forever binding and conclusive upon the party plaintiff in such suit.</p>
	TEX. R. CIV. P. 173.2	<p>(a) When Appointment Required or Prohibited. The court must appoint a guardian ad litem for a party represented by a next friend or guardian only if:</p> <p>(1) the next friend or guardian appears to the court to have an interest adverse to the party, or</p> <p>(2) the parties agree.</p>

		(b) Appointment of the Same Person for Different Parties. The court must appoint the same guardian ad litem for similarly situated parties unless the court finds that the appointment of different guardians ad litem is necessary.
Utah	UTAH R. CIV. P. 17	<p>(b) Minors or incompetent persons. An unemancipated minor or an insane or incompetent person who is a party must appear either by a general guardian or by a guardian ad litem appointed in the particular case by the court in which the action is pending. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted expedient to represent the minor, insane or incompetent person in the action or proceeding, notwithstanding that the person may have a general guardian and may have appeared by the guardian. In an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown party who might be a minor or an incompetent person.</p> <p>(c) Guardian ad litem; how appointed. A guardian ad litem appointed by a court must be appointed as follows:</p> <p>(c)(1) When the minor is plaintiff, upon the application of the minor, if the minor is of the age of fourteen years, or if under that age, upon the application of a relative or friend of the minor.</p> <p>(c)(2) When the minor is defendant, upon the application of the minor if the minor is of the age of fourteen years and applies within 21 days after the service of the summons, or if under that age or if the minor neglects so to apply, then upon the application of a relative or friend of the minor, or of any other party to the action.</p> <p>(c)(3) When a minor defendant resides out of this state, the plaintiff, upon motion therefor, shall be entitled to an order designating some suitable person to be guardian ad litem for the minor defendant, unless the defendant or someone in behalf of the defendant within 21 days after service of notice of such motion shall cause to be appointed a guardian for such minor. Service of such notice may be made upon the defendant's general or testamentary guardian located in the defendant's state; if there is none, such notice, together with the summons in the action, shall be served in the manner provided for publication of summons upon such minor, if over fourteen years of age, or, if under fourteen years of age, by such service on the person with whom the minor resides. The guardian ad litem for such nonresident minor defendant</p>

		<p>shall have 21 days after appointment in which to plead to the action.</p> <p>(c)(4) When an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.</p> <p>In proceedings in juvenile court, UTAH CODE ANN. § 78A-6-902 applies.</p>
Vermont	VT. R. CIV. P. 17	<p>(b) Guardians and Other Representatives. Whenever an infant or incompetent person has a representative, such as a general guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person.</p> <p>An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person. In any action in which there are or may be defendants who have been served only by publication and who have not appeared, the court may appoint an agent, guardian ad litem, or next friend to represent them.</p>
Virginia	VA. CODE ANN. § 8.01-8	Any minor entitled to sue may do so by his next friend. Either or both parents may sue on behalf of a minor as his next friend.
	VA. CODE ANN. § 8.01-9	<p>A. A suit wherein a person under a disability is a party defendant shall not be stayed because of such disability, but the court in which the suit is pending, or the clerk thereof, shall appoint a discreet and competent attorney-at-law as guardian ad litem to such defendant, whether the defendant has been served with process or not. If no such attorney is found willing to act, the court shall appoint some other discreet and proper person as guardian ad litem. Any guardian ad litem so appointed shall not be liable for costs. Every guardian ad litem shall faithfully represent the estate or other interest of the person under a disability for whom he is appointed, and it shall be the duty of the court to see that the interest of the defendant is so represented and protected. Whenever the court is of the opinion that the interest of the defendant so requires, it shall remove any guardian ad litem and appoint another in his stead. When, in any case, the court is satisfied that the guardian ad litem has rendered substantial service in representing the interest of the person under a disability, it may allow the guardian reasonable compensation therefor, and his actual expenses, if any, to be paid out of the estate of the defendant.</p> <p>B. Notwithstanding the provisions of subsection A or the provisions of any other law to the contrary, in any suit wherein a person under a</p>

		<p>disability is a party and is represented by an attorney-at-law duly licensed to practice in this Commonwealth, who shall have entered of record an appearance for such person, no guardian ad litem need be appointed for such person unless the court determines that the interests of justice require such appointment; or unless a statute applicable to such suit expressly requires that the person under a disability be represented by a guardian ad litem. The court may, in its discretion, appoint the attorney of record for the person under a disability as his guardian ad litem, in which event the attorney shall perform all the duties and functions of guardian ad litem.</p> <p>Any judgment or decree rendered by any court against a person under a disability without a guardian ad litem, but in compliance with the provisions of this subsection B, shall be as valid as if the guardian ad litem had been appointed.</p>
Washington	WASH. REV. CODE § 4.08.060	<p>When an incapacitated person is a party to an action in the superior courts he or she shall appear by guardian, or if he or she has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed as follows:</p> <p>(1) When the incapacitated person is plaintiff, upon the application of a relative or friend of the incapacitated person.</p> <p>(2) When the incapacitated person is defendant, upon the application of a relative or friend of such incapacitated person, such application shall be made within thirty days after the service of summons if served in the state of Washington, and if served out of the state or service is made by publication, then such application shall be made within sixty days after the first publication of summons or within sixty days after the service out of the state. If no such application be made within the time above limited, application may be made by any party to the action.</p>
West Virginia	W. VA. R. CIV. P. 17	<p>(c) Infants, Incompetent Persons, or Convicts. Whenever an infant, incompetent person, or convict has a representative, such as a general guardian, curator, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant, incompetent person, or convict. An infant, incompetent person, or convict who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court or clerk shall appoint a discreet and competent attorney at law as guardian ad litem for an infant, incompetent person, or convict not otherwise represented in an action, or shall make such other order as it deems proper for the protection of the infant, incompetent person, or convict.</p> <p>A guardian ad litem is deemed a party for purposes of service; failure to serve a guardian ad litem in circumstances where service upon a party is required constitutes failure to serve a party.</p>

	W. VA. CODE § 56-4-10	<p>The proceedings in a suit wherein an infant or insane person is a party shall not be stayed because of such infancy or insanity, but the court in which the suit is pending, or the judge thereof in vacation, or the clerk thereof at rules, shall appoint some discreet and competent attorney-at-law as guardian ad litem to such infant or insane defendant, whether such defendant shall have been served with process or not, and after such appointment no process need be served on such infant or insane person. If no such attorney be found willing to act, the court, or the judge thereof in vacation, may compel him to act, or appoint some other discreet and proper person in his stead; but the attorney or other person so appointed shall not be liable for costs. Every guardian ad litem shall faithfully represent the interest or estate of the infant or insane person for whom he is appointed, and it shall be the duty of the court to see that the estate of such defendant is so represented and protected. And the court, or the judge thereof in vacation, whenever of opinion that the interest of an infant or insane person requires it, shall remove any guardian ad litem and appoint another in his stead. When, in any case, the court or judge is satisfied that the guardian ad litem has rendered substantial service to the estate of an infant or insane defendant, it may allow him reasonable compensation therefor, and his actual expenses, if any, to be paid out of the estate of such defendant.</p>
Wisconsin	WIS. STAT. § 803.01	<p>(3) Minors or individuals alleged or adjudicated incompetent.</p> <p>(a) Appearance by guardian or guardian ad litem. If a party to an action or proceeding is a minor, or if a party is adjudicated incompetent or alleged to be incompetent, the party shall appear by an attorney, by the guardian of the estate of the party who may appear by attorney, or by a guardian ad litem who may appear by an attorney. A guardian ad litem shall be appointed in all cases in which the minor or individual alleged to be incompetent has no guardian of the estate, in which the guardian fails to appear and act on behalf of the ward or individual adjudicated incompetent, or in which the interest of the minor or individual adjudicated incompetent is adverse to that of the guardian. Except as provided in s. 807.10, if the guardian does appear and act and the interests of the guardian are not adverse to the minor or individual adjudicated incompetent, a guardian ad litem may not be appointed. Except as provided in s. 879.23(4), if the interests of the minor or individual alleged to be or adjudicated incompetent are represented by an attorney of record, the court shall, except upon good cause stated in the record, appoint that attorney as the guardian ad litem.</p>

		<p>(b) Guardian ad litem.</p> <ol style="list-style-type: none"> 1. The guardian ad litem shall be appointed by a circuit court of the county where the action is to be commenced or is pending, except that the guardian ad litem shall be appointed by a circuit court commissioner of the county in actions to establish paternity that are before the circuit court commissioner. 2. When the plaintiff is a minor 14 years of age or over, the guardian ad litem shall be appointed upon the plaintiff's application or upon the state's application under s. 767.407(1)(c); or if the plaintiff is under that age or is adjudicated incompetent or alleged to be incompetent, upon application of the plaintiff's guardian or of a relative or friend or upon application of the state under s. 767.407(1)(c). If the application is made by a relative, a friend, or the state, notice thereof must first be given to the guardian if the plaintiff has one in this state; if the plaintiff has none, then to the person with whom the minor or individual adjudicated incompetent resides or who has the minor or individual adjudicated incompetent in custody. 3. When the defendant is a minor 14 years of age or over, the guardian ad litem shall be appointed upon the defendant's application made within 20 days after the service of the summons or other original process; if the defendant is under that age or neglects to so apply or is adjudicated incompetent or alleged to be incompetent, then upon the court's own motion or upon the application of any other party or any relative or friend or the defendant's guardian upon such notice of the application as the court directs or approves. 4. If the appointment, for a plaintiff or a defendant, is after the commencement of the action, it shall be upon motion entitled in the action. If the appointment is for a plaintiff and is made before the action is begun, the petition for appointment shall be entitled in the name of the action proposed to be brought by the minor or individual
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		<p>adjudicated incompetent or alleged to be incompetent, and the appointment may be made before the summons is served. Upon the filing of a petition for appointment before summons, the clerk may impose the fee required for the commencement of an action, but in that event no additional commencement fee may be imposed when the summons is filed.</p> <p>5. The motion or petition under subd. 4. shall state facts showing the need and authority for the appointment. The hearing on the motion or petition under subd. 4., if made by a minor or an individual adjudicated incompetent or alleged to be incompetent for the minor's or individual's guardian ad litem, may be held without notice and the appointment made by order. If the motion or petition is made for a minor or an individual adjudicated incompetent or alleged to be incompetent who is an adverse party, the hearing shall be on notice.</p> <p>6. If a compromise or a settlement of an action or proceeding to which an unrepresented minor or individual adjudicated incompetent or alleged to be incompetent is a party is proposed, a guardian ad litem shall be appointed, upon petition in a special proceeding, to protect the interest of the minor or individual even though commencement of an action is not proposed. Any compromise or settlement shall be subject to s. 807.10.</p>
	<p>WIS. STAT. § 757.48</p>	<p>(1)</p> <p>(a) Except as provided in s. 879.23(4), in all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state. In order to be appointed as a guardian ad litem under s. 767.407, an attorney shall have completed 3 hours of approved continuing legal education that relates to the functions and duties of a guardian ad litem under ch. 767 and that includes training on the dynamics of domestic violence and the effects of domestic violence on victims of domestic violence and on children. In order to be appointed as a guardian ad litem under s. 54.40(1), an attorney shall have complied with SCR chapter 36.</p>

		<p>(b) The guardian ad litem shall be allowed reasonable compensation for his or her services such as is customarily charged by attorneys in this state for comparable services. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08(4m)(b). If the attorney of record is also the guardian ad litem, the attorney shall be entitled only to attorney's fees and shall receive no compensation for services as guardian ad litem.</p> <p>(2) If the statutes do not specify how the fee of the guardian ad litem is paid, the ward shall pay such fee. The court may, however, in cases involving real or personal property in which the ward claims or may have a right or interest, order payment out of such property.</p> <p>(3) No guardian ad litem may be permitted to receive any assets or income of his or her ward, nor may any bond be required of a guardian ad litem, but all assets or income of the ward may be paid or delivered to the ward's guardian of the estate, subject to the exceptions of s. 54.12.</p> <p>(4) No person shall be appointed guardian ad litem for a plaintiff without the written consent of the person appointed.</p>
Wyoming	WYO. R. CIV. P. 17	(2) Without a Representative. A minor or an incompetent person who does not have a duly appointed representative, or if such representative fails to act the minor or incompetent person may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.
	WYO. STAT. ANN. § 14-12-101	<p>(a) The office of the state public defender shall administer a guardian ad litem program. The program shall employ or contract with, supervise and manage attorneys providing legal representation as guardians ad litem in the following cases and actions:</p> <ul style="list-style-type: none"> (i) Child protection cases under W.S. 14-3-101 through 14-3-440; (ii) Children in need of supervision cases under W.S. 14-6-401 through 14-6-440, to the extent an attorney has been appointed to serve only as a guardian ad litem; (iii) Delinquency cases under W.S. 14-6-201 through 14-6-252, to the extent an attorney has been appointed to serve only as a guardian ad litem; (iv) Termination of parental rights actions under W.S. 14-2-308 through 14-2-319, brought as a result of a child protection, child in need of supervision or delinquency action;

		<p>(v) Interstate Compact on Juveniles proceedings under W.S. 14-6-102, when requested by the juvenile or the court;</p> <p>(vi) Appeals to the Wyoming supreme court in the cases or actions specified in this subsection.</p>
	<p>WYO. STAT. ANN. § 14-12-102</p>	<p>(a) In cases specified in W.S. 14-12-101(a), if the county in which the court is located participates in the program:</p> <p>(i) The court shall appoint the program to provide services when appointing a guardian ad litem;</p> <p>(ii) The administrator or designee shall assign an attorney to act as guardian ad litem in accordance with the court's order.</p> <p>(b) The program shall cooperate with juvenile courts in developing a case appointment system in each participating county for all applicable cases requiring the appointment of a guardian ad litem.</p> <p>(c) An attorney accepting a guardian ad litem assignment under the program shall be employed by or contract with the program to provide services in accordance with program requirements. The contract shall specify the fees to be paid for the assignment, which may be a defined hourly or per case rate or a defined sum. Fees paid by the program may vary based upon the type and difficulty of the case, location, work required and experience.</p>

Appendix GG: State Child Custody Laws Chart

State	Statute	Description
Alabama	ALA. CODE §§ 12-15-306, 30-3-130, 30-3-131	A child may be removed by a law enforcement officer from the custody of a parent, legal guardian, or legal custodian if there are reasonable grounds to believe removal is necessary for the health and safety of the child. Determination that there has been domestic or family violence creates a rebuttable presumption that custody by the perpetrator is detrimental to the child. The definition of abuse of a child includes sexual exploitation, which in turn includes, “allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child for commercial purposes.”
Alaska	ALASKA STAT. §§ 11.41.455, 18.66.990, 47.17.290	There is a rebuttable presumption that a parent who has a history of perpetrating domestic violence against the other parent, a child, or a domestic living partner may not be awarded sole legal custody, sole physical custody, joint legal custody, or joint physical custody of a child. The definition of domestic violence includes child abuse. The definition of “child abuse and neglect” includes sexual exploitation.
Arizona	ARIZ. REV. STAT. ANN. §§ 8-821, 13-3601, 25-403.03	The court shall consider evidence of domestic violence as being contrary to the best interests of the child. Prohibits the court from awarding joint legal decision-making over the child if the court finds the existence of significant domestic violence. Domestic violence includes any act that is a dangerous crime against children, including commercial and non-commercial sexual exploitation of a minor. The Department of Child Safety may remove a child from the custody of a guardian due to “exigent circumstances,” which include circumstances where probable cause exists to believe that the child is a victim of sexual abuse.
Arkansas	ARK. CODE ANN. §§ 9-13-101, 9-15-103	In a custody or visitation action, an act of domestic violence must be proven by a preponderance of the evidence. There is a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases where there was a finding of domestic abuse. Sexual exploitation is not explicitly included in the definition of domestic abuse, which is defined as, “physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household member” or, “any sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state.”
California	CAL. FAM. CODE §§ 3011, 3044	Creates a rebuttable presumption that, upon the court’s finding of domestic violence in the previous five years, an award of sole or joint physical custody or legal custody by the perpetrator is detrimental to the best interests of the child. The definition of

		domestic violence does not explicitly include sexual exploitation of a minor, but it does include situations where the perpetrator “is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in behavior involving, but not limited to, threatening, striking, harassing, destroying personal property, or disturbing the peace of another.” The court will also consider allegations of sexual exploitation of the child when making a determination of custody under the “best interests of the child” standard.
Colorado	COLO. REV. STAT. §§ 19-3-102, 19-3-604	A child may be adjudicated as “neglected or abandoned” if a parent or guardian has subjected him or her to mistreatment or abuse or allowed someone else to do the same. If a child is found neglected or abandoned, the court may terminate the parent-child relationship or impose a treatment plan, taking into account the safety of the child. When the parent-child relationship is terminated, the parent no longer has custody rights to the child. Even if the court decides to pursue a treatment plan, it may place the child in custody of another family member or a state agency.
Connecticut	CONN. GEN. STAT. §§ 46b-120, 46b-129	When a court finds that a child is uncared for, neglected, or abused, the court may assign legal guardianship to another relative or to the state temporarily or permanently. A child may be found “abused” under certain conditions, including in a condition that is a result of sexual molestation or exploitation.
Delaware	DEL. CODE ANN. tit. 13, § 705A	There is a rebuttable presumption that a perpetrator of domestic violence should not be awarded sole or joint custody of a minor child. However, the definition of “perpetrator of domestic violence” requires that the perpetrator must have been convicted of the offense. A court can still find domestic violence has occurred by a preponderance of the evidence and consider it in a custody proceeding without a criminal conviction.
District of Columbia	D.C. CODE §§ 16-914, 16-2301	There is no presumption that joint custody is in the best interests of the child when the court finds there has been an intrafamily offense or child abuse. A child may also be adjudicated as “neglected” if the child has been abused or sexually exploited. In that case, the court has jurisdiction to make custody decisions.
Florida	FLA. STAT. §§ 39.01, 39.521, 741.30	When a child is adjudicated by a court to be “dependent”, the court has the power by order to require placement of the child with another adult or in a child care facility. A child is dependent if they have been abandoned, abused, neglected by their custodians, or sexually exploited. A court may also grant a petitioner an injunction against domestic violence if it finds that the petitioner has likely experienced domestic violence or is likely to experience it in the future. The injunction may provide petitioner full custody of a minor child.

Georgia	GA. CODE ANN. §§ 15-11-2, 19-9-3, 19-9-7, 19-15-1	Courts must consider any evidence of family violence, sexual, mental, or physical child abuse before granting custody to that parent. Child abuse explicitly includes sexual exploitation of a minor. If a judge finds that a parent has committed one or more acts involving family violence, they must find adequate provision for the safety of the child before they award joint custody. A court may also adjudicate the child as a “dependent child” if they have been abused, including sexual exploitation. A court may then make custody changes or involuntarily terminate the parental rights to the dependent child.
Hawaii	HAW. REV. STAT. §§ 87A-4, 571-46, 571-61	When custody is at issue, a determination that family violence has been committed raises a rebuttable presumption that custody to that parent is not in the best interest of the child. A court will also consider any physical or emotional abuse of the child. A family court may also assert jurisdiction and terminate parental rights upon a finding by clear and convincing evidence that the natural parent committed sexual abuse of the child.
Idaho	IDAHO CODE §§ 16-1602, 32-717	In a child custody action, the court will consider domestic violence in making its determination of the best interests of the child. A court may obtain jurisdiction over a child by adjudicating the child as “abused.” The definition of abuse explicitly includes child pornography. Once the court has jurisdiction, it may make custody arrangements, including termination of that parent’s parental responsibilities.
Illinois	325 ILL. COMP. STAT. ANN. 5/1 <i>et seq.</i> ; 705 ILL. COMP. STAT. ANN. 405/2-3; 750 ILL. COMP. STAT. 5/603.10	In cases determining allocation of parental responsibilities, a court may restrict a parent’s responsibilities if they find the parent engaged in conduct that seriously endangered the child’s mental, moral, or physical health. This includes abuse or allowing someone else to abuse the child. A court can also get jurisdiction over child custody matters through a petition from Child Protective Services. If the court determines that a child is abused by a preponderance of the evidence, the court may determine custody of the minor in accordance with the best interests of the child, up to and including termination of parental rights.
Indiana	IND. CODE §§ 31-17-2-8, 31-34-1-4	In custody actions, a court will consider evidence of a pattern of domestic or family violence to determine the custodial placement that is in the best interests of the child. A court may also obtain jurisdiction over custody decisions by determining that a child is “in need of services.” A child is in need of services if a parent or guardian is allowing a child’s participation in obscene performance, as well as if they are subjected to other types of abuse. After adjudication, the court may alter custodial arrangements or terminate the offender’s parental rights if it is in the best interests of the child.

Iowa	IOWA CODE §§ 232.2, 232.96, 598.41	In child custody proceedings, if the court finds that a history of domestic abuse exists, there is a presumption against joint custody. A court will not award custody if it finds direct physical or emotional harm is likely to result from contact with one parent. Additionally, a child may be adjudicated as a “child in need of assistance” so that the court may alter custody arrangements. A child victim of sexual exploitation is a “child in need of assistance.” The state has the burden of proving the allegations by clear and convincing evidence. The court may then issue an order establishing removal of the child from the child’s home and potentially permanent termination of parental rights.
Kansas	KAN. STAT. ANN. §§ 38- 2202, 38-2255	A child who has been subjected to sexual abuse, including commercial sexual exploitation, is a “child in need of care.” A court may remove the child in need of care from the custody of the parent if it finds that the child is likely to sustain harm if they are not removed, allowing the child to remain is contrary to the welfare of the child, or it is in the best interests of the child to be removed.
Kentucky	KY. REV. STAT. ANN. §§ 403.270, 403.315	In deciding the best interests of the child, the court will consider any finding that domestic violence has occurred. The presumption that joint custody is in the best interest of the child is inapplicable when a domestic violence order has been entered.
Louisiana	LA. CHILD. CODE ANN. art. 606	If a child is a victim of abuse perpetrated, aided, or tolerated by a parent or caretaker, including pornography and exploitation offenses, they may be designated a “child in need of care.” If a child is designated a child in need of care, the court may order placement of the child with another relative or with the state.
Maine	ME. STAT. tit. 19-A, § 4002; ME. STAT. tit. 22, §§ 4002, 4055	If a court finds remaining with a parent is contrary to the welfare of the child, it may order removal of the child from the home. If the court finds an aggravating factor, like sexual exploitation or abuse, it need not make reasonable efforts to prevent removal of the child from the home. A parent’s parental rights may be terminated if the court finds it is in the best interests of the child, and there is a rebuttable presumption that a parent who has participated in the sexual exploitation of their child is not able to meet the child’s needs.
Maryland	MD. CODE ANN., FAM. LAW §§ 5-701, 9-101	Definition of child abuse includes encouraging or allowing sexual exploitation and pornography. In a custody or visitation hearing, if the court finds child abuse is likely, it shall deny custody or visitation rights to that party.
Massachusetts	MASS. GEN. LAWS ch. 208, § 31A	When issuing any custody orders, courts shall consider evidence of past or present abuse as a factor contrary to the best interests of the child.
Michigan	MICH. COMP. LAWS §§ 712A.13a, 722.602	Statute specifically lists child pornography offenses under child abuse. If the court finds probable cause to believe a household member abused a child, it may order the accused to leave the child’s home or place the child outside their home.

Minnesota	MINN. STAT. §§ 518.17, 518B.01	Upon a finding of domestic abuse, including criminal sexual conduct, a court may award temporary custody of the child to another family member or the state. In deciding custody orders, a court uses the best interests of the child standard. There is a rebuttable presumption that joint custody is not in the best interests of the child if domestic abuse has occurred.
Mississippi	MISS. CODE ANN. §§ 93-5-24, 93-15-119	If a court finds by a preponderance of the evidence that a parent has a history of perpetrating family violence, there is a presumption against awarding joint custody to that person. Parental rights may also be terminated upon a showing that the parent is unfit to raise the child, which can be shown by past or present conduct that demonstrates a substantial risk of compromising or endangering the child's safety and welfare.
Missouri	MO. REV. STAT. §§ 452.375, 455.523	In deciding the best interests of the child, the court will consider any history of abuse. A court may also award custody in the best interests of the child after issuing a domestic violence order of protection.
Montana	MONT. CODE ANN. §§ 41-3-609, 40-4-212, 40-15-201	Courts will consider physical abuse or threat of physical abuse when determining the best interests of the child. A minor is also eligible for a protective order if a parent sexually abuses them, which may include removing the abuser from the residence or placing the child in the custody of another family member. A court may also terminate the parental rights of a parent if they find the parent has subjected the child to enumerated types of extreme abuse.
Nebraska	NEB. REV. STAT. §§ 28-710, 43-2932	If the preponderance of the evidence demonstrates that a parent has committed child abuse or neglect, a court may deny legal or physical custody to that parent to protect the child from harm. Child abuse includes sexual exploitation or sex trafficking.
Nevada	NEV. REV. STAT. § 125C.0035	In considering the best interests of the child, a court will consider any history of abuse and neglect. A finding of abuse or domestic violence creates a rebuttable presumption against joint physical custody by the perpetrator.
New Hampshire	N.H. REV. STAT. ANN. §§ 169-C:3, 461-A:6	In determining parental rights, a court will consider any evidence of abuse. Abuse includes sexual abuse, such as sexual exploitation of children. If it is in the best interests of the child, the court will not grant custody to the abuser.
New Jersey	N.J. STAT. ANN. §§ 9:6-8.21, 9:6-8.54	After adjudicating that a child has been abused or neglected, the court may issue an order granting temporary custody of the child to another person.
New Mexico	N.M. STAT. ANN. §§ 32A-4-2, 32A-4-22	If a child is found to be neglected or abused, which includes being subjected to exploitation and child pornography offenses, a court may place the child with another parent or under protective supervision with the Department of Child Services. Attempt or conspiracy to subject a child to sexual abuse or chronic abuse is an

		aggravating circumstance that may allow a court to terminate parental rights involuntarily.
New York	N.Y. FAM. CT. ACT §§ 1012, 1052	A child is an “abused child” if a parent commits one of a list of enumerated offenses against them, including child sexual performance and child exploitation. Reasonable efforts to prevent or eliminate the need for removing the child from the home are not required in the case of aggravating circumstances, such as when a child has been subjected to repeated abuse or has been adjudicated an “abused child.”
North Carolina	N.C. GEN. STAT. §§ 7B-101, 7B-503	An “abused juvenile” is a person under the age of 18 whose caretaker has subjected them to one of a list of enumerated offenses, including committing, permitting, or encouraging preparation of obscene depictions of the juvenile. When there is reasonable factual basis to believe the juvenile has been subjected to those acts, a court might find they meet the criteria for nonsecure custody.
North Dakota	N.D. CENT. CODE §§ 14-07.1-02, 14-09-06.2	If the court finds credible evidence that domestic violence has occurred and there was at least one instance of serious bodily injury or a pattern of domestic violence, there is a rebuttable presumption that the perpetrator may not be awarded residential responsibility for the child. A court may also award a domestic violence protection order that would grant temporary custody with regards to minor children upon a showing of child abuse.
Ohio	OHIO REV. CODE ANN. §§ 2151.34, 3109.04	When allocating parenting responsibility the court will consider any history of, or potential for, child abuse or domestic violence. Domestic violence includes any offense that would result in the child being adjudicated an “abused child.” A court may also issue a protective order if a petition alleges a sexually oriented offense by the parent or guardian, which could result in a change of custody.
Oklahoma	OKLA. STAT. tit. 10A, §§ 1-1-105, 1-4-707	Upon the filing of a petition alleging that a child is “deprived,” a court will hold an adjudication hearing to make a determination. If a child is abused, they are deprived. Child abuse includes sexual exploitation or obscene photography. In accordance with the best interests of the child, a child may be placed under protective supervision of HHS or with the other parent or a family member.
Oregon	OR. REV. STAT. §§ 107.137, 419B.005	When determining the best interests and welfare of the child, the court considers relevant factors including whether one parent committed abuse. If so, there is a rebuttable presumption that it is not in the best interests of the child to award sole or joint custody to that parent. The definition of child abuse includes sexual exploitation broadly.
Pennsylvania	23 PA. CONS. STAT. § 5328; 42 PA. CONS. STAT. §§ 6302, 6351	Courts will consider present and past abuse and the continued risk of harm to the child when making custody determinations. Additionally, a court may adjudicate a minor as “dependent” in order to remove a child from a parent’s custody. A child may be found dependent based on evidence that the parent places the

		health, safety, or welfare of the child at risk. This includes perpetrating sexual violence such as child pornography offenses.
Rhode Island	15 R.I. GEN. LAWS §§ 15-15-1, 15-15-3	The definition of domestic violence explicitly includes encouraging or forcing a child into a sexually explicit performance. A legal guardian or the Department of Youth and Families (DCYF) may file a petition in family court requesting an order that will protect a child from abuse or sexual exploitation. This could include awarding custody of the children to petitioner.
South Carolina	S.C. CODE ANN. §§ 63-15-40, 63-15-240	When deciding custody cases, the court considers whether the child has been abused or neglected and whether one parent has perpetrated domestic violence or child abuse. This explicitly includes sexual exploitation of a minor.
South Dakota	S.D. CODIFIED LAWS §§ 25-4-45, 26-8A-2	A court will determine child custody actions in the best interests of the child. A circuit court may acquire jurisdiction if a child is alleged to be abused or neglected. The definition of abuse explicitly includes sexual exploitation. The court will then make a custody determination in the best interests of the child.
Tennessee	TENN. CODE ANN. §§ 36-6-106, 37-1-167	In a custody proceeding, a court will evaluate evidence of physical or emotional abuse to the child. The court will also consider any past instances where the child has been adjudicated a “dependent, neglected, or abused child” or any child protective services investigations. A court may also acquire jurisdiction over a minor by an adjudication that the child is dependent or abused. If a child has suffered sexual abuse, that child should not be placed back in the care of the abusive party unless the judge finds by clear and convincing evidence that the threat no longer exists.
Texas	TEX. FAM. CODE ANN. §§ 153.004, 161.001, 261.001	If credible evidence is presented of a history or pattern of past or present child neglect, physical, or sexual abuse, there is a rebuttable presumption against joint conservatorship. The definition of child abuse explicitly includes child pornography offenses. A court may also terminate the parent-child relationship if it finds that the parent knowingly allowed the child to remain in conditions which endanger the physical or emotional well-being of the child, among other reasons.
Utah	UTAH CODE ANN. §§ 30-3-10, 78A-6-302, 78A-6-312	In a child custody proceeding, there is no rebuttable presumption of joint custody upon a finding of domestic violence, physical or sexual abuse, or emotional abuse. A court may also have jurisdiction over child custody through an adjudication that the child has been abused, including through sexual exploitation. The court may then place the child in the custody of another adult and commence proceedings to terminate parental rights. In cases of sexual exploitation, the division does not have a duty to make “reasonable efforts” to reunify the offending parent and child.
Vermont	VT. STAT. ANN. tit. 15, § 665;	In considering custody arrangements, a court should consider evidence of abuse. A court may also exert jurisdiction over a child custody matter by adjudicating a minor as an “abused or neglected

	VT. STAT. ANN. tit. 33, § 4912	child,” meaning the child’s welfare is in danger. The definition of sexual abuse includes aiding and abetting child pornography.
Virginia	VA. CODE ANN. §§ 16.1-228, 16.1-278.2, 20-124.3	In child custody proceedings, a court will consider any history of family or sexual abuse in determining the best interests of the child. A court may assert jurisdiction over a custody matter by adjudicating a child as an “abused or neglected child” when a parent has subjected them to substantial risk of death, disfigurement, or impairment of bodily or mental functions, or committed a sexual act upon the child. Then, a court may order custody in the best interests of the child and prohibit or limit contact as appropriate.
Washington	WASH. REV. CODE §§ 13.34.030, 13.34.130, 26.09.191	In a custody proceeding, a permanent parenting plan should not require joint decision-making when one parent has engaged in sexual abuse or has a history of domestic violence. A child may be adjudicated a “dependent child” if the child is abused or neglected by a person legally responsible for their care. This includes sexual exploitation and child pornography offenses. If proven by a preponderance of the evidence that a child is dependent, the court may enter a disposition to award custody of the child to a different person or terminate the parent-child relationship altogether.
West Virginia	W. VA. CODE §§ 48-9-209, 49-4-604	If a court finds credible information that a parent has abused or sexually assaulted a child, the court may impose limits on a parenting plan that are reasonably calculated to protect the child from harm, including allocating sole custody to the other parent. A court may also make custody determinations by adjudicating a child as “abused or neglected.”
Wisconsin	WIS. STAT. §§ 48.13, 767.41	In a child custody proceeding, evidence of child abuse or domestic abuse creates a rebuttable presumption that parties will not be able to cooperate in joint decision-making. Child abuse includes sexual exploitation of a child. A court may also have exclusive original jurisdiction over a child if the child is “in need of protection or services” because they have been the victim of abuse.
Wyoming	WYO. STAT. ANN. §§ 14-3-429, 20-2-201	In custody determinations, the court shall consider evidence of child abuse as being contrary to the best interests of the child. A court may also have custody over a “neglected child,” which includes children subjected to abuse.

Appendix HH: Civil Non-Domestic No-Contact Orders Chart

State	Statute	Description
Alabama	N/A	Statutory civil protection orders are specific to victims whose abuser is a former intimate partner or household member.
Alaska	ALASKA STAT. § 18.65.850	A person who reasonably believes that they are a victim of sexual assault may file a petition in the district or superior court for a protective order. Court will issue the order if it finds by a preponderance of the evidence that the respondent has committed sexual assault.
Arizona	N/A	If the facts at issue do not qualify as domestic violence due to the lack of relationship between the parties, Arizona only issues civil injunctions for harassment.
Arkansas	N/A	Statutory civil protection orders are specific to victims whose abuser is a former intimate partner or household member.
California	CAL. CIV. PROC. CODE § 527.6	A court can issue a civil harassment order if a petitioner is a victim of unlawful violence like assault, battery, or stalking, or the respondent has acted repeatedly to cause extreme emotional distress. A court will issue a temporary restraining order upon reasonable proof of harassment. After a hearing, if a judge finds by clear and convincing evidence that unlawful harassment exists, they will issue a restraining order for up to five years.
Colorado	COLO. REV. STAT. § 13-14-104.5	Courts have the authority to issue a temporary or permanent civil protection order to prevent sexual assault or abuse. Petitioner does not need to show that they have reported the act to law enforcement or that criminal charges have been filed.
Connecticut	CONN. GEN. STAT. § 46b-16a	A victim of sexual abuse, sexual assault, or stalking may seek a civil protection order. The court must find that there are reasonable grounds to believe that the respondent has committed acts constituting grounds for issuance of an order and will continue to commit such acts or acts designed to intimidate or retaliate against the applicant.
Delaware	N/A	Statutory civil protection orders are specific to victims whose abuser is a former intimate partner or household member.
District of Columbia	D.C. CODE §§ 16-1003, 16-1004	A victim may petition for a civil protective order against an abuser in the Domestic Violence unit (regardless of whether the petitioner has an interpersonal relationship with the offender). The court will issue a temporary protection order upon a finding that the safety or welfare of the petitioner is immediately endangered and a final order after a hearing if it finds by a preponderance of the evidence that the respondent committed the acts.
Florida	FLA. STAT. § 784.046	A victim of sexual violence, including sexual performance by a child, may file for a protective injunction if (1) the person reported the sexual violence to law enforcement and is cooperating, regardless of whether criminal charges have been filed, or (2) the respondent was sentenced to prison. An injunction for repeat

		violence (at least two acts of violence, one in the past six months) is also available.
Georgia	N/A	Statutory civil protection orders are specific to domestic violence victims or victims of stalking.
Hawaii	HAW. REV. STAT. § 604-10.5	District courts have the power to enjoin or restrain “harassment,” defined as physical harm, bodily injury, assault, or imminent threat of such harm, or an intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs the individual and serves no legitimate purpose, provided that such course of conduct would cause a reasonable person to suffer emotional distress.
Idaho	IDAHO CODE § 18-7907	A court will grant a protection order by statute for victims of malicious harassment and stalking if a petition is filed within 90 days of the harassment. The definition of harassment requires a course of conduct intended to terrify, threaten, or intimidate a person.
Illinois	740 ILL. COMP. STAT. 22/201	A victim of non-consensual sexual conduct or non-consensual sexual penetration is entitled to a no-contact order if the unlawful activity can be shown by a preponderance of the evidence. Court shall not require physical injury of the victim.
Indiana	IND. CODE § 34-26-5-2	A parent or guardian may file a petition for an order of protection on behalf of a child against a person who has committed a sex offense against that child, including the offense of child exploitation.
Iowa	IOWA CODE § 236A.7	Courts will issue a protective order upon finding that the defendant has engaged in sexual abuse by a preponderance of the evidence, which includes sexual exploitation of a minor.
Kansas	KAN. STAT. ANN. § 60-31a05	Courts issue temporary protective orders when a plaintiff alleges stalking, sexual assault, or a human trafficking offense (like commercial sexual exploitation of a minor). After a hearing, the court may issue a final order if the petitioner proves the offense by a preponderance of the evidence. A criminal proceeding is not required to prove the offense.
Kentucky	KY. REV. STAT. ANN. § 456.030	A court will issue an interpersonal protective order if it finds that there is an immediate and present danger of dating violence and abuse, sexual assault, or stalking.
Louisiana	LA. STAT. ANN. § 46:2183	A protective order is allowed for nonconsensual sexual contact, which includes pornography involving juveniles. A showing that a person is or has been victim of sexual assault shall constitute good cause for an ex parte temporary order.
Maine	ME. STAT. tit. 19-A, § 4005	A victim will qualify for a “protection from abuse” order even if the abuser is not a family or household member or dating partner if the abuse includes sexual exploitation of a minor or dissemination of sexually explicit material. A temporary order may be issued upon a finding of immediate and present danger of abuse to the plaintiff. Upon finding that the respondent committed the abuse by

		a preponderance of the evidence, a protection order is issued for a period of up to two years.
Maryland	MD. CODE ANN., CTS. & JUD. PROC. § 3-1503-5	Victims of abuse may petition the court for a peace order if the abuser has committed one of the enumerated acts in the past 30 days. Acts include sexual assault, false imprisonment, harassment, misuse of electronic communication, and revenge porn. After a hearing, the court may issue a final peace order if the judge finds by a preponderance of the evidence that the respondent has committed, and is likely to commit in the future one of the enumerated acts. A final peace order is effective for no more than 6 months.
Massachusetts	MASS. GEN. LAWS ch. 258E, §§ 1–5	Victims of harassment may file for a civil protective order. Harassment is broad and includes sexual assault and “three or more acts of cruel behavior where the harasser intends to cause and causes fear, intimidation, abuse, or damage to property.” Temporary orders will be issued upon a finding of substantial likelihood of immediate danger of harassment. Any protective order must be for a period not exceeding one year.
Michigan	MICH. COMP. LAWS § 600.2950a	A court may issue a non-domestic sexual assault personal protection order. A court can grant relief if the petition alleges conduct that constitutes sexual assault regardless of whether the respondent has been charged or convicted of a crime.
Minnesota	MINN. STAT. § 609.748	A victim can get a restraining order to protect against harassment, which specifically includes a single incident of “nonconsensual dissemination of private sexual images” as well as sexual assault. A final restraining order issued under this section can last up to two years.
Mississippi	N/A	Civil protective orders in Mississippi only cover domestic relationships.
Missouri	MO. REV. STAT. § 455.040	Missouri courts will issue a civil protective order for a child or an adult in cases of sexual assault or harassment. A court may issue a temporary ex parte order until a hearing where, if the petitioner has proved the allegation by a preponderance of the evidence, a full order will be issued for up to one year.
Montana	MONT. CODE ANN. §§ 40-15-102, 40-15-202	Courts will consider granting an order of protection if the respondent is not a family member or partner if the petitioner alleges certain offenses such as sexual assault, sexual abuse of children, or human trafficking. Sexual abuse of children includes child pornography offenses. A petitioner is eligible whether or not charges have been filed or the conduct was reported to law enforcement. If the court finds that the petitioner is in danger of harm if the court does not act, it will grant a temporary order of protection. After a hearing, the court will determine whether good cause exists to make the order permanent.
Nebraska	NEB. REV. STAT. § 28-311.11	Any victim of a sexual assault offense may file a petition for a sexual assault protection order. Upon receiving a petition and an

		affidavit stating the facts a court may grant the order for up to one year.
Nevada	NEV. REV. STAT. §§ 33.010, 33.400	A court may grant an injunction when it appears that the plaintiff is entitled to the relief demanded and the relief consists in restraining the commission or continuance of the act complained of. A parent of a child may also petition for a temporary or extended order against an adult who the parent reasonably believes has committed a crime involving physical or mental injury to the child or sexual abuse or sexual exploitation of the child. It may be granted with or without notice to the adverse party.
New Hampshire	N/A	Civil protection orders are only issued by statute for domestic violence relationships or for stalking.
New Jersey	N.J. STAT. ANN. § 2C:14-14	A court may issue a restraining order if the petitioner is the victim of nonconsensual sexual contact, sexual penetration, or lewdness, regardless of whether criminal charges were filed. The court will issue a temporary order if the court determines the petitioner is a victim of the listed offenses. After a hearing, the order may become permanent.
New Mexico	N.M. STAT. ANN. § 40-13-2	Statute includes stalking or sexual assault under “domestic abuse” regardless of whether it was committed by a household member. A temporary order will issue immediately upon a finding of probable cause that the act of domestic abuse has occurred and will extend for no longer than six months with the possibility of extension.
New York	N/A	Civil protection orders are only issued by statute for victims of family offenses who have an “intimate relationship” with the abuser.
North Carolina	N.C. GEN. STAT. § 50C-5	A no contact order issues upon a finding that the victim has suffered unlawful conduct committed by the respondent. The court shall not require physical injury to the victim.
North Dakota	N.D. CENT. CODE §§ 12.1-31-01.2, 12.1-31.2-01	North Dakota issues restraining orders for “disorderly conduct” which encompasses intrusive or unwanted acts, words, or gestures intended to adversely affect the safety, security, or privacy of another person. This also includes human trafficking or attempted human trafficking. A court issues a temporary order if the petition alleges reasonable grounds to believe the individual engaged in disorderly conduct. After a hearing the court may extend the order. North Dakota also issues restraining orders when a petition alleges an offense for which a sexual act or sexual contact is an element.
Ohio	OHIO REV. CODE ANN. § 2903.214	A person may seek relief under the section if the respondent has committed a “sexually oriented offense” against them, which includes child pornography and exploitation offenses. The court may enter a temporary order upon good cause, such as immediate and present danger to the petitioner. After a full hearing, the court may issue a protection order for up to five years.

Oklahoma	OKLA. STAT. tit. 22, §§ 40.2, 60.4	Issues protective orders similarly to those in domestic abuse cases. Can be issued to a victim of a sex offense, which includes sex trafficking and sexual exploitation of a minor. After a hearing, if the court issues a final order, it can last up to five years.
Oregon	OR. REV. STAT. § 163.763	The court may issue a sexual abuse protective order if sexual abuse has happened to the petitioner within 180 days and the petitioner fears for their physical safety. Victims of stalking can also file for civil protection orders.
Pennsylvania	42 PA. CONS. STAT. § 62A05	Statute protects victims of sexual violence, including child sexual exploitation, by offering civil protective orders. The court may issue an order to protect the plaintiff or another individual, “as appropriate,” from the defendant.
Rhode Island	15 R.I. GEN. LAWS § 15-15- 3	A minor can get a domestic abuse restraining order in family court if they are sexually exploited by a person, regardless of their relationship to the child. A temporary order will be granted for 21 days if the court deems it necessary to protect the plaintiff from abuse. After a hearing, the court may issue a final order lasting up to three years.
South Carolina	N/A	South Carolina will only issue a civil restraining order if a non-household-member respondent has already stalked or harassed the victim.
South Dakota	S.D. CODIFIED LAWS § 22- 19A-8	A victim of stalking, physical injury as a result of an assault, or a crime of violence, may petition for a civil protection order whether or not there is a pending lawsuit between the parties. If the court finds by a preponderance of the evidence that the crime has taken place, it may issue a protection order for up to five years. The definition of a crime of violence includes abuse of or cruelty to a minor.
Tennessee	TENN. CODE ANN. § 36-3- 602	Tennessee grants civil protective orders by statute for victims of sexual assault, sexual battery and stalking. At a hearing, the victim must prove the allegation by a preponderance of the evidence in order to get a protective order for up to one year.
Texas	TEX. CODE CRIM. PROC. ANN. art. 7A.01	Courts issue protective orders by statute to victims of sexual assault or abuse, stalking, or trafficking. This includes offenses such as indecency with a child and continuous sexual abuse of a child. A court will issue a temporary ex parte order immediately if they find clear and present danger of further offenses. The court will then schedule a hearing. If, at the close of the hearing, the court finds reasonable ground to believe that the applicant is a victim of one of those offenses, the court shall issue a protective order.
Utah	UTAH CODE ANN. §§ 78B- 7-201, 78B-7- 502	Courts will issue child protective orders upon an ex parte determination that the child is being abused or is in imminent danger of being abused. Within 20 days, the court will have a hearing to determine whether, based on the preponderance of the evidence, the child is being abused or is in imminent danger of being abused. If so, the court will enter a protective order. Utah

		also issues civil protective orders by statute for sexual violence, including sexual exploitation and human trafficking regardless of whether or not the victim is a minor.
Vermont	VT. STAT. ANN. tit. 12, § 5133	A court will issue a protective order upon a petition that alleges sexual assault or stalking. If a court finds by a preponderance of the evidence that the defendant stalked or sexually assaulted the plaintiff, the court will grant a no-contact order for any fixed period of time.
Virginia	VA. CODE ANN. § 19.2-152.10	A court may issue a protective order by statute if it finds the victim has been subjected to an act involving violence, force, or threat.
Washington	WASH. REV. CODE ANN. § 7.90.090	Statute grants protective orders upon a preponderance of the evidence that the petitioner has been a victim of nonconsensual sexual conduct. No proof of reporting to law enforcement or physical injury is required.
West Virginia	W. VA. CODE § 53-8-1	Courts will issue a personal safety order for stalking, sexual offenses (including use of minors to produce obscene matter, sending or distributing depictions of a child engaged in sexually explicit conduct, and sexual abuse), or repeated credible threats of violent injury. A court will issue a temporary order upon finding there is reasonable cause to believe that the respondent has committed one of the specified acts. After a hearing, if the court finds by a preponderance of the evidence that the respondent has committed the act, it may issue a final personal safety order not exceeding two years.
Wisconsin	WIS. STAT. §§ 813.122, 813.123	A court may issue a restraining order to protect a victim of child abuse, which includes sexual exploitation of a child. If a court finds reasonable grounds to believe that the respondent has engaged in or may engage in abusing the victim it will issue a temporary restraining order. The court will grant an injunction after a hearing if the judge finds reasonable ground to believe the same. The injunction is issued for up to two years or up to six months after the minor turns 18. If the victim is an adult, they may qualify for an “individual at risk” restraining order, which protects against abuse, including sexual abuse, and neglect.
Wyoming	WYO. STAT. ANN. § 7-3-506	Wyoming issues civil orders of protection for victims of stalking and sexual assault. Sexual assault includes sexual abuse of a minor. There need not be any criminal charges pending to petition for this order. The court may grant a temporary ex parte order of protection if the facts show that there exists a clear and present danger of further conduct covered by the statute. After a hearing and upon a finding that the conduct has been committed, the court may enter an order of protection for up to three years.

Appendix II: Pleading Anonymously for Civil Plaintiffs Chart

State	Statute	Description
Federal	N/A	The Federal Rules of Civil Procedure do not explicitly allow plaintiffs to file under a pseudonym. However, courts sometimes allow it. Courts approach this issue as a constitutional one, weighing whether the plaintiff's privacy rights outweigh the public's right to an open judicial forum and whether anonymity would be fair to the defendant. <i>Doe v. Megless</i> , 654 F.3d 404 (3d Cir. 2011); <i>Doe v. Merritt Hosp., LLC</i> , 353 F. Supp. 3d 472 (E.D. La. 2018); <i>Doe No. 2 v. Kolko</i> , 242 F.R.D. 193 (E.D.N.Y. 2006). Cases suggest that courts consider (1) whether litigation involves matters that are highly sensitive and of personal nature; (2) whether identification poses risk of retaliatory physical or mental harm to party seeking to proceed anonymously; (3) whether identification presents other harms and likely severity of those harms; (4) whether plaintiff is particularly vulnerable to possible harms of disclosure, particularly in light of age; (5) whether suit is challenging actions of government or private parties; (6) whether defendant is prejudiced by allowing plaintiff to press claims anonymously, whether nature of prejudice differs at any stage of litigation, and whether it can be mitigated by court; (7) whether plaintiff's identity has thus far been kept confidential; (8) whether public's interest in litigation is furthered by requiring plaintiff to disclose identity; (9) whether, because of purely legal nature of issues presented or otherwise, there is atypically weak public interest in knowing litigants' identities; and (10) whether there are alternative mechanisms for protecting confidentiality of plaintiff. <i>Doe v. Skyline Autos. Inc.</i> , 375 F. Supp. 3d 401 (S.D.N.Y. 2019).
Alabama	N/A	
Alaska	N/A	
Arizona	N/A	
Arkansas	N/A	
California	CAL. CIV. CODE § 1708.85	When a plaintiff is pursuing a cause of action for distribution of sexually explicit materials, the court may grant injunctive relief allowing plaintiff to proceed using a pseudonym.
Colorado	N/A	Courts apply the balancing test laid out in <i>Doe v. Shakur</i> , 164 F.R.D. 359 (S.D.N.Y. 1996), and adopted by <i>Doe v. Heitler</i> , 26 P.3d 539 (Colo. App. 2001).
Connecticut	CONN. PRACTICE BOOK Sec. 11-20A	Pseudonyms may be used with prior approval of the judicial authority and if the judicial authority concludes that the order is necessary to preserve an interest which is determined to override the public's interest in knowing the name of the party. <i>See Doe v. Rackliffe</i> , 164 A.3d 1 (Conn. 2017).
Delaware	N/A	

District of Columbia	N/A	
Florida	N/A	
Georgia	N/A	In extraordinary cases a court may employ its discretion in determining whether a plaintiff may proceed under a pseudonym. Georgia courts will consider (1) whether the lawsuit involves matters of sensitive and highly personal nature; (2) whether the plaintiff or an innocent nonparty risks suffering physical or psychological harm if the plaintiff is identified, taking into consideration the age of the plaintiff; and (3) whether the plaintiff's anonymity imposes a risk of fundamental unfairness to the opposing party. <i>Doe v. Archdiocese of Atlanta</i> , 761 S.E.2d 864 (Ga. Ct. App. 2014).
Hawaii	HAW. REV. STAT. § 634-71	The court may allow a plaintiff to proceed anonymously after considering five factors: (1) the severity of the petitioner's injury; (2) the reasonableness of the petitioner's fears of reprisal; (3) the petitioner's vulnerability to retaliation from the action; (4) the risk of prejudice to the other party; and (5) whether the public interest would be served by allowing the petitioner to remain anonymous. The reasons for anonymity must be sufficient to outweigh the public interest in the disclosure of the parties and the court must believe that the parties' files will be a vehicle for improper use if not made anonymous.
Idaho	N/A	
Illinois	735 ILL. COMP. STAT. ANN. 5/2-401	Upon application and for "good cause shown," parties may appear under fictitious names. Good cause for anonymity exists "when necessary to protect privacy of children, rape victims, and other particularly vulnerable parties or witnesses." <i>Doe v. Nw. Mem'l Hosp.</i> , 19 N.E.3d 178 (Ill. App. Ct. 2014). Determination of good cause is solely within the discretion of the trial court.
Indiana	N/A	The Indiana Court of Appeals has used the factors considered in federal courts to decide whether a plaintiff should be allowed to proceed anonymously. <i>Doe v. Town of Plainfield</i> , 860 N.E.2d 1204 (Ind. Ct. App. 2007).
Iowa	N/A	
Kansas	N/A	Plaintiffs may be identified by a pseudonym where there is an important privacy interest to be recognized, subject to a decision by a judge. <i>Unwitting Victim v. C.S.</i> , 47 P.3d 392 (Kan. 2002).
Kentucky	N/A	
Louisiana	N/A	
Maine	N/A	
Maryland	N/A	Plaintiff may proceed under a fictitious name when "anonymity was closely connected to rights asserted by [plaintiff], and [plaintiff] would be required to reveal information of intimate and personal nature in order to vindicate rights grounded in protection

		of privacy.” <i>Doe v. Shady Grove Adventist Hosp.</i> , 598 A.2d 507 (Md. Ct. Spec. App.1991).
Massachusetts	N/A	
Michigan	N/A	The right to proceed anonymously is a derivative of the constitutional right to privacy, but it is not absolute. Social stigma or threat of physical harm can caution against disclosure of plaintiff’s identity to the public record. <i>Doe v. Bodwin</i> , 326 N.W.2d 473 (Mich. Ct. App. 1982).
Minnesota	MINN. R. CIV. P. 10.01; MINN. STAT. § 604.31	“A party may be identified by initials or pseudonym only where authorized by law or court order.” Relief is governed by the court’s discretion. When an individual is suing under MINN. STAT. § 604.31 for nonconsensual dissemination of sexual images the party is entitled to an order allowing anonymity.
Mississippi	N/A	
Missouri	N/A	
Montana	N/A	
Nebraska	NEB. REV. STAT. §§ 25-21,294, 25-21,301	If plaintiff brings an action pursuant to the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, Exploited Children’s Civil Remedy Act, or Human Trafficking Victims Civil Remedy Act, the statutes explicitly state that the plaintiff may request to file the action under a pseudonym.
Nevada	N/A	
New Hampshire	N/A	
New Jersey	N.J. STAT. ANN. § 2A:61B-1	In civil action for sexual abuse of a minor, “[t]he name, address, and identity of a victim or a defendant shall not appear on the complaint or any other public record . . . [i]n their place initials or a fictitious name shall appear.” Even in other civil actions courts will allow plaintiffs to proceed anonymously in sensitive situations. <i>Doe v. Tris Comprehensive Mental Health, Inc.</i> , 690 A.2d 160 (N.J. Super. Ct. Law Div. 1996) (plaintiff may proceed anonymously to avoid disclosing his homosexuality and HIV status).
New Mexico	N/A	
New York	N/A	A party may sue under a fictitious name in exceptional circumstances in the court’s discretion. The need for anonymity must outweigh prejudice to the opposing party and the public’s interest. Courts consider whether there is any risk of retaliation, risk of unfairness to the opposing party and whether the matter is of a highly sensitive and personal nature. <i>Doe v. Kidd</i> , 860 N.Y.S. 2d 866 (N.Y. Sup. Ct. 2008). There is a separate process for proceeding under an anonymous caption if a plaintiff is suing under the Crime Victims Act (CVA).
North Carolina	N/A	
North Dakota	N/A	
Ohio	N/A	
Oklahoma	N/A	

Oregon	N/A	
Pennsylvania	N/A	Courts may consider allowing a plaintiff to proceed anonymously in exceptional cases when the adverse consequences are so great as to outweigh the requirement that actions be brought in the names of the real parties. <i>Doe v. Johns-Manville Corp.</i> , 15 Pa. D. & C.3d 135 (Pa. Ct. C.P. 1980).
Rhode Island	N/A	The decision to allow a plaintiff to proceed under a pseudonym is within the sound discretion of the hearing justice. Case law suggests that Rhode Island state courts consider the same factors as federal courts. <i>Pelland v. State</i> , 919 A.2d 373 (R.I. 2007); <i>Doe v. Burkland</i> , 808 A.2d 1090 (R.I. 2002).
South Carolina	N/A	Courts weigh several factors in deciding whether to allow anonymous plaintiffs: (1) whether requesting party's justification is merely to avoid annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to requesting party or even more critically, to innocent non-parties; (3) ages of persons whose privacy interests are sought to be protected; (4) whether the action is against a governmental or private party; (5) risk of unfairness to opposing party from allowing an action against it to proceed anonymously. <i>Doe v. Howe</i> , 607 S.E.2d 354 (S.C. Ct. App. 2004).
South Dakota	N/A	
Tennessee	N/A	
Texas	N/A	
Utah	N/A	
Vermont	N/A	
Virginia	VA. CODE ANN. § 8.01-15.1	A trial court may allow a plaintiff to proceed anonymously if the anonymous litigant shows special circumstances such that the need for anonymity outweighs the public's interest in knowing the party's identity and outweighs any prejudice to the other parties. The court considers the following factors: whether the requested anonymity is intended merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a sensitive and highly personal matter; whether identification poses a risk of retaliatory physical or mental harm to the requesting party or to innocent nonparties; the ages of the persons whose privacy interests are sought to be protected; whether the action is against a governmental or private party; and the risk of unfairness to other parties if anonymity is maintained.
Washington	N/A	
West Virginia	N/A	
Wisconsin	N/A	
Wyoming	N/A	

Appendix JJ: Sample Privacy Motions

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X		
An Individual Known to the Defendant as)	
.jpg and .jpg)	
)	
Plaintiff,)	
)	LETTER BRIEF
v.)	
)	
,)	Index
)	
Defendant.)	
-----X		

PLAINTIFF'S APPLICATION TO PROCEED UNDER A PSEUDONYM

The Federal Rules of Civil Procedure do not explicitly authorize, or absolutely prohibit, the use of fictitious names by plaintiffs or other parties. In *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 71 Fed.R.Serv.3d 467 (2nd Cir. 08-12-2008), the Second Circuit Court of Appeals presented ten factors to consider when determining whether a plaintiff may maintain an action under a pseudonym:

1. whether the litigation involves matters that are highly sensitive and of a personal nature;
2. whether identification poses a risk of retaliatory harm to the party seeking to proceed anonymously or even more critically, to innocent non-parties;
3. whether identification presents other harms and the likely severity of those harms;
4. whether the plaintiff is particularly vulnerable to the possible harms of disclosure;
5. whether the suit is challenging actions of government or that of private parties;
6. whether the defendant is prejudiced by allowing the plaintiff to press claims anonymously;
7. whether the plaintiff's identity has thus far been kept confidential;
8. whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose her identity;
9. whether, because of the purely legal nature of issues presented or otherwise, there is atypically weak public interest in knowing the litigants' identities; and

10. whether there are any alternative mechanisms for protecting the plaintiff's confidentiality.

The Court of Appeals recognized that "the relevant inquiry [is] a balancing test that weighs the plaintiff's need for anonymity against countervailing interests in full disclosure." *Id.* at 189. This "factor-driven balancing inquiry requires a district court to exercise its discretion in the course of weighing competing interests." *Id.* at 190. Any appellate review is for abuse of discretion.

MEMORANDUM OF LAW

FACTOR 1: WHETHER THE LITIGATION INVOLVES MATTERS THAT ARE HIGHLY SENSITIVE AND OF A PERSONAL NATURE

When she was eight years old, the Plaintiff was raped and sexually exploited in order to produce child pornography. As a child, the Plaintiff was an involuntary participant in these highly sensitive and personal matters which were visually recorded then distributed and re-distributed endlessly worldwide. Over a decade later the images of the Plaintiff's rape and sexual exploitation continue to be widely circulated on the Internet and are possessed and traded by thousands of pedophiles each year.

The current litigation involves one such pedophile who pled guilty and was criminally convicted in federal court of possessing several of the Plaintiff's child pornography images. Visual depictions of a pre-pubescent child's rape and sexual exploitation are among the most highly sensitive and personal matters contemplated by the law. The mere possession of such images subjects an individual to a mandatory minimum federal sentence of five years in prison. 18 U.S.C. § 2252A(b)(1).

Congress and the American people have recognized the fundamental affront to human dignity and personal privacy that child pornography represents and have chosen through

public policy to make any possession, distribution and production punishable by significant criminal penalties. Such a determination, while not dispositive, supports the notion that the current litigation involves matters that are highly sensitive and of a personal nature and therefore the Plaintiff is deserving of the protection provided by proceeding under a pseudonym.

FACTOR 2: WHETHER IDENTIFICATION POSES A RISK OF RETALIATORY HARM TO THE PARTY SEEKING TO PROCEED ANONYMOUSLY OR EVEN MORE CRITICALLY, TO INNOCENT NON-PARTIES

In *James v. Jacobson*, 6 F.3d 233 (4th Cir. 01-24-1992), the Fourth Circuit Court of Appeals found that this factor was primarily concerned with “retaliatory physical or mental harm.” In *Doe v. Frank*, 951 F.2d 320 (11th Cir. 01-24-1992), the Eleventh Circuit Court of Appeals held that:

in cases where, as here, pseudonyms are used to shield the anonymous party from retaliation, the district court should determine the need for anonymity by evaluating the following factors: (1) the severity of the threatened harm, (2) the reasonableness of the anonymous party’s fears, and (3) the anonymous party’s vulnerability to such retaliation.

Both *James* and *Frank* were cited favorably by the Second Circuit Court of Appeals in *Sealed Plaintiff*.

In this case, the Plaintiff is at risk of mental harm if she is identified and she may also be at risk of physical harm. Child pornography is largely distributed by networks of anonymous pedophiles and members of other deviant subcultures utilizing a variety of Internet technologies. The individuals who possess and trade child pornography do not know each other which enable them to conduct their illegal activities with impunity and little risk of discovery. See Philip Jenkins, *Beyond Tolerance: Child Pornography on the Internet*. New York: NYU Press, 2001.

Given this situation, the Plaintiff's identity can easily and anonymously be conveyed to pedophiles and others who collect her child pornography images. These individuals will then know the Plaintiff not only through her images, but they will also know her actual identity. They will know her, but she will not know them. In *New York v. Ferber*, 458 U.S. 747, 102 S.Ct. 3348, FN 10 (1982), the United States Supreme Court recognized that "it is the fear of exposure and the tension of keeping the act secret that seem to have the most profound emotional repercussions" on victims like the Plaintiff.

The *Ferber* Court also found that "pornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child's actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place. A child who has posed for a camera must go through life knowing that the recording is circulating within the mass distribution system for child pornography." *Id.* Publication of a child pornography victim's identity will only compound this mental injury.

The severity of the threatened harm is great. The reasonableness of the anonymous party's fears are justified.

After child pornography victim Masha Allen went public with her story of sexual torture and rape which resulted in one of the most widely traded and possessed child pornography image sets, the first person convicted for child pornography in the United States, underground author Peter Sotos, wrote a book featuring "child porn star Masha Allen . . . in a violent new work which goes beyond pornography to investigate the very experience of pornography itself."

[<http://www.creationbooks.com/titles/SHOWADULT.html> visited 02-06-2009]

This book, called Show Adult, is sold on Amazon.com and contains passages like the following:

Masha with a smaller dick and perfect eyes and a sweaty shivering fear that she never shows in her pictures. Not one.

....

Photos of Disney's Masha naked and sucking and posing next to photos of the child who was simply telling her story of childhood attack next to photos of just Bodil's alcoholic face. No animals. You understand? I was looking for you.

When I finally found the pictures of her being homeraped by Mr. Mancuso, I had no idea that she had been knifed by her mother when only three years old. I didn't see the scar. I think it would have made an impression but I'm sure I would have thought it was simply some childhood ailment surgery that may have been connected to her crossed eyes and otherwise white slip looks. It's you that told me what had happened.

....

I've seen Dear Masha's naked and getting fucked photos. I know what makes her special to men like me.

Have you been told, Masha, that many men find you ugly?
What allows you to accept such sympathy. Don't you get tired of it?
Can you tire of receiving sympathy?

Has any of them let you know, at least, that so many of these children splayed beautifully wide open and then lamely spunked over, are much prettier than you? I did not say naturally. These men often prefer mouth to vagina. A distaste for penetration that stems from a fear of evidential damage as much as a worry for causing harm.

....

Truth is, I've watched TV interviews with crosseyed Masha Allen and gone back to the shots that I have of her being marginally sexually abused by her fosterfather. Now I know who took the shots and how I got them eventually. Where those impulses and curable attacks started. Why, most importantly, this man who did so much work felt the confusing need to disseminate that material after he found more than enough to keep him privately occupied for quite a few mindexpanding and physically exacting years. You know perfectly well which pictures and short film edits take pride of place. When, I only repulsively decide to finally take out my cock and cum on it. I don't know any literature ever that gets beyond that point.

Peter Sotos, *Show Adult*. New York: Creation Books, 2007.

When 19 year old Kylie Freeman spoke publicly about the the rape and sexual exploitation which was videotaped by her father and former reserve sheriff's deputy Kenneth John Freeman, a pedophile in Nevada tried to contact her through Facebook and emailed her friend as well trying to contact her. He is now being prosecuted in Nevada. [Email communication from Kylie Freeman's attorney on 12-02-2008]

The Plaintiff's fears are reasonable and, if her true identity is revealed, she will be vulnerable to retaliation like Masha Allen and Kylie Freeman.

FACTOR 3: WHETHER IDENTIFICATION PRESENTS OTHER HARMS AND THE LIKELY SEVERITY OF THOSE HARMS

In *M.M. v. Zavaras*, 139 F.3d 798 (10th Cir. 03-17-1998), referenced by the Court of Appeals in *Sealed Plaintiff*, the court describes this factor as "where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity."

As discussed above and recognized by the United States Supreme Court in *Ferber*, "[t]he victim's knowledge of publication of the visual material increases the emotional and psychic harm suffered by the child. . . . Thus, distribution of the material violates the individual interest in avoiding disclosure of personal matters." *Ferber*, 102 S.Ct. 3348, FN 10.

The *Ferber* Court also noted that "sexually exploited children are unable to develop healthy affectionate relationships in later life, have sexual dysfunctions, and have a tendency to become sexual abusers as adults . . . sexually exploited children [are] predisposed to self-destructive behavior such as drug and alcohol abuse or prostitution. . . . When such performances are recorded and distributed, the child's privacy interests are also invaded." *Id.* at FN 9.

All of these other harms, which are severe and can be lifelong, will be compounded once the Plaintiff's identity is revealed to the world.

FACTOR 4: WHETHER THE PLAINTIFF IS PARTICULARLY VULNERABLE TO THE POSSIBLE HARMS OF DISCLOSURE

For all the above reasons and as previously discussed, the Plaintiff is particularly vulnerable to the possible harms of disclosure.

FACTOR 5: WHETHER THE SUIT IS CHALLENGING ACTIONS OF GOVERNMENT OR THAT OF PRIVATE PARTIES

This factor is primarily one of status and resources. This suit is against a private party and is rooted in the Defendant's criminal conviction. The Defendant's status is an important factor in determining whether to permit the Plaintiff to proceed anonymously. Unlike the typical defendant in a civil suit, the defendant in this case is not "innocent." He is guilty of criminal acts which form the basis for this civil action. The Defendant's conviction for criminal acts against the Plaintiff collaterally estopp him from challenging the factual basis for this lawsuit. 18 U.S.C. 3664(l). The Defendant has, in law and in fact, admitted that he committed acts against the Plaintiff which resulted in civil liability.

The Plaintiff is no stranger to the Defendant. Her actual identity might be unknown, but her child pornography images are intimately familiar to the Defendant and the possession and distribution of those images are the reason the Defendant is now civilly liable. Unlike a defendant in a purely civil suit, the defendant in this case is not prejudiced by not knowing the Plaintiff's identity since the underlying facts have already been judicially determined and are indisputable. Simply put, the Plaintiff's identity is not a factual issue subject to dispute, other than showing that this Plaintiff is the individual depicted in the images for which the Defendant was criminally convicted.

FACTOR 6: WHETHER THE DEFENDANT IS PREJUDICED BY ALLOWING THE PLAINTIFF TO PRESS CLAIMS ANONYMOUSLY

For all the reasons discussed above in Factor 5, the Defendant is not unduly prejudiced by allowing the Plaintiff to press her claims anonymously. The Plaintiff is no stranger to the Defendant; he willingly pled guilty to and was convicted of the crimes he committed against her.

Knowledge of the Plaintiff's identity does little to advance the Defendant's case. Due to his criminal conviction, he is collaterally estopped from challenging the facts underlying the Plaintiff's civil case.

The Plaintiff is neither a public figure nor has she spoken publicly or even privately about this lawsuit, other than to her lawyers, therapist and immediate family. Her rape and sexual exploitation, and her continued victimization through child pornography, is unknown even to her closest friends and relatives. The Defendant already has the names and addresses of the Plaintiff's therapists and expert witnesses. No other person knows about the Plaintiff's involvement in this crime or this case.

Since damages are the only issue in this matter, and the Defendant has ample opportunity to examine the Plaintiff, her family and the experts involved with her treatment, there is little to be practically gained simply from knowing her name. The Defendant is free to inquire about any relevant issue related to damages through well-recognized and established civil discovery tools. Without a further showing, knowing the Plaintiff's name will have little effect on the Defendant's ability to conduct discovery and present a defense which is limited solely to damages.

FACTOR 7: WHETHER THE PLAINTIFF'S IDENTITY HAS THUS FAR BEEN KEPT CONFIDENTIAL

As stated above in Factor 6, the Plaintiff's identity has thus far been kept absolutely confidential and is known only to the Plaintiff's immediate family, her attorneys, and her therapists and expert witnesses. Her identity is also known to federal law enforcement including United States Attorneys throughout the country who know her largely as the victim in a named series of child pornography. Not knowing the Plaintiff's identity has not prevented the Defendant, and hundreds like him, from pleading guilty to criminal charges where the mandatory minimum for possession is five years. None of the defendants in the hundreds of criminal cases where the Plaintiff is an identified (but not named) victim are aware of her actual identity.

FACTOR 8: WHETHER THE PUBLIC'S INTEREST IN THE LITIGATION IS FURTHERED BY REQUIRING THE PLAINTIFF TO DISCLOSE HER IDENTITY

The public interest in this litigation, if any, will not be furthered or enhanced by knowing the Plaintiff's identity. The production of the child pornography possessed and distributed by the Defendant occurred over a decade ago and was briefly mentioned in local newspapers at that time. While the Defendant's crime resulted in some publicity several years ago, there was no mention of the Plaintiff as a victim or potential civil plaintiff. This Plaintiff's victim impact statement did not exist and was not considered at the Defendant's criminal sentencing in 2006. The Plaintiff has neither sought nor garnered any publicity or public interest to date. There is nothing about the Plaintiff's identity which is significant or newsworthy. The public's interest in the current litigation is non-existent and would not be furthered by requiring the Plaintiff to disclose her identity.

FACTOR 9: WHETHER, BECAUSE OF THE PURELY LEGAL NATURE OF ISSUES PRESENTED OR OTHERWISE, THERE IS ATYPICALLY WEAK PUBLIC INTEREST IN KNOWING THE LITIGANTS' IDENTITIES

As discussed previously, the factual predicate of the current litigation was addressed in the Defendant's criminal case which was completed in 2006. This case is solely about damages and the Constitutionality and legality of 18 U.S.C. §§ 2252A(f) and 2255(a) which have been challenged by the Defendant. Knowing the Plaintiff's identity will not increase the public's interest in this matter since her identity adds nothing to the public's understanding of the case.

In terms of the media's ability to cover this litigation, allowing the Plaintiff to proceed under a pseudonym is preferable to closing the courtroom or sealing the record since the facts and the record can be publicly revealed without further harming the Plaintiff.

FACTOR 10: WHETHER THERE ARE ANY ALTERNATIVE MECHANISMS FOR PROTECTING THE PLAINTIFF'S CONFIDENTIALITY

Other than closing the courtroom or sealing the record, there is no easily implemented alternative mechanism for protecting the Plaintiff's confidentiality. Proceeding under a pseudonym actually enhances the public's ability to participate in the litigation by obviating the need to seal or otherwise restrict documents and court proceedings. Since there is no familial or other direct relationship between the parties, there is no need to cloak any of the proceedings in secrecy once the Plaintiff's identity is protected. There is nothing in the underlying criminal case or the materials submitted in the civil case which will lead the public to discover the Plaintiff's identity. Allowing the Plaintiff to proceed under a pseudonym properly balances the Plaintiff's need for anonymity against countervailing interests in full public disclosure.

CONCLUSION

In *M. M. v Zavaras*, 129 F.3d 798 (10th Cir. 1998), the Tenth Circuit Court of Appeals held that “[t]he ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff has a substantial privacy right which outweighs the customary and constitutionally-embedded presumption of openness in judicial proceedings.”

The Plaintiff has shown, and the United States Supreme Court has found, that there is a fundamental privacy interest which was violated by the production, distribution and possession of the Plaintiff’s child pornography images. That privacy interest continues to be violated now and will continue to be violated far into the future as successive generations of pedophiles download, possess and distribute the Plaintiff’s images forever. The conclusion of this case will not end the Plaintiff’s victimization. Unfortunately her “identity,” as depicted in the images of her rape and sexual exploitation, will never be forgotten or fade into the past. Revealing the Plaintiff’s name by prohibiting her from proceeding under a pseudonym will only increase the pain and embarrassment that the Plaintiff has suffered and will suffer for the rest of her life.

Dated this 6th day of February, 2009
White Plains, New York

s/James R. Marsh

James R. Marsh Bar Number: 514012
Attorney for the Plaintiff

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DECLARATION OF ATTORNEY [INSERT NAME HERE]
ON BEHALF OF VICTIM "JANE DOE"

STATE OF [Insert State] §
 §
COUNTY OF [Insert County] §

BEFORE ME, the undersigned authority, on this date personally appeared [Attorney Name Here], personally known to me, who, being by me first duly sworn upon her Oath, deposed and stated the following:

1. "My name is [Name of Attorney]. I am an attorney licensed to practice law in the State of [state] since [year] and am admitted to the [listing of state/federal courts of admission]. My Firm & represent Plaintiff 'Jane Doe' regarding her rights as a victim of child pornography. I am fully competent to make this Declaration. The facts contained in this Affidavit are within my personal knowledge and are true and correct.
2. My Firm and I have represented Plaintiff 'Jane Doe' since [date]. In all of these matters and in every proceeding, a pseudonym has been used in order to protect her anonymity. No court has ordered that she proceed with her legal name in any court proceeding.
3. Jane Doe requests permission to use a pseudonym herein in order to protect her from, among other things, harassment, injury, ridicule and personal embarrassment.
4. Jane Doe has suffered and continues to suffer from severe psychological harm resulting from the child pornography-related crimes of which she is a victim. She suffers from, among other things, anxiety, depression and post-traumatic stress disorder. She lives in daily fear of being recognized and identified as the individual in the child sexual abuse images on the internet. She believes, and I agree, that revealing her actual, legal name to the public, in any court proceeding, will put her in significant physical danger and additional psychological danger.

FURTHER DECLARANT SAYETH NAUGHT

ATTORNEY,
Attorney for Victim
'Jane Doe'

UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

“AAA,” and “BBB”

Plaintiffs,

v.

XXX,

Defendant.

NO.

MOTION TO PROCEED WITH
PSEUDONYM

NOTE ON MOTION CALENDAR:

I. STATEMENT OF RELIEF REQUESTED

“AAA” and “BBB” through their attorneys of record, move this court for an order allowing Plaintiffs to proceed in this matter using pseudonyms.

Plaintiffs make this request in order to protect themselves from harassment, injury, ridicule and personal embarrassment.

II. FACTS RELEVANT TO MOTION

AAA's Child Sex Abuse Images

When AAA was under the age of 12, he met an adult man. The man was posing as a photographer who represented himself as being able to obtain modeling opportunities for AAA. The "photographer" photographed AAA on numerous occasions, in a variety of settings, clothed, wearing costumes, partially clothed and nude.

The photographs of AAA were created for the purpose of producing child pornography, and the photographs are now circulated on the internet, the dark web, and through channels available to pedophiles and other consumers of child pornography, such as the defendant, who obtained the images of AAA for his own use and pleasure. The images of AAA are known as the "_____" child pornography series, according to the National Center for Missing and Exploited Children and in law enforcement actions and criminal prosecutions.

BBB's Child Sex Abuse Images

BBB was a school-aged boy when a "counselor" befriended him. The adult male showed an interest in the boy that over time degenerated into first grooming and then outright sexual abuse with the assistance of drugs. His original abuser then brought confederates to join in sexually exploiting BBB. This abuse was photographed and distributed over the internet.

The photos of BBB's child sexual abuse are now circulated on the internet, the dark web, and through channels available to pedophiles and other consumers of child pornography, such as the defendant, who obtained the images of BBB for his own use and pleasure. The images of BBB are known as the "_____" child pornography series, according the National Center for Missing and Exploited Children and in law enforcement actions and criminal prosecutions.

III. Issues Presented

Whether the Plaintiffs' need for anonymity outweighs any prejudice to defendant.

If, so, whether it is appropriate to allow Plaintiffs to proceed via pseudonyms.

IV. Evidence Relied Upon

- A. Declaration of Plaintiff Counsel Carol L. Hepburn, filed herewith;
- B. Declaration of AAA
- C. Declaration of BBB
- D. The records and files herein.

V. Argument and Authority

Use of fictitious names are neither explicitly authorized nor prohibited under the Federal Rules of Civil Procedure. In *Does I through XXII v. Advance Textile Corp.*, 214 F.3d 1058, 1067-68 (9th Cir. 2000), (internal citations removed), the Ninth Circuit declared “[I]n the circuit, we allow parties to use pseudonyms in the unusual case when non-disclosure of the party’s identity is necessary... to protect a person from harassment, injury, ridicule or personal embarrassment.”

Further, “A party may preserve his or her anonymity in judicial proceedings and special circumstances when the party’s need for anonymity outweighs prejudice to the opposing party and the public’s interest in knowing the party’s identity.” *Id.* at 1067.

In weighing the severity of the threatened harm, the *Advanced Textile* opinion tells us that threatened harm should be evaluated based on whether damage is caused to a person’s good name and reputation by revealing highly personal or facts of utmost intimacy. *Id.* at 1068. Citing *Southern Methodist University Ass’n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979).

The United States Supreme Court, over 30 years ago, discussed the severe and certain “emotional and psychic” pain suffered by victims of child pornography due to their knowledge that others are viewing the image(s) of their sexual abuse. *New York v. Ferber*, 458 U.S. 747, 759. 102 S.Ct. 3348, 73 L. Ed.2d 1113 (1982). The Ninth Circuit Court of Appeals has more recently echoed this recognition of the pain suffered

by victims of child pornography. *United States v. Kennedy*, 643 F.3d 1251, 1260 (9th Cir. 2011).

A. Harm to AAA and BBB

The defendant in the instant litigation has been adjudicated to be a consumer of AAA and BBB's child sex abuse images. He has possessed images of "a highly personal nature" and "utmost intimacy" concerning Plaintiffs. If their identities are revealed, their identities can easily be found by pedophiles and other consumers of child pornography. AAA and BBB are vulnerable to being harassed, embarrassed, and humiliated should their real identities be revealed.

As recognized by the court in *Ferber*, "pornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child's actions are reduced to a recording, the pornography may haunt him in future years long after the original misdeed took place. A child who has posed for a camera must go through life knowing that the recording is circulating within the mass distribution system for child pornography."

New York v. Ferber, supra, 458 U.S. at 759.

Harassment of child pornography victims by consumers of their images is a reality as is shown by the conviction of one such internet stalker. See Decl. of Carol L. Hepburn.

B. Absence of Prejudice to the Defendant

Unlike a defendant in most other civil suits, the facts which form the basis of his liability have already been judicially determined. This defendant has pleaded guilty. The defendant in this case suffers no prejudice from not knowing the legal names of these plaintiffs. He has possessed the images of their abuse and has had full and ample opportunity and incentive to litigate the facts which form the basis of liability. He may not now challenge the factual basis for this lawsuit.

AAA and BBB are not strangers to the Defendant. While their actual identity is unknown, their child sex abuse images are intimately familiar to the Defendant and his

possession of those images is the reason he is now civilly liable. Unlike a defendant in a purely civil suit, the defendant in this case is not prejudiced by not knowing Plaintiffs' true identities since the underlying facts were already judicially determined and are indisputable.

Knowing AAA and BBB's identity does nothing to advance the Defendant's case. The salient facts at issue concern their injuries, which are well documented. Although Defendant may believe that he has legal defenses, assertion of such defenses is in no way impeded by not knowing their legal names.

Although AAA and BBB are known within the child pornography consumer community by their series names and pseudonyms, they are not public figures. Their rape and sexual exploitation, and their continued victimization through distribution of child pornography images thrust them into the child pornography community totally against their wishes. There is little to be practically gained simply from knowing their legal names. Knowing Plaintiffs' names will have little effect on the Defendant's ability to present a defense, which is limited solely to damages.

Given the factual determination already made, AAA and BBB will be moving for summary judgment on liability in this case. The statute under which AAA and BBB proceed in this matter provides for statutory damages. Should Defendant seek discovery on the issue of their damages ample information can be provided without disclosing their true names. Their status as victims of child sex exploitation is not a subject which they share with a large number of people; it is a very private matter. There is little to be gained by the defendant in exposing to the public or in knowing himself what AAA or BBB's legal names are.

C. Public Interest

Plaintiffs are aware of no manner in which the public interest is either enhanced by exposure of their true names or harmed by their use of a pseudonym. They have

been allowed the use of pseudonym in making requests for restitution in criminal court proceedings in multiple venues.

Allowing Plaintiffs to proceed with pseudonyms is preferable to sealing the court file, which is a request they would make should they have to proceed with their legal names. The public has a greater interest in maintaining an open court file than in knowing the legal name of a child sex abuse victim. Allowing AAA and BBB to proceed with the pseudonyms allows for the open record while protecting their identities. It also avoids the chilling effect upon other victims of child sex abuse and exploitation who might be dissuaded from coming forward in any proceeding should there be no protection against disclosure of their identity.

V. CONCLUSION

In this case nondisclosure of AAA and BBB's identities is necessary to protect them from harassment, injury, personal embarrassment, and potentially from physical harm. This case involves the very personal and sensitive issue of child pornography and the very intimate injuries flowing from exposure of the image(s) of child sex abuse. The Supreme Court has recognized this injury and the continuing harm to victims such as AAA and BBB. The Ninth Circuit has specifically recognized AAA and BBB's harm. Revealing their legal names in this proceeding will only increase that harm. Allowing them to use pseudonyms does not harm the Defendant, nor does it harm the public interest.

For all of these reasons, AAA and BBB respectfully request that they be allowed to proceed in this matter using the pseudonyms.

DATED this ____ day of _____, 2019.

By: _____
Attorney for Plaintiffs

1 United States Attorney
2 Eastern District of Washington

3
4
5 Post Office Box 1494
6 Spokane, WA 99210-1494

7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 UNITED STATES OF AMERICA,
11 Plaintiff,

12 vs.

13 ,
14 Defendant.

United States' Motion to Accommodate
and Protect Child Witnesses

16 Plaintiff, United States of America, by and through Michael C. Ormsby, United
17 States Attorney, for the Eastern District of Washington, and

18 Assistant United States Attorneys for the Eastern District of
19 Washington, submits the following Motion to Accommodate and Protect Child
20 Witnesses.
21
22

23 This case involves charges relating to the sexual abuse and production of sexually
24 explicit images of six young boys; Victims A-F. (ECF No. 36-Superseding
25 Indictment). At the time the sexual abuse at issue is alleged to have occurred, the
26 victims were between 7 to 16 years old. At time of trial in this matter, the victims will
27
28

United States' Motion to Accommodate and Protect Child Witnesses - 1

1 be between approximately 12 to 18 years old. Because of the age of the victims and
2 the highly sensitive nature of the questioning that will occur at trial, the Government
3 requests that the Court accommodate and protect the minor victim's privacy in several
4 ways:
5

6 First, that a child fair oath be administered to each of the minors (children under
7 the age of 18) who testify and require that objections be made in a manner that does
8 not involve intimidation of the minor witnesses.
9

10 Second, that the Court should require age-appropriate questioning of the minor
11 witnesses by the parties.
12

13 Third, that the Court accommodates each of the child witnesses by having a
14 support person available to them during their testimony and provides regular breaks
15 for the child during trial.
16

17 Fourth, for the privacy of the child victims and child witnesses, that they be
18 referred to by the pseudonyms of Victim A, Victim B, etc. and that their parents be
19 referred to by pseudonyms of Parent of Victim A, etc. This Court has already entered
20 a protective order requiring that pseudonyms are to be used at all times with respect to
21 all minors involved in the case, and documents containing those minors' information
22 are to be redacted consistent with Fed. R. Crim. P. 49.1(a). (ECF 27).
23

24 Fifth, that the courtroom be sealed during the testimony of the minor
25 victim/witnesses, but remain open during the testimony of the non-minor witnesses.
26
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United States' Motion to Accommodate and Protect Child Witnesses - 2

1 Sixth, that the images of child pornography at issue in this case be displayed in
2 such a manner as to be visible only to the jury, and not to the public in the gallery.

3 **I. Child Fair Oath & Child Fair Objections**

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5 Fed. R. Evid. 611(a) confers broad discretion on this Court in controlling: “the
6 mode and order of examining witnesses and presenting evidence so as to: (1) make
7 those procedures effective for determining the truth; (2) avoid wasting time; and (3)
8 protect witnesses from harassment or undue embarrassment.” The Government
9 requests that the Court exercise that control in the administration of the oath to the
10 child witnesses and in the manner in which objections are made by the parties during
11 the children’s’ testimony.
12

13
14 The words attorneys and judges use in courtrooms everyday are frequently
15 outside the scope of understanding of most children that will testify. (See T.D. Lyon,
16 *Child witnesses and the oath, CHILDREN’S TESTIMONY: A HANDBOOK OF*
17 *PSYCHOLOGICAL RESEARCH AND FORENSIC PRACTICE*, 245-260, H.L.
18 Westcott, G. M. Davies & R.H.C. Bull, eds., 2002). Among those words are those used
19 by the Court in administering the oath to witnesses. For example, “do you solemnly
20 swear” may mean something entirely different to a child than to an adult witness. The
21 Government requests that rather than administering the standard oath for witnesses,
22 the Court employ a child fair oath that the child will understand and agree to follow
23 before testifying. The Government proposes that the Court simply ask the children:
24 “Do you promise that you will tell me the truth?” See *Id.*
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United States' Motion to Accommodate and Protect Child Witnesses - 3

1 During the testimony of the children, the Government also requests that the
2 Court require the parties to not make loud pronouncements of their objections while
3 the child is on the stand. This may be very frightening to the child and he may shut
4 down in the presence of such outbursts. Instead, the Government requests that the
5 parties be required to simply state “your honor” audibly but not loudly, then calmly
6 cite the rule of evidence or basis on which the objection is based.
7
8

9 **II. Age Appropriate Questioning**

10 Also pursuant to Fed. R. Evid. 611(a), the Court may instruct counsel to refrain
11 from questions that are confusing, misleading, ambiguous or unintelligible. *Deleware*
12 *v. Van Arsdall*, 475 U.S. 673, 679 (1986)(court may place reasonable limits on cross-
13 examination based on harassment, prejudice, confusion of issues, witness’ safety,
14 repetitive or marginally relevant questions).
15
16

17 The Government submits that when a child is frightened, especially by counsel
18 who is sitting next to an individual who has sexually abused him, it may inhibit his
19 ability to recall facts and testify truthfully. If a child simply shuts down on the
20 witness stand, that can actually harm the defendant and leave an impression on the
21 jury about the defendant’s culpability. It is therefore in the best interest of all parties
22 involved that children in this case be asked questions that are not suggestive and that
23 are not intimidating. See, *A COURTROOM FOR ALL: CREATING CHILD AND*
24 *ADOLESCENT FAIR COURTROOMS*, 10, Allie Phillips, J.D. and Susanne Walters,
25 National District Attorneys Association, 2013.
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United States' Motion to Accommodate and Protect Child Witnesses - 4

1 The Government requests that this Court instruct counsel to refrain from unduly
2 embarrassing questions with marginal relevance. See *Alford v. United States*, 282 U.S.
3 687, 694 (1931)(the trial judge should protect the witness from questions which “go
4 beyond the bounds of *proper* cross-examination merely to harass, annoy or
5 humiliate.” Fed. R. Evid. 611(a).

7 The Government also requests that the Defense be required to ask simple, age-
8 appropriate questions. In other words, the Government requests that counsel be
9 prohibited from asking questions that are suggestive. While Rule 611 allows for
10 leading questions on cross examination, the Court may still limit such suggestive
11 questioning techniques when certain types of witnesses, such as child witnesses, are
12 being cross-examined. “The purpose of the qualification ‘ordinarily’ is to furnish a
13 basis for denying the use of leading questions” under certain circumstances. Fed. R.
14 Evid. 611(c), note (1972)(subdivision (c)). A young child might rather agree with an
15 overly suggestive and/or aggressive question than disagree with an adult in a room full
16 of strangers, regardless of the truth of the response. Such cross examination methods
17 will not achieve the desired result of achieving justice through the presentation of the
18 truth. Since the goal of trial is to get to the truth, the Government submits that the
19 Court should strictly limit the number of leading questions by the defense in cross-
20 examination of the young children in this case.
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United States' Motion to Accommodate and Protect Child Witnesses - 5

1 **III. Support Person & Regular Breaks for Child Witnesses**

2 The Government has a compelling interest in protecting the child witnesses
3 from further trauma that may accompany their attending court and testifying against a
4 “friend” who sexually abused them on numerous occasions and took photographs of
5 that abuse. Here, the Government seeks only to recognize that the experience of the
6 child witnesses may be difficult and the Court and the parties should accommodate
7 their needs by permitting regular breaks and allowing a support person, even one who
8 may be a witness at trial, to be present for the child and possibly at their side during
9 their testimony at trial. The Government is currently working with the children to
10 identify their specific needs for testimony and/or their specific preference for a
11 support person. The Government requests the opportunity to provide evidence to
12 support specific child testimony accommodations at the pre-trial hearing on this
13 motion.
14

15 **IV. Use of Pseudonyms**

16 The United States expects to present testimony of some of the Victim A-F and also
17 testimony of the parents of Victim A-F. In order to protect the minors from unwanted
18 notoriety to which a minor should not be exposed, pursuant to 18 U.S.C. §
19 3509(d)(3)(A), the United States requests that the victims be referred to by
20 pseudonym, Victim A, Victim B, etc. as charged in the Superseding Indictment , and
21 that their parents be referred to by pseudonyms of Parent of Victim A, etc.. The United
22 States proposes that the only exception is voir dire, when the full names of the minor
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United States' Motion to Accommodate and Protect Child Witnesses - 6

1 witnesses will be disclosed to the jury pool, without any accompanying detrimental
2 information, in order to determine whether any conflicts exist. However, since the
3 court room is open to the public and media during voir dire, the United States requests
4 that the names of the minor victims and their parents be provided in a written form to
5 the jurors and be made part of the record, rather than announced verbally by the court
6 or United States. Also, with respect to voir dire the United States requests the Court
7 use the confidential jury questionnaire employed in *United States v. Charles Pete*
8 *Eyle*, CR 1:14-CR-2058-

11 The pseudonym request comes pursuant to 18 U.S.C. § 3509(d)(3)(A), a portion
12 of the Victims' Protection and Rights Act (the "Act"):

14 On motion by any person the court may issue an order protecting a child
15 from public disclosure of the name of or any other information
16 concerning the child in the course of the proceedings, if the court
17 determines that there is a significant possibility that such disclosure
would be detrimental to the child.

18 A pseudonym request may be granted if the court determines that there is a
19 "significant possibility that such disclosure would be detrimental to the child."

20 Under §3509(a), "child" means a person who is under the age of eighteen alleged to
21 be either a "victim" of a crime of abuse, or a "witness" to such an event. The statute
22 therefore guarantees protection to child victims and child witnesses alike. In this
23 case, the court must balance the Sixth and First Amendment rights to a public trial
24 with the significant possibility of detriment to the child witness. Federal courts
25 "traditionally have recognized that in some cases the general presumption of open
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United States' Motion to Accommodate and Protect Child Witnesses - 7

1 trials — including identification of parties and witnesses by their real names —
2 should yield in deference to sufficiently pressing needs for party or witness
3 anonymity. *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993). The use of
4 pseudonyms is a narrowly tailored measure because it “shields the identity of the
5 witnesses from the press and the public only.” *United States v. Jacobson*, 785 F.
6 Supp. 563, 568-69 (E.D. Va. 1992). The defense will know the true identity of the
7 witnesses; therefore, use of the pseudonyms does not infringe upon the defendant’s
8 ability to cross-examine or preparation for trial. In other words, his Sixth Amendment
9 right to confront all witnesses will be preserved.

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13 Circuits have included such factors as whether identification “poses a risk of
14 retaliatory physical or mental harm to the requesting party.” *Doe v. Stegall*, 653 F.2d
15 180, 185 (5th Cir. 1981). Factors also include the ages of the persons whose privacy
16 interests are sought to be protected and the risk of reprisal or harassment. *Doe ex rel.*
17 *Doe v. Elmbrook Sch. Dist.*, 658 F.3d 710, 723 (7th Cir. 2011) (holding that student
18 plaintiffs and witnesses involved in religious suit against school could proceed
19 anonymously, where they feared future reprisals should their involvement in the
20 litigation become public knowledge); *United States v. Iron Cloud*, 312 F.3d 379, 380
21 n. 2 (8th Cir. 2002)(where victim, though not involved in the proceedings, was not
22 referred to by name to protect general privacy interests). If Defendant opposes this
23 request the United States respectfully requests an opportunity to provide testimony at
24 the pre-trial conference from the parents of the victim minors as the parents are in the
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United States' Motion to Accommodate and Protect Child Witnesses - 8

1 best position to inform the court regarding the past harassment, the impact on their
2 children, and their beliefs about the impact of future testimony without the anonymity
3 shield provided by the statute.
4

5 **V. Closure of the Courtroom**

6 The United States also requests that the courtroom be closed during the
7 testimony of the minor victims. This closure request is governed by 18 U.S.C. §
8 3509(e):
9

10 When a child testifies the court may order the exclusion from the
11 courtroom of all persons, including members of the press, who do not
12 have a direct interest in the case. Such an order may be made *if the court*
13 *determines on the record that requiring the child to testify in open court*
14 *would cause substantial psychological harm to the child or would result*
15 *in the child's inability to effectively communicate.* Such an order shall
16 be narrowly tailored to serve the Government's specific compelling
17 interest.

18 (emphasis added). As the italicized language shows, the standard from § 3509(e) is
19 more stringent and more specific than the standard from § 3509(d)(3)(A). No case
20 has specifically defined what constitutes “substantial psychological harm,” but before
21 the statute was enacted, the Supreme Court suggested that a district court should
22 consider “the minor victim's age, psychological maturity and understanding, the
23 nature of the crime, the desires of the victim, and the interests of parents and
24 relatives” when determining whether to close the courtroom. *Globe Newspaper Co.*
25 *v. Superior Court for Norfolk County*, 457 U.S. 596, 608 (1982). The Supreme
26 Court had placed the burden upon the party seeking closure to demonstrate two
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United States' Motion to Accommodate and Protect Child Witnesses - 9

1 things: (1) an overriding interest likely to be prejudiced by an open courtroom –
2 which, in this case, is set out by statute – and (2) that the closure sought is no broader
3 than is necessary to protect that interest. *See Waller v. Georgia*, 467 U.S. 39,
4 48 (1984); *Judd v. Haley*, 250 F.3d 1308, 1317 (11th Cir. 2001). The Seventh Circuit
5 has expanded on *Waller*, adding two additional prongs: (3) alternatives to closure
6 must be considered by the trial court; and (4) the court must make findings sufficient
7 to support the closure. *Walton v. Briley*, 361 F.3d 431, 433 (7th Cir. 2004) (citing
8 *Waller*, 467 U.S. at 48). While these factors and tests were formed outside of the
9 Victims’ Protection and Rights Act context, they were designed to alleviate any
10 constitutional concerns a closure might raise, and the Court considers them relevant,
11 though not dispositive.

12
13 The United States contends that several of the minor victim witnesses have been
14 captured by a recording device under circumstances which constitute child
15 pornography and at least one minor recalls events that led to an attempted production
16 of child pornography. Requiring the minor victims of this offense to testify in open
17 court, perhaps in conjunction with the display of child pornography depicting that
18 victim, and particularly in a case which has received significant publicity in the
19 community, would “cause substantial psychological harm to the child or would result
20 in the child’s inability to effectively communicate.” The minor would be forced to
21 relive, or to confirm, his victimization and the egregious violation of his privacy to
22 members of the public, and potentially to members of the press who would
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United States' Motion to Accommodate and Protect Child Witnesses - 10

1 disseminate that information to a readership that doubtless includes the minor's
2 peers. If the Defendant objects to closure during the minor victim witness's testimony,
3 then the United States proposes that remote testimony may be necessary to protect
4 the minor victim's privacy in this case. The United States requests that the court room be
5 closed to the public only during the minor victim/witness's testimony, but not during
6 the testifying witness's parents.
7

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9 **VI. Display of Potentially Pornographic Images**

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11 The United States requests the Court arrange the courtroom so that the alleged
12 child pornography in this case be displayed on monitors visible only to the jury and
13 trial participants, and not to the gallery.
14

15 The decision whether, when, and how to allow access to documents filed in
16 connection with criminal proceedings, which generally extends to photographic
17 evidence. "is one best left to the sound discretion of the trial court, a discretion to be
18 exercised in light of the relevant facts and circumstances of the particular case." *See*
19 *In re Associated Press*, 172 Fed. Appx. 1, 3 (4th Cir. 2006) (citing *Nixon v. Warner*
20 *Communications, Inc.*, 435 U.S. 589, 598-99 (1978)). "Every court has supervisory
21 power over its own records and files, and access [may be] denied where court files
22 might . . . become a vehicle for improper purposes." *Id.* at 598. Furthermore, 18
23 U.S.C. § 3509(d)(3)(B)(ii) provides that a protective order issued to prevent
24 disclosures detrimental to a child may also "provide for any other measures that may
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1 be necessary to protect the privacy of the child.” With respect to any potential child
2 pornography which might be displayed during trial, this is just such a case. There is
3 no particularly compelling reason why the public would need to see child pornography
4 in the gallery during trial, and it would be detrimental to the minors depicted therein
5 to put their victimization on display.
6

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9 Dated: .

10 MICHAEL C. ORSMBY
11 United States Attorney
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16 _____
17 Assistant United States Attorney
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Attorneys for the United States of America

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

UNITED STATES OF AMERICA

v.

**MOTION FOR PROTECTIVE ORDER
WITH RESPECT TO CHILD
VICTIMS/WITNESSES UNDER
18 U.S.C. § 3509**

Defendant.

Pursuant to 18 U.S.C. § 3509, the United States of America, by Billy J. Williams, United States Attorney for the District of Oregon, and _____, Assistant United States Attorneys, moves the Court for a protective order to protect the identities of child victims who will testify as witnesses at trial. The government also asks the Court to close the courtroom during the testimony of ■■■, one of the child victims in this case.

I. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is charged in the second superseding indictment with one count of production of child pornography outside of the United States, intending that it be transported to the United States, in violation of 18 U.S.C. §§ 2251(c) and (e); five counts of production or attempted

production of child pornography with respect to five separate victims, in violation of 18 U.S.C. §§ 2251(a) and (e); two counts of traveling in foreign commerce and engaging in illicit sexual conduct, in violation of 18 U.S.C. §§ 2423(c) and (e); and one count of possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). A number of the victims identified in the indictment by their initials will be witnesses at trial. Some of those victims are children who live in the Philippines, and for whom English is not their first language.

The trial is scheduled to begin on [REDACTED], 2016. The government expects to offer the testimony of the following victims named in the second superseding indictment: [REDACTED] (Count 4); [REDACTED] (Count 6); [REDACTED] (Count 7); [REDACTED] (Count 8). The government will also offer the testimony of [REDACTED] and [REDACTED] as victims in Counts 1, 2 and 3. The victims in Counts 4, 6, 7, and 8 are currently under 18 years of age. For the reasons discussed below, the government now seeks a protective order under 18 U.S.C. § 3509, as follows:

1. That the victims be referred to at trial by either their initials (as identified in the indictment), or by a first name/nick name that the child elects at the outset of their testimony;
2. That the witnesses from the United States, [REDACTED] and [REDACTED] and her parents not be required to divulge their current addresses in court;
3. That the minor witnesses' parent, guardian, or other adult attendant be permitted to remain in the spectator section of the courtroom during their testimony, even if that attendant will also be a witness;

**MOTION FOR PROTECTIVE ORDER WITH RESPECT TO CHILD
VICTIMS/WITNESSES UNDER 18 U.S.C. § 3509**

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4. That trial exhibits, including communications, emails, chats, or other messages between the defendant and the victims either be redacted to remove the victim's identities or be sealed so as to protect their identities; and
5. That any video monitors visible by spectators in the gallery be disabled or turned off whenever sexually explicit images or exhibits containing the victims' identification information are displayed.

II. DISCUSSION

The Child Victim Rights Act, codified at 18 U.S.C. § 3509, contains express provisions designed to protect the confidentiality of the identity of child victims of sexual exploitation offenses:

Protective orders.-- (A) On motion by any person the court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child.

(B) A protective order issued under subparagraph (A) may--

(i) provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom; and

(ii) provide for any other measures that may be necessary to protect the privacy of the child.

18 U.S.C. § 3509(d)(3). Section 3509(e) allows the Court to close the courtroom to members of the public, including members of the press, who do not have "a direct interest in the case" during the testimony of a child victim, if the Court determines on the record that "requiring the child to

**MOTION FOR PROTECTIVE ORDER WITH RESPECT TO CHILD
VICTIMS/WITNESSES UNDER 18 U.S.C. § 3509**

PAGE 3

testify in open court would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate."

A. Protection of Victim Identity.

The government is not seeking to close the courtroom during the testimony of all the victims, even though it will undoubtedly be difficult for them to recount their sexually explicit interactions with the defendant. Nonetheless, in order to protect their identities, and to protect them from needless and damaging public humiliation and ridicule, the government moves the Court for an order that the victims herein be referred to either by their initials, or by a preferred first name of their choosing. The government will address the issue by simply asking the child how they would prefer to be addressed during the proceeding at the outset of their testimony. Using that name or initials will avoid confusion, while causing no prejudice to defendant.

Courts have approved such an approach to protecting the identities of child victims. *See, e.g. United States v. Broussard*, 767 F. Supp. 1545, 1546 48 (D. Or. 1991) (upholding the redaction of child identifying information from documents made part of the public record in a criminal case, and rejecting the defendant's claim that such redaction impeded his First or Sixth Amendments right to a public trial); *United States v. Anderson*, 139 F.3d 291, 301 02 (1st Cir. 1998) (affirming the district court's order prohibiting the disclosure of the last names of two juvenile witnesses in a trial for transporting the juveniles across state lines for purposes of prostitution). Such a restriction serves a compelling interest in "safeguarding the psychological well-being of a minor." *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 604 05 (1982). *See also Broussard*, 767 F. Supp. at 1546. Judge Hernandez approved a

**MOTION FOR PROTECTIVE ORDER WITH RESPECT TO CHILD
VICTIMS/WITNESSES UNDER 18 U.S.C. § 3509**

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similar procedure in *United States v. Edward Allen McElroy*, No. 3:12-CR-542-HZ (allowing the minor victim to be addressed by her preferred first name, which was not her actual name).

The graphic nature of the victim's testimony and their ages both now and at the time of the offenses, warrants protection of their identities. This is especially true in light of the potential for media coverage of this case. If no protective measures are taken and the victims' identities are disclosed, they could be subject to inquiries and scrutiny from the press, their schoolmates, and members of the community, thereby harming their psychological well-being.

For those same reasons, the government seeks an order that any exhibits that contain a victim's last name, (such as e-mails and instant messaging chats) either be redacted to remove the last name, or that such exhibits be received under seal, so that they do not appear in the public record. If received under seal, the government requests that they not be displayed on monitors visible to spectators sitting in the gallery. For similar reasons, the government requests that the victims' address information not be disclosed during the course of the trial.

B. *The Presence of an Adult Attendant for Minor Victims.*

18 U.S.C. § 3509(i) provides, "A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child." The court may, in its discretion, "allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies," but may not provide the child with the answer to any question, or otherwise prompt the child. *Id.* A child is "a person under the age of 18" who is "a victim of a crime of physical abuse, sexual abuse, or exploitation." 18 U.S.C. § 3509(a)(2). The term "exploitation" includes child pornography. 18 U.S.C. § 3509(a)(6).

**MOTION FOR PROTECTIVE ORDER WITH RESPECT TO CHILD
VICTIMS/WITNESSES UNDER 18 U.S.C. § 3509**

PAGE 5

Several of the victims are under 18 years of age. Victims ■ and ■ are not only the victims of child exploitation, specifically, the production or attempted production of child pornography, but ■ was also raped, sodomized, and sexually abused by defendant. Some of the victims are from a third world country, and do not speak English as a first language. All minor victims should be entitled to have an adult attendant present in the courtroom with them throughout the trial. The child's mother or another adult attendant should be allowed to remain with the child in the courtroom throughout his or her testimony (and during any other parts of the trial, if the victims choose to observe), even if the attendant is also a witness who would otherwise be subject to exclusion.

C. *Displaying Sexually Explicit Images in the Courtroom.*

At some point during the trial, the government will be displaying to the jury a number of sexually explicit images that defendant produced. The nature and quality of the images are discussed thoroughly in the government's trial memo and will not be revisited here. However, some of the victims are depicted in the images the defendant produced and form the basis for the production counts in the indictment.

As to both the production count and the attempted production counts, the jury will need to determine whether the images constitute child pornography. While it will be necessary to display the images to the jury, there is no reason to display images of child pornography to spectators in the gallery of the courtroom. Thus, the government seeks an order that any

**MOTION FOR PROTECTIVE ORDER WITH RESPECT TO CHILD
VICTIMS/WITNESSES UNDER 18 U.S.C. § 3509**

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monitors visible to spectators in the gallery be disabled or turned off while the sexually explicit images of children are shown to the jury.¹

C. Closing the Courtroom for the Testimony of NS

■ is the charged victim in Count 6. During the course of this investigation, ■ disclosed significant acts of sexual abuse by defendant – conduct for which the defendant was convicted following trial in Washington County Circuit Court. During her testimony in the state court trial, ■ was subjected to extensive, vigorous cross-examination, and was emotionally fragile throughout her testimony.

■ worked with a trauma therapist from CARES Northwest for a period of time after her initial disclosure of abuse by the defendant. The clinician, Kim Jacobowitz, testified about her sessions with ■. She opined that ■ suffered from trauma-related symptoms related to the diagnosis of child sexual abuse and suffered from post-traumatic stress disorder.²

The government requests that the courtroom be closed during ■'s testimony. It is in the child's best interest to minimize the embarrassment, shame, and humiliation associated with recounting her relationship with the defendant. Furthermore, with a limited audience, it will minimize the likelihood that ■ will become emotional and have difficulty communicating during her testimony. Accordingly, the government requests the Court close the courtroom

¹ The government will also need to display to the jury images or videos of child pornography depicting children other than the named victims as part of its proof with respect to Counts 1 and 9. There is no reason to display those images or videos to spectators in the gallery either.

² The government can provide the court with a transcript of Ms. Jacobowitz's state court testimony upon request.

**MOTION FOR PROTECTIVE ORDER WITH RESPECT TO CHILD
VICTIMS/WITNESSES UNDER 18 U.S.C. § 3509**

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during ■■■'s testimony as permitted by Section 3509(e), with the exception of those persons described above and persons having a direct interest in the case and the need to be present.

III. CONCLUSION

For the reasons set forth above, the Court should enter a protective order protecting the victims' identities and residential addresses from disclosure, allowing their mother or another adult attendant to remain in the courtroom during her testimony, and prohibiting the public display of sexually explicit images of the victims or other children during the trial. In addition, the Court should close the courtroom during the testimony of ■■■.

Respectfully submitted,

BILLY J. WILLIAMS
United States Attorney

Assistant United States Attorney

**MOTION FOR PROTECTIVE ORDER WITH RESPECT TO CHILD
VICTIMS/WITNESSES UNDER 18 U.S.C. § 3509**

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

v.

CASE NO.

**UNITED STATES' MOTION FOR
COURTROOM CLOSURE DURING MINOR VICTIM'S
TESTIMONY AND PUBLISHING OF CHILD PORNOGRAPHY**

Pursuant to Title 18, United States Code, Section 3509(e), the United States of America, by and through the undersigned Assistant United States Attorney, respectfully requests that the Court enter an order excluding all persons not holding a direct interest in this case during the period of the trial when the minor victim testifies, and when videos of child pornography are published, and in support states:

1. This case is scheduled for trial commencing on
2. During the trial, the United States will call a minor victim to testify, and will introduce videos of the minor which depict her and defendant engaged in sexually explicit conduct.
3. Pursuant to 18 U.S.C. § 3509(e), the United States requests an order from the Court excluding all persons not holding a direct interest in the

case when the minor victim provides testimony and during the publishing of the videos of child pornography¹.

4. Counsel for defendant, _____, has indicated to the undersigned that he is not yet prepared to take a position on the relief requested in this motion.

Memorandum of Law

Title 42, United States Code, Section 10606(b)(1) provides that a victim of a crime has “[t]he right to be treated with fairness and with respect for the victim’s dignity and privacy.” 42 U.S.C. §10606(b)(1) (2002). When the victim is a juvenile, Title 18, United States Code, Section 3509, adds additional protections. Among them, Section 3509(e) provides that:

When a child testifies the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child’s inability to effectively communicate. Such an order shall be narrowly tailored to serve the Government’s specific compelling interest.

¹ Courtroom closure *during* the minor victim’s testimony is of paramount importance. If the videos of child pornography are not published to the jury during the course of the minor’s testimony, then courtroom closure for the publishing may not be necessary. In the alternative, during the publishing of videos, the United States may recommend to the Court that the video monitors be repositioned so that the videos cannot be seen by anyone in the courtroom other than the Court and its personnel, the parties and their counsel, and the jury.

18 U.S.C. § 3509(e) (2001). In addition, section 3509(d)(3) states:

(A) On motion by any person the court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child.

(B) A protective order issued under subparagraph (A) may --

(i) provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom;

18 U.S.C. §3509(d)(3) (2001). This case involves the sexual exploitation of a minor female by defendant through the production of sexually explicit videos of the minor. In order to spare the minor and her family additional trauma, the United States respectfully requests that the courtroom be closed during the minor's testimony and during the publishing of the videos. Closing the courtroom while the minor child testifies will prevent disclosure of the child's identity, and prevent her from any further traumatization.

The Supreme Court has recognized that, while "the press and general public have a constitutional right of access to criminal trials," this right is not absolute. Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 603, 606 (1982). The circumstances in which the press and general public may be barred from a criminal trial are limited; the justification for denying them access "must be a weighty one." Id. at 606. The Court stated that, when the right of access is

inhibited to prevent the disclosure of sensitive information, “it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.” Id. at 607. While the Court acknowledged that “safeguarding the physical and psychological well-being of a minor” has been recognized as a compelling interest, the Court found that this interest did not justify a mandatory closure of the courtroom. Id. at 607-08. Instead, the trial court must determine on a case-by-case basis whether closure is necessary to protect the welfare of the juvenile. Id. at 608.

The factors to be considered are “the minor victim’s age, psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of parents and relatives.” Id. In this case, the minor is 16 years old. The victim’s mother, who is expected to testify at trial, has indicated to the United States that courtroom closure would be in her child’s best interest. The nature of the crime charged herein involves the exploitation of the minor by means of the production of sexually explicit videos, and having her testify about these matters in open court may result in the minor having extreme difficulty communicating her story. These factors weigh heavily in favor of closing the courtroom during the minor victim’s testimony. Accordingly, to protect the privacy of, and prevent embarrassment or detriment to, the minor victim, the United States respectfully requests that the courtroom be closed during her testimony and during the publishing of the images of child pornography. The courtroom should be closed

to the members of the press, as well as to all persons not having a direct interest in this case. See 18 U.S.C. § 3509(e).

In Globe Newspaper Co., the Supreme Court found that the state statute at issue, which required mandatory closure of the courtroom to the press and public during the testimony of minor victims in criminal sex offense trials, violated the First Amendment. In a footnote to its holding, however, the Court stated:

We emphasize that our holding is a narrow one: that a rule of mandatory closure respecting the testimony of minor sex victims is constitutionally infirm. In individual cases, and under appropriate circumstances, the First Amendment does not necessarily stand as a bar to the exclusion from the courtroom of the press and general public during the testimony of minor sex-offense victims. But a mandatory rule, requiring no particularized determinations in individual cases, is unconstitutional.

Globe Newspaper Co., 457 U.S. at 611 n.27. Unlike that statute, Title 18, United States Code, Section 3509(e) does not require automatic closure whenever a minor victim testifies in a sexual exploitation case. Rather, it requires a determination that “requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child’s inability to effectively communicate.” 18 U.S.C. § 3509(e). The statute also dictates that the trial court’s order closing the courtroom “shall be narrowly tailored to serve the Government’s specific compelling interest.” Id. A case-by-case determination of whether the courtroom should be closed is in accord with the Supreme Court’s decision in Globe Newspaper Co. Id. at 609 (“That interest [safeguarding the physical and psychological well-being of a minor] could be

served just as well by requiring the trial court to determine on a case-by-case basis whether the State's legitimate concern for the well-being of the minor victim necessitates closure. Such an approach ensures that the constitutional right of the press and public to gain access to criminal trials will not be restricted except where necessary to protect the State's interest."). Further, unlike the facts in Globe Newspaper Co., the name of the minor victim has been kept confidential throughout this case. Finally, defendant will not be prejudiced by the closure since he will be present in the courtroom to hear the evidence against him, and will have the opportunity to confront the minor victim.

WHEREFORE, the United States respectfully requests that the Court grant this motion together with any further relief that the Court deems proper.

Respectfully submitted,

United States Attorney

By: _____

Assistant United States Attorney
Florida Bar Number

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

UNITED STATES OF AMERICA

vs.

Defendant.

**UNITED STATES' MOTION FOR EVIDENTIARY HEARING
REGARDING ALTERNATIVES TO LIVE
IN-COURT TESTIMONY FOR MINOR VICTIM**

The United States, by and through the undersigned Assistant United States Attorney, hereby files this motion seeking an Order of the Court allowing the presentation of the testimony of the minor victim via one of the alternatives to live in-court testimony set forth in 18 U.S.C. § 3509(b).

Background

Defendant [REDACTED] is charged by a Second Superseding Indictment with nineteen counts involving the sexually exploitation of a minor for the purpose of creating child pornography, in violation of Title 18, United States Code, Section 2251(a), and the distribution, receipt, and possession of child pornography, in violation of Title 18, United States Code, Section 2252A(a). The charges in the case stem from the defendant's sexual abuse of his granddaughter, who will be referred to as "H", and his filming and broadcasting of that abuse via the internet. H currently is nine (9) years' old. The United States intends to call H to testify regarding the sexual abuse inflicted by her grandfather and to describe how [REDACTED] took photographs of her and forced her to watch computer images of other girls as they were being molested by adult males.

The investigation began in Montana, where agents seized computer equipment belonging to

██████████. Carpenter's computer media contained the charged images of ██████████ molesting H, along with hundreds of other images of child pornography. Based upon information gathered from ██████████'s computer media, debriefings of Carpenter, and other investigation, in January 2006, law enforcement was able to identify ██████████ and H. At that time, H was 8 years' old. The sexual abuse occurred when H was 6 years' old.

Since the discovery of the sexual abuse earlier this year, H has been receiving psychological counseling from Dr. Kathleen Bey, Licensed Mental Health Counselor with The Banyan Group. As explained in greater detail below, live in-court testimony will cause H emotional trauma and will subject H to extreme fear. The interest in protecting H from that additional injury outweighs any harm due to a limited impingement of the defendant's right to confront this particular witness.

The Legislation and Case Law

In 1990, Congress enacted the Victims' Rights and Restitution Act, which was meant to provide greater protections to the rights of victims of crimes before, during, and after the trials of their perpetrators. Included in that legislation was 18 U.S.C. § 3509, entitled "Child victims' and child witnesses' rights." Subsection (b) provides two alternative methods for juries to hear the testimony of a child victim in certain circumstances – live testimony via 2-way closed circuit television and recorded testimony via videotaped deposition. 18 U.S.C. § 3509(b). In this case, the victim's family has asked the United States to move the Court for an order allowing H to testify via videotaped deposition and, if that motion is denied, then to seek testimony via 2-way closed circuit television.¹

¹As explained below, the defense opposes both of these requests.

Rules Regarding Videotaped Depositions

Pursuant to 18 U.S.C. § 3509(b)(2), in a proceeding involving a minor victim, an attorney “may apply for an order that a deposition be recorded and preserved on videotape.” 18 U.S.C. § 3502(b)(2)(A). If the motion is timely made,

the court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

(I) The child will be unable to testify because of fear.

(II) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.

§ 3509(b)(2)(B)(i).

If the Court undertakes that preliminary examination and “finds that the child is likely to be unable to testify in open court for any of the reasons [listed above], the court shall order that the child’s deposition be taken and preserved by videotape.”² § 3509(b)(2)(B)(ii).

The statute goes on to prescribe strict procedures regarding the conduct of the deposition, the defendant’s presence or absence from the deposition, and the handling of the videotape before and after the trial. §§ 3509(b)(2)(B) - (F). Most importantly at this stage, if the Court determines that a deposition should be taken, the “*trial judge shall preside* at the videotape deposition of a child and shall rule on all questions as if at trial.” 18 U.S.C. § 3509(b)(2)(B)(iii) (emphasis added). Counsel for both parties must be present at the deposition and the witness must be made available

²If the Court makes the preliminary determination that a videotaped deposition should be taken, the Court must make a final determination at the time of trial that the child is still unable to testify and “shall support a ruling . . . with findings on the record.” 18 U.S.C. § 3509(b)(2)(C). If the Court makes this ruling with the necessary findings, then the Court “may admit into evidence the child’s videotaped deposition in lieu of the child’s testifying at the trial.” *Id.*

for cross-examination. *Id.* The defendant has the right to confront the witness at the deposition, unless the Court further finds that the witness is unable to testify in the physical presence of the defendant due to fear. If that finding is made, then the defendant may be excluded from the room in which the deposition is conducted, so long as 2-way closed circuit television equipment is made available which would allow the defendant to see and to be seen in the room where the deposition is taking place and which would allow the defendant a means of private, contemporaneous communication with his attorney during the deposition. § 3509(b)(2)(B)(iv).

Rules Regarding Live Testimony via 2-Way Closed Circuit Television

If the Court decides not to order the videotaped deposition of the child victim for use at trial, another alternative to live in-court testimony is the use of 2-way closed circuit television. § 3509(b)(1). An application to use this method of presentation must be filed at least 5 days before the trial date. § 3509(b)(1)(A). Again, before ordering the taking of testimony via this method, the Court must make “findings on the record” that:

(i) The child is unable to testify because of fear. [and/or]

(ii) There is a substantial likelihood, *established by expert testimony*, that the child would suffer emotional trauma from testifying.

...

§ 3509(b)(1)(B). When making this determination, “the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the child attendant, the prosecutor, the child’s attorney, the guardian ad litem, and the defense counsel present.” § 3509(b)(1)(C).

The statute also sets forth the procedures if the Court grants the order to proceed via closed circuit testimony. If so ordered, counsel for the United States and the defendant will be in the

separate room with the child witness where direct and cross-examination would occur.

§ 3509(b)(1)(D).³

The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the defendant's image and the voice of the judge.

Id.

Thus, whether the Court allows testimony via videotaped deposition or via 2-way closed-circuit television, the defendant maintains the right to cross-examination and maintains the right to contemporaneously confer with counsel during the direct and cross-examination. In both scenarios, the testimony is taken under judicial supervision where the parties' objections are made on the record and ruled upon by the Court. Both situations also allow the jury to see and hear the witness, albeit on a television screen rather than in person.

Cases Interpreting Section 3509 or Its State Law Counterparts

In 1990, the Supreme Court addressed a Maryland statute that allowed child victims to testify against their abusers via 1-way closed circuit television. *Maryland v. Craig*, 497 U.S. 836, 110 S. Ct. 3157 (1990). In *Craig*, the prosecution invoked a state procedure whereby, prior to trial, the judge would "determine that testimony by the child victim in the courtroom will result in the child suffering serious emotional distress such that the child cannot reasonably communicate." *Craig*, 497 U.S. at 841 (quoting Md. Cts. & Jud. Proc. Code § 9-102(a)(1)(ii) (1989)). If the court made such

³The statute also provides that a limited number of other persons may be present in the room while the child testifies, specifically the child's attorney or guardian ad litem, persons needed to operate the television equipment, a judicial officer, and other persons the Court determines to be necessary to the welfare and well-being of the child, including an adult attendant. *Id.*

a determination, then the prosecuting attorney, the defense attorney, and the child witness would go to a separate room, while the judge, jury, and defendant remained in the courtroom. The child would be subject to direct and cross-examination, and the judge, jury, and defendant would be able to see the witness, but the witness would not see the defendant. *Id.* The defendant also would remain in contemporaneous communication with his attorney, and objections could be made and ruled upon as if the witness were testifying in the courtroom. *Id.* at 842. Craig was convicted after trial and appealed, arguing that Maryland's procedures violated the Confrontation Clause of the Sixth Amendment.⁴

The Supreme Court addressed the issue of whether "the Confrontation Clause guarantee[d] criminal defendants the *absolute right* to a face-to-face meeting with witnesses against them at trial." *Id.* at 844. The Supreme Court decided that the Confrontation Clause does not guarantee such an absolute right. Instead, "a defendant's right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured." *Id.* at 850 (citations omitted). Although Maryland's procedure "prevents a child witnesses from seeing the defendant as he or she testifies against the defendant at trial . . . Maryland's procedure preserves all of the other elements of the confrontation right: The child witness must be competent to testify and must testify under oath; the defendant retains full opportunity for contemporaneous cross-examination; and the judge, jury, and defendant are able to view (albeit by video monitor) the demeanor (and body) of the witness as he or she testifies." *Id.* at 851. Given

⁴The Confrontation Clause provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Constitution, 6th Am.

these safeguards, the Supreme Court stated that it was “confident that the use of the one-way closed circuit television procedure, where necessary to further an important state interest, does not impinge upon the truth-seeking or symbolic purposes of the Confrontation Clause.” *Id.* at 852.

Thus, this slight limitation of the defendant’s rights under the Confrontation Clause via the one-way closed circuit television procedure must be “necessary to further an important state interest.” *Id.* The Supreme Court addressed the “important state interest” first, and determined that “a State’s interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant’s right to face his or her accusers in court.” *Id.* at 853.

Second, the Court addressed the “necessity” prong, and held that “if the State makes an adequate showing of necessity, the state interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant.” *Id.* at 855. The Supreme Court went on to caution:

The requisite finding of necessity must of course be a case-specific one: The trial court must hear evidence and determine whether use of the one-way closed circuit television procedure is necessary to protect the welfare of the particular child witness who seeks to testify. . . . The trial court must also find that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant.

Id. at 855-856 (extensive citations omitted).

Neither the Supreme Court nor the Eleventh Circuit has ever had occasion to address the videotaped deposition and closed circuit television provisions contained in 18 U.S.C. § 3509. However, two Eleventh Circuit cases from this year are instructive.

In *United States v. Yates*, 438 F.3d 1307 (11th Cir. 2006), the Eleventh Circuit, *en banc*, held

that testimony provided via two-way video-conferencing equipment violated the defendants' confrontation rights where the defendants objected to the video-conferencing because there was an inadequate showing that the "denial of physical face-to-face confrontation was necessary to further an important public policy." *Id.* at 1312. In *Yates*, the witnesses were two adults involved in the defendants' fraud and money laundering scheme. The witnesses lived in Australia and, thus, were beyond the subpoena power of the United States. The prosecution averred that the witnesses were "essential witnesses to the government's case-in-chief." *See id.* at 1310.

The Eleventh Circuit adopted the *Craig* framework to determine whether the defendants' confrontation rights were violated:

where a defendant's right to confront a witness against him will be affected, the determination of whether a particular case requires a departure from usual procedures must be made, by the trial court, on a case-by-case basis. The court generally must: (1) hold an evidentiary hearing and (2) find: (a) that the denial of physical, face-to-face confrontation at trial is necessary to further an important public policy and (b) that the reliability of the testimony is otherwise assured.

Id. at 1315 (citing *Craig*, 497 U.S. at 850, 854, 855). In *Yates*, the only "public policy" invoked as the basis for hampering the defendants' confrontation right was the "government's interest in presenting the fact-finder with crucial evidence . . . and to expeditiously resolve [the case]". *Id.* at 1316. The *Yates* Court determined that, given the availability of Rule 15 depositions of the Australian witnesses, there was not a sufficient necessity or public policy that was "important enough to outweigh the Defendants' rights to confront their accusers face-to-face." *Id.*

Less than three weeks after the *Yates* decision, the Eleventh Circuit decided the case of *Fuster-Escalona v. Florida Dep't of Corrections*, 170 Fed. Appx. 627 (2006). Fuster-Escalona filed a petition for writ of habeas corpus in the Southern District of Florida challenging the state trial court's decision to permit four child sexual abuse victims to testify against the defendant "by closed-

circuit television without a ‘cause specific’ finding of necessity.” *Id.* at 629. The Eleventh Circuit affirmed the denial of the petition for habeas corpus and distinguished Fuster-Escalona’s case from *Craig*. The Eleventh Circuit noted Fuster-Escalona’s case involved *two-way* closed circuit television, which allowed the witnesses to see Fuster-Escalona while they testified. *Craig*, on the other hand, involved *one-way* closed circuit television. Thus, according to the Eleventh Circuit, in protecting a defendant’s confrontation rights, where the defendant is present and visible to the witness, there is no need for particularized findings, but if the witness is *not* able to see the defendant, then the Court must undertake particularized case-specific findings of how each witness would suffer harm if forced to testify in the presence of the defendant. *Id.* at 629-30.

H’s Testimony against Oliver

In the instant case, the United States intends to call H, the defendant’s now nine-year-old granddaughter, to testify against [REDACTED] about the abuse that she suffered when she was six years’ old. H’s testimony is essential to the prosecution. For example, H is the only person (other than [REDACTED] who can describe how [REDACTED] forced H to watch images of other children being sexually molested while [REDACTED] was molesting her.⁵ There is a strong public policy interest in allowing the jury to hear this essential evidence.

More significantly, as the Supreme Court has acknowledged, the United States’ “interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify” outside the presence of the defendant. *Craig*, 497 U.S. at 855. In this case, the evidence will

⁵This specific crime – distribution of child pornography to a minor to induce her to engage in criminal sexual activity with the defendant – is charged in Count 18 of the Second Superseding Indictment.

show that [REDACTED] sexually molested H on at least four occasions. Those events caused her emotional trauma and having to discuss those events – even with other family members and her therapist – has caused additional trauma. [REDACTED]’s molestation of H has instilled in H a deep fear of [REDACTED]. The change in H’s behavior, even before the molestation was discovered, caused H’s parents to stop visiting [REDACTED]. [REDACTED] also repeatedly told H that he had been a police officer,⁶ which has caused H to associate law enforcement officers with the abuse.

This is a case where it is necessary to allow H to testify outside the defendant’s presence in order to minimize the additional emotional trauma to H that this case has imposed. Whether the Court determines that the testimony should be preserved via videotaped deposition or via one- or two-way closed circuit television, H will be placed under oath, the Court will preside over the testimony and rule on any objections, H will be subjected to cross-examination, [REDACTED] will be able to communicate instantly with his counsel to allow him to participate in the cross-examination, and the jury will be able to see H’s demeanor and body language during her testimony. Thus, the limitations that will be imposed on the defendant’s Sixth Amendment right to confront his accuser will be minimized.

CONCLUSION

For the foregoing reasons, the United States, on behalf of H’s parents, respectfully requests that the Court set the matter for an evidentiary hearing to determine whether, in this particular case, there is sufficient evidence showing the necessity of allowing H to testify via videotaped deposition or closed circuit television to protect H from further emotional trauma. Prior to that hearing, the

⁶ [REDACTED] previously worked in various police departments before moving to Florida. While in Florida, [REDACTED] worked for the Palm Beach County Sheriff’s Office for one year.

United States respectfully requests that, pursuant to 18 U.S.C. § 3509(b)(1)(C), the Court question H “in chambers, or at some other comfortable place other than the courtroom, on the record,” in the presence only of both attorneys, H’s adult attendant, and H’s guardian ad litem.

Certification

In accordance with the Local Rules, the undersigned has conferred with counsel for the defendant regarding the motion. Defense counsel advises that the Defendant opposes the granting of this motion.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: . _____

Assistant United States Attorney
Florida Bar No.

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,)	No. 11–2783
)	
Plaintiff-Appellee,)	
)	Appeal from the United States
v.)	District Court for the
)	Northern District of Illinois,
BRIAN A. ANNORENO,)	Eastern Division
a/k/a “Acidburn”)	Case No. 06 CR 33
)	
Defendant-Appellant.)	Honorable James B. Zagel

**GOVERNMENT’S UNOPPOSED MOTION
TO SEAL DOCUMENTS IN THE APPELLATE RECORD**

The UNITED STATES OF AMERICA, by its attorney, GARY S. SHAPIRO, Acting United States Attorney for the Northern District of Illinois, hereby files its Unopposed Motion to Seal Documents in the Appellate Record pursuant to Seventh Circuit Operating Rule 10. In support of this motion, the government states as follows:

1. On December 1, 2010, defendant Brian A. Annoreno was convicted of: (i) conspiracy to receive, transport, and advertise about child pornography, in violation of Title 18, United States Code, Section 2252A(b)(1); (ii) receipt of child pornography, in violation of Title 18, United States Code, Section 2252A(a)(2)(A); and (iii) possession of child pornography, in violation of Title 18, United States Code, Section 2252A(a)(5)(B).

2. On June 10, 2011, the district court sentenced defendant to 40 years’ imprisonment. Defendant has appealed his sentence. On October 5, 2012, the government filed its brief in this appeal. R. 41; *see also* R. 43; R. 44.

3. On November 2, 2012, the district court transmitted to this Court documents labeled Government Suppression Hearing Exhibit 4 and Government Exhibit Annoreno Testimony, which were filed under seal in the district court and are part of the appellate record. R. 47. On November 5, 2012, this Court entered an order stating that these documents would become part of the public record absent a motion seeking to keep the documents under seal. R. 48.

4. The government seeks leave to have this Court keep Government Suppression Hearing Exhibit 4 and Government Exhibit Annoreno Testimony under seal in the appellate record pursuant to Seventh Circuit Operating Rule 10. Under Seventh Circuit Operating Rule 10, except to the extent portions of the record are required to be sealed by statute, every document filed in the Court (whether or not the document was sealed in the district court) is in the public record unless a judge of this Court orders it to be sealed. 7th Cir. Op. R. 10. A party moving to seal documents in the appellate record must provide a basis to seal the documents. *United States v. Foster*, 564 F.3d 852, 854–56 (7th Cir. 2009); *see also Baxter Int’l, Inc. v. Abbott Labs.*, 297 F.3d 544, 547–48 (7th Cir. 2002).

5. This case involves the creation and dissemination of child pornography, and defendant’s convictions and relevant conduct involved child victims. Pursuant to Title 18, United States Code, Section 3509(d)(2), “All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of a court order.” Section 3509(d)(2) also instructs that the party who makes such an under-seal filing shall submit to the clerk of the court “the

complete paper to be kept under seal; and . . . the paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record.”

6. Government Suppression Hearing Exhibit 4 and Government Exhibit Annoreno Testimony contain identifying information about child victims and the sexual abuse that they suffered. Specifically, Government Exhibit Suppression Hearing Exhibit 4 consists of a handwritten confession by defendant in which defendant wrote about his molestations of a child victim. Likewise, Government Exhibit Annoreno Testimony consists of testimony given by defendant during a suppression hearing held in the district court on April 22, 2009, during which defendant was questioned about his molestations and viewing of child pornography. These records contain information indicating the identities of certain victims. As such, these records should remain under seal in this Court, as directed by section 3509.

7. Based on the foregoing, the government respectfully requests that Government Suppression Hearing Exhibit 4 and Government Exhibit Annoreno Testimony remain sealed in this Court and that these documents be returned under seal to the district court upon the conclusion of this appeal.

8. On November 19, 2012, the government attorney spoke with counsel for defendant who does not oppose this motion.

WHEREFORE, the United States respectfully requests that the Court grant this motion and issue an order keeping Government Suppression Hearing Exhibit 4 and

Government Exhibit Annoreno Testimony under seal through the duration of this appeal, and directing the Clerk to return the documents under seal to the district court at the conclusion of this appeal.

Respectfully submitted,
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By: _____

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Chicago, Illinois 60604

Appendix KK: State Bullying Laws, Policies, and Regulations Map

For an overview of each state's laws, policies, and regulations regarding bullying, see *Laws, Policies & Regulations*, STOPBULLYING.GOV, <https://www.stopbullying.gov/resources/laws> (last visited September 20, 2021).

