

2024 -- S 2422

LC004897

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO CRIMINAL OFFENSES -- CHILDREN

Introduced By: Senators Burke, LaMountain, McKenney, and Tikoian

Date Introduced: February 12, 2024

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 11-9-1.3 of the General Laws in Chapter 11-9 entitled "Children" is  
2 hereby amended to read as follows:

3 **11-9-1.3. ~~Child pornography prohibited~~ Child sexual abuse material prohibited.**

4 (a) Violations. It is a violation of this section for any person to:

5 (1) Knowingly produce any ~~child pornography~~ child sexual abuse material;

6 (2) Knowingly mail, transport, deliver or transfer by any means, including by computer,  
7 any ~~child pornography~~ child sexual abuse material;

8 (3) Knowingly reproduce any ~~child pornography~~ child sexual abuse material by any means,  
9 including the computer; or

10 (4) Knowingly possess any book, magazine, periodical, film, videotape, computer disk,  
11 computer file or any other material that contains an image of ~~child pornography~~ child sexual abuse  
12 material.

13 (b) Penalties.

14 (1) Whoever violates or attempts or conspires to violate subdivisions (a)(1), (a)(2) or (a)(3)  
15 of this section shall be subject to a fine of not more than five thousand dollars (\$5,000), or  
16 imprisoned for not more than fifteen (15) years, or both.

17 (2) Whoever violates or attempts or conspires to violate subdivision (a)(4) of this section  
18 shall be subject to a fine of not more than five thousand dollars (\$5,000), or imprisoned not more  
19 than five (5) years, or both.

1 (c) Definitions. For purposes of this section:

2 (1) ~~“Child pornography”~~ “Child sexual abuse material” means any visual depiction,  
3 including any photograph, film, video, picture, or computer or computer-generated image or  
4 picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit  
5 conduct where:

6 (i) The production of such visual depiction involves the use of a minor engaging in sexually  
7 explicit conduct;

8 (ii) Such visual depiction is a digital image, computer image, or computer-generated image  
9 of a minor engaging in sexually explicit conduct; or

10 (iii) Such visual depiction has been created, adapted, or modified to display an identifiable  
11 minor engaging in sexually explicit conduct.

12 (2) “Computer” has the meaning given to that term in section 11-52-1;

13 (3) “Minor” means any person not having reached eighteen (18) years of age;

14 (4) “Identifiable minor.”

15 (i) Means a person:

16 (A)(I) Who was a minor at the time the visual depiction was created, adapted, or modified;

17 or

18 (II) Whose image as a minor was used in creating, adapting, or modifying the visual  
19 depiction; and

20 (ii) Who is recognizable as an actual person by the person’s face, likeness, or other  
21 distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

22 (B) Shall not be construed to require proof of the actual identity of the identifiable minor.

23 (5) “Producing” means producing, directing, manufacturing, issuing, publishing or  
24 advertising;

25 (6) “Sexually explicit conduct” means actual:

26 (i) Graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-  
27 anal, or lascivious sexual intercourse where the genitals, or pubic area of any person is exhibited;

28 (ii) Bestiality;

29 (iii) Masturbation;

30 (iv) Sadistic or masochistic abuse; or

31 (v) Graphic or lascivious exhibition of the genitals or pubic area of any person;

32 (7) “Visual depiction” includes undeveloped film and videotape and data stored on a  
33 computer disk or by electronic means, which is capable of conversion into a visual image;

34 (8) “Graphic,” when used with respect to a depiction of sexually explicit conduct, means

1 that a viewer can observe any part of the genitals or pubic area of any depicted person or animal  
2 during any part of the time that the sexually explicit conduct is being depicted.

3 (d) Affirmative defenses.

4 (1) It shall be an affirmative defense to a charge of violating subdivision (a)(1), (a)(2), or  
5 (a)(3) of this section that:

6 (i) The alleged ~~child pornography~~ child sexual abuse material was produced using an actual  
7 person or persons engaging in sexually explicit conduct; and

8 (ii) Each such person was an adult at the time the material was produced; and

9 (iii) The defendant did not advertise, promote, present, describe or distribute the material  
10 in such a manner as to convey the impression that it is or contains a visual depiction of a minor  
11 engaging in sexually explicit conduct.

12 (2) It shall be an affirmative defense to a charge of violating subdivision (a)(4) of this  
13 section that the defendant:

14 (i) Possessed less than three (3) images of ~~child pornography~~ child sexual abuse material;  
15 and

16 (ii) Promptly and in good faith and without retaining or allowing any person, other than a  
17 law enforcement agency, to access any image or copy of it:

18 (A) Took reasonable steps to destroy each such image; or

19 (B) Reported the matter to a law enforcement agency and afforded that agency access to  
20 each such image.

21 (e) Severability. If any provision or provisions of this section, or the application of this  
22 section to any person or circumstance is held invalid by a court of competent authority, that  
23 invalidity does not affect other provisions or applications of this section which can be given effect  
24 without that invalid provision or provisions or application of the provision or provisions, and to  
25 this end the provisions of this section are declared to be separable and severable.

26 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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RELATING TO CRIMINAL OFFENSES -- CHILDREN

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- 1           This act would amend the statute punishing child pornography by replacing the term "child
- 2 pornography" with the term "child sexual abuse material."
- 3           This act would take effect upon passage.

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