

## **SUBJECT MATTER EXPERT WORKING GROUP REPORTS**

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## Child Sexual Abuse Material

### Terminology

The term “child pornography” is currently used in federal statutes and is defined as any visual depiction of sexually explicit conduct involving a person less than 18 years old. While this phrase still appears in federal law, “child sexual abuse material” is preferred, as it better reflects the abuse that is depicted in the images and videos and the resulting trauma to the child. In fact, in 2016, an international working group, comprising a collection of countries and international organizations working to combat child exploitation, formally recognized “child sexual abuse material” as the preferred term.

Federal law prohibits the production, advertisement, transportation, distribution, receipt, sale, access with intent to view, and possession of child sexual abuse material (CSAM). Underlying every sexually explicit image or video of a child is abuse, rape, molestation, and/or exploitation. The production of CSAM creates a permanent record of the child’s victimization.

Due to rapid technological changes, online child sexual exploitation offenses are increasing in scale and complexity. Individuals who seek to sexually exploit children through CSAM can do so from anywhere in the world by using digital devices and the internet. Modern smartphones are the ideal child exploitation tool for offenders, as they can be used to photograph, record, or watch live child sexual abuse; store CSAM on the device; access CSAM stored remotely; connect with victims and other offenders; and distribute and receive CSAM, through an endless variety of applications. The device itself and the applications

often cloak this criminal activity with encryption.

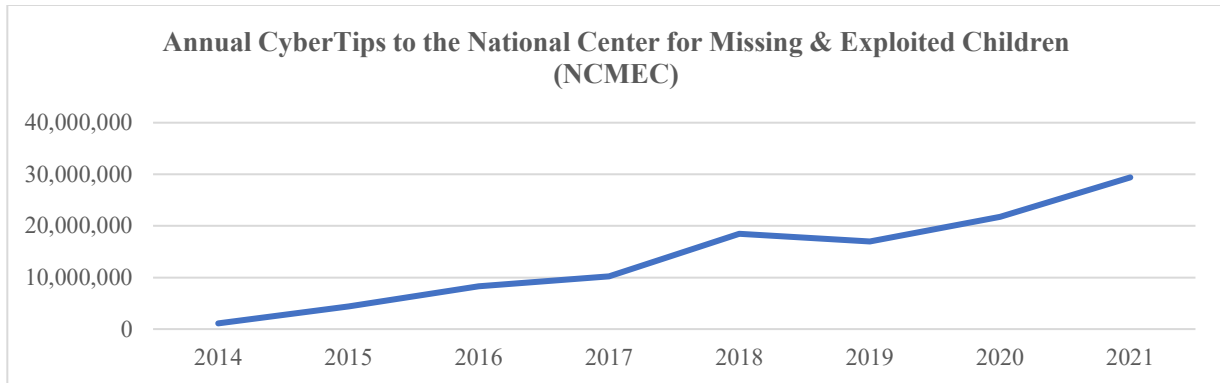
The market for CSAM among individuals with a sexual interest in children drives the demand for new and more egregious images and videos. The push for new CSAM results in the continued abuse and exploitation of child victims, and the abuse of new children every day. When these images and videos are posted and disseminated online, the victimization continues in perpetuity. Children often suffer a lifetime of re-victimization knowing the documentation of their sexual abuse is on the internet, available for others to access forever.

Increasingly, perpetrators are grooming minors to engage in sexually explicit conduct online. This is distinct, but related, to CSAM produced in person by offenders. Offenders engaged in either type of production have been known to take advantage of multiple vulnerabilities of a child, including a minor’s fear of getting in trouble with their parents or guardians, school, or law enforcement. This can result in the minor being extorted or blackmailed to create additional CSAM, or pay a ransom, to prevent images from being distributed to their peer networks.<sup>1</sup> Offenders tell victims they will call the police and the victims will get in trouble for the sexually explicit content they have already created and sent the offender. Even families who have become aware of the issue have been concerned the child will get into trouble with law enforcement and may not report the crime, preventing investigators from identifying and stopping the offender. In




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<sup>1</sup> For more information, please see the Sextortion, Crowdsourcing, Enticement and Coercion chapter.

the worst cases, victims feel so desperate that they commit suicide.<sup>2</sup> There is also a growing trend of juveniles victimizing other juveniles online, including through social media apps. Child victims have been reluctant to come forward because they do not want an offender, who may be a peer, to get in trouble.



### National Center for Missing & Exploited Children: Child Sexual Abuse Material Case Requests from Law Enforcement in 2020

 Number of Requests by Agency	 Images Included	 Videos Included
US Federal Law Enforcement - 2,058	23,787,804	1,666,029
Local/State/ICAC - 2,589	9,614,971	452,293
Military - 211	341,366	67,482
International - 19	198	15
<b>Grand Total - 4,877</b>	<b>33,744,339</b>	<b>2,185,819</b>

In 2021, NCMEC received 4,877 requests from law enforcement, containing more than 35 million images and videos. Analysts help determine if the children depicted have been previously identified or if they are unknown or new victims. Source: National Center for Missing & Exploited Children

<https://www.missingkids.org/content/ncmec/en/ourwork/impact.html#reduceexploitation>

CSAM is readily available through virtually every internet technology, including social networking platforms, file-sharing sites, gaming devices, and mobile apps. This has led to unprecedented growth in the volume of reports submitted to the CyberTipline operated by the National Center for Missing & Exploited Children (NCMEC). The CyberTipline provides a

<sup>2</sup> A 17-year-old boy died by suicide hours after being scammed. The FBI says it's part of a troubling increase in 'sextortion' cases. By Josh Campbell and Jason Kravarik, CNN. <https://www.cnn.com/2022/05/20/us/ryan-last-suicide-sextortion-california/index.html>

single interface where private citizens and companies, such as Electronic Service Providers (ESPs), can report suspected online child exploitation. From 2013 to 2021, the number of CyberTipline reports received by NCMEC skyrocketed from 500,000 to almost 30 million. On three occasions in this time span, the volume of CyberTipline reports doubled or nearly doubled from one year to the next. In 2015, the number of CyberTipline reports (4.4 million) was four times greater than the prior year.<sup>3</sup> In 2021, the nearly 30 million CyberTipline reports received by NCMEC constituted an overall increase of approximately 35% from the 2020 total (almost 22 million).<sup>4</sup> Though only one datapoint from one country, NCMEC CyberTipline report numbers are evidence of the staggering global scale of CSAM online.

Data from the Canadian Centre for Child Protection (C3P) paints a similar picture. C3P operates Project Arachnid, an innovative tool to combat the growing proliferation of CSAM on the internet. Project Arachnid's platform crawls links on sites on the open web to look for publicly available CSAM.<sup>5</sup> Once such imagery is detected, a notice requesting removal is sent to the provider hosting the content. Since Project Arachnid's launch in 2016 until October 1, 2021, over nine million notices have been sent to providers about CSAM detected on their platforms.<sup>6</sup> However, Project Arachnid numbers largely center on CSAM stored or traded online. On the Dark Web, where anonymity and encryption make it harder to trace CSAM perpetrators, a single active website dedicated to the sexual abuse of children had over 2.5 million registered users as of June 2021.<sup>7</sup>

Technology has enhanced offender sophistication and changed behavior patterns. Offenders can now groom and engage with victims on multiple platforms using surreptitious means, including common, everyday platforms where victims are particularly unsuspecting, i.e., gaming systems and social media sites. Offenders direct the production of CSAM without ever meeting their victims in person, often working with other offenders to crowdsource production, targeting hundreds of minors on sites frequented by youth, or meeting virtually to livestream the sexual abuse of a child to any number of viewers.

With mobile devices, offenders do not have to wait until they are in the privacy of their home to chat with victims or other offenders. Offenders are hiding in plain sight, ready and able to chat with victims or other offenders from almost any location. They can access their own collection of CSAM or find new material online while traveling, at work, or anywhere else with internet access. Some offenders use storage devices the size of a coin with large capacities that are portable and easily hidden. But because CSAM is available through so many internet locations,

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<sup>3</sup> Statement by John F. Clark President and Chief Executive Officer National Center for Missing & Exploited Children for the United States Senate Committee on the Judiciary "Protecting Innocence in a Digital World" July 9, 2019 <https://www.judiciary.senate.gov/imo/media/doc/Clark%20Testimony.pdf>

<sup>4</sup> Although the CyberTipline is a mechanism for American companies to report online child exploitation, we must emphasize that year over year, the majority of CyberTipline reports (typically around 95% of reports received per year) are made available to law enforcement in foreign countries. <https://www.missingkids.org/gethelpnow/cybertipline#bythenumbers>

<sup>5</sup> A Web crawler, often shortened to crawler, is an internet bot that systematically browses the World Wide Web and that is typically operated for the purpose of Web indexing. Crawlers can also perform data scraping, a function that extracts data from websites.

<sup>6</sup> <https://projectarachnid.ca/en/>

<sup>7</sup> Based on investigative and prosecutorial information provided by the authors.

offenders can access and demand CSAM repeatedly, any time they desire, without the need to store the files on their own devices. Once an image or video of CSAM is posted online, it can be immediately circulated around the globe, traded internationally, and is thus unable to be eradicated. CSAM lives forever, leaving victims to suffer a lifetime of consequences of the recording of their sexual abuse, always wondering when and where the images and videos will appear and by whom their exploitation will be seen. Law enforcement must focus on both the offender who downloads thousands of CSAM files and the active participant operating on the ever-changing landscape of new technology, communication platforms, and websites that provide access to children and CSAM.

## Encryption and Anonymization

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*We already know that social media is used to groom, lure, abuse and exploit children. Implementing available technology that would allow industry to continue to work side by side with agencies like NCMEC and law enforcement while still being able to provide end-to-end encryption and privacy to users who are not committing criminal acts shouldn't even be a question.*

*Children's lives and futures are in your hands.*

*– Survivor*

<https://www.missingkids.org/theissues/end-to-end-encryption>

legal process, such as a search warrant, law enforcement will lose an important means of identifying offenders and rescuing children.

Purveyors of CSAM continue to use various encryption techniques and anonymous networks, attempting to hide their identities, amassed collections, CSAM activities, and communications with minors. Encryption makes it more difficult for technology companies to detect CSAM on their systems and blocks law enforcement from obtaining lawful access to the content of digital media and communications, thwarting both investigations and highly valuable voluntary interdiction efforts by the private sector. Where full encryption is the default on digital devices, including smartphones, it can obstruct access to an individual offender's device, data, or files. Yet, the technology sector continues to adopt end-to-end encryption within their programs. Currently, many non-encrypted social media sites, apps, and internet platforms can search their systems for known CSAM using hash values or PhotoDNA. The investigations that result from these reports often lead to the rescue of children who are being sexually assaulted. However, if the technology sector continues to adopt end-to-end encryption without allowing for some form of lawful access to the data through appropriate

The increasing popularity of end-to-end encryption is particularly alarming with respect to online spaces where adults and children are co-mingled and can interact, such as gaming, video chat, and live-streaming platforms. This is the digital equivalent of taking children to a public (or even private) place with adult strangers without security cameras or any other means of supervision. Programs and applications with end-to-end encryption create an environment where parents have no ability to supervise unless they install monitoring software, and law enforcement has limited or no ability to obtain vital data.

In addition, online child sex offenders are increasingly migrating to the Dark Web. The Dark Web is a series of anonymous networks that prevent the use of traditional means to detect, investigate, and prosecute online child sexual exploitation offenses. Consider, for example, the

Tor anonymity network, a key network within the Dark Web that was established through government research and continues to receive some government funding. Administrators and users of “hidden services” on Tor have reliable, anonymous access to CSAM, allowing offenders to commit their crimes openly with little to no fear of being identified, much less apprehended. This stable, reliable access to CSAM online normalizes deviant behavior and offenders’ perception of the sexual abuse of children and the production, advertisement, possession, and distribution of CSAM.

As of March 2023, there were over 200 forums and other sites devoted to child exploitation, some of which have persisted for years, operating openly and notoriously on the Tor network.<sup>8</sup> Even when law enforcement successfully takes down one site, another soon appears in its place. The sites often expand rapidly. One site obtained 200,000 new members within its first four weeks of operation.<sup>9</sup> Though these sites sit within the Dark Web, they are readily accessible to anyone and essentially exist in the plain sight of law enforcement. However, even if the sites or users are identified, the administrators and facilitators may remain obscured and free from investigation, allowing them to continue rebuilding their platforms after each law enforcement disruption.

Many online communities are highly organized and sophisticated. They enforce strict security protocols and encryption techniques to elude law enforcement and perpetrate the ongoing sexual abuse of children. Some offenders closely follow legal filings and press releases to monitor law enforcement’s efforts and techniques to learn from the mistakes of other offenders and share this knowledge. Individual offenders mask their own possession and trafficking of CSAM beyond the Tor community by using and sharing knowledge of law enforcement efforts and methods to conceal illicit activity.

### **Effect of Online Communities**

As technology has evolved, there has been a dramatic increase in the number of newly produced images and videos depicting the sexual abuse of children, as well as a pervasive spread of images and videos of abuse produced prior to the advent of the internet. The degree of violence and sadistic content depicted in CSAM has increased as well. CSAM depicting the rape of infants and toddlers, bondage, humiliation through sexual assault, including self-mutilation, youth-on-youth abuse, and child-on-child abuse, as well as bestiality, are not uncommon.

Offenders can connect on internet forums and networks to share their interests, desires, and experiences abusing children, reveal tips for evading detection, share and trade CSAM, and livestream the abuse of a child for others to watch and direct. These online communities promote communication and collaboration among offenders, fostering a larger relationship premised on their shared sexual interest in children. Online communities attract and encourage new individuals to join them in the sexual exploitation of children, increasing both the supply and demand side, as well as motivating more severe abuse to satiate and impress each other.

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<sup>8</sup> Based on investigative and prosecutorial information provided by the authors.

<sup>9</sup> *Id.*

This community effect is particularly strong on protected spaces like Tor hidden services, where there is a thriving community for these like-minded offenders to congregate, discuss their shared interest in the sexual abuse of children, normalize their behavior, and encourage each other. Prior to the internet and anonymization technology such as Tor, offenders generally provided support to each other only if they met in person and disclosed their mutual sexual interest in children. On Tor, the novice becomes the expert quickly, learning how to access more material, what techniques to use to entice victims and gain their trust, and how to conceal activity from family members and law enforcement. Offenders not only encourage each other but have been known to compete with one another.<sup>10</sup> They see the sexual abuse of a child as a sport, trying to one-up others and show who is willing to take more risks or engage in more deviant conduct to victimize a child. Ego and power play large roles as offenders attempt to get more “likes” on their posts of CSAM or more followers on their sites. On some sites, administrators may deny access to certain CSAM content unless an offender produces and posts new CSAM. Whether for access, bragging, or sharing, these communities encourage more production of CSAM, which means more abuse and more victims. This poses a grave danger to children.

### Case Example

*United States v. Arlan Harrell, et al.* (C.D. Cal.). Arlan Harrell, John Brinson, and Moises Martinez were active members of several Tor-network-based child exploitation websites, including one website dedicated to the sexual exploitation of children under age five. As a result of their online group activity and connection, they repeatedly met together in California to sexually abuse children and produce CSAM. Martinez pleaded guilty to engaging in a child exploitation enterprise and production of child pornography and was sentenced to 55 years’ imprisonment. Harrell and Brinson pleaded guilty to engaging in a child exploitation enterprise and several counts of production of children pornography and were each sentenced to lifetime imprisonment.<sup>11</sup>

The communities on Tor are especially powerful because anonymization emboldens offenders to be more extreme in their efforts to abuse children. Law enforcement investigations revealed that in early 2019, the top three hidden child exploitation services on Tor totaled 1.5 million members.<sup>12</sup> Recently, one of these top three hidden services exclusively hosted imagery called “hurt core” – the sadistic physical abuse of children. Another was dedicated to the sexual abuse of children aged five and under. This preference for the youngest children has an added “benefit” for child sex offenders. Pre-verbal children—infants and toddlers—cannot disclose when they are sexually assaulted, thus further protecting the offenders from exposure and identification.

New data suggests that those previously considered passive “browsers” or “lurkers” are more active than once believed, and still present a significant risk. Law enforcement analysis of over 100,000 users on a CSAM Tor site showed that new users typically attempted to download a file

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<sup>10</sup> More information about this issue is available in the Offender Psychology chapter.

<sup>11</sup> See <https://www.justice.gov/opa/pr/california-man-sentenced-life-prison-creating-child-sexual-abuse-material-number-young>; <https://www.justice.gov/opa/pr/california-man-sentenced-life-prison-engaging-child-exploitation-enterprise-and-creating>

<sup>12</sup> Based on investigative and prosecutorial information provided by the authors.

containing CSAM within hours of registering on the site.<sup>13</sup> While these users are not as active in sharing material and discussing abuse, they are browsing the content, learning from the material, and attempting to obtain CSAM for themselves in only a short amount of time on the site. Besides producing, sharing, discussing, and encouraging CSAM, Tor communities also engage in other dangerous behavior. A more recent trend is offenders using their communities to discuss, track, and follow victims of CSAM as they grow up. Offenders try to find photographs of the victims online or on social media and work together to hunt these children long after the hands-on abuse has ended. They have successfully identified and reached out to victims, including one instance of an offender locating a victim from a well-known CSAM series and sending a box of sexual objects to her front door.<sup>14</sup>

*“I have a constant fear of being recognized and worry about my safety and privacy. People who have viewed these images of me being sexually abused online have stalked me. This stalking has happened both in-person and online through social media. They have started forums and created videos about my life as an adult and have shared my personal information.”*

Survivor Story 1, available at <https://www.unwantedfilmfest.com/survivor-stories/>

## Minors and Technology

Technology has also made it easier for offenders to access unsupervised children. Every year, more and younger children are given unfettered and unmonitored access to devices that connect them to the internet. This can expose them to offenders, through their computers, gaming systems, and mobile devices. Geography and lack of physical access are no longer hurdles to offenders engaging with youth; offenders who did not previously have any children in their lives can easily and instantaneously connect online with potential victims anywhere in the world.

There is a growing trend of juveniles on Tor, including juveniles who are self-producing CSAM and posting it for others.<sup>15</sup> Juveniles may learn of Tor because offenders are engaging them on other social media platforms and then assisting their migration to Tor to engage in more exploitative conduct. An interest in pornography while going through puberty is not a new phenomenon, but rather than finding adults in a magazine, some juveniles find toddlers or prepubescent children in CSAM online. For some juvenile offenders, this can lead to further pedophilic interests and behavior.<sup>16</sup>

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<sup>13</sup> Based on investigative and prosecutorial information provided by the authors.

<sup>14</sup> *Id.* See also <https://www.justice.gov/archive/usao/nv/news/2010/04282010.html> See also Keller, M. H., & Dance, G. J. X. (2020, January 1). Child Abusers Run Rampant as Tech Companies Look the Other Way. *The New York Times*. Retrieved April 27, 2022, from <https://www.nytimes.com/interactive/2019/11/09/us/internet-child-sex-abuse.html> and Keller, M. H., & Dance, G. J. X. (2020b, June 11). The Internet Is Overrun With Images of Child Sexual Abuse. What Went Wrong? *The New York Times*. Retrieved April 27, 2022, from <https://www.nytimes.com/interactive/2019/09/28/us/child-sex-abuse.html>

<sup>15</sup> Based on investigative and prosecutorial information provided by the authors.

<sup>16</sup> More information on the role of pornography in the development of deviant sexual interests can be found in the chapter on Offender Psychology. See also the American College of Pediatricians’ statement on the impact of pornography on children. <https://acpeds.org/position-statements/the-impact-of-pornography-on-children>



Minors are often particularly tech savvy. Most children are more comfortable with technology than their parents or guardians. This leaves children vulnerable to offenders seeking them out online because their parents or guardians often do not understand what their children are doing online and are not familiar with available online protection or monitoring to keep them safe.

### **Section 230 Protections**

While the CyberTipline data noted above shows a rapidly rising tide of CSAM online, data also suggests that there is a wildly divergent response by online providers to online child safety. According to NCMEC, in 2019 and 2020, over 1,400 companies were registered to use the CyberTipline. But in 2019, they only received CyberTips from 148 companies, approximately 10% of registered companies. The 2020 results are not much better, with 168 companies submitting CyberTips, approximately 12% of registered companies. Looking more closely at the data reveals the massive disparity in the effort by companies across the industry. In both years, a single company—Facebook—accounted for approximately 95% of all CyberTips. In contrast, in 2019 and 2020, most of the companies that submitted reports to the CyberTipline (66%) each sent less than 100 reports for the year.<sup>17</sup> While the quantity of reporting from individual companies is one informative barometer in evaluating reporting trends, the quality of reports (e.g., the scope of information provided, the timeliness of the report, and the actionability of the reported information) is equally, if not more, relevant to evaluating reporting trends to the CyberTipline.

Similarly, a recent report released by C3P revealed the delayed response by some online providers to remove CSAM from their platforms.<sup>18</sup> Between 2018 and 2020, 50% of the CSAM was no longer available the following day after a removal request was issued. While the median removal time was 24 hours, 10% of the CSAM was still online seven weeks or longer after the take-down notification was issued. This lag time is troubling, given the speed with which CSAM is traded and shared.

Child safety is also undermined when app stores advertise applications in a way that misrepresents their danger. For example, Apple's app store rates the apps for TikTok, Snapchat, Facebook, and Instagram as 12+ (suitable for children aged 12 and up), which means material on those platforms has:<sup>19</sup>

- Infrequent/Mild Mature/Suggestive Themes;
- Infrequent/Mild Cartoon or Fantasy Violence;
- Infrequent/Mild Alcohol, Tobacco, or Drug Use or References;
- Infrequent/Mild Profanity or Crude Humor;
- Infrequent/Mild Sexual Content or Nudity.

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<sup>17</sup> See <https://www.missingkids.org/content/dam/missingkids/pdfs/2019-reports-by-esp.pdf> and <https://www.missingkids.org/content/dam/missingkids/pdfs/2020-reports-by-esp.pdf>

<sup>18</sup> *Reviewing Child Sexual Abuse Material Reporting Functions on Popular Platforms*, Canadian Centre for Child Protection <https://protectchildren.ca/en/resources-research/csam-reporting-platforms/>

<sup>19</sup> <https://apps.apple.com/mn/story/id1440847896>

This rating is hard to reconcile with the fact that in 2020, TikTok submitted 22,692 CyberTips. Snapchat submitted 144,095, and Facebook, which owns Instagram, submitted 20,307,216.<sup>20</sup> These platforms can also be used to solicit CSAM from children. For example, offender Jacob Blanco used musical.ly (now TikTok), Snapchat, and Kik to contact young girls and have them send him sexually explicit content. Blanco was first arrested in 2017 when the parents of a six-year-old victim discovered images sent to him on musical.ly. Blanco pretended to be a modeling agent or an underage person to get the photos from his victims. As part of his plea agreement to five counts of producing CSAM, Blanco admitted he had communicated with more than 50 children.<sup>21</sup>

There are limited legal options to hold those online providers accountable who play a role in facilitating online child exploitation offenses, either for direct actions, such as hosting CSAM, or indirect actions, such as distributing applications with functions that enable predators to exploit children. This is due in large part to case law interpreting the Communications Decency Act, codified at 47 U.S.C. § 230. As currently written and interpreted by courts, Section 230 gives online providers immunity from civil action and state and local criminal action for material on their platform created by a third-party. The sole exception to this blanket immunity, discussed in more detail below, is for conduct related to sex trafficking and the intentional facilitation of prostitution.

In this regard, victims depicted in CSAM do not have the same remedies as victims of sex trafficking. The *Allow States and Victims to Fight Online Sex Trafficking Act of 2017*<sup>22</sup> made it a federal criminal offense to own, manage, or operate an interactive computer service with intent to facilitate prostitution, in violation of 18 U.S.C. § 2421A. It also amended the Communications Decency Act under 18 U.S.C. § 1595 to permit federal civil suits and state criminal action against online providers for their involvement in sex trafficking or prostitution offenses, comparable to that proscribed by Section 2421A. Another deficiency in the current legal framework is the Children’s Online Privacy Protection Act (COPPA). While COPPA has served to shield young children from some of the most egregious data collection and targeted marketing tactics, the law’s basic framework has major limitations. According to the American Academy of Pediatrics,

*“For example, instead of prohibiting companies from engaging in certain practices, it requires verifiable parental permission before a marketer can collect personal information from a child, thus putting the burden on parents to evaluate confusing, legalistic privacy policies. Moreover, nothing prevents children from simply lying about their age, and research has documented that this is common, particularly on highly popular social networking platforms. Finally, COPPA applies only to children younger than 13 years old, leaving teenagers without privacy protections in an essentially unregulated, commercial, digital media environment.”<sup>23</sup>*

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<sup>20</sup> The data provided by NCMEC provides a single number for Facebook and all entities owned by Facebook and does not disaggregate by individual components like Instagram or WhatsApp.

<sup>21</sup> See <https://www.justice.gov/usao-edca/pr/fresno-man-admits-sexual-exploitation-least-50-children-through-multiple-social-media>.

<sup>22</sup> Pub. L. No 115-164, 132 Stat. 1253 (2018) (FOSTA)

<sup>23</sup> Montgomery, Kathryn C. et al. “Children’s Privacy in the Big Data Era: Research Opportunities” *Pediatrics* (2017) 140 (Supplement\_2): S117–S121; <https://doi.org/10.1542/peds.2016-1758O>.

Yet the legal remedies are limited for victims depicted in CSAM who often endure the endless online circulation of imagery depicting their sexual abuse. In a lawsuit recently filed against Twitter, for example, the plaintiffs claim that they were solicited and recruited for sex trafficking as minors. After the trafficking ended, CSAM depicting them was disseminated on Twitter.<sup>24</sup> The law currently provides these victims a clear remedy to the extent they were trafficked, but it bars relief to address the harm caused by the dissemination of their CSAM images or videos.<sup>25</sup>

Justice requires that CSAM victims have ways to redress their victimization, particularly if knowingly facilitated by internet providers. The increase in CSAM production in the past 10 years, along with an increase in platforms that provide ready access to children, has dramatically increased the number of CSAM victims globally. Many of these victims have reached adulthood, are themselves computer-savvy, and face the reality that explicit images and videos of them as children continue to proliferate on the internet. This problem is particularly severe for pubescent victims (13-17), whose images may not be as easy to identify as depicting a minor under the age of 18 (as compared to images depicting younger children). For these victims, the ability to report the existence of these images and videos to internet providers and seek their rapid removal is essential. Far too often victims struggle to get such content removed and are sometimes asked to prove they were, in fact, minors, assuming the victims can even establish contact with a provider's content moderation team.

Starting in 2016, C3P and NCMEC increased engagement with CSAM survivors to elevate their voices, advocate for change, and increase the use of technological interventions that can reduce their re-victimization.<sup>26</sup> Advocacy from survivor groups such as The Phoenix 11<sup>27</sup> plays an important role in challenging the inadequate responses to the prevalence of CSAM on the internet. These survivors have been instrumental in identifying serious deficiencies in online platforms' reporting tools. Survivors described their experiences reporting CSAM online as disheartening, reporting exceedingly long delays in responding to their complaints, moderators challenging victims on the veracity of their report, or, frequently receiving no response at all.<sup>28</sup> Research conducted by C3P found that while all the platforms they reviewed, including major platforms like Google, YouTube, Twitter, Facebook, and others, provide users with the ability to report illegal or inappropriate content, in nearly all cases it was impossible to explicitly flag content as CSAM. In contrast, issues related to copyright infringement almost universally have formal reporting tools and clear instructions for initiating a complaint.<sup>29</sup> In addition to the burden on survivors due to inadequate reporting mechanisms, the absence of CSAM-specific reporting limits the ability of providers to curb the spread of CSAM on their platforms and gauge the effectiveness of their platform's protection measures.

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<sup>24</sup> See <https://endsexualexploitation.org/articles/statement-second-survivor-of-child-sexual-abuse-sues-twitter/>.

<sup>25</sup> While not a substitute for a remedy for continued circulation of their images facilitated by internet providers, victims of CSAM can receive restitution directly from offenders through the criminal restitution process or possibly receive financial support through other victim support funds.

<sup>26</sup> See C3P's International Survivor's Survey <https://protectchildren.ca/en/programs-and-initiatives/survivors-survey/>

<sup>27</sup> <https://protectchildren.ca/en/programs-and-initiatives/survivor-advocacy-groups/>

<sup>28</sup> Reviewing Child Sexual Abuse Material Reporting Functions on Popular Platforms, Canadian Centre for Child Protection, <https://protectchildren.ca/en/resources-research/csam-reporting-platforms/>

<sup>29</sup> *Id.*

## Significant Developments

The biggest change in CSAM offenses over the last five years has been the increasing number of production cases, when offenders photograph, record, or livestream their sexual abuse and exploitation of children. The quality and ubiquity of cameras on mobile phones make it easier than ever for offenders to create CSAM whenever and wherever there is access to a child. The Department of Justice’s prosecution efforts reflect this trend. Increasing every year for 11 straight years, the number of federal production cases has almost *tripled*, from 218 cases initiated against 239 defendants in FY 2008, to 750 cases initiated against 795 defendants in FY 2021.<sup>30</sup>

In March of 2020, the Five Country Ministerial (FCM), comprised of the U.S. (through the Attorney General and the DHS Secretary), Australia, Canada, New Zealand, and the U.K., announced the *Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse*.<sup>31</sup> Developed in consultation with representatives from six leading technology companies (Facebook, Google, Microsoft, Snap, Twitter, and Roblox), and a broad range of experts from industry, civil society, and academia, the 11 Voluntary Principles outline measures that companies in the technology industry can choose to implement to protect the children who use their platforms from sexual abuse online and to make their platforms more difficult for child sex offenders to exploit. The idea behind the Voluntary Principles was to sketch out the elements that would contribute to the creation of an online culture of safety.

## Strategic Response

Short-Term Goals	Long-Term Goals
<p><b>Design Targeted Educational Resources for Parents and Guardians:</b> Federal agencies should provide educational resources, tailored to specific age groups, about online safety, how to spot signs of exploitation, and how to respond should it occur.</p>	<p><b>Train law enforcement to train the community:</b> Federal agencies should fund and support efforts to train law enforcement on CSAM, and subsequently use them to educate the community, including schools, parents, guardians, and caregivers. Strengthening community ties around this sensitive issue can increase reporting.</p>
<p><b>Inform Congress on CSAM-related Industry Regulation:</b> Given the rapid technological advancements in this area, federal agencies should keep policymakers informed on the dynamics of CSAM offenses &amp; proliferation.</p>	<p><b>Continue Engagement with Industry:</b> Continue fostering collaboration between online platforms and law enforcement to enhance best practices related to combating CSAM, such as the Voluntary Principles.</p>
<p><b>Amend Section 230:</b> Federal agencies should discuss potential amendments to Section 230 to permit legal action to address child abuse on online platforms.</p>	<p><b>Continue enhancing CSAM-relevant legislation:</b> Legislation governing tech industry regulation and enforcement of child exploitation laws should be continually reviewed and updated considering the ever-evolving predatory landscape.</p>

<sup>30</sup> See Federal Prosecution Accomplishments Summary Appendix.

<sup>31</sup> <https://www.justice.gov/opa/press-release/file/1256061/download>

<p><b>Foster greater engagement with the technology industry:</b> Work with online platforms to increase monitoring of CSAM online, access encrypted material pursuant to legal process, standardize reporting, and better balance privacy and branding concerns with the need to stop online child sexual abuse and prosecute offenders.</p>	<p><b>Enhance detection technology:</b> Increase funding to enhance technologies to aide law enforcement to uncover CSAM online.</p>
	<p><b>Assess research gaps regarding impact of technological advancements on CSAM production:</b> Determine specific issues that would shed light on connection between children’s unmonitored access to the internet, lack of privacy protections, role of social media, and CSAM. This research could inform internet safety measures and survivor care.</p>

*Strategic Law Enforcement Approach*

Law enforcement must continue responding to the rise in CSAM online with a multi-pronged approach aimed at earlier identification of victims and perpetrators and enhanced triage capabilities. Additional resources would assist law enforcement to continue employing new technology, consistent with the Fourth Amendment, to focus on earlier identification of victims and enhanced triage capabilities. Such technology could include artificial intelligence, machine learning classifiers, computer vision, natural language processing, and hash algorithms specifically developed for CSAM content online.

*Education Efforts for Parents/Guardians and Children to Prevent Online Child Sexual Exploitation*

Both children and their parents and guardians need to be empowered to prevent online child sexual exploitation. A national standard and federal leadership for prevention education are essential to improve the quality of messaging.<sup>32</sup> Fear-based messaging about what can occur if minors engage in risky behavior does not create an outlet for victims to come forward when something has already happened. The messaging needs to explain what to do if something does happen online, how to prevent it from escalating, and what to do if you suspect someone else is being abused or exploited. Part of the educational protocol needs to address mental health issues with minors and address non-digital ways to combat crushing depression and anxiety that has plagued teens over the last several years. Social isolation, targeted advertising, and the lack of adequate resources to support mental health recovery in minors has driven minors to seek validation, connection, and attention through social media applications. The educational model should not only empower teens to do something if victimized but also empower teens not to be drawn into the social media vortex in the first place.

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<sup>32</sup> More information about child exploitation prevention efforts can be found in the Prevention chapter.

Education efforts should begin at an early age when children start to have access to technology. Research indicates that roughly 27% of adolescents have received sexually explicit images, videos, or messages via text, usually with other adolescent peers.<sup>33</sup> High school is too late to begin having these conversations, since children are engaging in dangerous behaviors online much earlier. During listening sessions conducted for this report, one forensic interviewer recounted an interview conducted with a seven-year-old victim who was targeted by a perpetrator in an online game creating paper dolls that had a chat function. The perpetrator told her to go to the messaging app Kik to make new friends and sent her a link to download. Once there, 19 people reached out and asked her for photographs. Outreach efforts need to engage children, parents, and guardians at the same time to foster discussion between them. Additionally, the programs need to be age appropriate. It is important to acknowledge and include male victims and not always portray males as the offenders.

Including members of the law enforcement community in educational programs and other efforts could help to address, and hopefully reduce, potential fear children may have of law enforcement. Many children have never spoken to a law enforcement agent or been to court, so they do not know or understand the process and are susceptible to an offender's misrepresentation that they will get in trouble. Age-appropriate education efforts should include an explanation of the continuum of crimes, from sexting to sextortion to sexual exploitation, to help them appreciate the risks and recognize and report concerns before they escalate.

Additionally, schools need better guidelines on how to keep children safe online both while on-campus and away from school.<sup>34</sup> Most schools are leveraging technology to support teaching and learning, particularly since the pandemic.<sup>35</sup> However, many digital devices do not track what children are doing online. Access to technology is integral to the grooming process. Schools should assist in monitoring access while limiting contacts to those necessary between students and educational professionals. Schools must also implement clear and concise policies regarding appropriate communications between teachers, coaches, and other education personnel and students, restricting them to school devices and sites.

Educational outreach efforts must include parents and guardians, who may not fully understand the risks children face online. A more informed populace may lead to greater demand for transparency and accountability within the technology industry to protect children. The paradigm of safety online needs to be changed for the sake of children, and consumers must demand that

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<sup>33</sup> Madigan S, Ly A, Rash CL, Van Ouytsel J, Temple JR. Prevalence of Multiple Forms of Sexting Behavior Among Youth: A Systematic Review and Meta-analysis. *JAMA Pediatrics*. 2018;172(4):327–335. doi:10.1001/jamapediatrics.2017.5314

<sup>34</sup> Resources from the Department of Education are available at <https://oese.ed.gov/resources/safe-school-environments/keeping-students-safe-online/>, specifically see Cyber Safety Quick Links for Protecting Youth: Empowering Students to Become Responsibly Digital Citizens and Engage Online Safely. The Office of Educational Technology also has a document entitled Building Technology Infrastructure for Learning, which covers building technology infrastructure to support digital learning, including a section on safety, available at <https://tech.ed.gov/infrastructure/>.

<sup>35</sup> 'A Year of Tremendous Growth.' How the Pandemic Forced Teachers to Master Technology, Alyson Klein, Education Week, April 20, 2021 <https://www.edweek.org/technology/a-year-of-tremendous-growth-how-the-pandemic-forced-teachers-to-master-technology/2021/04>

industry prioritize safety as well as privacy. Privacy and child protection should not and need not be at odds with one another, and the issue should be framed to prevent such conflict.

Thorn, an anti-human trafficking organization that uses technology to combat the sexual exploitation of children, has recently launched Thorn for Parents.<sup>36</sup> The goal for this resource is to better equip parents and guardians to address the issue of self-generated CSAM through the lens of prevention, providing the resources parents and guardians need to have earlier, more frequent, and judgment-free conversations with their kids about digital safety. The program was developed by speaking to and surveying thousands of youths, caregivers, and educators to understand how kids feel about these issues and what motivates their online behaviors. Thorn's work uncovered three key findings, which should inform current and future prevention efforts:

- Children are being exposed to these pressures younger than we think.
- Online interactions have different boundaries than in-person.
- Shame is the biggest obstacle to kids seeking help.

### *Industry Engagement*

Many national governments are watching for signs that safety measures are being adopted more widely across the industry, and how companies are implementing the suggestions in the Voluntary Principles. Transparency from industry is a critical component of this effort, as it will lead to accountability. With clear information about what companies are doing, or not doing, to protect children, the public can make informed decisions about what safety measures it will demand from online service providers. Companies should not be allowed to hide behind a false narrative that they are acting in the best interests of millions of child users. The reality, as discussed in this report, is far different.

The Tech Coalition<sup>37</sup>, a global alliance of technology companies working together to further technologies and best practices that help keep children safe online, made a commitment to transparency as part of its Project Protect, which was announced in June of 2020 as a “renewed investment and ongoing commitment to our work seeking to prevent and eradicate online” child sexual exploitation and abuse (CSEA).<sup>38</sup> One notable element of this effort is a commitment to publishing an annual progress report as part of Project Protect's emphasis on transparency and accountability:

*“We will drive greater accountability and consistency across industry by sharing collective insights through meaningful reporting of online child sexual exploitation and abuse (CSEA) and abuse material across member platforms and services.*

*We will provide meaningful and actionable information that goes beyond reporting numbers to give insights into the ways in which CSEA is identified, the range of content types, advances in detection and reporting, and the evolving threat landscape.*

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<sup>36</sup> <https://parents.thorn.org/>

<sup>37</sup> <https://www.technologycoalition.org/>

<sup>38</sup> <https://www.technologycoalition.org/newsroom/the-tech-coalition-announces-project-protect>

*We will develop a process for industry to benchmark progress and actions taken, including the development of a maturity model for newer companies, inspired by the recent release of the Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse, international safety and privacy-by-design efforts, and the UN Convention on the Rights of the Child.*

*Working closely with the WePROTECT Global Alliance to End Child Sexual Exploitation Online, we will promote good practice about how our members are making progress in the fight against CSEA and share learnings.”*

Recent progress is encouraging that transparency will become an important part of company policies on CSAM, and that child safety will become paramount. Federal agencies should encourage progress towards these goals.

The technology industry is not the only one that can play an important role in curbing the spread of CSAM. Because of the spread of encryption on technology platforms, leveraging financial data opens a new approach to identifying and apprehending CSAM offenders. Project Shadow, a public-private partnership between Scotiabank, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), and C3P, with support from other financial institutions and law enforcement agencies in Canada, aims to identify red flags in financial data that might indicate money laundering activity related to online child exploitation and increase reporting of suspected illegal activity related to these crimes.<sup>39</sup> The U.S. is in the early stages of replicating such a partnership, but more work is needed to fully leverage the power of financial data in combating child exploitation.

### *Legislation*

Congress has a historic opportunity to enact meaningful legislation that will create an online culture of safety for children. The Department has legislative proposals that will help investigate and prosecute CSAM offenders and protect victims, including a suggestion that the term “child pornography” be replaced throughout the United States Code with “child sexual abuse material.” Congress could create a notice-and-takedown regime for CSAM, enforceable through civil or administrative fines, that would give victims and law enforcement more authority to require that CSAM be promptly removed once discovered on a provider’s network. Congress could also ensure more effective reporting mechanisms to combat the unique challenges of youth-produced content and could ensure that immunity protections do not apply where online platforms knowingly facilitate the distribution of CSAM. Congress could also implement a meaningful interdiction regime by updating and overhauling laws designed to ensure that children do not appear in pornographic material. Such legislation could require, in part, that websites that host third-party content have a duty to ensure that children do not appear in the images and videos. Congress can drive change in other ways, such as through grants funding school-based online safety classes. Legislation and political leadership should also support and advance a public health approach to CSAM and publicize the increased risks to children on certain online platforms.

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<sup>39</sup> Project Shadow: AML Investigations Into Online Child Sexual Exploitation, ACAMS Today, December 22, 2021 <https://www.acamstoday.org/project-shadow-aml-investigations-into-online-child-sexual-exploitation/>; see also <https://www.fincen.gov/sites/default/files/shared/FinCEN%20OCSE%20Notice%20508C.pdf>



## Child Sex Trafficking in the United States

### Terminology

Many organizations working to address child exploitation have established formal definitions for terms like “child”, “youth”, “juvenile”, and “minor.” For example, in their statistical analyses, the United Nations, defines “youth” as those between the ages of 15 and 24. Article 1 of the United Nations Convention on the Rights of the Child defines “children” as persons under the age of 18.

In some contexts, such as in legislation or the criminal code, delineating these terms from one another is important. However, in this report, these terms will often be used interchangeably. Generally speaking, “youth” refers to older minors, such as adolescents or teenagers, while “child”, “juvenile”, or “minor” may refer to anyone under the age of 18.

Child sex trafficking is a pervasive and underreported crime, and one of the most complex forms of child exploitation. Significantly, trafficked children (who predominantly are between 14-17)<sup>40</sup> are advertised and presented as adults, often appear to be adults, and are trained by traffickers to lie about their age to buyers and law enforcement.

Under federal criminal law, child sex trafficking—also referred to as “domestic minor sex trafficking,” “commercial sexual exploitation of minors,” or even inappropriately “the prostitution of children<sup>41</sup>”—is defined as the recruiting, enticing, harboring, transporting, providing, obtaining, advertising, maintaining, patronizing, or soliciting of a person under 18 years, knowing or recklessly disregarding that the person is a minor and that the person will be caused to engage in a commercial sex act.<sup>42</sup> A “commercial sex act” is any sex act on account of which anything of value is given to or received by any person, and is not limited to financial transactions.<sup>43</sup> Child sex trafficking thus encompasses not only those situations where the child or the child’s trafficker receives payment for the sex act, but also those where there is no identified trafficker, and a buyer directly solicits sex with a child in exchange for food, shelter,

clothing, drugs, or other items of value. The law also criminalizes knowingly benefitting, financially or by receiving anything of value, from participation in a venture that has engaged in a child sex trafficking act.<sup>44</sup> In contrast to the sex trafficking of adults, child sex trafficking does not require the use or threat of force, fraud, or coercion—although traffickers and buyers often use such tactics with children. If the victim is a minor, and the offender knew or recklessly disregarded the fact that a minor would be engaged in a commercial sex act, then the offender engaged in child sex trafficking.<sup>45</sup> If the offender has a “reasonable opportunity to observe” the victim, which is often the case, then there is no need to prove knowledge or reckless disregard of the victim’s minor status.

<sup>40</sup> See Federal Human Trafficking Report, available at <https://traffickinginstitute.org/wp-content/uploads/2022/09/2021-Federal-Human-Trafficking-Report-WEB-1.pdf>, at p. 28.

<sup>41</sup> A minor under the age of 18 cannot legally consent to a commercial sex act. Force, fraud, or coercion are not necessary elements of sex trafficking under the federal definition, and any instance of commercial sex with a minor is considered child sex trafficking.

<sup>42</sup> See 18 U.S.C. § 1591(a)

<sup>43</sup> *Id.* § 1591(e)(3)

<sup>44</sup> *Id.* § 1591(a)(2).

<sup>45</sup> *Id.* § 1591(a), (c)

Although a federal child sex trafficking offense requires connection to federal land or interstate or foreign commerce, a victim need not be moved across state or international lines for a federal crime to occur. If the offender advertises the victim online, coordinates logistics for the encounter via text message, uses hotels or motels to facilitate trafficking, or provides condoms for use during the act, the offense could fall under federal jurisdiction.

### Child Sex Trafficking by the Numbers

While it is very difficult to determine the true volume of child sex trafficking, research has helped shed light on the dynamics of these crimes taking place in the United States.

- According to one study, from 2010 to 2015, approximately 1,400 individuals were arrested at the federal, state, and local levels on the specific charge of sex trafficking a minor, with an increasing number arrested each year.<sup>46</sup> The research team identified child sex trafficking arrests in every state except for Alaska, Hawaii, West Virginia, and Wyoming.
- The average age of the traffickers in federal prosecutions was 28.5 years old.<sup>47</sup> Roughly three-quarters of them were male.<sup>48</sup> Nearly all were U.S. citizens.<sup>49</sup>
- Federal prosecutions of child-only sex trafficking cases increased 17% from 2019 to 2020, and children made up 69% of victims in newly charged sex trafficking cases in 2020.<sup>50</sup>
- Looking at federal trafficking cases prosecuted in 2020, just over half of the victims were children,<sup>51</sup> with victim ages ranging from 4 to 17 years old when they were exploited, with an average age of 15 years old.<sup>52</sup> 89% of child victims in active sex trafficking cases were between 14 and 17 years old.<sup>53</sup>
- 45.1% of victims knew their trafficker prior to becoming a victim.<sup>54</sup>

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<sup>46</sup> Dr. Dominique Roe-Sepowitz *et al.*, Ariz. State Univ. Office of Sex Trafficking Intervention Research, *A Six-Year Analysis of Sex Traffickers of Minors*, at ii (Apr. 2017). 97 offenders were arrested in 2010 and 360 in 2015. This report uses data collected through a structured online search that produced a six-year picture of the arrests in the United States of the specific charge of sex trafficking of minors from 2010 to 2015. The findings from this report include individual and case details including characteristics of the sex traffickers (age, gender, race, professions, and gang involvement), details about how they recruited and victimized their minor victims, and information about their case resolution. The data for this study was collected from web-based media reports found through the Google search engine, electronically filed court documents, and online press releases from government agencies. However, some cases may not have been reported by the media or by law enforcement and prosecutors. Some variables in this study have missing data, due to what was available online and through targeted searches.

<sup>47</sup> *Id.* at iii.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Kyleigh Feehs & Alyssa Currier Wheeler, 2020 Federal Human Trafficking Report, Human Trafficking Institute (2021), available at <https://traffickinginstitute.org/wp-content/uploads/2022/09/2021-Federal-Human-Trafficking-Report-WEB-1.pdf>

<sup>51</sup> *Id.* at p. 5

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at p. 32

<sup>54</sup> *Id.*

Traffickers include those who recruit, control, and sell children for sex to others; those who pay for sex with a child; and those who facilitate the crime, such as online advertisers, owners of hotels and motels where the commercial sex takes place, and drivers who transport victims. Third parties are not always involved in child sex trafficking. Some child sex trafficking victims, such as those engaging in “survival sex” (commercial sex engaged in by the child who sees it as the only means to find money for food or shelter), may interact directly and exclusively with the person providing items of value to the child in exchange for sexual acts.

Traffickers often target vulnerable children, exploiting community instability, poverty, and lapses in parental supervision to expand their opportunities to victimize children. For example, homeless and runaway minors; minors in the foster care and juvenile justice systems; children in communities that are impoverished, have a strong gang or drug presence, or are dealing with natural disasters; unaccompanied and undocumented minors; and minors whose online presence is unsupervised by adults are all at greater risk of victimization.

Children may be sold for sex by their own family members.<sup>55,56</sup> In fact, the Counter-Trafficking Data Collaborative, the world’s first data portal to include human trafficking case data contributed from multiple agencies, found that based on global data analyzed, family members are involved in 36% of child sex trafficking cases.<sup>57</sup> Familial trafficking often includes younger victims and the exploitation can take place through advertising the child online, making the child available through organized child sex abuse rings or networks, or through individual contacts. A family member’s motivation may be for money, drugs, or production of child sexual abuse material. Such abuse may also be a continuation of intergenerational trauma.

Sex trafficking occurs in rural, urban, and tribal areas, and impacts children of all races and socioeconomic statuses, and all ages, genders, and sexual orientations. However, evidence suggests children of color, LGBTQI+ children, and children from lower income families and communities are disproportionately affected by child sex trafficking.<sup>58</sup>

With the proliferation of social media, offenders have easy access to victims with whom they would not otherwise come in contact. Some children are recruited into child sex trafficking by their peers at school, lured in by young adults who are both victims and intermediaries in the trafficking organization, or groomed by young, charismatic traffickers, who pretend to be a romantic partner to gain their confidence before coercing them into commercial sex.<sup>59</sup>

Once recruited, traffickers frequently use violence, intimidation, drug addiction, and psychological manipulation to trap victims into continued sexual exploitation. Victims are commonly advertised online and transported to hotels, motels, or residences where they meet sex

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<sup>55</sup> See, e.g., *id.* at 45 n.123; [Nine arrested, charged federally in connection to human trafficking operation involving drugs exchanged for sexual access to children | USAO-SDOH | Department of Justice](#); [Jax Beach woman sentenced to 30 years for child neglect – 104.5 WOKV](#)

<sup>56</sup> Sprang, G., Cole, J. Familial Sex Trafficking of Minors: Trafficking Conditions, Clinical Presentation, and System Involvement. *J Fam Viol* 33, 185–195 (2018). <https://doi.org/10.1007/s10896-018-9950-y>

<sup>57</sup> [https://www.iom.int/sites/g/files/tmzbd1486/files/our\\_work/DMM/MAD/Counter-trafficking%20Data%20Brief%20081217.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/DMM/MAD/Counter-trafficking%20Data%20Brief%20081217.pdf)

<sup>58</sup> See, e.g., <https://polarisproject.org/wp-content/uploads/2019/09/LGBTQ-Sex-Trafficking.pdf>

<sup>59</sup> This chapter focuses on child exploitation and minor sex trafficking within the United States. International minor sex trafficking is addressed in the Extraterritorial Child Sexual Abuse chapter of this report.

purchasers – colloquially known as “johns,” customers, dates, tricks, or clients.<sup>60</sup> Victims often receive little to no financial proceeds, despite promises to the contrary by their traffickers, and they frequently face physical and sexual assault by their trafficker, including buyers. Traffickers are more likely than other perpetrators of child sexual exploitation to have documented criminal histories, often for violent offenses.<sup>61</sup> And yet, because traffickers often subject their victims to extreme coercion and emotional abuse, child sex trafficking victims often retain a sense of loyalty to their traffickers and may not see themselves as victims. This “trauma bond” is due to complex trauma resulting from exposure to multiple traumatic events causing wide-ranging and long-term effects. These complicated trauma-related coping mechanisms can hinder or delay identification of the minor as a victim by law enforcement, social workers, school personnel, medical providers, and other professionals who may encounter the victim and see signs of their trafficking, such as public transit staff, car or taxi drivers, and hotel managers. Such professionals often miss signs of sex trafficking when the victim is a child of color and/or male, due to implicit biases in our society and the adultification of children of color.<sup>62,63</sup>

The covert nature of child sex trafficking makes it inherently difficult to identify and track. Databases and studies often do not disaggregate adult sex trafficking from child sex trafficking, and they may conflate sex trafficking with prostitution and solicitation. Further, there is no national database for collecting data on child sex trafficking across United States jurisdictions, making it impossible to generate reliable, comprehensive statistics on the prevalence of these crimes. Questions regarding trafficking are not currently asked in national surveys, such as the Youth Risk Behavior Surveillance System<sup>64</sup>, which is collected by the Centers for Disease Control & Prevention (CDC) and serves as a primary source for other critical information on child victimization. This lack of data makes it difficult both to quantify the pervasiveness of the existing problem and evaluate the effectiveness of various interventions aimed at addressing and preventing child sex trafficking.

### **Facilitating Trafficking: Offender Profile & Methodology<sup>65</sup>**

Generally, the facilitators<sup>66</sup> responsible for child sex trafficking differ from other child exploitation offenders in that they are not primarily motivated by a sexual interest in the children

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<sup>60</sup> Many advocates oppose the use of these terms with the concern that it minimizes the fact that trading something of value for a sex act with a child is a serious form of child abuse and a trafficking offense.

<sup>61</sup> Based on U.S. Sentencing Commission data; for example, offenders sentenced for CSAM-related offenses tend not to have prior criminal history

<sup>62</sup> <https://genderjusticeandopportunity.georgetown.edu/adultification-bias/>

<sup>63</sup> Goff, P. A., Jackson, M. C., di Leone, B. A. L., Culotta, C. M., & DiTomasso, N. A. (2014). The essence of innocence: Consequences of dehumanizing Black children. *Journal of Personality and Social Psychology*, 106(4), 526–545. <https://doi.org/10.1037/a0035663>

<sup>64</sup> <https://www.cdc.gov/healthyyouth/data/yrbs/index.htm>

<sup>65</sup> This section specifically addresses the behavior of facilitators, often referred to as “pimp-controlled trafficking.” While this type of trafficking is commonly seen by law enforcement, it is not the only type of offending, nor is it the most important to consider. Other types of trafficking offenders, such as familial, gang-controlled, or buyer-perpetrated child sex trafficking may tend to exhibit other behavioral or psychological traits.

<sup>66</sup> Any purchase of sex with a minor constitutes human trafficking because minors cannot legally consent. Thus, both the purchasers of sexual acts with minors and the facilitators of that purchase are considered traffickers. The discussion of the commercial nature of these crimes should in no way minimize the harm that these perpetrators cause to their victims.

they exploit. Rather, they are commonly motivated by financial gain and are trafficking the child in exchange for money, drugs, or other items of value. Despite the financial motivation, these perpetrators may also sexually assault, rape, record images and videos of the child's sexual exploitation, or otherwise exploit their victims in an effort to control and/or advertise them.

### Who are trafficking offenders?

Both the purchasers of sex from a minor and the individuals facilitating that purchase are referred to as "traffickers".

Human traffickers include perpetrators directly involved in trafficking, such as recruiters, enforcers, facilitators, buyers/customers, and advertisers, and individuals who benefit from the exploitation, such as others who unlawfully financially benefit from these crimes.

Most offenders are male, but the facilitators of child sex trafficking are not otherwise a homogeneous group. Some are charismatic (sometimes referred to in the commercial sex industry as "finesse" or "Romeo" pimps), while others are aggressive (sometimes referred to in the commercial sex industry using racist and problematic terms like "gorilla" or "guerilla" pimps). Charismatic traffickers tend to be socially skilled, manipulative, and charming. They appeal to the emotional needs of the victim and often use the ruse of a romantic relationship, coupled with empty promises, as a recruiting tactic. Many victims of charismatic offenders

believe they are in a romantic relationship with the offender. They do not see themselves as victims, and thus are less likely to cooperate in a criminal investigation. While charismatic offenders prefer to use manipulation to ensure compliance with their demands, they may resort to threats and acts of violence to control their victims when necessary.

By contrast, aggressive offenders use frequent, extreme violence to exert power and control. These acts are often torturous and may involve physical assault, branding or tattooing victims, burning them with cigarettes, striking them with implements such as wire hangers, choking, and forcing them to engage in humiliating or degrading acts. Due to their extreme violence, aggressive sex trafficking offenders are more likely to come to the attention of law enforcement and their criminal records often reflect a history of violent behavior.

These two types of offenders fall along a continuum, rather than distinct categories where an offender fits into either one "box" or another. Facilitators vary their methodologies based on past successes, the vulnerabilities of victims, their relationship or history with the victim, and techniques learned from observing other traffickers.

Sex trafficking is generally not a crime of opportunity, but rather requires some organization.<sup>67</sup> Offenders must house and control their victims, direct and oversee the exploitation on the street, in a hotel, and/or via the internet, and manage the proceeds from the activity – all without attracting attention from law enforcement. While some offenders may be intuitively skilled in this regard, others are mentored by other sex traffickers. They are "trained" on how to locate,

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<sup>67</sup> Task Force on Trafficking of Women and Girls. (2015). *Report of the Task Force on Trafficking of Women and Girls*. Washington, DC: American Psychological Association.

recruit, and control victims, and they learn “best practices” for engaging in related criminal acts. For some, these “skills” are passed down through their families.<sup>68</sup>

*“I looked for girls who were willing to travel and [who were] running away from something or someone.”<sup>69</sup>*

*– A child sex trafficking facilitator*

Considering the calculation, manipulation, and violence shown by offenders, it is not surprising that one federal law enforcement study found that many of the traffickers met the criteria for psychopathy—a cluster of personality traits and behaviors that includes, among other things, superficial charm, manipulation, parasitic lifestyle, and a lack of empathy. These offenders are calculating and predatory in identifying and recruiting vulnerable victims, and they engage in deliberate acts of violence to control them. This finding has implications beyond a single sex trafficking conviction. Psychopaths with a history of sexual violence represent a significant danger to society upon release because they lack a conscience and act without empathy. These characteristics usually result in a rapid return to criminal activity.<sup>70</sup>

Sex traffickers often have diverse criminal histories including misdemeanor crimes, drugs or narcotics arrests, assaults, and weapons violations. One study found that on average, charged facilitators have more than a decade of history in the criminal justice system.<sup>71</sup> One federal law enforcement study<sup>72</sup> found that very few sex trafficking offenders had a history of detected sexual crimes, and even fewer were registered sex offenders at the time of the sex trafficking investigation. This may reflect low rates of detecting sexual crimes against children, or more likely, a financial, rather than sexual, motivation of the offenders. The same study revealed that nearly a third of sex trafficking offenders continue to engage in criminal activity while incarcerated for trafficking offenses. The criminal conduct often involved witness tampering.

Research shows facilitators are methodical in their attempts to identify and recruit vulnerable victims. While being a child is itself a vulnerability, some factors can elevate a child’s risk, including developmental delays, mental illness, poverty, drug addiction, homelessness, unstable family environments, and prior abuse or maltreatment. Children who are runaways – from permanent homes or foster care – are particularly vulnerable to becoming child sex trafficking victims. Once a potential victim has been identified, offenders use various means to manipulate and psychologically control the child. As a result, the victim becomes more isolated from any potential support system, which leads to a greater reliance on the perpetrator. Over time,

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<sup>68</sup> See *U.S. v Williams*, <https://www.justice.gov/usao-mdfl/pr/tampa-brothers-sentenced-total-seventy-years-sex-trafficking-conspiracy>

<sup>69</sup> Raphael, J., & Myers-Powell, B. (2010). *From victims to victimizers: Interviews with 25 ex-pimps in Chicago*. Chicago, IL: DePaul University College of Law, Schiller DuCanto & Fleck Family Law Center. Retrieved from [http://newsroom.depaul.edu/PDF/FAMILY\\_LAW\\_CENTER\\_REPORT-final.pdf](http://newsroom.depaul.edu/PDF/FAMILY_LAW_CENTER_REPORT-final.pdf)

<sup>70</sup> Hargreaves-Cormany, H. A., Patterson, T. D., Muirhead, Y. E., & Federal Bureau of Investigation. (2016). A Typology of Offenders Engaging in the Sex Trafficking of Juveniles (STJ): Implications for Risk Assessment, *Aggression and Violent Behavior*, 30, 40-47.

<sup>71</sup> *Id.* at 44.

<sup>72</sup> *Ibid.*

isolation and forced dependence result in the victim feeling there is no way to escape. The offender's pretended care and compassion create a "trauma bond," a dysfunctional attachment to the perpetrator that can deprive the victim of the emotional and cognitive resources needed to escape. This misplaced loyalty to the offender, created by intermittent delivery of rewards and punishment, is "the result of specific, strategic behaviors on the part of traffickers" designed to control victims.<sup>73</sup> The dependence created by trauma bonding makes it more difficult for law enforcement to identify trafficking situations.

#### Case Study: *United States v. Michael Gunn, et al & United States v. Steven Nowell*<sup>74</sup>

The United States prosecuted both the facilitators and the purchasers of a child sex trafficking ring involving a 14-year-old and 16-year-old victim who were exploited over the course of two years throughout Virginia, Maryland, and Washington D.C. Defendants Michael Gunn, Angel Gunn, and Vanessa Dominguez lured the girls into the sex trafficking ring through promises of love, a nice place to live, drugs, and gifts. Over the course of two years, countless sex buyers paid cash to sexually exploit the girls. One of the highest paying buyers was a wealthy businessman named Steve Nowell who sexually exploited one or both victims every Friday evening over the course of a year.<sup>75</sup> Michael Gunn was convicted of conspiracy to engage in sex trafficking of minors, two counts of sex trafficking of minors, commission of a felony involving a minor, and interstate travel and use of a facility in interstate commerce to promote prostitution by a federal jury in September 2017 and sentenced to 30 years imprisonment. Angel Gunn and Vanessa Dominguez each pleaded guilty to sex trafficking minors and were sentenced to 140 months and 120 months in prison respectively. Steven Nowell was convicted after a jury trial in August 2018 and was sentenced to ten years' incarceration. A restitution judgment against Michael Gunn was entered in the amount of \$648,000 and a house was seized to assist in providing restitution payments to the victims. Both trial convictions were affirmed by the Fourth Circuit.

#### Buyer Traffickers: Demand for Commercial Sex with Children

In recent years, Congress has been focused on the impact of demand on sex trafficking. Four statutes enacted in 2018 and 2019 include provisions addressing the demand side of sex trafficking.<sup>76</sup>

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<sup>73</sup> Casassa, K., Knight, L., Mengo, C. (2021). Trauma Bonding Perspectives From Service Providers and Survivors of Sex Trafficking: A Scoping Review, *Trauma, Violence, and Abuse*, 1-16.

<sup>74</sup> *United States v. Michael Gunn, et al* (1:17-cr-137 E.D.Va.); *United States v. Steven Nowell* (1:18-cr-188 E.D.Va.). See also <https://www.justice.gov/usao-edva/pr/pimp-sentenced-30-years-prostituting-two-minor-victims>

<sup>75</sup> Because minors this age are not legally able to consent to sex, every act of sexual exploitation of these minors constituted rape.

<sup>76</sup> See Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22 (2015); Abolish Human Trafficking Act of 2017, Pub. L. No. 115-392 (2018); Trafficking Victims Protection Act of 2017, Pub. L. No. 115-393 (2018); and Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, Pub. L. No. 115-425 (2019).

- The Justice for Victims of Trafficking Act of 2015 allows the federal government to prosecute individuals who patronize or solicit persons for a commercial sex act, making traffickers and buyers equally culpable for sex trafficking offenses.
- The Abolish Human Trafficking Act of 2017 codified that a commercial sex act with a minor constitutes a severe human trafficking offense.
- The Trafficking Victims Protection Act of 2017 amended the federal criminal code to authorize civil action by the DOJ to stop or prevent child sexual exploitation offenses.
- The Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 contained several provisions to improve the federal government’s authorities to combat human trafficking.

Over a decade before this legislation was enacted, however, the Department prosecuted offenders who pay to have sex with children or attempt to do so.<sup>77</sup> Those efforts have continued to date, both with respect to prosecutions and training on how to hold buyers accountable. In 2021, 100% of all federal sex trafficking prosecutions against buyers involved child victims with the majority of those cases initiated through undercover stings purporting to offer child victims.<sup>78</sup> It is imperative to understand that buyer stings involving fictitious minors, though useful to identify individuals who are willing to engage in commercial sex with a child, do not result in the identification of an actual victim or a potential “facilitator trafficker” of that minor. Thus, this type of enforcement actions must be properly balanced in an overall strategic approach to combating child sex trafficking.

The Department’s prosecutions show that while there are offenders who specifically seek out or accept offers of children for commercial sex, these preferential offenders are not the norm in the United States. Instead, most buyers want to buy sex and are indifferent to the age of the sex provider or the risk that a child may be victimized. In other words, the demand for sex *with a child* is an extremely small subset of the general demand for commercial sex. Of course, this behavior is still problematic and not excused by a buyer’s ignorance of person’s age. Even though they may not be specifically seeking out children, their conduct exploits and victimizes the most vulnerable.

## Pressing Challenges

### *Missing Children and Challenges of Complying with the Preventing Sex Trafficking and Strengthening Families Act (PSTSFA)*

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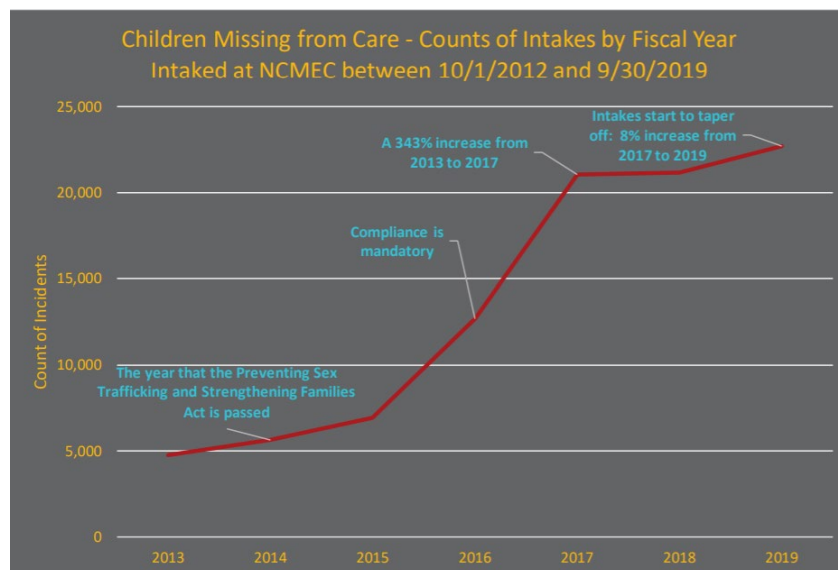
<sup>77</sup> See, e.g., FBI, Protecting Children from a World of Harm: The Case of the Not So Accidental Tourists (Apr. 29, 2005), <https://archives.fbi.gov/archives/news/stories/2005/april/cac042905>; see also *United States v. Strevell*, 185 F. App’x 841 (11th Cir. 2006) (affirming the defendant’s convictions for attempting to travel in foreign commerce to engage in a commercial sex act with a minor after he responded to an advertisement in an adult magazine for “taboo vacations”); *One Year After Enactment: Implementation of the JVT Act of 2015: Hearing Before the S. Comm. on the Judiciary*, 114th Cong. (2016) (statement of Jill Steinberg, National Coordinator for Child Exploitation and Interdiction), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16%20Steinberg%20Testimony.PDF>.

<sup>78</sup> Kyleigh Feehs & Alyssa Currier Wheeler, 2020 Federal Human Trafficking Report, Human Trafficking Institute (2021), available at <https://traffickinginstitute.org/wp-content/uploads/2022/09/2021-Federal-Human-Trafficking-Report-WEB-1.pdf>



Children who have run away, are experiencing homelessness, or who are involved with the child welfare system are particularly vulnerable to exploitation through commercial sex. According to one study, more than half of child sex trafficking victims had run away.<sup>79</sup> A report conducted by the California Child Welfare Council found that anywhere from 50 percent to 80 percent of victims of child sex trafficking are or were formerly involved with child welfare, while the Department of Children and Families in Connecticut reported that 86 out of the 88 children identified as child sex trafficking victims had been involved with child welfare services in some manner.<sup>80</sup> The National Center for Missing & Exploited Children (NCMEC) reports that one in six of the more than 25,000 children reported to NCMEC as a missing runaway in 2022 were likely victims of child sex trafficking.<sup>81</sup>

Enacted in 2014, the *Preventing Sex Trafficking and Strengthening Families Act* (PSTSFA) sought to improve the child welfare system’s response to the sex trafficking of older children in foster care. The PSTSFA requires that within 24 hours of a child going missing from state care, child welfare agencies must notify (i) local law enforcement so the child can be entered into the FBI’s National Crime Information Center (NCIC) database, and (ii) NCMEC, so they can provide support services to try to locate the child. This requirement has resulted in a significant increase in the number of reported missing children. Additionally, since enactment, the average duration that reported children have been missing has declined significantly. Of all the children missing from state care who were reported to NCMEC between October 2017 and September 3, 2019, the child was missing for an average of 32 days, a decrease from an average of 49 days between 2012 and 2016.<sup>82</sup>



Children Missing from Care: 2019 Update, National Center for Missing & Exploited Children

<sup>79</sup> Pullmann, et al; *Residential instability, running away, and juvenile detention characterizes commercially sexually exploited youth involved in Washington State’s child welfare system*, Child Abuse and Neglect 102 (2020).

<sup>80</sup> U.S. Dep’t of Health & Human Servs., Admin. for Children, Youth, & Families, *Guidance to States and Services on Addressing Human Trafficking of Children and Youth in the United States* 2-3 (2013).

<sup>81</sup> NCMEC, *The Issues: Child Sex Trafficking*, <https://www.missingkids.org/theissues/trafficking#bythenumbers> (last visited March 14, 2023).

<sup>82</sup> Children Missing from Care: 2019 Update, National Center for Missing & Exploited Children

Unfortunately, state compliance with the statutory reporting requirement, which has no penalty for noncompliance, varies tremendously, resulting in differing levels of information being reported to NCMEC when a child is missing from state care.<sup>83</sup> States cite the following as the biggest barriers to compliance:

- Lack of clarity at the state level concerning what information is required to be reported to NCMEC under the PSTSFA and other federal laws that impose requirements on state child welfare agencies<sup>84</sup>, as well as the interrelationship among these laws;
- Lack of federal funding to support the time and personnel involved in reporting and a lack of state resources to fill the gap;
- Lack of established, consistent reporting mechanisms and information sharing about the specifics of a missing-child case. For example, an employee may be responsible for submitting the state or agency's reports to NCMEC but that person is not the original social worker and does not have detailed information such as the child's social media platforms or last-worn clothing, which can inhibit finding the child); and
- State legal barriers (e.g., privacy laws and policy) that inhibit information-sharing.

Significant gaps in the PSTSFA limit its effectiveness in providing a greater safety net for vulnerable children. The PSTSFA is silent with respect to what information states must provide when they learn that a child in foster care is missing.<sup>85</sup> NCMEC also operates the CyberTipline, the nation's centralized reporting system for reporting the online exploitation of children. U.S. based electronic service providers, such as social media companies, are required by U.S. federal law to report apparent child sexual abuse material on their platform, but this reporting requirement does not include instances of child sex trafficking.

### *Familial Trafficking*

*“When trauma emanates from within the family, children experience a crisis of loyalty and organize their behavior to survive within their families.”<sup>86</sup>*

Familial sex trafficking is more common than many would like to believe, extremely hard for the public to comprehend and unlikely to be discovered. Victims of familial exploitation often regularly attend school, may get good grades, participate in normal activities, and are cautious about what they say to adults. Child victims' reluctance to disclose their exploitation is even greater when the perpetrators are family members, with whom the victims tend to have a bond of affection or from whom they need care. Studies and data are thus even sparser in this area of child sex trafficking. While more victims have come forward with their stories of familial trafficking in recent years, it remains unclear whether such trafficking is increasing or is simply more recognized now. Current data focuses on older minors and leaves unanswered whether younger children are either less subjected to this form of trafficking or whether they are simply not being identified.

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<sup>83</sup> NCMEC maintains a list of states that are and are not in compliance.

<sup>84</sup> These laws include the Families First Prevention Services Act and the Child Abuse Prevention and Treatment Act (CAPTA) amendments in the Justice for Victims of Trafficking Act.

<sup>85</sup> See 42 U.S.C. §§ 671(a)(34)(A) and (35)(B).

<sup>86</sup> Sprang and Cole at 187, (quoting B. A. van der Kolk, *Developmental Trauma Disorder: Toward a Rational Diagnosis for Children with Complex Trauma Histories*, 35 PSYCH. ANNALS, 401, 406 (2005)).

One form of familial trafficking involves children in the United States who are sexually exploited by one or more members of their family, or someone who they perceive as family.<sup>87</sup> Familial trafficking has been reported nationwide in both urban and rural areas of the country, including in Indian country.<sup>88,89,90</sup> Familial trafficking is often a result of other well-documented risk factors, including intergenerational history of trafficking, historical trauma, normalized exploitation, extreme poverty with difficulty meeting basic needs, drug addiction, and other community stressors. Another complicating factor in familial child sex trafficking is the possibility of other co-occurring exploitation of the child, such as physical abuse and neglect, child sexual molestation perpetrated by the trafficker, and the production and distribution of child sexual abuse material. The COVID-19 pandemic has exacerbated the risks of exploitation for families who lost jobs and were desperate for income.

### *Gang-Controlled Trafficking*

Some gangs engage in human trafficking due to a reliable “supply” of victims, greater profitability, and lower risk of detection than other criminal activities. Gangs leverage their organizational structure, violence, and local, national, and international networks to instill fear and loyalty in their victims.<sup>91</sup>

Cases involving gang-controlled child sex trafficking are challenging because the minors involved can be both victims and perpetrators of other crimes. The victims often suffer horrible violence and exploitation, but they may also commit violent crimes. These crimes are often committed under coercion or due to trauma bonding. While “[v]ictims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked,”<sup>92</sup> these cases are particularly challenging with respect to whether and how victims should be held accountable, typically in state court, when involved in violent crimes. Many local law enforcement agencies are reluctant to see anyone who commits a crime, particularly a violent crime, as a victim. That makes it difficult for these survivors, many of whom have been subject to horrific violence themselves, to get services or justice. The violence inherent in gang activity intensifies the need to get gang traffickers off the street, and the victims into services, as quickly as possible.

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<sup>87</sup> Another form of reported familial sex trafficking involves minors exploited outside the United States who are knowingly sold by their family or deceived that the child will be given access to education or other benefits, which is further discussed in the chapter on Extraterritorial Child Sexual Abuse.

<sup>88</sup> West Virginia Sees Increase in “Family” Sex Trafficking Related to Opioid Epidemic. (2018, February 6). *WVPublic*. <https://www.wvpublic.org/news/2018-01-09/west-virginia-sees-increase-in-family-sex-trafficking-related-to-opioid-epidemic>

<sup>89</sup> Selling Kids: When your trafficker is “family.” (2019, September 19). *Alabama Public Radio*. <https://www.apr.org/news/2019-09-19/selling-kids-when-your-trafficker-is-family>

<sup>90</sup> ‘The devil you know’: SC residents are selling family members into the sex trade. (2019, June 5). *The State*. <https://www.thestate.com/news/special-reports/article226639189.html>

<sup>91</sup> Lugo K. (2020) Gang Sex Trafficking in the United States. In: Winterdyk J., Jones J. (eds) *The Palgrave International Handbook of Human Trafficking*. Palgrave Macmillan, Cham. [https://doi.org/10.1007/978-3-319-63058-8\\_31](https://doi.org/10.1007/978-3-319-63058-8_31)

<sup>92</sup> See 22 U.S.C. § 7101(b)(19).

## Survivor Story<sup>93</sup>

“I grew up in an abusive home, in a small, conservative town in Texas where I was taught that gay people went to hell. I always knew that I was different, that I wasn’t like the boys I went to school with. I wanted to be different. I told my parents I could change in a new environment, so they sent me to live with an aunt in San Antonio.

All alone in a big city at 15, I started to seek that love and acceptance that I wasn’t getting from my parents. I was lured by an older man online who claimed he lived in Austin in a huge, beautiful home and made me all kinds of promises about work, about continuing my education, and all that. He began grooming me. He got me to go to the gym, put me on a healthier diet, made me trust him. He said he was a massage therapist and that I should learn how to be one as well because it was a good skill to have and I could make a living with it.

It turned out that the kind of massage he provided was erotic massage. I was a selling point. He was a trafficker. He posted pictures of me shirtless on Craigslist to get more clients and have me participate. It was degrading and terrifying, but I was too scared to leave. I felt like I had nowhere to go and my trafficker kept reinforcing that to keep me under his control.

Eventually I fled, more damaged than before because of the trafficking experience and the sense that I couldn’t trust anyone. I also learned that what happened to me had a name: Trafficking. I heard from someone I knew that the man who had trafficked me was arrested for doing something similar to another young boy – and trying to take him to London to traffick him at the Olympics. I called the U.S. National Human Trafficking Hotline and told them my story and that I wanted to help. They put me in touch with the prosecutors of the case and I wound up testifying against my trafficker at trial. He got 30 years.

Now I am trying to get my story out there in the community so people can learn how trafficking really works and how LGBTQI+ young people are particularly vulnerable to traffickers who are experts at exploiting the pain and loneliness when they are rejected by their families and their communities. There were so many points in this story where things could have turned out differently if the systems that are supposed to protect vulnerable people – children in particular – had worked.”

### *Gender-Related Victim Identification Issues*

While girls make up the majority of known victims in child sex trafficking cases, relatively little attention is paid to the boys of any sexual orientation and transgender minors who, while less likely to appear as victims in existing data, just as desperately need to be identified and supported. In 2020, boys constituted 7% of child sex trafficking victims reported to NCMEC.<sup>94</sup> Boys are less likely to be identified as victims of sex trafficking<sup>95</sup> for a variety of reasons: they do not self-identify as a victim or come forward with their abuse due to guilt, shame, and stigma; are less likely to be identified because no one is looking for them; are less likely to be reported

<sup>93</sup> <https://polarisproject.org/survivor-story-jose-alfaro/>

<sup>94</sup> <https://www.missingkids.org/theissues/trafficking#bythenumbers>

<sup>95</sup> *Id.*

missing by their families if they have been kicked out of their homes, including because they identify LGBTQI+ or have run away. There are also few programs that provide focused support for male victims.<sup>96</sup> Male victims do not typically engage with service providers in the same way female victims do; better understanding and training on how to engage with male victims, as well as with LGBTQI+ victims, is necessary.

### *The Online Marketplace for Trafficking Post-Backpage & FOSTA*

#### **Definition: *Mens Rea***

*Mens rea* refers to criminal intent, or the knowledge a person has of the wrongdoing that would be caused by their action or inaction.

The April 2018 seizure and shutdown of Backpage.com and subsequent prosecution of Backpage and several high-ranking employees by the U.S. Department of Justice, followed by the April 2018 enactment of the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), marked a turning point in efforts to combat the online marketplace for sex trafficking. In the last ten years, most federal sex trafficking cases involved internet advertising.<sup>97</sup>

For many years, Backpage served as the primary website through which commercial sexual encounters (including sex trafficking) were advertised and facilitated. At one point, almost three out of every four federal prosecutions for sex trafficking involved advertisements on Backpage.<sup>98</sup> Days after that platform was shuttered, FOSTA made it a federal crime to own, manage, or operate an online platform with the intent to promote or facilitate prostitution, or to act in reckless disregard of the fact that such conduct contributed to sex trafficking.<sup>99</sup> In FOSTA's wake, the Department initiated several prosecutions against online platforms.<sup>100</sup> In the first plea ever entered under FOSTA, the owner of CityXGuide pleaded guilty in August 2021 to one count of promotion of prostitution and reckless disregard of sex trafficking and one count of conspiracy to engage in interstate transportation in aid of racketeering enterprises – facilitating prostitution.<sup>101</sup> FOSTA also eliminated online service providers' immunity from state criminal prosecutions for such conduct.<sup>102</sup> FOSTA further removed legal barriers to state criminal prosecutions for sex trafficking, as well as to federal civil actions for such conduct.<sup>103</sup> FOSTA, to date, does not seem to have led to state criminal prosecution of online service providers, although a number of states have passed or are considering passing legislation similar to FOSTA, with a reduced *mens rea* requirement as compared to the federal law.

A handful of civil suits against online providers have been filed in federal court since the enactment of FOSTA, including cases against MindGeek, Twitter, and Salesforce.com.<sup>104</sup>

<sup>96</sup> Raney, R. F. (2017, April). Unseen victims of sex trafficking. *Monitor on Psychology*, 48(4).

<http://www.apa.org/monitor/2017/04/sex-trafficking>

<sup>97</sup> See <https://www.justice.gov/usao/page/file/1403671/download>

<sup>98</sup> See <https://www.traffickinginstitute.org/wp-content/uploads/2020/04/2017-Federal-Human-Trafficking-Report-WEB-Low-Res.pdf>, pg. 3.

<sup>99</sup> See 18 U.S.C. § 2421A(a)-(b)

<sup>100</sup> See <https://www.gao.gov/assets/gao-21-385.pdf>, page 13.

<sup>101</sup> See <https://www.justice.gov/usao-ndtx/pr/us-attorney-seeking-victims-advertised-cityxguidecom>

<sup>102</sup> See 47 U.S.C. § 230(e)(5)(C)

<sup>103</sup> See 47 U.S.C. § 230(e)(5)(A)-(B)

<sup>104</sup> See <https://www.businessinsider.com/girls-do-porn-victims-sue-pornhub-mindgeek-40-million-2020-12>; <https://endsexualexploitation.org/articles/statement-second-survivor-of-child-sexual-abuse-sues-twitter/>; *A.B. vs. Salesforce.com*, 4:20-cv-01254 (S.D. Tex.).

MindGeek owns over 100 pornographic websites, production companies and brands including Pornhub, RedTube, XTube, Tube8, and YouPorn. One lawsuit brought by 34 individuals, some of whom are minors, alleges that MindGeek and its subsidiary Pornhub intentionally monetized videos depicting rape, child sexual exploitation, sex trafficking, and other nonconsensual sexual content. MindGeek denies the allegations. Nevertheless, in July of 2021, XTube announced that it was shutting down in September 2021. In operation for 13 years, XTube was a well-known pornography website that had 10.77 million visits in May 2021 alone. XTube prominently branded itself as part of the “Pornhub Network.”

The seizure and shutdown of Backpage and the enactment of FOSTA have destabilized the online market for commercial sex, creating obstacles to the use of online service providers to facilitate these crimes.<sup>105</sup> For example, in the immediate aftermath of these events, traffickers faced greater challenges in connecting buyers with victims, as there was no longer a centralized source for connection from behind the relative privacy of one’s electronic devices. Some websites voluntarily shut down as a result. However, technologically savvy offenders have evolved, creating new challenges for law enforcement who no longer have a single website through which they can originate and concentrate trafficking investigations and prosecutions.

#### “Sex Work” vs. Trafficking

While both sex work (or prostitution) and sex trafficking involve the sale of sex, sex trafficking victims have been forced, coerced, or deceived into selling sex. Additionally, all commercial sex with a minor is considered child sex trafficking.

Despite its fracturing, the online marketplace has retained its primacy, amplified by the isolation and online presence of vast numbers of children during the COVID-19 pandemic. In addition to traditional advertising sites, so-called “hobby boards” allow commercial sex buyers (self-identified “hobbyists”) to review and rate those providing commercial sex (like a Yelp review for sex) and participate in similarly graphic discussion forums.<sup>106</sup> These sites are often monetized through membership subscriptions or by marketing other platforms.

There are also so-called “sugar daddy/sugar baby” sites where individuals connect with one another for relationships under a commercial arrangement in which sexual activity is expected or implied. The websites are as easy to access as a dating website, so a 14-year-old girl can go onto a sugar daddy website and easily sign up. Minors frequently represent themselves as adults on such sites. As a result, men can easily seek out minors or minors purporting to be adults for sex on the sites. These cases may be hard to prosecute because there may be a blurring of boundaries between the exchange of items of value in furtherance of so-called “dates” or for sex. But where minors are involved, “sugar daddies” could still meet the definition of traffickers if they are engaging in sex with a minor in exchange for something of value. Many of those who control these platforms have moved their web servers, web hosting services, and the registration of their domain names to countries where prostitution is legal, believing it will insulate them from criminal liability in the United States.

<sup>105</sup> Childsafe.ai, *Beyond Backpage: Buying and Selling Sex in the United States One Year Later* 42-43 (2019), available at <https://childsafe.ai/beyond-backpage-buying-and-selling-sex-in-the-united-states-one-year-later>.

<sup>106</sup> Thompson, L. (2017, July 26). Busted: How police brought down a tech-savvy prostitution network in Bellevue. *The Seattle Times*. <http://projects.seattletimes.com/2017/eastside-prostitution-bust/>

Another emerging trend surrounds the monetizing of CSAM depicting child sex trafficking victims. This provides opportunities to make additional money from the sexual exploitation of the child. In addition to selling the child for sex to buyers in the immediate geographic area, CSAM depicting the child can be sold to buyers online around the world. This is further complicated by the increasingly popularity of subscription-based sites in which the content for sale is hidden behind a paywall making detection even more difficult.

Current challenges to investigating online-facilitated child sex trafficking include:

- Offenders’ use of disparate, sometimes smaller, and newer websites and social media platforms to advertise and facilitate trafficking (e.g., gaming sites, “sugar daddy” and dating websites, hobby boards, and other advertising sites), each of which law enforcement must become familiar with;
- Offenders’ use of apps that encrypt or do not preserve content, leaving less of an evidentiary trail for law enforcement;
- Postings of fake ads (including by bots), which make it harder for buyers to find the market, but also harder for law enforcement to find real offenders and victims;
- Online service providers’ offshoring of much of their data (e.g., to Europe or Asia), where privacy protections and other legal differences may preclude, or at the very least delay, collection by or for U.S. law enforcement;
- Lack of sufficient investigative and prosecutorial resources for online investigations, typically intensive, multi-year processes involving evidence and defendants overseas and vast networks of shell corporations and accounts, requiring investigators and prosecutors with expertise in both sex trafficking and financial crimes;
- Lack of cooperation with law enforcement by many platforms and internet service providers, which could help reduce many of the issues that make children vulnerable.

### *Determining Jurisdiction for Child Sex Trafficking*

Debate continues over the complex, interwoven relationship between commercial sex and adult sex trafficking. As a matter of law and policy, the Department of Justice focuses its efforts on eradicating sex trafficking, largely deferring to our state and local counterparts to address crimes related to commercial sex. By definition, child sex trafficking victims did not or cannot consent to the sexual abuse. Federal statutes criminalizing conduct associated with prostitution either require interstate travel or the use of a means or facilities of interstate or foreign commerce.<sup>107</sup> For cases involving concurrent local and federal jurisdiction, task forces and other partnerships facilitate investigators and prosecutors working together to determine which criminal justice system is best-suited based on an individualized assessment of the circumstances. Considerations can include whether state or federal statutes more readily apply to the offense conduct, strategic utilization of limited federal prosecutorial capacity, whether federal agencies can assist with cases involving multiple jurisdictions or particularly complex evidentiary issues, and which system can best accommodate the victims’ needs.

### *The Criminalization of Victims*

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<sup>107</sup> See, e.g., 18 U.S.C. §§ 2421 (The Mann Act), 2421 (FOSTA), 2422

A recurring issue for investigators and prosecutors is trafficking victims who have also committed criminal offenses.<sup>108</sup> Minors should never be subject to prosecution for engaging in commercial sex, even if they claim to have done so of their own accord. States have come a long way in recent years to protect children from facing arrest or prosecution for acts committed as a direct result of being trafficked, most commonly for prostitution offenses.<sup>109</sup> So-called “safe harbor” provisions in some states offer these minor victims affirmative defenses, diversion to the child welfare system, immunity, or decriminalization/non-criminalization, expungement of arrests, and vacating of convictions.

Law enforcement training on how to identify and respond to victims of child sex trafficking is essential to ensure these children are treated as victims from the outset. The training that does exist is often directed at the officers or units that specialize in child exploitation, or at supervisors, rather than new recruits, frontline officers, or first responders who are likely to see instances of child sex trafficking. They may not recognize signs of risk, like finding a minor in a motel without a parent or caregiver or getting into a car with an adult on a street known to be frequented by sex buyers.

Failing to recognize children as potential victims often leads law enforcement to arrest them on drug, truancy, or other solicitation charges resulting from their exploitation, and failing to connect victims with needed support services, including advocates, child welfare, housing, food, or counseling. Without appropriate services, victims often feel they need to return to their trafficker for survival. Even when law enforcement does recognize victimization, the scarcity of support services may leave some law enforcement believing they have little choice but to charge the victim to place them in a secure facility, such as a jail or juvenile justice facility, that has space.

While arrest and detention may temporarily remove the child from the trafficker’s reach, there is considerable research showing that incarceration further traumatizes child victims of exploitation and may make the child more vulnerable to further sex trafficking.<sup>110</sup> In addition, the child must then deal with the trauma caused by arrest and detention, as well as the potential long-term consequences of a juvenile record. The experience of being arrested and detained can have a serious and harmful effect on child sex trafficking victims, even if the charges against them are ultimately dropped or are only used as a tool to divert them into services through the court. A juvenile record makes it more difficult for the child to escape a life of being trafficked and more likely that the child will avoid law enforcement entirely and return to their trafficker, undermining rapport that could be essential to holding their exploiter criminally liable in some cases. Some states have processes in place to vacate or expunge criminal records resulting from trafficking victimization, but these laws often do not extend to minors adjudicated delinquent.<sup>111</sup>

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<sup>108</sup> See “Criminal Conduct of Victims: Policy Considerations” available at <https://www.justice.gov/usao/page/file/1008856/download>, p. 139.

<sup>109</sup> Seeking Justice, Shared Hope International [https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver7.pdf](https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf)

<sup>110</sup> Lambie, I., & Randell, I. (2013). The impact of incarceration on juvenile offenders. *Clinical Psychology Review*, 33(3), 448–459. <https://doi.org/10.1016/j.cpr.2013.01.007>.

<sup>111</sup> Issue Brief: Access to Justice for Trafficking Survivors, Shared Hope International [https://sharedhope.org/wp-content/uploads/2020/12/SH\\_Issue-Brief-4.3\\_2020.pdf](https://sharedhope.org/wp-content/uploads/2020/12/SH_Issue-Brief-4.3_2020.pdf)



## Significant Developments

The COVID-19 pandemic likely accelerated online victimization, with virtual platforms replacing in-person contact. As both offenders and children spend more time online, children without supervision of their online activity may be more vulnerable to victimization. Data is not yet available on the impact of the pandemic on the incidence of child sex trafficking, whether in person or virtually.

On December 3, 2021, President Biden released the National Action Plan to Combat Human Trafficking.<sup>112</sup> Several initiatives in the Action Plan are particularly relevant to the strategy to combat child sex trafficking. The strategies relevant to child sex trafficking are detailed below.

## Strategic Response

Short-Term Goals	Long-Term Goals
<p><b>Increase reporting of missing and at-risk children:</b> Build on HHS’s existing efforts to provide more detailed guidance to states and child-welfare agencies on how to comply with PSTSFA and advocate that additional agencies (e.g., schools and juvenile justice programs) report missing children to NCMEC.</p>	<p><b>Encourage demand-focused sex trafficking policies:</b> Support state efforts to focus on the demand for commercial sex (i.e., greater prosecution of buyers; education directed at potential buyers of the harms and risks inherent in engaging in commercial sex that may be with minors).</p>
<p><b>Improve PSTSFA:</b> Develop legislative proposals to improve PSTSFA and to require reporting by online platforms of suspicious activity or instances of child sex trafficking. Additionally, clarification on how the PSTSFA and FFPSA and the CAPTA amendments in the JVTA affect each other is needed to support the implementation of PSTSFA.</p>	<p><b>Increase access to service models and community-based support:</b> Potential victims of child sex trafficking should have access to a range of services based on an individualized therapeutic assessment, including housing placement options <i>outside</i> the criminal and juvenile justice system where needed, such as secured support facilities, trauma-responsive treatment, and other community-based services provided through other social services providers.</p>
<p><b>Expand training:</b> Increase scope of training for criminal-justice, child-welfare, educational, first responder, and medical personnel to ensure they are adequately trained on identifying signs of child sex trafficking, implementing a multidisciplinary, victim-centric response model, and building avenues for victim compensation and restitution.</p>	<p><b>Foster online safety for children:</b> Work with industry and schools and enact legislation, to develop an online culture of safety for children (e.g., age verification, ensure default settings for minors are the most secure and private).</p>

<sup>112</sup> <https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf>

<p><b>Support for online providers in responding to legal process:</b> Create DOJ model subpoena returns to share with electronic service providers to clarify the scope of standard subpoena requests, as well as how to respond in a format that state and federal prosecutors can easily use.</p>	<p><b>Child sex trafficking research:</b> Conduct additional research assessing the impact of race, poverty, sex, and sexual orientation and gender identity on the identification of, and response to, child sex trafficking victims and provision of services.</p>
<p><b>Expand investigatory toolkit:</b> Increase law enforcement’s awareness of and access to many free or low-cost technological tools that can identify (potential) offenders and victims of child sex trafficking.</p>	<p><b>Ensure sustainability for human trafficking task forces:</b> Explore avenues to ensure the funding for human trafficking task forces is sustainable while also ensuring that task forces are held accountable for their adherence to victim-centered, trauma-informed approaches.</p>
<p><b>Improve human trafficking victimization data capture:</b> Add questions regarding trafficking to national surveys, such as the CDC’s Youth Risk Behavior Surveillance System.</p>	

*Review and update training, policies, and guidance for law enforcement to protect human trafficking victims*

The criminalization of human trafficking in 2000 was, in part, a response to the inappropriate treatment and penalization of human trafficking victims. For almost 20 years, the federal government has been working to safeguard victims of human trafficking from inappropriate incarceration, fines, or penalties for unlawful acts committed as a direct result of being trafficked.<sup>113</sup> That said, more work is needed to effectively implement this principle and to encourage state, local, tribal, and territorial governments to do the same, including through training and collaboration with survivor experts.<sup>114</sup>

Federal training and policies should be reviewed with the understanding that victims should not be criminalized for the unlawful acts their traffickers compelled them to commit. Unlawful activity may include, but is not limited to, engaging in commercial sex acts, entering the country without documentation, or working without authorization or with false documents. Federal law enforcement agencies should also provide field offices and task forces with training and information on best practices for victim-centered, trauma-informed law enforcement operations, options for appropriate shelter rather than jail or detention for individuals identified as trafficking victims, and screening for human trafficking during other operations, including worksite, drug, and gang-related enforcement operations, before arrest or detention.

Federal law enforcement agencies should also work with state, local, tribal, and territorial authorities and task forces on policies to prevent the inappropriate arrest of human trafficking

<sup>113</sup> 22 U.S.C. § 7101(b)(19).

<sup>114</sup> The term “survivor expert” is used in this report to refer to a human trafficking survivor who has expertise on human trafficking issues.

victims for unlawful conduct resulting directly from victimization and to offer trauma-responsive victim services. State, local, tribal, and territorial partners should be encouraged to update their policies and recommendations with respect to victims of child sex trafficking to ensure they are victim-centered and trauma-informed. All training and technical assistance should include information on the benefits of accurately identifying child sex trafficking, on protocols that mandate law enforcement refer sexually exploited minors to child welfare or community-based services, and on the impacts of the demand for sex on the lives of children and on communities.

### *Create comprehensive training on restitution*

Financial restitution may be the most important aspect of justice for some victims. Many of these victims will find themselves penniless and in need of medical and mental health care, adequate and safe housing, job training, and other resources to care for themselves and other family members due to their victimization. Federal law mandates that victims receive restitution, that forfeiture be ordered in human trafficking cases, and that victims be prioritized to receive the value of forfeited assets.<sup>115</sup>

According to some reports, courts have awarded victims restitution in only a minority of cases,<sup>116</sup> and even in cases where courts ordered restitution, the full amounts were not recovered from the defendants for transfer to the victims. Actions taken at each stage of a criminal case, from investigation to charging, plea negotiations, and sentencing, affect whether the court orders restitution and/or forfeiture and victims' ability to receive full and timely restitution. Yet, in some cases, forfeiture and restitution are not considered until the sentencing phase of a criminal prosecution. Identifying and seizing the assets of traffickers as soon as possible during the investigation will prevent traffickers from disposing of assets and thus may leave more funds available for victims' restitution down the road. Further, prosecutors and judges may lack awareness of who is entitled to restitution, what is recoverable, and what information is required in determining which property and assets can be forfeited and applied to victim restitution. While significant work has been done to ensure that prosecutors vigorously pursue restitution and forfeiture on behalf of human trafficking victims, more effort is needed to maximize recovery of perpetrators' assets and to ensure that courts are well-informed about mandatory restitution under federal law.

To ensure the government can maximize the recovery of assets for restitution to victims of trafficking, DOJ and federal investigative agencies should provide comprehensive training on the investigation, imposition (charging through sentencing), collection of restitution and transfer of forfeited funds to victims under the Justice for Victims of Trafficking Act.<sup>117</sup> A training plan should include outreach to the judicial branch via the Administrative Office of the United States Courts and for probation officers at the United States Probation and Pretrial Services National Training Academy. Training should explain the importance of focusing on forfeiture and

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<sup>115</sup> See 18 U.S.C. §§ 1593 – 1594.

<sup>116</sup> The Human Trafficking Institute, 2019 Federal Human Trafficking Report, available at [https://www.traffickinginstitute.org/wp-content/uploads/2020/05/2019-Federal-Human-Trafficking-Report\\_High-Res.pdf](https://www.traffickinginstitute.org/wp-content/uploads/2020/05/2019-Federal-Human-Trafficking-Report_High-Res.pdf).

<sup>117</sup> See Pub. L. No. 114-22, § 105 (a)(4) (2015) (18 U.S.C. § 1594(f)); The Attorney General Guidelines for Victim and Witness Assistance, available at <https://www.justice.gov/ag/page/file/1546086/download>

restitution at the early stages of investigation and the role of the Department of Labor in assisting with calculating forfeiture and restitution in sex trafficking cases. Building on the training, the DOJ should develop public materials about advocating for forfeiture and restitution in a case and on the availability of other financial remedies, such as private civil causes of action and crime victims' compensation programs.

*Increase victim-centered criminal enforcement through improved coordination among law enforcement agencies and their partners*

To target and dismantle complex human trafficking networks and hold human traffickers accountable, federal prosecutors and law enforcement agencies must leverage the diverse perspectives, skills, and capacities of many partnerships, including with survivor experts, NGOs, and state, local, and tribal entities. Coordination can occur by creating federally led initiatives, partnering with private entities that can disrupt trafficking, strengthening referral mechanisms, and expanding task forces to a broad range of partners.

DOJ's Enhanced Collaborative Model Task Forces to Combat Human Trafficking<sup>118</sup> are one model for multidisciplinary, partnership-oriented, victim identification, and investigatory task forces. These human trafficking task forces bring together professionals from a variety of disciplines who collaborate to identify victims of all forms of human trafficking; engage in victim-centered, trauma-informed investigations; prosecute or refer sex and labor trafficking cases to state, local, tribal, and territorial agencies; and address the needs of human trafficking victims through a comprehensive array of services. Each task force must submit a joint application and will receive two separate cooperative agreement awards – one to a law enforcement entity and one to a service provider.

DOJ completed an evaluation of the structure and impact of the Enhanced Collaborative Model (ECM) Task Force Program, which it published in June 2021.<sup>119</sup> The evaluation results, which are reflective of a small sample of 10 task forces (OJP has funded close to 100 task forces under this model since 2004) found that the ECM model has helped task forces obtain resources needed to support the work they are doing to address human trafficking, including augmented law enforcement staff (i.e., more detectives and support staff dedicated exclusively to human trafficking), and, in certain places, the establishment of hubs to coordinate work across stakeholders in one location. These additional resources have made a difference in the 10 jurisdictions' capacity to do this type of work more effectively. The results of each task force varied and data concerning the types of cases targeted by the task force relied on each task force's definition of cases related to human trafficking.<sup>120</sup> The sustainability of these task forces was not considered as part of this evaluation, and it is unclear if ECM taskforces can sustain

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<sup>118</sup> This task force program is funded under the TVPA, which authorizes OVC to make grants for direct services to victims of human trafficking. OVC and the Bureau of Justice Assistance (BJA) developed the Enhanced Collaborative Model Task Forces to support the development and enhancement of multidisciplinary task forces.

<sup>119</sup> Evaluation of the Enhanced Collaborative Model to Combat Human Trafficking (2021), Technical Report, available at <https://www.ojp.gov/pdffiles1/nij/grants/300863.pdf>.

<sup>120</sup> Qualitative results of small samples selected from each taskforce revealed that some taskforces reporting a high volume of cases also reported a high percentage of prostitution/facilitating prostitution charges instead of human trafficking charges. See [Evaluation of the Enhanced Collaborative Model to Combat Human Trafficking, Technical Report | National Institute of Justice \(ojp.gov\)](#) at pg. 43.

improvements after their funding ends. This evaluation and future feedback from the field, evaluations, and partners noted below will inform the evolution of the ECM task force model. OVC, which oversees the ECM program, continues to request, receive, and incorporate feedback on the task force model from current and past task force recipients, other federal partners, and discussions with the U.S. Advisory Council on Human Trafficking and their Annual Reports. DOJ will continue to provide training and technical assistance to task force recipients to build and sustain increased collaboration among law enforcement, victim services, and community stakeholders. Any program modification will continue to be informed by survivor experts. In FY22, NIJ was awarded a grant to conduct a more rigorous evaluation of the ECM model.

In addition to evaluating and evolving its own task force models, DOJ must collaborate to establish or enhance state, tribal, territorial, or locally led human trafficking task forces that fulfill the principles of victim-centered law enforcement and trauma-responsive victim services. These efforts must draw on lessons from evaluations of other collaborative multidisciplinary efforts, including the Enhanced Collaborative Model Task Forces, and survivor experts must inform program development.

Task forces should be distributed broadly across the country building toward at least one task force, whether funded through federal or other sources, in each state, and should cover both urban and rural areas. These task forces should build on lessons learned, including the development of community-based, sustainable, multi-disciplinary collaborations with the goal of effective law enforcement, victim services, and survivor-informed leadership to build, retain, and exchange institutional knowledge. Task forces should work to sustain collaborations among grant recipients and federal law enforcement and promote actionable intelligence sharing, investigative capacity, and a strategic approach to increased victim identification and victim-centered prosecution at all levels of government. A human trafficking victim's access to protection and resources, regardless of whether and when victims collaborate with law enforcement, is a fundamental principle of the ECM Task Force model important to successful enforcement. Task forces can provide critical assistance to victims, which allows them to stabilize, rebuild their lives, and, in some cases, become ready to collaborate with law enforcement investigations and prosecutions of human traffickers.

#### *Engage relevant stakeholders to increase child sex trafficking prosecutions*

DOJ must bring together investigative and prosecutorial stakeholders from the federal, state, local, tribal, and territorial levels with survivors and survivor organizations to describe the child sex trafficking threat landscape, develop strategies for strengthening investigations and prosecutions, and identify subject matter experts available to provide training and outreach. Since passage of the TVPA of 2000, federal child sex trafficking investigations and prosecutions have steadily increased. However, since most crimes are not prosecuted federally, and given the limitations on federal resources and the strong state, local, tribal, and territorial equities, the federal government must continue to invest in building capacity of these law enforcement partners. Partners should consider appropriate sentences for child sex trafficking and should be trained on child sex trafficking investigations and prosecutions, including protecting trafficked children. Partners in this capacity-building effort could include, but not limited to, the National Association of Attorneys General, the National District Attorneys Association, the International

Association of Chiefs of Police, the National Congress of American Indians, AEquitas, and the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States, which includes members of the judiciary, prosecutors, law enforcement, survivors and other important stakeholders.

*Enhance capabilities to locate children who are missing, including those who have run away from foster care, and are vulnerable to human trafficking*

Enhanced efforts and abilities are needed to locate missing children, including children who have run away from foster care and are highly vulnerable to sex trafficking. The Departments of Justice, Homeland Security (DHS), and Health and Human Services (HHS) must facilitate the sharing of information on potential child trafficking victims among the technology industry, state, local, tribal, and territorial child welfare agencies, the National Center for Missing & Exploited Children (NCMEC), and law enforcement at all levels, consistent with relevant legal authorities and privacy, civil rights, and civil liberties protections.

Together, agencies could take the old idea of putting photos of missing children on milk cartons to increase the number of people looking for children and modernize it to create a “virtual milk carton” to help locate potential child trafficking victims. When a child goes missing from foster care, the state could notify law enforcement and NCMEC, as required by PSTSFA, and provide a photograph of the child. NCMEC could then provide that information and photo to law enforcement, and make it available to social media companies, internet service providers, and NGOs that scrape online sex trafficking advertising and other internet data, so that they can all look for any information on the identity and location of the child. Any information that technology companies or NGOs found could be fed back to law enforcement via NCMEC. Legislation could be considered to support this initiative.

DOJ and HHS, in consultation with the Marshals Service (USMS), should collaborate to expand Operation HOPE nationally to identify children missing from foster care, screen recovered children for potential trafficking, connect victims to appropriate care, and prosecute offenders as appropriate. The first significant challenge in protecting children who are missing from care is in locating the missing child. Operation HOPE has brought together federal, state, and local authorities for joint regional efforts led by HHS OIG Office of Investigations. Its aim is to locate and recover children missing from foster care programs. This program has led to the recovery of 42 children missing from care. This program should be expanded, incorporated into other investigative efforts, and used to develop human trafficking prosecutions as appropriate.

*Develop improved technology for human trafficking interdiction and identify technical barriers impeding investigations*

Because traffickers frequently use electronic platforms and devices to conduct their illicit activities, including grooming, recruiting, and advertising victims, the federal government must work with the social media and technology industry to identify potential barriers to voluntary reporting of suspected human trafficking on their platforms, and to identify possible solutions. Industry, NGOs, and academia must be engaged to develop innovative technical tools to find and interdict human trafficking, disrupt demand, and to promote adoption of those tools by relevant

stakeholders. The National Advisory Committee on the Sex Trafficking of Children and Youth in the United States is a potential forum, among others, for engaging industry on these issues.<sup>121</sup>

Law enforcement officials are frequently unable to access data due to privacy and security measures (e.g., encryption) despite the issuance of legal process (e.g., subpoenas, search warrants, or other legal process). These measures make it harder to identify current and historical victims, prevent traffickers from recruiting new victims, collect evidence to assist in identifying and prosecuting human traffickers and co-conspirators, and may prevent the removal of harmful online data or images of the victims. The long-term availability online of these images causes re-victimization and significant trauma. DOJ and DHS, working with their international and domestic partners, should also engage with the social media and technology industry on the need for lawful access to digital evidence in human trafficking investigations, again, consistent with relevant legal authorities and civil rights protections.

### *Enhance focus on investigating and prosecuting facilitators of human trafficking*

Law enforcement at all levels should target entities and individuals that knowingly contribute to or facilitate human trafficking. Facilitators include hotel owners who knowingly profit from sex trafficking and companies that recklessly disregard their labor recruiters' involvement in labor trafficking and should be potential targets. These individuals may be important co-conspirators or participants in the criminal network and are sometimes overlooked by investigators and prosecutors.

Focusing on the demand and facilitators serves two main purposes. First, these people and entities are directly involved in committing the crime of human trafficking and contributing to its profitability. Second, these perpetrators may have assets that could be forfeited and used for restitution. Restitution can help the victims on a road to recovery. Targeting all participants involved in the crime will disrupt traffickers' ability to victimize children and will hold all responsible persons accountable.

DOJ should continue to train federal, state, local, tribal, and territorial investigators, and prosecutors on identifying and prosecuting the demand for and facilitation of human trafficking under relevant statutes using a victim-centered, trauma-responsive approach designed to build trust with law enforcement among victims and potential victims. DOJ should also increase collaboration with its state, local, tribal, and territorial partners who may be able to pursue cases that are not brought to federal court for prosecution.

## **Child Exploitation in Special Areas and Populations**

Most child sexual abuse offenses fall under state jurisdiction. However, when the offense occurs on federal lands, such as national parks, military bases, or tribal territories, then the case falls under federal jurisdiction. Other areas of federal jurisdiction include federally owned facilities, such as holding facilities or detention centers, and maritime cases, such as those occurring on a

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<sup>121</sup> The National Advisory Committee on the Sex Trafficking of Children and Youth in the U.S. advises the Attorney General and the Secretary of Health and Human Services on the nation's response to trafficking. The Committee was responsible for [two Congressional reports: Best Practices and Recommendations for States](#) (PDF) (2020) and [Preliminary State Self-Assessment Overview](#) (PDF) (2022).

cruise ship or airplane. This chapter will explore the dynamics of combating child exploitation in some of these unique federal jurisdiction settings: Indian country, military installations, unaccompanied noncitizen minors entering the United States, cruise ships, and commercial flights.

## Indian Country

Children in tribal communities are particularly vulnerable to sexual abuse. According to the most recent 2019 National Child Abuse and Neglect Data System (NCANDS), American Indian and Alaska Native (AI/AN)<sup>122</sup> children are 50% more likely to be victims of sexual abuse than Caucasian children. The long-term impacts of this abuse are profound. Adverse childhood experiences (ACEs) like child sexual abuse are linked to chronic health problems, mental illness, and substance abuse problems in adulthood and can negatively impact education, job opportunities, and earning potential.<sup>123</sup>

“Indian country” is a legal term used to describe reservations and other lands set aside for Indian use, such as Indian allotments, and lands held in trust for Indians or Indian tribes. 18 U.S.C. § 1151.

Many of the contributing factors to child sexual abuse in Indian country are the same as in other parts of the United States. However, tribal communities face additional complex issues, such as historical or generational trauma, lack of federal support and resources, and larger systemic economic and social challenges. Community or housing situations that increase the number of people in the region or the number of people who have access to AI/AN children, may increase the risk of child exploitation. Local or regional events may also increase both tourism and travel between reservations or tribally held property, potentially increasing access to children by predators. Crowded or transient family living arrangements can also increase the number of people in a home who have access to children, and thus increase the risk of abuse.

### *Federal Jurisdiction*

There are 574 federally recognized tribes in the United States today. The federal government’s responsibility in child sexual abuse cases occurring in Indian country, in part, is determined by whether the crime occurred in a P.L. 280 jurisdiction or a non-P.L. 280 jurisdiction. In 1953, Congress passed P.L. 280,<sup>124</sup> which delegated criminal jurisdiction and limited civil jurisdiction over Indian country from the Federal Government to six states: Alaska (with the exception of the Metlakatla Indian Tribe), California, Minnesota (with the exception of the Red Lake Reservation), Nebraska, Oregon (with the exception of the Warm Springs Reservation), and Wisconsin. In non-P.L. 280 jurisdictions, the federal government has jurisdiction to investigate

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<sup>122</sup> Throughout this document, the terms Native American, Indigenous person, and American Indian and Alaska Native are used synonymously.

<sup>123</sup> Preventing Adverse Childhood Experiences, Centers for Disease Control and Prevention [https://www.cdc.gov/violenceprevention/aces/fastfact.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Ffacestudy%2Ffastfact.html](https://www.cdc.gov/violenceprevention/aces/fastfact.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Ffacestudy%2Ffastfact.html)

<sup>124</sup> 18 U.S.C. § 1162(a).



and prosecute sexual abuse crimes committed within Indian country if either the defendant or the victim is an Indian person.<sup>125</sup>

The Bureau of Indian Affairs, Office of Justice Services (BIA-OJS), within the Department of the Interior directly provides policing services and also contracts with tribes for policing, criminal investigations, dispatch, and corrections within Indian country. Thus, tribes may have either received one or more of those services directly from BIA-OJS or may contract to provide one or more of those services tribally.<sup>126</sup> BIA-OJS, tribal investigators, and tribal police work with the FBI on investigations involving children in Indian country. USAOs are responsible for prosecution of child sexual exploitation cases in Indian country within the federal court system. In addition, tribes often have their own court systems and criminal and civil codes that are enforced by tribal law enforcement. Many tribal criminal codes address the exploitation of children. Together, these dedicated federal and tribal resources collaborate to find and implement solutions addressing immediate and long-term public safety challenges in Indian country, particularly involving child exploitation.

### *Investigative Challenges*

Child sexual abuse cases in Indian country present special challenges and require particularized investigative strategies, training, and resources. Many child sexual abuse crimes in tribal communities involve repeated hands-on offenses committed by a person the child knows, loves, or trusts. Sexual abuse is typically committed outside the presence of witnesses and frequently lacks corroborating physical evidence.<sup>127</sup> Delayed disclosure of these offenses is common, and sometimes the delay in reporting spans many years. As with other similar cases nationally, many tribal communities are small and tightly knit, which may discourage a victim from disclosing their abuse to prevent others in the community from discovering the abuse. Moreover, the child may feel fear, shame, humiliation, or simply may not realize that they are a victim of a crime. Victims may face pressure to not to report their abuse, to recant an allegation, or may be afraid of retribution by the offender. Intergenerational sexual abuse may lead to attitudes of normalization, and reporting may damage relationships with extended family members.

Child sexual abuse cases are some of the most psychologically damaging crimes to victims and their families and among the most challenging cases to investigate and prosecute. Child victims may not present in a way that might be expected by those outside the criminal justice system, sometimes appearing stoic or emotionless. Victim advocates, child forensic interviewers, law enforcement officers, and prosecutors understand this behavior and the reasons underlying it.

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<sup>125</sup> If the crime occurred outside of Indian country it will not be investigated by tribal or federal law enforcement. Instead, the case will be handled by state or local investigators and prosecutors. Most Indigenous people and their families live outside of Indian country. See <https://www.bia.gov/frequently-asked-questions>

<sup>126</sup> “Congress has recognized the right of tribes to have a greater say over the development and implementation of federal programs and policies that directly impact on them and their tribal members. It did so by enacting two major pieces of legislation that together embody the important concepts of tribal self-determination and self-governance: The Indian Self-determination and Education Assistance Act of 1975, as amended (25 U.S.C. 450 et seq.) and the Tribal Self-Governance Act of 1994 (25 U.S.C. 458aa et seq.). Through these laws, Congress accorded tribal governments the authority to administer themselves the programs and services usually administered by the BIA for their tribal members.” <https://www.bia.gov/frequently-asked-questions>.

<sup>127</sup> Department of Justice, National Strategy for Child Exploitation Prevention and Interdiction (2016), at 105.

These professionals often spend hours working with child victims, including forensic interviews, helping the child and the child's family with referrals to services to assist them in healing, and in transportation to and from interviews and court proceedings. All these services must be provided in a victim-centered, trauma-informed, and culturally-competent way – paying particular attention to the needs of the victim and family.

The investigation and prosecution of child exploitation crimes in Indian country is complex and requires a multi-jurisdictional and multidisciplinary response. This is due, in part, to multiple jurisdictions (federal, state, and/or tribal) having the legal authority to investigate and prosecute a case. Federal law<sup>128</sup> and the Attorney General Guidelines for Victim and Witness Assistance (2022)<sup>129</sup> encourage law enforcement, prosecutors, and victim service providers involved in federal cases to use a multidisciplinary, collaborative approach to investigate and prosecute child sexual exploitation cases in Indian country. Multidisciplinary Teams (MDTs) may consist of federal and tribal prosecutors, law enforcement, pediatricians, victim advocates, counselors, child protective services workers, and child advocates, among others. Working collaboratively, MDTs and tribal communities work to find and implement solutions for immediate and long-term public safety challenges, particularly around child exploitation. MDTs in many parts of Indian country meet regularly to staff new and ongoing child sexual exploitation and physical abuse cases, providing a team approach to resolving the cases.

Staffing shortages, however, are a constant challenge in Indian country. One way for tribal and local law enforcement officers to obtain additional personnel who can exercise federal authority for crimes committed in Indian country is through a Bureau of Indian Affairs issued Special Law Enforcement Commission (SLEC).<sup>130</sup> A SLEC allows officers to enforce federal criminal statutes and federal hunting and fishing regulations in Indian country. Criteria for obtaining a SLEC includes successful completion of the Criminal Jurisdiction in Indian Country (CJIC) class and achieving a 70% on a test at the conclusion of the class. TLOA shifted primary responsibility for delivery of CJIC training to the DOJ, with the NICTI managing course development and training. The CJIC training curriculum covers topics such as search and seizure, federal Indian law, federal criminal procedure, the Crime Victims' Rights Act, and investigating sexual assault, domestic violence, and child abuse crimes occurring in tribal communities. This course is usually offered between 20 to 25 times a year at various locations around the country. On average, approximately 450 to 550 tribal, state, and local law enforcement personnel complete this class annually. Due to COVID-19, the training has been offered virtually with more than 3,000 officers trained since August 2020. Over 2,000 of these officers are from Oklahoma where a recent United States Supreme Court decision recognized that a large area of the state is still Indian country; this decision created an immediate need to have state and local law enforcement officers trained on federal Indian law and criminal jurisdiction. The SLEC program is an important force multiplier and an effective tool in increasing the number of officers able to respond to child exploitation crimes in tribal communities.

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<sup>128</sup> 18 U.S.C. § 3509(g)

<sup>129</sup> A tribal liaison is required by statute for every USAO that has a federally recognized tribe within its district, regardless of PL 280 or non-PL 280 status. *The Attorney General Guidelines for Victim & Witness Assistance*, available at <https://www.justice.gov/ag/page/file/1546086/download>.

<sup>130</sup> Per 25 C.F.R. § 12.21, an SLEC is issued to a tribal or local law enforcement officer. A SLEC does not result in the deployment of federal officers to a certain area.

## *Tribal Liaisons*

All U.S. Attorneys' Offices (USAOs) with Indian country responsibilities must appoint at least one Assistant United States Attorney (AUSA) to serve as a Tribal Liaison and be the primary point of contact with tribes located within the district.<sup>131</sup> The Tribal Liaison program was established in 1995 and codified with the passage of the Tribal Law and Order Act (TLOA).<sup>132</sup> Tribal Liaisons are integral to USAOs' efforts in Indian country and play a critical and multi-faceted role. In addition to their duties as prosecutors, Tribal Liaisons often coordinate and train federal agents, BIA-OJS criminal investigators, and tribal police officers investigating violent crime and sexual abuse cases in Indian country.

Tribal Liaisons' job duties vary by district due to the nature, circumstances, and needs of the tribes in their districts. They are accessible to the community in ways that are unique as compared to other AUSAs. Tribal Liaisons develop relationships and have frequent contact with tribal governments, including government leaders, law enforcement, courts, prosecutors, and social service agency staff. These relationships enhance information sharing and assist the coordination of criminal prosecutions - federal, state, or tribal.

Tribal Liaisons continue to play a critical role in USAO implementation of TLOA and the Violence Against Women Reauthorization Act of 2013<sup>133</sup> (VAWA 2013) by fulfilling the need for skilled, committed prosecutors working on the ground in Indian country. As an example, the passage of VAWA 2013 resulted in the new federal assault crime of strangulation or suffocation,<sup>134</sup> which AUSAs frequently charge. Additionally, Tribal Liaisons work with tribal partners to assist them with Special Domestic Violence Criminal Jurisdiction (SDVCJ) implementation. SDVCJ allows participating tribes to prosecute certain non-Indian defendants in tribal court for acts of domestic violence, dating violence, and personal protection order violations.<sup>135</sup> Tribal Liaisons work with tribes in organizing MDTs that primarily address child abuse cases, and Sexual Assault Response Teams (SARTs) that coordinate community response to sexual violence. Both MDTs and SARTs consist of federal, tribal, and state subject matter experts.

Tribal Liaisons perform outreach in tribal communities to educate tribal organizations and members on various issues, including substance abuse and violent offenses. Tribal Liaisons meet regularly with tribal law enforcement and host trainings on various legal issues, and help foster and cultivate relationships among federal, state, and tribal law enforcement officials by convening meetings to discuss jurisdictional and investigative issues. These relationships enhance information sharing and assist the coordination of all criminal prosecutions.

## **U.S. Attorneys' Offices with Indian Country Responsibility as of January 2023**

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<sup>131</sup> 25 U.S.C. § 2810(b).

<sup>132</sup> Pub. L. 111-211, 124 Stat. 2261, enacted July 29, 2010.

<sup>133</sup> Pub. L. 113-4, 127 Stat. 56, enacted March 7, 2013.

<sup>134</sup> 18 U.S.C. § 113(a)(8).

<sup>135</sup> 25 U.S.C. § 1304.

<b>District Name</b>	<b>Abbreviation</b>	<b>District Name</b>	<b>Abbreviation</b>
<b>Middle District of Alabama</b>	ALM	<b>District of Nevada</b>	NV
<b>Southern District of Alabama</b>	ALS	<b>District of New Mexico</b>	NM
<b>District of Alaska</b>	AK	<b>Eastern District of New York</b>	NYE
<b>District of Arizona</b>	AZ	<b>Northern District of New York</b>	NYN
<b>Central District of California</b>	CAC	<b>Western District of New York</b>	NYW
<b>Eastern District of California</b>	CAE	<b>Western District of North Carolina</b>	NCW
<b>Northern District of California</b>	CAN	<b>District of North Dakota</b>	ND
<b>Southern District of California</b>	CAS	<b>Eastern District of Oklahoma</b>	OKE
<b>District of Colorado</b>	CO	<b>Northern District of Oklahoma</b>	OKN
<b>District of Connecticut</b>	CT	<b>Western District of Oklahoma</b>	OKW
<b>Middle District of Florida</b>	FLM	<b>District of Oregon</b>	OR
<b>Southern District of Florida</b>	FLS	<b>District of Rhode Island</b>	RI
<b>District of Idaho</b>	ID	<b>District of South Carolina</b>	SC
<b>Northern District of Indiana</b>	INN	<b>District of South Dakota</b>	SD
<b>Northern District of Iowa</b>	IAN	<b>Western District of Tennessee</b>	TNW
<b>District of Kansas</b>	KS	<b>Eastern District of Texas</b>	TXE
<b>Western District of Louisiana</b>	LAW	<b>Western District of Texas</b>	TXW
<b>District of Maine</b>	ME	<b>District of Utah</b>	UT
<b>District of Massachusetts</b>	MA	<b>Eastern District of Virginia</b>	VAE
<b>Eastern District of Michigan</b>	MIE	<b>Western District of Virginia</b>	VAW
<b>Western District of Michigan</b>	MIW	<b>Eastern District of Washington</b>	WAE
<b>District of Minnesota</b>	MN	<b>Western District of Washington</b>	WAW
<b>Northern District of Mississippi</b>	MSN	<b>Eastern District of Wisconsin</b>	WIE
<b>Southern District of Mississippi</b>	MSS	<b>Western District of Wisconsin</b>	WIW
<b>District of Montana</b>	MT	<b>District of Wyoming</b>	WY
<b>District of Nebraska</b>	NE		

### *Investigative Training in Indian Country*

When a crime occurs in a tribal community, the first responder is typically a tribal police officer or another local law enforcement official. First steps taken in a criminal investigation are critical steps and must be done correctly. A significant challenge in investigating child exploitation cases in tribal communities is the limited number of law enforcement personnel and frequent turnover in tribal police department staffing. In addition to the lack of available staff, child exploitation

offenses often involve several issues, requiring specialized training, including: child forensic interviewing; mandatory reporting obligations; pediatric or adolescent forensic medical examinations; crime scene processing and evidence collection; searches of electronic communications and social media; defendant interviewing and interrogation techniques; victim advocacy; courtroom presentation and trial skills. Increased staffing and specialized training are the key to developing a comprehensive trauma-informed investigation and prosecution strategy for sexual abuse crimes in Indian country.

In July 2010, the Executive Office for United States Attorneys (EOUSA) launched the National Indian Country Training Initiative (NICTI) to ensure that DOJ personnel, as well as state and tribal criminal justice and social welfare professionals, receive the training and support needed to address the challenges relevant to Indian country investigations and prosecutions. Pre-pandemic, the NICTI typically hosted a dozen or more residential training courses at the National Advocacy Center (NAC) in Columbia, South Carolina. The NICTI also prepares and delivers online training and authors and disseminates written educational materials. In addition, the NICTI Coordinator teaches at dozens of other training events throughout the year. These training events are sponsored by federal and state agencies and DOJ-funded tribal training and technical assistance providers.

Since the launch of the NICTI, thousands of criminal justice and social service personnel, working in Indian country, have traveled to the NAC for training. These students represent several hundred different tribes, USAOs, and federal, state, and tribal organizations serving Indian country. The overwhelming majority of attendees are from tribes or tribal organizations. DOJ's Office of Legal Education (OLE) covers the costs of travel and lodging for tribal students attending classes sponsored by the NICTI. This allows many tribal criminal justice and social service professionals to receive cutting-edge training from national experts at no cost to the student or tribe.

Additional national, regional, and local training for tribes is made available through DOJ's grant-making components: the Office of Community Oriented Policing (COPS), Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office for Victims of Crime (OVC), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Office on Violence Against Women (OVW). These components fund technical assistance (TA) providers with expertise on Indian country issues. Funded TA is provided to federal, state, and tribal law enforcement personnel as well as key stakeholders involved in responding to child exploitation cases. This funded TA includes projects like the National AMBER Alert Training and Technical Assistance Program, the Sex Offender Registration and Notification Act (SORNA), and the Internet Crimes Against Children Task Force Program (ICAC program). These important programs receive support from OJJDP through annual grants via the Missing Children's Act, the PROTECT Act, and from SMART through annual grants via the Adam Walsh Child Protection and Safety Act. In sum, the Department of Justice has a long history of providing training and technical assistance to law enforcement personnel and other key stakeholders on child exploitation issues impacting tribes.

The Ashlyne Mike AMBER Alert in Indian Country Act was born out of the tragic abduction and murder of 11-year-old Ashlyne Mike of the Navajo Nation in 2016. At the time, tribal law

enforcement officers did not have an AMBER Alert plan to notify people living on the reservation—a serious problem shared by tribes across the country. The enactment of the 2018 legislation represents significant progress in addressing the problem. It makes federally recognized tribes eligible for AMBER Alert grants and permits the use of grant funds to integrate state or regional AMBER Alert communication plans with tribes across the nation.

OJJDP created an AMBER Alert in Indian Country (AIIC) Initiative as part of their broader National AMBER Alert Training and Technical Assistance Program (AATTAP).<sup>136</sup> This initiative was created to assist Tribal communities in developing programs and AMBER Alert communication plans to safely recover endangered, missing, or abducted children through the coordinated efforts of the tribes and their local, state, and federal partners by using training and technology to enhance response capabilities and increase public participation in protecting children. Since 2007, more than 2,400 tribal law enforcement and child protection providers have participated in AATTAP. The training included information on combating child sex trafficking, the dynamics of child sex trafficking, and other problems affecting high-risk youth in Indian country.

The Department of Justice SMART Office, Office of Tribal Justice, and Justice Management Division launched the Tribal Access Program (TAP) in 2015 to provide tribes access to national crime information systems for both criminal and civil purposes. Tribes face unique challenges in information sharing and accessing federal databases, which impact law enforcement and child safety not only in Indian country but across the United States. Tribes implementing SORNA had faced challenges in meeting federal requirements to submit sex offender biometrics and biographical data into various federal databases, including the National Sex Offender Registry (NSOR). To help facilitate this, TAP – fully funded initially by the SMART Office – provides tribes the ability to exchange critical data across the DOJ’s Criminal Justice Information Services (CJIS) systems and other national crime information systems. TAP is currently funded by SMART, COPS, OVC, and OVW and enhances participating tribes’ ability to register sex offenders, have orders of protection enforced off-reservation, protect children, keep guns out of the wrong hands, improve the safety of public housing, and allows tribes to have tribal arrests and convictions be associated with their tribe. The Violence Against Women Act Reauthorization Act of 2022 formally authorized an annual appropriation for TAP for FYs 2023 through 2027.

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<sup>136</sup> AMBER Alert in Indian Country (AAIT) Fact Sheet [https://amber-ic.org/wp-content/uploads/2020/02/AIIC\\_Fact\\_Sheet\\_11-2022.pdf](https://amber-ic.org/wp-content/uploads/2020/02/AIIC_Fact_Sheet_11-2022.pdf)

## Military

Within Department of Defense, Military Criminal Investigative Organizations (MCIOs) are responsible for investigating noncombat deaths, sexual assaults, and other violent crime.

Examples of MCIOs include:

- U.S. Army Criminal Investigation Command (CID)
- Naval Criminal Investigative Service (NCIS)
- Air Force Office of Special Investigations (AFOSI)

In addressing child sexual exploitation and abuse, the Department of Defense's (DOD) responsibilities span more than 1.3 million active duty uniformed and 760,000 civilian employees, 1.2 million school-age children of those employees, and more than 4,775 military sites DOD occupies worldwide.<sup>137</sup> The Family Advocacy Program (FAP) is the congressionally mandated Department of Defense program responsible for providing clinical assessment, support, and treatment services in response to reported incidents of child abuse and neglect in military families. FAPs are available at every military installation where families are located, and work closely with other military programs, as well as with civilian social service agencies and

civilian law enforcement, to provide comprehensive prevention and response to family maltreatment.

### *Legal Limitations on Domestic Law Enforcement Functions*

The DOD contributes to the fight against child sexual exploitation in a variety of ways, including through each of the military services' criminal investigative organization (MCIO).<sup>138</sup> MCIO special agents are military and civilian personnel who have the authority to investigate criminal statutes identified in the Uniform Code of Military Justice (UCMJ) and the United States Code.<sup>139</sup> Participation of all military personnel, including MCIO special agents, in civilian law enforcement activities, however, is limited by a federal statute known as the Posse Comitatus Act<sup>140</sup> (PCA), and military department policies and regulations.<sup>141</sup>

Due to PCA-like restrictions, the MCIO's are restricted from engaging in law enforcement activities outside a statutorily defined jurisdiction. The MCIO jurisdictions are specifically limited to enforcement of federal laws, Title 10 (UCMJ) and Title 18 laws where there is a DOD-nexus. There is no statutory authority for MCIOs to enforce state laws, therefore PCA-like

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<sup>137</sup> *Child Welfare: Increased Guidance and Collaboration Needed to Improve DOD's Tracking and Response to Child Abuse*, GAO-20-110 (February 2020) retrieved from: <https://www.gao.gov/products/gao-20-110>; *Federal Workforce Statistics Sources: OPM and OMB*, Congressional Research Service (June 24, 2021) retrieved from: <https://fas.org/sgp/crs/misc/R43590.pdf>; *Military and Civilian Personnel by Service/Agency by State/Country* (March 2021) retrieved from: <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports>.

<sup>138</sup> The MCIOs include U.S. Army Criminal Investigation Command (USACIDC), Naval Criminal Investigative Service (NCIS), and Air Force Office of Special Investigations (AFOSI).

<sup>139</sup> *Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations*, Department of Defense Inspector General Report No. DODIG-2020-127 (September 4, 2020) at p.6.

<sup>140</sup> 18 U.S.C. § 1385.

<sup>141</sup> See DOD Instruction 3025.21 retrieved from:

<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/302521p.pdf?ver=2019-02-08-082258-453>

restrictions apply. Because most juvenile offender cases will be investigated as violations of state laws and through state courts, MCIO's are restricted from active participation in law enforcement activities. MCIO's can and do support state law enforcement agencies with administrative investigative activities.

In *United States v. Dreyer*, the Ninth Circuit Court of Appeals addressed the Posse Comitatus Act (PCA) and PCA-like restrictions in the context of an online child sexual exploitation investigation, conducted by a special agent of the Naval Criminal Investigative Service (NCIS).<sup>142</sup> Using RoundUp,<sup>143</sup> a software investigative tool that monitors online distribution of known child pornography files,<sup>144</sup> the NCIS agent conducted an audit of all computers engaged in file sharing on certain peer-to-peer networks within the state of Washington. The Ninth Circuit described the agent as having “cast a net across the entire state of Washington, knowing the sweep would include countless devices that had no ties to the military,” and found that “the investigation was not reasonably tied to military bases, military facilities, military personnel, or military equipment,” and that the methodology employed “violated DOD and naval policy, as well as the boundary Congress imposed through the PCA.”<sup>145</sup> The court also found that “the violations in this case likely resulted from institutional confusion about the scope and contours of the PCA and PCA-like restrictions.” The court stated, however, that “we are persuaded that the Government should have the opportunity to self-correct before we resort to the exclusionary rule, particularly because it has already acknowledged the need to do so.”<sup>146</sup> The court observed that after the *Dreyer* investigation, “DOD adopted new regulations that acknowledge the applicability of PCA-like restrictions to the Navy and to NCIS” and to the fact that “the Government represented at oral argument that the military is already in the process of changing its practices and limiting its participation in civilian law enforcement to conform to PCA-like restrictions.”<sup>147</sup>

To comply with these legal restrictions, child exploitation interdiction efforts undertaken by military personnel must be carefully tailored to ensure that sufficient military nexus exists. However, in the absence of specific, department-wide guidance on what constitutes “sufficient” military nexus in the context of online child exploitation investigations, determining which investigations violate the PCA and PCA-like restrictions is challenging and somewhat unclear. It is particularly challenging as military and civilian lines blur. In proactive investigations, a difficult “catch-22” arises because investigators need to ensure a sufficient military nexus exists prior to investigation—but the investigation is often required to uncover whether that nexus exists (e.g., the target’s identity and active-duty status). As such, many MCIOs are uncomfortable pursuing certain child exploitation investigations and no longer investigate certain cases.

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<sup>142</sup> *United States v. Dreyer*, 804 F.3d 1266 (9th Cir. 2015) (en banc).

<sup>143</sup> RoundUp was developed for the Internet Crimes Against Children (ICAC) task forces, comprised of federal, state, and local law enforcement officers investigating internet crimes against children, including distribution of child pornography. *Id.* at 1270.

<sup>144</sup> See *Protecting Law Enforcement Peer-to-Peer Investigations*, Department of Justice Journal of Law and Technology (January 2018), retrieved from: <https://www.justice.gov/usao/resources/journal-of-federal-law-and-practice>.

<sup>145</sup> *U.S. v. Dreyer*, 804 F.3d at 1276.

<sup>146</sup> *Id.* at 1280.

<sup>147</sup> *Id.*



Since *Dreyer*, DOD and the military services have taken steps, including revising policies, to ensure that MCIO special agents engaging in online child exploitation investigations do not violate the PCA or the PCA-like restrictions established by DOD or their respective military service.<sup>148</sup> In order to comply with these legal restrictions, MCIO special agents and federal prosecutors engaging in online child exploitation investigations must have clear guidance and receive adequate education and training to ensure a sufficient military nexus is present. Collaboration and communication between the MCIO office that is planning and conducting an online child exploitation investigative operation, and the appropriate United States Attorney's Office or DOJ's Child Exploitation and Obscenity Section, can help ensure the investigation is tailored accordingly.

### *Military Extraterritorial Jurisdiction Act*

The Military Extraterritorial Jurisdiction Act (MEJA)<sup>149</sup> was enacted on November 22, 2000. MEJA permits the exercise of federal criminal jurisdiction over crimes committed outside the United States, if at the time of the offense the offender was employed by the Armed Forces outside the United States;<sup>150</sup> accompanying the Armed Forces outside the United States;<sup>151</sup> or (in limited circumstances) a member of the Armed Forces.<sup>152,153</sup>

MEJA cases are often difficult and complex. Many of the same issues that exist in extraterritorial child sexual abuse investigations and prosecutions are present in MEJA cases.<sup>154</sup> In addition, through the life-cycle of the investigation (and any prosecution), due to military policies and resource constraints, the MCIO case agent is subject to performing temporary duty (TDY) assignments of varying lengths, attending off-site training programs that might last weeks or

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<sup>148</sup> See, e.g., *Evaluation of the Air Force Office of Special Investigations' Conduct of Internet-Based Operations and Investigations*, Department of Defense Inspector General Report No. DODIG-2016-075 (April 25, 2016) retrieved from: <https://www.oversight.gov/sites/default/files/oig-reports/DODIG-2016-075.pdf>; and Department of Defense Instruction No. 3025.21 (February 27, 2013, Incorporating Change 1, Effective February 8, 2019) retrieved from: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/302521p.pdf>

<sup>149</sup> 18 U.S.C. §§ 3261-67.

<sup>150</sup> Under MEJA, a person "employed by the Armed Forces outside the United States" is defined as (1) a civilian employee, contractor (including a subcontractor at any tier), or employee of a contractor of the Department of Defense; or (2) a civilian employee, contractor (including a subcontractor at any tier), or employee of a contractor of any other federal agency or a provisional authority, to the extent that the person's employment "relates to supporting the mission of the Department of Defense overseas."

<sup>151</sup> A person "accompanying the Armed Forces outside the United States" is defined as a dependent or other qualified family member residing overseas with (1) a member of the Armed Forces, (2) a civilian employee the Department of Defense, (3) a Department of Defense contractor (including a subcontractor at any tier), or (4) an employee of a Department of Defense contractor.

<sup>152</sup> There are limited circumstances. One circumstance in which such a prosecution against a member of the Armed Forces could be so commenced is if, at the time of prosecution, the member is no longer subject to the Uniform Code of Military Justice ("UCMJ"). Generally, a military service member is subject to the UCMJ for an offense that the service member commits anywhere in the world. However, if the service member separates from military service, and thus is no longer subject to the UCMJ, MEJA would allow prosecution for the applicable federal felony offense that the service member had committed overseas before that separation. Another circumstance is that the member is charged with committing the offense with one or more other defendants who are not subject to the UCMJ.

<sup>153</sup> MEJA does not, however, cover offenses committed by any of these individuals if they are nationals of the foreign country where the offense occurred, or ordinarily reside in the foreign country where the offense occurred.

<sup>154</sup> More information can be found in the Extraterritorial Child Sexual Abuse chapter.

months, or being deployed or rotated to a new position or assignment away from the investigating jurisdiction. Any of those events is detrimental to investigative tempo, the quality and timeliness of the investigation, and disrupts any potential rapport developed with victims. This lack of case agent continuity often creates an impediment to being able to bring a successful MEJA prosecution.

Moreover, the frequency and rapidity with which overseas military-affiliated personnel (i.e., members of the Armed Forces, DOD civilian employees, and contractors -- and their dependents and family members) move presents further challenges in these investigations and prosecutions. Witnesses, victims, and alleged perpetrators tend to move to very different geographic locations while investigations are ongoing. Prosecutors often must rely on leads/interviews conducted by investigators who are not familiar with the parties or facts of the investigation. This leads to less fulsome interviews being conducted requiring prosecutors to re-interview witnesses and victims to obtain more information. If an alleged perpetrator is moved, it is not uncommon for the case to be transferred with him/her and away from the original investigator. This poses significant challenges for continuity of investigation.

Additional complexities are raised in cases in which the subject falls within the following categories: 1) “third country nationals”<sup>155</sup> who are covered by MEJA’s jurisdictional reach because they are a person “accompanying the Armed Forces outside the United States”; 2) retired military members who remain subject to recall; and 3) military and national guard reservists who commit extraterritorial offenses while in an active status or executing orders, but then at the time of investigation and prosecution are no longer active, or, alternatively, commit the offense when they are not in an active status but their reserve commitment has not yet expired leaving them amenable to recall by the military.

First, “third country nationals” who are either accompanying military members abroad, or more frequently are working as contractors for the military, raise a host of challenges for ensuring accountability under MEJA. As a general matter, their nationality may facilitate their ability to evade arrest and prosecution by immediately returning to their home countries. In addition, MEJA has very specific arrest, detention, and removal requirements. Various international agreements, including applicable SOFAs (Status of Forces Agreements) may apply and limit when and how MEJA may be used against a third country national. Specifically, if a judge orders the removal of a third country national from a foreign country pursuant to MEJA, the physical

### By the Numbers

According to the *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2020* issued by the Department of Defense, there was a statistically significant decrease in child sexual abuse incidents in 2020. DOD data has shown a steady decrease in child sexual abuse over the past decade.

In FY 2020, there were 209 unique victims of child sexual abuse. 92.3% of the victims were female. More than half of victims were between the ages 11-17, nearly a third were between 6-10, and roughly 12% were under the age of 5.

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<sup>155</sup> A “third country national” in this context identifies a person who is not a United States national or a national of the country in which the offense is committed.

movement of that subject through other countries en route to the United States or even directly to the United States, may raise a host of diplomatic issues or sensitivities.<sup>156</sup>

Next, offenses committed by retired military members raise complications. An active component retiree entitled to pay is a member of the Armed Forces subject to chapter 47 of title 10 of the United States code (the Uniform Code of Military Justice), unlike, for example, a former military member who is separated honorably or otherwise, but who is not retired. Accordingly, retired military members remain subject to the UCMJ<sup>157</sup> and do not fall within the jurisdictional reach of MEJA for child sexual offenses. In practice, this means that retired military members, some of whom frequently serve as United States contractors abroad, cannot be held accountable under MEJA but rather must be recalled to active duty, attached to a military unit, and then court-martialed. This can be a challenge and impediment to both effective investigation and prosecution. Indeed, the subject may have been retired for many years and accordingly the process of recall for purposes of prosecution can add significant delay and complexity.

Finally, extraterritorial offenses committed by a member of the Reserve component are not only complex, they can also result in accountability gaps. Certainly, while on active duty or executing Reserve orders, a member of the Reserve component may be court-martialed for offenses proscribed by the UCMJ. Likewise, if a Reservist committed the offense while on active duty or orders but was no longer in that status at the time the investigation and prosecution commenced, *and whose reserve commitment had not expired*, that situation would raise the same complications as retired military members who must be recalled to active duty before charges can be preferred and a court martial may be commenced. However, if a member of the Reserve component commits the offense while not on active duty or Reserve orders, and the individual's reserve commitment has not ended, there are varying analyses of whether MEJA applies and whether the Reservist remains subject to, or amenable to, UCMJ jurisdiction.<sup>158</sup> Given the litigation risks of indicting such a Reservist under MEJA, the safer course is likely a court-martial. However, although historically the Department of Defense took the position that MEJA jurisdiction could not attach to anyone who was subject to recall, because they were still amenable to UCMJ jurisdiction for the offense, presently military prosecutors and investigative

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<sup>156</sup> MEJA contains provisions to remove the subject from the host country without having to rely upon the traditional extradition protocols. Such removals may be relatively straightforward when they involve United States nationals that are DOD dependents, military contractors and others supporting the mission of the Department of Defense abroad. But they can raise concerns when subjects who are not United States nationals are removed from the host country without reliance upon the host country's procedures and/or [due] process requirements.

<sup>157</sup> However, the United States District Court for the District of Columbia recently upended this well-established interpretation when it found the UCMJ unconstitutional as applied to retirees, thereby potentially expanding MEJA's applicability to retirees. *See Larrabee v. Braithwaite*, 502 F.Supp.3d 322 (D.D.C. Nov. 20, 2020). The Department has appealed this decision.

<sup>158</sup> MEJA provides that "[n]o prosecution may be commenced against a [member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice) ... unless ... such member ceases to be subject to such chapter." Arguably, then, if the subject is not in a title 10 status at the time the prosecution is commenced, then a valid interpretation could be that the subject does not fall within that provision. However, at least one case has endorsed the view that because the military has the power to render the reservist "subject" to the UCMJ (by recalling him or her), that MEJA will not apply. *See United States v. Santiago*, 966 F. Supp. 2d 247, 255-58 (S.D.N.Y. 2013); *United States v. Santiago*, 987 F. Supp. 2d 465, 480 n.13 (S.D.N.Y. 2013). This interpretation frustrates the extension of MEJA jurisdiction to any reservist whose commitment has not ended, including those who may have committed an offense even when not in an active status.

agencies routinely assert that the UCMJ does not apply as the offense was not committed while the Reservist was “subject to” the code. Given the competing analyses and the current precedent in federal court, there is no clear consensus as to how a reservist who was inactive and not on reserve orders at the time of the offense can and should be held accountable absent an explicit legislative determination as to whether such Reservist remain subject to the UCMJ, subject to MEJA or subject to both concurrently.

### *Problematic Sexual Behavior in Children and Youth (PSB-CY)*

Media reports in March 2018 highlighted DOD’s challenges in responding to incidents of juvenile-on-juvenile sexual abuse occurring on military installations and overseas.<sup>159</sup> Within weeks, the Office of the Secretary of Defense established a DOD team to assess DOD’s policies, procedures, and responses to child abuse, juvenile-on-juvenile sexual abuse, and problematic sexual behavior in children and youth (PSB-CY). Simultaneously, the DOJ and DOD formed a working group to examine the issues presented by juvenile-on-juvenile sexual abuse occurring on military installations or involving military dependents to ensure that such incidents are effectively addressed. Since the formation of the DOD team and the DOJ/DOD working group, DOD has expanded and made improvements to its policies and procedures concerning child abuse, juvenile-on-juvenile sexual abuse, and PSB-CY, but gaps remain.<sup>160</sup>

The most significant gap identified by the working group is DOD and DOJ’s inability to ensure juvenile justice system access in all appropriate cases. While *procedures* exist for handling in federal court juveniles who have committed violations of federal criminal law,<sup>161</sup> there is no federal juvenile justice *system*.<sup>162</sup> In contrast, every state has a juvenile justice system. Consequently, federal law and policy is that juvenile matters should be handled by state authorities whenever possible because the States are in the best position to do so. Yet, in several states, military children are deprived of access to the state’s juvenile justice system and rehabilitative programs solely because the incident occurred in an area of a military installation where the legislative jurisdiction is “exclusive federal jurisdiction.”<sup>163</sup>

Some states’ juvenile justice systems will intervene and exercise jurisdiction over an incident occurring on a military installation within their state borders so long as federal authorities choose

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<sup>159</sup> “Child-on-Child sex assault cases languish on US Bases”, Justin Prichard and Reese Dunklin, March 14, 2018 Associated Press <https://apnews.com/article/hidden-victims-41da2867897042399f3f9c55cfde3f16>

<sup>160</sup> See, generally, GAO-20-110.

<sup>161</sup> See 18 U.S.C. §§ 5031-5043.

<sup>162</sup> “For all practical purposes, there is no federal juvenile justice system.” Robert G. Schwartz, Opportunities for Juvenile Justice Reform: Paper Prepared for the William T. Grant Forum on Reforming Publicly Funded Youth Systems I (Mar. 2003) <https://www.aspeninstitute.org/sites/default/files/content/docs/rcc/rccRobertSchwartz.pdf>. For a definition and description of “juvenile justice system” see pp. 77-82 of “Reforming Juvenile Justice: A Developmental Approach,” National Research Council (2013). Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>

<sup>163</sup> GAO 20-110 at pp. 15-16 and 57-58.

not to exercise jurisdiction.<sup>164</sup> Other states' juvenile justice systems will not exercise authority over such incidents claiming a lack of jurisdiction, and despite requests being made by DOD, DOJ, and the victims.<sup>165</sup> To address this latter scenario, new federal legislation is needed, and such has been proposed by the Department,<sup>166</sup> to expressly give states jurisdiction over juvenile offenses committed in areas of exclusive federal jurisdiction.<sup>167</sup>

### Problematic Sexual Behavior in Children and Youth (PSB-CY)

While some use the term “juvenile-on-juvenile sexual abuse”, the Department of Defense prefers not to use terms that imply this behavior is on par with child exploitation perpetrated by adults. PSB-CY is a broad spectrum of behaviors that does include sexual assault involving minors, but also a range of otherwise normative sexual behaviors that are inappropriate for a particular time or place, but which do no harm to others. Given the developmental nature of children, the DOD does not characterize PSB-CY as a form of child sexual exploitation or child sexual abuse, which are criminal acts committed by adults against minors.

Research shows that youth who are criminalized and put on juvenile sex offender registries report more problems or fewer strengths in the domains of mental health, peer relationships, and experiences with safety and victimization.<sup>168</sup> Instead, problematic sexual behavior in children and youth should be met with a preventative and rehabilitative approach that includes clinical and socio-emotional behavioral understanding.

At its core, DOD's approach to PSB-CY is rehabilitative, rather than criminal justice oriented. The DOD policy on how to handle PSB-CY is based on Public Law 115-232, Section 1089, which prescribes a clinical, social services approach to cases of PSB-CY, as defined in DOD issuance 6400.01. After becoming aware of concerning sexual behavior, military law enforcement may refer the behavior to the Family Advocacy Program (FAP). Before a criminal justice response is considered, the FAP reviews the behavior and coordinates a multidisciplinary team to determine next steps. Cases that involve sexual assault are passed on to law enforcement.

Military has not seen a large increase in PSB-CY, in no small part thanks to the FAP's work educating children and families on what sort of behavior is normal for a given age group and whether behavior should be escalated.

<sup>164</sup> See, e.g., 103 Md. Op. Atty. Gen. 49 (Md.A.G.), 2018 WL 7575213 (Dec. 26, 2018) at pp. 14-15. Juvenile matters should be handled by state authorities whenever possible since they are best suited to handle them. *Id.* at pp. 13-14; GAO-20-110 at p. 57.

<sup>165</sup> Lack of access to state juvenile justice systems also occurs when the offense takes place overseas. GAO-20-110 at 58.

<sup>166</sup> See Department of Justice Legislative Proposals Appendix.

<sup>167</sup> Lack of access to state juvenile justice systems also occurs when the offense takes place overseas. GAO-20-110 at 58. For those offenses, however, even if federal legislation was enacted that would expressly provide states with concurrent jurisdiction over select extraterritorial offenses over which the federal government currently has jurisdiction, there may well be state constitutional or other barriers to a state's ability to exercise jurisdiction over an extraterritorial criminal offense.

<sup>168</sup> Letourneau, E. J., Harris, A. J., Shields, R. T., Walfield, S. M., Ruzicka, A. E., Buckman, C., Kahn, G. D., & Nair, R. (2018). Effects of juvenile sex offender registration on adolescent well-being: An empirical examination. *Psychology, Public Policy, and Law*, 24(1), 105–117. <https://doi.org/10.1037/law0000155>

The DOD, with the assistance and support of DOJ, is continuing its efforts to attempt to remove barriers preventing military children from having access to state juvenile justice systems and rehabilitative programs. In June 2019, the Acting Deputy Secretary of Defense issued a memorandum directing each military department to seek to establish concurrent jurisdiction, with the respective states, for offenses committed by juveniles in areas on military installations that are currently exclusive federal jurisdiction, through the existing statutory process of “retrocession.”<sup>169</sup> Military installations have also been directed to update or establish memoranda of agreement with their corresponding USAO and local/state authorities for the referral of juvenile offenses to the state juvenile justice system.

### *Military Sex Offender Reporting Act*

Congress amended the Sex Offender Registration and Notification Act (SORNA)<sup>170</sup> in 2015 by enacting the Military Sex Offender Reporting Act (MSORA).<sup>171</sup> MSORA requires DOD to provide information to the National Sex Offender Registry (NSOR) and the National Sex Offender Public Registry Website (NSOPW) on any sex offender who is adjudged by courts-martial or released from a military corrections facility.<sup>172</sup> DOD and the military services subsequently established policy and assigned responsibility for implementing the requirements of MSORA.<sup>173</sup>

### *Victim Support*

The Family Advocacy Program (FAP)<sup>174</sup> is the main support for victims and non-abusive family members within the military. The primary challenge to victim assistance in the military are the Child Abuse Prevention and Treatment Act (CAPTA) definitions for cases. Eligible beneficiaries of services are defined based on the relationship between the perpetrator and child. An abuser must be a parent, caregiver, or an older sibling or relative that is specifically in a caregiving role.<sup>175</sup> When the offender is not a qualifying family member, there is no specific military

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<sup>169</sup> GAO 20-110 at pp. 16-17. The Department of Justice is supporting and assisting DOD in this endeavor. It is important to note that although each military service Secretary has the authority, pursuant to 18 U.S.C. § 2683, to relinquish to a State (or to a territory or possession of the United States) all or part of the legislative jurisdiction of the United States over lands under the Secretary’s control in that State, such does not and cannot occur unless and until the State accepts the retrocession (unless the State’s laws provide differently).

<sup>170</sup> For more information on SORNA, see the Sex Offender Registration Violations chapter.

<sup>171</sup> Pub. L. No. 114-22, § 502, 129 Stat. 227 (codified at 34 U.S.C. § 20931).

<sup>172</sup> See, generally, *Sex Offender Registration and Notification in the United States -- Current Case Law Summary and Issues: Military Registration*, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), U.S. Department of Justice (July 2022) available at: <https://smart.ojp.gov/sorna/current-law/case-law/i-sorna-requirements#5-registration-for-military-convictions>

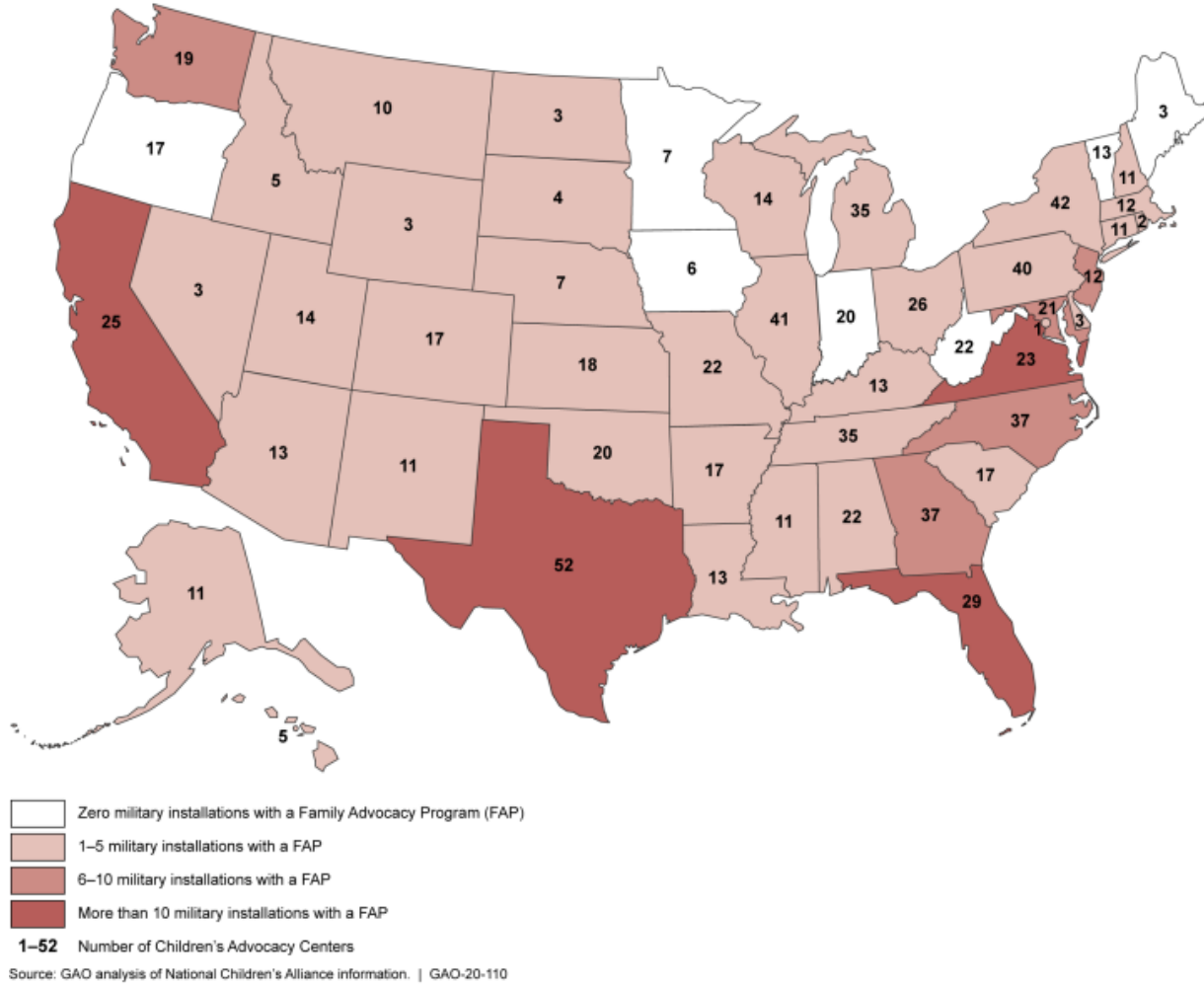
<sup>173</sup> See *Registered Sex Offender (RSO) Management in DOD*, Department of Defense Instruction No. 5525.20 (November 14, 2016); and *Evaluation of DOD Law Enforcement Organization Submissions of Criminal History Information to the Federal Bureau of Investigation*, Department of Defense Inspector General Report No. DODIG-2020-064 (February 21, 2020) at pp. v-vi, viii, x, 82-98.

<sup>174</sup> There are FAPs located in 230+ military installations.

<sup>175</sup> Per DOD Instruction 6400.01; Department of Defense Annual Report on Sexual Assault in the Military, Fiscal Year 2020 – Appendix H: Child Sexual Abuse

service response for victims of exploitation. CAPTA challenges are even more significant overseas due to the lack of state-equivalent services (i.e., CPS, family court system). If a minor victim is exploited by another American minor or the offender is a foreign national, the military lacks the infrastructure and resources to provide the needed response and victim support. For example, due to a lack of state-equivalent services, investigations may not have access to the child or children for interviews or other investigative needs when it is unclear who the offending parent is or when the non-offending parent denies access to the child.

**Number of Military Installations and Children’s Advocacy Centers by State as of August 2019**



Since the last National Strategy for Child Exploitation Prevention and Interdiction was issued in 2016, DOD and the military services have taken steps to improve the services and support provided to victims of child sexual exploitation or abuse, but as documented in a February 2020 GAO Report, additional gaps remain.<sup>176</sup>

<sup>176</sup> See, generally, GAO-20-110.

In its report, the GAO noted that the military services do not consistently make use of the Children's Advocacy Centers (CACs)<sup>177</sup> in the United States despite the fact that most military installations in the United States with Family Advocacy Program services are located within 50 miles of a CAC. A 2019 study found that only 7% of Child Advocacy Centers (CACs) with military installations in their service area reported having the memorandum of understanding (MOU) that is needed in order to authorize services associated with a Family Advocacy Program referral.<sup>178</sup> It has been recommended that each military service seek to develop a memorandum of understanding with the National Children's Alliance that makes CAC services available to all the service's installations.<sup>179</sup>

As to child victims overseas, additional gaps remain. The GAO found that the availability of certified pediatric sexual assault forensic examiners across DOD is limited and that without processes that ensure timely access to certified pediatric examiners, child victims of sexual abuse overseas may not receive exams in time for evidence to be collected for use in prosecution, increasing the stress and trauma of affected victims.<sup>180</sup> The GAO recommended that DOD should establish processes that help ensure children who are sexually abused overseas have timely access to a certified pediatric sexual assault forensic examiner to conduct the examination.<sup>181</sup> The GAO also found that the military services' guidance regarding the extent of commander authority to remove children from unsafe homes on overseas installations is unclear,<sup>182</sup> and recommended that DOD and the military services clarify, in guidance, the circumstances under which commanders may exercise their authority to remove a child from a potentially unsafe home on an overseas installation.<sup>183</sup>

The GAO also found victims' families receive inconsistent levels of information and available services after an incident of child abuse is reported.<sup>184</sup> The report recommended that each military service establish efforts to comprehensively inform victims' families about how reported incidents of child abuse will be addressed following the report. For example, a guide that explains the process the Family Advocacy Program and military law enforcement organizations will follow, and available victim services.<sup>185</sup>

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<sup>177</sup> "CACs have considerable experience working with abused children. Specifically, according to the National Children's Alliance, in 2018 CACs collectively served over 367,000 children, conducted over 260,000 forensic interviews, and completed over 91,000 medical exams and treatments. Further, CACs provide a child-friendly environment to conduct these interviews and exams, which are then reviewed by a multidisciplinary team that includes medical, law enforcement, mental health, and legal personnel, victim advocates, and state child welfare agencies. The purpose of the multidisciplinary team is to determine how to best support the child, such as through therapy, courtroom preparation, and victim advocacy." *Id.* at pp. 61-63.

<sup>178</sup> *Id.* at p. 61.

<sup>179</sup> *Id.* at p.70.

<sup>180</sup> *Id.* at pp. 51-55.

<sup>181</sup> *Id.* at p. 70.

<sup>182</sup> *Id.* at 48-51.

<sup>183</sup> *Id.* at 69

<sup>184</sup> *Id.* at pp. 46-48.

<sup>185</sup> *Id.* at p. 69.



## Unaccompanied Noncitizen Minors

When an unaccompanied noncitizen minor arrives at the border, the Department of Homeland Security's U.S. Customs and Border Protection (DHS/CBP) typically takes initial custody of the minor before referring them into U.S. Department of Health and Human Services' Office of Refugee Resettlement (HHS/ORR) care and custody. ORR facilitates the minor's placement with a vetted sponsor, usually a parent or a close relative in the United States. However, placement time varies depending on the sponsor-child relationship. Accordingly, ORR funds a network of providers to care for unaccompanied minors until they are safely released to a vetted sponsor, or otherwise leave ORR care following an immigration judge's order of removal, turning 18 years of age, or obtaining immigration status in the United States.<sup>186</sup>

The Homeland Security Act of 2002 requires the HHS's Office of Refugee Resettlement (ORR) to house all unaccompanied children that enter the United States without legal authorization until they could be placed with vetted sponsors, who are typically family members residing in the U.S. The agency cannot house minors once they reach legal age. In these circumstances, under 8 U.S.C. 1232(c)(2)(B), when the minor is transferred into Immigration and Customs Enforcement (ICE) custody, a custody determination will be made that will consider placement in the least restrictive setting available.

ORR requires all care provider facilities to adhere to the *Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children*,<sup>187</sup> and to report emergency incidents<sup>188</sup> that immediately threaten a minor's safety and well-being within four hours of the occurrence or staff becoming aware of the incident. The Trafficking Victims Protection Reauthorization Act of 2008 (TVPA, as amended) requires federal, state, and local officials to notify HHS within 24 hours of discovering that an unaccompanied minor may be a victim of trafficking.<sup>189</sup> For incidents of a sexual nature, facilities must submit a Sexual Abuse Significant Incident Report for each of

<sup>186</sup> Because these facilities are federally funded, federal criminal jurisdiction may exist over incidents involving or relating to sexual abuse, physical abuse, and neglect perpetrated by facility staff against these children in addition to the state and local criminal jurisdiction that exists over such incidents. *See, e.g.*, 18 U.S.C. §§ 242 and 2241-2244. *See also United States v. Pacheco*, 977 F.3d 764 (9th Cir. 2020) (Youth care worker employed at a facility that housed unaccompanied noncitizen children pursuant to a federal contract with ORR was properly convicted of federal offenses for sexually abusing minors at the facility between 2016-2017).

<sup>187</sup> Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children, Office of Refugee Resettlement, Department of Health and Human Services <https://www.acf.hhs.gov/orr/standards-prevent-uac-sexual-abuse>

<sup>188</sup> Significant incidents include medical emergencies, physical or verbal aggression between minors, self-harm, runaway attempts, and incidents of a sexual nature that occur or are reported while a minor is in ORR custody.

<sup>189</sup> 22 U.S.C. § 7105 (b); Foreign national minors in the United States, including unaccompanied children (UC), who have experienced a severe form of trafficking in persons (forced labor or commercial sex) are eligible for benefits and services under the Trafficking Victims Protection Act (TVPA) of 2000, as amended through the issuance of an Eligibility or Interim Assistance Letter from the HHS Office on Trafficking in Persons (OTIP). These benefits and services include access to trafficking-specific case management services, medical services, food assistance, cash assistance, health insurance, and other needs to the same extent as a refugee. Any person who has concerns that a foreign national minor in the United States may have experienced forced labor or commercial sex as a victim of a severe form of trafficking in persons may submit a Request for Assistance (RFA, OMB Control Number 0970-0362)

the individuals involved and report all incidents that meet ORR's definition of sexual abuse to ORR, state child protective services, and/or licensing agencies, local law enforcement, FBI, and HHS's Office of the Inspector General (OIG).<sup>190</sup>

In June 2020, HHS OIG published a report titled, *The Office of Refugee Resettlement's Incident Reporting System Is Not Effectively Capturing Data To Assist Its Efforts To Ensure the Safety of Minors in HHS Custody*.<sup>191</sup> The report identified challenges in ORR's incident reporting process and found that ORR's incident reporting system lacked designated fields to capture key information about incidents that ORR can use to oversee facilities and to protect the minors in ORR care. Important information about efficient identification of issues that required a care provider's immediate action is not systematically collected to help ORR determine whether care providers responded appropriately and analyze concerning trends. Finally, the report described challenges with staffing youth care workers – who are essential to preventing, detecting, and reporting incidents – and difficulties determining which incidents should be reported to ORR. The report offered four recommendations to assist ORR in addressing effective incident reporting.

Also, in June 2020, HHS OIG published an evaluation titled, *Unaccompanied Alien Children Program Care Provider Facilities Do Not Include All Required Security Measures in Their Checklists*.<sup>192</sup> The report examined facility security checklists required by ORR and ORR's oversight of facilities' use of these checklists to identify and address safety risks. Proactive safety and security planning at facilities can help prevent potential child safety incidents, and proper implementation and function of physical security measures are necessary for possible early detection of a threat while a child is in ORR care. In September 2022, OIG published a report on one of fourteen Emergency Intake Sites established by ACF's ORR, which were operationalized to provide care to the historically high number of unaccompanied children who arrived at the U.S. southern border in early 2021.<sup>193</sup>

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through Shepherd. In accordance with the TVPA of 2000, as amended, federal, state, and local officials with information about foreign national minors who may have experienced human trafficking must refer cases to OTIP for assessment within 24 hours. OTIP will accept case referrals even after the initial 24-hour period. For questions about the process, to discuss a potential case, or to submit a PDF version of the RFA, individuals can contact the OTIP Child Protection Specialist team at [childtrafficking@acf.hhs.gov](mailto:childtrafficking@acf.hhs.gov) or 202-205-4582.

<sup>190</sup> For ORR related reporting policies for trafficking, see here: [3.3.3 Screening for Child Trafficking and Services for Victims](#).

<sup>191</sup> The Office of Refugee Resettlement's Incident Reporting System Is Not Effectively Capturing Data To Assist Its Efforts To Ensure the Safety of Minors in HHS Custody, Office of the Inspector General, Department of Health and Human Services, OEI-09-18-00430, June 2020 <https://oig.hhs.gov/oei/reports/oei-09-18-00430.pdf>

<sup>192</sup> OIG Final Issue Brief: *Unaccompanied Alien Children Program Care Provider Facilities Do Not Include All Required Security Measures in Their Checklists*, OEI-05-19-00210, June 2020 (<https://oig.hhs.gov/oei/reports/oei-05-19-00210.asp>).

<sup>193</sup> Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children, Office of the Inspector General, Department of Health and Human Services, OEI-07-21-00251, Sept. 2022 <https://oig.hhs.gov/oei/reports/oei-07-21-00251.pdf>

**Table 2: Requests for Assistance (RFAs)<sup>194</sup> Received by OTIP by type of potential trafficking reported, FY 2016 – FY 2021**

Type of Potential Trafficking	FY16	FY17	FY18	FY19	FY20	FY21	Total Number of Requests Received
None	371	509	464	517	165	0	2026
Labor	318	311	369	604	478	1683	3763
Sex	90	89	138	251	122	470	1160
Sex and Labor	23	30	36	25	39	2	155
Not Reported	3	0	1	21	103	23	151
<b>Total Number of RFAs Received</b>	<b>805</b>	<b>939</b>	<b>1008</b>	<b>1418</b>	<b>907</b>	<b>2178</b>	<b>7255</b>

**Table 3. Eligibility Letters Issued by OTIP by type of trafficking experienced<sup>195</sup>, FY 2016 – 2021**

Type of Trafficking Experienced	FY15	FY16	FY17	FY18	FY19	FY20	Total Number of Eligibility Letters Issued
Sex	72	105	124	251	135	787	1474
Labor	244	367	312	614	500	287	2324
Sex and Labor	19	34	30	27	38	69	217
<b>Total Number of Eligibility Letters Issued</b>	<b>335</b>	<b>506</b>	<b>466</b>	<b>892</b>	<b>673</b>	<b>1143</b>	<b>4015</b>

Unaccompanied noncitizen minors are at risk of experiencing human trafficking before entering and after exiting ORR care. Noncitizen minors in the United States who have or may have been subjected to a severe form of trafficking are eligible for certain benefits and services under the

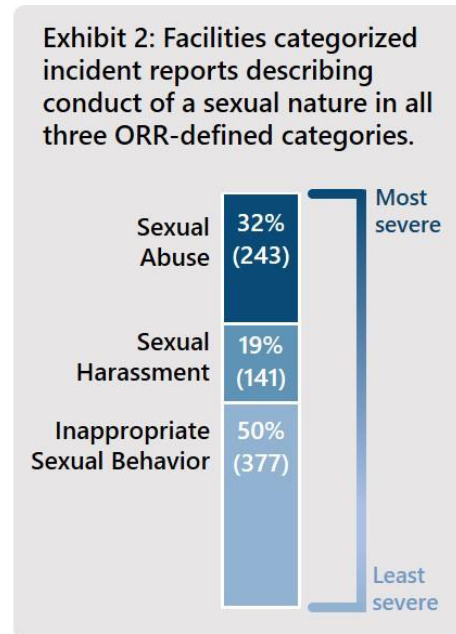
<sup>194</sup> Case managers, attorneys, law enforcement officers, child welfare workers, and other representatives, including ORR grantees' workers and staff can submit an RFA to OTIP on behalf of a foreign national minor child who may have experienced a severe form of trafficking in persons. The figures here reflect all RFAs received by OTIP, not solely RFAs received, though the majority of RFAs received are submitted on behalf of unaccompanied minors in ORR care. Further data cleansing and validation is necessary to disaggregate RFAs received by requester type (or referral source).

<sup>195</sup> Foreign national minors who receive Eligibility Letters from OTIP may have experienced a severe form of trafficking in persons in their countries of origin, in another country, during their journey to the United States, or within the United States/within United States government facilities. Further data cleansing and validation is necessary to disaggregate by location of exploitation.

William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.<sup>196</sup> The majority of RFAs received by OTIP are submitted on behalf of unaccompanied minors in ORR care. The following two tables provide the volume of requests for assistance received by OTIP on behalf of foreign national minors and the type of trafficking experienced by those minors determined eligible by OTIP to receive benefits and services in the United States to the same extent as a refugee.

Like other minors involved in the U.S. child welfare system, unaccompanied noncitizen minors are at risk of experiencing exploitation, including sexual abuse and human trafficking, while in congregate care settings or after discharge. Moreover, these minors may also have experienced sexual exploitation in their home country or during their migration journey which may not be reported until a child discloses to staff at ORR facilities, who are then required to report the incident following relevant protocols and statutes.<sup>197</sup>

As outlined by the HHS OIG in their June 2020 report regarding incident reporting, ORR policies and procedures require program staff working at ORR-funded facilities to report all incidents involving conduct of a sexual nature and categorize the allegation by severity (e.g., inappropriate sexual behavior, sexual harassment, or sexual abuse). Facilities send ORR incident reports that describe conduct of a sexual nature, along with other forms of conduct that may pose risks to children, in ORR’s significant incident reporting system. As shown in Exhibit 2, reproduced from the HHS OIG report, facilities categorized half of the 761 incidents as Inappropriate Sexual Behavior, which includes conduct that does not meet the definition of the more severe categories of Sexual Abuse and Sexual Harassment. The report analyzed information on incidents reported to ORR by 45 care provider facilities between January 1, 2018 and July 31, 2018. The facilities cared for approximately 72 percent of the children in ORR care.



Note: Percentages do not add to up to 100 due to rounding.

Source: OIG analysis of SA SIRs reported to ORR between January 1, 2018, and July 31, 2018.

<sup>196</sup> *Eligibility Letters*, Office on Trafficking in Persons, Administration for Children and Families, Department of Health and Human Services, <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters/>

<sup>197</sup> Individuals working with foreign national minors, including unaccompanied children, can access various resources to support in their efforts in responding to concerns of human trafficking through the Trafficking Prevention and Protection Resources for Working with Unaccompanied Children website at <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters/resources>

In May 2021, to assist ORR in responding to a surge of unaccompanied noncitizen children, HHS OIG issued a document titled, *Insights from OIG's Work on the Office of Refugee Resettlement's Efforts To Care for Unaccompanied Children*:

OIG identified immediate actions that the Office of Refugee Resettlement (ORR)—the office within HHS's Administration for Children and Families that administers the program—could take to ensure children's health and safety including:

- Coordinating with local and Federal law enforcement agencies when opening new facilities that are not State licensed in order to identify the entities that will provide emergency response services
- Maintaining the significant incident reporting system and ensuring that facility staff have clear training on how to effectively report safety incidents
- Ensuring that facilities meet requirements for pre-employment background screenings, including conducting timely background checks for new employees
- Taking all reasonable steps to minimize the time that children remain in ORR custody by efficiently and effectively vetting potential sponsors.<sup>198</sup>

### **Other Areas of Federal Jurisdiction: Commercial Flights and Cruise Ships**

The FBI has investigative responsibility in the United States for child sexual assaults committed on commercial flights<sup>199</sup> and cruise ships.<sup>200</sup> The FBI's Civil Aviation Security Program (CASP) supports 475 FBI Special Agents and Task Force Officers assigned as Airport Liaison Agents at the nation's TSA regulated airports by providing operational support and training to the field, sharing intelligence, serving as a liaison to industry, and representing the FBI on aviation policy.

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<sup>198</sup> *Insights from OIG's Work on the Office of Refugee Resettlement's Efforts To Care for Unaccompanied Children*, OEI-09-21-00220, May 2021, <https://oig.hhs.gov/oei/reports/OEI-09-21-00220.asp>. The toolkit compiles insights, largely drawn from audits and evaluations conducted since 2008, including evaluations that were conducted following OIG's analysis of SIRs submitted by 45 facilities during the 2018 increase in unaccompanied children referrals.

<sup>199</sup> See, generally, *Violent Crime Prosecutors' Manual*, United States Department of Justice (2019), pp. 391-98 and 415-18 (discussing the special aircraft jurisdiction of the United States).

<sup>200</sup> *Id.* at pp. 99-109 (discussing extraterritorial maritime jurisdiction over sexual abuse on cruise ships).

## Commercial Flights



In April 2018, following a rise in sexual assaults on commercial flights, the FBI initiated a public awareness campaign.<sup>201</sup> Several months later, the FAA Reauthorization Act of 2018 was signed into law, requiring the Department of Transportation (DOT) to consider developing or addressing new passenger protections, including seating families with young children together and handling sexual assaults aboard commercial aircraft.<sup>202</sup> DOT subsequently formed the National In-Flight Sexual Misconduct Task Force.

In March 2020, the task force issued its report.<sup>203</sup> The report found that despite the vulnerability of children to sexual assaults on commercial flights, particularly children who are traveling alone, neither the Federal government nor the airline industry collect data on the number of incidents of in-flight sexual assaults of children.<sup>204</sup> The report also noted there are no federal regulations regarding children who are traveling alone with respect to seating assignments, or otherwise.<sup>205</sup> Airlines currently establish their own policies concerning children who are traveling alone.

DOT, however, does make available, on its website, a booklet titled *When Kids Fly Alone*, summarizing some of the most common airline policies designed to protect the well-being of unaccompanied children.<sup>206</sup> The task force recommended that airlines, airports, and appropriate Federal agencies engage in awareness campaigns to deter offenders and inform victims of available resources, including how to report incidents and the availability of victim support services.<sup>207</sup> Additionally, DOT leads the Blue Lightning Initiative (BLI), in partnership with DHS and CBP. The BLI trains aviation industry personnel to identify potential traffickers and human trafficking victims, and to report their suspicions to federal law enforcement.<sup>208</sup> To date, more than 200,000 personnel in the aviation industry have been trained through the BLI, and actionable tips continue to be reported to law enforcement.

Numerous obstacles exist to the effective investigation of sexual assaults committed against minors, and adult victims, on commercial flights. Airlines routinely maintain tight flight schedules for aircrafts, resulting in inadequate opportunities for the FBI to conduct a crime scene investigation or interview critical witnesses such as flight attendants and passengers. In cases

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<sup>201</sup> See, e.g., <https://www.fbi.gov/news/stories/raising-awareness-about-sexual-assault-aboard-aircraft-042618>; <https://www.fbi.gov/audio-repository/ftw-podcast-sexual-assault-aboard-aircraft-042618.mp3/view>; and <https://www.fbi.gov/file-repository/sexual-assault-aboard-aircraft-poster-042618.pdf/view>.

<sup>202</sup> Pub. L. No. 115-254, § 339A, 132 Stat. 3186, 3283 (2018).

<sup>203</sup> *A Report on Sexual Misconduct on Commercial Flights by the National In-Flight Sexual Misconduct Task Force*, Department of Transportation (March 16, 2020) at: <https://www.transportation.gov/individuals/aviation-consumer-protection/report-sexual-misconduct-commercial-flights-national>.

<sup>204</sup> *Id.* at p. 36.

<sup>205</sup> *Id.* at p. 36, n.74.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* at p. 70.

<sup>208</sup> [transportation.gov/administrations/office-policy/blue-lightning-initiative](https://www.transportation.gov/administrations/office-policy/blue-lightning-initiative)

where a complaint is made after the flight has reached its destination, or even later, a cleaning crew may have already “turned the cabin over” destroying critical evidence and passengers, who may be witnesses, have likely disembarked, moved on to connecting flights or have left the airport. When the offender is unknown to the victim, offender identification can raise challenges. Flight manifests, however, can provide some guidance to investigators. Finally, if the subject is a foreign national, he or she may be difficult to track as they continue onward to their next destination or return to their country of origin. Engaging the cooperation and assistance of the airline industry is crucial to the ability of federal law enforcement to effectively investigate and prosecute offenses occurring on commercial flights.

Prosecutorial challenges include establishing U.S. federal jurisdiction over the assault and identifying the proper venue to indict an alleged offender in the United States. When venue is not immediately clear, confusion and delay may compromise an immediate response by either the FBI or a USAO. In cases in which the offender may be a foreign national who has returned to their country of origin, the need to seek extradition may complicate a prosecution.

### *Cruise Ships*

The Cruise Vessel Security and Safety Act (CVSSA),<sup>209</sup> enacted in July 2010, requires cruise lines operating ships that embark or disembark passengers in the United States to take certain actions related to passenger safety. Safety measures include, providing cabins equipped with security latches and time-sensitive key technology, limiting crew access to passenger cabins, maintaining a video surveillance system to assist in documenting crimes on the vessel and in providing evidence for the prosecution of such crimes, and employing qualified medical staff to help in the event of sexual assault.<sup>210</sup> Sexual assaults on cruise ships were the leading cruise vessel crimes reported to the FBI between 2010 and 2013.<sup>211</sup> Minors were the victim in a significant percentage of total alleged sexual assaults on cruise vessels, according to a July 2013 Congressional staff report.<sup>212</sup>

Many of the challenges that arise when investigating and prosecuting offenders who sexually assault minors on airlines also apply to cases wherein minors are sexually assaulted on cruise ships. Cruise ships also maintain relatively tight schedules, often in port for a limited time, frustrating investigators’ ability to conduct a comprehensive crime scene investigation. Cruise passengers may have disembarked and returned to locations both domestic and international making them difficult to identify and track for interviews. Cruise ship employees are particularly difficult to track down and maintain contact with because they are often foreign nationals. The assistance of the cruise line becomes critical to making and establishing contact with their employees and to encouraging those employees who may be witnesses to cooperate with United States law enforcement. Cooperation is paramount because the United States lacks subpoena power over foreign nationals.

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<sup>209</sup> Pub. L. No. 111-207, 124 Stat. 2243 (2010).

<sup>210</sup> GAO-14-13 at p.1 n.3.

<sup>211</sup> *Cruise Vessels: Most Required Security and Safety Measures Have Been Implemented, but Concerns Remain About Crime Reporting*, GAO-14-13 (December 2013) at p.25.

<sup>212</sup> *Cruise Ship Crime: Consumers Have Incomplete Access to Cruise Crime Data*, Senate Committee on Commerce, Science, and Transportation (July 24, 2013) at p.iii at <https://www.commerce.senate.gov/services/files/b6b046f1-eb82-404e-a0cc-9cd26a74117f>.

Many cruise ships have their own security personnel who may examine a crime scene or take statements of witnesses, the victim, or the offender before the FBI can engage. While these efforts are sometimes beneficial to law enforcement, it may also complicate a prosecution if ship security contaminated a crime scene or otherwise compromised evidence. Statements obtained by ship security personnel, who may not be experienced interviewers, may also later raise prosecutorial challenges if witness statements appear to be inconsistent. Finally, jurisdiction, venue, and extradition issues can create further prosecutorial challenges. Further complications arise when the alleged offenders are juveniles and perhaps even foreign national juveniles.

### Strategic Response

Short-Term Goals	Long-Term Goals
<b>Indian Country</b>	
<p><b>Increase number of Tribal SAUSA prosecuting child exploitation crimes:</b> Working with DOJ components like OVW and BJA, increase the number of Tribal SAUSAs skilled in prosecuting child sexual assault cases and failure to register as a sex offender cases in tribal and federal courts.</p>	<p><b>Expand training for Tribal SAUSAs on prosecuting child exploitation:</b> Ensure that a robust training curriculum is developed and maintained for Tribal SAUSA program to ensure Tribal SAUSAs have necessary skills to complete their mission.</p>
<p><b>Increase AUSAs in Oklahoma:</b> Increase the number of AUSAs in Oklahoma to address the increased number of child sexual assault case referrals to the USAOs due to the <i>McGirt v. Oklahoma (MvO)</i> Supreme Court decision in July of 2020, which changed the jurisdictional landscape of Indian country in Oklahoma.</p>	<p><b>Evaluate and adjust court staffing levels:</b> Continue to monitor, assess, and adjust staffing levels as state and federal courts issue opinions in a myriad of appellate cases involving the primary issue of jurisdiction of violent crime in Indian country. Work with DOJ grant making components to help tribes build capacity to investigate and prosecute these crimes and to fund prevention and recovery programs.</p>
<p><b>Offer forensic training for those serving Indian country:</b> The National Indian Country Training Initiative (NICTI) will host forensic interviewing training for federal, state, and tribal prosecutors, law enforcement, and social workers responding to cases of child sexual abuse. Training topics will include evidence collection, suspect interviews, trial strategies for prosecutors, forensic interviews, expert witness training for SANEs, and conducting a trauma-informed investigation and prosecution.</p>	<p><b>Offer child exploitation-related trainings to educators:</b> The NICTI should continue to develop their catalog of training options on issues connected to child sexual assault and expand to other relevant parties, including educators and school personnel.</p>



<p><b>Foster greater collaboration across various USAO roles addressing child sexual abuse in Indian country:</b> The NICTI should work with Department components to conduct training regarding overlapping child sexual abuse issues addressed by these different USAO positions: Tribal Liaisons, PSC Coordinators, Victim Witness Coordinators, and Human Trafficking Coordinators. The NICTI will work with DOJ components to ensure that these joint coordination trainings are held at least every other year.</p>	<p><b>Expand use of task force collaboration models in investigations:</b> Increase partnerships and collaboration between tribal law enforcement and non-tribal law enforcement (federal, state, and local), prosecutors, medical providers, school personnel, mental health professionals by using MDTs, SANE/SARTs and local ICACs where appropriate. MDTs should institute training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.</p>
<p><b>Review Chapter 109A:</b> Convene a working group to examine the effectiveness of the current federal sexual assault statutes found in Chapter 109A and, if necessary, propose legislative fixes.</p>	<p><b>Recommend and implement any necessary changes to Chapter 109A:</b> Work with relevant agencies to seek legislative changes to Chapter 109A and other statutes used to investigate and charge child sexual abuse.</p>
<p><b>Coordinate training efforts:</b> Create a process so that DOJ-funded training on child exploitation matters provided by Training and Technical Assistance Providers is reviewed and coordinated with the Department’s National Indian Country Training Initiative (NICTI).</p>	<p><b>Enhance training based on latest research:</b> Ensure that DOJ funded Training and Technical Assistance Providers are hosting training that supports DOJ priorities, is based on current research and science, and is delivered by competent experienced subject matter experts.</p>
<p><b>Expand TAP:</b> Continue to provide and expand the Department’s Tribal Access Program (TAP), including training and support to the tribes that are currently participating or have recently been accepted into TAP.</p>	<p><b>Provide adequate resources and staffing in Indian country:</b> Ensure access to all eligible tribal agencies whose staff have contact with or control over Indian children; civil agencies that investigate allegations of abuse, neglect, and exploitation of children; sex offender registration agencies; public housing agencies; child support enforcement agencies; Head Start programs; and civil courts that issue orders of protection, injunctions, restraining orders or other keep away orders.</p>

<b>Military</b>	
<p><b>PCA and PCA-Restriction Compliance:</b> Online investigations conducted by MCIOs should be required to uniformly comply with the PCA and PCA restrictions.</p>	<p><b>Training for Military Special Agents:</b> MCIOs should review the training provided to special agents regarding the PCA and PCA-like restrictions and provide augmented training as appropriate. MCIO offices should coordinate their online child exploitation investigations with the appropriate United States Attorney’s Office or DOJ’s Child Exploitation and Obscenity Section to help ensure PCA and PCA-like restrictions compliance.</p>
<p><b>Establish and Update MOAs and Retrocede Exclusive Federal Jurisdiction:</b> Military installations should be required to update or establish MOAs with their corresponding United States Attorney’s Office and local/state authorities for the referral of juvenile offenses to the state juvenile justice system. Military departments should establish concurrent jurisdiction with the respective states for offenses committed by juveniles in areas on military installations that are currently exclusive federal jurisdiction.</p>	<p><b>Full Access to State Juvenile Justice Systems:</b> Processes and standards should be put in place to ensure military children are no longer deprived of access to a state’s juvenile justice system when an incident occurs in exclusive federal jurisdiction, on any military installation, or overseas.</p>
<p><b>Child Advocacy Center Access:</b> Each military service should establish an MOU with the National Children’s Alliance that makes children’s advocacy center services available to all of the service’s installations.</p>	<p><b>Child Advocacy Center Access:</b> All child victims should have eligibility to receive services if they are within a children’s advocacy center’s service area.</p>
<p><b>Fix Legislative Gaps:</b> Enact legislation to confer jurisdiction to state juvenile justice systems for any juvenile offense committed in a “Federal Area”, including military installations, and those committed in a foreign country by juveniles accompanying the Armed Forces.</p>	<p><b>Unsafe Homes Overseas:</b> DOD and each military service should clarify guidance around when commanders may exercise their authority to remove a child from a potentially unsafe home on an overseas installation. The safety of children overseas should be ensured by consistent and timely removal from unsafe homes.</p>
<p><b>Comprehensive Information is Provided to Victims:</b> Following a report of child sexual abuse, procedures should be established dictating that victims’ families are comprehensively informed about how reported incidents of child abuse will be addressed following the report.</p>	<p><b>Pediatric Sexual Assault Forensic Examiners:</b> DOD should establish processes that ensure children who are sexually abused overseas have timely access to a certified pediatric sexual assault forensic examiner to conduct the examination.</p>

<b>Unaccompanied Noncitizen Minors</b>	
<b>Increase Staff Training:</b> Homeland Security Investigations should train relevant staff in ICE facilities about the forensic interviewing process, including how to identify and develop the facts that support cases of sexual abuse.	<b>Support Ongoing Training Needs:</b> OTIP will provide training on an ongoing basis to ICE and ORR staff on identifying, responding, and reporting trafficking concerns for foreign national minors.
ORR will work with facilities to address staffing shortages of youth care workers.	ORR will systematically collect key information about incidents that allows for efficient and effective oversight.
<b>Update Reporting Guidance:</b> ORR should improve its guidance to help facilities consistently identify and report significant incidents.	<b>Improve Tracking Mechanisms:</b> ORR should track and monitor trends in incident reports to identify opportunities to better safeguard minors.
<b>Commercial Flights &amp; Cruise Ships</b>	
<b>Awareness Campaigns &amp; Staff Training:</b> Awareness campaigns should be conducted to deter individuals from committing child sexual assault on commercial flights and cruise vessels, and to inform crime victims and witnesses on how to report such incidents and services available. Airlines and cruise lines should develop trainings to assist flight attendants and cruise line employees identify situations that create vulnerabilities or recognize conduct by a juvenile that might indicate distress	<b>Reporting Sexual Assaults:</b> Airlines or cruise lines should be encouraged to have routine/standard mechanisms in place that facilitate flight attendants' and employees' ability to capture critical information that may include: identity of employees on duty during the event; specific date and time of the event to establish the precise location of the carrier; identifying information (physical and biometric) if the offender can be readily determined; and the identity and basic contact information of possible witnesses.
	<b>Cruise Lines:</b> Cruise lines should establish video monitoring of areas frequented by minors including child-care facilities on the ship, engage in stringent vetting of employees that interact with minors regularly, and ensuring ship security routinely review video of those locations in which minors are consistently present (e.g., day care and child camps). <b>Airlines:</b> Airlines should be required by the FAA to adopt uniform policies involving minors traveling alone.

## **Training, Education and Coordination**

### *Indian Country*

Educators and school personnel on or near tribal communities must be knowledgeable about federal mandatory reporting of child abuse laws. Therefore, the National Indian Country Training Initiative (NICTI) will convene a working group of AUSAs and Bureau of Indian Education personnel to review current mandatory reporting laws and to develop a training that can be exported to the USAOs for tribal liaisons and AUSAs to deliver locally.

The NICTI will ensure that these training materials are continually updated and that all tribal liaisons in USAOs, federal law enforcement, and tribal law enforcement, child welfare workers and school personnel have an opportunity to receive an annual training on the topic of federal laws concerning mandatory reporting of child abuse.

### *Military*

To ensure online investigations conducted by MCIOs uniformly comply with the PCA and PCA restrictions, MCIOs should review the training provided to special agents and provide augmented training as appropriate. MCIO offices should also coordinate their online child exploitation investigations with the appropriate United States Attorney's Office or DOJ's Child Exploitation and Obscenity Section to help ensure PCA and PCA-like restrictions compliance.

Training should also be provided around problematic sexual behavior in children and youth, including topics like the limitations of military law enforcement agencies in many of these allegations. For most of these allegations, when there is a criminal element, the DOD does not have jurisdiction to open a criminal investigation. If the jurisdiction to open a criminal investigation is present, DOD law enforcement agencies usually lack a prosecutorial avenue (i.e., the children and youth are not subject to the UCMJ and there is no federal juvenile court system).

Because MOUs are needed to authorize services associated with a Family Advocacy Program referral, each military service should seek to develop a memorandum of understanding with the National Children's Alliance that makes children's advocacy center (CAC) services available to all the service's installations. Each military service should establish efforts to comprehensively inform victims' families about how reported incidents of child abuse will be addressed following the report. DOD should also establish processes that help ensure children who are sexually abused overseas have timely access to a certified pediatric sexual assault forensic examiner to conduct the examination. DOD and the military services should also clarify, in guidance, the circumstances under which commanders may exercise their authority to remove a child from a potentially unsafe home on an overseas installation.

### *Commercial Flights*

Efforts by FBI to re-initiate their prior awareness campaigns, coordinate closely with local law enforcement at airports within their respective Area of Responsibility (AOR), engage with commercial airline leadership, and streamline criminal referrals from the FAA may prove to be

fruitful avenues to address sexual assaults against children, as well as other crimes on board aircraft. In turn, the Department can provide necessary training to FBI counterparts, further engage on policy and other initiatives that strengthen FBI capacity, and promote aggressive prosecution of sexual offenses committed against children on commercial flights.

To that end, the Department (specifically the Human Rights and Special Prosecutions Section of the Criminal Division) has engaged on matters involving both domestic and extraterritorial criminal offenses occurring on board commercial airline flights. Such engagement has included coordination with FBI, EOUSA and the FAA on policy, legislation, and prosecutorial issues. In addition, in connection with HRSP's extraterritorial violent crime portfolio, HRSP provides training to FBI special agents on violent offenses committed on board aircraft at the FBI's yearly conference hosted by the Indian Country and Special Jurisdiction Unit (formerly the International Violent Crime Unit). HRSP also provides consultation and guidance to federal investigators and federal prosecutors as requested, maintains written materials and sample filings available to all federal prosecutors, and coordinates with EOUSA to communicate DOJ's priorities and resources to the USAO community.

### *Cruise Ships*

Efforts by FBI and the Coast Guard to initiate awareness campaigns, engage with commercial cruise companies, and strengthen resources and capacity in AORs that have a large cruise industry presence (e.g., Miami, Tampa, Seattle) may prove to be fruitful avenues to address sexual assaults against children, as well as other crimes on board cruise ships. In turn, the Department can provide necessary training to FBI and the Coast Guard, further engage on policy and other initiatives that strengthen FBI and Coast Guard's investigative capacity, and promote aggressive prosecutions of sexual offenses committed against children on cruise ships.

The Department through HRSP routinely provides guidance to law enforcement and others on violent criminal offenses occurring on cruise ships and other maritime vessels. In connection with HRSP's extraterritorial violent crime portfolio, HRSP provides training to FBI special agents on violent offenses committed on maritime vessels at the FBI's yearly conference hosted by the Indian Country and Special Jurisdiction Unit. HRSP also consults with and provides guidance to federal investigators and prosecutors, provides written materials and sample filings to AUSAs, and coordinates with EOUSA to communicate information to the USAO community.

## **Legislation**

### *Indian Country*

The Department will convene a working group to examine the effectiveness of the current federal sexual assault statutes found in Chapter 109A and, if necessary, propose legislative fixes. For example, current federal law does not provide an offense for when a person in a position of authority, like a teacher, engages in a sexual relationship with a student who is older than 16 and there is no force used by the teacher or fear experienced by the minor. This is a gap that should be reviewed by the working group to propose appropriate solutions.

## *Military*

Extraterritorial jurisdiction over offenses committed by retired military member or military reservists is subject to confusion and at times competing legal opinions as to MEJA's applicability. Legislative efforts are also necessary to clarify the scope of MEJA's applicability to "retired military members who remain subject to recall" and "military and national guard reservists who commit extraterritorial offenses while in an active status or executing orders, but then at the time of investigation and prosecution are no longer active, or, alternatively, commit the offense when they are not in an active status but their reserve commitment has not yet expired leaving them capable of being recalled by the military to active duty." Enacting legislation can fix existing jurisdictional gaps that might frustrate accountability for criminal offenses committed extraterritorially by these categories of individuals against children.

To ensure that military children are not deprived of access to a state's juvenile justice system, Congress should also enact legislation to expressly give states jurisdiction over juvenile offenses committed in areas of exclusive federal jurisdiction so that states' juvenile justice systems can intervene and exercise jurisdiction over an incident occurring on a military installation, so long as federal authorities choose not to exercise jurisdiction over the incident.

Additionally, the fact that there is no established process to issue a federal arrest warrant through the UCMJ should be addressed. The inability to obtain federal arrest warrants slows and often hinders the investigation and prosecution. There are several examples where the individual who is subject to UCMJ whereabouts are known however the DOD lacks the ability to obtain a federal arrest warrant. Legislative efforts to create processes for federal arrest warrants through the UCMJ is necessary to eliminate any gaps in coverage that might frustrate accountability for criminal offenses committed extraterritorially by these categories of individuals against children.

## **Funding & Resources**

### *Military*

More funding and resources should be allocated to address problematic sexual behavior in children and youth, including to remove barriers preventing military children from having access to state juvenile justice systems and rehabilitative programs and to establish concurrent jurisdiction, with the respective states, for offenses committed by juveniles in areas on military installations that are currently exclusive federal jurisdiction, through the existing statutory process of "retrocession."

## **Investigations & Operations**

### *Indian Country*

Many child sexual abuse victims report the offense weeks, months, or years after the crime. And some victims never disclose what happened to them. To ensure that cases with delayed disclosures are investigated with the same tenacity as a case with an immediate outcry, the NICTI and FBI Child Adolescent Forensic Interviewers will develop and deliver training for

tribal and federal law enforcement about the effects of trauma on the brain, the reasons for delayed reporting, and how to investigate and prosecute cases with delayed reporting.

The Department will work with federally recognized tribes to increase tribe's capacity to respond to these offenses. Specific examples include strengthening the community response, developing safe places for children to disclose abuse; increasing awareness among judiciary; and investing in Family Violence Programs, with a focus on prevention education and providing resources to families to understand DV, sexual violence, and historical trauma.

In some communities there are challenges coordinating federal, state, and tribal responses to child exploitation crimes occurring in tribal communities. This can be due to jurisdictional complexities present. One way to answer some of these questions before a crime occurs is through a robust MDT where issues like criminal jurisdiction can be discussed. Therefore, AUSAs will be reminded to fully engage with MDTs hosted by tribes in their districts. And, where an MDT is not currently in place, AUSAs will be encouraged to discuss with their tribal partnerships the benefits of starting an MDT.

Finally, turnover of tribal law enforcement and child welfare personnel in some tribal communities is a persistent problem. In the short term, relevant DOJ personnel should engage with DOI officials to be briefed on the "spending, staffing and unmet needs assessment" that BIA is obligated to report to Congress pursuant to the Tribal Law and Order Act. The Department should explore with the grant making components the availability of grant funds to support the hiring of criminal justice and child welfare professionals working in tribal communities. In addition, the NICTI together with the grant making components will work to ensure that new hires have training opportunities, and that technical assistance is available to the tribes so that tribal capacity to handle these crimes is strengthened.

### **Enforcement and Removal Operations for Serious Crimes Committed by Noncitizens**

A critical part of the law enforcement mission of U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) is the identification, arrest, and removal of noncitizens who are a threat to public safety. Those who have committed serious crimes, including sex offenses against children and human smuggling and trafficking, are a top priority for ERO. ERO enforces multiple statutes that are directly related to human trafficking and sexual exploitation of children, and works with law enforcement partners at the federal, state, and local level to combat these offenses. Under the Immigration and Naturalization Act (INA), key provisions include:

- INA § 101(a)(43)(A), 8 U.S.C. § 1101(a)(43)(A), Murder, Rape, or Sexual Abuse of a Minor
- INA § 101(a)(43)(F), 8 U.S.C. § 1101(a)(43)(F), Crimes of Violence
- INA § 101(a)(43)(I), 8 U.S.C. § 1101(a)(43)(I), Child Pornography
- INA § 101(a)(43)(K), 8 U.S.C. § 1101(a)(43)(K), Prostitution and Slavery Offenses

In FY 2022, ERO arrested 46,396 noncitizens with a criminal history, including 198,498 charges and convictions. These included charges or convictions for 8,164 sex offenses and sexual assaults, many of which involved underage victims.

ERO has the unique ability to remove those who have committed serious crimes, including child exploitation and human trafficking. During FY 2022, ERO removed 44,096 noncitizens with a criminal history. This totaled 183,251 charges and convictions, including 7,370 charges and convictions for sex offenses and sexual assault, many of which also involved underage victims.

### *ERO Arrest Mechanisms*

ERO relies on statutory law enforcement authority to identify and arrest noncitizens in the interior of the United States who may present a threat to national security or public safety, or who otherwise undermine the integrity of U.S. immigration laws. ERO utilizes targeted, intelligence-driven operations to prioritize its enforcement actions in a manner that helps protect communities nationwide. While ERO primarily conducts administrative arrests of noncitizens it has probable cause to believe are removable from the United States, it also has the authority to execute criminal arrest warrants and initiate prosecutions for criminal activity, including immigration-related crimes. As part of this process, ERO's Fugitive Operations teams identify and arrest foreign born criminals, including sex offenders, at-large within U.S. communities, while ERO's Criminal Apprehension Program identifies noncitizens in state and local jails who have been arrested for criminal activity. Additionally, ERO periodically runs operations targeting specific groups of serious criminals, such as Operation Sex Offender Arrest and Removal (SOAR).

### *Operation Sex Offender Arrest and Removal (SOAR)*

ERO's SOAR is a coordinated enforcement operation that specifically targets noncitizen sex offenders. It seeks to identify, arrest, and remove those who have committed sex crimes, including the exploitation of children, ensuring these individuals are removed from the community. During the latest version of SOAR, which occurred in late October and early November 2022, ERO administratively arrested 138 sex offenders with 403 charges and convictions associated with them – including at least 100 charges and convictions involving the sexual exploitation or abuse of minors.



## Extraterritorial Child Sexual Abuse

### Terminology

Extraterritorial child sexual abuse is often misleadingly referred to as “child sex tourism.” Characterizing the offense as tourism downplays both the offender’s criminal conduct and the harms caused by these serious crimes. Additionally, because the term focuses on tourism, offenders permanently residing abroad or travelling on business or other types of travel may be overlooked.<sup>213</sup>

“Illicit sexual conduct” is defined as certain federally proscribed sexual acts, commercial sex acts, and production of child sexual abuse material (CSAM).<sup>214</sup>

Extraterritorial child sexual abuse, often misleadingly referred to as “child sex tourism,” involves United States citizens or lawful permanent resident aliens<sup>215</sup> who either: 1) travel to a foreign country with a *motivating purpose* of engaging in any “illicit sexual conduct” with a minor<sup>216</sup>; or 2) travel to, or reside in, a foreign country *and engage in* “illicit sexual conduct” with a minor.<sup>217</sup> It is irrelevant if under the foreign country’s laws the minor is of legal age or the sex act is not considered a crime. Offenders often travel to impoverished countries where they seek to take advantage of inadequate laws, weak law enforcement responses, corruption, high levels of poverty, desperate families, and the anonymity that comes with being abroad.

There is no single profile of an extraterritorial child sex abuser. Offenders include teachers, clergy, humanitarian workers, doctors, businesspeople, and government employees who use their American status and financial assets to take advantage of at-risk children. Offenders may also be expatriates (“ex-pats,”) that is, Americans

who permanently relocate abroad. Offenders may have prior convictions for child sex offenses or have no criminal history. Offenders have been known to seek employment or volunteer opportunities that give them access to children.

Children in developing countries are seen as easy targets by American perpetrators because they are perceived as vulnerable due to unstable or unfavorable economic, social, or political conditions. Parents and caregivers may offer their children for commercial sex with foreigners or may look the other way when there is a financial benefit for allowing access to a child. Additionally, some countries lack effective law enforcement to investigate and prosecute the crime, aggravating the problem. Thus, offenders may believe they can abuse children without consequence, relying on their American status and the value of the American dollar and assuming local citizens are reluctant to report. Some

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<sup>213</sup> Terminology Guidelines for The Protection Of Children From Sexual Exploitation And Sexual Abuse, Interpol 2016, <https://www.interpol.int/en/Crimes/Crimes-against-children/Appropriate-terminology>

<sup>214</sup> 18 U.S.C. § 2423(e).

<sup>215</sup> In certain government communications, the preferred terms for individuals who are not a citizen or national of the United States are “noncitizen” or “migrant.” See <https://www.justice.gov/eoir/book/file/1415216/download>. In this context, the relevant statute (18 U.S.C. § 2423) uses the term “alien admitted for permanent residence” which has a specific legal meaning. See 8 CFR § 245a.10.

<sup>216</sup> 18 U.S.C. § 2423(b).

<sup>217</sup> 18 U.S.C. § 2423(c).

offenders rationalize their acts as acceptable, perceiving themselves as helping the children and their families financially.

Technological advances have revolutionized the ease of international travel and the exchange of information, including how and where to find child victims in foreign locations. While much of this predatory conduct occurs in less developed countries, such as areas in Southeast Asia, Central and South America, and Africa, extraterritorial sexual exploitation of children by American perpetrators occurs all over the world. The United States must play a significant role in deterring U.S. citizens and residents from committing these acts abroad.

### **Difficulty Identifying and Finding Victims in Foreign Jurisdictions**

Successful prosecution of extraterritorial child sexual abuse often requires victims' identification and cooperation. However, victims may be reluctant to report the abuse for many reasons including distrust of police generally or a lack of knowledge about how to contact United States law enforcement in lieu of contacting local authorities. Corruption and fear of being stigmatized as a victim of sexual abuse may also factor into victims' unwillingness to report. Offenders often provide money, food, school supplies, cell phones, or something else of value to victims and their families to build trust, loyalty, and dependency. Offenders build long-term relationships with the victims' families by paying school tuition, taking them on vacation, providing English lessons, or providing other services and financial assistance. This calculated grooming behavior is designed to add pressure not to report and may be combined with telling or implying to victims and their families that they might get in trouble and the financial assistance would end.

Even when victims come to the attention of their local law enforcement and U.S. law enforcement, they may be difficult to locate throughout the investigation and prosecution process. Due to poverty, many victims do not have stable housing, or even access to a telephone or other means of consistent communication. They may live in extremely rural areas without access to transportation. There may be cultural or language barriers, differing knowledge or expectations of legal systems, or continued loyalty to the offender. Often, travel by investigators, forensic interviewers, and prosecutors will be necessary to meet victims and families to understand the extent of abuse and pave the way for a successful prosecution. There is often a lack or shortage of culturally sensitive and trauma-informed therapeutic resources and support to assist the victims in their home country and keep them engaged through the investigation and prosecution process. Maintaining lines of communication with the victims throughout the process is one of the biggest challenges of successful prosecution of these cases.

### **Grooming Foreign Victims**

American offenders will use their status and money in a foreign country to buy food, clothes, toys, and electronics for their targeted victims. Offenders may also pay for a victim's education, provide English lessons, take the victim or the victim's family on vacation, or offer to work on or around the home, all to develop a relationship of trust, control, and dependence with the victims and their families.

## Family Member and Caregiver Offenders

When the perpetrator or the facilitator of the abuse is a family member or caregiver, there can be even greater pressures on the victims not to disclose the abuse. These trusted people in a child's life have been known to sell or rent children to an offender for subsistence money or other financial gain, thus acting as a sex trafficker. In other scenarios, they may be aware of the sexually illicit activities, but do not get involved or stop the activities because of the financial gain. A 2019 study of the nature and scale of the online sexual exploitation of children in the Philippines<sup>218</sup> found that biological parents facilitated the abuse in 41% of cases, while other relatives facilitated the abuse in 42% of cases.<sup>219</sup>

Foreign law enforcement may be unwilling to investigate what it considers intrafamilial abuse, making it particularly difficult to bring these offenders to justice. Even if child victims are recovered, children and parents or guardians who perpetrated the abuse will need separate housing to prevent further abuse, and there may be limited child protective services or guardian ad litem programs to facilitate the protection and care of the victims, including removal of the offending parents or guardians from the home.

### Case Study: *U.S. v. Dow*

In 2008, Gregory Dow and his family traveled from their home in Lancaster County, PA to the Republic of Kenya to start an orphanage. The orphanage, which came to be known as the Dow Family Children's Home, was established near Boito, Kenya, and remained in operation for nearly a decade with financial support from donors in the United States, including churches and other faith-based organizations.

In September 2017, Kenyan authorities learned that Dow had sexually abused children in his care. Dow fled Kenya when the allegations came to light, returning to Lancaster County. Acting on information provided by Kenyan women living in the United States, the FBI investigated the allegations and determined that Dow had sexually abused at least four teenage girls between October 2013 and September 2017. Two of the girls were as young as 11 years old when the abuse began. Dow's wife even transported the victims to a medical clinic to have birth control devices implanted into their arms, which allowed Dow to perpetrate his crimes without fear of impregnating his victims. Dow purported to be a Christian missionary who cared for these children and asked them to call him "Dad." But instead of being a father figure, he preyed on their youth and vulnerability.

In July 2019, Dow was charged in a four-count indictment; he pleaded guilty to all four counts in June 2020 and was sentenced to 15 years, eight months in prison, a lifetime of supervised release, and ordered to pay \$16,000 in restitution.

<sup>218</sup> While online sexual exploitation is the subject matter of another national strategy segment, there is overlap in the subject matter of these topics.

<sup>219</sup> [https://ijmstoragelive.blob.core.windows.net/ijmna/documents/Final\\_OSEC-Public-Summary\\_05\\_20\\_2020.pdf](https://ijmstoragelive.blob.core.windows.net/ijmna/documents/Final_OSEC-Public-Summary_05_20_2020.pdf)

## Difficulty in Securing Evidence and Witnesses for Trial

Extraterritorial offenses are extremely difficult to investigate and prosecute because most of the evidence and witnesses are in foreign countries. The evidence-gathering process can be slow and uncertain. For example, the ability of U.S. law enforcement to gather information from and maintain access to foreign victims often relies heavily on coordination with foreign law enforcement and non-government organizations (NGO). This may involve submitting requests for evidence pursuant to a Mutual Legal Assistance Treaty or a discretionary letter rogatory, which can sometimes be cumbersome, with no guarantee that the evidence will be provided in a timely manner, or at all. Some countries have privacy laws that may result in refusal or reluctance to allow access to certain pieces of critical evidence identifying victims.

In many cases involving evidence on electronic devices, by the time U.S. law enforcement receives reports of abuse by an American offender, the ability to obtain forensic evidence from electronic devices from either the offender or the victim, may be gone. Foreign law enforcement may not have the tools, protocols, or training to preserve technological evidence, so evidence may be lost or inadmissible in a U.S. prosecution.

Additionally, before U.S. law enforcement involvement, victims may have already been through multiple rounds of interviews, sometimes conducted by untrained individuals who ask questions in a manner that might affect the victims' testimony or cause additional trauma. Even when trained U.S. law enforcement can conduct a trauma-focused forensic interview of a child victim, it may be difficult to coordinate how to conduct that interview in the child's first language without losing the integrity of the child's disclosure or appropriate interview techniques.

While the United States cannot compel a foreign victim or witness to testify at trial in the United States, they may agree to participate. In such a case, extensive preparation and logistical coordination is necessary. Victims and witnesses may need passports, assistance with travel, food, lodging, and weather-appropriate clothing, and if they are minors, they may need to be accompanied by a parent or guardian. Cultural and language issues are also often present when attending and participating in a trial in the United States, a foreign country for them.

The U.S. government has a mechanism in place called Significant Public Benefit Parole that can be utilized to allow a foreign victim without U.S. immigration status to enter the U.S. legally to assist with an investigation. Using this mechanism, in conjunction with Continued Presence which allows this type of victim to remain in the U.S., provides foreign victims access to U.S. based trauma-informed therapeutic resources and victim services. Other immigration options such as T and U nonimmigrant status may also be available.<sup>220</sup> Individuals are only eligible for T visas if they are physically present in the U.S. or territories, or at a port of entry on account of trafficking, while U visas are available regardless of the victim's location. These resources can also assist in building trust between law enforcement and the victim.

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<sup>220</sup> T immigrant status and U nonimmigrant status, commonly referred to as a T visa and the U visa, was created in October 2000 as part of the Victims of Trafficking and Violence Protection Act.

<https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes>; *see also* <https://www.dol.gov/agencies/whd/immigration/u-t-visa>

## **Legal Limitations for U.S. Prosecutions**

### *Securing the Defendant from Overseas*

The ability to secure custody of offenders from overseas to face U.S. prosecution is often dependent on the relationship between the United States and the foreign country. When the offender is a U.S. citizen, the State Department may revoke the offender's U.S. passport based on an active felony arrest warrant, which can be sought after the United States files charges. Once the passport is revoked, the United States can ask the foreign country to deport the offender to the United States. Sometimes foreign authorities will remove the offender from their country but will not force the person to return to the United States, or they may not communicate with the United States about the timing of the offender's deportation. This is particularly likely when the offender is being released from prison in the foreign country. In such cases, foreign authorities may be reluctant to initiate deportation proceedings prior to the termination of the offender's local sentence, but the United States may not have any warning as to when the offender will be released and thus may not have sufficient time to file charges to compel deportation upon the offender's release. If, upon release, the offender is allowed to remain in the foreign country or removed to a third country, he may hide to avoid U.S. prosecution.

### *Venue*

Depending on the circumstances of the crime and the defendant's actions prior to going abroad, venue for an offender's extraterritorial child sexual abuse crime may be found in various locations, including the location of the defendant's last known U.S. residence, where he traveled from prior to departing the U.S., where he was first brought back into the U.S., or where he was arrested. Proper venue can differ depending on whether charges are brought via complaint or indictment and may differ for related but separate extraterritorial crimes. Basing venue on the defendant's last known residence brings certain challenges. For example, if the defendant has been abroad for a long time, his last known residence may be difficult to establish, or if the defendant returns to a different location in the United States before charges have been finalized, the district that has venue may change during the investigation. Further, the district of last known residence may not have the specialized experience and sufficient investigative resources for this type of complex investigation. Basing venue on the defendant's arrest or where he is first brought is also complicated because that location may not be known in advance and may be subject to a particular commercial flight itinerary.

### *Restitution*

While restitution may be awarded to victims of extraterritorial sexual abuse as part of a successful U.S. prosecution, calculation of a proper award and challenges with delivery to victims living in a foreign country can make the availability of the award challenging. First, it may not be common practice for foreign victims to have access to receipts or documentation for out-of-pocket expenses. It may also be difficult to determine the availability or cost of any future therapy given the lack of therapeutic resources available to a victim in his or her country. Even if an amount of restitution can be calculated, restitution payments are provided in the form of a U.S. Treasury check. Many foreign victims do not have bank accounts or the means or

knowledge to facilitate cashing or maintaining the restitution payment. Even if they do, some foreign banks will not accept a U.S. check. If the victim can receive the money, a sudden influx of cash can make the victim a target for other crimes. This is especially true if the victim is still a minor and needs a guardian to handle the money. Finally, if a defendant does not have the means to pay the restitution award up front, the money is typically paid in small amounts throughout the defendant's sentence or life. This requires sending small payments to the foreign victims over the course of many years, many of whom do not have stable addresses or means of contact. Local NGOs can assist with some of these issues, but at the time of sentencing (when the restitution order is typically finalized), it may be difficult to identify an NGO that can establish a trust for the victim and maintain contact with the victim for many years.

### Case Study: U.S. v. Johnson

Between November 2005 and his arrest in December 2013, Daniel Stephen Johnson, 40, of Coos Bay, Oregon, systematically and repeatedly molested children who lived at an unlicensed orphanage he started and ran in Phnom Penh, Cambodia. Johnson funded the orphanage by soliciting donations from church groups in Oregon, California, Texas, and elsewhere. Ten Cambodian victims—who ranged in age from seven to 18 years old at the time of abuse—disclosed Johnson's abuse or attempted abuse.

Victims described a range of sexual abuse, including waking to Johnson sexually abusing them. Following the abuse, Johnson would sometimes provide his impoverished victims with small amounts of money or food. On one occasion, Johnson gave a victim the equivalent of \$2.50 in Cambodian currency.

In 2013, a warrant was issued for Johnson's arrest on an unrelated case by officials in Lincoln County, Oregon. Local law enforcement officers worked with the FBI to locate Johnson overseas. The FBI in turn worked with the State Department to revoke Johnson's passport based on the Oregon warrant. Through the work of the FBI, Action Pour Les Enfants, a NGO dedicated to ending child sexual abuse and exploitation in Cambodia, and the Cambodian National Police (CNP), authorities were able to locate Johnson in Phnom Penh.

On December 9, 2013, CNP arrested Johnson. Based on disclosures made by children at the orphanage, Cambodian officials charged Johnson and detained him pending trial. In May 2014, Johnson was convicted by a Cambodian judge of performing indecent acts on one or more children at the orphanage and sentenced to a year in prison. Following his release from prison, Johnson was escorted back to the United States by the FBI.

Based on the sexual-abuse allegations against him, the FBI undertook a lengthy investigation of Johnson. During their investigation, agents interviewed more than a dozen children and adults who had resided at the orphanage, with help from child-forensic interviewers in Cambodia. Some victims were interviewed multiple times before disclosing Johnson's abuse.

While in custody awaiting trial, Johnson made multiple efforts to tamper with witnesses and obstruct justice. Johnson contacted his victims online, encouraging them to lie and offering money and gifts. One message, sent via his relative's Facebook account to an adult in

Cambodia, discussed visiting a victim's family and encouraging them to convince the victim to retract their statement, potentially in exchange for \$10,000. Another message explains the need for a victim to say they were under duress and "pushed by police" to thumbprint a document.

In 2018, Johnson's jury trial resulted in his conviction on six counts of engaging in illicit sexual conduct in a foreign place and one count each of travel with intent to engage in illicit sexual conduct and aggravated sexual assault with a child. He was sentenced to 30 years in prison on each count of illicit sexual conduct in a foreign place, 30 years for traveling with the intent to engage in illicit sexual conduct, and life in prison for aggravated sexual assault with children.

## **Emerging Trends in the Extraterritorial Sexual Abuse of Children**

Americans are increasingly traveling abroad to teach in foreign and international schools.<sup>221</sup> Because of the demand and the status of having an American on their staff, schools may not engage in thorough background or reference checks. Additionally, foreign schools interested in a native English speaker may not require additional teaching credentials, such as those required for a teaching position in the United States. As such, Americans with a sexual interest in children, including those with existing criminal histories for child sex offenses, may find access to children abroad through a teaching job that would otherwise be unavailable to them in the United States. While abroad, a teacher caught offending may be fired or asked to resign, but not reported to law enforcement. Offending teachers have been known to simply move to another school and exploit other children. Unfortunately, it often takes a long time (if ever) until reports of these offenses come to the attention of U.S. law enforcement, making it more difficult to investigate, identify victims, and prosecute.

Offenders also gain access to children by working in positions of trust, as missionaries, religious leaders, leaders or founders of orphanages, or foreign aid providers. Humanitarian workers are often given unsupervised access to children, who are desperate for food, shelter, and attention. Like international teachers, many of these workers are not vetted or checked for past offenses. The children under their care are often faced with enduring abuse or risk losing their care.

## **Significant Development**

Some convicted child sex offenders are traveling or moving to countries where they are not required to register and where they have easy access to vulnerable children.<sup>222</sup> Since 2007, U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI) has conducted Operation Angel Watch, which targets convicted child sex offenders who may pose a threat of committing extraterritorial child sexual abuse. Operation Angel Watch notifies foreign countries regarding the anticipated travel of registered child sex offenders. HSI partners with the U.S. Customs and Border Protection and the U.S. Marshals Service's (USMS) National Sex Offender Targeting Center to proactively identify traveling offenders. Each year, the Angel

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<sup>221</sup> See, e.g., <https://www.theatlantic.com/education/archive/2017/06/the-international-school-surge/528792/>

<sup>222</sup> See, e.g., <https://www.justice.gov/opa/pr/repeat-child-sex-offender-sentenced-108-months-prison-attempted-sex-abuse-vietnam>

Watch Center (AWC) has vetted thousands of leads, even when travel decreased due to the COVID-19 pandemic.<sup>223</sup> In 2021, AWC submitted over 2,000 notifications to foreign countries.

In 2016, Congress sought to address this growing problem by enacting International Megan’s Law (IML). IML requires certain sex offenders<sup>224</sup> to report intended international travel and requires that U.S. passports issued to registered child sex offenders to reflect this status. IML also provides statutory authorizations and procedures for U.S. officials to notify foreign countries about sex offenders, who have been confirmed by Operation Angel Watch as covered by the law, traveling to their jurisdiction. This legislation and its implementation are discussed in further detail in the chapter on Sex Offender Registration Violations.



The graphic above shows the share of notifications sent by Angel Watch Center as part of IML by country in Fiscal Year 2021. Source: Homeland Security Investigations, Angel Watch Center Fiscal Year 2021 Report

<sup>223</sup> Based on internal data provided by the Angel Watch Center.

<sup>224</sup> <https://www.govinfo.gov/content/pkg/PLAW-114publ119/pdf/PLAW-114publ119.pdf>



Despite these efforts, many sex offenders may still travel abroad either without providing the required advanced notice, or the advanced notice is inadequate to take action.<sup>225</sup> In addition, offenders have learned which countries are turning sex offenders away when they enter from the U.S. To circumvent this denial, offenders will travel to a country with a more relaxed border that can facilitate their entry into their country of choice. Once permitted to enter a foreign country, offenders can often avoid their registration requirements and move about freely without detection.

Under 22 U.S.C. § 212b, the passport of a confirmed registered sex offenders convicted of certain child sex offenses must have a unique identifier. However, U.S. passport applications do not currently include the necessary questions, such as those regarding sex offender registration status, to determine which applications should be assessed by Operation Angel Watch to identify those passports that qualify for this unique identifier. As a result, almost all passport applicants who would be covered by IML remain unidentified and the qualifying class of offenders are permitted to travel without notification of their status to the foreign destination.

With the expectation that covered offenders will have annotated passports, countries and individuals might get a false sense of security that an unmarked passport is an indication of a non-offender status, when in fact, only a small fraction of eligible offenders have the unique identifier specified in 22 U.S.C. § 212b. Further, that mark is only as good as a foreign country’s knowledge to look for it and desire to act on it. Additionally, a sex offender with an unmarked U.S. passport issued prior to a registration conviction can move to a foreign country, putting him outside the scope of any registration requirements, including the requirement to have a marked passport. Under 22 U.S.C. § 212a, the Secretary of State is authorized to revoke the passports of a U.S. citizen convicted of certain federal child sexual offenses where the individuals used a passport or passport card or otherwise crossed an international border in committing the offenses. While a defendant is on supervised release for a violation of 18 U.S.C. § 2423, the defendant typically cannot obtain a new passport. American offenders can be prosecuted by foreign countries for their crimes outside the United States, however Section 212a only applies to a federal prosecution in the United States. It is therefore vital for the United States to prosecute extraterritorial crimes against children.

## Strategic Response

Short-Term Goals	Long-Term Goals
<b>Partnership and Training:</b> U.S. agencies should continue to collaborate with foreign stakeholders to conduct trainings on how to	<b>Expand use of Partnerships:</b> With enhanced funding, additional partnerships, including Child Protection Compact Partnerships <sup>226</sup> , could

<sup>225</sup> More information about issues relating to registered sex offenders and international travel are included in the Sex Offender Registration Violations chapter.

<sup>226</sup> “A Child Protection Compact (CPC) Partnership is a multi-year plan developed jointly by the United States and a particular country that documents the commitment of the two governments to achieve shared objectives aimed at strengthening the country’s efforts to effectively prosecute and convict child traffickers, provide comprehensive trauma-informed care for child victims of these crimes, and prevent child trafficking in all its forms.”

improve the interdiction of American offenders in their respective countries, and should continue to provide training to U.S. law enforcement at home and abroad on identifying, prosecuting, and preventing extraterritorial child sexual abuse.	established with at-risk countries to address areas with the highest prevalence of extraterritorial child sex abuse crime. Existing partnerships could also expand their scope to include extraterritorial child sexual abuse and offer more trauma-informed services to victims.
<b>Collaborate with the tourism industry and foreign-based NGOs:</b> U.S. agencies should continue to provide training on the risk factors and enforcement of extraterritorial child sexual abuse and resources to the hospitality industry, NGOs, schools, and other organizations with an international footprint.	<b>Improve Measurement and Information-Sharing Processes:</b> U.S. agencies should fund research to enable greater understanding of the causes of, opportunities for, and effects of extraterritorial abuse. U.S. and foreign partners should use the expanded knowledge base to improve investigation and targeting of known areas of frequent extraterritorial child sexual abuse and offenders.
<b>Enforcement:</b> U.S. agencies should assess and strengthen International Megan’s Law enforcement capabilities, including updating U.S. passport applications.	
<b>Legislation:</b> Enact comprehensive legislative changes to enhance the prosecution of these offenders and strengthen proactive measures to prevent the offenses from occurring, including creating additional charging options for Americans committing sexual abuse abroad, improving access for foreign victims to receive and handle restitution awards, and strengthening registration and passport marking requirements for child sex offenders who are or plan to travel abroad.	

*Partnerships and Trainings*

Success in preventing extraterritorial child sexual abuse, as well as in investigating and prosecuting the offenders, requires robust investigations by U.S. law enforcement in targeted foreign countries, strong partnerships with victim organizations, and collaboration with foreign law enforcement to detect and identify these offenders.

The Justice Department, along with FBI and HSI agents, should expand coordination with the State Department, which has personnel throughout the world including Diplomatic Security Service agents. The State Department’s relationships with foreign entities assist with providing

[https://www.state.gov/child-protection-compact-partnerships/#:~:text=A%20Child%20Protection%20Compact%20\(CPC,and%20convict%20child%20traffickers%20C%20provide](https://www.state.gov/child-protection-compact-partnerships/#:~:text=A%20Child%20Protection%20Compact%20(CPC,and%20convict%20child%20traffickers%20C%20provide)

training on the prevention and interdiction of sex offenses committed by Americans in Southeast Asia, South America, and Africa. Additional training about the prevalence of these offenses, our ability to prosecute them, and how teamwork can overcome challenges related to foreign victims and evidence is necessary and should include U.S. law enforcement abroad and other global task force partners. Training must ensure that federal law enforcement understands we can prosecute extraterritorial offenders in the United States, regardless of the citizenship of the victim, so investigators do not erroneously believe that such offenses can only be prosecuted where the offenses occur.

We must also engage with the hospitality and tourism industries, and various NGOs who are critical partners in the field, to increase their level of involvement and assistance. Communication about the severity and consequences of child sexual exploitation, and about the ability and willingness of the United States to prosecute can be helpful.

The State Department has increased its efforts to educate international schools, school directors, and child protection officers about signs of abuse. Education efforts include how to build the necessary relationships with the U.S. embassy to know the correct law enforcement contact when an allegation is received or concerning behaviors are observed. Efforts to educate and partner with schools should continue and expand so that schools can better identify and respond to abuse and exclude offenders from their schools in the first instance.

### *Enforcement*

A U.S. prosecution may be viable even if an offender is first prosecuted in the country where an offense takes place. Accordingly, prosecutors should consider pursuing domestic charges even after a foreign conviction, if appropriate. Ancillary consequences resulting from a domestic prosecution that may not result from a foreign conviction can include sex offender registration, supervised release, mandatory sex offender treatment, and its impact on defendant's future travel. If offenders are convicted of certain extraterritorial sexual abuse statutes under U.S. law, their passports can be revoked for the duration of their supervised release, preventing them from traveling abroad where they could reoffend and evade law enforcement. Sex offender registration and supervised release which accompany a U.S. child sex offense conviction also add certain protections to avoid future offenses, which a foreign conviction cannot always achieve.

### *Funding*

The State Department has funded Child Protection Compact (CPC) Partnerships to combat child sex trafficking and forced labor in some at-risk countries. This includes funding to expand trauma-informed and child-friendly protection services. Additional funding could allow these partnerships to advance such services and combat these crimes, including potential efforts to combat extraterritorial child sexual abuse.

Victims in a foreign country who are exploited by United States citizens should receive victim services as if they were exploited in the United States. However, the level of care is not always sufficient or easily accessed abroad. The U.S. should provide and expand programs that enhance victim assistance in the victim's home country. These efforts would include working with NGOs

to ensure victims are receiving all the services and assistance to which they are entitled, including restitution. For example, in countries without established guardian ad litem programs or other organizations set to help victims, it will be necessary to find different resources that can provide services in the first instance.

## **Legislation**

Congress should enact legislation to provide additional charging options for American offenders who commit child sex offenses abroad. Congress should also enact legislation to facilitate the process of providing restitution to foreign children who are victims of federal child exploitation offenses. Congress should enact legislation to improve implementation of the passport revocation provision in 22 U.S.C. § 212a, and to have it apply to more child exploitation offenses. Congress should strengthen the registration and passport marking requirement to ensure it applies to American child sex offenders who live in foreign countries. Finally, Congress should enact legislation modernizing the venue statute established for the prosecution of offenses committed outside of the United States; specifically abolishing the requirement that defendants be prosecuted in the federal district where they are “arrested or first brought” and, instead, permit the prosecution of extraterritorial offenses in any federal judicial district. This legislation would allow venue in the district that is most appropriate and equipped to investigate and charge the case.

## Livestreaming and Virtual Child Sex Trafficking

Online child sexual exploitation has increased dramatically over the past few decades.<sup>227</sup> Minors access digital devices, the internet, and social media platforms at much younger ages than in the past, and devices and platforms are expanding the capacity for image creation and sharing. Further, current technology allows offenders to purchase livestreamed child sexual abuse from “sellers” or facilitators in foreign countries. Such conduct is sometimes referred to as “cybersex trafficking,”<sup>228</sup> “livestreaming of child sexual abuse”<sup>229</sup> or, as here, “virtual child sex trafficking.” The latter terminology more appropriately reflects the commercial element in these online exchanges, which are done for a financial benefit.<sup>230</sup>

### *Livestreaming Child Sexual Exploitation (LCSE)*

Livestreaming child sexual exploitation (LCSE) occurs when an offender compels a child victim to engage in sexually explicit conduct during a broadcast, in real time, to one or more viewers. There are generally three types of LCSE: child “self-generated,” offender-streaming, and virtual child sex trafficking.

- **Child “Self-Generated”:** This type of LCSE occurs when an offender coerces, tricks, or otherwise compels children to engage in sexually explicit conduct on a livestream, typically from the child’s bedrooms or a bathroom. In some cases, this activity occurs under the pretext of the offender and victim being in a romantic relationship.
- **Offender-streaming:** Offender-streaming LCSE occurs when an offender sexually abuses a child in person while livestreaming the abuse to viewers. The offender is usually someone who knows, and has easy access to, the victim, such as a family member or a family friend. The viewers may not know each other in real life. They often participate in the activity by requesting that specific sex acts be committed.
- **Virtual Child Sex Trafficking:** In this form of LCSE, offenders pay to watch while another offender sexually abuses a child in person or offenders pay a victim directly to create “self-generated” CSAM. Because of the interactive nature of livestreaming platforms, offenders can request specific sexual abuse acts for an additional cost. Payment is usually made digitally. This offense often involves offenders in the United States and facilitators and children in foreign countries. Children may be transported from rural areas of that foreign country to urban settings in furtherance of this crime.

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<sup>227</sup> WeProtect 2021 Global Threat Assessment <https://www.weprotect.org/global-threat-assessment-21/>

<sup>228</sup> See e.g. *IJM 2016 Casework Factsheet on Cybersex Trafficking* available at IJM.org

<sup>229</sup> *United Nations Office on Drugs and Crime’s E4J University Module Series: Cybercrime Module 12: Interpersonal Cybercrime, Online child sexual exploitation and abuse* (published in May 2019, updated in February 2020) available at <https://www.unodc.org/e4j/en/cybercrime/module-12/key-issues/online-child-sexual-exploitation-and-abuse.html>

<sup>230</sup> See also *U.S. Department of State Trafficking in Persons Report* (2021) available at <https://www.state.gov/trafficking-in-persons-report/>; *IJM Summary Report Online Sexual Exploitation of Children in the Philippines: Analysis and Recommendations for Governments, Industry, and Civil Society* retrieved from <https://www.ijm.ca/stories/online-sexual-exploitation-of-children-hidden-in-plain-sight>.

The use of livestreaming on social media has become extremely popular among children and adolescents. Livestreaming allows a user to produce real-time video that is broadcast over an online social media platform, whether viewed publicly or by a restricted audience. As of 2018, 42% of the population in the U.S. was livestreaming online content, up from 25% the prior year.<sup>231</sup> It is reasonably anticipated that this number will rise in the post-pandemic era, particularly among children who were called on to use livestreaming technology daily as part of remote learning. Live.me, Periscope, and Omegle are among the most popular platforms for livestreaming, along with livestreaming capabilities on mainstream platforms like Facebook, Instagram, TikTok, YouTube, Snapchat, and Twitch. Most platforms have a chat feature where users can interact with the viewers of their content. No special equipment is required, as livestreaming can be done easily with any internet-capable device, including smart phones, which are now ubiquitous, and new platforms are constantly emerging.<sup>232</sup>

As livestreaming platforms have proliferated, offenders have increasingly engaged in LCSE to coerce a child's self-generated content and stream in-person abuse to others. Some people perceive child self-generated LCSE as less harmful than in-person abuse (also referred to as hands-on abuse) to victims because it occurs remotely, but it is important to recognize all forms of LCSE can leave profound and lasting negative impacts on a child. The trauma caused by LCSE and other forms of online child exploitation is compounded by the victim's knowledge that documentation of their abuse will live on the internet in perpetuity. It's critical that victims of online child sexual abuse receive robust, ongoing victim services to aid in their healing.

### **Virtual Child Sex Trafficking**

Like other kinds of human trafficking, virtual child sex trafficking may involve a facilitator and a buyer, both of whom exploit the child. This differs from other types of child exploitation in which a child is directly groomed or enticed into the abuse by one offender. Because of the financial aspects inherent in this crime some prosecutors charge this conduct as child sex trafficking under 18 U.S.C. § 1591.<sup>233</sup>

*Virtual Child Sex Trafficking refers to the livestreaming and often real-time abuse of children by way of video-enabled internet communication platforms such as Skype, and other, smaller webcam applications in exchange for money or something else of value.*

Much of this kind of exploitation begins when the victims are infants or toddlers and can continue over many years. Offenders who purchase access to the content may participate in the abuse by requesting what they want to see in advance or directing the abuse as it occurs. Offenders may not record the livestream, but if they do, memorialization and distribution of new CSAM exacerbates the harm and trauma to the child.<sup>234</sup>

<sup>231</sup> Nielsen U.S. Video 360 Report 2018 <https://www.nielsen.com/us/en/insights/report/2018/video-360-2018-report/>

<sup>232</sup> See, <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

<sup>233</sup> See, e.g. *United States v. Sara*, as cited above.

<sup>234</sup> See *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 [...] the materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation.”)

The prevalence of virtual child sex trafficking is unknown, due in part, to the difficulties in detecting this type of conduct. Virtual child sex trafficking viewed in English-speaking countries appears to be frequently generated in the Philippines, where knowledge of English and the widespread availability of high-speed internet facilitate communication, and poverty motivates using children to acquire money.<sup>235</sup> This type of abuse does not just occur in the Philippines; it occurs throughout the world, including in the United States. Because it only requires that facilitators<sup>236</sup> and buyers can connect via the internet, virtual child sex trafficking can happen anywhere. The economic disparity between “buyers” and “sellers,” is often extreme;<sup>237</sup> the cost of “on demand” child sex abuse can be \$20 USD or less.<sup>238</sup> Moreover, because of how the abuse is perpetrated and the difficulty of detection, the sexual abuse often lasts for years. In some cases, the trafficker or facilitator is a mother or other female relative.<sup>239</sup> Even when no parent is involved in the actual trafficking, parents are often aware of the abuse because they are benefitting financially from the crimes.

The offenses typically involve buyers in wealthy, higher-infrastructure countries (e.g., United States and the United Kingdom) and victims and sellers or facilitators in poorer, lower-infrastructure countries.<sup>240</sup> However, this type of exploitation can also occur within any country in which there is economic disparity. The increasing availability of internet connectivity and platforms, particularly in countries and communities with fewer socio-economic resources, has contributed to the increasing volume and prevalence of such cases.<sup>241</sup> Offenses can involve a single buyer and seller, or a sophisticated network of offenders offering child exploitation as a commodity to a large customer base.

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<sup>235</sup> The Philippines receives thousands of cybersex-trafficking case referrals a month from the U.S. alone. The estimated number of Philippine IP addresses used for child sexual exploitation each year tripled from 2014 to 2017. Due to limitations in the data, this could reflect of an actual rise in the occurrence of the crime, a rise in the reporting of the crime, or both. *IJM 2016 Casework Factsheet on Cybersex Trafficking* available at IJM.org. See also *IJM Summary Report Online Sexual Exploitation of Children in the Philippines: Analysis and Recommendations for Governments, Industry, and Civil Society* <https://www.ijm.ca/stories/online-sexual-exploitation-of-children-hidden-in-plain-sight>

<sup>236</sup> A “facilitator” acts as the go-between between the victim and the customer and is frequently a relative of the victim. Facilitators may also be the ones directed to abuse the victims in specific ways.

<sup>237</sup> “Almost a quarter of the population of the Philippines lives on less than US \$ 1.25 a day.” *ECPAT’s 2017 Regional Overview: Sexual Exploitation of Children in Southeast Asia* at p. 25 <https://ecpat.org/resources/>

<sup>238</sup> See *United States v. Benjamin Walter* (5:19-cr-00073-AKK-GMB) District Court, N.D. Alabama; see also reporting on Australian offenders paying A\$15 for children to perform sexual acts online <https://www.theguardian.com/world/2019/dec/09/australian-paedophiles-pay-15-dollars-online-abuse-filipino-children>

<sup>239</sup> Based on investigative and prosecutorial information provided by the authors, observing the percentage of female offenders in this crime seems to be substantially higher than in other child sex abuse offenses.

<sup>240</sup> *Europol (2015a) Virtual Global Taskforce Child Sexual Exploitation Environmental Scan* at p. 6 (Law enforcement agents from countries such as the United States, Australia, Switzerland, and the United Kingdom, who were queried as to the impact of increasing internet coverage in developing countries with regard to online CSAM in their respective jurisdictions, “mainly referred to the increase in the livestreaming of child sexual abuse to their nationals from developing countries, although this type of crime was also reported as being committed on a national level”), available at <https://www.europol.europa.eu/publications-documents/vgt-cse-environmental-scan-2015>. Further, “the relatively high financial rewards available to organisers of live-distant child abuse in developing countries were indicated as a significant driver contributing to its widespread proliferation.” *Id.* at p. 7.

<sup>241</sup> Baines, V. (2019). *Online child sexual exploitation: Towards an optimal international response* at p.4. (“Geographical areas of burgeoning internet connectivity and socio-economic deprivation have tended to be hotspots for the production of for [livestreamed child sexual abuse] for commercial distribution.”).

Financial transactions associated with this type of abuse usually involve sending relatively small amounts of money, often by wire transfer or virtual currencies. Like other forms of exploitation based in part on global inequities, particularly human trafficking, virtual child sex trafficking offenders exploit the poverty of vulnerable victims and their families. The increasing number of willing buyers increases the demand for both sellers and the children they abuse, creating a vicious cycle commercializing the sexual exploitation of children.

Some offenders participate in the online sexual exploitation of minors abroad and then travel to perpetrate hands-on offenses, known as extraterritorial child sexual abuse.<sup>242</sup> Therefore, combating virtual child sex trafficking is also important to the interdiction of other child exploitation crimes. Combating virtual child sex trafficking, like other forms of online child exploitation, requires substantial international coordination and cooperation. Law enforcement resources dedicated to investigating this type of abuse are woefully inadequate. Investigations frequently involve complex forensic data analysis due to offenders' use of multiple internet platforms and the often-complex financial component of the crime. Effective strategies must address both the supply and demand side, emphasize evidence sharing, target offenders, and conduct outreach to vulnerable communities. These cases also require enhanced, dedicated victim services to ensure survivors get adequate care. As explained in more detail below, because these cases are more complex and more difficult to investigate than other kinds of child abuse cases, more resources must be allocated to increase awareness of and collaboration on this global crime.

## Reporting

Two primary challenges exist related to the reporting of livestreaming and virtual child sex trafficking. The first is detecting LCSE, because livestreamed content is often unmonitored by internet service providers.<sup>243</sup> The use of children is frequently cloaked or embedded within internet sites that offer virtual livestreamed adult sex. Thus, looking at transactional information or even the initial advertisement webpage does not reveal that children are involved. Unlike traditional CSAM investigations that involve images, many instances of LCSE and virtual child sex trafficking go undetected by internet platforms and other online providers, even after the event, because the abuse is livestreamed and there is typically no captured content. Even if providers or other users are aware and want to report the abuse to law enforcement, the lack of preserved digital evidence hinders or prevents investigations, including victim identification.

Second, electronic communication service providers and other online platforms where this kind of exploitation occurs are often not statutorily required to report these crimes, or the information they are required to provide is insufficient to assist investigators in locating and identifying offenders and victims. There is broad disparity across platforms in what kinds of information providers are willing or able to supply. There are also vast differences in technical infrastructure,

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<sup>242</sup> See e.g. *United States v. Burt*, NDCA, 3:15-cr-00137-WHO, <https://www.justice.gov/usao-ndca/pr/hayward-man-sentenced-over-ten-years-imprisonment-receipt-child-pornography-and-travel>. See also Interpol Report on *Threats and Trends Child Sexual Exploitation and Abuse Threats and Trends: Covid-19 Impact* at page 13 available at [interpol.int](https://www.interpol.int). Additional information can be found in the Extraterritorial Child Sexual Abuse chapter.

<sup>243</sup> “[M]ost livestreamed abuse is transmitted online within private ‘conversations’ and is therefore not subject to screening or moderator review.” WeProtect Global Alliance’s *Global Threat Assessment 2021* at p. 62 available at <https://www.weprotect.org/global-threat-assessment-21/>.



staffing, and policies among platforms like Google or Yahoo and less widely used applications such as LiveMe. As a result, no one methodology can be applied consistently when following up on investigating an individual report from an online provider. Thus, investigators must often pursue new or unique methods of investigation, tailored to the individual platform referenced in the report.

### **Investigation, Prosecution, and Victim Assistance**

LSCE cases present significant challenges to investigators. In most cases, the livestreamed feed is not preserved in any form by the platform on which it was broadcast.<sup>244</sup> Few social media and streaming platforms are willing or able to voluntarily monitor their platforms to detect and report LCSE. The variety and volume of online social media and streaming platforms creates an ever-growing digital haystack. Without a complaint or a report from a company, law enforcement may not have a mechanism to find evidence of a crime.

When investigators do identify and detect LCSE, the live, real-time nature of the criminal conduct creates additional complexities. Attempting to overtly intervene to stop an instance of LCSE risks both the destruction of evidence and flight from prosecution by as-yet unidentified offenders, and significant embarrassment, humiliation, or even self-harm by a child victim who may not have realized that he or she is being victimized or does not want their victimization to be made public. If an investigation is launched, the responses to legal process from social media providers are inconsistent and incomplete, frequently yielding little, if any, available evidence of the LCSE itself even pursuant to legal process, since livestream footage often is not preserved.

Therefore, investigators often need to rely on peripheral or circumstantial evidence, such as written communications and financial transactions between the facilitator and the buyer to prove what kind of content was actually streamed and paid for. When agents connect information gleaned from financial transactions with other evidence, including leads involving the same suspect on other platforms, they are better able to build a strong case. Agents should not rule out the possibility that LCSE has been recorded in some format and possibly shared.

#### **Case Story: United States v. Sara<sup>245</sup>**

In 2017, Carl Sara from Springfield, VA, was sentenced to 168 months in prison for attempting to entice an eight-year-old to have sex with him during a 2013 trip to the Philippines. In 2013, Sara participated in virtual child sex trafficking by way of webcam sessions depicting minors engaged in sexually explicit conduct, along with instant message chatting with facilitators in the Philippines and elsewhere. During some of these chats, Sara discussed with a woman in the Philippines, plans for him to have sex with her eight-year-old daughter during an upcoming trip to the country. Sara sent the mother \$200 dollars in return for the mother's agreement and offered to pay her an additional \$300 after he had sex with the child.

<sup>244</sup> While not preserved, offenders may still be prosecuted under United States "production" of child pornography laws.

<sup>245</sup> *United States v. Sara* (1:17-cr-00054) District Court, E.D. Virginia <https://www.justice.gov/opa/pr/virginia-man-sentenced-14-years-prison-attempting-entice-eight-year-old-minor-have-sex>

Sara then traveled to the Philippines to have sex with the eight-year-old and other minor children. During this trip, he paid for sex with another minor, a 16-year-old girl. Investigators confirmed Sara sent wire transfers overseas totaling more than \$33,000, the majority of which paid for live webcam shows depicting minors engaged in sexually explicit conduct. Sara routinely sought out mothers with young children in the Philippines to persuade them to allow him to have sex with their children.

Virtual sex trafficking has its own distinct investigative challenges. As noted above, virtual child sex trafficking involves a monetary payment or other exchange for value, making it a commercial transaction. Because virtual child sex trafficking generates profits, perpetrators often commit financial crimes to conceal illicit profits, whether in the form of cash, foreign currency, or cryptocurrency. One of the most effective ways to deter criminals, including those who exploit children, and to stem the harms that flow from their actions is to follow the money, expose illicit activity, and prevent criminal networks from benefiting from the use of the United States' economy and financial system. Federal prosecutors have a wide range of tools to combat the financial aspects of virtual child sex trafficking. For example, the Bank Secrecy Act of 1970 (BSA) mandates reporting designed to prevent criminals from exploiting the U.S. financial system. The BSA requires financial institutions, including banks, casinos, money service businesses, and virtual currency exchanges, to file reports, including Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs), regarding transactions that meet certain thresholds or suspicious financial transactions. Law enforcement can use the data reported in SARs and CTRs, among other BSA reports,<sup>246</sup> to identify perpetrators and facilitators of sex trafficking, including virtual child sex trafficking.

Despite these tools, identifying a target's assets can be difficult; many virtual traffickers do not deposit their illicit proceeds in traditional financial institutions. The use of virtual currencies in these cases compounds the problem because virtual currencies can provide pseudo-anonymity, can be transmitted quickly, and are subject to varying levels of regulation and supervision globally. Virtual currency users also "rely on technology that conceals their location and identity from law enforcement."<sup>247</sup> Thus, it can be difficult to identify who is using virtual currency to pay for access to virtual child sex trafficking content or to fund digital infrastructure, such as advertisements for livestreaming of children. These investigations require the same depth and breadth of analysis and tracing as traditional financial investigations.

Clearly, investigating virtual child sex trafficking crimes requires complex, staffing-intensive investigative techniques, often involving undercover operations. Investigators need to know where to look for these crimes (where on a particular platform and where in the world) and how to connect with offenders and facilitators. Undercover investigators often spend significant time developing relationships with suspects on these platforms to determine who poses the most immediate risk to children. There are numerous platforms where offenders meet to discuss in detail their sexual interest in children and plans to abuse them.

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<sup>246</sup> <https://www.fincen.gov/resources/filing-information>

<sup>247</sup> See U.S. Dep't of the Treasury (Treasury), *National Money Laundering Risk Assessment* (2018) at 26, available at [https://home.treasury.gov/system/files/136/2018NMLRA\\_12-18.pdf](https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf).

Additionally, as the facilitators and/or sellers are most often located outside the United States, U.S. law enforcement must rely on or work with foreign law enforcement to find, question, and arrest suspects located abroad. This presents its own logistical and legal challenges and requires extensive coordination with foreign law enforcement and NGOs. In countries where victims distrust law enforcement, sometimes U.S. law enforcement succeed with the assistance of the in-country resources of NGOs, collaborating with NGOs as the investigation and prosecution progress. Just as differing practices between U.S. and foreign law enforcement can pose challenges to subsequent U.S. prosecutions, so too can differing practices employed by NGOs.

Targeting offenders in the U.S. and other more developed parts of the world is only part of the solution because it must be accompanied by comprehensive efforts to prevent the continued abuse and distribution of illicit content from developing countries. The U.S. must work with NGOs to address the issues created by widespread poverty in developing countries to prevent these crimes. NGOs can also assist law enforcement in child identification and rescue, and in supporting local efforts for interdiction and prosecution.

Foreign victim interviews are an important component of virtual child sex trafficking investigations but present potential challenges for investigators and prosecutors. Offenders are increasingly targeting ever-younger victims. Interviewing such young victims requires specialized training and experience. Even with experienced interviewers, exceedingly young, sometimes pre-verbal, victims may not be developmentally able to articulate their experiences. If the facilitator is related to the victim, it may be difficult or impossible to obtain an interview or a disclosure of the extent of the abuse and the relative's involvement. There are also diverse cultural, social, and even governmental norms to consider, beyond the victims' developmental maturity and understanding of what has happened to them. For example, some foreign government and law enforcement agencies have special policies that apply to video interviews of victims and are hesitant to record such interviews. Young victims' beliefs and attitudes on privacy, sexuality and sexual abuse, personal autonomy, and respect for or trust in law enforcement are informed by cultural and social norms. Thus, success in these cases requires sensitivity by, and specialized trauma informed and culturally appropriate training for, interviewers and investigators.

Children who have been victims of virtual child sex trafficking need a robust and structured support system to help them navigate the trauma they have experienced and their role in subsequent legal processes. Assistance to victims located overseas is always complex, often made more challenging by a lack of sufficient resources to support them. Where the abuse has been perpetrated and/or facilitated by family members, assisting minor victims on their journeys to recovery is even more difficult. Appropriate medical exams, mental and physical health care, adequate living conditions, access to school, meaningful aftercare programs, and other considerations in the best interests of the child should be part of a victim's recovery. Not all countries have such supports in place, and it often falls to law enforcement and NGOs to fill the gaps for victims.

Successful U.S. prosecutions may result in awards of restitution to victims, but there is an acute lack of adequate mechanisms to administer and distribute restitution funds to foreign-located

victims. In some cases, the government may seek to establish a trust holding the restitution funds; however, that option requires trustees who can develop and coordinate instruments to disburse the funds to benefit victims located overseas.

### Significant Developments

Incidences of LCSE and virtual child sex trafficking have been and are likely to continue to increase because of the COVID-19 pandemic.<sup>248</sup> Children spending an extensive amount of time on the internet provides a fertile online hunting ground for offenders. School closures and limited in-person contact with friends increased the time minors spent online. Parents who work from home are unable to continually monitor their children’s online activity. Because of the pandemic, offenders, too, spent more time online during hours that overlapped with children, creating a perfect storm of opportunity for exploitation of children, even as offenders lost access to victims in-person through their work, volunteer activities, or other means.<sup>249</sup>

While more data is needed to quantify the impact of COVID-19 on LCSE, Homeland Security Investigations has observed an increase in the presence of children on livestreaming platforms in general and in self-generated sexually explicit material. At the same time, the pandemic has reduced available resources and increased demands on law enforcement, potentially limiting their ability to investigate and combat the increase in LCSE. In a survey of 470 law enforcement officers from 39 countries who work on child sex abuse cases, more than half of respondents reported that the fallout from the pandemic affected law enforcement capacity to investigate child sexual abuse. They reported that an increase in workload, limitations associated with working from home, suspended search warrants, difficulties in conducting interviews and limited court processes led to slower processing time or cases not being investigated at all.<sup>250</sup>

### Strategic Response

Short-Term Goals	Long-Term Goals
<p><b>Expand international cooperation in investigations:</b> Offenders are using livestreaming platforms to victimize children without regard to jurisdiction. Collaboration across national, regional, and international law enforcement agencies is necessary to investigate the global nature of online child sexual exploitation.</p>	<p><b>Explore sustainable methods to combat child sexual exploitation and abuse on livestreaming platforms:</b> Engage with online internet service providers to raise awareness of the complexities of LCSE and virtual child sex trafficking that allow offenders to interact with children in real time and leave limited evidence of their crimes.</p>

<sup>248</sup> Interpol Report on *Threats and Trends Child Sexual Exploitation and Abuse Threats and Trends: Covid-19 Impact* at page 13. (“Livestreaming of child sexual exploitation for payment has seen an increase in recent years, and the demand is likely to rise as travel restrictions remain in place. The supply of livestreamed CSEAM is also likely to increase as victims may be locked down with facilitators (often a family member) and economic hardship increases.”) available at [interpol.int](https://www.interpol.int). CSEAM refers to Child Sexual Exploitation and Abuse Materials and is an equivalent term to CSAM.

<sup>249</sup> Europol Internet Organised Crime Threat Assessment (Iocta) 2020 <https://www.europol.europa.eu/activities-services/main-reports/internet-organised-crime-threat-assessment-iocta-2020>

<sup>250</sup> The NetClean Report 2020: COVID-19 Impact 2020 <https://www.netclean.com/netclean-report-2020/>

<p><b>Develop new detection technology:</b> Livestreaming platforms should pursue, and federal agencies support the development of, new technological services to detect initial captures and redistributions of livestreamed child sexual abuse online. This work should be conducted in collaboration with law enforcement and NGOs working in the space.</p>	<p><b>Adopt successful NGO partnership models:</b> Expand successful partnership models to other countries and NGOs to fill law enforcement gaps in foreign jurisdictions, to provide investigative resources, to provide victim advocacy and services, and to facilitate restitution claims on behalf of victims.</p>
<p><b>Expand international training:</b> Expand training to combat virtual child sex trafficking, including how to sensitively interview foreign child victims, gather and analyze evidence of communications and payments exchanged, and assess and facilitate restitution claims.</p>	<p><b>Deepen capabilities of foreign law enforcement:</b> Continue investing in investigatory collaboration with foreign law enforcement and promote capacity building in such countries, to strengthen their ability to investigate and prosecute these cases themselves.</p>
<p><b>Leverage U.S. Diplomatic Security Service (DSS) international presence:</b> Use DSS resources, especially in places less accessible to other U.S. agencies, to provide investigatory assistance and resources to law enforcement in more remote areas.</p>	

*International Cooperation*

Given the cross-border, distributed nature of online child sexual exploitation, national, regional, and international law enforcement agencies often collaborate in the investigation of these cybercrimes. The threats detailed above necessitate better global collaboration among agencies, NGOs, and law enforcement agencies. Standard approaches for international cooperation in criminal matters, such as mutual legal assistance and extradition, and multilateral conventions and agreements on child sexual exploitation and abuse, will help combat the expansion of interconnected online networks for child exploitation.

Aside from collaboration, it is critical that more resources be allocated to increase the numbers of law enforcement personnel who are trained and dedicated to investigating these crimes. Finally, either through court-appointed advocates or pro bono efforts, legal expertise must be marshalled to develop and administer victim restitution.

*Training & Education*

In the short term, U.S.-based investigators and interviewers would benefit from more in-depth training. Regarding international trainings, shifting the focus from solely high-level prosecutors and judges to local officers and investigators at the beginning of their careers will increase awareness and capacity. U.S. agents who serve in legal attaché offices abroad often do not have a background in investigating child exploitation cases and thus require additional training. Involving foreign local law enforcement in the trainings with the legal attaché offices would build collaboration and facilitate partnerships to help investigate and prosecute future cases.

Domestic training should focus on investigative methodologies, navigating interactions with family members or caregivers complicit in the abuse, child forensic interviewing, and regional and cultural background information, among other topics. Forensic interviewers and investigators must understand and be trained on the unique aspects of virtual sex trafficking offenses and how best to prepare for forensic interviews of victims. Proper preparation and collaboration can increase the chance of successful forensic interviews, resulting in both disclosures of abuse and information identifying offenders. Training should also include awareness and understanding of cultural issues that could impact victims during both the investigation and prosecution stages. When faced with a particular investigative lead, forensic interviewers who are talking to victims and investigators who are putting together the entire case should be mindful of how cultural issues could impact the investigation and know what resources are available to navigate those issues with victims and offenders abroad, and in foreign legal systems. Training must also focus on preservation and presentation of evidence, which can be particularly challenging in international investigations.

### *Partnerships*

In addition to training, there should be increased emphasis on interdisciplinary and intergovernmental cooperation. U.S. investigators and agencies will be more successful when they build relationships that assist with resources and cultural issues in regions where virtual child sex trafficking is common. For instance, the U.S. Diplomatic Security Service (DSS) has a presence all over the world. Significantly, DSS has regional security offices in countries where FBI and HSI do not have legal attachés. Thus, DSS could provide resources and assistance to federal investigators in these areas. U.S. law enforcement should also focus on building relationships with foreign law enforcement and engage in collaborative and informed investigations on both sides to dismantle both individual buyers and sellers of virtual sex trafficking, and sophisticated organizations built around the market for LCSE material. U.S. law enforcement and resources should also promote capacity building in other countries, to facilitate investigations and prosecutions by foreign law enforcement in their jurisdictions.

Funding assistance can provide resources and build relationships among international agencies and governments with common goals of prosecuting child traffickers, helping victims of virtual child sex trafficking receive comprehensive, trauma-informed care, and working together to prevent the crime from happening. For example, to improve its response to virtual child sex trafficking, the Philippines partnered with the United States and signed the four-year U.S.-Philippines Child Protection Compact (CPC) Partnership (2017-2021). In support of the CPC Partnership's objectives, the United States committed over four million dollars in foreign assistance over the course of the CPC Partnership to civil society organizations that acted as CPC implementing partners, carrying out the capacity-strengthening activities agreed upon by the two governments. One of those organizations, International Justice Mission (IJM), along with support from U.S. law enforcement, developed and provided comprehensive training to Philippine law enforcement on internet crimes against children investigations and digital forensic evidence collection. Further, IJM provided technical assistance to key court officials, including prosecutors and judges, on application of child appropriate procedures and the use of digital

evidence for virtual child sex trafficking cases. This model could prove useful in other countries where children are victims of virtual child sex trafficking.

### *Industry Engagement*

As a more long-term solution to the LCSE epidemic, livestreaming companies could develop and deploy measures to monitor for sexually explicit content on their servers, such as by obtaining and saving every few frames from each live broadcast. Social media companies also could use real-time intervention to educate and engage users about online safety. A livestreaming platform called Yubo, which is owned and operated by a French company, is leading the way in this domain. Yubo enforces a strict no-nudity policy that is enforced through the capture, scanning, and preservation of a snapshot of the livestream every few seconds. Any violations are immediately reported to the police. This shows that such practices are feasible and may be a promising way to better identify livestreaming offenders and victims, and to preserve evidence. Training and relationship building are important cornerstones for all efforts to prevent and combat LCSE and virtual child sex trafficking.

## Sextortion, Crowdsourcing, Enticement, and Coercion

Because offenders use a variety of techniques to manipulate minors into producing child sexual abuse material (CSAM), the child exploitation threat is constantly evolving. Some of those techniques include engaging in sextortion and crowdsourcing schemes which use enticement and coercion to victimize children. The unique aspects of crowdsourcing, sextortion, and grooming are discussed below, but all contribute to a rise in “self-generated” sexual content. “Self-generated” sexual content can include when an adult offender, whether through deception, trickery, threats, or other means, induces or compels children to record, photograph, or livestream themselves engaging in sexual activity. The Internet Watch Foundation reported a 77% increase in self-generated child sexual abuse content brought to their attention from 2019 to 2020.<sup>251</sup> Producing and sharing self-generated CSAM is becoming increasingly common according to survey participants, with 1 in 5 teenage girls and 1 in 10 teenage boys reporting they had shared nude images of themselves.<sup>252</sup> It is critical to explore all means to prevent and interdict this form of child exploitation, and to develop appropriate services for the victims. Crowdsourcing, sextortion, enticement, and coercion cases represent a growing and pernicious problem that present significant challenges to investigators. In addition to the barriers noted above that prevent children from reporting online sexual exploitation, many cases go unreported because the minors may not view themselves as victims, as they believed they were chatting and sending images and videos to someone they trusted. Offenders who engage in crowdsourcing schemes are difficult to identify because they constantly change the platforms they use, moving to those they perceive as having the lowest risk of detection, including the Dark Web.

### Sextortion

Sextortion occurs when offenders use threats or coercive tactics to cause victims to produce and send sexually explicit imagery of themselves. Offenders utilize a variety of techniques. Most often, they may use grooming techniques, or trickery by pretending to be a minor themselves, to manipulate victims into providing nude or partially nude images or videos of themselves, which they then use to coerce that victim into sending more graphic images and videos or a ransom. Alternatively, or in addition to grooming, they may access other private and sensitive information, such as using social engineering to compromise social media accounts, school information, friend lists, and other personal information. Perpetrators often threaten to post an image or sensitive information publicly or send them to the victim’s friends and family if the child does not comply with their demands to send more sexually explicit images or videos or pay money.

Sextortion remains a significant growing threat to children, as it was in the 2016 DOJ National Strategy survey.<sup>253</sup> Federal law enforcement has noted a drastic increase in sextortion incidents over the last five years. Despite the growing concern, however, the crime remains remarkably understudied. Dedicated research efforts have provided valuable insight, but no empirical

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<sup>251</sup> The Internet Watch Foundation, “[Trend: ‘Self-Generated’ Content](#),” 2020.

<sup>252</sup> Thorn and the Benensen Strategy Group, “[Responding to Online Threats: Minors’ Perspectives on Disclosing, Reporting, and Blocking](#),” 2020

<sup>253</sup> U.S. Department of Justice, “[The National Strategy For Child Exploitation Prevention And Interdiction](#),” 2016.



statistics exist that accurately capture the frequency of sextortion cases.<sup>254</sup> The extant statistics likely are gross underestimates of the true scope of this problem because victims are understandably apprehensive about reporting the crime due to shame and embarrassment, fear of the offender, or concern that they might get into trouble themselves for creating and sending the images and videos.

### Offender Grooming Behavior

Child exploitation may begin with offenders grooming their victims. The sexual grooming process includes identifying a minor, establishing a connection by offering support and attention to the minor, befriending them, gaining their trust, gathering personal information about them, exploiting any vulnerabilities they may have, and lowering their inhibitions by talking, joking, and teaching a minor about sex. In person or hands-on child sexual abuse cases, the sexual grooming period can be lengthy and targeted towards both the minor and the minor's caretakers to ensure access to the child and to prevent disclosure of the conduct. In the online context, the sexual grooming period can be very short. Some minors report chatting with offenders for less than an hour before being asked to send sexually explicit images and videos of themselves. Because minors today may feel more comfortable chatting and sending images and videos over the internet, long-term sexual grooming is often unnecessary.

Offenders often groom their victims by posing as a peer. Pretending to be minor boys and girls, offenders will stream pre-recorded videos (often referred to as loops) of other minors engaged in sexual acts to the targeted victim to trick the minor into believing they are watching a live video of someone their own age. This normalizes the sexual behavior and makes children feel more comfortable exposing themselves over a broadcast. Using peer pressure, an offender convinces the minor to engage in sexual acts like those shown to them on the pre-recorded videos. The victim may be unaware he or she is communicating with an adult and that the adult is recording the minor's sexually explicit activity.

Sextortion is often conflated with "sexting." Sexting is the consensual sharing and receiving of sexually explicit messages and nude or partially nude images and videos between adults. Under federal law, minors cannot consent to the production of CSAM even if it is self-generated at the request of another. Some states are loosening their laws to avoid criminalizing teen-to-teen sexting, so long as the imagery is not distributed to any other parties.<sup>255</sup> However, what starts as sexting, may become sextortion when the offender uses threats or coercive tactics to cause the victim to produce and send more sexually explicit imagery of themselves. In a survey of over 1,300 victims of sextortion, almost 60% of respondents who were minors when their sextortion occurred knew the perpetrators in person, often as romantic partners.<sup>256</sup> Though sexting typically

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<sup>254</sup> Research is currently being conducted by the University of New Hampshire, with funding support from the National Institute of Justice, to assess the frequency of sextortion crimes.

<sup>255</sup> Miranda Jolicoeur and Edwin Zedlewski, "[Much Ado About Sexting](#)," *National Institute of Justice*, June 2010.

<sup>256</sup> Thorn, "[Sextortion: Summary findings from a 2017 survey of 2,097 survivors](#)," 2019. Includes data from sextortion victims who were adults at the time of their victimization.

occurs over the same types of platforms as sextortion, they are two different concepts and should be treated as such.<sup>257</sup>

### Sextortion by the Numbers

- **1 in 4** victims were 13 or younger.
- **47%** of victims experienced threats daily, and **45%** of victims said that their offender didn't stop contacting them even after the victim blocked them.
- **62%** of victims complied with their offender's demands to try and make the threats stop; of those who did so, **68%** said complying only made the threats become more frequent.
- **1 in 3** victims never told anyone, usually because of shame or embarrassment
- Of those who did disclose their victimization, **54%** did so to their family or friends, and **only 17%** reported it to law enforcement.

*Thorn online survey of 2,097 victims of sextortion from ages 13 to 25 in 2017.*

### *Sextortion Victims*

In recent years, sextortion has become a major threat, affecting children across all demographics. Sextortion offenders usually threaten minors between the ages of 10 and 17 years, the typical age range for juvenile internet users. Increasingly, however, there is a concerning trend where the offender manipulates the victim to abuse younger siblings or friends, extending the threat to even younger and more vulnerable victims.<sup>258</sup>

Changes to the technological landscape certainly have played a role in the increased vulnerability of our nation's youth. Children are accessing technology at increasingly younger ages,<sup>259</sup> including on smartphones and tablets. In addition, because of societal changes brought about by the 2020 Coronavirus pandemic, even children in pre-kindergarten have been required to navigate online, whether for learning or to engage in social interaction via videoconferencing. As a result of our growing technological dependence, younger children may increasingly be at risk.

Because there are no geographic boundaries online, sextortion offenders can gain access to and control victims from anywhere in the world, and a single offender can victimize hundreds of victims at a time. A 2017 analysis comparing sextortion offenders with CSAM production offenders found the number of victims ranged from 1 to 250 victims per sextortion offender, whereas the number of victims per CSAM production offender ranged from 1 to 15 victims.<sup>260</sup>

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<sup>257</sup> More information about sexting and what parents can do to educate their children about the potential risks involved, even when consensually sharing sexually explicit images, can be found in the "[Sexting Tips for Parents & Youth](#)" fact sheet created by the Internet Crimes Against Children (ICAC) Task Force Program.

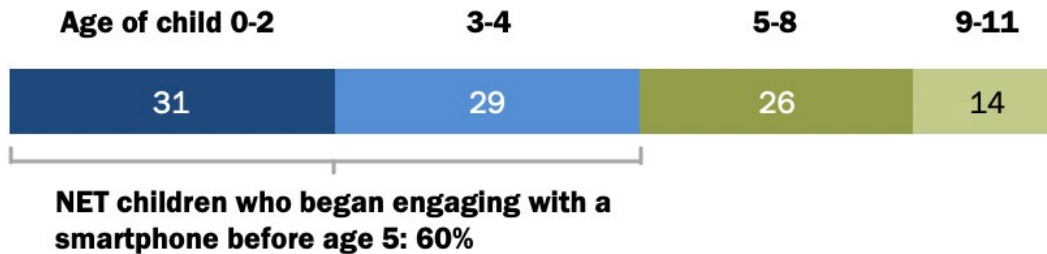
<sup>258</sup> See, e.g., Federal Bureau of Investigation, "Sextortion Subjects Target Victims' Minor Family and Friends for Sexually Explicit Videos and Images," *Intelligence Bulletin*, 2015. External dissemination.

<sup>259</sup> Brooke Auxier et al., "[Parenting Children In The Age Of Screens](#)," *Pew Research Center*, 2020.

<sup>260</sup> Federal Bureau of Investigation, "A Comparative Analysis of Sextortion and Child Pornography Production Offenders," 2017. Internal dissemination.

## Many U.S. parents report their children began using a smartphone before age 5

Among U.S. parents of a child aged 11 or younger who uses a smartphone, % who say their child began engaging with a smartphone between the ages of:



*Note: If a parent has multiple children, they were asked to focus on one child when answering this question. Those who did not give an answer are not shown.*

*Auxier, B., Anderson, M., Perrin, A., & Turner, E. (2020). Parenting children in the age of screens. Pew Research Center. Available at <https://www.pewresearch.org/internet/2020/07/28/childrens-engagement-with-digital-devices-screen-time/>*

Sextortion has a significant and lasting impact on victims. Victims report feelings of shame, embarrassment, and fear that they will get in trouble or be blamed for their victimization. Victims may also fear that the offender will carry out specific threats, such as sharing the images with friends, family, or the school. These emotions contribute to underreporting, and researchers have found nearly 1 in 3 participants surveyed stayed silent about being sextorted.<sup>261</sup> Victims are understandably concerned that if they disclose or if the offender carries out the threat and distributes images online, they may lose friends, have to change schools, or need to completely relocate to a new neighborhood. The trauma of the pervasive, psychologically damaging, and ongoing nature of this type of exploitation causes some victims to engage in self-harm and attempt or complete suicide. That this exploitation occurs from a distance should not be misconstrued to imply these offenders are less dangerous or that their abuse is less harmful to victims simply because there is no physical contact.

### *Where Does Sextortion Happen*

Sextortion most commonly takes place over messaging applications, social networking sites, and through video chatting. One study found that perpetrators primarily use social media to contact their victims (54%), followed by messaging platforms (41%), and videoconferencing platforms (23%).<sup>262</sup> Importantly, the study also found that nearly half (45%) of victims were contacted by the offender on multiple platforms.<sup>263</sup>

<sup>261</sup> Thorn (2019). Sextortion: Summary findings from a 2017 survey.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

Where does sextortion happen?	
<b>Social Networks</b>	54%
<b>Messaging/Photo Apps</b>	41%
<b>Video Voice Call Apps</b>	23%
<b>Email</b>	12%
<b>Dating Apps</b>	9%
<b>Video Sharing Social Sites</b>	6%
<b>Image Board Sites</b>	3%

*Thorn (2019). Sextortion: Summary findings from a 2017 survey of 2,097 survivors. Includes both data from adult and minor victims. Available at [https://www.thorn.org/wp-content/uploads/2019/12/Sextortion\\_Wave2Report\\_121919.pdf](https://www.thorn.org/wp-content/uploads/2019/12/Sextortion_Wave2Report_121919.pdf)*

Other recent trends include the use of gaming platforms, which offenders may use to meet children and gradually build trust through the games’ chat capabilities. Children have increasing access to a variety of gaming apps and platforms, most of which do not block users based on age. Gaming apps may be seen as more innocuous than traditional social media platforms and thus are less monitored by parents and caregivers, particularly if parents and caregivers are unfamiliar with the capabilities of the programs. Sexual predators use the online gaming environment to target child users. Offenders may offer rewards or bribes like “cheat codes” or game currency in exchange for explicit material.<sup>264</sup> Online predators may use gaming platforms to meet children before encouraging them to move to livestreaming or other platforms where further abuse occurs.

### *How Does Sextortion Happen*

In many sextortion cases, particularly where offenders and victims do not know each other offline, offenders intentionally and systematically move communications with minor victims from one online platform to another, including moving from the mainstream internet to the Dark Web. An offender will typically approach a minor victim on a social media site, where they obtain personal information about the minor, such as where they go to school, where they live, and information about their family and friends. The offender will then persuade the minor to communicate on an anonymous messaging application or livestreaming platform where the offender uses a variety of tactics to obtain sexually explicit content. Such tactics may include reciprocation (“I’ll show you if you show me”); developing a friendship or romantic relationship; secretly recording the victim during video chats; using multiple online identities against a victim, presenting as both the blackmailer and a supportive friend; threatening suicide if the victim does not provide the sexual content; offering something to the victim such as money, gift cards, or drugs in exchange for the sexual images or videos; and pretending to work for a modeling agency.

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<sup>264</sup> The Federal Bureau of Investigation, “Kids, Teens Vulnerable to Sextortion,” Public Service Announcement, 2019.

*“Younger victims were more likely to experience sextortion via an online offender and be threatened for explicit imagery.”*

*Thorn (2019), Sextortion: Summary findings from a 2017 survey of 2,097 survivors*

Offenders who engage in sextortion typically target children who have a strong social media presence that allows the offenders to gain enough information to attempt a connection with the potential victims.

According to reporting by one federal law enforcement agency, sextortion offenders often specifically target children they consider vulnerable targets because of their demonstrated willingness to post personal content online and engage in livestreaming video activity, whether the content is sexually explicit, or not. They may also target children or youth who have previously been victimized or bullied, experience low self-esteem, have poor relationships with their parents or guardians, or otherwise grapple with mental health challenges.<sup>265</sup> Offenders collect information from the online presence of potential victims, some of whom openly post pictures or videos of themselves, by reviewing their posts and “friends lists,” or by posing as an acquaintance or a stranger with similar interests. Victims’ “friends lists” also provide offenders with additional victims and the ability to trick the victim into believing the offender is someone they can trust.

Sextortion offenders typically do not employ sophisticated malware or hacking techniques to gain information about victims, although it happens occasionally.<sup>266</sup> The widespread use of social media makes such technological skill unnecessary. Offenders are easily able to find information about victims’ friends, families, schools, and employers and use this information to bolster the credibility of their threats and enhance their ability to coerce their victims to comply.<sup>267</sup> This form of social engineering is the most common sextortion method, representing more than 90% of cases involving minors.<sup>268</sup>

The pace of the grooming process in sextortion cases can be more rapid than in other forms of child exploitation, including hands-on contact abuse. Research indicates grooming begins almost immediately in 85% of sextortion cases,<sup>269</sup> 60% of victims received threats within two weeks of first contact,<sup>270</sup> and 25% were threatened during their first contact with the offender.<sup>271</sup>

Demands for explicit imagery were reported by 86% of victims threatened by online sextortion offenders.<sup>272,273</sup> The requests tend to be very specific; in a relevant study they included telling the victim how to appear or what to do in pictures or videos (41%), trying to meet via webcam

<sup>265</sup> Linda S. Jonsson, et al. “[Online Sexual Abuse Of Adolescents By A Perpetrator Met Online: A Cross-Sectional Study](#),” *Child Adolescent Psychiatry Mental Health*, Volume 13, August 2019.

<sup>266</sup> Benjamin Wittes, et al., “[Sextortion: Cybersecurity, Teenagers, And Remote Sexual Assault](#),” *The Brookings Institution*, May 2016.

<sup>267</sup> Roberta Liggett, “Exploring Online Sextortion,” *Family & Intimate Partner Violence Quarterly*, 11(4), 45-56, 2016.

<sup>268</sup> Wittes, B., Poplin, C., Jurecic, Q., & Spera, C. (2016). *Sextortion: Cybersecurity, teenagers, and remote sexual assault*. The Brookings Institution. Available at <https://www.brookings.edu/research/sextortion-cybersecurity-teenagers-and-remote-sexual-assault/>

<sup>269</sup> National Center for Missing & Exploited Children (NCMEC), “[Trends Identified In CyberTipline Sextortion Reports](#),” 2016.

<sup>270</sup> Thorn (2019). *Sextortion: Summary findings from a 2017 survey*.

<sup>271</sup> *Id.*

<sup>272</sup> NCMEC (2016). *Trends identified in CyberTipline sextortion reports*.

<sup>273</sup> Thorn (2019). *Sextortion: Summary findings from a 2017 survey*.

for sexual activity (30%), attempting to meet in person (18%), telling the victim to hurt themselves (16%), soliciting sexual pictures or videos of someone else (e.g., friend, sibling) (10%), and demanding the victim send money (7%).<sup>274</sup>

*“Nearly 2 in 3 victims complied with threats in hopes the offender would be satisfied and go away; however, for more than half (64%) the threats continued. In fact, for those who complied with threats, 68% said the threats become more frequent in the aftermath.”*

*Thorn (2019), Sextortion: Summary findings from a 2017 survey of 2,097 survivors; Note: Includes both adult and minor victims.*

Some victims of sextortion report having to meet demands for sexually explicit images and videos multiple times per day. These demands can occur at any time, day or night, on holidays, or during vacations and family events. In a recent study, nearly half (47%) of participants reported being threatened daily, and one in four were threatened more than 20 times per day.<sup>275</sup> Given the frequency of threats from offenders, often across multiple platforms, victims of sextortion often feel they are virtually surrounded, with no hope for escape from their perpetrator, who appears omnipresent. Once children become targets of sextortion, their victimization may last for years.

Sextortion offenders often ask youth to provide their cell phone numbers and/or additional screen names, then invite the child to move to another platform to continue communicating.<sup>276,277</sup> This allows the offender to a) transition a child to a more private, one-on-one conversation; b) move to a livestreaming or more video-capable platform for obtaining explicit content; and/or c) exert a sense of virtual control over the child by targeting him or her across multiple platforms.

### *Sextortion Offender Characteristics*

In a study specifically examining sextortion, the National Center for Missing & Exploited Children (NCMEC) determined sextortion offenders typically have one of three main objectives: a) to acquire increasingly more explicit sexual content of a child victim; b) to obtain money or goods from a child victim, or c) to meet a child victim to engage in sexual acts with them.<sup>278</sup>

Given the prominent sexual themes in most of the demands, it appears sexual gratification - specifically, a sexual interest in children - is the primary motivation for most sextortion offenders.<sup>279</sup> It is not uncommon for sextortion offenders to maintain CSAM collections unrelated to images they obtained through sextortion.<sup>280</sup> However, sextortion offenders may also possess the same underlying desire for power and control over victims as perpetrators of

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<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> NCMEC (2016). Trends identified in CyberTipline sextortion reports.

<sup>277</sup> Thorn (2019). Sextortion: Summary findings from a 2017 survey.

<sup>278</sup> NCMEC (2016). Trends identified in CyberTipline sextortion reports.

<sup>279</sup> Based on investigative and prosecutorial information provided by the authors.

<sup>280</sup> Liggett, 2019.

domestic violence and sexual assault.<sup>281,282</sup> Thus, sextortion offenders may demonstrate additional predatory characteristics, including excitement derived from exerting control and humiliating children. The Department of Justice estimates that many sextortion offenders are also engaged in hands-on sexual exploitation of children.

*“It went from what would be relatively benign pictures to fulfilling my offender’s perverted desires.*

*I just remember breaking down and crying, trying to get my dad not to call the police because I knew that I would end up in jail or something because I complied, and I sent him the pictures even though I didn’t want to. I tried to think rationally, like this guy was threatening me. But I sent him the pictures, so that’s breaking the law, isn’t it? I am underage and I am sending him naked pictures of me. I didn’t want to go to jail.*

*If it hits close to home, maybe they will understand. High school girls never think it will happen to them. I never thought this would happen to me, but it did.”*

- Sextortion Survivor<sup>283</sup>

## Crowdsourcing

Crowdsourcing is the practice of obtaining information or input into a task or project by enlisting the services of many people, typically via the internet. In the context of child exploitation, it refers to offenders, rather than the public, collaborating in groups to target and exploit their victims. In crowdsourced child exploitation, organized groups of offenders work together to identify social media profiles of minor victims and strategize how to convince minors to engage in sexually explicit activity. Often at least one offender poses as a minor, so that the victims believe they are trading sexually explicit content with a same-age peer. This can occur over any social media application and involve traditional images and videos, but livestreaming applications tend to be the platform of choice among crowdsourcing offenders. Crowdsourced child exploitation allows offenders a way to collaborate with other perpetrators to sexually exploit large numbers of minors in short periods of time. Forensic examinations of crowdsourcing offenders’ digital media reveal thousands of organized folders containing images and videos of minor victims. Many of the videos located during crowdsourcing investigations are recordings from livestreaming applications.

Many barriers prevent minors from disclosing their victimization in online sexual exploitation cases. Many minor victims feel too afraid or ashamed to report the conduct to adults, teachers, or law enforcement. According to recent research by Thorn, children are much more comfortable blocking a person acting inappropriately online than they are reporting the person to the platform

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<sup>281</sup> *Id.*

<sup>282</sup> Catherine D. Marcum, “[Interpreting the Intentions Of Internet Predators: An Examination Of Online Predatory Behavior](#),” *Journal of Child Sexual Abuse*, 16(4), 99–114, 2007.

<sup>283</sup> Federal Bureau of Investigation, “[Sextortion](#),” July 7, 2015.

### What is Crowdsourcing?

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or confiding in a friend or adult.<sup>284</sup> One reason may be that even when minors do report the conduct, focus can often fall on blaming the minor who sent the image or video, rather than on the offender who coerced and/or enticed the minor to do so. Minors also cite being concerned that their friends will judge them, that they may face consequences from their parents, or even that they may face criminal charges themselves. In a survey of more than 1,300 victims, 68% of respondents said that they did not report their exploitation because they thought they would get in trouble.<sup>285</sup> Creating awareness among children of this type of exploitation is necessary

to promote reporting and make clear that they are not responsible and should not feel any shame if they are a victim of sextortion. Training is also needed for responders, educators, and prevention specialists to ensure a victim-centered approach once sextortion is reported.

As with other types of child exploitation, another barrier commonly noted is the timing lapse between when law enforcement receives a CyberTip or other investigative lead about an offense to when they can access data. This lapse can often result in data related to the investigative lead being purged before it can be acted on. Parents and other caregivers upon learning of exploitation sometimes delete important data believing that they are acting in the best interest of the child prior to engaging with law enforcement. Improved communication, processes, and partnership can help address these issues.

### Victim Impact

Victims of these crimes may not be treated as such because they may have never physically interacted with their offender. In addition, some perceive online child sexual abuse as less harmful to victims because it occurs remotely. In fact, online victimization of minors can have equally serious negative impacts on a child. Minor survivors of sextortion experience severe trauma and mental health consequences as a direct result of their exploitation. They may experience depression; exhibit physical ailments resulting from emotional trauma; and are at increased risks of suicide.<sup>286</sup> Trauma and related mental conditions can have significant negative impacts on a victim's ability to thrive in relationships, academics, employment, and beyond.<sup>287</sup> The impact can be particularly profound for those victims who had existing mental health challenges prior to the victimization. Whether due to the recurring exploitation caused by having their intimate photos perpetually available to offenders online, the shame of having their friends or family find out about the abuse, misplaced guilt about their role in the offense, or fear of how

<sup>284</sup> Thorn (2019). Sextortion: Summary findings from a 2017 survey.

<sup>285</sup> Janis Wolak, et al., "[Sextortion of Minors: Characteristics and Dynamics](#)," *Journal of Adolescent Health*, 62(1), 72-79, January 2018. See Table 4.

<sup>286</sup> Centers for Disease Control and Prevention, "[Fast Facts: Preventing Child Sex Abuse](#)," April 6, 2022.

<sup>287</sup> Canadian Centre for Child Protection, "[Survivor's Survey Full Report 2017](#)," 2017.



the offender may retaliate if they disclose, rates of suicide among sexual abuse (including online abuse) survivors are high, especially among teens.<sup>288,289</sup>

### Case Study: International Child Exploitation Crowdsourcing Conspiracy

Eight men from around the country were sentenced in 2017 and 2018 for participating in an international child pornography production conspiracy. Between July 2014 and April 2015, these defendants and other co-conspirators outside the United States utilized a website that was specifically designed to help the group target and sexually exploit minor females. The website was password-protected, and only vetted individuals could become members. The members of the website worked together to identify social media profiles of girls, including girls as young as 10, and strategized regarding how to convince the girls to engage in sexually explicit activity via live web camera. Typically, while pretending to be minor boys and girls, the defendants streamed pre-recorded videos of other underage girls engaging in similar conduct to their target-victims to trick the girls into believing they were watching a live video of someone their own age. Using peer-pressure, the members convinced the victims to engage in sexually explicit activity. The victims were unaware that they were communicating with adult men who were recording their sexually explicit activity. After successfully recording a victim's sexually explicit activity, the defendants would share the videos with each other by uploading the files to a file-storage site and placing a link to download the file on a section of their members-only website. To date, 91 victims from 28 states and Canada have been positively identified.

Six of the co-conspirators pleaded guilty to conspiracy to produce child pornography and conspiracy to receive and distribute child pornography, while the seventh defendant pleaded guilty to conspiracy to produce child pornography, as well as two substantive counts of production of child pornography with two different victims, one of whom was under the age of 12. Another co-conspirator was prosecuted in the District of New Jersey and pleaded guilty to conspiracy to produce child pornography. The offenders, who all lived in different states, received sentences ranging from 18 to 40 years in prison, followed by a lifetime of supervised release. All defendants were ordered to pay restitution to several of their victims.<sup>290</sup>

### Significant Development

All these challenges were amplified by the COVID-19 pandemic and associated increase in the amount of time children, as well as offenders, spent at home and online. Law enforcement has observed that offenders are likely targeting a younger victim cohort due to remote learning during the COVID-19 pandemic. Young children, who are often more trusting than older children, have experienced increased independence and access to diverse online/social

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<sup>288</sup> Delphine Collin-Vezina et al., "[How many times did I not want to live a life because of him': the complex connections between child sex abuse, disclosure, and self-injurious thoughts and behaviors](#)," *Borderline Personality Disorder and Emotional Dysregulation*, 8(1), January 4, 2021.

<sup>289</sup> Josh Campbell and Jason Kravarik, "[A 17-year-old boy died by suicide hours after being scammed. The FBI says it's part of a troubling increase in 'sextortion' cases.](#)," *CNN*, May 23, 2022.

<sup>290</sup> U.S. Department of Justice, "[Seven Men Sentenced for Their Roles in an International Child Exploitation Crowdsourcing Conspiracy](#)," August 30, 2018.

networking platforms both for school and for online socialization. Parents and caregivers were forced to allow access to technology much earlier and for longer durations than may have been planned. Due to remote learning, children as young as pre-kindergarten are learning to navigate online environments often with limited supervision from parents and caregivers adapting to their own remote working situations. The pandemic introduced younger children to online applications that were not designed with them or their safety needs in mind, putting them at a heightened risk for abuse and allowing offenders to have an even more direct route to younger children than ever before.

### Strategic Response

Short-Term Goals	Long-Term Goals
<p><b>Encourage accountability of industry platforms and online service providers:</b> Social media, gaming, messaging services, and other companies whose platforms are used by offenders to target children should consider the safety of their product, assessing what measures currently exist to detect child sexual exploitation, and what new measures may be deployed. Companies should also consider the use of real-time intervention to educate and engage users about online safety and increase reporting of exploitive situations by children.</p>	<p><b>Assess and design appropriate victim services:</b> Across the field, there is little experience providing services to victims who were not aware of their own victimization at the time it occurred, or of behavioral health services for victims of online abuse where images remain online for years. There should be an assessment of the unique impact this may have on victims so that appropriate services can be developed.</p>
<p><b>Educate teens and parents about detecting grooming and disengaging from risky encounters:</b> Education efforts should focus on easy-to-understand information for minors about what these offenses look like, what warning signs to watch for, and how to disengage when grooming or sextortion has begun. Parents and caregivers need education about what programs used by minors are being targeted by offenders, how to set-up and maintain parental safety controls, and how to foster communication about online activities and encourage safe practices online with their children.</p>	<p><b>Build tools to make online safety easier:</b> Social media providers should create easy, intuitive, and uniform tools to combat exploitation. This includes tools for parents to control and monitor their children’s online activity and for minors to report offender conduct better and more easily.</p>
	<p><b>Fund research exploring the dynamics of online exploitation:</b> Research is needed to better understand how children can best be protected from offenders who use new and sophisticated methods to communicate and meet vulnerable victims online and the longitudinal impacts for victims of sextortion and online exploitation offenses.</p>

## *Prevention*

The best protection against crowdsourcing, sextortion, and grooming is prevention, which includes parental supervision of children's online time and resources to help parents and youth communicate about, understand, and recognize these dangerous situations. It is important to educate parents about the risks children face online and the need to use proper parental controls. One existing prevention program is NCMEC's digital citizenship and safety program, NetSmartz®<sup>291</sup>, an educational program that utilizes games, animated videos, classroom-based lesson plans, activities, and much more to help empower children to make safer choices online. Thorn also offers resources to assist parents and youth in guarding against online child sexual exploitation.<sup>292</sup> To bolster the efficacy of these public awareness campaigns, social media providers should work together to create uniform parental controls so that parents can better and more easily control and monitor children's online activity. Child protection professionals and other adults who play a role in creating a culture of safety around children must also be trained on how to educate parents and children about these issues.<sup>293</sup>

Enhanced reporting capabilities are necessary for quick responses to the proliferation of child sexual abuse material online. Social media providers should provide uniform reporting tools for minors to report offender conduct.

## *Strategic Law Enforcement Approach*

Law enforcement will respond to the rise in crowdsourcing, sextortion, and grooming with a multi-pronged approach aimed at earlier identification of subjects and enhanced triage capabilities. Earlier identification strategies will be primarily executed through targeted deployment of covert assets. Enhanced triage capabilities will aid covert assets with digital forensics technologies targeting the application of artificial intelligence, machine learning classifiers, computer vision, natural language processing, and fuzzy hashing algorithms specifically developed for livestream content.

Another common finding for law enforcement and personnel in this area is the overall strain this line of work places on them. Increased access to wellness resources to build resilience, proactive policies for mental health and wellness, and bringing on skilled personnel for this line of work may be something to highlight and build toward.<sup>294</sup>

## *Victim Identification and Support*

Crowdsourcing presents unique victim identification problems, as many victims are not aware they have been victimized. Unique resources and training are needed for law enforcement and victim services programs to identify victims and address the ongoing harm they may incur.

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<sup>291</sup> NCMEC, "[The Issues: Online Enticement](#)."

<sup>292</sup> Thorn, "[Introducing Thorn for Parents](#)."

<sup>293</sup> More information about preventing online child exploitation offenses can be found in the Prevention chapter.

<sup>294</sup> More information about wellness for law enforcement professionals working to combat child exploitation can be found in the Wellness Challenges for Law Enforcement Personnel chapter.

The number of children falling victim to crowdsourcing, sextortion, and grooming is growing rapidly. Law enforcement must handle victims with appropriate sensitivity and ensure that pertinent resources are trauma-informed and readily available to help the victims recover from the offense, even as it may be ongoing. While there are well-established behavioral health services for child sexual abuse, many do not directly address the lingering long-term impacts of abuse that is perpetrated and spread online. Because the trauma effects may last well into adulthood, ample victim support services should be made available to the youth impacted by these crimes after they turn 18. All accountability and consequences for the exploitation should be focused on the offenders, not on the victims.

Cooperation between the private sector and government agencies is also essential in countering online child sexual exploitation and abuse. Several private companies have already chosen to block access of registered sex offenders to platforms frequented by children.<sup>295</sup> Artificial intelligence tools may also be helpful in flagging suspicious activity on these platforms like current efforts to identify suspicious financial transactions.

### *Funding/Resources*

Crowdsourcing, sextortion, and grooming are complex problems that require partnership, cooperation, and communication, both within government, and between government and non-government entities, at the federal and grassroots levels. All the training and education recommendations discussed herein require funding. To the extent possible the federal government should allocate funding to appropriate agencies and should establish grant programs for community outreach and education on this issue.

The immense size of the internet and the rapid pace of online innovation makes it increasingly difficult to identify and prosecute child sexual exploitation. As the offenders and the platforms available for exploitative activities evolve, so too must investigatory techniques. Funding should be allocated to develop new technological solutions that can reduce the amount of time it takes to identify perpetrators and victims, and proactively remove child sexual exploitation and abuse material from the internet.

### *Research Needs*

There is a lack of scientific data on these topics, including the scale and complexity of the crimes, as well as the short and long-term impacts on victims. The existing studies do not currently utilize representative samples of cases, nor do they do enough comparison among cases with different technological elements, e.g., online sexual abuse with and without sextortion. Current methods to collect statistics on criminal actions may need revision to capture the evolving threat and changing societal and offending behaviors frequently adapting to new technology. New and extended studies are required to better assess the dynamics and risk factors of sextortion, crowdsourcing, enticement, and coercion.

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<sup>295</sup> United Nations Office on Drugs and Crime, "[Online Child Sexual Exploitation And Abuse](#)."

## Unique Resource and Enforcement Issues

As child exploitation cases increase in complexity, so too do the investigative and prosecutorial processes involved in bringing offenders to justice and protecting victims. Child exploitation cases often take longer to move through the criminal justice system than other types of violent crime and require more resources from law enforcement and prosecutors, hindering the ability to keep pace with the volume of new cases and investigatory leads. This chapter will address the resourcing and legal challenges in combating child exploitation, beginning with the investigation of these offenses, and spanning the trial and post-conviction phases.

### Investigative Challenges

#### *CyberTipline Reports: Volume and Quality*

Under federal law, electronic service providers (ESPs) are required to send a CyberTipline report to the National Center for Missing & Exploited Children (NCMEC) whenever they are aware of an apparent instance of a CSAM offense.<sup>296</sup> Although ESPs are not statutorily required to take affirmative steps to search for CSAM on their platforms or networks<sup>297</sup>, some voluntarily do so. Section 2258A suggests what kinds of information ESPs can include in a CyberTip report, but the ESP retains the discretion to decide what information it will include in its report.<sup>298</sup>

Domestically, the dramatic and rapid increase in CyberTip reports submitted each year<sup>299</sup> poses a significant challenge to law enforcement. Notably, the volume of CyberTips referred to the ICAC Task Forces in the five years from FY 2016 to FY 2021 more than tripled, from 76,603 to 342,140, without a commensurate increase in resources. The high volume of reports stretches resources, and this strain is compound by practical and legal challenges with CyberTips as discussed below.<sup>300</sup>

In addition to the quantity of CyberTips, the quality of the information provided by the ESPs can also pose a challenge. Some CyberTips may contain little more than a screen name or user ID and the CSAM that was detected. When ESPs provide minimal information, it takes more time for law enforcement to confirm whether that CyberTipline report contains actionable information. Delays in the investigative response can negatively impact a case in several different ways. If too much time passes, law enforcement may be unable to obtain a search warrant or risk having evidence suppressed due to the staleness of the lead. Because agents can be delayed by poor quality information submitted by ESPs in CyberTips, there is often less available time and resources to conduct proactive investigations separate from CyberTips. The

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<sup>296</sup> See 18 U.S.C. § 2258A.

<sup>297</sup> See 18 U.S.C. § 2258A(h).

<sup>298</sup> See 18 U.S.C. 2258A(b).

<sup>299</sup> More information on the rapid increase in CyberTip reports can be found in the Child Sexual Abuse Material chapter.

<sup>300</sup> On the other hand, as discussed in the Technology chapter, if Facebook adopts end-to-end encryption, millions of CyberTips would be lost. This would create a completely different problem. Instead of being overstretched, law enforcement would be deprived of a valuable source of leads and would be hamstrung in its ability to identify and rescue children.

content provided by ESPs in CyberTips also impacts how those reports may be used to obtain a search warrant. That issue is discussed in the section below entitled *Systemic Issues Obtaining Evidence Through Legal Process*.

As it stands today, the current volume of CyberTipline reports and the differing quality and quantity of information ESPs include in such reports would benefit from a broader examination of the entire CyberTip system by the three main players involved—the tech industry, NCMEC, and law enforcement. For example, there are no industry best practices relating to the consistency, timeliness, or completeness of the information ESPs provide when reporting apparent CSAM to the CyberTipline. ESPs differ as to whether they include IP addresses, information relating to whether reported content has been viewed or categorized by the ESP, and if the CSAM content was distributed beyond the reported user. Sometimes ESPs report an old incident that it only recently detected, or provide reports with minimal information that prevent any action by law enforcement. Other times, ESPs no longer have, or in violation of its statutory requirement, never preserved, data relevant to the offense, such as the internet protocol address which is needed to trace the location where the crime is occurring.<sup>301</sup> In addition, there could be improved systems and protocols in place for the tech industry, NCMEC, and law enforcement to share information about the quality of information submitted by ESPs, to identify overarching factors that lead to, or thwart, a successful outcome. Designating a single point of contact among the stakeholders (NCMEC, law enforcement, and industry) could facilitate this information exchange. Congress has and should continue considering ways to improve and modernize the CyberTipline.

Prioritizing certain CyberTips over others can be extremely difficult. Resource limitations coupled with the overwhelming volume of CyberTips minimizes law enforcement’s ability to conduct the investigative activities that would allow law enforcement to better prioritize them. While there are some indicators that could be contained in a CyberTip to suggest that an offender is a high priority due to the severity of his conduct or the imminent risk he poses to children, the lack of such indicators in a CyberTip do not necessarily signify an offender is a lower-level threat. In fact, the Department has prosecuted violent and prolific child sex abusers who initially appeared to have engaged in minimal criminal activity based on the CyberTip information. As the volume of CyberTips continues to grow, the need for more effective triaging becomes more urgent.

#### *Improvements to the Child Victim Identification Program*

NCMEC’s Child Victim Identification Program (CVIP) began in 2002 and, to date, more than 19,100 children have been identified. NCMEC maintains a database of CSAM information noting which CSAM depicts identified children and which CSAM depicts victims yet to be identified. During an investigation, law enforcement will send the images and videos seized in their investigation to law enforcement co-located at NCMEC. NCMEC will then cross-check the material from the investigation with its database. For CSAM depicting identified victims, NCMEC generates a report listing contact information for individuals who can confirm the identity and age of children appearing in the CSAM. These reports serve several purposes, including whether the victim or caretaker wishes to receive notifications about any subsequent

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<sup>301</sup> See 18 U.S.C. § 2258A(h).

federal criminal case involving CSAM depicting the victim, whether they have provided a victim impact statement, and whether they are seeking restitution.

There are certain ways that the CVIP program could be improved. Currently, law enforcement physically mails media to law enforcement co-located at NCMEC, which is burdensome and can create a bottleneck or a disincentive to use the CVIP program. The Department and NCMEC could explore the use of secure, online file-sharing solutions to facilitate these submissions to NCMEC. In addition, the Department and NCMEC could explore how to promote the use of CVIP. This could include training for law enforcement agencies to ensure they are aware of how to use this program, and information-sharing with agencies who are not subject to such a mandate to encourage the voluntary use of this program.

NCMEC and the Department should explore better ways that the information in the CVIP database can advance the cause of identifying and investigating child sexual exploitation offenses by sharing information in CVIP with law enforcement, to include seeking any requisite legislation, if required. In addition, NCMEC and the Department could seek to improve coordination among the various stakeholders concerning the operation and use of CVIP and information gathered and maintained through CVIP.

### *Coordination and Deconfliction*

Fundamentally, the online world operates without respect to jurisdiction. Offenders, often known only through screen names or user IDs, must be identified before an agency can determine whether they would have jurisdiction over the investigation. There is often a jurisdictional ban to investigate offenses outside the law enforcement agency's area of responsibility which limits investigations into offenders whose locations are not known at the outset of the investigation. In addition, there can be a more general disincentive for law enforcement to invest time and resources into investigating a target over which they may not have jurisdiction. The identification and location of the suspect is also needed to conduct deconfliction—an important process by which different agencies ensure they are not duplicating efforts by investigating the same target. Existing efforts and databases help with deconfliction, but some state databases are not accessible by federal law enforcement and vice versa.<sup>302</sup> Additional impediments, such as offenders using multiple screennames on multiple platforms, may continue to complicate deconfliction and should be addressed by continuing enhancements to existing deconfliction systems. It is also important that federal and state law enforcement routinely utilize the deconfliction tools available to them.

*Deconfliction is a process by which different agencies ensure they are not duplicating efforts by investigating the same target.*

Even within a district, coordination is vital. In 2006, Project Safe Childhood was launched to be a national platform with locally based partnerships between federal, state, local, and

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<sup>302</sup> To fill this gap, the Department provided funding in 2019 and 2020 for NCMEC and the ICACs to enhance and expand deconfliction capabilities within the CyberTipline and IDS workflows for federal and state law enforcement. NCMEC has created a deconfliction feature that enables a law enforcement agency to determine if another law enforcement agency is working on a CyberTipline report that involves any of the same elements as a CyberTipline report they are reviewing.

tribal law enforcement officers in each federal judicial district to investigate and prosecute internet-based crimes against children. Each U.S. Attorney is responsible for designing and implementing programs that are uniquely tailored to the needs of the district, while maximizing the impact of national resources and expertise. Every district should have an established and well-functioning Project Safe Childhood team with a clear Project Safe Childhood Strategic Plan to ensure coordination and communication across the various law enforcement agencies. These teams ensure all parties involved know who to contact and what details need to be developed in each case to determine assignment and prosecution needs, eliminating coordination and deconfliction challenges.

### *Investigations and Prosecutions Involving Victim Participation*

An increasing number of federal cases require victim interviews, testimony, and support services. While cases involving prosecution for the distribution, receipt, or possession of CSAM typically do not require the victim to participate in the investigation or prosecution, that is not the case for other types of child exploitation offenses, including production of CSAM. These cases constituting a larger proportion of cases prosecuted by the Department of Justice have unique demands:

- Whenever possible, child victims should be interviewed by personnel trained in child interviewing techniques. A certified Child Forensic Interviewer will use an evidence-based, legally sound, developmentally appropriate, and child-sensitive methodology that is designed to obtain accurate information while minimizing trauma experienced by a minor victim. When a child speaks another language, it can be particularly difficult especially if the child is in a foreign country to find a trained interviewer to conduct the interview or an interpreter to assist the forensic interviewer in the child’s native language.
- Resources and assistance for victims and their families are needed throughout an investigation and prosecution, from making sure their rights are protected and respected, to coordinating the logistics of their involvement and testimony. This requires regular and frequent training for victim/witness coordinators and often a reliance on NGOs to assist.
- It is critical that investigators and prosecutors identify, contact, and work with any professional who has already encountered the child. For example, child sex trafficking victims are often already “system-involved”, whether that be a case worker from the state’s Child Protective Services or a probation officer from a state juvenile justice system.

*Guardian ad litem is appointed by the court to watch over a child during court proceedings and represent their best interests. The Child Abuse Prevention and Treatment Act (CAPTA)<sup>303</sup> requires states to appoint guardians ad litem for children in abuse or neglect proceedings.*

In some cases that involve the participation of child exploitation victims, a Guardian Ad Litem (GAL) will be appointed by the court to advocate for and protect the best interests of the child. Funding for GALs is lacking in many jurisdictions, but it is important for prosecutors to seek their appointment and for prosecutors and GALs to work cooperatively. Similarly, multidisciplinary teams, which should

<sup>303</sup> <https://www.childwelfare.gov/pubpdfs/about.pdf>



include child welfare, GALs and others who are involved with safeguarding the child, are an important resource to protect a child throughout the legal process. For the benefit of the child, it is important for everyone to meet regularly and communicate early and often throughout the case. When possible and appropriate, prosecutors should deploy measures like those set forth in 18 U.S.C. § 3509 to protect victims testifying in court. However, as discussed in the Department of Justice Legislative Proposals appendix, there are some shortcomings with Section 3509 that Congress should address, to include a lack of guardian ad litem funding.<sup>304</sup> Prosecutors often explore additional support mechanisms such as emotional support dogs to assist victims when testifying.

Cases involving foreign national victims have additional challenges, starting with language barriers. Some foreign national victims in the United States may be fearful of cooperating with U.S. authorities when they lack immigration status. Many state and local law enforcement agencies do not know or understand the options available to enable the continued presence of foreign national victims in the country. In recent years, the immigration process has become slower and involved a greater risk of immigration removal. Cases involving the abuse of children outside of the United States can be particularly difficult. Because U.S. prosecutors cannot compel foreign witnesses to testify in U.S. court proceedings, prosecution often depends on their cooperation. Arranging their travel to the United States for trial can involve a host of logistical challenges. They often do not have passports or other identifying documents, such as birth certificates. The Department is limited in its ability to have children travel with a companion, such as a parent or guardian. Arrangements that must be made may include providing clothing, familiar foods, religious services, medical care, and security.

Under federal law, victims of CSAM, human trafficking, sexual assault, and crimes of violence are entitled to mandatory orders of restitution, regardless of the defendant's ability to pay. The Department must remain unflagging in its commitment to seek restitution, educate prosecutors on the impact of charging and plea decisions on restitution, improve methods of proving restitution (with or without victim cooperation), and to give victims the right to confer about restitution. To facilitate payment of restitution to child exploitation victims, the Department has prepared a legislative proposal to facilitate the appointment of trustees.<sup>305</sup> In December of 2018, the Amy, Vicky, and Andy Child Pornography Victim Assistance Act was signed into law. This law gives victims of trafficking in CSAM (which generally means the distribution, receipt, and possession of such material) the option of obtaining a one-time lump sum payment of defined monetary assistance.

Finally, many legal tools are lacking that could help combat online child sexual exploitation and empower victims.<sup>306</sup> Key among these are amendments to 47 U.S.C. § 230 to permit victims to pursue civil remedies against online providers that facilitate CSAM offenses, and to permit the Department to seek injunctive relief against online providers to stop online sharing of CSAM.

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<sup>304</sup> See *United States v. Lewis*, 791 F. Supp. 2d 81, 94, fn. 18 (D.D.C. 2011) (noting the lack of funding for guardian ad litem).

<sup>305</sup> Measures Congress can take to facilitate payment of restitution to victims through the appointment of trustees or other fiduciaries are discussed further in the Department of Justice Legislative Proposals appendix.

<sup>306</sup> This is further discussed in the Child Sexual Abuse Material chapter and the Department of Justice Legislative Proposals appendix.

Also needed is a “notice and takedown” civil or administrative mechanism that would require online providers to quickly remove content upon the request of the victim. Because tools such as these are currently missing, the criminal justice system is the sole legal option for fighting these crimes. The Department welcomes the opportunity to work with Congress on legislation to broaden the means to address these crimes.

### *Systemic Issues Obtaining Evidence Through Legal Process*

Both law enforcement agencies and the tech industry face challenges with respect to child exploitation search warrants.

Technology companies receive search warrants from many jurisdictions seeking a wide variety of information. The lack of uniformity and use of different terms creates confusion as to what information is being requested. One potential solution is to improve the access of state and local law enforcement officers to search warrant samples, forms, and templates that are currently available to federal law enforcement. This will improve the precision and consistency of warrants. Another is to increase dialogue between the tech industry and the Internet Crimes Against Children (ICAC) Task Forces to better share information about what information companies possess and how to address emergencies.

Law enforcement, on the other hand, is facing increasing challenges in using CyberTips to obtain search warrants. For example, in *United States vs. Wilson*, 13 F.4th 961 (9th Cir. 2021), the Court of Appeals held that a search warrant for a defendant’s home and email account should be suppressed where the warrant was premised on a CyberTip and law enforcement reviewed the content of that CyberTip without a warrant. To the extent that *Wilson* suggests that two warrants are required—the first one to review the CyberTip and a second one to search a home, digital device, or online account—this exacerbates the strain on already limited resources particularly given the rising number of CyberTip reports. The Department has been and continues to explore practical solutions to address this issue with the tech industry and NCMEC, which includes discussion of information that could be included in CyberTips to forestall this legal issue.

Companies not possessing or having access to the requested information is a more difficult issue. One challenge is encryption. As encryption and other tools become more widespread, evidence of a crime stored on an encrypted device or shared over an encrypted platform is almost always inaccessible, even with a valid warrant or court order.<sup>307</sup> Another challenge is retention. For over two decades, investigations have been stymied because internet service providers do not retain data that can be used to identify individuals using a particular internet protocol address on a given date and time, or they do not retain it long enough such that the data is gone even when law enforcement quickly serves legal process. Obtaining that information is critical because it often provides the bridge between online sexual abuse and the real-world abuser. More recently, there have been instances when companies have deleted information after submitting a CyberTipline report to NCMEC. Although federal law mandates that information relating to a CyberTipline report be preserved for 90 days,<sup>308</sup> some companies incorrectly consider the

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<sup>307</sup> This issue is addressed in further detail in the Technology chapter.

<sup>308</sup> See 18 U.S.C. 2258A(h)

CyberTipline report itself to constitute sufficient preservation. This creates problems later if the company is asked to authenticate information in the CyberTipline report.

Law enforcement also has difficulties when companies fail to provide any information in response to a valid search warrant, when tech companies provide the requested information in an unreadable format, when there is a significant delay in receiving information in response to a search warrant, and when companies litigate the scope of a warrant, an issue that is particularly difficult for state and local law enforcement, who have very few resources to repeatedly litigate matters against well-resourced companies.

### *Obtaining Evidence from Abroad*

*A treaty on mutual legal assistance in criminal matters (MLAT) creates legally binding obligations between two countries to facilitate the gathering of evidence for use in criminal investigations, prosecutions or related proceedings.*

Investigations of online child sexual exploitation offenses increasingly require evidence from social media or tech companies that are based in foreign countries. To obtain such evidence, investigators often must submit a request pursuant to a Mutual Legal Assistance Treaty (MLAT).<sup>309</sup> Regrettably, the MLAT process can be slow, due largely to the high volume of global requests made through this process and the lack of capacity to deal with them in some countries. For state and local investigators, the process can be more complicated because they need to coordinate with their federal counterparts to submit a request. Some offenders deliberately use services based in countries that do not have an MLAT with the United States, leaving law enforcement in the United States with limited or no means to obtain evidence of the crime apart from discretionary requests for assistance that may not be productive when dealing with uncooperative countries.

In March 2018, Congress enacted the Clarifying Lawful Overseas Use of Data (CLOUD) Act to speed access to electronic information held by U.S.-based global providers that is critical to our foreign partners' investigations of serious crime, ranging from terrorism and violent crime to sexual exploitation of children and cybercrime. The CLOUD Act authorizes the United States to enter into executive agreements with rights-respecting foreign countries under which authorities in each country are able to obtain certain electronic data directly from communications service providers operating in the other's jurisdiction to fight serious crime and terrorism. To date, the United States has signed CLOUD Act agreements with only the United Kingdom and Australia.<sup>310</sup>

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<sup>309</sup> MLATs create obligations between the United States and the foreign country to provide reciprocal assistance in relation to a broad range of criminal matters. Specifically, MLATs are intended to facilitate foreign evidence gathering while ensuring that investigators and prosecutors respect the sovereignty of the treaty partner and do not run afoul of foreign laws that can create both civil and criminal liability for persons acting in the foreign territory without legal authority.

<sup>310</sup> See <https://www.justice.gov/dag/cloudact>.

## **Trial Issues**

### *Need for Judicial Training*

Many judges rarely preside over child exploitation cases. Those judges may be unfamiliar with the technology, trauma, and complexities of these crimes. Even judges who see these cases regularly may lack the training necessary to understand multi-faceted child exploitation cases. Every state has a judicial education requirement. There are also specialized trainings for bench officers who preside over certain types of cases, such as child sex trafficking.<sup>311</sup> Accordingly, there are opportunities to provide training and outreach to different groups of judges and to enhance training that currently exists.

Judges should be trained on the complex trauma caused by sexual abuse and sexual exploitation, the level of violence depicted in the images, and on the long-term impacts of the persistent existence of the images that remain online, sometimes for decades. As offenders become more sophisticated in their use of technology to commit these crimes, judges should be regularly trained to better understand the computer forensics that often play a pivotal role in these cases. Judicial training is also needed on trauma, how it manifests in victims and may impact a victim's involvement in a prosecution, the impact of judicial proceedings on victims, and how victims are perceived as witnesses. Survivors should be involved in these trainings to discuss their own experiences and humanize the consequences of these crimes. Training should also address the demographics of these crimes, including who the victims are, who the perpetrators are, and the significant disparate impact they have on marginalized communities, including communities of color, Indigenous communities, LGBTQI+ communities, and those living in poverty. Finally, training should include training on secondary trauma, which affects judges, court staff, jurors, and anyone exposed to these cases.

### *Trial Technological Issues*

In any case involving CSAM, the actual images and videos of CSAM are critical pieces of evidence. It is important to treat CSAM in a way that is respectful to victims, which includes avoiding any unnecessary duplication of the images and videos and limiting exposure to those required to see them; but technological limitations often make it difficult to prepare trial exhibits and present the evidence to the jury while maintaining these protections. The below changes in the current process are needed:

- Law enforcement needs better equipment to prepare and present evidence to prosecutors.

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<sup>311</sup> The National Judicial Institute on Domestic Child Sex Trafficking (NJIDCST) offers training programs for judges that address child sex trafficking in the United States. Created in partnership with the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, and Rights4Girls in 2014, the Institute provides judges with a highly interactive educational opportunity to expand their knowledge of trafficking risk factors, victim identification, effective intervention strategies, cultural considerations, and much more. The Institute aims to instill a stronger sense of judges' courtroom and community roles to help prevent and end domestic child sex trafficking. <https://www.ncjfcj.org/child-welfare-and-juvenile-law/domestic-child-sex-trafficking/national-judicial-institute-on-domestic-child-sex-trafficking/>

- Prosecutors need stand-alone computers to take to court that allow prosecutors not only to store and display CSAM, but also allows prosecutors and staff to use CSAM to create trial exhibits.
- Courts need updated technology to accommodate special stand-alone computers, so CSAM does not have to be duplicated onto other devices.
- Courtrooms need better technology to allow the display of CSAM only to the necessary parties rather than broadcasting it to the entire courtroom. Some courtrooms accomplish this by having individual monitors for each juror, but many courtrooms are not equipped to treat CSAM differently than other non-contraband images and videos displayed at trial.

## Post-Conviction Issues

### *Sentencing Issues in Cases Involving Trafficking of Child Sexual Abuse Material*

*United States Sentencing Guideline § 2G2.2 covers the trafficking in material involving the sexual exploitation of a minor; receiving, transporting, shipping, or advertising material involving the sexual exploitation of a minor with intent to traffic; and possessing material involving the sexual exploitation of a minor.*

Sentences in federal criminal cases are informed by the U.S. Sentencing Guidelines (U.S.S.G.) issued by the U.S. Sentencing Commission. In cases involving the distribution, receipt, and possession of child pornography, U.S.S.G. § 2G2.2 applies. The Sentencing Commission has repeatedly found that judges apply below-guideline sentences more often in sentencings under § 2G2.2 than they do for any other type of federal offense. Specifically, in a 2021 report,<sup>312</sup> the Sentencing Commission noted that, although sentences imposed remain lengthy, courts increasingly impose terms of incarceration below the guideline ranges calculated under Section 2G2.2. In fiscal year 2019, less than one-third (30.0%) of non-production child pornography offenders received a sentence within the guideline range. The majority (59.0%) of non-production child pornography

offenders received a variance below the guideline range, and only 16.8% of those were a result of a prosecutor's request.

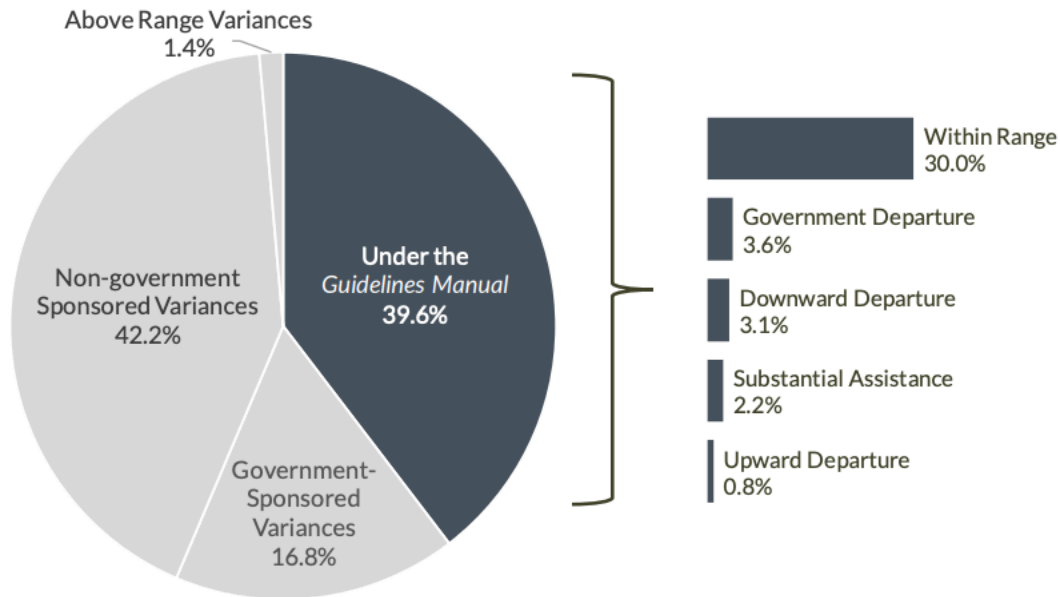
The Commission reached a similar conclusion in a report released in 2012, indicating that this trend has been the reality in federal sentencing in this area for nearly a decade. Courts imposed below-guideline sentences at a higher rate when sentencing a defendant under Section 2G2.2 than for any other federal offense.<sup>313</sup>

Section 2G2.2 is outdated and fails to capture modern aggravating conduct. Four of the six enhancements in Section 2G2.2—accounting for a combined 13 offense levels—cover conduct that has become so ubiquitous that they now apply in the vast majority of cases sentenced under Section 2G2.2. Two enhancements: use of a computer and age of the victim depicted (under 12 years) applied for over 95% of the non-production child pornography offenders in fiscal year 2019.

<sup>312</sup> See [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210629\\_Non-Production-CP.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210629_Non-Production-CP.pdf).

<sup>313</sup> See [https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Chapter\\_06.pdf](https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Chapter_06.pdf), pg. 133-134.

## Sentences Relative to the Guideline Range for All Section 2G2.2 Offenses



Source: Federal Sentencing of Child Pornography Non-Production Offenses, June 2021, United States Sentencing Commission

At the same time, Section 2G2.2 does not adequately account for aggravating factors that are more relevant for determining appropriate sentencing based on what is known about child exploitation offending today. In 2019, more than forty percent (43.7%) of non-production child pornography offenders participated in an online child pornography community. This is an important aggravating factor to note in sentencing because online child exploitation communities can lead to an escalation in offender behavior.<sup>314</sup> Surrounded by others who share their predilections, offenders rationalize their pedophilic attractions and often shed the guilt or shame that might prevent them from offending. Offenders also learn from each other, including how to groom victims and evade detection. Investigators have also uncovered offenders in these groups competing with each other resulting in increased hands-on victimization and CSAM trafficking. In addition, this kind of competition may lead offenders to consume, share, or perpetrate increasingly sadistic forms of child sexual abuse and exploitation to gain credibility with others in the group.

As courts and the government contend with the outdated statutory and guideline structure, sentencing disparities among similarly situated non-production child pornography offenders have become increasingly pervasive. Charging practices, the resulting guideline ranges, and the sentencing practices of judges<sup>315</sup> have all contributed to these disparities. For example:

<sup>314</sup> More information about the impact of online child exploitation communities on offender behavior can be found in the Offender Psychology chapter.

<sup>315</sup> For example, some judges do not view images when imposing sentences for non-production convictions, which may result in lower sentences as compared to sentences imposed by judges who do.

- Among 119 possession of child pornography offenders with the same guideline calculation through the application of the same specific offense characteristics and criminal history category, sentences ranged from probation to 228 months' incarceration.<sup>316</sup>
- Among 52 receipt of child pornography offenders with the same guideline calculation through the application of the same specific offense characteristics and criminal history category, sentences ranged from 37 months' to 180 months' incarceration.<sup>317</sup>
- Among 190 distribution of child pornography offenders with the same guideline calculation through the application of the same specific offense characteristics and criminal history category, sentences ranged from less than one month to 240 months' incarceration.<sup>318</sup>

Congress set several of the guideline's enhancements<sup>319</sup> and, as a result, legislation will be required to change them. As a result, the Sentencing Commission cannot modernize the guideline on its own. The Department of Justice is prepared to work with Congress to develop a sentencing guideline for cases involving CSAM that accurately and meaningfully captures the most serious aggravating conduct.

#### *Victim Impact Statements*

For victims of distribution, receipt, and possession of CSAM, the DOJ maintains a database of victim impact statements that are used as an efficient option for victims to exercise their right to be heard at "any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding."<sup>320</sup> Under this system, victims prepare a statement one time (although they may update or revise it at any time and as often as they wish), and provide permission for federal prosecutors and victim witness personnel to submit the statement at any subsequent federal sentencing in a case involving CSAM depicting that victim. These DOJ personnel may also, with the victim's permission, share these statements with state and local counterparts for use at appropriate sentencings in those courts. These statements may also be used in probation and parole hearings. DOJ commits to examining ways to make distribution of statements more efficient as well as the feasibility of obtaining and distributing videotaped victim impact statements in a manner that protects the privacy and security of victims. Videotaped impact statements humanize the victim and underscore the impact of these crimes in a way that written statements cannot, particularly when many judges may not review the CSAM involved in the case. DOJ also commits to outreach in a victim-centered and trauma-informed way, to obtain statements from victims whose abuse may have occurred before this system was implemented, and to afford victims who have already provided statements an opportunity to update them as desired.

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<sup>316</sup> See [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210629\\_Non-Production-CP.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210629_Non-Production-CP.pdf).

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> <https://guidelines.ussc.gov/gl/%C2%A72G2.2>

<sup>320</sup> 18 U.S.C. 3771(a)(4).

## Information Sharing Concerning Prior Convictions

It is sometimes difficult for law enforcement to gather the necessary criminal history documents from different domestic and international jurisdictions. Often law enforcement cannot obtain complete conviction and disposition information, and frequently, there are challenges with interpreting the information received from other jurisdictions. There are also gaps in information sharing and tracking of offenders across criminal justice agencies and between different jurisdictions. For example, juvenile adjudications may be sealed and information unavailable even when the individual is required to register as a sex offender as an adult. Obtaining complete conviction and disposition information is critical to registering sex offenders and ascertaining their tier, which determines their registration frequency and duration.

## Significant Developments

The passage of the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018 created a new process for CSAM victims seeking restitution from defendants possessing, receiving, and distributing their sexual abuse imagery. Specifically, the Act established the Child Pornography Victims Reserve (“Reserve”) to provide restitution to eligible individuals who are depicted in CSAM that is the basis for certain convictions under the United States Code.

The Reserve will provide payment to CSAM victims based on orders obtained in U.S. district courts. While the Reserve is not yet fully implemented, courts are already using the new law to levy monetary penalties against convicted defendants.

## Strategic Response

Short-Term Goals	Long-Term Goals
<b>Encourage information sharing to improve CyberTipline system:</b> Explore opportunities to increase the meaningful exchange of information among law enforcement, the tech industry, and NCMEC concerning information submitted to the CyberTipline by tech companies, processing of CyberTipline reports by NCMEC, and review of CyberTipline reports by law enforcement, with an emphasis on identifying trends, frequently encountered issues, and best practices concerning the content of CyberTips, and develop legislative proposals, as needed, to facilitate such conversations.	<b>Expand judicial child exploitation training:</b> Expand survivor-informed training for the judiciary about child exploitation offenses, with emphasis on the technical and forensic issues involved.
<b>Improve the Use and Functionality of CVIP:</b> With NCMEC and relevant law enforcement agencies, assess the current process for submissions to CVIP and develop a plan: (1) to increase submissions by state and federal law enforcement agencies to CVIP and to facilitate online submission of content; (2) to	<b>Expand international agreements under the CLOUD Act:</b> Continue efforts to enter into CLOUD Act executive agreements with rights-respecting foreign governments to facilitate faster access to electronic



create greater transparency concerning NCMEC’s operation of CVIP; and (3) to facilitate the use of information in CVIP to assist in the interdiction of child exploitation offenses.	data for investigations and prosecutions of serious crime, including child sexual abuse.
<b>Revise United States Sentencing Guideline § 2G2.2:</b> Develop legislation to revise the sentencing guidelines for CSAM cases.	
<b>Develop training on law enforcement &amp; industry collaboration:</b> Improve the search warrant process (application and obtaining responsive data) by providing training and guidance to state and local law enforcement and facilitating information sharing among law enforcement and the tech industry.	

### *Training*

Two training efforts are needed to improve responses to child exploitation:

- The first is judicial training. This training effort should replicate a successful judicial training program conducted by CEOS over ten years ago that provided basic information about computer forensics and digital evidence to familiarize judges with the nature of this evidence, which is likely to appear in a variety of criminal cases before the courts. Given the evolving technological nature of child exploitation cases, this training should offer some content that is specific to these types of cases and should be regularly refreshed to keep up with the changing nature of the technology.

Judicial training must include training on the importance of a trauma-responsive, victim-centered approach. It should address topics such as how to display CSAM evidence in court and how to make it as comfortable as possible for trauma victims appearing in court including using courtroom support dogs.

- The second training program is for state and local law enforcement partners. This training should enhance their ability to partner with and leverage the resources of the technology industry to obtain search warrants and court orders expeditiously and successfully for digital evidence. This training can also promote the use of the CVIP program, by emphasizing to the relevant agencies that their participation is required, or by encouraging its voluntary use by other agencies.

### *Partnerships*

Addressing many elements of this component of the National Strategy will depend on partnerships. CVIP, for example, is by and for federal, state, local, and tribal law enforcement, and is operated by NCMEC. These entities must continue to work collaboratively to identify solutions to improve the efficiency and efficacy of this program, in part through training as noted above.

Similarly, the CyberTipline is a reporting mechanism for online child sexual exploitation committed around the globe. It is operated by NCMEC and serves as a national reporting mechanism for the public and electronic service providers to report suspected child sexual exploitation. CyberTips are forwarded to law enforcement for review and potential investigation. While in some ways the explosion in CyberTipline reports is a positive development due to voluntary efforts by some in the tech industry to detect child exploitation offenses, it is also overwhelming law enforcement agencies all over the world, particularly to the extent it requires time to ascertain when no further investigation is possible or warranted. To improve the quality of information submitted by ESPs to the CyberTipline, so that reports made available to law enforcement are more actionable, consistent, and effectively reviewed, NCMEC, the tech industry, and law enforcement should collaborate to identify trends, common issues, and other best practices concerning CyberTipline reporting.

Finally, the primary purpose of the CLOUD Act is to facilitate partnerships among the United States and rights-respecting foreign countries, to permit a more efficient process for obtaining digital evidence. Given how often child exploitation investigations involve foreign-based evidence, expanding the universe of agreements under the CLOUD Act will speed the process of investigating these crimes.

#### *Legislation/Policy*

An accurately calibrated sentencing regime is a necessary component of an effective response to CSAM. The current sentencing guidelines place a great deal of emphasis on the visual depictions, without a commensurate focus on the defendant's conduct. Of the seven specific offense characteristics in § 2G2.2, almost half pertain to the content or volume of the visual depictions. The remaining enhancements cover types of distribution, the use of a computer, and the prior abuse of children. While most of these enhancements have merit, they collectively portray only a slice of the full extent of a defendant's criminal conduct. Because the guidelines dictate the relevant evidence at sentencing, they are the de facto checklist for computer forensic analyses. This is a problem because once the necessary evidence to trigger all possible sentencing enhancements is gathered, the analysis often stops, which may cause more extensive criminal conduct to be missed. The guidelines should be recalibrated to better account for serious, aggravating conduct. Because the guideline was created in part through legislation, Congress must take measures to overhaul it.

The Department will also prepare legislation to the extent needed to improve the efficiency and efficacy of the CyberTipline and CVIP.

## Technology

One of the most persistent, evolving threats to children online is the very technology that enables the digital world to thrive. While technology has many benefits, it also has made it dramatically easier for offenders to harm kids and connect with one another. Those who seek to exploit children can connect on internet networks and forums to produce, sell, share, and trade child sexual abuse materials (CSAM), and to find and groom children for sexual abuse. These interactions are facilitated through numerous forms of internet technology, including websites, email, peer-to-peer networks, internet gaming sites, social networking sites, messaging apps, anonymized networks, instant messaging, Internet Relay Chat (IRC), newsgroups, and bulletin boards. The emergence of these online communities has promoted communication between offenders in ways previously inconceivable in real life. The communities normalize and radicalize an offender's sexual interest in children, facilitate sharing knowledge and best practices among offenders on how to avoid detection or sexually abuse children, and desensitize them to the physical and psychological damages inflicted on the children being exploited.



*We already know that social media is used to groom, lure, abuse and exploit children. Implementing available technology that would allow industry to continue to work side by side with agencies like NCMEC and law enforcement while still being able to provide end-to-end encryption and privacy to users who are not committing criminal acts shouldn't even be a question.*

*Children's lives and futures are in your hands.*

*– Survivor*

<https://www.missingkids.org/theissues/end-to-end-encryption>

Built largely in just the past 25 years, the digital world has developed rapidly, and continues to grow. This constantly churning sea of change leaves many parents, political leaders, judges and even law enforcement playing catch up to understand how technology is bringing offenders together with one another, as well as how technology creates both opportunities and risks for children. Furthermore, society struggles to balance its desire for innovations or policies developed for privacy, such as encryption, anonymization, and data retention, with that of safety, particularly child safety. Within this backdrop, technology-based issues frequently frustrate the collective ability to combat online child exploitation.

For law enforcement, technology, of course, is a double-edged sword, which creates both challenges and opportunities as a tool to combat child exploitation. In the arena of digital forensics, the development of protocols and tools for digital analysis in child exploitation cases is complicated by the ever-changing variety of platforms used to commit offenses, the sheer volume of data to analyze, and the cost, time, and expertise involved in development.

Given a variety of technological changes on several fronts, a perfect storm is brewing that sharply curtails law enforcement's ability to detect and investigate technology-facilitated child sexual exploitation offenses. This chapter will discuss several of the primary technological threats hindering the prevention and interdiction of child exploitation.

## Increased Availability of Default Encryption

### *Data at Rest: The Spread of Default, Full Disk Encryption*

#### Types of Encryption

Encryption is a technology that protects information by converting it into unreadable code that cannot be deciphered easily by unauthorized people.

Full disk encryption uses disk encryption software or hardware to encrypt every bit of data, including all files and programs, that goes on a disk, device, or hard drive.

End-to-End encryption is a method of secure communication that only allows the users communicating with one another to read and view the content and prevents third parties from accessing any of the data.

As a technology, encryption is not new. Nor is it inherently harmful. At the Department of Justice, we rely on encryption every day to keep sensitive intelligence and investigative information safe, and in our personal lives we benefit from the privacy afforded by encryption. At the same time, the investigation and prosecution of crime are thwarted when we cannot access the contents of a hard drive or a smart phone, even with a lawful court order or search warrant issued only after a neutral judge has determined there is probable cause that the hard drive or phone contains evidence of a crime. This impact is felt throughout the case, from identification and investigation, to charging, plea negotiations, sentencing, and restitution. Most significantly, victim identification and rescue are rendered impossible even if it is known that images or

videos that could lead to that rescue reside on the device. Over the last five years, full disk encryption has become the default model of many digital devices, particularly smartphones and tablets, requiring no action by the user to obtain that warrant-proof technology. Complicating the issue is the existence of multiple types of full disk encryption, each requiring a different investigative method and/or forensic approach, and even different types of legal process. Often one case can involve multiple forms of encryption, which strains or exceeds the capacity of law enforcement's already limited forensic resources.

### *Data in Motion: The Spread of End-to-End Encryption (E2EE)*

Many technology companies have adopted, or are adopting, end-to-end encryption (E2EE), which secures online data but also has potentially dire consequences. E2EE prevents companies or any third-party, such as law enforcement agencies with appropriate warrants or court orders, from detecting or gathering information about the activity of people who use the internet to exploit children and share CSAM. This results in countless incidents of online child sexual exploitation remaining hidden and victims going unidentified and awaiting rescue.

Nothing demonstrates the impact of the spread of E2EE more dramatically than data about the impact of Meta's<sup>321</sup> planned adoption of E2EE on its Messenger platform. Meta (formerly The Facebook Company) is the undisputed global leader when it comes to voluntary efforts to detect CSAM on its platforms. In 2019 and 2020, Meta-owned platforms, including Facebook, Instagram, and WhatsApp, accounted for approximately 94% of all CyberTips sent in by

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<sup>321</sup> The Facebook Company changed its company name to Meta on October 28, 2021  
<https://about.fb.com/news/2021/10/facebook-company-is-now-meta/>

industry each year.<sup>322</sup> However, The National Center for Missing & Exploited Children (NCMEC) estimates that approximately 12 million CyberTips will be lost to the implementation of E2EE on Facebook’s Messenger platform.<sup>323</sup> Meta promises that it is developing alternative tools to detect CSAM even with E2EE, but thus far has provided no information to confirm the viability or accuracy of this claim.<sup>324</sup>

*“If Facebook moves forward with the plans that they have at the moment, we will be blinded. They will blind themselves and law enforcement.”*

*FBI Director Christopher Wray*

Meta’s data also sheds light on how much child exploitation activity must already be occurring in the dark, protected spaces of apps that already use E2EE - if this much crime is happening in the open, how much is going on where it cannot be detected? Anecdotal cases involving encrypted messaging apps like Telegram, Wickr, and WhatsApp provide a small glimpse - a tip of the iceberg - into crimes against children on encrypted platforms.<sup>325</sup> Beyond what these cases can tell us,

we do not have a statistical picture of the prevalence and severity of child exploitation that takes place behind encryption. In the words of FBI Director Christopher Wray, “If Facebook moves forward with the plans that they have at the moment, we will be blinded. They will blind themselves and law enforcement.”<sup>326</sup>

In this regard, E2EE poses the gravest threat to children, particularly on platforms where children are allowed to use or even encouraged to use such apps alongside adults. In these unsafe online spaces, children are easy prey for predators because voluntary detection and interdiction is impossible. E2EE blinds us all, at the expense of children.

### **Increased Availability of Anonymizing Technology**

Anonymizing technology comes in many forms, but the core feature is that it is designed to conceal information about a user’s identity and physical location. Law enforcement can watch crimes occur in real time in anonymous spaces but have no ability to identify the location of the sites or find and apprehend the offenders who access them.

#### *The Dark Web*

The Dark Web, also known as the Dark Net, is a heavily encrypted layer of the internet. Unlike the “surface web,” which is the portion of the internet indexed by search engines and used by most consumers for most mainstream services, the Dark Web is designed for anonymity. Users

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<sup>322</sup> 15,884,511 of 16,836,694 CyberTips in 2019, and 20,307,216 of 21,447,786 in 2020. Because NCMEC combines report totals for related platforms and companies, the number of CyberTips reported by Facebook includes reporting from other Meta-owned platforms, including Instagram and WhatsApp.

<sup>323</sup> <https://www.justice.gov/opa/press-release/file/1207081/download>. Pg. 2

<sup>324</sup> <https://www.nytimes.com/2020/02/05/technology/facebook-encryption-child-exploitation.html>

<sup>325</sup> <https://www.justice.gov/usao-edva/pr/sex-traffickers-sentenced-combined-81-years-prison>  
<https://www.texarkanagazette.com/news/texarkana/story/2020/nov/14/man-gets-17-years-prison-charges-child-pornography/849054/>

<https://www.justice.gov/usao-ne/pr/lincoln-man-receives-100-year-sentence-producing-child-pornography>

<sup>326</sup> Taken from testimony in front of the Judiciary Committee of the U.S. House of Representatives on February 5, 2020.

need special software to access the Dark Web. The advanced anonymity of Dark Web platforms makes it exceptionally hard for law enforcement to identify the physical location of Dark Web sites (hence the Dark Web name for websites - “Hidden Services”) and the individuals behind the illegal activity. Society has effectively created a lawless environment where a vast amount of criminal activity occurs and is tolerated under the banner of digital privacy. Although the design of the Dark Web makes it difficult to comprehensively document the staggering scope and breadth of crime occurring, some estimates indicate that 57% of the websites on the Dark Web are designed to facilitate illicit activity, with new sites being continually added.<sup>327</sup>

*In 2018, 2.88 million accounts were registered globally across the ten most harmful child sexual exploitation sites on the Dark Web.*

The Dark Web has given offenders easier, more secure access to vulnerable children and allowed people who share a sexual interest in children to build global networks and communities to discuss their predilections, share CSAM, and hone techniques to avoid law enforcement detection. In 2018, 2.88 million accounts were registered globally across the ten most harmful child sexual exploitation sites on the Dark Web.<sup>328</sup> One image that was posted on a Tor hidden hosting service for 24 hours was viewed 21,000 times.<sup>329</sup> Not only is the Dark Web attractive to more technologically sophisticated offenders who are looking to use extra measures to attempt to evade detection, but the increasing size and accessibility of Dark Web platforms has made it easier for even less sophisticated offenders to achieve heightened anonymity. Most Dark Web child exploitation communities are open forums or chat sites, which instantly connect offenders of varying degrees of sophistication. Some sites require users to pay a fee to gain access, generally using cryptocurrency payments, commercializing the abuse suffered by victims whose images are trafficked. Others require new or prospective members to provide newly produced CSAM, pushing offenders even further into their abuse of children. This amplification effect is endemic of the Dark Web, as offenders feel freer to discuss their sexual interests with others and share more niche or extreme images in the haven of these anonymized sites. These communities provide a forum for offenders to bond with one another, share stories about their past, and often go beyond just viewing and trading images to collaboratively targeting children to extort more CSAM or to gain face-to-face access to children they otherwise would never encounter.<sup>330</sup>

Investigations on the Dark Web often depend on innovation in strategy and law enforcement tools. Empowering law enforcement to collaborate beyond jurisdictions or national borders is a key to success in identifying victims who are broadcast on the dark web from a hidden location. While the Department of Justice has made significant success in taking on criminals utilizing the Dark Web, there is no question that such investigations are slow, inefficient, and resource intensive.

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<sup>327</sup> Goodison, Sean E., Dulani Woods, Jeremy D. Barnum, Adam R. Kemerer, and Brian A. Jackson, Identifying Law Enforcement Needs for Conducting Criminal Investigations Involving Evidence on the Dark Web. Santa Monica, CA: RAND Corporation, 2019. [https://www.rand.org/pubs/research\\_reports/RR2704.html](https://www.rand.org/pubs/research_reports/RR2704.html).

<sup>328</sup> ‘The Internet is Overrun with Images of Child Sexual Abuse. What Went Wrong?’ (New York Times, 2019) available at <https://www.nytimes.com/interactive/2019/09/28/us/child-sex-abuse.html>

<sup>329</sup> Based on investigatory and prosecutorial experience of the authors.

<sup>330</sup> Based on investigatory and prosecutorial experience of the authors.

## Key Definitions

### **The Dark Web**

The Dark Web is a layer of the internet that can only be accessed through special software, such as anonymous browser networks like Tor, which shields users' identities and locations. Most of the Dark Web's content is hosted anonymously.

### **Tor**

The Onion Router (now known by its acronym Tor) is a free software that encrypts and anonymizes a user's internet activity by sending internet traffic across numerous servers to shield the user's true location. It was created as part of a federal government research project – and is still largely funded by federal agencies – but now is an open-source software available for any user.

### **Virtual Private Network (VPN)**

A virtual private network encrypts the connection between a device and the internet to protect sensitive data being transmitted over the network. It works by masking a user's IP address, preventing unauthorized people from eavesdropping on a user's internet traffic. This technology is used widely in corporate settings to enable secure remote work by an organization's employees.

### **Peer-to-Peer (P2P) File Sharing Network**

A peer-to-peer file sharing network acts as a decentralized repository of content, where a community of users can upload and download digital files, such as videos, software, or images.

## **Increase in Use and Availability of Virtual Private Networks (VPNs)**

Virtual Private Networks (VPNs), like encryption, are not new, but their pervasiveness and accessibility have continued to expand. VPNs thwart the use of traditional means to identify and locate a potential suspect by encrypting the connection between a device and the internet and masking the user's IP address. Many VPNs are hosted outside of the United States, making an IP address appear to be in a particular location, when the VPN hosting service's users are active all over the world. Even when law enforcement and partner agencies identify an initial IP address for a child exploitation offender, VPN technology may result in CyberTips and leads being incorrectly routed to the service hosting country, creating a delay in getting the lead to the right local authorities in the offender's jurisdiction. Worse, the VPN may not retain real location data for its users, making the lead useless. Historically the VPN would degrade a user's download speeds, so investigators could attempt to find information on the computer when the VPN was not logged in. However, it is becoming increasingly common to require a VPN to even access the internet, so that opportunity is now generally lost.

## **Inability to Recover Information from Apps and Software**

Smartphones are the perfect tool to sexually exploit a child as they can readily produce, trade, and store CSAM on a fully encrypted, often warrant-proof, device. In addition, users can instantly access images remotely stored, record and upload video or photographs in seconds,

initiate or receive videocalls or livestreaming, and communicate by text, email, or countless apps. Smart phones connect to social media platforms where adult offenders coningle with unwitting underage users. Offenders can also connect with likeminded offenders on a variety of platforms without limits - 24 hours a day, 7 days a week. As they become increasingly affordable with a broad global footprint, more people, particularly children, have access to smart phones and tablets than computers. In fact, over half of children in the United States have their own smartphone by age 11.<sup>331</sup> This allows offenders easy access to a wider socio-economic range of victims.

The ubiquity of smart phones has ushered in a corresponding increase in the use of apps, and a decrease in the use of software installed on a computer. This shift has impacted law enforcement's ability to obtain and analyze evidence to further an investigation. Investigations today may involve an offender in one country, victims in several others, and evidence (sitting on cloud-based storage systems) in even more. In addition, each app likely has its own data retention policy and its own unique data formats that may be indecipherable to law enforcement. If the app is foreign-based or stores its data overseas, it may require a Mutual Legal Assistance Treaty (MLAT) request, or foreign law enforcement engagement, to access despite the fact the data is accessed by the user in the U.S. On one device, you might have 5-10 different apps involving multiple jurisdictions. This complex international issue greatly frustrates law enforcement's ability to investigate and obtain crucial evidence even in a relatively straightforward case. When there are indicators that a child is at risk, the situation becomes urgent and outcomes potentially dire.

At the same time, many apps have short or non-existent data retention policies, which are a discretionary decision of each company, leave law enforcement with little room for delay in initiating a legal process. Data retention, or the lack thereof, is one of the biggest barriers to the successful identification of a potential offender. Apps also vary in their responsiveness to non-disclosure orders and preservation requests, causing law enforcement to spend significant effort just to make sure the offender is not tipped off and able to destroy evidence.

### **Technology Systemically Helping Offenders Evade Law Enforcement**

Offenders are deploying a variety of measures to shield themselves from law enforcement's reach. Consider ProtonMail<sup>332</sup>, which according to its website, is the world's largest encrypted email provider. ProtonMail stores all its data in Switzerland and has engineered its service in such a way that it cannot scan the content of users' messages. As a result, images of child exploitation, and messages concerning grooming of children for sexual purposes or sextortion cannot be detected. At one time, ProtonMail advertised its services as being difficult for even law enforcement agencies to investigate any crimes that may be committed using the service by placing what limited data it does store beyond the reach of most countries' laws. As previously advertised on its website:

*All user data is protected by the Swiss Federal Data Protection Act (DPA) and the Swiss Federal Data Protection Ordinance (DPO) which offers some of the strongest privacy*

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<sup>331</sup> <https://www.npr.org/2019/10/31/774838891/its-a-smartphone-life-more-than-half-of-u-s-children-now-have-one>

<sup>332</sup> See <https://protonmail.com/>



*protection in the world for both individuals and corporations. As ProtonMail is outside of US and EU jurisdiction, only a court order from the Cantonal Court of Geneva or the Swiss Federal Supreme Court can compel us to release the extremely limited user information we have.*

In pursuit of protecting privacy and freedom of expression, companies such as ProtonMail advertise their services in a way that unavoidably attracts individuals looking to commit crimes, including child exploitation offenders, and therefore undermine law enforcement and public safety efforts to protect children. In fact, ProtonMail was used by Alexander Nathan Barter when he planned his travel to rape, kill, and eat a 13-year-old child.<sup>333</sup> Inexplicably, ProtonMail is listed with an age rating of 4+ in the Apple Appstore, which states the app contains no objectionable material and is apparently appropriate for children. Barter was only apprehended because he conversed with an undercover law enforcement officer.

Another threat to online child safety comes from technology providers who frustrate government's lawful access to information by designing themselves to essentially be sovereignless - meaning they are beyond the reach of legal requests for information from any country. For example, Telegram is an encrypted cloud-based mobile and desktop messaging app that purposefully stores data in multiple jurisdictions around the globe so that law enforcement must obtain several court orders from different jurisdictions to obtain any useable information.<sup>334</sup> As Telegram explains on its website, since its launch in 2013, it has provided zero bytes of data in response to any lawful government request, in part because "Telegram uses a distributed infrastructure. Cloud chat data is stored in multiple data centers around the globe that are controlled by different legal entities spread across different jurisdictions. The relevant decryption keys are split into parts and are never kept in the same place as the data they protect. As a result, several court orders from different jurisdictions are required to force us to give up any data."<sup>335</sup>

### **Non-responsive File and Image Hosting Services (Bulletproof Hosting)**

*Bulletproof hosting services are file and image-sharing platforms with little to no restrictions regarding what kind of content can be hosted on their site, that do not, and are not required to, cooperate with law enforcement.*

Offenders often prefer to use "bulletproof hosting" sites to share files and images with one another. Bulletproof hosting sites operate in largely the same way that other web-based file sharing platforms do, but take a much more lenient, "don't ask, don't tell" stance concerning what kind of content can be hosted on their platform. They also ignore requests or fail to remove illicit content from their sites. Often, these file hosting platforms are based outside of the United States in countries with less stringent or non-existent content removal

requirements and practices, making such platforms attractive to offenders wishing to evade law enforcement. This is a prolific problem that often thwarts domestic investigations.

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<sup>333</sup> See <https://www.justice.gov/usao-edtx/pr/dark-web-cannibal-sentenced-40-years-followed-lifetime-supervised-release>.

<sup>334</sup> See <https://telegram.org/faq#q-do-you-process-data-requests>

<sup>335</sup> See <https://telegram.org/faq#q-do-you-process-data-requests>.

These services operate as the delivery mechanism for offenders sharing CSAM with one another. Offenders will post previews of CSAM on the Dark Web sites noted above, but the full photo or video is hosted on separate storage websites that are outside the United States. Other users must download the media, generating new copies of the files on their computers. This means that, even if the CSAM image or video is removed from the hosting site, several other privately held copies likely exist, which may re-emerge on the internet at any time.

Offenders also share tips with one another about which file sharing sites have poor or nonexistent monitoring and removal practices, resulting in a massive concentration of content on these sites. On any given day, there may be more than 2,000 postings on Dark Web sites linking to bulletproof hosting websites where a file containing CSAM is stored.<sup>336</sup>

### Free.FR

Free.fr is a “bulletproof hosting” service based in France. Many offenders have used Free to anonymously store and distribute CSAM online. In 2021, the Canadian Centre for Child Protection released a report estimating that more than 2.7 million CSAM images or video media files have appeared on Free’s hosting service.<sup>337</sup> The service is popular for its ease and scale. Users do not need to register or make an account to begin using the service, and no contact or payment information is required to start sharing files. Free provides a very generous file size limit, allowing for large media collections to be uploaded and distributed. It also offers password protection for files, limiting who can access the content, further shielding content from detection.

### Use of Multiple Platforms

Offenders who use multiple platforms, or more precisely, identify and groom children on one platform, and then convince them to switch to a different platform that offers less protection for children, are a significant challenge for both law enforcement and industry. For law enforcement, the digital trail can go cold when this happens, or in the alternative, it can lead to duplication of effort because it is difficult to de-conflict investigations conducted by different agencies on different platforms that involve the same target. For the tech industry, this is a great limitation on child safety. One platform can have industry-leading child protection measures, but those mean little if a child is lured away from that protected online space into one where they are on their own.

### Other Ways Offenders Use Technology

Some offenders are learning to use technology in anticipation of defending themselves from criminal charges. For example, offenders may leave their wireless router publicly available to set up a defense that someone else may have been the perpetrator. Similarly, certain apps are designed to hide themselves as a storage container on a mobile device. Thus, it appears to be one type of app (music oriented) but in fact, it is basic storage that can be used to store CSAM.

<sup>336</sup> Based on the investigatory and prosecutorial experience of the authors.

<sup>337</sup> Project Arachnid: Online Availability of Child Sexual Abuse Material, The Canadian Centre for Child Protection, June 8, 2021 [https://protectchildren.ca/pdfs/C3P\\_ProjectArachnidReport\\_en.pdf](https://protectchildren.ca/pdfs/C3P_ProjectArachnidReport_en.pdf)

## Case Example

A Fresno, California, man pleaded guilty to five counts of production of child pornography, as well as one count of receipt of child pornography, in May of 2020. The defendant's activities initially came to light in 2017, when the parents of a then six-year-old discovered that the minor had communicated with and created sexually explicit images at the request of another user on the social media application Musical.ly, now known as TikTok. A search of the defendant's digital media revealed that he had successfully persuaded and coerced multiple minors to produce sexually explicit material by pretending to be a modeling agent or to be a minor himself. He used Snapchat, Kik, Musical.ly and other applications to communicate with at least 50 minors.<sup>338</sup>

## CyberTip Volume

NCMEC's CyberTipline is the United States' centralized reporting system for the online exploitation of children. The public and electronic service providers can make reports of suspected online enticement of children for sexual acts, child sexual molestation, CSAM, extraterritorial child sexual abuse (sometimes misleadingly referred to as child sex tourism), child sex trafficking, unsolicited obscene materials sent to a child, misleading domain names, and misleading words or digital images on the internet. NCMEC uses staff and automated systems to review each tip and work to determine if a child is in imminent risk, as well as determine a potential location for the incident reported so that it may be made available to the appropriate law-enforcement agency for possible investigation. By statutory mandate, U.S.-based Electronic Service Providers (ESPs) that locate CSAM on their platforms must report such incidents to NCMEC which, in turn, makes these reports, numbering in the thousands to millions, available to law enforcement in nearly every country on the planet. ESPs are not required to scan content for CSAM but if they voluntarily take affirmative steps to locate it or it otherwise comes to the ESPs' attention, they are required by federal law to report it to NCMEC.

From 2013 to 2020, the number of CyberTips sent to NCMEC skyrocketed from 500,000 to almost 22 million. On three occasions in this period, the volume of CyberTips doubled or nearly doubled from one year to the next; in 2014 the number of CyberTips was four times greater than the prior year. In 2020, the 22 million CyberTips sent to NCMEC constituted an overall increase of approximately 28% from the 2019 total.<sup>339,340</sup> In 2021, reports again increased to over 29.3 million, a 35% increase from 2020.<sup>341</sup> Though the majority of CyberTips are forwarded to overseas law enforcement, hundreds of thousands of CyberTips are sent to U.S. law enforcement every year. The Internet Crimes Against Children (ICAC) Task Forces, a national network of 61 coordinated task forces across federal, state, and local law enforcement and prosecutorial

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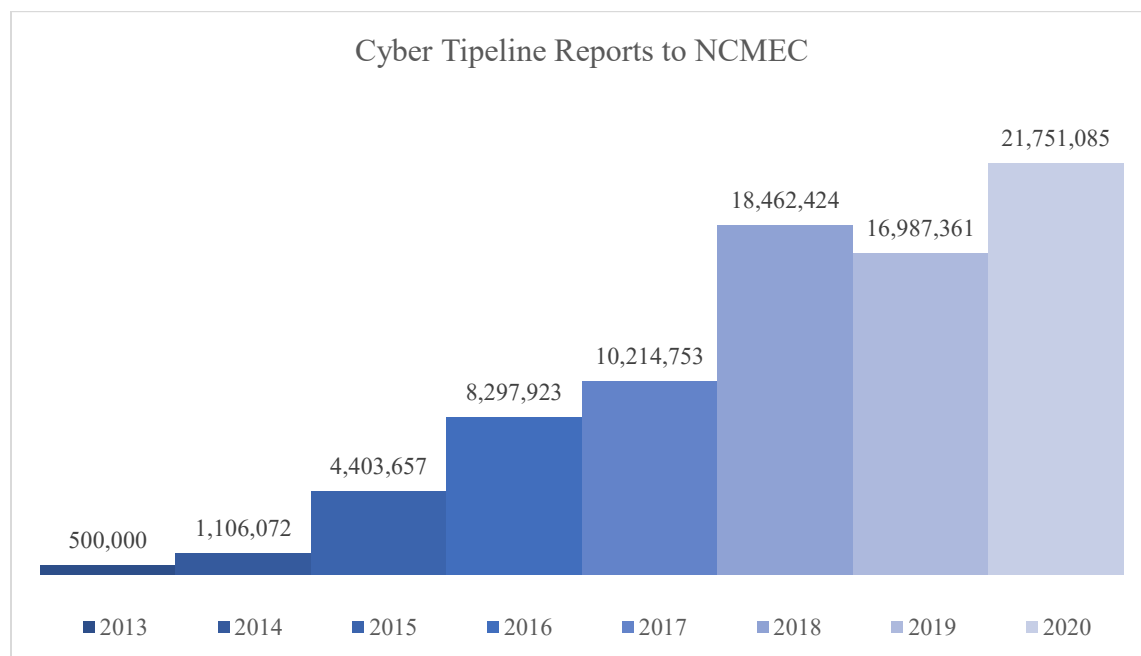
<sup>338</sup> <https://www.justice.gov/usao-edca/pr/fresno-man-admits-sexual-exploitation-least-50-children-through-multiple-social-media>

<sup>339</sup> See <https://www.missingkids.org/gethelpnow/cybertipline#bythenumbers>.

<sup>340</sup> Although the CyberTipline is a mechanism for American companies to report online child exploitation, we must emphasize that year over year, the majority of CyberTips (typically around 90% of reports received per year) are forwarded to law enforcement in foreign countries.

<sup>341</sup> See <https://www.missingkids.org/gethelpnow/cybertipline>

agencies, are the primary receiving investigative entities for Cybertips. Since 2016, ICACs have investigated more than 1 million CyberTips.<sup>342</sup> with each year bringing a relative percentage increase similar to the overall increase in CyberTips.



It is helpful that some companies still can detect CSAM on their platforms and are voluntarily doing so. The increases in CyberTips in recent years can likely be attributed to three factors: the growth of the overall number of users of online platforms, the creation and use of PhotoDNA hash sets, and the use of these hash-based monitoring systems by large online platforms including Facebook, Google, and Microsoft. PhotoDNA is an image-identification technology that creates a unique digital signature (known as a “hash”) to represent each image, which can then be used to identify other instances of the image (matching hashes), even if the image has been recolored or resized.<sup>343</sup> The technology allows online service providers to detect, report, and remove child sexual abuse images shared on their sites, and the collective database of the images that have been found to date allows law enforcement to prioritize investigations into newly produced CSAM.

The deluge of actionable CyberTips could disappear tomorrow if more and more providers implement E2EE, blinding providers to additional parts of the digital world. While the tips would decrease, the exploitation of children would undoubtedly continue – unabated and undetected. In the meantime, however, the volume and the quality of CyberTips remains a challenge for law enforcement as they attempt to discern the signal from the noise to prioritize which tips to investigate first. Some small changes would provide outside benefits, such as making it easier for NCMEC to package together individual CyberTips involving the same offender for law enforcement, even if they were received on different dates or involve different platforms. Implementing a good feedback loop between law enforcement and the tech industry could also

<sup>342</sup> See Internet Crimes Against Children (ICAC) Task Forces Review appendix.

<sup>343</sup> <https://www.microsoft.com/en-us/photodna>

help make the CyberTip system more effective, such as by eliminating repeated CyberTips involving the same content that is not actionable. Such communication is hampered because some in the tech industry feel that the Stored Communication Act,<sup>344</sup> which bars online providers from disclosing additional content or communicating with law enforcement except in response to legal process, limits its ability to share information or evidence it inadvertently encounters running its platforms.<sup>345</sup>

### **Co-mingled Adult and Child Platform Users**

The popularity of social media and online gaming platforms cannot be overstated. They have fundamentally changed the way people live their lives. Posting your story online, filming a dance video, or building an online world with friends have become synonymous with adolescence today. However, these activities are not the exclusive province of global kids and teens. Adults similarly orient their lives today around online communities, gaming platforms, and information sharing. Thus, the worlds of kids and adults intersect online in ways that are deemed unacceptable and discouraged in the physical world. Adults have unsupervised and largely unfettered access to children online not just in their own communities, but across the world. They can chat with children, pretend to be children themselves, and quietly stalk and develop relationships with dozens of children simultaneously. Unfortunately, even if they have stated age restrictions, providers do little to verify the ages of their users or keep children separated from adults online. The result can be catastrophic for an unsuspecting child who falls prey to the seasoned online predator.

### **Maintaining Capacity at the Front Line**

Building and maintaining expertise in the investigation and prosecution of online child exploitation offenses has always been a challenge. That has never been truer than in 2020 and 2021 when law enforcement was stretched thin by the demands of the pandemic response. We anticipate that post-pandemic data will show high rates of retirement from law enforcement, and a low rate of recruitment, which will reduce the overall experience level of the police force. At the same time, specialized expertise is needed more than ever to respond to the onslaught of technological and resource challenges, which include the following:

#### *Increased Investigative Costs*

Routine investigative steps are expensive. For example, Google and other online providers can charge a substantial fee to respond to legal process.<sup>346</sup>

In addition, forensic tools and certifications not only need to be obtained, but maintained, which again requires capital. Building effective password cracking mechanisms, for example, takes significant time and money. Further, there are costs associated with running and updating forensic tools, training personnel on the updates, and so on. Tools can quickly become outdated

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<sup>344</sup> 18 U.S.C. § 2701 to 2710 <https://www.justice.gov/archives/jm/criminal-resource-manual-1061-unlawful-access-stored-communications-18-usc-2701>

<sup>345</sup> See additional discussion on *U.S. v. Wilson* in the Unique Resource and Enforcement chapter.

<sup>346</sup> Based on the investigatory and prosecutorial experience of the authors.

with updates and changes from device makers like Apple and Google. Ironically, even if an agency can cover the cost to obtain data from an online provider and have forensic or analytical capacity for review, the data itself may come in a proprietary format unique to the online service that is unrecognizable to known forensic tools, leaving agencies with a large bill and no results.

These investigative costs create a disparity among different socio-economic communities. Well-funded police departments in wealthy areas are more likely to have the ability to solve cases than departments in poorer areas. Smaller agencies might struggle to meet these costs and choose to either withdraw a legal request or never submit it at all.

### *Insufficient Forensic Capacity*

One of the most critical gaps in the technology arena continues to be the lack of sufficient computer forensic resources. The volume of computer data has increased exponentially over the past 5-10 years with gigabytes of stored data becoming terabytes. In addition, the volume of devices, many containing little to no evidence, located during searches has increased. It is now routine for homes to contain over a dozen desktops, laptops, tablets, smart phones, and/or external storage devices. Each device requires some analysis, even if just to eliminate it as evidence, which adds to the time spent on each case. Another difficulty is the reality that nearly all types of criminal cases now require some computer forensic analysis, greatly straining agency resources that might otherwise be available for child exploitation cases, while the number of child exploitation cases requiring computer forensic analysis also continues to grow. For example, over the six-year period of FY2016 – FY2021, the number of Child Exploitation Cases received by the FBI’s Regional Computer Forensics Laboratories (RCFLs) has ***nearly doubled*** from more than 5,000 to more than 10,000 (*see* RCFL table below), and the number of computer forensic examinations conducted by the ICAC Task forces **increased by 17%** from more than 77,000 to more than 90,000 (*see* ICAC table below). In far too many instances the result is a significant – up to years long - delay between when devices and data are seized by law enforcement and criminal charges are able to be brought against a perpetrator.<sup>347</sup>

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<sup>347</sup> Computer forensics and digital investigation is a step-by-step process that is often also iterative in nature. *See* generally, Carroll, O., Brannon, S., & Song, T. “Computer Forensics: Digital Forensic Analysis Methodology.” United States Attorney's Bulletin 56, no. 1 (January 2008): pp. 1-8 available at: <https://www.justice.gov/sites/default/files/usao/legacy/2008/02/04/usab5601.pdf> There are many points at which progress in completing or beginning a step may be delayed and many reasons for delay, including a lack of availability of necessary personnel and the lack of availability or access to necessary tools and equipment. Any delay at any point in the process that is occasioned by such a lack could rightly be characterized as a “backlog” and is something that is difficult, if not impossible, to meaningfully measure.

**RCFL Child Exploitation Cases by Year (FY2016-FY2021)**

<b>RCFL Child Exploitation Cases<sup>348</sup></b>						
<b>Office</b>	<b>FY2016</b>	<b>FY2017</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>
CGRCFL	808	877	960	1,444	1,055	1,565
GHRCFL	270	297	329	374	351	451
HARCFL	468	439	640	741	638	627
IWRCFL	388	387	405	429	466	599
KRCFL	149	163	195	217	179	368
NERCFL	--	2	131	226	359	623
NJRCFL	352	353	299	250	321	723
NMRCFL	306	279	264	273	267	369
NTRCFL	480	477	450	570	489	489
NWRCFL	187	167	198	262	279	300
OCRCFL	684	617	714	900	680	1010
PHRCFL	529	496	446	578	596	748
RMRCFL	186	201	227	489	555	558
SDRCFL	532	543	484	550	479	814
SVRCFL	331	357	366	400	316	294
TVRCFL	--	28	25	404	325	323
WNYRCFL	187	160	176	180	253	429
<b>TOTAL</b>	<b>5,857</b>	<b>5,843</b>	<b>6,309</b>	<b>8,287</b>	<b>7,608</b>	<b>10,290</b>

**ICAC Computer Forensic Exams by Year (FY2016-FY2021)**

<b>ICAC Computer Forensic Exams<sup>349</sup></b>							
<b>State</b>	<b>Task Force Agency</b>	<b>FY2016</b>	<b>FY2017</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>
AK	Anchorage Police Department	651	351	442	389	269	276
AL	Alabama Law Enforcement Agency	418	652	1,749	449	1,024	1,290
AR	Arkansas State Police	1,867	1,418	1,478	1,408	1,287	1,406
AZ	Phoenix Police Department	1,249	2,221	2,422	2,403	2,838	2,666
CA	Los Angeles Police Department	1,822	1,663	2,753	1,233	2,512	4,984
CA	San Diego Police Department	621	744	900	467	373	551
CA	San Jose Police Department	768	880	873	2,794	2,964	2,551

<sup>348</sup> This data was pulled from the CART Database Case Management System. The accuracy of these numbers cannot be verified as the database only contains and reports on what was entered into the system by various users.

<sup>349</sup> See Internet Crimes Against Children (ICAC) Task Forces Review appendix.

CA	Fresno County Sheriff's Office	421	485	480	507	724	632
CA	Sacramento County Sheriff's Office	911	1,072	704	708	863	1,080
CO	Colorado Springs Police Department	1,140	1,283	1,378	1,281	1,108	1,392
CT	Connecticut State Police	896	680	923	482	285	219
DE	Delaware Department of Justice	372	278	194	135	46	104
FL	Broward County Sheriff Office	991	1,080	1,206	1,498	1,691	1,573
FL	Gainesville Police Department	1,988	1,589	1,967	1,581	2,413	2,059
FL	Osceola County Sheriff's Office (Polk County Sheriff's Office for FY16 and FY17)	2,897	2,677	1,067	2,091	2,697	2,466
GA	Georgia Bureau of Investigation	1,678	2,039	2,038	2,225	1,844	2,475
HI	Hawaii Department of the Attorney General	9	8	114	76	147	200
IA	Iowa Division of Criminal Investigation	868	812	800	1,308	1,033	1,159
ID	Idaho Office of the Attorney General	863	240	276	371	463	536
IL	Cook County State's Attorney's Office	369	251	307	335	258	265
IL	Illinois Office of the Attorney General	1,456	1,824	1,186	1,288	1,407	1,338
IN	Indiana State Police	1,861	2,523	2,227	2,558	2,259	2,633
KS	Sedgwick County Sheriff's Department	634	663	704	697	658	895
KY	Kentucky State Police	919	672	649	855	818	845
LA	Louisiana Department of Justice	973	1,171	956	1,043	721	712
MA	Massachusetts State Police	1,179	1,338	1,440	1,675	509	380
MD	Maryland State Police	944	1,065	1,049	1,118	1,432	1,624
ME	Maine State Police	587	289	400	534	584	448
MI	Michigan State Police	232	5,728	8,359	8,028	7,324	7,278
MN	Minnesota Department of Public Safety	1,379	1,856	1,865	1,733	1,577	1,396
MO	St. Charles County Sheriff's Department	3,685	3,703	3,352	3,025	2,861	2,427



MS	Mississippi Office of the Attorney General	771	861	691	678	796	757
MT	Montana Department of Justice - Division of Criminal Investigation (Billings Police Department for FY16 and FY17)	382	198	415	426	314	193
NC	North Carolina State Bureau of Investigation	1,694	4,093	2,339	1,863	2,637	2,302
ND	North Dakota Office of the Attorney General	390	592	566	669	759	771
NE	Nebraska State Patrol	1,534	1,276	1,171	607	678	701
NH	Portsmouth Police Department	736	676	716	1,218	1,375	1,233
NJ	New Jersey Department of Law and Public Safety	2,943	3,124	3,327	4,801	3,356	2,366
NM	New Mexico Office of the Attorney General	962	812	964	812	617	687
NV	Las Vegas Metropolitan Police Department	1,251	1,101	995	956	971	945
NY	New York City Police Department	245	386	380	329	200	237
NY	New York State Police	2,790	2,647	2,635	2,944	3,662	2,681
OH	Cuyahoga County Prosecutor's Office	1,951	1,419	1,234	1,249	1,921	1,940
OK	Oklahoma State Bureau of Investigation	294	484	1,361	720	593	813
OR	Oregon Department of Justice	102	87	296	498	426	362
PA	Delaware County District Attorney's Office	5,434	4,196	3,875	4,566	2,873	3,641
RI	Rhode Island State Police	221	340	465	371	408	288
SC	South Carolina Attorney General's Office	776	720	1,457	1,440	786	1,409
SD	South Dakota Office of the Attorney General	1,160	1,485	1,142	1,167	1,141	1,061
TN	Knoxville Police Department	1,604	1,684	2,333	1,872	1,903	1,771
TX	Houston Police Department	1,100	952	703	627	850	911

TX	Dallas Police Department	725	1,725	982	1,159	1,490	1,711
TX	Office of the Attorney General of Texas	1,608	2,397	1,383	1,259	1,700	2,251
UT	Utah Office of the Attorney General	2,364	1,759	2,089	1,741	1,559	1,544
VA	Bedford County Sheriff's Office	1,400	1,866	1,882	1,909	1,604	1,709
VA	Virginia State Police	3,895	1,464	1,389	1,265	1,151	1,152
VT	Vermont Office of the Attorney General	325	339	336	249	211	241
WA	Seattle Police Department	585	831	1,003	821	897	3,611
WI	Wisconsin Department of Justice	3,393	4,351	4,649	4,522	4,644	3,907
WV	West Virginia State Police	1,582	1,443	1,222	1,369	1,046	1,151
WY	Wyoming Office of the Attorney General	336	321	217	110	136	112
<b>TOTALS</b>		<b>77,201</b>	<b>84,884</b>	<b>86,475</b>	<b>86,512</b>	<b>85,693</b>	<b>90,318</b>

### *Deficient Analysis*

Deficiencies in forensic capacity do not just center on volume. Dramatic variations in quality of the forensic processing also pose a substantial challenge. This variation largely stems from a “generalist” approach to forensic examination, rather than a more collaborative, nuanced investigation. Often, forensic investigators simply focus on data extraction, then hand the investigation off to an agent to conduct the evidence review.

The problem with this approach is two-fold. First, the computer forensic examiners may not extract all the relevant evidence, focusing on the image files alone. For example, the examiner may not understand the significance of the file structure, chat applications, browsing history, or other indicators that could signal a more dangerous offender. Second, the agent tasked with the review of digital evidence may lack the experience to be able to render or efficiently review the data. There are few, if any, standard protocols for forensic examinations specifically in child exploitations. As a result, information/evidence from different sources (such as cloud storage, home devices, and mobile devices) may not be married up effectively in a way that allows law enforcement to take appropriate action. Additionally, without adequate computer forensic expertise among law enforcement agents, important insight and detail will be lacking when designing and implementing proactive investigations that target entire platforms or websites.

Because online child exploitation offenders often engage in similar patterns of activity, it is more useful to obtain computer forensic analysis from examiners who possess some subject matter expertise with online crimes against children. Knowing the preferred platforms, offender methods, and how seized data intersects with cloud-based data is crucial. The need for trained

specialized computer examiners who are familiar with child exploitation offenders has never been greater.

### *Expertise on the Execution of Search Warrants*

When executing a search warrant for digital media, law enforcement needs training and guidance on how to handle any number of issues, including legal and technical solutions to biometric locks on digital devices (such as using a fingerprint or facial recognition to unlock a device), and how to time the execution of the warrant to maximize the amount of data that will be available for seizure. The success of an investigation often depends on the training of forensic and investigative personnel at the search warrant scene, and the communication among them, so that they know what to look for, what to ask for, and how to conduct an effective interview if the target agrees to one. Personnel must know how to identify different types of encryptions, how to tailor their approach accordingly and must know when devices will lock down or erase. As law enforcement strives to keep up with emerging technologies and platforms, they cannot forget how to handle older technologies. Indeed, new forensic tools are only looking for evidence based on today's technology, even though some offenders continue to use older technologies.

The issues with the execution of a search warrant can be so complicated that additional personnel are needed. For example, addressing encryption on scene is very time consuming, and may continue many hours after the evidence has been seized. Forensic examiners are needed to supplement automated tools.

For example, if a tool is missing data, the examiner will have to go back and figure out how to find what was missed. Of course, some jurisdictions do not have forensic personnel available to assist on scene during search warrants, and often, those on scene have not received sufficient training to address the issue of encryption.

### *Officer Safety*

The tragic murders of FBI Special Agents Dan Alfin and Laura Schwartzenberger, and injury of three other agents, in February of 2021 during the execution of a CSAM-related search warrant underscores the incredible danger law enforcement can face when approaching targets, particularly those who use technology such as smart doorbells, which lets them see the agents coming.<sup>350</sup> This risk can be particularly acute when investigating crimes against children, because the stress offenders may feel at being exposed may cause them to act in a dangerous or erratic manner. These considerations, along with the preservation of critical evidence potentially jeopardized by encryption, must be considered when developing policy for requesting search warrant protocols for entry.

### *Training for Prosecutors*

Training is also critical for prosecutors who handle crimes against children. The technology and platforms used by offenders to perpetrate these crimes are changing rapidly and becoming increasingly sophisticated, as are the laws in place governing these tools. Prosecutors must fully

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<sup>350</sup> <https://www.fbi.gov/news/stories/honoring-fallen-special-agents-laura-schwartzberger-and-daniel-alfin-020821>

understand digital evidence and digital forensic investigations to draft effective search warrants, make the best charging decisions, and construct compelling evidence presentations at trial. This training must include understanding how digital forensic investigations are approached, how digital evidence is used in court, challenges involved in evidence admission, and how to identify and access evidence that is critical to the government's case at sentencing. The DOJ is working to provide this training via national training events<sup>351</sup>, as well as building connection points across the Child Exploitation and Obscenity Section<sup>352</sup> and other Project Safe Childhood practitioners to share expertise, resources, and best practices in this evolving area.

Additionally, prosecutors need to be provided the mental health support necessary to cope with the impact of dealing with these horrific crimes daily. The weight of this work is extreme: in addition to having to regularly view child sexual abuse in the images and videos involved in their cases, investigators and prosecutors carry the weight of a child's safety on their shoulders. This can lead to significant negative mental and physical health outcomes, and lead many to leave the field altogether, limiting the ability to apprehend offenders and prevent future offending.<sup>353</sup>

### **Need for New Investigatory & Collaboration Tools**

Just as online child sexual exploitation can be exacerbated by technological advancements that favor offenders, so too can it be combatted through technological innovation. New technological tools can help the tech industry, NGOs, and investigators and prosecutors more effectively identify and interdict online crimes against children.

#### *Need for New Forensic and Interdiction Tools*

In 2009, Microsoft partnered with Dartmouth College to develop PhotoDNA, a technology that aids in finding and removing known images of child exploitation. The advent of PhotoDNA has assisted in the detection, disruption, and reporting of millions of child exploitation images. However, a tool is still needed to apply a standardized, effective hashing system to video files, as well as a tool to detect online predators attempting to lure children for sexual purposes. Natural language processing and data analytics could be deployed as possible early detection measures. Current methods of detecting livestreaming of sexual activity requires a large amount of human capital, and there remains no automated method to identify newly produced material. Finally, any new tools that are developed should focus on being able to merge different evidence streams to enable more efficient analysis and data sharing.

The development and refinement of these tools will take dedicated resources, including the creation of full-time jobs or programs devoted to doing this work. It is impractical and inefficient to expect dedicated agents with some computer science and forensics knowledge to attempt to build tools on shoe-string budgets to investigate or analyze digital platforms that have trillion-dollar market capitalization and command the best and brightest dedicated computer programmers in the world. There is also always a delay between the emergence of a new

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<sup>351</sup> <https://ojjdp.ojp.gov/national-training-and-technical-assistance-center>

<sup>352</sup> <https://www.justice.gov/criminal-ceos>

<sup>353</sup> These issues are discussed further in the Wellness Challenges for Law Enforcement Personnel chapter.

technology and the adoption and deployment of tools to leverage that technology. We need to find ways to shorten that time delay and ensure that existing, effective approaches are not sacrificed when technology changes.

To be sure, these tools would not be a complete fix to online child sexual exploitation. However, these tools could do more than just support investigations. They could also be useful in making online environments inhospitable to CSAM, helping to rapidly remove CSAM and stop the cycle of revictimization endured by survivors. Further, they could protect victims from ongoing stalking and harassment because of their imagery remaining available to new offenders on the internet.

### *Information Sharing Among Law Enforcement*

Over time, several different image repositories (commonly referred to as hashsets) have been developed in the United States to support investigations and identify, locate, and rescue the children depicted in CSAM imagery. One such repository is part of the Child Victim Identification Program (CVIP) at NCMEC. When a victim of CSAM is identified, law enforcement will provide notice of the identification of that child victim to NCMEC to be added to the CVIP database. Separately, when a law enforcement investigation involves CSAM, they will gather any imagery seized through that investigation and send it to NCMEC, which will compare it with imagery in the CVIP database. NCMEC then generates a report that is sent back to law enforcement advising them which files in the defendant's collection may contain children who have been previously identified. The information included in the report is used to provide victims with the rights they are entitled to under law and may help prosecutors build a criminal case.

Although the FBI and HSI can and do periodically compare and share their own image repositories with one another, neither currently does so with the CVIP repository, which also includes state and local submissions as well as distributed international images and videos. Whatever image comparison and sharing does occur is irregular and dependent on individual agents who initiate the process when time allows. This leaves law enforcement, as well as NCMEC, without the best up-to-date information as to which children have been identified and rescued, and which should be a priority to be identified and rescued. Victim identification and CSAM investigations would benefit from ensuring that all investigative entities have access to coextensive image repositories.

### *Staying Current*

For CSAM investigative tools to remain effective, they need to have comprehensive, current datasets. This is done by constantly updating with them with new, additional CSAM content, which is expensive and time consuming. Further, it relies on sharing information regarding CSAM investigations that can be challenging when thousands of local, state, and federal law enforcement entities, each with independent policies on data sharing, have simultaneous jurisdiction over CSAM offenses. Similarly, there is a never-ending need for open communication and sharing of investigative best practices, lessons learned, and latest developments that arise in the field. Some new developments are not fully taken advantage of

because they are not shared among law enforcement. Each of these problems suggest the need for an integrated center, bringing together federal, state, and local law enforcement resources, and offering training and tools for combating child exploitation with a dedicated, innovating management team.

### Technology as a Solution: Thorn

Thorn is a non-profit that builds technology to defend children from online sexual abuse. They've built several tools to aid in preventing and combating child exploitation.

Thorn's flagship product, Spotlight, is a web-based tool used by law enforcement in all 50 states and Canada to accelerate victim identification and streamline law enforcement workflows so they can respond to instances of child sex trafficking with speed. Spotlight has helped identify more than 17,000 child victims of human trafficking in the past four years and resulted in over 60% in time savings for law enforcement. They also offer a commercial product called Safer, which allows electronic service providers to identify, remove, and report CSAM on their platforms.

Lastly, Thorn runs the country's most extensive online child sexual abuse deterrence program, communicating directly with people searching for CSAM, disrupting their sense of anonymity, and encouraging them to seek help. They are constantly testing messaging, identifying the best tactics to reach and persuade specific sub-groups of offenders to seek help, and capturing aggregate data to inform future research.<sup>354</sup>

### Offender Targeting – Working with Domestic and International Partners

Great strides have been made in the effort to identify victims using collaborative image and video analysis. However, offender targeting is frequently siloed within investigative agency systems without the benefit of local, state, federal, or international counterparts who often are investigating the same offenders. More problematic, the evidence needed to effectively identify offenders and victims may sit within seized data that another investigative agency, even one situated only a few miles away, possesses.

This phenomenon is fueled by an online environment that frustrates traditional notions of geographic jurisdiction. For example, in Dark Web investigations, offenders and the websites they frequent lack a known location so online investigators from the world over may target them. Further, jurisdiction for child sex offenders nearly always exists across various federal, state, and local law enforcement entities. Despite this jurisdictional overlap, offender targeting is dependent on individual law enforcement priorities, resources, and capacity, and the strategic targeting, data, and analysis is fundamentally disconnected. Technology can play a critical role in building a more integrated approach.

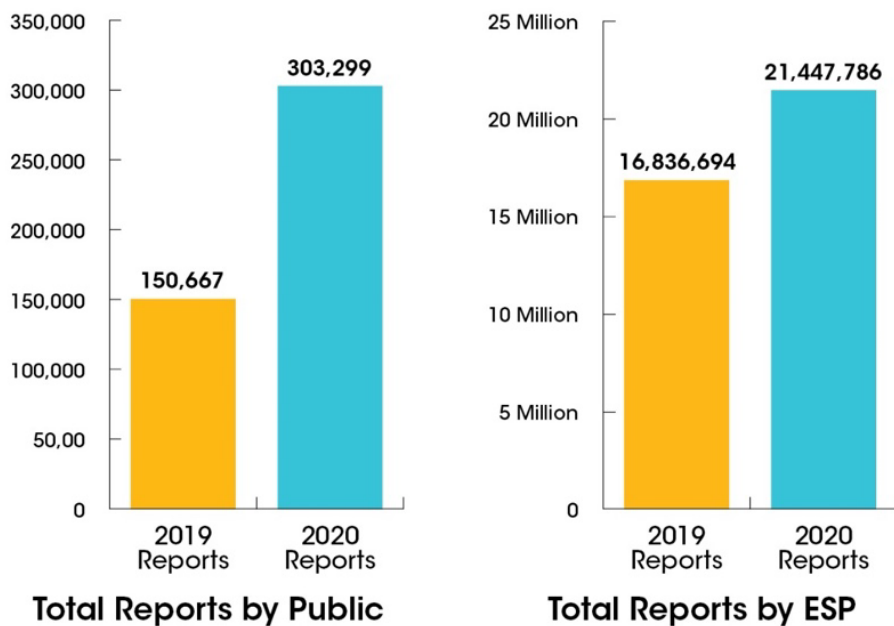
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<sup>354</sup> <https://www.thorn.org/our-work-to-stop-child-sexual-exploitation/>

## Role of Industry in Online Safety

Most people have little awareness of just how pervasive CSAM is across online platforms, or the real risk children face online. Adults and children effectively navigate online highways every day that governments neither control nor regulate. Even more significant, they are also unaware of what internet-based companies are doing to protect children online, often assuming companies have built in robust practices to keep children safe and their platforms free of illicit content. The age rating system in App Stores reflects this confusion. The name “age rating” seemingly reflects an assurance of safety for a particular childhood age when nothing could be further from the truth. Sadly, there is a stark difference between perception and the reality when it comes to online safety. It is only through robust transparency regarding online safety practices, much the way we have access to automobile safety reports or other products safety mechanisms, that parents, children, and broader society at least understand the dangers of the digital world.

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There is no question that the tech industry plays an important role in eradicating online child sexual exploitation. The explosion in CyberTips coming from tech platforms alone demonstrates the dire need for industry engagement to make online environments inhospitable to CSAM. As noted, Microsoft led the development of a tool that has been used for well over a decade to help find CSAM, as well as one to detect online grooming. Google took the initiative to develop a *Special Victims Investigation Unit*, which focuses on more egregious CyberTips to supplement reports with more information, leading to a faster response by law enforcement. To deter queries seeking CSAM on Google’s search engine, it launched an improved deterrence message for queries that appear to be seeking CSAM.

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<sup>355</sup> Electronic Service Providers (ESP) make the majority of CyberTipline reports, but reports of online sexual exploitation from the public more than doubled in 2020. <https://www.missingkids.org/gethelpnow/cybertipline>

However, data suggests that there is a wildly divergent response by online providers to online child safety. According to NCMEC, in 2019 and 2020, over 1,400 companies were registered to use the CyberTipline. But in 2019, NCMEC received CyberTips from only 148 companies (approximately 10% of registered companies). The results in 2020 were barely any better, with 168 companies sending in CyberTips (approximately 12% of registered companies). Looking more closely at the data reveals the massive disparity in the effort by companies across industry. In both years, a single company—Meta—accounted for approximately 95% of all CyberTips sent in by industry that year, and three companies were the source for approximately 98% of CyberTips (Facebook, Google, and Microsoft in 2019, and Facebook, Google, and Snapchat in 2020). In contrast, in 2019 and 2020, the majority of companies that sent in any CyberTips at all (66%) each sent in less than 100 reports for the year.<sup>356</sup>

Similarly, a recent report released by the Canadian Centre for Child Protection (C3P) reveals the lackadaisical response by some online providers to requests to remove CSAM on their platforms, including some who take longer than 42 days to remove the material. Worse, their data shows a massive problem with “image recidivism,” which occurs when imagery that had been subject to a removal notice is later reposted on the same platform: almost half (48%) of media targeted by removal notices had previously been flagged by C3P’s Project Arachnid.<sup>357</sup>

#### *Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse*

This disparity in industry response led the Departments of Justice and Homeland Security to join ministerial counterparts from Australia, Canada, New Zealand, and the United Kingdom (collectively, the Five Eyes Countries), to develop and launch the *Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse* on March 5, 2020. Developed in consultation with representatives from six leading technology companies (Facebook, Google, Microsoft, Snap, Twitter, and Roblox), and a broad range of experts from industry, civil society, and academia, the 11 Voluntary Principles outline measures that companies in the technology industry can choose to implement to protect the children who use their platforms from sexual abuse online and to make their platforms more difficult for child sex offenders to exploit. The Voluntary Principles provide a common and consistent framework to guide the digital industry in its efforts to combat the proliferation of online child exploitation.<sup>358</sup>

The focus has now turned to gathering information from the tech industry about who has endorsed the Voluntary Principles, and how they have been implemented, particularly among members of the Technology Coalition. Formed in 2006, the Technology Coalition is comprised of 23 tech industry leaders represented by individuals who specialize in online child safety issues. All six companies who contributed to the Voluntary Principles are members of the Technology Coalition. The Tech Coalition indicates that it is committed to technological innovation to thwart online child sexual exploitation, collective action, independent research,

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<sup>356</sup> See <https://www.missingkids.org/content/dam/missingkids/pdfs/2019-reports-by-esp.pdf> and <https://www.missingkids.org/content/dam/missingkids/pdfs/2020-reports-by-esp.pdf>.

<sup>357</sup> Project Arachnid: Online Availability of Child Sexual Abuse Material, The Canadian Centre for Child Protection, June 8, 2021 [https://protectchildren.ca/pdfs/C3P\\_ProjectArachnidReport\\_en.pdf](https://protectchildren.ca/pdfs/C3P_ProjectArachnidReport_en.pdf)

<sup>358</sup> A copy of the principles is available here: <https://www.justice.gov/opa/press-release/file/1256061/download>.



information and knowledge sharing, and transparency and accountability.<sup>359</sup> In furtherance of this effort, members of the Tech Coalition published transparency reports in 2021.<sup>360</sup> Although company-to-company comparisons are difficult, the transparency reports do set forth measures taken by each company to combat online child sexual exploitation.

### Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse

In 2020, WeProtect Global Alliance, which currently comprises 97 governments, 25 technology companies and 30 civil society organizations, committed to adopting and promoting these principles at a global level to drive collective industry action.

**Principle 1:** Companies seek to prevent known child sexual abuse material from being made available to users or accessible on their platforms and services, take appropriate action under their terms of service, and report to appropriate authorities.

**Principle 2:** Companies seek to identify and combat the dissemination of new child sexual abuse material via their platforms and services, take appropriate action under their terms of service, and report to appropriate authorities.

**Principle 3:** Companies seek to identify and combat preparatory child sexual exploitation and abuse activity (such as online grooming for child sexual abuse), take appropriate action under their terms of service, and report to appropriate authorities.

**Principle 4:** Companies seek to identify and combat advertising, recruiting, soliciting, or procuring a child for sexual exploitation or abuse, or organizing to do so, take appropriate action under their terms of service, and report to appropriate authorities.

**Principle 5:** Companies seek to identify and prevent child sexual exploitation and abuse facilitated or amplified by livestreaming, take appropriate action under their terms of service, and report to appropriate authorities.

**Principle 6:** Companies seek to prevent search results from surfacing child sexual exploitation and abuse and seek to prevent automatic suggestions for such activity and material.

**Principle 7:** Companies seek to adopt enhanced safety measures with the aim of protecting children, in particular from peers or adults seeking to engage in harmful sexual activity with children; such measures may include considering whether users are children.

**Principle 8:** Companies seek to take appropriate action, including providing reporting options, on material that may not be illegal on its face, but with appropriate context and confirmation may be connected to child sexual exploitation and abuse.

<sup>359</sup> <https://www.technologycoalition.org/#vision>.

<sup>360</sup> <https://www.technologycoalition.org/annualreport/>

**Principle 9:** Companies seek to take an informed global approach to combating online child sexual exploitation and abuse and to take into account the evolving threat landscape as part of their design and development processes.

**Principle 10:** Companies support opportunities to share relevant expertise, helpful practices, data, and tools where appropriate and feasible.

**Principle 11:** Companies seek to regularly publish or share meaningful data and insights on their efforts to combat child sexual exploitation and abuse.

### *Leveraging Tech to Improve Threat Transparency Globally*

The advent of PhotoDNA has enabled two key methods of making the online environment inhospitable for CSAM. First, the widespread voluntary use of PhotoDNA has revealed a high volume of CSAM on even large, well-known sites like Facebook, Google, Microsoft, Twitter, and Snapchat. This data is captured in NCMEC CyberTips. Second, Project Arachnid combines PhotoDNA and web-crawling technology to supplement Industry’s voluntary efforts by combing all parts of the web. The notices sent through Project Arachnid to companies hosting CSAM on their sites allows for those companies to act.

These methods of interdiction are encouraging and indicate the ability of private industry and civil society to stop the circulation of CSAM online. However, more could be done. For example, child protection efforts would be greatly improved if there were a hashing standard like PhotoDNA that worked for videos, if there were a well-vetted, collaborative hash sharing database easily accessed by all Industry members, and if there were robust efforts by private industry and civil society to support web-crawling efforts like Project Arachnid.

Unfortunately, these measures are still only a beginning. There is a wealth of information available that can inform our collective understanding of the online risks. It will require focused effort and dedicated resource allocation for political and industry leadership to fully understand and address the risk posed to children online.

### **Strategic Response**

<b>Short-Term Goals</b>	<b>Long-Term Goals</b>
Continued engagement with the tech industry on the Voluntary Principles, emphasizing the need for transparency on how the Principles are implemented, and the importance of robust child safety measures in spaces where adults and children are co-mingled.	Expand forensic capacity to obtain and analyze evidence on digital devices and in the cloud, including in encrypted environments.
Develop training and outreach on interdiction and prevention for parents, teachers, and citizens, that emphasizes the intersection of technology and risk.	Take measures to ensure hash sets used by law enforcement are as uniform and consistent as possible, to provide feedback to tech companies about imagery in their hash sets, and to develop a uniform approach for hashes of videos.

Develop technical tools for law enforcement to conduct investigations more efficiently.	Promote public transparency across the tech sector and by relevant NGOs concerning the adoption and efficacy of child protection measures, in a manner that makes it easy to evaluate and compare.
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### *Training*

The need for training to build law enforcement capacity to address online child sexual exploitation is never ending, both because technology continues to evolve and because of turnover among personnel who investigate these crimes. This has never been truer, as the volume of digital evidence continues to grow, whether stored on numerous different types of digital devices in a home (smartphone, tablet, computer) or in the cloud. Law enforcement also needs the skillset to pursue an investigation even when some or most evidence is protected by encryption, and to execute an investigation to maximize the opportunity to access evidence in an unencrypted state. To achieve these goals, the Department will develop and deploy cutting-edge training that will be delivered on a regular basis.

Separately, extensive outreach is needed to educate the public on the risks and rewards of technology as it intersects with online child safety. The goal is not to frighten, but to empower parents, teachers, and citizens to make informed choices and to demand better and easier to use tools to protect children online, particularly in online spaces where adults and children can interact.

### *Partnerships*

As is recognized in the Voluntary Principles, “keeping children safe from online sexual exploitation and abuse and limiting their re-victimization by preventing the sharing and viewing of CSAM can only be achieved through systematic cross-sector collaboration. Only by strengthening collaboration among governments, industry and others and drawing on our collective skills and resources will we achieve the safe online environment that our children and the global community expect and deserve.”<sup>361</sup> In furtherance of that goal, the Department will continue to encourage companies to adopt the Voluntary Principles and to transparently describe the measures being taken within those companies to implement the Principles. This will help ensure that the endorsement of the Principles is not a meaningless gesture, and also will give the public the means to assess industry response.

Beyond the Voluntary Principles, the Global Strategic Response set forth by WeProtect Global Alliance similarly calls on the tech industry to:

- Regularly publish transparency reports on detection and prevention of CSEA online with meaningful metrics, and ensure data is supported by explainable methodology and reviewed regularly.

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<sup>361</sup> <https://www.justice.gov/opa/press-release/file/1256061/download>

- [Conduct] honest appraisal of responses and prevention techniques to inform future work and efforts.
- [Provide] transparency around the innovation of tools and techniques, research, allocation of resources, and collaboration with other key stakeholders, staffing and training.<sup>362</sup>

The Department will endeavor to obtain, gather, and publicize such information.

To the extent that third-party NGOs, such as NCMEC, have information that illuminates whether, how, and how effectively companies are protecting children, the Department will encourage public dissemination of that information, to include seeking legislation if necessary. For example, the information shared by NCMEC about the volume of CyberTip reports sent by each company vividly illuminates the wildly varying response by industry and the impact of encryption on voluntary efforts by industry to detect CSAM on their platforms. It is critically important that such troves of information be shared with the public and policymakers.

Partnerships are also needed to harmonize several different image repositories that have been developed in the United States and are used in support of investigations in a variety of ways, the most important being to identify, locate, and rescue the children depicted in the imagery. As discussed above, while some image comparison and sharing does occur between the FBI and HSI, those image repositories are often not compared or shared with the CVIP repository, which also includes state and local submissions as well as distributed international images and videos. Neither the FBI nor HSI have access to the CVIP repository, so neither law enforcement nor NCMEC have the most up-to-date information as to which children have been identified and rescued, and which should be a priority to be identified and rescued. The Department will work with all relevant partners to address this issue, to include preparing memoranda of understanding, executive orders, or legislation as needed.

### *Funding and Research*

Investment in two areas could yield substantial improvements in our ability to investigate online child sexual exploitation offenses. The first would be encouraging the development of new tools to facilitate gathering and analyzing digital evidence. Law enforcement is always in the position of reacting to new technological developments, so it is critical that our investigatory tools are as up to date as possible. Second, the deployment of a universal standard for hashes of videos, comparable to PhotoDNA for images, would dramatically expand the ability of both law enforcement and the tech sector to look for CSAM in video format. The explosion in CyberTips in recent years demonstrates the power of scanning for known CSAM, and yet those numbers do not include all possible versions of known videos. This gap in our collective response must be closed.

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<sup>362</sup> <https://www.weprotect.org/frameworks/gsr/>

## Offender Psychology

From 2016 to 2020, federal judges sentenced over 12,500 offenders for crimes related to the possession, distribution, and/or production of child sexual abuse materials (CSAM) and 2,900 offenders for the transportation or trafficking of minors for sexual purposes.<sup>363</sup> These numbers represent the tenacity and hard work of federal law enforcement, Internet Crimes Against Children Task Forces, and Offices of the United States Attorneys. Sadly, each of these numbers represents at least one victim, and in many cases, significantly more. While these statistics denote child sex offenders who were identified, apprehended, and prosecuted, they underestimate the totality of the offenders' concerning and deviant behaviors.

Consider “Steven,” age 28, who is before the Court for the first time for trading CSAM: *Steven and another offender are accused of “repurposing” a seemingly benign platform to share material representative of their sexual interest in children. Steven saved his collection of CSAM, which depicts the lascivious display of genitals of prepubescent boys and anal sexual abuse of prepubescent boys by adult men, to his hard drive. A search of his home revealed non-pornographic photographs he surreptitiously took of boys in his town, magazines and catalogs depicting young boys, and numerous books and articles focused on the abuse and murder of children. He also possessed new pairs of boys’ socks and underwear he admitted he uses during masturbation. When interviewed by federal law enforcement, he disclosed he regularly fantasizes about abducting, raping, and killing a young boy; at this time, however, there is no evidence he is a contact offender.*

Labeling Steven as a “CSAM offender,” while technically accurate, does a disservice to those who need to understand the risks he poses. The label also creates a problem in the research setting, since academics often use convictions as a method for placing offenders in specific categories and samples. But clearly the term underestimates the totality of Steven’s deviant behavior, fails to fully capture the time and effort he expends in support of his sexual interests, and mischaracterizes his criminal intentions.

Contrast Steven with “Rob,” age 31:

*Rob recently was charged with transportation of a minor for sexual purposes and sex trafficking of children. The Government alleges that Rob forced two teenagers, ages 16 and 17, to engage in sexual activity with adults in exchange for money, which they then were required to give to him. Rob used the money to buy extravagant clothes, as well as to fund his and the victims’ travels to major cities across the U.S., where they stayed in luxury hotels. Rob also used the proceeds to support his and his girlfriend’s cocaine habits. There is no evidence he engaged in sexual activity with either of the teens; however, there are indications he was physically abusive to them. He has a lengthy criminal history, dating back to when he was a juvenile, for crimes including theft, burglary, disorderly conduct, fraud, and resisting law enforcement.*

Both Steven and Rob are child sex offenders and, if convicted, each might be required to register as sex offenders for the rest of their lives. Importantly, however, they possess differing

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<sup>363</sup> Based on sentencing data captured by the U.S. Sentencing Commission for guidelines 2G2.1 & 2G2.2 (CSAM) and 2G1.3 (trafficking) respectively

motivations, and the risks they pose to society are dissimilar. Specifically, Steven’s actions are likely driven by a sexual attraction to prepubescent children (e.g., pedophilia), whereas Rob appears motivated by antisocial tendencies, such as the desire to control others and the willingness to exploit them for personal gain.

Determining what drives and influences sex offenders – their *motivational pathways* – is a complex task. It is best undertaken by experienced clinicians who possess not only the appropriate academic credentials but also sufficient experience interviewing, evaluating, and/or treating, and assessing the risk posed by sex offenders. Too often, expert witness testimony is provided by professionals who have advanced academic degrees but lack sufficient training or experience working with sex offenders. Armed with an unsophisticated understanding of this population, they unwittingly propagate myths, describe inaccurate “mitigators,” provide skewed or erroneous explanations about the origins of deviant predilections, and – perhaps most frequently – underestimate the risks these offenders pose.

*Since sexual interests are enduring, it is important for investigators to consider any gaps in any offender’s known criminal history to discover previously undetected crimes and identify possible victims.*

## **Persistence of Underlying Factors**

It is important to note that deviant predilections and behavior – whether due to psychological disorders (e.g., pedophilia), hedonistic impulsivity, or antisocial traits – tend to persist across the lifespan. Currently there are no cures for these underlying conditions and attempts to manage sexual deviance have resulted in only modest success.<sup>364,365,366,367,368</sup>

## **Typologies**

Investigators, academics, and mental health professionals “type” offenders in various ways. The easiest method is to label them according to the criminal behavior they are known to have committed – “child molester,” “traveling sex offender,” and “trafficker” are examples of hands-on criminals, while “collector,” and “trader” refer to online conduct. Unfortunately, detected crimes are not always accurate representations of offenders’ sexual criminality. Known offenses typically constitute only the metaphoric tips of offenders’ criminal icebergs.

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<sup>364</sup> Långström, N., Enebrink, P., Laurén, E-M, Lindblom, J., Werkö, S., & Hanson, R. K. (2013). Preventing sexual abusers of children from reoffending: Systematic review of medical and psychological interventions. *BMJ*, 347:f4630.

<sup>365</sup> Dennis, J. A., Khan, O., Ferriter, M., Husband, N., Powney, M. J., & Duggan, C. (2012). Psychological interventions for adults who have sexually offended or are at risk of offending. *Cochrane Database of Systematic Reviews*, 12, Article number CD007507.

<sup>366</sup> Lösel, F., Link, E., Schmucker, M., Bender, D., Breuer, M., Carl, L., Endres, J., & Lauchs, L. (2020). On the effectiveness of sexual offender treatment in prisons: A comparison of two different evaluation designs in routine practice. *Sexual Abuse*, 32(4), 452-475.

<sup>367</sup> Mews, A., Di Bella, L., & Purver, M. (2017). Impact evaluation of the prison-based Core Sex Offender Treatment Programme. *Ministry of Justice Analytical Series*.

<sup>368</sup> Schmucker, M., & Lösel, F. (2015). The effects of sexual offender treatment on recidivism: An international meta-analysis of sound quality evaluations. *Journal of Experimental Criminology*, 11, 597-630.

Alternatively, offenders can be typed by *modus operandi* (e.g., “grooming”), the criminal arena in which they operate (e.g., “online offender”), or victimology (“preferential offender”). These descriptors often are inconsistently applied, can be overused, and ultimately are imprecise since they fail to adequately account for criminal diversity.

One way to conceptualize sex offenders is using psychological/psychiatric classifications. While diagnostic terms (e.g., “pedophile,” “sadist,” “psychopath”) may most accurately describe the offender’s motivational pathway and are helpful in treatment and risk assessment settings, the diagnoses must be given by qualified mental health professionals, and the terms are commonly misused by laypersons.

From an investigative standpoint, no matter which framework is used to describe sex offenders, typologies end up being double-edged swords. For example, they can be useful to help law enforcement officers gain conceptual insight into what drives a given perpetrator. This knowledge can inform efforts to identify or apprehend them, as well as improve the efficacy of interview techniques following arrest. On the other hand, typologies may contribute to inferences that misguide or prematurely close investigations. For example, identifying a subject as targeting only girls may cause investigators to overlook potential male victims. Similarly, deciding an offender is “preferential” based on his CSAM collection may fail to identify teenaged or even adult victims.

*It is important to recognize that many offenders depart from the categories in which they’ve been conceptually placed - they may assault victims outside their ideal victim pool, engage in adjunctive or spontaneous sexual acts, and/or experiment with alternative methods for accessing, abusing, or silencing their victims.*

## Crossover

The utility of “typing” offenders is diminished if crossover is not considered. As the name implies, crossover refers to offenders who commit crimes in multiple offense categories. Crossover among sex offenses has been studied for more than three decades. In one of the earliest examinations of sex offenders’ criminal diversity,<sup>369</sup> researchers noted that while their offender sample had been assumed to fall into only one sexual offense category, most had “significant experience with as many as ten different types of deviant sexual behavior.” A study<sup>370</sup> with samples of both incarcerated and paroled offenders reported similar findings: the majority of the nearly 500 sex offenders admitted assaulting both children and adults, and sexually assaulting victims of both genders. A third, more recent analysis of 251 CSAM offenders revealed that more than a third of the offenders engaged in crossover offending in which they attempted or engaged in other sexual exploitation crimes.<sup>371</sup> Importantly, in the latter study it was the in-depth investigation by law enforcement that revealed the more egregious

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<sup>369</sup> Abel, G. G., Becker, J. V., Cunningham-Rathner, J., Mittelman, M., & Rouleau, J.-L. (1988). Multiple paraphilic diagnoses among sex offenders. *Bulletin of the American Academy of Psychiatry and the Law*, 16(2), 153-168.

<sup>370</sup> Heil, P., Ahlmeyer, S., & Simons, D. (2003). Crossover sexual offenses. *Sexual Abuse: A Journal of Research and Treatment*, 15, 221-236.

<sup>371</sup> Owens, J. N., Eakin, J. D., Hoffer, T., Muirhead, Y., & Shelton, J. E. (2016). Investigative aspects of crossover offending from a sample of FBI online child sexual exploitation cases. *Aggression and Violent Behavior*, 30, 3-14.

crimes, as more than half of the crossover offenders were referred to law enforcement for CSAM possession.

Researchers who rely on reviews of criminal records often report lower crossover in their samples than what law enforcement professionals and qualified treatment providers encounter “on the ground.” Even the best official records are typically poor proxies for offenders’ true history of exploitative behaviors – the best way to come reasonably close to learning the truth is through qualitative research conducted by experienced interviewers. Since the detection rates for sexual offenses is very low, it is not surprising that often the most accurate studies – those that do not underestimate risk and criminal diversity – include those conducted in treatment settings and/or that used polygraph verification. Not surprisingly, such studies tend to find much higher rates of crossover.

### **The Role of Adult Pornography**

As a society we struggle to understand why otherwise normal people engage in child exploitation crimes. We seek logical explanations for why a local pastor would abuse children, a coach would send explicit photographs to underage athletes, or a teacher would download CSAM. We have a hard time reconciling the normalcy of the person we thought we knew with the “other” person that lurked beneath the surface.

Some try to find answers in the psychological process of *operant conditioning*<sup>372</sup> because it specifically addresses how many human behaviors can be shaped. Through this lens, perpetrators can be reframed from “monsters” to mere victims of their environment or some unknown circumstances (e.g., childhood abuse). Finding a cause for their deviant sexual interests allows us to avoid confronting disconcerting realities: that the world is not as safe as we would like, that we often fail to identify malevolence around us, that our maternal and paternal instincts are frighteningly insufficient at identifying threats to our children, and – most significantly – that people commit crimes against children for reasons we simply do not understand.<sup>373</sup>

Unfortunately, the misapplication of key concepts found in behaviorism (e.g., *habituation*,<sup>374</sup> *normalization*,<sup>375</sup> *desensitization*) has resulted in confusion about how deviant predilections develop and, in particular, about the role the internet plays. This includes “gateway theories”<sup>376</sup> that suggest certain behaviors, over time, will lead to others - including acts that are illegal and/or undesirable. Gateway theories are not new; historically, seemingly logical paths have been drawn to “prove” that smoking cigarettes leads to heroin abuse, dancing leads to premarital sex, etc. The problem stems from causal misattribution - while it is true many addicts first used

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<sup>372</sup> Operant conditioning is the process by which behavior is learned and modified through reinforcement and punishment.

<sup>373</sup> Salter, A. (2004). *Predators: Pedophiles, rapists, and other sex offenders*. Basic Books.

<sup>374</sup> Habituation is an example of non-associative learning - no reward or punishment is associated with the stimulus. An example is people who live near airports who no longer notice the sounds of airplanes overhead.

<sup>375</sup> Normalization is the process by which things become more “okay” in a given context (e.g., wearing a facemask in public has become normalized during the pandemic). In the area of sexual exploitation, normalization can occur when offenders join a community of like-minded individuals who persuade him that crimes against children are less harmful and less morally repugnant than they are.

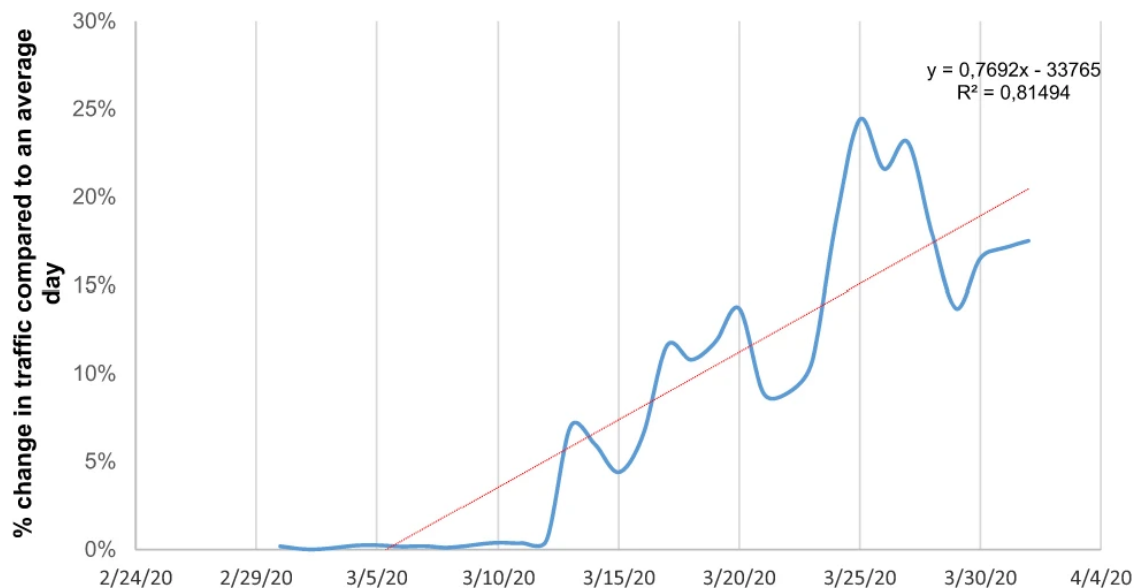
<sup>376</sup> Also referred to as “stepping stone theories”



nicotine before they tried heroin, the vast majority of cigarette smokers do not progress down the path to opioid dependence. In short, there is strong empirical research that shows gateway theories do not occur in the way they are often presented.<sup>377,378</sup>

The question of whether adult pornography “leads to” CSAM is analogous in that many individuals with sexual interests in children “started” with adult pornography. In other words, they encountered adult material before they found CSAM. This is not surprising – adult pornography is easier to find, it is legal, and the consequences for getting caught viewing it by a parent or significant partner are much less severe. But this does not mean pornography somehow starts people down a deviant path, or that it “pushes” people toward depravity.

*According to PornHub, data shows a 25% increase in total traffic in late March 2020 compared to an average day in the past four years.*



Source: Zattoni, F., Gül, M., Soligo, M. et al. The impact of COVID-19 pandemic on pornography habits: a global analysis of Google Trends. Int J Impot Res (2020). Available from: [www.nature.com/articles/s41443-020-00380-w#citeas](https://www.nature.com/articles/s41443-020-00380-w#citeas)

377 National Institute on Drug Abuse (2020). Marijuana report. Author. Available from: <https://www.drugabuse.gov/publications/research-reports/marijuana/marijuana-gateway-drug>

378 Nkansah-Amankra, S., & Minelli, M. (2016). "Gateway hypothesis" and early drug use: Additional findings from tracking a population-based sample of adolescents to adulthood. Preventive Medicine Reports, 4, 134–141. <https://doi.org/10.1016/j.pmedr.2016.05.003>

Pornography consumption is relatively commonplace in society.<sup>379</sup> According to recent research,<sup>380,381</sup> a large percentage of men and approximately 25% of women view adult pornography on a regular basis (on average, about 20-30 minutes per week). Although estimates vary as to what percentage of our population views CSAM, all would agree the number is significantly smaller. Therefore, if we assume most people's first exposure to pornography consists of viewing explicit media of consenting adults, the question becomes why do a small fraction of people "move" from adult pornography to CSAM while others do not (incidentally, the same question can be asked of those who view media depicting any other deviant sexual interest).

The answer can be found by understanding sexual "end points." End points are the most reinforcing facets of people's sexual drives – the individuals and activities they find the most exciting.<sup>382</sup> According to behavioral psychology, a normal adult should obtain significantly more pleasure (i.e., "reinforcement") from pornography that is closer to or consistent with his or her end point, and should experience the opposite – boredom, anger, or disgust (i.e., "punishment") – the farther away he or she goes from the center ring of their arousal target. Thus, if an adult with normative sexual interests is shown images involving abusive acts committed against animals, corpses, or children, the experience will be upsetting and repulsive;<sup>383</sup> for someone who possesses deviant interests involving those themes, however, the experience would be rewarding.

This explains why investigators, when viewing the computer search history of an offender with a sexual interest in children, often notice he<sup>384</sup> first downloaded adult pornography. They may then observe that after a brief period he "moved" to viewing younger-appearing adults on "barely legal" sites, and then began searching the internet for images and videos of older teenagers. Perhaps he eventually moved to collecting media depicting younger adolescents, and so on, until he finally reached his end point. This progression is often consistent with offenders' self-reports.<sup>385,386</sup>

To the inexperienced observer, it may seem this "progression" is the result of the offender becoming bored or "habituated" to the initial stimuli, which then causes him or her to "become

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<sup>379</sup> A comprehensive discussion of the merits and/or harms of adult pornography is beyond the scope of this work.

<sup>380</sup> Castleman, M. (2020, October 31). How much time does the world spend watching porn? *Psychology Today*. Available from: [www.psychologytoday.com/us/blog/all-about-sex/202010/how-much-time-does-the-world-spend-watching-porn](http://www.psychologytoday.com/us/blog/all-about-sex/202010/how-much-time-does-the-world-spend-watching-porn)

<sup>381</sup> Ogas, O. & Gaddam, S. (2011). *A Billion Wicked Thoughts: What the Internet Tells Us About Sex and Relationships*. Plume.

<sup>382</sup> Bourke, M. L. (2019). Internet sexual offending. In V. B. Van Hasselt & M. L. Bourke (Eds.), *Handbook of Behavioral Criminology*, pp. 331-347.

<sup>383</sup> Continued exposure would exacerbate these feelings and could even become traumatizing. Evidence for this can be found in the growing body of literature on vicarious traumatization and secondary traumatic stress among investigators and prosecutors who are exposed to this material.

<sup>384</sup> Although female offenders certainly exist, the male pronouns "he/his" will be used for ease of reading.

<sup>385</sup> The most experienced interviewers in the field note a common pattern: following apprehension, CSAM offenders initially claim they became interested in CSAM only after they became bored from significant exposure to adult pornography. After further discussion, however, the offenders almost universally admit their sexual interest in children predated their use of adult pornography. They admit their "desensitization" story helped them deflect responsibility and avoid shame.

<sup>386</sup> Seto, M. C., Reeves, L., & Jung, S. (2010). Motives for child pornography offending: The explanations given by the offenders. *Journal of Sexual Aggression*, 16(2), 169-180. <http://dx.doi.org/10.1080/13552600903572396>

more deviant.” The offender is thus viewed as someone who was corrupted by unseen forces within the internet. In fact, offenders are not pushed into deviance – they are pulled into the abyss by their own desires to find material that matches their thoughts, attractions, and urges - fantasies that nearly always emerge during adolescence.<sup>387,388,389</sup>

This explanation helps explain why it is inaccurate to describe someone arrested for downloading CSAM as a “hands-off offender.” The label not only reflects considerable naivete about the amount of deviance (including hands-on abuse) that goes undetected, but it erroneously implies the motivational pathways underlying CSAM offenses and hands-on abuse of minors are distinct. In other words, even if a so-called “hands-off” CSAM offender had not, at the time of arrest, sexually abused a child, it is reckless to assume he never will. From a motivational or “drive” standpoint, those arrested for CSAM offenses do not appear substantially different from those arrested for hands-on abuse, and there is no good evidence to support this contention.<sup>390</sup>

Further evidence to support this theory can be found in studies that are conducted in conditions where offenders can disclose their offenses with protections against self-incrimination, and/or where their disclosures are verified via polygraph. For example, of a sample of so-called “child pornographers” in a prison-based treatment program, 85% admitted previously undetected hands-on offenses.<sup>391</sup> A similar study in which offenders were interviewed immediately after their arrest found a crossover rate of 57.5%.<sup>392</sup> In a third study, a sample of 119 paroled federal sex offenders were asked about undiscovered hands-on abuse during polygraph examinations, and 69% acknowledged committing hands-on offenses. At least 148 victims were not reflected in official records.<sup>393</sup>

*Deviant interests manifest during human development and become apparent at precisely the same point as when everyone else is becoming aware of and sorting out their more normative sexuality – during adolescence.*

Crimes involving the online exploitation of children should be viewed as adjunctive manifestations of the same urges and fantasies as those that result in the hands-on abuse of children. Some so-called “just pictures” offenders may not have reached their end points when they were detected and apprehended by law enforcement. Others could very well be among the numerous hands-on offenders who managed to effectively groom, threaten, or otherwise silence their victim(s).

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<sup>387</sup> Seto, M. C. (2012). Is pedophilia a sexual orientation? *Archives of Sexual Behavior*, 41, 231-236.

<sup>388</sup> Bernard, F. (1985). *Paedophilia: A factual report* [English edition]. Rotterdam: Enclave Press.

<sup>389</sup> Li, C. K. (1991). ‘The main thing is being wanted’: Some case studies on adult sexual experiences with children. *Journal of Homosexuality*, 20, 129–143.

<sup>390</sup> Any differences shown in studies between sex offender subgroups often can be attributable to other factors other than basic motivations, including intelligence, the presence of criminogenic factors, and degree of technological sophistication.

<sup>391</sup> Bourke, M. L. & Hernandez, A. E. (2009). The ‘Butner Study’ redux: A report of the incidence of hands-on child victimization by child pornography offenders. *Journal of Family Violence*, 24, 183-191.

<sup>392</sup> Bourke, M. L., Fragonelli, L., Detar, P. J., Sullivan, M. A., Meyle, E., & O’Riordan, M. (2014). The use of tactical polygraph with sex offenders. *Sexual Aggression*, 21(3), 354-367.

<sup>393</sup> Delisi, M., Caropreso, D. E., Drury, A. J., Evans, J. L., Heinrichs, T., & Tahja, K. M. (2016). The dark figure of sexual offending: New evidence from federal sex offenders. *Journal of Criminal Psychology*, 6(1), 3-15.

It is important to mention that not all CSAM offenders intend to become hands-on offenders. There are many individuals with sexual interests in children who experience anxiety and self-loathing regarding their predilections.<sup>394</sup> Some hope their use of CSAM as masturbatory stimuli will satisfy and sufficiently assuage their urges to act out with a child “in real life.” Unfortunately, masturbation does not mitigate sexual drives, and CSAM stimuli only enhances the poignancy of their fantasies. As their interest in acting on their drives strengthen and inhibiting factors erode, the individuals travel farther down the “Spiral of Sexual Abuse.”<sup>395</sup>

It is worth noting that if human beings could be pushed into possessing a completely different sexual arousal pattern as the result of operant conditioning, this would be a relief to sex offender treatment providers. For the first time, therapists would have the opportunity to eradicate pedophilic impulses with simple counterconditioning, or by using behavioral extinction techniques. Sadly, it does not work that way. People do not “choose” their sexual orientations, sexual interests, or paraphilias. While most experts agree latent paraphilic urges (including pedophilia) can be strengthened with online stimuli, the predilections are not *created* by immersion in this material.

### **The Vampire Syndrome**

A pervasive misconception about sex offenders is that they become sexually interested in children as the result of their own childhood abuse. This is known as the “Vampire Syndrome,” based on the legend that the bite of a vampire will cause an innocent person to turn into one. Unfortunately, some mental health professionals perpetuate this etiological myth, despite its incongruity with research surrounding sexual trauma<sup>396</sup> and well-established psychological principles.

The extant research clearly indicates most offenders have *not* been sexually abused. There is evidence that suggests sexual abuse, physical abuse, psychological/emotional abuse, and neglect are higher in sex offenders than “normal” adults, but the rates of abuse among sex offenders are statistically similar to other criminals. In other words, experiencing abuse (and many other kinds of adverse childhood experiences) places people at risk for engaging in criminality later in life, but not necessarily *sexual* criminality. An excellent longitudinal study examining the influence of abuse and neglect on future criminality recently was published in a *Journal of the American Medical Association*.<sup>397</sup> Researchers followed a large sample of maltreated children for approximately 45 years to examine how their lives differed from a control sample. The researchers concluded: “The idea that children who were sexually abused are uniquely at risk to

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<sup>394</sup> As one incarcerated federal offender told his treatment provider, “I never chose to be a pedophile. If there is any kind of therapy, medication, or surgery that can cure me, please give it to me. Because all this has ever done for me is cause me to hurt kids and end up in prison.”

<sup>395</sup> Sullivan, J. (2019). Child sexual abuse and molestation: The Spiral of Sexual Abuse. In V. B. Van Hasselt & M. L. Bourke (Eds.), *Handbook of Behavioral Criminology*, pp. 257-277.

<sup>396</sup> Just as most victims of rape do not become rapists, the overwhelming percentage of children who are victimized grow up to become survivors, not perpetrators.

<sup>397</sup> Widom, C. S. & Massey, C. (2015). A prospective examination of whether childhood sexual abuse predicts subsequent sexual offending. *JAMA Pediatrics*, 169(1). Retrieved from <https://amanetwork.com/journals/jamapediatrics/article-abstract/2086458>.

become sex offenders was not empirically supported.” In fact, the researchers found that subjects who were *physically* abused were at greater risk for committing a sexual offense than the subjects who were sexually abused.

Childhood abuse and neglect and the risk of being arrested for a sex crime			
	Total (N = 1575)	Males (n = 776)	Females (n = 799)
Variable	No. (%)	No. (%)	No. (%)
Total	1575 (6.7)	776 (11.3)	799 (2.1)
Control group	667 (4.5)	334 (7.5)	333 (1.5)
Abuse/neglect (overall)	908 (8.3)	442 (14.3)	466 (2.6)
Neglect	697 (9.0)	374 (14.4)	374 (2.8)
Physical Abuse	160 (8.1)	88 (13.6)	72 (1.4)
Sexual Abuse	153 (4.6)	24 (12.5)	129 (3.1)

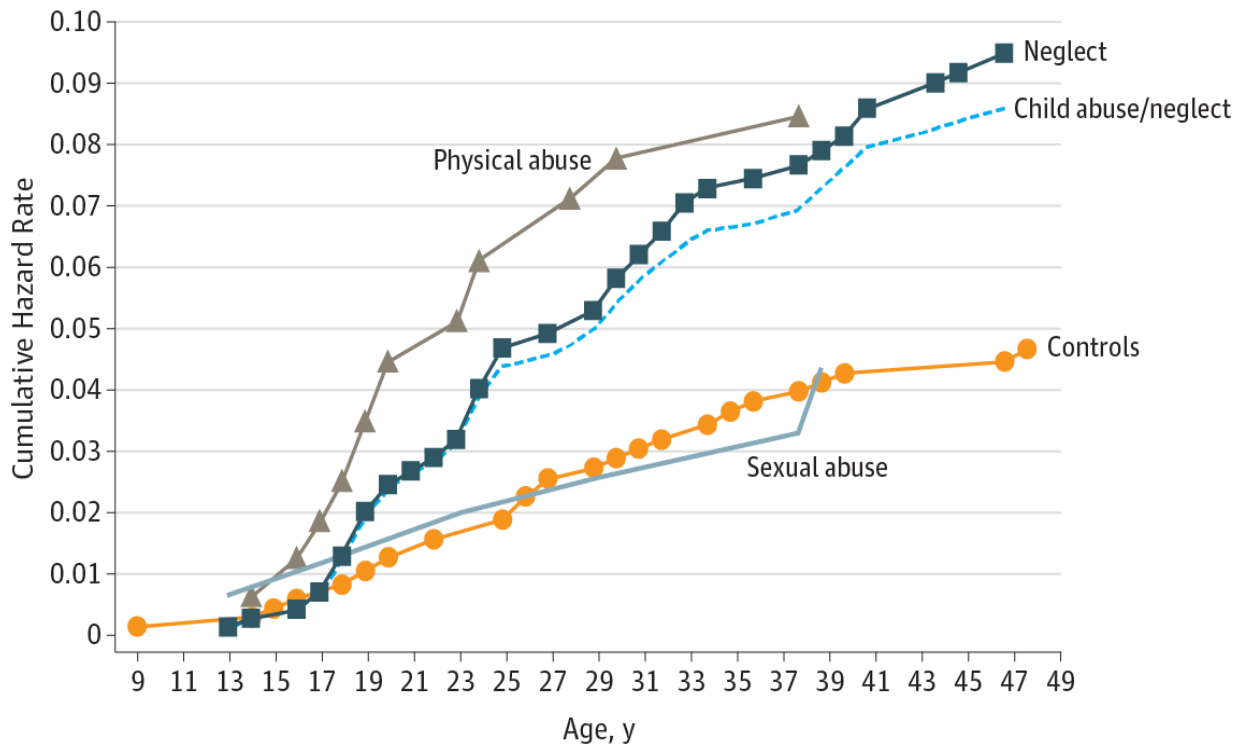
Individuals with histories of physical abuse and neglect were at increased risk for being arrested for sex offenses compared to the control group. For individuals with histories of childhood sexual abuse, the Adjusted Odds Ratios (AORs) were not significant. The AORs ranged from 1.82 to 2.50.

Source: Widom, C. S. & Massey, C. (2015). A prospective examination of whether childhood sexual abuse predicts subsequent sexual offending. *JAMA Pediatrics*, 169(1).

It is not uncommon for offenders to admit they lied and manipulated mental health professionals during court-ordered evaluations, and some purposefully “shop around” until they find one they feel is particularly naïve. Interestingly, many say they get a sense the evaluator would like them to say they were abused, and they simply tell the evaluator what he or she wants to hear. The offenders also know that overly-“empathic” professionals are more likely to testify on their behalf and inform the court they “need treatment, not prison.” Some mental health professionals have taken what they believe is an ethical high road by refusing to “pathologize” their clients. The offenders therefore make up an abuse history, knowing there is little risk in surrendering to the sympathies of the court.<sup>398</sup> Their logic is that it will be more difficult for their judge to give a lengthy sentence to a victim who made a poor choice, versus a sexual predator with no excuse for his behavior, and who cannot be cured.

<sup>398</sup> Hindman, J. & Peters, J.M. (2001). Polygraph testing leads to better understanding adult and juvenile sex offenders. *Federal Probation*, 65, 8 – 15.

## Age at First Arrest for a Sex Crime by Group



The curve for sexual abuse is not significantly different from the control group. However, the curves for physical abuse, neglect, and child abuse/neglect are significantly different from the control and sexual abuse curves. Source: Widom, C. S. & Massey, C. (2015). A prospective examination of whether childhood sexual abuse predicts subsequent sexual offending. *JAMA Pediatrics*, 169(1).

The gamble often pays off. The professionals are more likely to describe their patients as confused rather than malevolent. They are more likely to try to ascribe blame for the offender’s actions on co-existing conditions such as depression, autism, or obsessive-compulsive disorder. They provide theories with just enough psychological jargon to seem plausible; for example, that the offenders never “processed” their own abuse. Not surprisingly, they have a significantly more difficult time trying to explain how unprocessed abuse leads to a desire to inflict that pain on another innocent person. Similarly, they cannot walk the jury through the process by which a victim with unresolved trauma would become the monster they once feared and loathed, or why a survivor of sexual abuse would seek out thousands - perhaps hundreds of thousands - of images and videos of other children being assaulted, when other victims of trauma do not behave in this manner.<sup>399</sup>

Professionals and laypersons, alike, are desperate for an explanation for why otherwise “normal” individuals in their families, communities, and organizations are, in fact, sexually aroused by

<sup>399</sup> Survivors of serious automobile crashes do not collect footage of crashes, victims of house fires do not download images of burned people, etc. In fact, it is a criterion of posttraumatic stress disorder (and similar diagnoses) that the trauma survivor *avoids* any reminder of the trauma.

minors. Unresolved abuse appears to be the most comforting explanation for most people<sup>400</sup>, and is easier to accept than the alternative: that there are people who abuse children for reasons we just do not understand.<sup>401</sup>”

## The Internet and Child Exploitation

Prior to the advent of the internet, individuals with odd predilections, and certainly those with sexually deviant desires, lacked global forums to openly discuss their impulses and fantasies with thousands of like-minded individuals. Any thoughts about abusing children, as well as all consequent shame, would have been dealt largely in isolation. Since cognitive dissonance and emotional discomfort can serve as inhibitory components of one’s conscience, unresolved guilt and shame that resulted from a would-be offender’s awareness of his predilections could have prevented him from acting on any morally repugnant fantasies.

The pseudonymous nature of the internet, however, caused a significant change. Online chatrooms became outlets for people with sexual interests in children - as well as those interested in rape, bestiality, and a multitude of other deviant sexual interests - to openly discuss the things they find arousing. In these forums they discover like-minded individuals who provide assurances they are not alone. Within the online communities, child abusers find acceptance and validation.<sup>402,403,404,405,406</sup>

In these communities, offenders assuage each other’s guilt and shame, and tell each other their thoughts are not amoral, but rather simply misunderstood by a closed-minded society. They share their beliefs that sexual activity between adults and children is not harmful and can even be healthy. Over time, they reinforce the cognitive distortions that facilitate offending – twists in thinking that allow them to rationalize, intellectualize, minimize, deny, and justify abusive behavior. They provide advice and recommendations to their peers: ways to identify and access vulnerable victims, techniques to force or manipulate a victim to “comply” with sexual acts, tips to avoid leaving evidence, and methods to prevent disclosure. Some of these recommendations can be found in “how to” guides that have been circulated for years.<sup>407</sup> The internet provided

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<sup>400</sup> In her 2018 book *Predators: Pedophiles, rapists, and other sex offenders*, Dr. Anna Salter notes: “We mute the realization of malevolence- which is too threatening to bear - by turning offenders into victims themselves and by describing their behavior as the result of forces beyond their control.”

<sup>401</sup> *Id.*

<sup>402</sup> Durkin K. F., & Bryant, C. D. (1999). Propagandizing pederasty: A thematic analysis of the on-line exculpatory accounts of unrepentant pedophiles. *Deviant Behavior: An Interdisciplinary Journal*, 20, 103-127.

<sup>403</sup> Quinn, J. F. & Forsyth, C. J. (2013). Red light districts on blue screens: A typology for understanding the evolution of deviant communities on the internet. *Deviant Behavior*, 34(7), 579-585.

<sup>404</sup> Steel, C., Newman, E., O’Rourke, S. & Quayle, E. (2020). An integrative review of historical technology and countermeasures usage trends in online child sexual exploitation material offenders. *Forensic Science International: Digital Investigation*, 33.

<sup>405</sup> van der Bruggen, M. & Blokland, A. (2020). A crime script analysis of child sexual exploitation material fora on the Darkweb. *Sexual Abuse (advance online publication)*. <https://doi.org/10.1177/1079063220981063>

<sup>406</sup> van der Bruggen, M. & Blokland, A. (2021). Profiling Darkweb child sexual exploitation material forum members using longitudinal posting history data. *Social Science Computer Review*. ISSN: 0894-4393.

<sup>407</sup> Blalock, J. R. & Bourke, M. L. (in press). A content analysis of pedophilic manuals. *Aggression and Violent Behavior*. <https://doi.org/10.1016/j.avb.2020.101482>. Advance online copy available at [www.sciencedirect.com/science/article/abs/pii/S1359178920301865](http://www.sciencedirect.com/science/article/abs/pii/S1359178920301865).

another feature that was game-changing in the area of sexual exploitation: the ability to send and receive images and videos. Offenders can quickly access highly arousing stimuli that brings their fantasies to life, perhaps in full motion and with sound. The sexual gratification they obtain while viewing these images and videos strengthens their sexual drives and reinforces their fantasies. They discover they can trade CSAM with like-minded individuals to acquire material that perfectly matches their desires. If they cannot find what they seek, they can encourage another anonymous group member to produce the desired material – thereby contributing to more hands-on abuse of minors and the proliferation of so-called “original content.”

Unique interpersonal dynamics are present in online communities that contribute to the sexual exploitation of children. First, the administrators of these offender communities compete with one another, and even attack one another, in attempts to “steal” members and illegal content. This competition appears to be a function of egos as well as the pragmatic desire to possess more fantasy-enhancing material. Second, some offenders within the community enjoy “showing off” and “one-upping” their fellow group members. This is usually done by having a larger collection than others, having access to a child, or by possessing rare or original content created by the user or an online friend.<sup>408</sup> Third, some groups require members to regularly make contributions to the trove of illegal material. While this serves as a means to ensure law enforcement is not in their midst, it also can create a form of “peer pressure” to acquire new material. Fourth, offenders can develop a sense of twisted pride from successfully carrying out acts of abuse and exploitation – experiences that subsequently are shared with and lauded by fellow members.

The internet does not “create” a sexual interest in children. These interests nearly always develop during adolescence; and, unfortunately, they do not go away. There are no cures for any of the underlying motivational pathways that lead to sexual exploitation of minors; instead, extant pharmacological and psychotherapeutic interventions attempt to help offenders manage their maladaptive urges and fantasies.

### **Anonymous Networks**

Anonymous and encrypted networks (colloquially, the “Darkweb”) create a safe space for offender engagement and sharing of deviant fantasy material. A detailed discussion about these networks is beyond the scope of offender psychology and is addressed in detail in the Technology chapter section of this report.

### **“Non-offending pedophiles”**

In recent years, communities of so-called “virtuous pedophiles<sup>409</sup>” or “non-offending pedophiles” have emerged online. Members self-identify as having sexual interests in children but claim they have no desire to act on their fantasies. Many attempt to normalize pedophilia as an alternative sexual orientation.<sup>410</sup>

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<sup>408</sup> Carr, A. (2012). The social dimension of the online trade of child sexual exploitation material. In E. Quayle & K.M. Ribisl (Eds.), *Understanding and preventing online sexual exploitation of children* (pp. 96 - 115). Routledge.

<sup>409</sup> Cranney, S. (2018). Why did God make me this way? Religious coping and framing in the virtuous pedophile community. *Journal for the Scientific Study of Religion*, 56(4):852–868

<sup>410</sup> Seto, Michael C. 2012. Is pedophilia a sexual orientation? *Archives of Sexual Behavior* 41(1):231–36.



Several observations warrant consideration. First, while some mental health professionals and academics have advocated for a re-conceptualization of pedophilia and the risks “non-offending” pedophiles pose to children, their advocacy appears based on the assumption the self-identified pedophiles are as “virtuous” as they assert. Many appear to simply accept the claims of the anonymous group members that they have not acted on their impulses. Law enforcement authorities, however, have found the supposed non-offending pedophiles are in fact consuming CSAM online. The percentage who are also committing other hands-on or online offenses is not known.

### **Support groups and hotlines**

In a related issue, some forensic psychologists support the concept of “support groups” where those with sexual interests in children can congregate and communicate about their desires on social media.<sup>411</sup> For both clinical and ethical reasons, this approach is contraindicated and may be dangerous. Unmoderated support groups can quickly devolve into inappropriate communications<sup>412</sup> or become *de facto* therapy groups as members attempt to “treat” one another in the absence of qualified clinicians. There is no way to confirm whether members in “self-help” groups are truly non-offending, and under the façade of providing help they may increase networking opportunities and facilitate offenders’ desires for ongoing immersion in the world of child exploitation.

Conducting group therapy with sex offenders can be challenging even for qualified mental health providers. As a result of their cognitive distortions, offenders tend to give each other misguided advice that must be immediately addressed by the therapist. The clinician must also watch for offenders who may be telling stories to obtain sadistic satisfaction; those who may be trying to arouse themselves, the therapist, or other group members; and those who are attempting to dominate the discussion to obtain a sense of power.

Unfortunately, other treatment options for these predilections are limited. Availability, cost, stigma, and confusion regarding mandatory reporting can stand in the way of individuals accessing professional, one-on-one therapy to address their sexual interest in children. While the implementation of hotlines could be a useful tool to assist with preventing exploitation, the hotline should serve only as a resource to direct the caller to qualified mental health professionals for appropriate assessment and treatment. Counseling or prolonged conversations about the caller’s fantasies and urges should be avoided due to the risks the offender is using the communication to increase his arousal.<sup>413</sup>

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<sup>411</sup> Kernsmith, P. D., & Kernsmith, R. N. (2008). A safe place for predators: Online treatment of recovering sex offenders. *Journal of Technology in Human Services, 26*, 223-238.

<sup>412</sup> In a large sex offender treatment program in south Florida, clinicians had to prohibit offenders from congregating in the parking lot before their group therapy sessions because they would engage in inappropriate discussions to arouse one another and even prey on younger group members.

<sup>413</sup> An incarcerated offender once informed a DOJ psychologist he molested a child while speaking to a facilitator on a “pedophile hotline.”

## Offender Gender

The gender of offenders committing online offenses continues to be predominantly male, with only a very small percentage of women arrested for online offenses each year.<sup>414</sup> Gender does play an important role, however. Women are less likely to be reported for sexually motivated crimes against children and are less likely to be investigated or charged for these offenses. Convictions are harder to secure, and sentences are lighter than their male counterparts. This may be attributable to general beliefs that women are naturally more protective of children and less driven by sexual impulses. When a woman is accused of engaging in the online sexual exploitation of children, society is perplexed and often seeks novel explanations that do not apply to males (e.g., she was coerced by a man to do it). While not all acts of sexual exploitation and abuse committed by women are motivated by a sexual interest in children, it is important to recognize that such fantasies and urges can be present in either gender.<sup>415,416,417</sup>

## Risk to Law Enforcement and Others

Individuals with sexual interests in children are stereotypically seen as socially awkward and immature – men more likely to be described as odd or “nerdy” than aggressive or dangerous. Yet two federal agents lost their lives and other officers were wounded in Sunrise, Florida on February 2, 2021, as they attempted to execute a CSAM warrant – a tragic illustration of the dangers these offenders pose.<sup>418</sup>

Sadly, this attack is not as anomalous as one would hope. While violence against police by sex offenders is not well-studied, in a sample of 1,107 significant incidents where a subject posed a serious threat to officers executing arrest warrants,<sup>419</sup> 11.2% involved a sex offender. In those situations, 61.3% threatened law enforcement officers with a weapon or attempted to run them over in a vehicle. And another federal law enforcement agency found that in a 10-year period, 17.4% of the law enforcement officers killed were murdered by sex offenders.<sup>420</sup>

A related concern is offender suicide, including “suicide by cop” in which, for example, a suspect intentionally points a weapon at officers to force him or her to use deadly force. Research by one DOJ law enforcement agency examined more than 100 cases in which a subject under investigation for a child sex offense killed himself during an investigation; 10% of these incidents occurred in the presence of, or in close proximity to, law enforcement personnel.<sup>421</sup> In

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<sup>414</sup> Gottfried, E. D., Shier, E. K. & Mulay, A. L. (2020). Child pornography and online sexual solicitation. *Current Psychiatry Reports*, 22(3), 10.

<sup>415</sup> Tewksbury, R. (2004). Experiences and attitudes of registered female sex offenders. *Federal Probation*, 68(3), 30-34.

<sup>416</sup> Gakhal, B. K. (2011). A comparison of the general public's, forensic professionals', and students' perceptions towards female sex offenders. *Journal of Sexual Aggression*, 17(1), 105-116.

<sup>417</sup> Zack, E., Lang, J. T., & Dirks, D. (2016). It must be great being a female pedophile! The nature of public perceptions about female teacher sex offenders. *Crime, Media, Culture: An International Journal*, 14(1), 61-79.

<sup>418</sup> <https://www.fbi.gov/news/stories/honoring-fallen-special-agents-laura-schwartzenberger-and-daniel-alfin-020821>

<sup>419</sup> Unpublished data (2004-2016), United States Marshals Service

<sup>420</sup> *Id.*

<sup>421</sup> Hoffer, T.A., & Shelton, J., (2012). *Suicide among child sex offenders*. Springer Briefs.

another DOJ agency, 16% of deaths determined to be “suicide by cop” were committed by sex offenders.<sup>422</sup>

Child sex offenders, but particularly those offenders caught trafficking in CSAM, may be assessed as low risk for violence because most lack prior arrests for violent crimes; or indeed, any crimes.<sup>423</sup> This finding places them squarely outside predictive heuristics that rely on past behavior to predict future behavior. But it is important to note that acts of violence can be precipitated by fear and desperation.<sup>424</sup> Thus, while the majority of offenders caught trafficking in CSAM have no criminal history and may not otherwise present as aggressive, they dread the thought of going to prison, where they believe they will be at significant risk for violence.<sup>425</sup> Historical analysis of male sex offenders who completed suicide during child sex crime investigations revealed they killed themselves within 48 hours after becoming aware of the investigation in 25% of the cases.<sup>426</sup> A lack of prior contact with law enforcement could intensify the offender’s reaction due to inexperience with the investigative/legal process and an unforeseen future. It is likely the offenders also recognize the arrest may irreparably damage their reputation and carefully created self-image,<sup>427</sup> affect or destroy their relationships with friends and family, drain their life’s savings, and eliminate their means to earn a living. As their world starts to crumble, their normal coping strategies become overwhelmed, and they are left with panic, hopelessness, terror, and shame. They may decide the only way out is to end their lives – a state of mind that exponentially increases their risk to themselves and others.

### Strategic Response

Short-Term Goals	Long-Term Goals
Educate legislators and the judiciary about child sex offenders, their psychology and means/methods of predation, and the long-term impact of their crimes on victims.	Explore the creation of a national child exploitation research center
Develop and implement a training program for foreign prosecutors, investigators, computer forensic analysts, and judges about child sex offenders, their psychology, and means/methods of predation, to include travel of U.S. citizens to foreign countries to exploit and abuse vulnerable children.	Reform the U.S. sentencing guidelines to better address offending behavior.

<sup>422</sup> United States Marshals Service

<sup>423</sup> Shelton, J., Eakin, J., Muirhead, Y., Owens, J. (2016). Online child sexual exploitation: An investigative analysis of offender characteristics and offending behavior. *Aggression and Violent Behavior, 30*, 15-23.

<sup>424</sup> In a study of 203 prison inmates, Taylor (1985) found that “high emotional arousal such as panic or retaliation triggered the greatest violence.” (p. 491).

<sup>425</sup> Acts of aggression against sex offenders in federal custody is exaggerated in movies and media. When inmates are managed appropriately, violence is very uncommon. For example, out of more than 1,000 inmates who participated in the BOP’s Sex Offender Treatment Program between 2000 and 2008, only two participants were ever assaulted, and the perpetrators were other sex offenders.

<sup>426</sup> Hoffer, T.A., & Shelton, J., (2012). *Suicide among child sex offenders*. Springer Briefs.

<sup>427</sup> *Id.*

Short-Term Goals	Long-Term Goals
Develop and deliver a curriculum designed to educate school administration, staff, childcare providers, and parents about child sex offenders, their psychology, and the means/methods by which they prey on children.	Develop and implement a training program for supervised release officials and administrators about child sex offenders, their psychology, and the means/methods of predation to better inform supervision protocols and techniques with this population of offenders.
Incentive mechanisms for Bureau of Prisons sex offender treatment programs to grow the number of offenders who access treatment.	Establish appropriate (ideally empirically-based) standards for the clinical assessment and treatment of sex offenders as well as coordinate with the mental health community to establish a standardized credentialing program for sex offender treatment providers that would apply across jurisdictions.
Examine the feasibility and most efficacious models for providing confidential services for those with a sexual interest in children.	Implement child safety standards and audits for any youth organization that receives federal funds or seeks not-for-profit tax exemption.

*Gap: Recognition of the impact of child exploitation on our communities and our systems*

Solution: Identify child sexual exploitation as a public health problem.

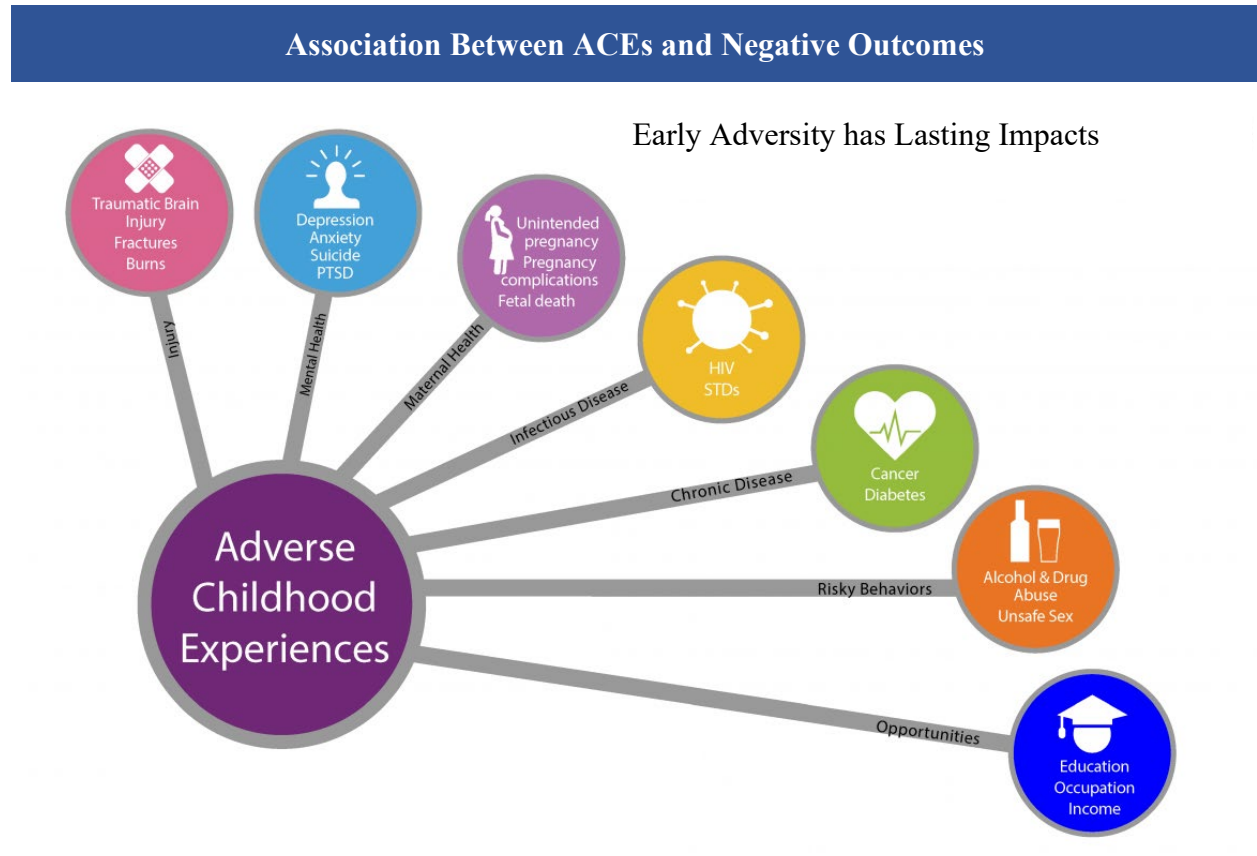
*Approaching child exploitation as a public health problem, rather than a problem unique to the criminal justice system, is a more appropriate lens through which to view this form of abuse.*

Like scores of perpetrators of other types of crimes, many child sex offenders do not stop engaging in criminal conduct after their first victim. Rather, perceived success from “getting away with it” can result in continued victimization of children until they are detected by investigators. Yet, even detection and apprehension by law enforcement may prove insufficient to quell the abusive conduct. Their crimes leave children and adults suffering for years – and for some victims, a lifetime. This victimization can impact educational achievements and affect later professional performance. Further, the mental health care often needed by victims and the treatment of offenders expected by the court taxes our already strained mental health systems. Finally, the data are clear—there is a relationship between adverse childhood experiences (known as ACEs) and the future presence of adult diseases and health risk factors.<sup>428</sup>

<sup>428</sup> Felitti, et. al (1998). Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults. *American Journal of Preventative Medicine*, 14(4), 245-258.

ACEs can result in billions of dollars in economic and social costs to individuals and our society.<sup>429</sup>

Approaching child exploitation as both a criminal justice and a public health problem is a more appropriate lens through which to view this form of abuse. This parallel approach could prompt the formation of resources designed to learn more about the offenders and their conduct, improve prevention efforts, prompt legislation that is salient to the crime problem, create innovative law enforcement solutions, and encourage increased collaboration with the medical and mental health communities for more effective treatment of victims and offenders.



Source: Centers for Disease Control and Prevention, <https://www.cdc.gov/violenceprevention/aces/fastfact.html>.

*Gap: Need for Additional Research*

The field of child exploitation is dominated by quantitative studies, which typically require less work, use archival data or data that is relatively easy to acquire, and are less expensive to carry out compared to large-scale qualitative studies. As a result, some publications are written by researchers who possess excellent research skills but lack a comprehensive understanding of sex offenders. This results in published studies that are statistically impressive but conceptually off base. These articles minimize sexual offending, underestimate re-offending, and offer advice that is seriously misguided (e.g., suggesting that individuals with sexual interests in children should

<sup>429</sup> <https://www.cdc.gov/violenceprevention/aces/fastfact.html>

be given child sex dolls<sup>430</sup> or “virtual CSAM” to assuage their urges, when in fact these stimuli would enhance the poignancy of dangerous fantasies and reinforce deviant predilections).

**Solution: Explore the creation of a national child exploitation research center**

To better understand the dynamics of sexual offending against children and to advance investigative best practices, a national research center devoted to child exploitation could conduct research into currently unexplored areas of sexual offending against children with a primary focus on practical investigative matters. This center could partner with academic institutions and private researchers to conduct research and produce effective and timely training to law enforcement officers, prosecutors, and judges regarding the results of the research and its impact on investigations, prosecutions, and supervision. Beyond the various research questions posed in this document, a research center’s capabilities would be available for prosecutors, the judiciary, and law enforcement and delve into emerging research topics in this rapidly evolving space. A national research center could function as a multi-agency fusion center comprised of permanent staff, as well as outside partners, consultants, and contractors.

**Solution: Increased use of qualitative research to learn more about the offenders and the criminal and non-criminal behavior that supports their sexual interest in children**

Despite the vast amount of research that has been conducted on various facets of child sex offenders and their behavior, additional studies are needed to better understand their motivations, conduct, and techniques. *Quantitative research* uses numbers and statistics to help quantify constructs and behaviors. These studies are useful when testing hypotheses or examining trends within a larger population. *Qualitative research* is generally exploratory rather than confirmatory, and it often uses text-based information, such as information obtained from interviews. Both approaches are important.

Qualitative inquiries are the preferred method for gaining deeper insight into a particular issue. In the absence of a sound theoretical foundation, quantitative researchers may produce studies that are statistically sound but conceptually off base. For example, a researcher who is unaware of the extent to which criminal histories underrepresent true offending may inaccurately assume official records are an adequate proxy (or may erroneously assume the differences can be accounted for with statistical adjustment). As a result, his or her statistical analyses could underestimate rates of crossover or show inaccurately low rates for re-offense. On the other hand, without the benefit of statistical testing it would be difficult to refute or support certain theories or reap benefits derived from empirical methods (e.g., the development of actuarial risk assessment tools such as the STATIC-99R).

Methodological imbalances present risks. If research is skewed toward the quantitative side, qualitative studies that introduce new concepts or challenge the status quo are likely to be dismissed for being too dissimilar from extant statistical “averages.” This could restrict innovation and remove the very advantages qualitative research offers – greater insights into particular phenomena.

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<sup>430</sup> Roper, C. (2020, January 9). "Better a robot than a real child": The spurious logic used to justify child sex dolls. ABC Religion & Ethics. <https://www.abc.net.au/religion/spurious-logic-used-to-justify-child-sex-dolls/11856284>

Currently, the field of child exploitation suffers from a knowledge chasm. There is a category of interviewers, investigators, treatment providers, prosecutors, and supervised release officers who work with offenders “on the ground.” They know what makes offenders “tick” and have an experiential understanding of the true risks the offenders pose. These professionals generally do not produce research, however, so their voices often go unheard in the literature. However, the loudest voices often come from academics and researchers who are accomplished at analyzing data and disseminating studies, but may lack a comprehensive and practical understanding of child sexual offending.

As Dr. Jakob Nielsen<sup>431</sup> noted:

*“...quantitative studies are often too narrow to be useful and are sometimes directly misleading... It's a dangerous mistake to believe that statistical research is somehow more scientific or credible than insight-based observational research. In fact, most statistical research is less credible than qualitative studies.”*

To fully understand the issues facing those in the field of child exploitation, we must support qualitative studies that explore issues of importance to those on the front lines. Put another way, “we need to go deep as well as wide.”

The following are examples of observations that are well-known to professionals who work with sex offenders but are ignored or awkwardly addressed in the literature – not because they are inaccurate, but because they cannot easily be assessed from “official records.” In most cases, the data can be obtained only by skillful interviewers, or by using time-consuming methodology.

- Based on the collective experience of professionals in this space, offenders initially minimize and deny just about everything. After sufficient rapport building by an experienced interviewer, significantly more information is revealed. For this reason, studies that find offenders engage in more crossover - or have a greater number of victims than records show - likely are not “outliers.”<sup>432,433</sup>
- Offenders first became aware of their deviant sexual interests in adolescence. Their predilections are not caused by the internet.
- No one collects, distributes, or repeatedly views CSAM, or engages in sexual chat with a minor, because of “curiosity.”
- In general, offenders first engage in exploitative/abusive behavior at a much younger age than what is reflected in records (often before age 18).
- Offenders commit more criminal acts than is typically known at the time of their arrest, trial, and sentencing. Their crimes are broader in scope with more “crossover.”

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<sup>431</sup> Nielsen, J. (2014). Risks of quantitative studies. Available from: [www.nngroup.com/articles/risks-of-quantitative-studies/](http://www.nngroup.com/articles/risks-of-quantitative-studies/)

<sup>432</sup> Bourke, M.L., Fragomeli, L., Detar, P., Sullivan, M.A., Meyle, E. & O'Riordan, M. (2014). The use of tactical polygraph with sex offenders. *Journal of Sexual Aggression: An international, interdisciplinary forum for research, theory and practice*, DOI: 10.1080/13552600.2014.886729

<sup>433</sup> Owens, J.N., Eakin, J.D., Hoffer, T., Muirhead, Y., & Shelton, J.E. (2016). Investigative aspects of crossover offending from a sample of FBI online child sexual exploitation cases. *Aggression & Violent Behavior*, 30, 3-14.

- Most sex offenders were never sexually abused, and the vast majority of survivors do not become abusers.
- Offenders say (and evidence supports their claims) they can fool unskilled or naive professionals into believing a minimized version of events and/or convince them they are less dangerous than is the case. Many offenders feel clinicians are gullible and believe everything they are told.
- Most risk assessment instruments typically do not consider dynamic risk factors (e.g., unemployment, substance abuse), which are arguably the most important.
- Providing offenders with “virtual” CSAM and child sex dolls would not mitigate sexual predilections and drives.<sup>434,435,436</sup> This material would strengthen and reinforce the desire to abuse children.<sup>437</sup>
- The motivational pathways that underlie CSAM crimes also fuel hands-on crimes against children. Research suggests between 55% and 85% of CSAM offenders have committed undetected hands-on offenses,<sup>438</sup> and it is a dangerous practice for researchers to label an offender a “hands-off” offender simply because his “hands-on” crimes have never been detected.

Solution: Encourage and fund qualitative research to learn more about risk factors for suicidal and homicidal ideation among child sex offenders.

Qualitative research could inform strategies to reduce the potential risk for a violent interaction between a child sex offenders and others, to include law enforcement. Each nonviolent interaction between law enforcement and a child sex offender provides an opportunity to learn what prevented the interaction from turning violent. The same holds true for learning why an offender with suicidal ideations did not complete suicide during the criminal justice process. Exploring static and dynamic risk factors, as well as the emotional self-regulation and coping methods offenders use, can assist the criminal justice system in preventing loss of life. This research also would allow for exploration of the offender’s decision-making process during law enforcement interactions and identification of protective factors that may have mitigated the risk for harm to self/others.

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<sup>434</sup> 85% of individuals in the United Kingdom who were arrested for child sex dolls were actively using CSAM (Cox, 2018).

<sup>435</sup> “...female-bodied sex dolls reinforce women’s subordinate status and the sexual objectification of women and girls. Despite this reality, a number of academics *encourage* the manufacture of these products for men’s sexual use, and some actually herald child sex dolls as a therapeutic treatment for child rapists — an approach that I see as both misguided and irresponsible.” (Roper, 2020)

<sup>436</sup> Brown and Shelling (2019)

<sup>437</sup> The *Curbing Realistic Exploitative Electronic Pedophilic Robots (CREEPER) Act* passed the U.S. House of Representatives in June 2018 but was not passed in the U.S. Senate. It was later reintroduced as HR 8236. Section 2 of the Act raises questions about the relationship between doll ownership and CSAM, notes that they can be customized to represent actual children, observes that robot versions have settings that simulate rape, which can teach offenders how to overcome resistance, and suggests they normalize submissiveness and normalize sexual activity between adults and children. The authors also note that obscene material is often used to groom children, and that they can lead to the exploitation, objectification, abuse and rape of minors (Brown & Shelling, 2019).

<sup>438</sup> Bourke & Hernandez, 2009; Bourke, et. al (2014); Delisi, et al. (2016); Seto, Hanson, & Babchishin (2011)



Solution: Qualitative and quantitative research to better identify risk factors for offending/re-offending behavior

Qualitative and quantitative research is needed to identify risk factors that may assist with prevention and prioritization efforts. Such research can ascertain factors associated with re-offense – for both online and offline offenses – including those related to criminal diversity (i.e., “crossover”).

Our criminal justice system has become reliant on referring to criminal history records to ascertain risk. Although this data is relatively easy to obtain, many individuals with few or no past arrests pose a significant risk to children. Researchers should examine dynamic factors as well as offenders’ modus operandi, impulsivity, noncriminal behaviors, and underlying motivational pathways. Also, studies are needed to examine the correlation between certain CSAM themes (e.g., incest, bestiality, sadism) and offender risk. This inquiry may better inform whether current methods for “categorizing” media into levels of seriousness are meaningful. Further, it will assist in prioritizing, for investigative and prosecutive attention, those offenders who may be at higher risk for offending behavior.

Solution: Qualitative research to better identify best practices in community supervision of child sex offenders.

Incarcerated sex offenders should be prioritized for supervised release based on clinically informed, empirically supported risk factors. Supervision of sex offenders can be challenging. Given their ability to engage in criminality that is difficult to detect and their adeptness at avoiding detection, additional research is needed to identify best practices for safely managing this unique offender group in our communities.

The way forward is to support a robust mix of qualitative and quantitative research. Qualitative research should be conducted by experienced interviewers; ideally, a mix of seasoned investigators and experienced qualified mental health professionals who can collaboratively find answers to some of the more salient questions facing the field.

*Gap: An understanding of child sex offender psychology and their means/methods of predation*

Solution: Educate the judiciary about child sex offenders, their psychology and means/methods of predation, and the long-term impact of their crimes on victims.

Despite the efforts of law enforcement and prosecutors to educate members of the judiciary about the dangers of CSAM and its impact on victims through affidavits, testimony, motions, and arguments, it is not uncommon for some judges to minimize the offender’s conduct as “just pictures” or “mere possession.” Not only do these statements directly contradict what is known about CSAM and its impact on child victims, but it enables and reinforces offenders’ cognitive distortions and offense-supportive thinking. Greater efforts and resources to educate the judiciary about these offenders, their psychology, and their means/methods of predation are needed.

Solution: Educate legislators about child sex offenders, their psychology, and the means/methods they use to prey on children.

Legislators can propose and enact legislation that impacts how child sex offenders are investigated, prosecuted, sentenced, and supervised in the community. A comprehensive understanding of these offenders and how they behave is crucial to enacting legislation that will meaningfully address the nuances of this complex offender group while balancing the rights of victims.

Solution: Reform of the U.S. sentencing guidelines to better address offending behavior.

The U.S. sentencing guidelines as they exist today are antiquated when compared to how offenders currently commit their crimes. For example, an offender engaged in trading of CSAM can receive a two-level increase for the use of a computer in the commission of the crime. While perhaps not as commonplace when the guidelines were last updated in 2004, today nearly every offender uses a computer or electronic device to commit child exploitation crimes. Similarly, an offender's guideline calculation can be increased by five levels if he possessed more than 600 images. For those offenders who maintain collections of CSAM on their digital devices, 600 images would represent only a small fraction of their material. As a result of these and other enhancements, the offenders often appear similar, presenting challenges for prosecutors, judges, and defense counsel, alike.

These guidelines and the sentences that result from them are important considerations as the community's and justice system's responses to deviant criminal acts can either dissuade future offending, or support and facilitate offenders' cognitive distortions. Recently, offenders charged with the production, possession, or trafficking of CSAM have been more likely to receive sentences below the guideline range than offenders who commit other federal crimes against children.<sup>439</sup> The departures from sentencing guidelines unfortunately sends a message to offenders that their exploitative and abusive behaviors are less egregious than the reality (as communicated by mental health professionals, victim advocates, and law enforcement personnel). Some offenders, after experiencing or hearing about "slaps on the wrist" from the judiciary, may conclude that the victims, as well as those who advocate for them, are making much ado about nothing.

In 2012, the U.S. Sentencing Commission published their Report to Congress<sup>440</sup> on CSAM offenses wherein they focused on U.S. Sentencing Guideline § 2G2.2, the guideline applied to cases involving the possession, receipt, transportation, and distribution of CSAM. The Commission opined that the guidelines with respect to these non-production crimes warranted an update due to the "outdated and disproportionate enhancements related to offenders' collecting behavior." Additionally, they noted the guideline "fails to account fully for some offenders' involvement in child pornography communities and sexually dangerous behavior." As mentioned previously, many CSAM offenders are engaged in behavior far more deviant than is represented in the guidelines or in the size of their collection of deviant material. The Commission suggested that updates to the guideline could address the "full range of an offender's collecting behavior,

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<sup>439</sup> United States Sentencing Commission (2021). Preliminary USSC Child Exploitation Results.

<sup>440</sup> <https://www.ussc.gov/research/congressional-reports/2012-report-congress-federal-child-pornography-offenses>

the degree of his involvement in a child pornography community, and any history of sexually dangerous behavior” to represent the specific behavior of the offender and promote more proportionate sentences.

Aside from minor changes made in 2016 by the Commission to address circuit conflicts and issues with the application of §2G2.1 and §2G2.2 under Amendment 801,<sup>441</sup> the guidelines issued in 2014 remain largely unchanged. As these offenders are better understood through ongoing research, a closer look at—and reform of—the sentencing guidelines will be in order.

**Solution:** Training program for foreign prosecutors and judges about child sex offenders, their psychology, and means/methods of predation, to include travel of U.S. Citizens to foreign countries to exploit and abuse vulnerable children.

While U.S. law enforcement has substantially improved techniques to identify and apprehend individuals who act on their desire to engage in sex with a child, many countries around the world have difficulties developing appropriate legislation and maintaining adequate enforcement resources to address the problem; this is particularly true in developing nations with struggling economies. Offenders who lack access to children within the U.S. and/or those concerned with law enforcement detection within our country may travel to developing nations to capitalize on legislative and enforcement inadequacies. In these countries offenders can easily identify vulnerable children and families for victimization. Further, offenders are aware the likelihood for disclosure among this population of victims is low, which results in relative security and facilitates continued access by the offender.

Should foreign law enforcement or a non-governmental organization (NGO) identify a perpetrator operating in their territory, disparities in law enforcement practices – including interviewing and evidence collection techniques – could result in challenges during attempts to prosecute the offender on U.S. soil for a violation of Title 18 U.S.C. § 2423. Offering comprehensive training programs to our foreign law enforcement and justice partners, such as those currently conducted by the International Centre for Missing and Exploited Children (ICMEC), can bridge gaps currently being exploited by these offenders. Such training programs would result in established relationships among stakeholders as well as increased collaboration on best practices to combat this problem.

**Solution:** Training programs for supervised release officials and administrators about child sex offenders, their psychology, and the means/methods of predation to better inform supervision protocols and techniques with this population of offenders

Community supervision officers face significant challenges with managing sex offenders in the community. Risk assessment procedures vary from one state to another, and the instruments and algorithms that are used to categorize offenders can be pragmatically uninformative, inaccurate, and even misleading. Unfortunately, there is a lack of resources available to conduct the comprehensive evaluations needed to truly ascertain each offender’s level of risk.

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<sup>441</sup> <https://www.ussc.gov/guidelines/amendment/801>

While the task of supervision officers is always daunting – helping to keep offenders from reoffending – the work becomes even more challenging with sex offenders. The behaviors that indicate potential relapse are often difficult, if not impossible, to detect. Sex offenders can engage in criminal conduct in near secrecy and can easily begin grooming children, guardians, and organizations without causing alarm. Further, since there is no cure for the predilections and motivations underlying most forms of sexual assault, and since some offenders may be unmotivated to change, therapeutic interventions may be ineffective or counterproductive.

With comprehensive training, probation and parole officers and administrators can develop a better understanding of the offenders they are tasked with supervising, identify salient intelligence they encounter in the field, and more fully appreciate the effectiveness, benefits, and shortcomings of sex offender treatment. Further, they can be made aware of accepted best practices and policies that treatment providers should follow, as well as the necessary credentials the clinicians should possess. While law enforcement and supervision officials do not conduct treatment, uncertainty surrounding how treatment works could cause some authorities to assume an offender is “doing well” on supervision solely because they are “treatment compliant.”<sup>442</sup>

*Solution: Educate school administration, staff, childcare providers, and parents about child sex offenders, their psychology, and the means/methods by which they prey on children*

By the time someone with a sexual interest in children engages in their first act of abusive conduct, they have often spent many hours and significant effort manipulating those around the child to believe they are upstanding, trustworthy, and benevolent. In so doing, the offender attempts to ensure any outcries by children regarding concerning behavior will be dismissed as misunderstandings, exaggerations, or even lies. Disclosures about abusive conduct are much more likely to be ignored or overlooked by those who have developed a favorable impression of the accused, and these opinions can be very difficult to change. People often become entrenched in their decision to “stand behind” someone accused of misconduct because the alternative may cause them significant guilt; alternatively, they may fear others will view them as naïve, easily fooled, or vulnerable, themselves. By offering comprehensive training, society will be better informed about these dynamics, and how offenders use grooming techniques to gain trust and access to children. Such knowledge may be the key to prevention efforts.

*Gap: Lack of credentialing for clinicians who treat child sex offenders*

*Solution: Coordination with the mental health community to establish a credentialing program for sex offender treatment providers*

The mental health community is comprised of individuals who possess a variety of credentials, academic degrees, and professional titles. This array is confusing, and it is relatively easy for unscrupulous professionals to provide “expert” testimony that surpasses their level of education and training. Unfortunately, there are no credentials clinicians can obtain that attests to their proficiency in evaluating or treating sex offenders. The Association for the Treatment of Sexual

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<sup>442</sup> “Treatment compliant” often simply means the offender is attending group therapy, is not disruptive in sessions, and is not behind on his payments.

Abusers (ATSA) provides ethical standards they suggest treatment providers follow, but it does not certify or accredit practitioners.

The field would benefit significantly if such credentials were offered. Such a credential should be universally understood across U.S. jurisdictions and offered nationwide by a standardized licensing body. With a credentialing program in place, triers of fact could have confidence the expert witness not only adheres to important ethical principles, but also that he or she is using the most valid assessment measures and up-to-date clinical practices. Any professional who violates the professional guidelines or departs from appropriate standards could lose their credentials.

*Gap: Accountability of Organizations who Serve Youth*

**Solution:** Implementation of child safe standards and audits for any youth-serving organization (YSO) that receives federal funds or requests a not-for-profit tax exemption.

Some YSOs have taken significant steps –indeed, steps that have imperiled their own survival as an organization – to ensure youth are kept safe. They have implemented mandatory training – for youth and adults – and are enforcing tough policies to make their activities inhospitable to offenders. However, more work is needed on the development of organizational governance guidelines that encourage reporting and foster child safety.

A committee including YSO youth protection representatives, law enforcement personnel, NGOs (e.g., NCMEC), and victim services/child advocate professionals should be convened to establish child youth protection standards. Any youth-serving organization wishing to receive federal funding, or a not-for-profit tax exemption would demonstrate their commitment to these child safety standards and provide evidence of comprehensive abuse prevention plan. Audits of organizations should be conducted to ensure the documentation of said measures, violations by volunteers/employees and the dispositions thereof, and evidence of compliance with mandatory reporting requirements.

Policies such as those recommended above are not unprecedented at a federal level. In 2017, Australia’s Royal Commission into Institutional Responses to Child Sexual Abuse recommended the implementation of child safe standards in response to an inquiry of organizations which failed to protect children.<sup>443</sup>

*Gap: Need for Targeted Prevention Efforts – Existing Offenders and Individuals with a Sexual Interest in Children*

**Solution:** Incentivize mechanisms for Bureau of Prisons sex offender treatment programs to grow the number of offenders who can access treatment

The Federal Bureau of Prisons (BOP) offers two levels of treatment to offenders with a history of sexual offending: residential and non-residential. These programs are provided at facilities with a

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443 <https://aifs.gov.au/cfca/2019/11/06/child-safe-organisations-information-organisations-how-keep-children-safe#:~:text=The%20Australian%20Human%20Rights%20Commission,of%20children%20and%20young%20people>

Sex Offender Management Program (SOMP). Eligibility for participation in a treatment program depends on an offender's evaluated risk of future sexual offending. Treatment is entirely voluntary. SOMP institutions have a higher proportion of sex offenders in their offender population than non-SOMP institutions. This higher concentration of individuals with a history of sexual offending within an institution helps create an environment conducive to seeking treatment. Individuals interested in and found appropriate for treatment are placed in the program based on their projected release date or other factors such as an immediate need for treatment. Upon arrival to an institution, inmates are provided information on available psychology programs, to include sex offender treatment programs. Sex offender treatment programs are located in all six BOP regions. In total, there are nine institutions that offer sex offender treatment. An additional treatment program is scheduled to activate in fiscal year 2022. There are multiple occasions during an individual's sentence when they are encouraged to consider sex offender treatment. This includes the initial intake with a doctoral-level psychologist upon arrival at a BOP facility as well as routine meetings with their Unit Team staff.

*Criminogenic needs are characteristics, traits, problems, or issues of an individual that directly relate to the individual's likelihood to re-offend and commit another crime.<sup>444</sup>*

The sex offender treatment programs offered in the BOP are rooted in cognitive-behavioral theory and were modeled after existing programs of the same nature. They address distorted thinking and deficits in emotion regulation, sexual self-regulation, and intimacy, as well as any evidence-based criminogenic factors identified in a comprehensive psychosexual evaluation. SOMP staff evaluate each offender's level of risk to determine their need for residential or non-residential sex offender treatment. This is assessed through actuarial risk assessments (such as the STATIC-99R) when appropriate, an initial risk assessment interview, and a review of dynamic risk factors. The individual's level of risk is continually monitored throughout their incarceration and is reassessed if new clinically significant information is gathered. This allows treatment to be individualized and tailored to specific treatment needs.

#### *Residential Sex Offender Treatment Program*

The Residential Sex Offender Treatment Program was developed to provide treatment to moderate and high-risk sex offenders. The residential treatment program is a high intensity program where participants engage in treatment five days per week for approximately 12 to 18 months. There are currently facilities that offer this program, and approximately 1700 individuals have completed treatment.<sup>445</sup> Approximately 120 beds are allocated for the Residential Sex Offender Treatment Program. Participants benefit from engagement in a therapeutic community, and treatment is individually tailored for each participant. Longitudinal research is currently underway to evaluate the impact of this program.

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<sup>444</sup> "Criminogenic Needs: Definition & Risk Factors." Study.com, 11 April 2016, [www.study.com/academy/lesson/criminogenic-needs-definition-risk-factors.html](http://www.study.com/academy/lesson/criminogenic-needs-definition-risk-factors.html)

<sup>445</sup> This number captures only offenders who have completed treatment and does not include those who are actively undergoing treatment today or began and withdrew from treatment for a variety of reasons, including medical issues.

### *Non-Residential Sex Offender Treatment Program*

The Non-Residential Treatment Program is a 9- to 12-month program where outpatient groups occur two to three times per week for several hours. Eight facilities currently offer these services, and another is in the process of being activated. Approximately 252 inmates can participate at any given time in the Non-Residential Sex Offender Treatment program nationwide. Participants learn basic concepts to help them understand their past offenses, manage emotions, address deviant sexual interests, and build skills with the goal of reducing their risk of future offending. Individuals are offered treatment groups based on identified needs. This treatment is offered to offenders who are considered low to moderate risk of re-offense. One goal of the non-residential treatment program is to prepare offenders for participation in additional treatment programs upon release.

An additional component of SOMP institutions is their ability to identify and manage individuals who engage in risk-relevant behavior during their incarceration. Risk-relevant behavior refers to any conduct related to a sexual offender's history that is associated with a potential risk of future sexual offending. These behaviors often align with dynamic risk factors. For example, an individual who continues to possess child sexual abuse images, writes sexual stories with or without deviant sexual themes, or attempts to contact potential child victims, would be identified as potentially having a greater risk for re-offending. Risk-relevant behavior is documented, summarized, and provided to the assigned United States Probation Office to assist in the identification of individuals with greater needs while on supervised release. When staff are aware of risk-relevant behavior, they work to engage the inmate in treatment and continue to assess their risk of sexual re-offending throughout their incarceration.

Today, a portion of the sex offenders held in federal custody are participating in these rehabilitation programs. The BOP is expanding its programming to new prisoners in the coming months, targeting low-level offenders, which make up the largest share of sexual offenders currently in BOP custody.

However, one hurdle to expanding access to rehabilitation programming to more federal inmates convicted of a sexual offense against children is securing their willing participation in the program. BOP rehabilitation programming for sexual offenders is completely voluntary. While judges may direct offenders to enroll in rehabilitation programming at sentencing, they cannot be forcibly compelled to participate. Part of the program's success – both in terms of enrollment and offender engagement with the programming – relies on the offender's motivation to participate. BOP staff makes frequent contact with sexual offender inmates at multiple points during incarceration to remind them of the availability and benefits of rehabilitation, and in some cases, First Step Act credits are made available to offenders that participate. Other motivational incentives for participation will be needed to expand the reach of these programs to all sex offenders in BOP custody.

Research is currently underway to evaluate the long-term effectiveness of these rehabilitation programs. If these programs are proven effective, it would be prudent to examine avenues that may encourage more offenders to take rehabilitative programming while they are incarcerated.

Depending on the results of the research, funding may prove beneficial to both better understand the impacts of this work and implement any changes revealed by existing research.

### Solution: Targeted Campaign Offering Free and Confidential Services for Those with a Sexual Interest in Children

Individuals with a sexual interest in children often experience internal conflict, shame, and embarrassment about their sexual predilections. As a result, they may be reticent to request help from others for fear of scrutiny and rejection. Additionally, they may lack experience in seeking appropriate mental health care or be constrained by a lack of financial resources. These factors may prevent someone from seeking help to address their deviant sexual interests—a potential prevention point for future abusive conduct.

In 2004, the German government, in conjunction with the Volkswagen Foundation and others, created an extensive media campaign to specifically target those with a sexual interest in pre-pubescent and pubescent children to inform them of an opportunity to receive help free of charge. The program, called the Berlin Prevention Project Dunkelfeld (PPD), used phrases such as, “You are not guilty because of your sexual desire, but you are responsible for your sexual behavior. There is help! Don’t become an offender!”<sup>446</sup> to garner interest. Within 38 months of launch, 808 individuals contacted the program and requested assistance. A little less than half traveled to the outpatient clinic for a full assessment - representing potential intervention for these individuals. Similarly, Stop It Now! is an organization that offers various prevention programs aimed at helping adults take responsibility to prevent and stop CSA.<sup>447</sup>

Implementation of a similar program that offers mental health treatment by experienced and qualified providers<sup>448</sup> for those with a sexual interest in children or other deviant sexual interests supports a prevention effort. Doing so also would allow for research into what motivates an individual to seek help, follow through with recommended treatment, and treatment outcomes.

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<sup>446</sup> Beier, M., Neutze, J., Mundt, I.A., Ahlers, C.J., et al. (2009). Encouraging self-identified pedophiles and hebephiles to seek professional help: First results of the Prevention Project Dunkelfeld (PPD). Preprint version of the Brief Communication, *Child Abuse & Neglect*, 33, 545–549.

<sup>447</sup> Stop It Now!, “[About Us](#),” 2021.

<sup>448</sup> The emphasis on experience and qualifications of these mental health providers cannot be overstated, as referenced previously in this section.



## Partnerships

The modern world's technological advances have contributed to an increase in the scale, complexity, and danger of threats to children, but those same advances can be harnessed to combat and prevent child exploitation. Innovative solutions that prioritize collaboration, information sharing, and responsiveness are needed to update and enhance the nation's approach to combating child exploitation.

The government alone cannot solve these complex challenges. Federal agencies must not only partner with each other, but also with state, local, and Tribal jurisdictions, and with non-governmental organizations (NGOs), community leaders and organizations, academic institutions, the private sector, and survivors. Working together, this network can share each partner's capabilities and insights to address child exploitation, multiplying the collective impact and building more effective policies and programs.

Although partnerships among various groups currently exist, there is no unified collaboration or outreach strategy. Existing collaborations, partnerships, and initiatives, while highly successful in some areas, are sometimes focused on enforcement or specific facets of child exploitation rather than on a comprehensive approach. Best practices from these existing partnerships, where they exist, are not always shared broadly.

An effective partnership strategy can extend and sustain the government's impact, inform policy, and align resources to prevent and interdict child exploitation. As shown during the COVID-19 pandemic, technology can enable effective communication and collaboration across jurisdictions. Maximizing the power of partnerships is more critical – and more possible – than ever before.

### **Fragmented Communication & Information Sharing**

Many entities are involved in preventing and combating child exploitation, including federal agencies<sup>449</sup>, state, local, and Tribal policy makers, social services, law enforcement, non-profit organizations, survivor organizations, private industry, academia, schools, hospitals and healthcare providers, and more. Establishing communication channels and processes across varied agencies and organizations is extremely challenging. Fragmented communication results in duplicated efforts and inefficient use of time and resources. Amid a rising volume of child exploitation reports year after year<sup>450</sup>, law enforcement and victim services resources are spread thin, making critical the effective collective use of time, expertise, data, and funding.

Many entities do not know where to find subject matter experts, what resources are available, or who to contact for a specific problem or case. Community mapping of the available services and the roles and responsibilities of various organizations, allows agencies and organizations to leverage resources available at the local, state, and federal level, or to form the partnerships necessary to fill gaps. This is particularly challenging in time-sensitive or emergency situations.

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<sup>449</sup> To see all the various federal agencies involved in combating child exploitation, please see the Government Agencies Involved in Combating Child Exploitation appendix.

<sup>450</sup> <https://www.missingkids.org/gethelpnow/cybertipline>. For more information, please see the Unique Resource and Enforcement chapter.

For example, when a child's needs require immediate attention, a trauma-informed service provider must be quickly identified and available to support the exploited child.

Not every law enforcement agency has extensive experience working child sexual exploitation cases. Agencies that do not have the expertise need to know who to contact when unusual or complex situations arise. Turnover within an agency or task force adds to the challenge of connecting with the appropriate personnel. Unfortunately, the heavy workload of those working to combat child exploitation leaves little time to develop and maintain relationships that can continue beyond an individual employee's tenure.

### Internet Crimes Against Children Task Forces: By the Numbers

Since the ICAC Task Force Program's inception in 1998:

- **61** ICAC Task Forces currently make up the ICAC Task Force Program
- **4,700+** Law Enforcement Agencies and prosecutorial agencies are affiliated with the ICAC Program
- **807,000+** program members have been trained
- **1,300,000+** Complaints of child sexual victimization have been received
- **118,000+** Individuals have been arrested because of the complaints reviewed

Partnership and collaboration thrive in areas where existing relationships are strong, or where a central contact serves as a coordinator to connect the relevant parties. This is a strength of the Internet Crimes Against Children (ICAC) Task Forces. The ICAC Task Force Program is a national network of 61 coordinated task forces, representing over 4,700 federal, state, and local law enforcement agencies dedicated to investigating, prosecuting, and developing effective responses to internet crimes against children.<sup>451</sup> The ICAC Task Forces receive grant funding through the Department of Justice Office of Juvenile Justice and Delinquency Prevention. By creating regional or state task forces specifically focused on online child exploitation cases, ICAC task forces create a streamlined approach to communication and bridge gaps across the network of partners that ICAC members already work with. All ICAC Task Force commanders convene three times a year, bolstering relationships and knowledge sharing across geographic boundaries. These relationships and pooled resources are critical in the face of rising reports of child exploitation crimes, increasingly sophisticated methods of offending and evading detection, and limited investigatory resources.<sup>452</sup>

In many states it may make sense for each county to have one point of contact for child exploitation cases. Those designated individuals, chosen for their knowledge about handling child exploitation cases, would be members of an affiliate network, which facilitates easy transfers of intelligence across counties and ensures case referrals are pursued and handled appropriately.

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<sup>451</sup> For more information, please see the Internet Crimes Against Children (ICAC) Task Forces Review appendix.

<sup>452</sup> More information about limited investigatory resources can be found in the Wellness Challenges for Law Enforcement Personnel chapter.

Multidisciplinary task forces/collaborations are models for streamlined communication. They foster communication and networking among diverse agencies and organizations that expedite the sharing of expertise and information. Multidisciplinary collaborations that include all those who might encounter sexually exploited or at-risk youth enable communication and cooperation among agencies, individuals, and systems that might not otherwise talk to each other. In addition to law enforcement these may include child welfare workers, health care providers, survivor organizations, tribal organizations, advocacy organizations, service providers and others. These broad partnerships often include case-specific multidisciplinary teams (MDTs), like those common in health care settings, that help with deconfliction and prevent conflict and confusion over the progress of a case and survivor care.

### What is a Multidisciplinary Task Force or Collaboration?

Multidisciplinary task forces and collaborations bring together partners from various disciplines. They operate differently in different jurisdictions and may include partners who convene and/or staff case-specific multidisciplinary teams (MDTs). Child Advocacy Centers (CACs) may play a critical role in these collaborations. CACs are community-based, child-friendly, multidisciplinary services for children and families affected by sexual abuse or severe physical abuse.<sup>453</sup> CACs bring together, often in one location, child protective services investigators, law enforcement, prosecutors, and medical and mental health professionals to provide a coordinated, comprehensive response to victims and their caregivers.

The King County, Washington Commercially Sexually Exploited Children (CSEC) Task Force is an example of a multidisciplinary collaboration. Originally convened by the court, its broad-based network includes the court, prosecutors, survivors, federal and state law enforcement (including the local ICAC lead), tribes and tribal organizations, survivors, defense attorneys, a military advocate, public health, schools, service providers, child welfare, a multitude of nonprofit organizations, and others. There are two kinds of case-specific MDTs operated by the Task Force, both led by the Child Advocacy Center, Children's Justice Center King County (CAC CJCKC). One is a weekly child sexual abuse case review, and the other is a standing monthly meeting. However, most MDT meetings are ad hoc, because they are time critical and are often pulled together overnight to respond quickly to an issue. The MDTs vary with each case, depending on a child's needs. The full Task Force meets quarterly, with time set aside for networking to enhance relationships across fields.

Federal agencies tend to be based in urban locations, where relationship building is relatively easy. In rural areas, federal agencies may have less frequent contact with local law enforcement, so federal and state or local agencies are less likely to be connected. Due to the variation in laws and procedures from state to state and county to county, successful partnership models that work well in one jurisdiction may not work elsewhere. These differences may limit the effectiveness of partnerships across jurisdictions. Guidance for how to partner with agencies across levels of government would help fill these gaps.

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<sup>453</sup> <https://www.nationalcac.org/history/>

## Engaging Survivors

No one knows the landscape of sexual exploitation, including child exploitation, better than survivors – those with lived experience. Including survivors in establishing partnerships significantly enhances preventative and investigative efforts. Survivor involvement can improve investigations, encourage victim disclosure, and mobilize other parties to actively engage in combating child exploitation.

Survivors can help law enforcement and others better understand the means and methods used by offenders to target, groom, and abuse their victims and the horrific impacts of the trauma they suffer. No survivors should be asked to use their voices in the public sphere because for many, every restatement of their abuse is another triggering trauma. Some, however, choose to share their stories, which may encourage other victims to seek help, or act as peer mentors to support others. Third, survivors play an integral role in communicating the need for a dedicated focus on prevention efforts.

The Phoenix 11 is a group of survivors whose child sexual abuse was recorded and, in most cases, distributed online. These 11 survivors, with the help of the Canadian Centre for Child Protection (C3P) and the National Center for Missing & Exploited Children (NCMEC), have banded together to use their collective voice to challenge inadequate responses to the prevalence of child sexual abuse materials (CSAM) on the internet. When the public, corporations, agencies, and organizations learn about the ongoing, often lifelong trauma caused by continuing online circulation of images and videos depicting abuse, they are more likely to act to support efforts to prevent it. Internet service providers who make it difficult to detect and prosecute offenders and remove the content from continued circulation, enable both the abuse and the trauma.<sup>454</sup>

Survivors are increasingly involved in both multidisciplinary collaborations and the development of policies that combat child exploitation. The Violence Against Women Act, as amended, authorizes grant programs that provide federal funding to victim service organizations serving victims of domestic violence, dating violence, sexual assault, and stalking and in some programs, sex trafficking; many of these organizations founded and run by survivors.<sup>455</sup> In addition to providing victim services, these organizations may refer cases to law enforcement after a victim discloses details of their abuse because their personnel are mandatory reporters under state law. Several non-profit anti-trafficking organizations and coalitions working to combat both labor and sex trafficking, offer resources, training, and technical assistance for organizations that wish to employ and engage survivors. Government agencies and other partner organizations should be trained on how best to include survivors and avoid compounding their trauma. Above all, survivors must be respected as experts in the field and given the opportunity to serve in professional capacities. This includes compensating survivors for their insights and their work, like that of any other paid consultant or employee.

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<sup>454</sup> More information about how technology enables child exploitation can be found in the Technology chapter.

<sup>455</sup> <https://www.justice.gov/ovw/grant-programs>

## Non-Traditional Partnerships

While improving partnerships within governmental, prosecutorial, and law enforcement agencies is important, these agencies must also look outside the public sector for partnership opportunities. Such opportunities abound.

### *The Education System*

#### Addressing Child Exploitation through Education

**California:** In 2017, California passed the Human Trafficking Prevention Education and Training Act, which requires comprehensive sexual health education for children in grades 7-12, including information on sexual assault and trafficking.<sup>456</sup>

**Florida:** In 2019, Florida became the first state to require that all K-12 educators receive training and educational resources about preventing human trafficking in schools.<sup>457</sup>

**New Jersey:** Also in 2019, New Jersey enacted legislation directing the creation of child trafficking and exploitation guidelines and awareness training in all public schools.<sup>458</sup>

**Virginia:** In 2017, Virginia required its state Department of Education to formalize guidelines for training educators on the prevention of child trafficking. Those guidelines were issued the following year.<sup>459</sup>

Teachers, school counselors, nurses, and other school staff are important allies in the fight against child exploitation. However, there are few formal alliances. While outreach may exist within a jurisdiction, such as between a local school district and the region's ICAC or other task force, widespread partnership at the state and federal level is lacking. A framework should be established to foster alliances at the state and local level that include those who see children every day in school. To support this effort, there is a high need to clearly identify existing and potential roles of each partner to avoid confusion and to enhance meaningful, results-oriented collaboration. The Department of Education (ED), via their Office of Safe and Supportive Schools (OSSS), administers, coordinates, and recommends policy as well as administers grant programs and technical assistance centers addressing the overall safety and health of school communities. Their work includes funding state and local activities designed to decrease the incidence of violence in schools, which may include sexual assaults. While ED can provide funding as appropriated by Congress, resources,<sup>460</sup> and recommendations in formalizing partnerships to address and prevent child exploitation in schools, it does not control state or local curricula.

Because of these limitations, individual school districts and state education agencies and boards have

<sup>456</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB1227](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1227)

<sup>457</sup> <https://www.fl DOE.org/schools/healthy-schools/human-trafficking.stml>

<sup>458</sup> <https://nj.gov/education/students/safety/health/ht/>

<sup>459</sup> <https://www.doe.virginia.gov/programs-services/student-services/prevention-strategies-programs/human-trafficking>

<sup>460</sup> Resources from the Department of Education are available at <https://oese.ed.gov/resources/safe-school-environments/keeping-students-safe-online/>, specifically see Cyber Safety Quick Links for Protecting Youth: Empowering Students to Become Responsibly Digital Citizens and Engage Online Safely. The Office of Educational Technology also has a document entitled Building Technology Infrastructure for Learning, which

the most influence over teachers' training and any information shared with students. Unfortunately, creating and implementing a single model for partnerships is difficult as the nation's many school districts all have individualized practices, funding levels and priorities. Additionally, even in states or school districts where prevention curricula have been encouraged, or even mandated, teachers are often expected to integrate this work into their other responsibilities, with limited resources and time. Providing grant funding, guidelines, educational materials, and model trainings – developed in partnership with law enforcement, survivors, NGOs, and relevant social worker and service providers – can ease the burden on teachers and encourage greater adoption of and consistency in implementing these programs. Work is already underway at the Department of Health and Human Services to fill this gap.

Educational partnerships within education must focus on four audiences, each with a tailored approach and curriculum: school leadership, school staff, students, and parents/caregivers. The messaging should be focused on prevention and response. While these are challenging topics to discuss, especially with young children, children should be taught about healthy relationships, how to identify inappropriate behavior from adults and peers, and what to do when they believe a friend may not be safe. Survivors should be involved in curriculum development.

Examples include NetSmartz<sup>461</sup>, which is NCMEC's online safety education program, and the FBI's Safe Online Surfing content.<sup>462</sup> Both provide age-appropriate videos and activities in both English and Spanish to help teach children be safer online with the goal of helping children to become more aware of potential online risks and empowering them to help prevent victimization by making safer choices on and offline.

Schools, parents, and caregivers must recognize that the threat of child exploitation is present wherever digital technology exists, whether on a school computer or a child's phone. Adults must recognize that the scary scenario is no longer the stranger in the park, but offenders that are often known to the victim and those with ready access to children in their homes or through their phones, computers, and gaming systems.

### *The Medical Community*

#### **Department of Health & Human Services SOAR Program**

The Department of Health & Human Services (HHS) offers the SOAR to Health and Wellness training program,<sup>463</sup> which is designed to educate health care providers, social workers, public health professionals, and behavioral health professionals on how to identify, treat, and respond appropriately to individuals who are at risk of or who have experienced trafficking. The SOAR trainings are developed in collaboration with subject matter experts in the field, including those with lived experiences, and partner organizations.

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covers building technology infrastructure to support digital learning, including a section on safety, available at <https://tech.ed.gov/infrastructure/>.

<sup>461</sup> <https://www.missingkids.org/netsmartz/home>

<sup>462</sup> <https://sos.fbi.gov/en/>

<sup>463</sup> <https://www.acf.hhs.gov/otip/training/soar-health-and-wellness-training>

To promote free online, accredited training, HHS provides SOAR *Online*, which includes both foundational (101) and advanced (201) anti-trafficking trainings, through the TRAIN Learning Management System. During FY 2022, HHS developed and launched the following SOAR *Online* training modules:

**Working With Foreign National Minors Who Have Experienced Trafficking**

- Explain common reasons minors may migrate to the United States.
- Identify tactics that individuals use to exploit foreign national minors.
- Differentiate common trends and potential red flags of trafficking between foreign national minors and U.S. citizens.
- Understand how to respond to concerns of trafficking among foreign national minors and connect them with federal services and resources.
- Share the importance of trafficking awareness and responsiveness with others in your work environment.

**Responding to Human Trafficking Through the Child Welfare System**

- Describe the intersection of human trafficking with child abuse and neglect.
- Summarize federal laws describing child welfare’s role in serving children and youth who have experienced human trafficking.
- Articulate the role of child welfare in responding to human trafficking.
- Identify key areas of the child welfare response to human trafficking.
- Determine ways to partner with child welfare in serving children and youth who have experienced human trafficking.

Child abuse and exploitation are a public health problem. The medical community must be involved in identifying and responding to child trauma and exploitation. All medical professionals should be trained on how to identify signs of trauma, and where identified, must have the training to find out the source of the trauma. Law enforcement should participate in local collaborations that include medical professionals, so that trusting relationships are developed. Partnerships among law enforcement agencies and major medical professional associations, such as the American Medical Association, American Academy of Pediatrics, the American Board of Emergency Medicine, and the American Academy of Nursing, should be explored and strengthened. Training should include all types of medical professionals: pediatricians, hospital-based doctors, school nurses, first responders, and others who encounter children. Training should include physical trauma and abuse, and all forms of child exploitation including sex trafficking and online production of CSAM.

The target audience of HHS’s SOAR to Health and Wellness training program includes physicians, pharmacists, pharmacy technicians, registered nurses, dentists, psychologists, social workers, case managers, school counselors, public health professionals, health education specialists, and allied health professionals. By applying a public health approach, SOAR seeks to build the capacity of communities to identify and respond to the complex needs of individuals who have experienced trafficking and understand the root causes that make individuals, families, and communities vulnerable to trafficking.

*“What has been incredibly important as a provider and part of the Family Advocacy Outreach Network is the ongoing training NCMEC provides me. Their materials are so valuable and unique. It’s helped a great deal because what I’m really doing is crisis intervention. That training has proven invaluable as new cases come into my school and practice. The training that NCMEC offers is first class quality training that no one else offers. It’s such a specialty, this training is not available anywhere else. It’s such an eye opener into another world that no one really likes to talk about.”*

*– NCMEC, Family Advocacy Outreach Network provider*

The National Center for Missing & Exploited Children has also created another opportunity for medical professionals to provide support for child sexual abuse victims via their Family Advocacy Outreach Network (FAON), a voluntary network connecting victims and families with mental health service providers and other organizations within their communities. FAON leverages the expertise of experienced treatment professionals and service organizations who are willing to provide therapeutic services pro bono or at a low sliding-scale fee to the families of missing and/or sexually exploited children.

### *The Private Sector*

Private companies play a pivotal role in identifying reporting child exploitation, both within and outside of the technology industry. Other businesses that interact with offenders and victims may provide additional partnership opportunities. By acting as good corporate citizens, these companies can be valuable partners to prevent and combat child exploitation and rescue children from ongoing abuse.

Transparency is important in building these partnerships. Law enforcement, government agencies, NGOs, and survivors must work with companies to share knowledge, inform the development of child safety measures, and understand how offenders use these private companies to offend. Company policies must be designed to protect children and prevent exploitation. NCMEC has cultivated a network of corporate partnerships<sup>464</sup> that provide financial and in-kind support for the organization’s work, and also co-create programs, policies, and communication channels to prevent and intervene in any child exploitation occurring in the companies’ sectors or on their platforms.

Government must engage with the private sector, so companies understand the issues and the important role corporations play in combating these crimes. Such engagement creates shared accountability and a foundation upon which all parties can partner and prevent child sexual exploitation. The Department of Homeland Security’s (DHS) Blue Campaign<sup>465</sup> takes a partnership-first approach as part of their efforts to address human trafficking, for example. Aligned with the DHS Center for Countering Human Trafficking,<sup>466</sup> the Blue Campaign is a

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<sup>464</sup> <https://www.missingkids.org/supportus/our-corporate-partners#:~:text=NCMEC%20and%20Yubo%20collaborate%20on.increase%20their%20online%20safety%20skills>

<sup>465</sup> <https://www.dhs.gov/blue-campaign>

<sup>466</sup> <https://www.dhs.gov/dhs-center-countering-human-trafficking>



national public awareness campaign designed to educate the public, law enforcement and other industry partners to recognize indicators of human trafficking, and how to appropriately respond to possible cases. The Blue Campaign leverages partnerships with the private sector, NGOs, law enforcement and state and local authorities to maximize national public engagement on anti-human trafficking efforts through general awareness trainings, as well as specific educational resources to help reduce victimization within vulnerable populations. The Blue Campaign's educational awareness objectives consists of two foundational elements, prevention of human trafficking and protection of exploited persons.

Other public-private partnerships aimed at addressing human trafficking and child exploitation exist and take a more targeted, sector-specific approach:

### Transportation

Traffickers may use ride-sharing companies, taxis, or other driver services to transport child victims. Traffickers may also use public transportation or airlines. Transportation companies should be educated about the warning signs of trafficking; they need to train their employees on the warning signs of child exploitation and know how to report and intervene where they suspect trafficking.

The Blue Lightning Initiative (BLI),<sup>467</sup> led by the Department of Transportation, the Department of Homeland Security, and U.S. Customs and Border Protection, is an element of the DHS Blue Campaign. The BLI trains aviation industry personnel to identify potential traffickers and human trafficking victims, and to report their suspicions to federal law enforcement. To date, more than 200,000 personnel in the aviation industry have been trained through the BLI, and actionable tips continue to be reported to law enforcement.

### Hospitality

Hotels, motels, or other short-term stay venues are often centers for commercial child sexual exploitation. These companies and employees must be trained to identify and respond to sexual exploitation and to work with law enforcement and must train their employees. The No Room for Trafficking program of the American Hotel and Lodging Association and its Foundation is an awareness program that builds on the industry's ongoing commitment and work to end human trafficking. Through elevating, assessing, educating, and supporting the fight to end human trafficking, the campaign helps ensure hotel employees are continuously developing a better understanding of ways to identify traffickers and potential victims in hotels.

### Financial Services

The International Labour Organization estimates that human trafficking is a \$150 billion global industry.<sup>468</sup> Traffickers often use legitimate financial institutions to fund recruitment of victims and to manage their operations. Federal laws, including the Bank Secrecy Act (BSA) and the USA PATRIOT Act, mandate that financial institutions monitor for, and report suspected illegal activity. Just as technology has changed the world of exploitation, so have financial practices evolved. Agencies and institutions should partner with financial services companies to

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<sup>467</sup> <https://www.transportation.gov/administrations/office-policy/blue-lightning-initiative>

<sup>468</sup> *Id.* at p. 40

understand how money is used and moves among sellers, and between sellers and buyers in child exploitation crimes. This will both help identify offenders and build cases for prosecution.

In 2006, the International Centre for Missing and Exploited Children (ICMEC) and NCMEC launched the U.S. Financial Coalition Against Child Sexual Exploitation (formerly the Financial Coalition Against Child Pornography).<sup>469</sup> The U.S. FCACSE's membership<sup>470</sup> includes dozens of the country's leading banks, credit card companies, electronic payment networks, third party-payments companies, and internet services companies. Working with law enforcement, the FCACSE's mission has been to disrupt the economics of child exploitation. As a result of its efforts, the use of credit cards to purchase child sexual abuse content online has been virtually eliminated globally. However, websites offering child sexual abuse material now frequently direct buyers away from traditional payment methods, such as credit cards, towards more complicated alternatives, including cryptocurrency, that may dissuade some potential purchasers but are also more difficult to track by financial services companies and law enforcement.

In October 2020, the Financial Crimes Enforcement Network (FinCEN) issued an advisory for the financial services industry on how to identify and report human trafficking activity through financial transactions and other activity.<sup>471</sup> These recommendations were developed by partnering with law enforcement to identify 20 new financial and behavioral indicators of labor and sex trafficking, and four mechanisms that human traffickers use to evade detection, hide their illicit proceeds, and profit off their victims. FinCEN offered further guidance to financial institutions regarding filing suspicious activity reports (SARs) in September 2021 in response to an increase in online child sexual exploitation.<sup>472</sup> This guidance noted offenders' increased use of the Dark Web, encryption, and convertible virtual currency (also referred to as CVC and commonly referred to as cryptocurrency) to conceal their crimes.

In addition, the United States is a member of the Organization for Security and Cooperation in Europe (OSCE). In 2019, OSCE's office of the Special Representative for Combating Trafficking in Human Beings issued a report focused on tracking financial transactions arising from human trafficking.<sup>473</sup> It includes a step-by-step guide for such investigations and a compendium of resources.

### Example of Public-Private Partnership: Financial Services

In 2020, a partnership co-led by Scotiabank and the Canadian Centre for Child Protection (C3P) and is supported by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), with participation from major financial institutions and law enforcement agencies

<sup>469</sup> <https://www.icmec.org/fcacse/>

<sup>470</sup> <https://www.icmec.org/fcacse/fcacse-members/>

<sup>471</sup> FinCEN Advisory, FIN- 2020-A008, "Supplemental Advisory on Identifying and Reporting Human Trafficking and Related Activity," (October 15, 2020). [https://www.fincen.gov/sites/default/files/advisory/2020-10-15/Advisory%20Human%20Trafficking%20508%20FINAL\\_0.pdf](https://www.fincen.gov/sites/default/files/advisory/2020-10-15/Advisory%20Human%20Trafficking%20508%20FINAL_0.pdf)

<sup>472</sup> FinCEN Advisory, FIN-2021-NTC3 "FinCEN Calls Attention to Online Child Sexual Exploitation Crimes" (September 16, 2021) <https://www.fincen.gov/sites/default/files/shared/FinCEN%20OCSE%20Notice%20508C.pdf>

<sup>473</sup> <https://www.osce.org/secretariat/438323>

in Canada, was announced, to better detect, report, and disrupt money laundering used as part of child exploitation crimes. Named Project Shadow,<sup>474</sup> the collective aims to:

- Raise awareness of child exploitation amongst financial crimes professionals and encourage investigation of these crimes
- Identify indicators and typologies of money laundering relating to child exploitation
- Increase suspicious transaction reporting and add a new report code to track reports of potential online child sexual exploitation

## Technology

Evolving technology has transformed the dynamics of child sexual exploitation; from how offenders find, groom, and recruit victims, how they perpetrate abuse, how they market children and images and videos of abuse, to how they conceal their crimes. Under federal law, technology companies are required to send a CyberTipline report to the National Center for Missing & Exploited Children (NCMEC) whenever they are aware of an apparent instance of a CSAM offense on their platform.<sup>475</sup> Federal law provides guidelines on what kinds of information technology companies can include in a CyberTip report, but there are no requirements of what information must be shared – companies can ultimately decide for themselves what details they pass on.<sup>476</sup> Although they are not required to proactively search for CSAM on their platforms or networks,<sup>477</sup> some voluntarily do so.

While online platforms can be exploited to target victims, perpetrate sexual abuse and exploitation, and distribute CSAM, changes in technology can be valuable tools for identifying abuse online and apprehending offenders. PhotoDNA is an example of what is possible when law enforcement and partner organizations work together to combat child exploitation harnessing the expertise and capabilities of the technology industry.<sup>478</sup> PhotoDNA creates a unique digital signature (known as a “hash”) of an image which is then compared against signatures (hashes) of other photos to find copies of the same image. When matched with a database containing hashes of previously identified illegal images, PhotoDNA is a powerful tool to help detect, disrupt, and report the distribution of CSAM. Microsoft sublicensed PhotoDNA to NCMEC for its own use and provides this valuable technology for free to law enforcement and other qualified organizations including technology companies, developers, and non-profit organizations for the purpose of combating child exploitation. Today, PhotoDNA is used by organizations around the world and has assisted in the detection, disruption, and reporting of millions of child exploitation images.

## *Social Services*

A disturbing number of children experiencing homelessness or under the care of social services become victims of sex trafficking. Under federal law, because a minor cannot legally consent to

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<sup>474</sup> <https://www.fintrac-canafe.gc.ca/intel/operation/exploitation-eng>. See also <https://www.acamstoday.org/project-shadow-aml-investigations-into-online-child-sexual-exploitation/>

<sup>475</sup> See 18 U.S.C. § 2258A.

<sup>476</sup> See 18 U.S.C. 2258A(b).

<sup>477</sup> See 18 U.S.C. § 2258A(h)

<sup>478</sup> <https://www.microsoft.com/en-us/photodna>

sex, any instance of commercial sex is considered child sex trafficking, regardless of whether the child was or was not forced to do so by a third-party. This includes “survival sex,” which is when someone who is homeless or facing severe need trades sex in exchange for food, a place to sleep, or other basic needs. A 2017 study of more than 600 youth in North America who had run away or were experiencing homelessness found that 14% had been victims of sex trafficking, while 19% reported turning to “survival sex.”<sup>479</sup> Children in transitional housing also face heightened risk: in the same study, nearly 15% reported that they were recruited directly from shelter programs or group homes.<sup>480</sup> Because children who are involved in the child welfare system (having already been victims of abuse or neglect) are more vulnerable to exploitation, it is critical that both criminal investigators and those engaged in prevention efforts partner with child welfare agencies to strengthen the current system. Strengthening includes ensuring safe, effective placements for children with adults who are trained in CSEC specific care and includes recovering children who are missing from care. Today, most prevention services and partnerships with social services are reactive, working to prevent further abuse. We need to dedicate significant resources to identifying at-risk families and communities, to partnering with schools and health care systems to identify those families and children, and to preventing abuse and exploitation before it occurs. That would significantly reduce societal costs of abuse and exploitation (substance use, lifelong health care costs, mental health costs, etc.) and reduce the cost of investigating and prosecuting these cases.

#### *Youth-Serving Organizations (YSOs) and Religious Organizations*

Government agencies should also strengthen partnerships with youth-serving organizations (YSOs) such as the YMCA, Boys and Girls Club of America, Big Brothers Big Sisters of America, and both Girl and Boy Scouts. First, YSOs are a good avenue to provide prevention education to children. Second, the services they offer can fill gaps existing due to strained resources in government child welfare programs. Similarly, faith-based organizations, particularly those that serve children and marginalized populations, can help law enforcement engage with communities. All youth-serving organizations (including group homes, foster homes, and detention centers) are magnets to those wanting access to children for illicit purposes. Like others, YSOs and religious organizations must have strong protective processes that prevent offenders from contacting the children in their programs, and they must have protocols for responding to and reporting allegations of abuse, including to law enforcement. By working with them, law enforcement and government agencies can help ensure these non-governmental organizations have consistent processes and policies that comply with federal and state law and are in the best interest of children.

#### *Non-Governmental Organizations (NGOs)*

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<sup>479</sup> Labor and Sex Trafficking Among Homeless Youth - A Ten-City Study: Full Report, Laura T. Murphy, 2017 <https://www.rhyclearinghouse.acf.hhs.gov/library/2017/labor-and-sex-trafficking-among-homeless-youth-ten-city-study-full-report>

<sup>480</sup> On-Ramps, Intersections, and Exit Routes: A Roadmap for Systems and Industries to Prevent and Disrupt Human Trafficking, Polaris Project, July 2018 <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking.pdf> NOTE: This report includes data from both adult and child victims, as well as victims of labor trafficking. 35% of respondents were under the age of 18 when they were initially trafficked, and 77% of all respondents were involved in a form of sexual trafficking.

Because of the vast ability of child exploitation material on the internet, offenders now have access to abuse and exploitation of children anywhere in the world from their phones and computers at home, at work, or anywhere else. To respond to this growing global threat, there are a number of domestic and international organizations that support our mission to end child exploitation.

### Examples of NGO Partners

**A21** exists to end human trafficking around the world. A21's solution includes reaching vulnerable communities through educational programs, rescuing individuals from exploitative situations through child advocacy centers and legal assistance, and providing aid, relocation, and job opportunities to former victims of human trafficking to break the cycle of re-victimization. A21 also has a yearly walk for freedom to increase awareness of human trafficking.

Source: <https://www.a21.org/>

**Brave Movement** is a survivor-centered global movement fighting to end childhood sexual violence. The Movement's campaign involves demanding global finance, calling on all governments to provide justice for victims, and calling for a child rights and protection drive approach to creating a safe internet. The Movement demands prevention, healing, and justice from global leaders. The Brave Movement's Theory of Change provides the foundation upon which they will create the social change urgently needed to end sexual violence against children and adolescents by 2030.

Source: <https://www.bravemovement.org/>

**Canadian Centre for Child Protection** is a national charity dedicated to the personal safety of all children. Their goal is to reduce the sexual abuse and exploitation of children, assist in the location of missing children, and prevent child victimization through a number of programs, services, and resources for Canadian families, educators, child-serving organizations, law enforcement, and other parties.

Source: <https://www.protectchildren.ca/en/about-us/>

**Child Rescue Coalition (CRC)** is a nonprofit organization that rescues children from sexual abuse by building technology for law enforcement to track, arrest and prosecute child predators, provided to law enforcement around the world free of charge. The CRC uses its collected data about child sexual abuse material to help law enforcement to arrest and prosecute child predators worldwide. More than 10,000 law enforcement officers in all 50 U.S. states and in 97 countries around the globe use the CRC's technology to target and apprehend predators.

Source: <https://childrescuecoalition.org/>

**ECPAT** works to better understand the web of child sexual exploitation through research and pushes for the critical systemic and social changes necessary to eliminate child exploitation within governments, intergovernmental institutions, the private sector, civil society and the general public. ECPAT has organized and co-sponsored three Global Congresses (Stockholm 1996, Yokohama 2001, and Rio De Janeiro 2008) which has firmly placed the issue of child sexual exploitation on the agendas of global leaders and decision-makers. ECPAT looks at this problem in all settings, including online and in the context of travel and tourism.

Source: <https://ecpat.org/about-us>

**End Violence Against Children** is a global partnership and fund launched in July 2016 by the U.S. Secretary-General working to achieve a world in which every child grows up in a safe, secure, and nurturing environment free from all forms of violence. The End Violence Partnership is a platform for collective, evidence-based advocacy and action. It connects and convenes its unique coalition of more than 700 organizations to raise awareness, catalyze leadership commitments, mobilize new resources, promote evidence-based solutions, and support those working to end all forms of violence, abuse and neglect of children. The End Violence Fund is a flexible funding vehicle that identifies new and emerging challenges focused solely on Sustainable Development Goal 16.2: ending all forms of violence against children by 2030.

Source: <https://www.end-violence.org/who-we-are>

**Family Online Safety Institute (FOSI)** brings an international perspective to making the online world safer for kids and families. Their 20+ members include tech giants Amazon and Verizon. FOSI convenes leaders in industry, government and the non-profit sectors to collaborate and innovate new solutions and policies in the field of online safety. Through research, resources, events and special projects, FOSI promotes a culture of responsibility online and encourages a sense of digital citizenship for all. FOSI prioritizes policy and research, international events, and good digital parenting to help decrease the numbers of online sex abuse.

Source: <https://www.fosi.org/>

**International Centre for Missing and Exploited Children (ICMEC)** works to protect children around the world by disrupting the economics and mechanics of child sexual exploitation, training partners on the front lines to prevent and respond to cases of missing children, child sexual abuse, and exploitation, and collaborating with key stakeholders. Regional representation in Australia, Brazil, and Singapore allows the Centre to respond to local and regional needs, develop customized programs, and raise awareness of its mission. The Centre's programs include model national response, law enforcement training, and CSAM reporting.

Source: <https://www.icmec.org/>

**International Justice Mission (IJM)** is a global organization that protects people in poverty from violence. IJM partners with local authorities in 29 program offices in 17 countries to combat trafficking and slavery, violence against women and children, and police abuse of power. IJM's Community Protection Model includes strengthening justice systems, rescuing and restoring victims, bringing criminals to justice, and scaling demands for protection.

Source: <https://www.ijm.org/>

**National Center for Missing & Exploited Children (NCMEC)** works with families, victims, private industry, law enforcement, and the public to assist with preventing child abductions, recovering missing children, and providing services to deter and combat child sexual exploitation. NCMEC's mission is to help find missing children, reduce child sexual exploitation, and prevent child victimization.

Source: <https://www.missingkids.org/footer/about>

**Tech Coalition** is an alliance of global tech companies who are working together to combat child sexual exploitation and online abuse. These organizations include Microsoft, Pinterest, Yahoo, Zoom, and many more large tech companies. The Coalition provides resources to tech companies on what industry is doing to tackle the issue. The Coalition is working across industry to accelerate the adoption of existing technologies and invest in the development of new technologies to combat child sexual abuse. The Coalition is driving greater accountability and consistency across industry through meaningful reporting of online child sexual abuse material across member platform and services. The Coalition also funds independent research to help understand patterns of online sex abuse.

Source: <https://www.technologycoalition.org/>

**Thorn** identifies critical technical needs and produces tools that allow law enforcement to stay ahead of perpetrators and identify more children victims. Thorn's flagship product is Spotlight, which accelerates victim identification and helps law enforcement make the best use of the critical time they have to focus on finding more child sex trafficking victims. Thorn offers technology for small and mid-sized companies, including Safer, which is a commercial product for platforms to identify, remove, and report child sexual abuse material, and the Sound Practices Guide, which offers best practices and concrete steps for companies to help protect kids on their platforms. Thorn also seeks to increase awareness for preventing further abuse by equipping youth with the knowledge and tools they need to resist online threats.

Source: <https://www.thorn.org/>

**WeProtect Global Alliance** brings together governments, the private sector, civil society and international organizations to protect children sexual exploitation and abuse online. In 2020, it relaunched as an independent organization combining two initiatives: the European Commission and the U.S. Department of Justice's Global Alliance Against Child Sexual Abuse Online; and WeProtect, established by the U.K. government as a global multi-stakeholder response to combating online child sexual abuse. WeProtect generates political commitment and practical approaches to make the digital world safer for children, preventing sexual abuse and long-term harm.

Source: <https://www.weprotect.org/>

## Funding for Partnerships

The PROTECT Act<sup>481</sup> endorsed funding to support child exploitation-focused partnerships. However, those provisions have never been fully funded.<sup>482</sup> As a result, partnership offices are often underfunded and understaffed, and they sometimes lack personnel with significant experience working with the stakeholders necessary for effective collaboration. When budgetary challenges arise, partnership programs are often the first to be cut.

The absence of flexible funding sources undermines the ability to pursue partnerships. Partnership opportunities often arise unexpectedly when outside entities offer to provide

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<sup>481</sup> S.151 - PROTECT Act <https://www.congress.gov/bill/108th-congress/senate-bill/151>

<sup>482</sup> For more details on the levels of PROTECT Act funding and how the funds are used, please see the Existing and Requested Funding for the Prevention & Interdiction of Child Exploitation appendix.

resources for projects in collaboration with government support and funding. Discretionary funding for federal agencies is crucial to take advantage of these opportunities and pursue collaboration with outside partners.

### Significant Developments

The Five Country Ministerial (commonly known as the FCM) is an annual meeting of home affairs, public safety, interior, security, border and immigration ministers from Australia, Canada, New Zealand, the United Kingdom, and the United States of America. The FCM grew out of an intelligence-sharing agreement among these countries, referred to as the “Five Eyes.” At FCM meetings, ministers meet to discuss national security challenges of mutual interest and concern and to discuss opportunities for collaboration.

Following the FCM meeting in 2019, the collective issued the *Online Child Sexual Exploitation and Abuse: Voluntary Principles*.<sup>483</sup> These principles provide a common and consistent framework to guide the digital industry in its efforts to help combat the proliferation of online child exploitation.

Thus far, 17 technology companies have endorsed the Voluntary Principles.<sup>484</sup> This is a powerful example of successful partnership spanning geographies and the public and private sectors. However, more needs to be done to encourage other companies to adopt the principles.<sup>485</sup>

### Strategic Response

Short-Term Goals	Long-Term Goals
<p><b>Map community resources and establish a single point of contact:</b> Time and resources should be dedicated to mapping what agencies and resources exist within a community or jurisdiction.</p>	<p><b>Develop training for state, local, and tribal agencies and organizations about partnership best practices:</b> State and federal agencies should issue directives and develop training to provide clarity and encourage best practices about how to partner across sectors and geographies.</p>
<p><b>Encourage state and local efforts to mandate curricula for teachers on how to identify, respond to, report, and prevent child exploitation:</b> Education agencies and school systems should develop and implement age-appropriate preventive curricula for students.</p>	<p><b>Explore ways federal agencies can support partnership on child exploitation:</b> For example, the Department of Education should consider opportunities for supporting greater partnership between the education system and child exploitation prevention and interdiction efforts.</p>

<sup>483</sup> <https://www.weprotect.org/library/voluntary-principles-to-counter-online-child-sexual-exploitation-and-abuse/>

<sup>484</sup> The companies are Amazon, Apple, Dropbox, Google, MatchGroup, Mega, Meta, Microsoft, Pinterest, Roblox, Semantics21, Snap Inc., Spotify, TikTok, Twitter, Yubo, and Zoom. See <https://www.weprotect.org/library/voluntary-principles-to-counter-online-child-sexual-exploitation-and-abuse/>

<sup>485</sup> For more information, please see the Technology chapter.



<p><b>Fully fund the PROTECT Act:</b> Congress should approve appropriations for the full extent of the funding that has been allocated in the PROTECT Act.</p>	<p><b>Provide funding and resources to support state, local, and tribal partnership programs:</b> Funding, guidelines, and educational resources should be provided to assist with the execution of and compliance with partnership-oriented policies or standards established around child exploitation.</p>
	<p><b>Disseminate training on how to incorporate survivors into organizations and partnerships:</b> Leverage existing resources and initiatives in the anti-trafficking field and as part of broader national training on how to best cultivate child exploitation-focused partnerships, content should include guidance on how to integrate survivors respectfully and effectively into organizations, task forces, or teams, including in leadership roles.</p>

*Operational/Enforcement*

Those working on child exploitation issues often do not know what resources and supports are available in their communities to support the children they work with. Solving this problem requires resource mapping of all of agencies and resources within the community or state known to employ best practices.

One entity could serve as a central point of contact to connect various partner agencies and organizations. Much of this information is already known to some agencies, but enhanced community mapping work would strengthen existing networks.

To fully operationalize widespread partnerships, an interagency compact or additional memorandum of understanding may be needed. A top-down directive from federal agencies dictating that they must focus on child exploitation and collaborate with one another will ensure this work is prioritized over the long-term.

*Funding/Resources*

The PROTECT Act should be fully funded by Congress to maintain existing partnerships and expand collaboration efforts. Legislation and directives are important steps towards addressing the child exploitation threat but are ineffective without the funding to support them. Often mandates are established without recognizing the time and financial constraints that institutions and individuals face. Grant funding, clearinghouses of educational prevention resources and programs, and guidelines for policies and trainings should be developed to ease the burden on partners.

*Education & Training*

The desire for greater partnership on child exploitation issues exists, but processes and training on how best to bring together diverse and geographically distributed entities and form effective

partnerships is needed. To encourage participation, state and federal agencies could provide examples or resources, or issue guidance, highlighting examples regarding what level of collaboration has proven effective and develop trainings on recommended partnership models and operational best practices to ease the initial challenges involved in forming any new partnership.

State licensing and consumer affairs agencies should require or offer (as appropriate for the sector) training to businesses and others that may regularly encounter child exploitation and trafficking, such as body art, hospitality, healthcare, and others.

#### *Outreach & Victim Support*

All training must include guidance on how to integrate survivors and survivors' experiences into collaborations and partnerships including in professional and leadership roles. Survivors must be respected as experts and professionals and should be compensated as any other consultant or professional would be.

## Prevention

Child sexual abuse (CSA) poses a serious threat to the health, safety, and development of our nation's children. While there is no precise estimate for the prevalence of CSA, studies indicate that millions of children are impacted by CSA. One recent study of child sexual abuse prevalence estimates an overall prevalence rate of 7.5-11.7%, with girls being disproportionately affected compared with boys.<sup>486</sup> Victims experience both short term and life-long impacts from child sexual abuse, including chronic health conditions and mental health consequences.<sup>487</sup> Additionally, the lifetime public health and economic costs to society for CSA cases occurring in a single year have been estimated to be \$9.3 billion.<sup>488</sup>

Due to the pervasiveness of child sexual abuse and the significant consequences to both victims and society, it is imperative to devote more resources to preventing as well as responding to child sexual abuse. Public health, which focuses on creating broad population-level impact, can play an important and unique role in preventing CSA and in complementing the criminal justice-oriented approaches already in place. Taking a public health approach to preventing CSA requires the expertise to identify, track, and analyze the problem; identify factors that increase or decrease risk; implement and evaluate preventive measures and approaches; assure widespread adoption of evidence-based approaches; and track progress on reductions in CSA.

Although the evidence base for effective CSA prevention efforts is small and growing, evidence suggests that preventing CSA is possible at the individual, relationship, and community levels<sup>489</sup>:

- Individual-level prevention programs focus on providing information, treatment, or training to individuals guiding them to alter or manage their behaviors.
- The relationship level examines relationships that may increase the risk of experiencing or perpetrating CSA, such as programs designed to reduce conflict, foster healthy relationships, and build protective factors within families, peers, mentorship relationships, or other bystanders who may witness abuse.
- Community-level prevention programs seek to identify and modify the social, economic, and environmental aspects of the community and create safer spaces where people live, work, go to school, and play.

Many researchers and practitioners advocate for addressing all forms of child sexual abuse, exploitation, and assault in a unified approach due to shared risk factors and intervention approaches.<sup>490</sup> A comprehensive approach to preventing child sexual abuse involves three types

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<sup>486</sup> Catherine Townsend and Alyssa A. Rheingold, "[Estimating A Child Sexual Abuse Prevalence Rate for Practitioners: A Review of Child Sexual Abuse Prevalence Studies](#)," *Darkness to Light*, August 2013. The estimated prevalence rate for girls is 10.7% to 17.4% and the rate for boys is 3.8% to 4.6%.

<sup>487</sup> <https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html>

<sup>488</sup> Elizabeth J. Letourneau, et al., "[The Economic Burden of Child Sexual Abuse in the United States](#)," *Child Abuse & Neglect*, March 2018.

<sup>489</sup> Centers for Disease Control and Prevention, "[Report to Congress on Child Sexual Abuse Prevention](#)," 2019.

<sup>490</sup> Centers for Disease Control and Prevention, "[Preventing Multiple Forms of Violence: A Strategic Visions for Connecting the Dots](#)," 2016.

of prevention: primary, secondary, and tertiary. Primary prevention is aimed at stopping violence before it occurs.<sup>495</sup> Secondary prevention is aimed at immediate responses to violence, and tertiary prevention includes long-term responses to those who have been exposed to violence and breaking the cycle of victimization.<sup>496</sup>

Across all types, an intervention could be directed to prevent victimization or perpetration. Criminal justice approaches have traditionally relied on secondary and tertiary prevention strategies, but there has been increasing interest in primary prevention research and practices in recent years. The VetoViolence website from the United States Centers for Disease Control and Prevention (CDC) has resources with more information about the basics of violence prevention, along with strategies and approaches to prevent different forms of violence.<sup>497</sup> The Department of Justice's (DOJ) Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) has also funded prevention initiatives in

## Minor Sex Trafficking Prevention Programs in the US

The University of New Hampshire (UNH) is conducting research into child sexual abuse prevention.<sup>491</sup> With funding support from the Department of Justice, the University of New Hampshire (UNH) is currently evaluating the survivor care programs developed by Love146. Love 146 is a nonprofit anti-trafficking organization that offers survivor care and prevention education for youth that are either at high-risk or confirmed survivors of domestic minor sex trafficking.<sup>492</sup> Formative evaluation procedures will be conducted to inform the future rigorous outcome evaluation, including developing feasible research tools and procedures for involving this vulnerable population. The next phase of this work, which involves an outcome evaluation, was funded by NIJ in FY2022.

Also with funding support from the Department of Justice, Boston University conducted a three-year, longitudinal, multi-site evaluation of the My Life My Choice program, which provides mentorship programs for survivors of domestic minor sex trafficking.<sup>493</sup> Positive results were seen after just 6 months of participation in the program, and after a year, youth were less likely to have experienced commercial sexual exploitation, to have engaged in delinquent behavior, be arrested or detained by police, and had improved coping skills.<sup>494</sup>

<sup>491</sup> David Finkelhor and Lisa Jones, "[Prevention](#)," University of New Hampshire Crimes Against Children Research Center.

<sup>492</sup> National Institute of Justice Grant #2020-V3-GX-0076, "[Improving Outcomes for Domestic Minor Sex Trafficking Victims: A Phased Evaluation of the LOVE146 Victim Services Program](#)." See also <https://nij.ojp.gov/funding/awards/15pnij-22-gg-03291-nonf>

<sup>493</sup> National Institute of Justice Grant #2014-R2-CX-0005, "[A Longitudinal Evaluation of a Survivor-Mentor Program for Child Survivors of Sex Trafficking in the United States](#)."

<sup>494</sup> Emily F. Rothman, et al., "[A Longitudinal Evaluation of a Survivor-Mentor Program for Child Survivors of Sex Trafficking in the United States](#)," *Child Abuse & Neglect*, 100, 2020.

<sup>495</sup> Roberto H. Potter, Jeanne E. Krider, and Pamela M. McMahon, "[Examining Elements of Campus Sexual Violence Policies: Is Deterrence or Health Promotion Favored?](#)" *Violence Against Women* 6 (12), 2000; Centers for Disease Control and Prevention, "[Stop SV: A Technical Package to Prevent Sexual Violence](#)," 2016.

<sup>496</sup> David S. Lee, et al., "[Sexual Violence Prevention](#)," *The Prevention Researcher* 14 (2), April 2007; Pamela M. McMahon, "[The Public Health Approach to the Prevention of Sexual Violence](#)," *Sex Abuse* 12 (1), 2000.

<sup>497</sup> Centers for Disease Control and Prevention, "[VetoViolence](#)."

college and university campuses<sup>498</sup> as well as organizations focused on preventing abuse within the U.S. Olympic and Paralympic movements<sup>499</sup>, environments that can present safety risks for children and adolescents. The Office of Juvenile Justice and Delinquency Prevention continues to fund the Supporting Effective Interventions for Youth with Problematic or Illegal Sexual Behavior Program through the National Center on the Sexual Behavior of Youth, an initiative that supports communities in developing and implementing intervention strategies to prevent offenses on other children.<sup>500</sup> Lastly, the Department of Health & Human Services Office on Trafficking in Persons has dedicated more of its focus to prevention efforts, including funding a Human Trafficking Youth Prevention Education (HTYPE) Demonstration Program, which allows local educational agencies to develop and implement skills and education-focused prevention programs in partnership with anti-trafficking nonprofits as subgrantees.<sup>501</sup>

Many primary prevention programs have not yet undergone full evaluations of their effectiveness. However, there is limited but promising research about the effectiveness of primary prevention programs, including several targeted towards adolescents and peer sexual violence. For example, Shifting Boundaries, a program targeting 6<sup>th</sup> and 7<sup>th</sup> graders that included targeted interventions and efforts to increase awareness of dating violence over a 6–10 week period, resulted in meaningful reductions in perpetration and victimization of sexual harassment and peer sexual violence, as well as reductions in dating sexual violence victimization, amidst mixed results for other outcomes.<sup>502</sup> A similar program, Safe Dates, which targeted 8<sup>th</sup> and 9<sup>th</sup> graders with a 10-session curriculum focused on consequences of dating violence, gender stereotyping, conflict management skills, and attributions for violence, as well as increased services for dating violence victims in the community, showed significant reductions in sexual dating violence perpetration.<sup>503</sup> The prevention education logic model for sexual abuse is also bolstered by the evidence for successful offense reductions with educational programs targeting bullying,<sup>504</sup> general delinquency and aggression,<sup>505</sup> all contexts that considerably overlap with sexual abuse behaviors.

Importantly, the above programs were largely primary prevention programs focused on educating youth about peer-to-peer sexual violence. They do not address sexual abuse of younger children by adults, and more research is needed to identify effective prevention interventions for all types of CSA. The increased attention to primary prevention strategies arises from the realization that the problem of child sexual abuse is too large to ever be eradicated only by

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<sup>498</sup> SMART Opportunity ID #SMART-2015-4157, “[SMART FY 15 Campus-Focused Sexual Assault Perpetration Prevention and Education Program](#).”

<sup>499</sup> SMART Award #2018-KY-B8-0001, “[U.S. Center for SafeSport](#).” SMART Award # 15PSMA-21-GG-02193-KYAS, “[U.S. Center for SafeSport - Keeping Young Athletes Safe](#)”; see also <https://uscenterforsafesport.org/>.

<sup>500</sup> OJJDP Opportunity ID #O-OJJDP-2022-171269, “[OJJDP FY 2022 Supporting Effective Interventions for Youth With Problematic or Illegal Sexual Behavior](#)”

<sup>501</sup> Office on Trafficking in Persons, “[Human Trafficking Youth Prevention Education Demonstration Program](#),” 2020.

<sup>502</sup> Sarah DeGue, et al., “[A Systematic Review of Primary Prevention Strategies For Sexual Violence Perpetration](#).” *Aggression and Violent Behavior*, 19 (4), 346–362, August 2014.

<sup>503</sup> DeGue, et al., *A Systematic Review*.

<sup>504</sup> Maria M. Ttofi and David P. Farrington, “[Effectiveness Of School-Based Programs to Reduce Bullying: A Systematic and Meta-Analytic Review](#).” *Journal of Experimental Criminology*, 7(1), 27–56, 2011.

<sup>505</sup> Sandra Jo Wilson and Mark W. Lipsey, “[School-Based Interventions for Aggressive and Disruptive Behavior: Update Of a Meta-Analysis](#).” *American Journal of Preventive Medicine*, 33(2 Suppl.), 130–143, August 2007.

holding individuals accountable for their crimes after a child has been harmed. The large volume of child sexual abuse cases will continue to overwhelm investigators unless more resources are devoted to preventing as well as responding to CSA. It is imperative that investments continue to be made comprehensively and strategically in these efforts.

### **Insufficient Program Evaluation**

Despite the prevalence, investments in the prevention of CSA have been severely lacking. In 1978, Congress authorized 3 to 4 million dollars annually to develop effective prevention, treatment, and law enforcement strategies to address CSA. That funding disappeared in the 1980s and while some funding has recently been appropriated, it has not returned to the same level. Without a significant investment of resources to build this evidence base, there is not enough research to truly guide the growing number of legislative initiatives in this area.

Much of the legislation and public awareness efforts relating to CSA prevention have focused on providing children with prevention education. In many states, this type of education is required by law. These laws have different names across the country, but common names are “Jenna’s Law” or “Erin’s Law”, named in honor of survivor advocates. In some states, prevention education related to child sex trafficking (CST) is also required. According to a 2019 report to Congress from the CDC these programs are often able to demonstrate effectiveness in teaching children the intended information (e.g., how to recognize safe v. unsafe touch, how to report, how to assert your own personal boundaries and respect the boundaries of others) but most programs have never been evaluated to determine if these programs decrease victimization of children.<sup>506</sup>

Furthermore, in some states, including those with statutory requirements, schools can be reluctant to teach on this topic due to parental pushback on the issue, as it may cross over into sex education, an issue fraught with sensitivities. Appropriate education can help youth understand the fundamentals of healthy relationships, such as how to recognize safe and unsafe touch, how to report harassment or exploitation, and how to assert your own personal boundaries and respect the boundaries of others. Safety-focused education, such as that around identifying and responding to instances of abuse and trafficking, only addresses exploitation once the relationship between the child and the perpetrator has gone too far, whereas arming children with

*“My daughter was 15 when she met her perpetrator, and she was missing for 3 weeks. During that time, I had been working in social services for many years. I was knowledgeable about the resources available and how to access them, how to move up chains of command, and to navigate things and get things done. But it’s different and overwhelming when it’s your family.”*

*“I think more education on child sexual abuse is needed in the school setting if the training material can be done in an appropriate way. I understand sex education is tied to morals and values that are specific to each family, but if presented in a way that focuses on safety education, it’s really valuable. There are kids that hear the information and then go to counselors sharing that they think their friend is at risk. We just can’t deny that this is a real threat to teens with access to the internet.”*

*Parent of a child sex trafficking survivor*

<sup>506</sup> CDC, [“Report to Congress on Child Sexual Abuse Prevention.”](#)

the knowledge and confidence they need to better navigate relationships could help reduce their risk.

The Internet Crimes Against Children (ICAC) Task Forces are required to develop and deliver internet crimes against children public awareness and prevention programs (Section 103(8) of PROTECT ACT). However, there is no evaluative research demonstrating whether internet safety programs are effective in reducing child sexual exploitation, despite a desire from the ICAC units to collaborate and explore the impacts of prevention messaging. Recent research reviews conclude these efforts are most likely ineffective based on research comparing internet safety programs to established principles of effective prevention programs.<sup>507,508</sup> Even though minimal resources have been dedicated to implementing these programs, sufficient resources have not been allocated to evaluate the effectiveness of these approaches.

Of course, it should never be a child's responsibility to stop their own abuse by adults. It is up to adults and communities to protect children. This is the philosophy of Stop It Now!, an organization that offers various prevention programs aimed at helping adults take responsibility to prevent and stop CSA.<sup>509</sup> Building a true culture of safety around children must also include education for adults to identify and interrupt signs of abuse, as well as interventions targeted towards adults with regular interaction with children and those at risk of perpetration.

## Research

Though important research about preventing child sexual abuse is ongoing, a much bigger investment in child sexual abuse prevention is needed to understand more about these crimes and how to effectively prevent them. Critical areas for additional research include epidemiologic data on the magnitude, nature, and causes of child sexual abuse; research on risk and protective factors; and research on effectiveness of strategies to prevent child sexual abuse and child sex trafficking. This research should be cross-disciplinary because there is a need for consistent definitions related to child sexual abuse so that the research can be compared and aggregated. For more details on these recommendations, see the CDC Report to Congress on Child Sexual Abuse Prevention.<sup>510</sup>

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<sup>507</sup> Lisa Jones, Kimberly J. Mitchell, and Wendy A. Walsh. "[Evaluation of Internet Safety Materials Used by Internet Crimes Against Children \(ICAC\) Task Forces in School and Community Settings, 2011-2012 \[United States\]](#)," *Inter-university Consortium for Political and Social Research*, March 2016.

<sup>508</sup> David Finkelhor, et al., "[Youth Internet Safety Education: Aligning Programs With the Evidence Base](#)," *Trauma Violence Abuse*, April 2020.

<sup>509</sup> Stop It Now!, "[About Us](#)," 2021.

<sup>510</sup> CDC, "[Report to Congress on Child Sexual Abuse Prevention](#)."

## Siloed Expertise in Prevention Activities

Many different types of professionals with unique areas of expertise overlap in efforts to protect children from sexual abuse, including human development and sexuality educators, sex offender treatment providers, positive youth development program developers, child sexual abuse prevention experts, educators, therapists, etc. Unfortunately, these disciplines often work in their own silos and do not listen to and incorporate important research and practice findings from other fields even though effective approaches to prevention need to be holistic in approach and scope. These siloes are often reinforced by funders and policymakers, who may prioritize implementation strategies over prevention or certain aspects of child exploitation over others. With limited funding available for this work, many non-profits and NGOs are forced to be territorial in their work to retain existing funding levels, rather than collaborate and develop cross-disciplinary approaches.

## Differing Approaches Across States and Agencies

Prevention education efforts are hampered by a state-by-state approach with little coordination between states on standards and little guidance available for local jurisdictions about how to determine which programs are effective in preventing child sexual abuse. Some states have taken the initiative to develop technical guides to assist in understanding different prevention curriculums such as *Georgia's Child Sexual Abuse and Exploitation Prevention Technical Assistance Resource Guide*<sup>514</sup> and the *Human Trafficking Prevention Curriculum Matrix*.<sup>515</sup> These guides are useful, but also underscore how complicated it is to compare and evaluate the plethora of prevention curricula available to local jurisdictions.

Work occurring within any given agency is far too often siloed from similar work in any of the other departments also addressing issues relating to child exploitation, in many of the ways that states are. Overall, the “patchwork” approach by different states and disciplines makes it extremely challenging to consolidate knowledge, evaluate what is effective, and integrate all the

## Australia's Approach to Prevention

The Australian Royal Commission into Institutional Responses to Child Sexual Abuse has spent approximately \$342 million across five years to better understand the issue of child sexual abuse in Youth-Serving Organizations (YSOs). This funding has generated 17 volumes of findings that can contribute to our understanding of underlying risk factors related to abuse in YSOs.<sup>511</sup>

In 2019, Victoria, the second largest state in Australia, legislatively mandated that all YSOs, which include schools, residential facilities, medical clinicals and hospitals, as well as other youth organizations, comply with seven child safe standards.<sup>512</sup> A set of national principles for child safe organizations has also been developed and endorsed by all Australian state and territorial governments.<sup>513</sup> This standard may offer a model for the U.S. to consider when building a basic set of child safe standards for YSOs.

<sup>511</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, “[Final Report](#),” December 15, 2017.

<sup>512</sup> Commission for Children and Young People, “[Being A Child Safe Organisation](#).”

<sup>513</sup> Australian Human Rights Commission, “[National Principles for Child Safe Organisations](#),” 2018.

<sup>514</sup> Georgia Statewide Human Trafficking Task Force, “[Georgia's Child Sexual Abuse & Exploitation Prevention Technical Assistance Resource Guide](#),” July 2017.

<sup>515</sup> North Carolina Coalition Against Sexual Assault, “[Human Trafficking Prevention Curriculum Matrix](#),” August 2020.



necessary expertise into comprehensive approaches, much less scale-up those best practices at the national level.

## **Advancing Technology**

Advancements in technology make it easier to proactively identify and remove child sexual abuse material (CSAM) and content related to child sex trafficking, such as advertisements from the internet. Removal of this exploitative online material minimizes further trauma due to widespread circulation. The increased ability and dedication of resources to find this content is apparent in the dramatic reporting increases to the National Center for Missing & Exploited Children (NCMEC) CyberTipline in recent years. Despite these technological advances, the sheer volume of reports of online child sexual exploitation remains a tremendous challenge. Continued investment is needed to keep pace with advancing technology and the ever-increasing volume of exploitive content circulating online. Additionally, improvements should be made to public-facing systems for reporting exploitative content to technology companies. Technology is needed to both prevent easy access to CSAM by offenders and proactively remove CSAM from the web to interrupt the ongoing victimization for children whose exploitation continues every time the image or video of their abuse is viewed, even long after any hands-on assault has ended. Continued investment in all these areas is important to help these programs keep pace with rapidly evolving technological challenges in keeping children safe from sexual abuse in all its forms.

The technology industry partners are critical in preventing CSA and building a culture of safety around children. Several companies are proactively considering efforts to stem child sexual exploitation online, with a recent example being Apple’s announcement of expanded protections and child safety features on their devices.<sup>516</sup> These efforts have been postponed following discussions with stakeholders about balancing the privacy concerns from users with the government’s endeavors to fight child sexual exploitation.<sup>517</sup> In any case, the dialogue around these potential interventions confirms that the industry must be a fully engaged partner to prevent the spread of child exploitation on their platforms.

## **Significant Developments**

### *Offender Focused Prevention Efforts*

Until recently, the focus of prevention programs has been on preventing victimization, collecting data on the prevalence of victimization, and developing better investigation and response to reports of victimization. In the last few years, there have been significant shifts and accomplishments that expanded efforts from solely preventing victimization to also include a focus on preventing repeat or potential child sexual abuse offenders from offending.

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<sup>516</sup> Chloe Setter, “[Apple’s Fresh Approach To Child Protection Can Be A Game-Changer](#),” WeProtect Global Alliance, August 11, 2021.

<sup>517</sup> David K. Li and Olivia Solon, “[Apple Delays Plans To Scan Devices For Child Sexual Abuse Images](#),” NBC News, September 3, 2021.

There is growing recognition that if we want to prevent child sexual abuse before a child is harmed, we must also look at ways to target those at risk of offending. Perpetration-focused initiatives are critical to a comprehensive approach to prevention. An example of this approach is Thorn’s online deterrence program, where an individual looking for CSAM is redirected to offender treatment options.<sup>518</sup>

There has also been a shift towards “outer-layer” prevention<sup>519</sup> – prevention that happens by changing the community, the environment, and social norms. The focus of these efforts is decreasing risk factors that increase the likelihood of causing harm and increasing protective factors that reduce the likelihood of harm. Some DOJ resources have enabled examination of the impact of the environment on effective prevention in both campus and sports organizations. The CDC has identified this strategy as “creative protective environments” and the CDC Foundation, with technical assistance from the CDC, is currently developing resources based on the best available evidence to support diverse youth-serving organizations (YSOs) in preventing CSA and ensuring safe, stable, nurturing relationships and environments.<sup>520</sup>

In recent years, in response to high-profile child sexual abuse cases, such as the horrific abuse of more than 150 young gymnasts by USA Gymnastics team doctor Larry Nassar, there have been legislative initiatives elevating the importance of child sexual abuse prevention. In 2017, the U.S. Center for SafeSport was established and, since then, SafeSport has developed extensive educational materials about situational prevention, conducted abuse prevention training, published an inaugural athlete culture and climate survey,<sup>521</sup> required organizational prevention policy requirements,<sup>522</sup> and regularly audited sport National Governing Bodies.<sup>523</sup> As noted earlier, many states have passed legislation requiring or recommending child sexual abuse prevention in schools, although these efforts tend to focus on victimization rather than offending. Some states have recently added requirements to include child sex trafficking prevention as well. Prevention online training materials prepared by nonprofits funded in part by the Department of Justice’s OJJDP and SMART offices are used by numerous youth sports organizations.

There has also been a shift in recent years towards looking at the intersection of discrimination, poverty, and inequity with child sexual abuse. By looking at how we can better address these issues within families and communities, there may be opportunities to decrease risk factors to children’s safety. For example, efforts to support safe and available housing resources can reduce risk, because a child’s guardians will not be put into positions of accepting housing in situations that could jeopardize their child’s safety because they cannot afford anything else.

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<sup>518</sup> <https://www.thorn.org/deterrence-prevent-child-sexual-abuse-imagery/>

<sup>519</sup> Joan Tabachnick, “[Preventing Perpetration: Promising Advances in Situational and Developmental Approaches](#),” *The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking*, May 4, 2021.

<sup>520</sup> Centers for Disease Control and Prevention, “[Preventing Child Sexual Abuse in Youth-Serving Organizations: Creating Safe, Stable, Nurturing Relationships and Environments](#),” June 4, 2021.

<sup>521</sup> <https://uscenterforsafesport.org/survey-results/>

<sup>522</sup> <https://uscenterforsafesport.org/training-and-education/minor-athlete-abuse-prevention-policies/>

<sup>523</sup> <https://uscenterforsafesport.org/audit-reports/>

*Interdiction for the Protection of Children (IPC) Program*

In 2008, the Texas Department of Public Safety (DPS) began to create what is believed to be the first program designed to train patrol officers to identify signs of child sexual exploitation and other forms of abuse during routine encounters with citizens. Since that time the Interdiction for the Protection of Children (IPC) program has expanded to other states and has become an innovative, proactive policing approach to prevent criminal offenses through active intervention as well as intelligence gathering. Initially, the foremost area of concern for IPC was child abduction. The focus has since broadened to include trafficking and a wide variety of other crimes involving the abuse, exploitation, and/or neglect of children.<sup>524</sup>

During the past five years, the U.S. Marshals Service has partnered with the Texas DPS to assist with the ongoing development of the program. USMS personnel also supplement the training cadre for the two-day IPC course. The USMS Behavioral Analysis Unit gathers intelligence on multiple types of indicators. The goal is to better identify and validate observable signs during law enforcement encounters that suggest something is amiss. Although some signs are obvious, others are subtler; without training, these indicators can be easily overlooked or explained away by even experienced officers. With training, law enforcement personnel learn to quickly recognize signs of harm. IPC training courses are funded, in part, by a grant from the U.S. Department of Justice, Community Oriented Policing Services (COPS) Office.<sup>525</sup> To date, graduates of the program have rescued more than 591 children during routine law enforcement encounters.

**Strategic Response**

<b>Short-Term Goals</b>	<b>Long-Term Goals</b>
<b>Housing:</b> Identify and utilize funding sources to support the development and operation of housing for minors who have experienced or are at risk of child sexual trafficking and exploitation	<b>Collaboration:</b> Enhance multidisciplinary collaboration focusing on racial and other inequities relating to access to resources, including those with past experiences of victimization
<b>Outreach:</b> Explore standardized prevention programs for ICAC task forces, including training to supply the effective presentation and messaging skills needed to successfully execute prevention programs; establish standards for prevention best practices and training based upon research, including an understanding of the impact on disproportionately affected populations.	<b>Resources:</b> Establish a centralized entity to oversee prevention resources at the national level for professionals and families; enhance access to resources for mandated reporters and investigators working to prevent and address online child sexual exploitation and abuse.

<sup>524</sup> Bourke, M. L., Prestridge, D., & Malterer, M. B. (2016). Interdiction for the Protection of Children: Preventing sexual exploitation one stop at a time: *Aggression and Violent Behavior*, 30, 68-75.

<sup>525</sup> Grant numbers: 2019CKWXX021, 2018CKWXX002

<p><b>Education and Outreach:</b> Evaluate the implementation and effectiveness of prevention education across the United States at the federal, state, and local level; identify other gaps in prevention education and outreach, including adequate safety information available through online platforms; explore legislation needed to implement prevention and education strategies.</p>	<p><b>Research and Evaluation:</b> Identify key areas for continued research and evaluation to ensure that resources, programs, and legislation are based upon best available science; enhance existing federal data collection efforts on CSA to improve their relevance and comprehensiveness; evaluate prevention policies, programs and practices for effectiveness and scalability.</p>
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*Training*

To increase common understanding of effective prevention practices across the country, there is a clear need for easily accessible cross-disciplinary training for professionals who provide prevention education alongside school administrators and other stakeholders responsible for implementing prevention programs. Once ample supportive evidence for prevention programs has been collected, a national clearinghouse for resources would be an ideal body to lead the development and implementation of these types of trainings for the field. The CDC’s VetoViolence website<sup>526</sup> is an example of the type of information and resources that would benefit from wide dissemination to prevention decision-makers and program developers. Another important training topic, particularly for ICACs and other law enforcement agencies developing their own prevention programs, is applying prevention science from other domains to the CSA space.

<p><b>Education-Focused Prevention Programs in the Non-Profit Sector</b></p>
<ul style="list-style-type: none"> <li>• The Love146 Not a Number program offers an interactive child trafficking and exploitation prevention curriculum designed to provide youth with information and skills that inspire them to make safe choices and identify and utilize healthy support systems that may decrease their vulnerabilities.<sup>527</sup> Several states are currently leveraging the Not a Number Trafficking Prevention Curriculum.</li> <li>• 3Strands Global Foundation<sup>528</sup> offers the PROTECT program, an online platform created by Arizona State University to both train and enhance awareness of all school staff on child exploitation, abuse, and trafficking. PROTECT addresses the required mandates for human trafficking prevention training and curriculum in most states across the country. All staff, after their initial training, can download the K-12 curriculum which provides engaging interactive lessons and developmentally appropriate strategies structured to build student self-awareness, self-management, social awareness, relationship skills, resilience and responsible decision making. Participants can also connect with peers to discuss what they have learned and how they can create an inclusive trauma-informed environment in their school.</li> </ul>

<sup>526</sup> Centers for Disease Control and Prevention, “[VetoViolence](#),” 2019.  
<sup>527</sup> Love146, “[Not a Number](#).”  
<sup>528</sup> 3Strands Global Foundation, <https://www.3strandsglobalfoundation.org/education>

- The A21 education curriculum *Bodies Are Not Commodities* is a resource for high school educators and students. It is designed to equip high school students with tools to combat human trafficking both globally and locally. It includes 5 sessions, aligned to education standards, as well as a facilitator guide, student guide, and videos. An evaluation of the program found that participants were highly engaged in the content and as a result, the lessons had an influence on students' attitudes and positions of advocacy regarding human trafficking.<sup>529</sup>
- Teach2Reach in North Carolina is working with researchers at the University of North Carolina at Chapel Hill to develop evidence-informed and developmentally appropriate content and protocols to teach students in North Carolina public schools about sex trafficking and connect at-risk students with needed services.

### *Funding and Research*

There is a lack of funding for primary prevention of child sexual abuse. While significant funding has been designated for specific prevention programs or policies, there has not been a widespread investment in prevention. A dedicated investment in prevention would not only help limit the number of children from being victimized but would reduce the tremendous societal costs of child sexual abuse. This is a burgeoning space, with several promising frontiers for investment. Critical needs include:

- An investment in data management and research; specifically:
  - Creating datasets with representative CSA perpetration prevalence and incidence data
  - Updating existing data reports to document the changes in prevalence and funding
  - Enhancing existing federal data collections to allow for better trend assessment and policy analysis in the context of CSA<sup>530</sup>
  - New research to explore the impact of exploitation on disproportionately affected populations
  - Understanding risk and protective factors for first time perpetrators to inform the primary prevention of CSA
  - Exploring the differences in these dynamics across various forms of CSA
- Establishing clear standards for program evaluation and interpretation of the effectiveness of a policy or intervention

The CDC is currently rigorously evaluating several CSA prevention programs, specifically programs designed to prevent CSA in education settings and targeting adults with sexual interest

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<sup>529</sup> Laskia M. Scott, Christina Crenshaw, and Elena M. Venegas, "[Bodies Are Not Commodities: Examining A21 Curriculum's Impact on Students' Knowledge, Attitudes, and Advocacy About Anti-Human Trafficking Rights and Issues](#)," *Journal of Human Trafficking*, 5:1, 25-42, 2019.

<sup>530</sup> Relevant data collections include the National Child Abuse and Neglect Data System, the National Incident Based Reporting System, the National Crime Victimization Survey, the Youth Risk Behavior Survey, the National Survey of Children Exposed to Violence, the National Juvenile Online Victimization Survey, and the Youth Internet Safety Survey. See also <https://crimesolutions.ojp.gov/>

in children.<sup>531</sup> The CDC Foundation is also currently updating their 2007 report on preventing child sexual abuse in youth-serving organizations.<sup>532</sup> The CDC's prevention-focused research portfolio will continue to grow as new funding is awarded to rigorously evaluate CSA programs. This work is critical, as it not only will enable the evaluation of existing programs but also support the development of new prevention approaches that are based on solid, evidence-backed frameworks and insights.

### *Legislation/Policy*

There are many initiatives across the U.S. focused on child sexual abuse prevention education and policies, but there is a lack of consistent standards, evaluation of what is working, and funding. These mandates, often issued without additional dedicated funding to support them, stretch limited resources, especially without a clear direction. Legislation requiring schools to provide prevention education to students, educators, and parents also needs to provide adequate funding to implement, monitor, evaluate, and expand prevention education programs.

Similarly, consideration should be given to the PROTECT Act's requirements for ICAC Task Forces. Task forces should have access to prevention education and awareness programs created by subject matter experts with substantive prevention expertise and experience. The ICAC Task Force Public Awareness Working Group has developed a Prevention and Communication Plan that identified the need to create a collaborative approach with technology safety subject matter experts to develop safety prevention resources addressing some of the most pressing child exploitation issues, including self-produced sexually explicit material. A national prevention clearinghouse, as discussed above, could provide guidance for internet safety programs supported by federal funding such as those provided to ICAC Task Forces. Prevention programs should also specifically include evaluation components to assess effectiveness.

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<sup>531</sup> Centers for Disease Control and Prevention, "[Child Sexual Abuse Funded Research](#)," September 23, 2020.

<sup>532</sup> Centers for Disease Control and Prevention, "[Preventing Child Sexual Abuse in Youth-Serving Organizations: Creating Safe, Stable, Nurturing Relationships and Environments](#)," June 4, 2021.

## Sex Offender Registration Violations

Sex offender registration and notification are critical means for law enforcement and the public to protect children from crimes of sexual abuse and exploitation.<sup>534</sup> The registration and notification systems protect children by facilitating the detection and apprehension of offenders who have sexually abused or exploited children if they reoffend, and by reducing their opportunities to reoffend.

Law enforcement agencies, using the information the registration systems collect about the identities, locations, and criminal histories of released sex offenders in their communities, are better equipped to solve crimes of sexual abuse and exploitation against children and promptly apprehend the perpetrators.

The disclosure of this information through community notification programs enables members of the public to take measures to protect themselves and their families from child abuse, child abduction, online exploitation, and other serious and violent crimes against our most vulnerable populations. For example, armed with this knowledge, parents may decline a convicted sex offender's offer to babysit their children or lead a youth group, and members of the community may report suspicious approaches to children by such offenders to the authorities.<sup>535</sup> With the growth of the internet and internet-connected devices, the importance of public availability of comprehensive and accurate sex offender information has increased correspondingly.<sup>536</sup> Many convicted sex offenders now find their victims through employment and online through social media sites. The potential victims may be, for example, children of working or single parents, who need childcare, and possible second caregiver support. Many of the victims are young children and teenagers who have unsupervised access to social media. Sex offenders prey on these vulnerabilities online, aiming to move into the lives of the victims. The community notification programs and associated public sex offender websites provide a means for those targeted – whether approached online or in person – to check whether persons with whom they are currently or potentially involved in social relationships are sex offenders, and to inform law enforcement when it appears that such offenders are engaged in or planning further criminal activities against children.

### Recidivism in Sexual Offenses

How likely are sexual offenders to offend again? According to the Bureau of Justice Statistics, released sex offenders were more than three times more likely than other released prisoners to be arrested for rape or sexual assault.<sup>533</sup> Given many sexual offenses, particularly those against children, go unreported and undetected, this is likely just the tip of the iceberg in terms of repeat sexual offending.

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<sup>533</sup> *Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-14)*. Mariel Alper and Matthew R. Durose (2019), Bureau of Justice Statistics. (NCJ 251773).

<sup>534</sup> Sex offender registration also covers offenders who commit sexual offenses against adults, not just children.

<sup>535</sup> See 73 FR 38044-45.

<sup>536</sup> In 2021, the National Center for Missing & Exploited Children's CyberTipline received 29,397,681 reports about online child sexual exploitation, broken down as follows: Child Pornography (possession, manufacture, and distribution) – 29,309,106; Online Enticement of Children for Sexual Acts – 44,155; Child Sex Trafficking – 16,032; Child Sexual Molestation – 12,458; Misleading Words or Digital Images on the Internet – 5,825; Unsolicited Obscene Material Sent to a Child – 5,177; Misleading Domain Name – 3,304; Child Sex Tourism – 1,624. See <https://www.missingkids.org/gethelpnow/cybertipline>.

## Voice in the Community

*From the Remarks of United States Marshals Service Deputy Director David L. Harlow on the 10-year Commemoration of the Adam Walsh Act, SMART Symposium, July 27, 2016:*

“Registration provides information which allows people to protect themselves, their children and their neighbors. It also provides a critical tool which helps law enforcement respond to sex crimes. Registration has been associated with, or led to, [a] widespread increase in public safety... For example:

- In February 2014, a former sheriff’s deputy in Colorado saw a man who appeared to be watching children from his car, which was parked outside an elementary school. The former deputy recognized the man from his image on the sex offender registry. The registrant, who had a previous conviction for sexually assaulting children, was interviewed by police. They determined that he was there looking for the “perfect” girl to lure into his car. He was arrested.
- Earlier this month, in Ohio, a law enforcement officer recognized a registered sex offender who was driving a car full of children in a parade. Investigation found he had been left in charge of those children for several days as their “adult mentor” was prepping for the parade. He was a child sex offender, on parole, with a no-contact order for children. He was arrested.

“Similar stories have emerged from across the nation... It is unlikely that these crimes would have been detected without the registry.

“We will rarely know the names of the near victims saved by registries, and this is precisely the point. The registry helps the public identify and respond to risk; it offers a way to intervene before plans toward sexual assault are carried through. In those cases, we do not have to learn a new name like Megan Kanka, Jacob Wetterling, or Adam Walsh. As the above list of arrests show, the registry has helped in the detection of crime. From a law enforcement perspective, and for much of the public, that makes registries extremely valuable.”

The registration and notification mechanisms would not be effective if a registered sex offender could simply disappear from the purview of the registration authorities by moving from one jurisdiction to another, or if the registration and notification requirements could be evaded by moving from a jurisdiction with an effective program to another jurisdiction that required little or nothing in terms of registration and notification. Congress has accordingly created a cooperative federal–state system in which sex offender registration and notification are primarily carried out and enforced through the programs of the individual states and other non-federal jurisdictions (D.C., the U.S. territories, and Indian tribes), but with minimum national standards for these programs, and with federal assistance and enforcement elements that encourage, support, and leverage the programs.<sup>537</sup>

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<sup>537</sup> See 73 FR 38045.



The federal Sex Offender Registration and Notification Act (SORNA), and related guidelines issued by the Attorney General, establish the minimum national standards for sex offender registration and notification, with funding conditions and assistance that encourage implementation of these standards. The Justice Department’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office directly assists and assesses the registration jurisdictions’ implementation of SORNA. It also provides a variety of technical and technological tools that facilitate the jurisdictions’ implementation efforts and enable them to share sex offender information. The Dru Sjodin<sup>538</sup> National Sex Offender Public Website ([www.NSOPW.gov](http://www.NSOPW.gov)), administered by the SMART Office, provides access through a single national site to the information on the registration jurisdictions’ public sex offender websites. The National Sex Offender Registry (NSOR), administered by the FBI, compiles information about sex offenders from the registration jurisdictions and makes it available to law enforcement on a nationwide basis. The U.S. Marshals Service investigates, locates, and apprehends sex offenders who have failed to comply with registration requirements throughout the country. Under a federal criminal provision, 18 U.S.C. § 2250, sex offenders who violate SORNA’s registration requirements can be federally prosecuted, if circumstances supporting federal jurisdiction exist.

Building on these efforts, Congress and the federal government can and should do more to meet the threats against children that the sex offender registration and notification system is designed to address.

## **Variation in SORNA Implementation among Jurisdictions**

### *Registration*

Since its enactment in 2006, SORNA has influenced the registration requirements adopted in jurisdictions across the United States, with most of these jurisdictions meeting many of the minimum national standards. Despite the overall progress in enacting SORNA’s standards, variations remain in the implementation of SORNA across the country. As of July 2021, 158 jurisdictions (18 states, 4 territories, and 136 federally recognized tribes) out of 213 potential SORNA registration jurisdictions had substantially implemented SORNA’s requirements.<sup>539</sup> Many of the states that have not yet substantially implemented SORNA’s requirements have adopted most of them.<sup>540</sup> States and territories that do not meet SORNA’s substantial implementation requirements are subject to an annual mandatory reduction in federal justice assistance funding. However, these jurisdictions may apply to have those withheld funds reallocated to use for the sole purpose of furthering SORNA implementation. Jurisdictions have

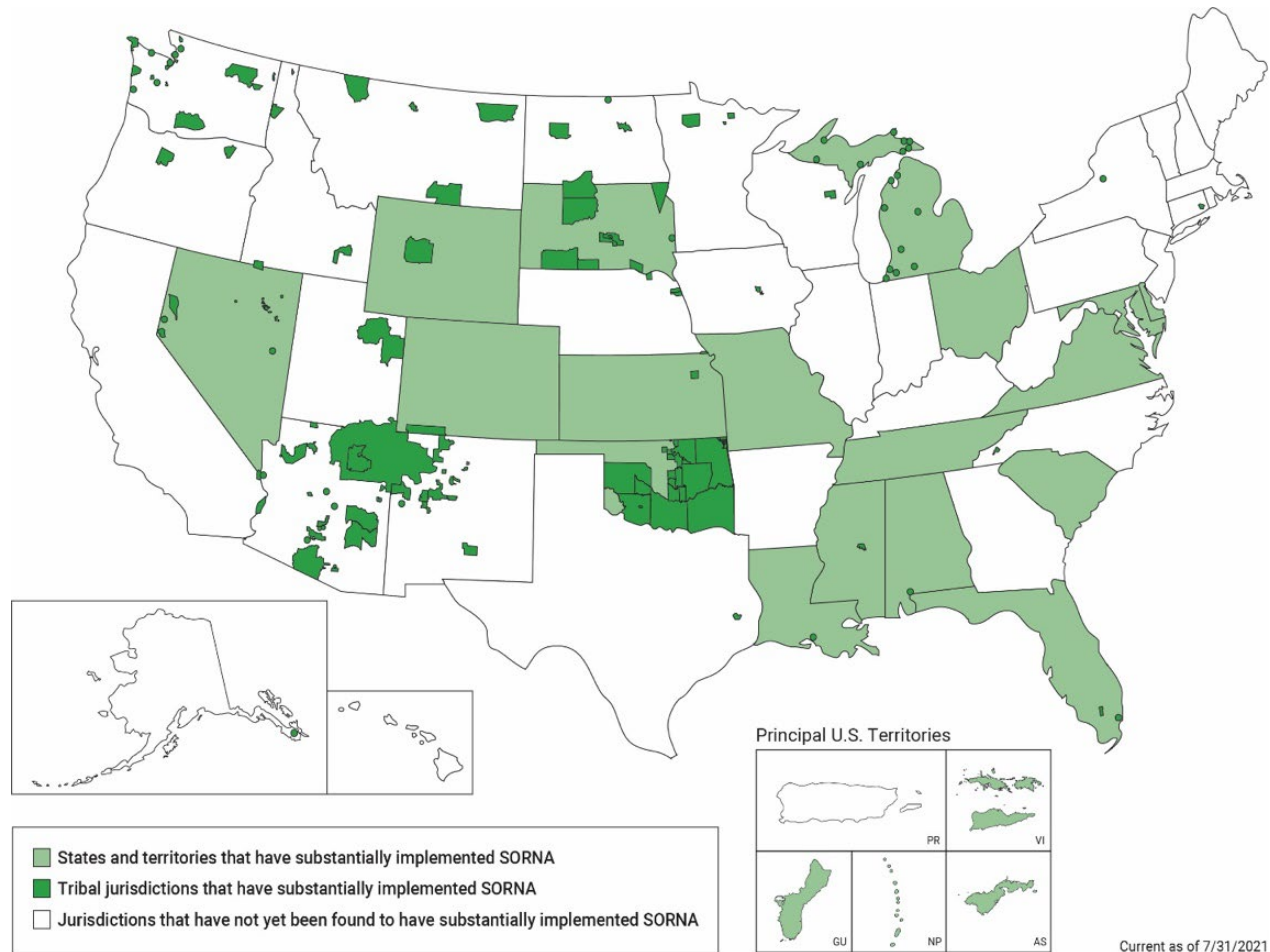
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<sup>538</sup> First established in 2005 as the National Sex Offender Public Registry (NSOPR), NSOPW was renamed by the Adam Walsh Child Protection and Safety Act of 2006 in honor of 22-year-old college student Dru Sjodin of Grand Forks, North Dakota, a young woman who was kidnapped and murdered by a sex offender who was registered in Minnesota. For more information, visit <https://www.nsopw.gov/en/About>.

<sup>539</sup> See Figure 1.

<sup>540</sup> See National Institute of Justice, *Tracking Individuals Who Commit Sex Offenses: Federal Law, Resources Have Led to Marked Improvement of State Registries, But More Work is Needed* (November 13, 2020) (“At least half the states met implementation thresholds for 13 of the 14 SORNA standard areas; 75% of the states met the thresholds for at least nine areas; and 92% of the states met them for at least half of the SORNA areas.”).

used the reallocated funds to improve registry software, purchase hardware and other registration-related equipment, and support registry personnel.



*States, Tribes, and Territories that Have Substantially Implemented SORNA*

*Forum shopping refers to the practice of choosing the court or jurisdiction that has the most favorable rules or laws for the position being advocated.*

Nonetheless, about half of the states do *not* meet the SORNA standards for offender in-person appearances and verification. These standards include offense-based tiering that affects the required frequency for updating registration information and the duration of registration. Hence, the information in some states’ sex offender registries may not be sufficiently verified and kept up to date, and the public safety benefits of registration and notification may be lost after relatively short

registration periods. States that have not yet implemented SORNA’s requirements may instead use different risk assessment methods to determine an offender’s classification and related registration responsibilities, ranging from judicial projection of the likelihood to reoffend, to assessing risk by actuarial methods, to local sheriffs making discretionary ad hoc determinations. The lack of uniformity across jurisdictions in meeting SORNA’s standards for tiering and classifying offenders can deny law enforcement and the public information needed for the protection of children and can allow “forum shopping” by sex offenders to avoid more robust

registration requirements – or even registration altogether. Without nationwide implementation of SORNA, there will continue to be gaps and disparities that sex offenders can exploit, to the detriment of children’s safety.

### *Notification*

As with registration requirements, jurisdictions vary on the implementation of SORNA’s notification requirements. Consequently, there continues to be variation in the extent to which states inform the public about the presence of released sex offenders in their communities and many states have remaining work to bring their notification programs up to the national standards.

All 50 states, D.C., five U.S. territories, and 136 federally recognized tribes have public sex offender websites that make information about registered sex offenders available to the public. All public sex offender websites are linked to the National Sex Offender Public Website (NSOPW), a national site mandated by SORNA and maintained by the SMART Office. NSOPW is an unprecedented public safety resource that provides the public with access to sex offender data nationwide. It is the only U.S. government website that links public state, territorial, and tribal sex offender websites in one national search site. Despite this remarkable achievement in providing public access, the efficacy of the NSOPW is dependent on the adequacy of the information included in the registration jurisdictions’ websites that feed into it.

### **Importance of Notification**

On July 29, 1994, in Hamilton Township, New Jersey, 7-year-old Megan Kanka entered the house of her neighbor, Jesse Timmendequas, a convicted sex offender, in the hope of seeing his puppy. Once she was inside, Timmendequas sexually penetrated her and killed her by strangulation and suffocation.

Timmendequas was living across the street from Megan and her family with two other sex offenders he had met while imprisoned. Timmendequas’s earlier crimes included attempted aggravated sexual assault of a 5-year-old girl in 1979 and attempted sexual contact in 1981 in which he choked a 7-year-old girl unconscious and left her for dead.

“We knew nothing about him,” said Megan’s mother, Maureen Kanka, regarding Timmendequas. “If we had been aware of his record, my daughter would be alive today.”

In the wake of the tragedy, the Kankas sought to have local communities warned about sex offenders in their areas. In 1996, Congress enacted Megan’s Law (Pub. L. 104-145) to encourage States to protect children by informing the public about sex offenders in the community.

Sex offender notification laws have evolved both at the state and federal levels since that time, including through the enactment of the Sex Offender Registration and Notification Act (SORNA), which was Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248). SORNA was enacted to close potential gaps and loopholes that existed under

prior laws, and to strengthen the nationwide network of sex offender registration programs. In 2016, Congress enacted International Megan’s Law (Pub. L. 114-119), also named for Megan Kanka, whose purposes included addressing known child-sex offenders who travel internationally.

Discrepancies remain among the states not only in the amount and type of registration information that is publicly displayed for each offender but also in whether a sex offender is publicly posted at all. For example, as of July 2021, 23 states fell short of meeting the minimum national standards for community notification, including publicly posting all offenders and registration information required under SORNA. In states that fall short of the SORNA standards, as few as 2% or 3% of registered sex offenders may be posted.<sup>541</sup> An acute concern is that many agencies that work with children or other vulnerable populations rely on the public sex offender websites as part of their background check screening. NSOPW is often utilized as a user-friendly and centralized method to search all public sex offender websites. But the information can only be as useful as it is thorough. Running an NSOPW search for a person who resides in a state that does not publicly post 97 to 98% of all registered sex offenders is, at best, of limited value.

Ultimately, these critical problems must be resolved by all jurisdictions implementing the requirements of SORNA. Some states have cited a lack of funding as contributing to their inability to meet the national standards, whereas other states point to legislative roadblocks or a lack of political will by state and local politicians. As with SORNA’s registration requirements, without nationwide implementation of SORNA’s community notification standards, there will continue to be gaps and disparities that sex offenders can exploit.

### **SORNA Enforcement**

If a sex offender wishes to commit more crimes against children, unimpeded by the safeguards of registration and notification, relocating to another state and failing to register there can be an attractive means to that end. Location and apprehension of these absconding offenders by the U.S. Marshals Service, and federal prosecution under 18 U.S.C. § 2250 in appropriate cases, can foil their efforts to evade registration and reoffend.

While many registration violation cases are successfully prosecuted under 18 U.S.C. § 2250, the extent of prosecution varies among districts and certain features of existing law create obstacles for the effective use of 18 U.S.C. §2250. Litigation challenges include:

<b>5 Key SORNA Litigation Challenges</b>	
1	<b>Difficulties in classifying and prosecuting sex offenders.</b> There are offenders who have committed serious sex offenses against children and violated state registration laws. It is difficult, however, to classify their crimes and prosecute them federally because of differences in the definition of state sex offenses.

<sup>541</sup> <https://sexoffenders.oregon.gov/Faq> (reporting as of July 1, 2021, that only 1,062 sex offenders out of 31,651 are publicly posted).

2	<b>Sex offenders' claims that they are not liable for SORNA violations.</b> Some offenders assert they are not liable for SORNA violations if they committed their sex offenses before SORNA's enactment, or if they committed their registration violations in jurisdictions that have not fully implemented SORNA.
3	<b>Issues prosecuting SORNA violations short of a complete failure to register.</b> There have been difficulties in prosecuting sex offenders who fail to appear periodically to verify their registration information as SORNA requires, or sex offenders not reporting lodging at places away from their residences, where they may travel to sexually abuse children with a lesser likelihood of detection.
4	<b>Claims by sex offenders that SORNA is unconstitutional.</b> Many sex offenders have alleged that SORNA is unconstitutional because it unfairly holds them liable for violating registration requirements of which they are unaware or registration requirements they assert are impossible for them to comply with.
5	<b>Venue considerations.</b> It may be necessary that a prosecution under 18 U.S.C. § 2250 be brought in the state to which a sex offender absconds, as opposed to the state of origin which reported the offender's disappearance to the U.S. Marshals Service. <sup>542</sup>

As discussed below, there are potential legislative reforms and regulatory reforms that would resolve or help with all of these problems.

### International Issues

Offenders who have sexually abused or exploited children, and who wish to do more of the same, in many cases travel or relocate to foreign countries where law enforcement is (or is perceived to be) weaker, where child victims may be more readily available, where children are more vulnerable, and where they are free of the registration and notification safeguards to which they are subject in the United States.<sup>543</sup>

Congress has begun to address this global threat to children by enacting International Megan's Law (IML) in 2016 (Pub. L. 114-119), although gaps remain. The IML reforms include:

- amending SORNA and 18 U.S.C. § 2250 to require sex offenders to report intended international travel with federal criminal prosecution authorized for violations;
- providing statutory authorizations and procedures for U.S. authorities to notify foreign states regarding sex offenders' travel to their territories; and
- requiring that U.S. passports issued to U.S. citizens that are registered sex offenders against children bear markings that identify them as such, after the Angel Watch Center

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<sup>542</sup> However, the jurisdiction of the initial conviction often has the most information about the offender, providing more interest in prosecuting the offender as well as often making it easier for USMS to gather the information needed to prosecute an 18 U.S.C. § 2250 offense. Circuit courts have divided as to whether prosecution can be legally brought in an offender's departure district.

<sup>543</sup> See 86 FR 69856.

(AWC) has confirmed to the Department of State that the individual is covered by IML.<sup>544</sup>

The efficacy of these reforms, however, depends on their effective implementation and, in some contexts, on the adoption of supplementary legislative or regulatory measures. Nothing in IML prevents the Department of State from including questions about sex offender registration status in passport application forms, but IML does not *require* that such information be sought, which drastically reduces the effectiveness of the law. In the first three years of IML implementation, only 85 passport applicants self-reported this information on passport applications, while independent checks by AWC identified several thousand more offenders covered by IML who never disclosed their sex offender status.<sup>545</sup> By 2020, only one percent of the estimated number of covered offenders had been identified.

### Angel Watch Center

Operation Angel Watch was created to identify and target individuals who have been convicted of sexual crimes against children, and who are traveling in foreign commerce, in a proactive effort to reduce the risk of U.S. persons engaging in extraterritorial child sexual abuse. AWC helps enable foreign countries to make fully informed decisions relating to admissibility, border inspections, surveillance or investigative measures, or any other action deemed appropriate, as well as increasing information sharing and encouraging foreign countries to provide the U.S. with notifications when foreign nationals convicted of sexual crimes against children in their countries are traveling to the U.S.

In addition to incorporating a question about sex offender registration in passport applications, increased automation and connectedness across systems would help to ensure accuracy and completeness of passport marking as envisioned in IML. Implementation of the IML passport marking protections hinges on confirmation by AWC that an individual is a “covered offender” – but since the implementation of IML in 2017, numerous offenders who travel internationally and should be subject to passport marking have not been referred to AWC for review. Integration of sex offender registration information into automated checks of passport applications would help to identify potentially covered offenders, flag them for review by AWC, and confirm the accuracy of responses to the passport application question if it were added.

The effectiveness of the requirement that sex offenders report international travel depends largely on states and other registration jurisdictions incorporating this requirement into their registration programs. While most states have adopted such a requirement or inform

sex offenders of the federal law requirement to report international travel, some states have not yet done so. All jurisdictions should implement this critical SORNA requirement in their sex offender registration programs and ensure that their registration forms consistently give sex offenders notice of the international travel reporting requirement. Criminal liability under 18

<sup>544</sup> For purposes of the IML passport marking requirement, the current definition of a covered sex offender is an individual who: (A) is a sex offender, as defined in 34 U.S.C. §§ 21502(3), 21503(f); and (B) is currently required to register under the sex offender registration program of any jurisdiction. *See* 22 U.S.C. § 212b.

<sup>545</sup> The AWC keeps a list of all covered sex offenders that have been vetted and found to be required to have the IML endorsement, as well as by what means they were identified. From when the State Department began marking passports in fiscal year 2018 through fiscal year 2020, AWC operations identified 4,609 applications that should have been covered by IML.

U.S.C. § 2250(b) depends on a sex offender knowingly failing to provide international travel information as required by SORNA.

Congress did not fully specify the international travel reporting requirement by statute, but rather authorized the Attorney General to flesh out matters of procedure and detail – such as how far in advance sex offenders must report intended international travel, to give U.S. authorities adequate time to conduct any warranted investigation and to notify the responsible authorities in the destination country prior to the sex offender’s arrival. The absence of a complete set of specifications regarding how and when sex offenders are to comply with the international travel reporting requirements can create difficulties in offender compliance as well as in prosecuting sex offenders for violating these requirements. As discussed below, a recently adopted regulatory reform addresses this problem.

Since the IML passport marking requirement is limited to sex offenders required to register in a U.S. jurisdiction, it may be avoided by a sex offender retaining a U.S. passport but moving to a foreign country, which puts the offender outside the scope of the registration requirements of domestic U.S. jurisdictions. As discussed below, this problem can be addressed through an appropriate legislative amendment.

#### Case Story: *United States v. Pendleton*<sup>546</sup>

For decades, Thomas S. Pendleton traveled throughout the United States and to foreign countries and sexually abused children in the places he went. Pendleton was convicted in 1981 in Michigan for molesting an 11-year-old while serving as a church camp counselor at the victim’s church. He was convicted in 1992 for sexual abuse of a 12-year-old boy on biking trips in Virginia and New Jersey. He was convicted in the Republic of Latvia of sexually abusing a 9-year-old child and a 13-year-old child between June and November 2001. After serving his sentence for those crimes, he was deported to the United States on March 20, 2005.

Pendleton was then registered as a sex offender in Washington, D.C. On April 29, 2005, he informed D.C. that he was moving to Delaware and said that he had been in contact with the Delaware authority confirming his responsibilities there. He never registered as a sex offender in Delaware.

Pendleton traveled to Germany in November 2005 and sexually abused a 15-year-old boy, whom he had befriended, on a bike trip. After serving his prison sentence for that offense, he was deported to the United States and returned on January 21, 2008.

Pendleton traveled about the United States, not registering anywhere, and ultimately returned to Delaware. He was arrested by the U.S. Marshals Service in Wilmington, Delaware, on March 10, 2008, for failing to register as required by SORNA, in violation of 18 U.S.C. § 2250. Execution of a search warrant on an email account Pendleton used showed that in late January 2008 he had researched sex offender registration requirements to determine that he was not

<sup>546</sup> *United States v. Pendleton*, 636 F.3d 78 (3d Cir. 2011); *United States v. Pendleton*, 658 F.3d 299 (3d Cir. 2011); *Pendleton v. United States*, 2016 WL 402857 (D. Del. 2016); [www.justice.gov/opa/pr/serial-sex-offender-sentenced-30-years-prison-sex-tourism-and-failure-register-charges](http://www.justice.gov/opa/pr/serial-sex-offender-sentenced-30-years-prison-sex-tourism-and-failure-register-charges).

required to register under Delaware law at that time. At the time of his arrest, Pendleton had a one-way airplane ticket to travel on March 12, 2008, to Prague, Czech Republic.

Pendleton was convicted of extraterritorial child sexual abuse under 18 U.S.C. § 2423 for the illicit sexual conduct in Germany, for which he was sentenced to 30 years of imprisonment, and for the failure to register offense under 18 U.S.C. § 2250, for which he was sentenced to a concurrent term of 10 years. He remains in the custody of the Federal Bureau of Prisons with a projected release date of October 1, 2033.

## Significant Developments

There have been several key developments relating to sex offender registration in recent years. Legislatively, the enactment of International Megan’s Law in 2016 marked an important advance in the evolution of the global system for protecting children against sex offenders who travel internationally. There have also been several Supreme Court decisions in recent years affecting sex offender registration and notification. In *Nichols v. United States*, 578 U.S. 104 (2016), the Court held that a sex offender could not be held liable under 18 U.S.C. § 2250 for leaving the state in which he was registered (without informing the state) and relocating to the Philippines but noted that the international travel reporting reforms of International Megan’s Law would address the problem going forward. In *Gundy v. United States*, 139 S. Ct. 2116 (2019), the Court rejected a constitutional challenge alleging that Congress could not validly empower the Attorney General to specify the scope of application of SORNA’s requirements, including to sex offenders whose convictions predate SORNA’s enactment.

The Department of Justice’s SMART Office carries forward the work of SORNA implementation and strengthening sex offender management. Noteworthy developments include:

- **SMART Symposium** – The SMART Office hosts National Symposia on Sex Offender Management and Accountability, most recently on July 18-19, 2019, in Chicago. This two-day event brought together criminal justice professionals who investigate and prosecute sex offenses and register and monitor sex offenders, as well as those providing victim support services. Highlights of the 2019 symposium included a case study on a cold case solved with genetic genealogy, tactics to identify child sex trafficking, and a session on psychopathic sex offenders. The symposium provided almost 600 law enforcement officers, prosecutors, sex offender registry officials, victim advocates and criminal justice experts information on the latest tools and techniques vital to combating sexual assault and child sexual abuse. The symposium sessions focused on four topic areas: information for prosecutors; tools for registrars and jurisdictional registry officials; interdiction and tracking of sex offenders; and research on sex offender behavior and sex offender registration and notification laws.
- **Tribal Access Program** – The Justice Department’s expansion of direct access to the FBI’s NSOR in the Tribal Access Program (TAP) has been critical to enable tribes to meet SORNA standards. Direct access allows tribes participating in TAP and implementing SORNA to use their Tribe and Territory Sex Offender Registry System (TTSORS) to submit required sex offender data and gain access to NSOR, giving tribal



law enforcement information necessary to investigate sex offenses and share sex offender information with other jurisdictions across the country. The TTSORS-NSOR interconnection, developed by SMART, facilitates timely information sharing between tribal sex offender registries and other registries and law enforcement nationwide.

- **NSOPW** – In July 2019, SMART unveiled a refresh of the National Sex Offender Public Website (NSOPW) with expanded search capacity, improved navigation, created a mobile app, and updated safety and education information. NSOPW averages 5 million searches a month.

The landscape and discussion surrounding sex offender registration continue to evolve. In the 2020 “Information Sharing and the Role of Sex Offender Registration and Notification, Final Technical Report,” supported by the National Institute of Justice, three general developments in state implementation of SORNA were identified.<sup>547</sup> These are (i) a growing registrant population, broadened data elements and triggering events requiring updating and verification, and an increase in interjurisdictional transactions, (ii) transition to newer and more robust technological platforms, and (iii) advances in a “culture of information sharing,” both interjurisdictionally and within jurisdictions.

However, the American Law Institute, in September 2022, adopted a revision of the Model Penal Code, Article 213, concerning sexual assault and related offenses. The revision proposes detrimental changes in sex offender registration and public notification, such as:

- Prohibiting public notification regarding registered sex offenders. *See* §§ 213.11H(1)(a), .11I(3)(a). This would terminate the public sex offender websites, existing in all states, which parents rely on for the safety of their children – *see* the Megan Kanka case described above – and which child-serving organizations rely on in screening employees and volunteers.
- Restricting and penalizing the disclosure of information from the sex offender registries even to victims. For example, a law enforcement officer could be imprisoned for up to five years for telling the parent of a sexually abused child, or a rape victim of any age, that the offender has been released from prison and is living across the street from the victim. The victim could be informed that the offender is living in the same county – but she could be imprisoned for up to five years for sharing the information outside of her household. *See* § 213.11H(1)(a)(ii), (b)(ii), (2)(a).
- Severely curtailing law enforcement’s current uses of sex offender registration information to prevent, detect, and investigate sex offenses, including sexual abuse and exploitation of children. This is accomplished by prohibiting the sharing of registration information with other law enforcement agencies, except for information about a specific sex offender requested to aid in investigating a specific offense. *See* § 213.11H(1)(a)(i).
- Prohibiting registration authorities from accepting or recording key information from sex offenders, such as fingerprints, telephone numbers, and email addresses. *See* § 213.11D(1), (5). This would make administration of the sex offender registries and communication with the registrants difficult or impossible, and preclude the normal uses

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<sup>547</sup> <https://www.ojp.gov/pdffiles1/nij/grants/254680.pdf> (pp. 64-66)

of sex offender registration information in preventing, detecting, and investigating online child sexual abuse and exploitation.

- Excluding many serious sex offenses, including sex offenses against children, from the offenses for which registration is authorized. *See* § 213.11A(1)(d). Sexual assault by extortion, by fraud, in the absence of consent, or of a legally restricted person (in custody or under supervision) would not be registrable offenses. *See* §§ 213.3(3), .4, .5, .6. Sexual assault of a minor and fondling a minor would not be registrable offenses unless the offender is at least 10 years older than the victim or the victim is under 12, and offensive sexual contact with a minor would not be a registrable offense. *See* § 213.8(1), (4), (6). Promoting, patronizing, and facilitating sex trafficking, including in cases involving child victims, would not be registrable offenses. *See* § 213.9(3)-(5).
- Capping the duration of registration at 15 years, regardless of the seriousness of the sex offense and the offender’s criminal history, and allowing registration to be terminated at any time. *See* §§ 213.11F, .11 J.
- Making it easy for sex offenders to evade registration requirements by moving to another jurisdiction. Registration authorities could not inform their counterparts in other jurisdictions, in which the sex offender is not already registered, about the offender’s relocation. *See* §§ 213.11D(6), .11H. The requirement to register would terminate if the destination jurisdiction defined the relevant sex offense more narrowly. *See* § 213.11A(2)(a), (c)-(d). For example, a sex offender convicted of sexually abusing a six-year-old under a statute prohibiting sexual acts with children below the age of 17 would not have to register after moving to a jurisdiction whose corresponding offense prohibits sexual acts with children below the age of 16.
- Thwarting the international tracking and notification system established by International Megan’s Law through new prohibitions of collecting and sharing information necessary for the system’s operation. For example, registration authorities would be barred from accepting or recording information from sex offenders about intended international travel. *See* § 213.11D(1), (5).

These changes are alarming and have been met with grave concern by organizations and individuals concerned with the safety of children and the security of the public against sexual abuse and exploitation. They pervasively conflict with the national standards for sex offender registration and notification enacted by Congress in SORNA. If adopted, they would undermine the national system of sex offender registration and notification under SORNA with heavy costs to public safety. The Department of Justice published final regulations in 2021, at 86 FR 69856, which fully articulate sex offenders’ registration requirements under SORNA. These regulations will facilitate compliance with and enforcement of all of SORNA’s requirements.

## **Strategic Response**

Short-Term Goals	Long-Term Goals
<p><b>Implement SORNA Regulations and Support Legislative Amendments:</b> The final SORNA rule, published at 86 FR 69856, should be fully utilized. Congress should enact legislative amendments to strengthen sex offender registration and notification, including authorizing federal prosecution of state law registration violations committed under circumstances supporting federal jurisdiction, and authorizing the extension of passport marking to U.S. sex offenders who live abroad.</p>	<p><b>Enhance SORNA and IML Enforcement:</b> The Department of Justice will implement and utilize the regulatory and legislative reforms to enforce sex offender registration requirements through prosecution under 18 U.S.C. § 2250. The Department of State and the Department of Homeland Security will implement passport marking for U.S. child sex offenders who live abroad.</p>
<p><b>Create an award program for SORNA champions:</b> As a further incentive for SORNA implementation, an annual award program should be authorized and funded to recognize jurisdictions, officials, organizations, and individuals across the country that have promoted public safety through sex offender registration and notification or made significant strides in SORNA implementation.</p>	<p><b>Secure implementation of as many SORNA elements as possible by as many jurisdictions as possible:</b> The Department of Justice and the SMART Office will promote and support effective sex offender registration, notification, and management through collaboration with other federal, state, tribal, territorial agencies and jurisdictions, and with non-profit and nongovernmental organizations. The SMART Office will continue to provide training, funding, and a myriad of resources to support SORNA implementation efforts. All jurisdictions that have not substantially implemented SORNA should work diligently toward that objective, and those that have substantially implemented should work to maintain their programs' consistency with SORNA.</p>
<p><b>Continue implementing the Tribal Access Program:</b> Many SORNA tribes still don't have access to the FBI's criminal justice information systems, limiting their ability to screen for offenders in their jurisdiction and inhibiting cross-jurisdictional information sharing about mobile offenders. Additional funding is needed to continue implementing TAP and ensure all SORNA tribes have access to the full suite of intelligence about sexual offenders in their area.</p>	<p><b>Assess strategies to further automate the registration process:</b> As technology advances, avenues should be explored to automate as much of the registration process as possible, especially for offenders that move from one jurisdiction to another, so that communities and law enforcement have access to the most up-to-date and accurate registration information possible.</p>

<p><b>Strengthen the implementation of International Megan’s Law to better track sex offenders’ international travel:</b> The Department of State will add a question to passport applications to help identify sex offenders who are subject to the passport marking requirement.</p>	<p><b>Use automation to improve compliance with International Megan’s Law:</b> The automated checking system for passport applications will be enhanced to help identify sex offenders who are subject to the passport marking requirement.</p>
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*Partnerships, Training, and Other Assistance*

Many federal agencies – including the U.S. Marshals Service, the FBI, the Bureau of Indian Affairs, Interpol Washington-U.S. National Central Bureau, the Department of Homeland Security, the Department of State, and the Department of Defense – must continue to collaborate with state, tribal, and local partners on issues relating to sex offender registration. Continuation of these partnerships is vital to the ongoing success of SORNA implementation at the state, tribal, and territorial levels. Likewise, the Department of Justice, including its SMART Office, must continue to collaborate, strengthen, and broaden relationships with non-profit and nongovernmental organizations, such as the National Center for Missing & Exploited Children, to extend their reach, bolster education and advocacy efforts, and address issues relevant to sex offender registration and notification. Grant-funding should be created to fund and encourage established, proven programs that educate the public on sex offender registration, including how to leverage the information available to them on public registries to protect their children. The SMART Office offers myriad resources and training on SORNA implementation issues and administers grant funding to support SORNA implementation efforts.<sup>548</sup>

*Legislative and Regulatory Reforms*

The SORNA regulations, published at 86 FR 69856, should be fully utilized. The rule resolves many issues that can hinder effective federal enforcement of sex offender registration requirements. Among other measures, the rule does the following: (1) it clarifies that SORNA’s registration requirements apply to *all* sex offenders – regardless of when they committed their sex offenses and regardless of where they committed their registration violations – and that 18 U.S.C. § 2250 prosecutions may be premised on any type of SORNA violation; (2) it explains that SORNA and 18 U.S.C. § 2250 do not hold sex offenders liable for violating registration requirements of which they are unaware or for failing to do the impossible; (3) it requires sex offenders to inform a jurisdiction that they are leaving the jurisdiction prior to departure, supporting venue to prosecute violations in the jurisdiction in which a sex offender was registered prior to absconding; and (4) it specifies the timing requirements for, and clarifies other aspects of, international travel reporting by sex offenders.

Congress should amend 18 U.S.C. § 2250 to provide liability if sex offenders violate the state registration requirements of the jurisdiction they are in, under circumstances supporting federal jurisdiction. Currently, proving that state sex offenders violated SORNA can require difficult judgments whether their state offense was within descriptive categories set forth in SORNA’s offense-coverage or “tiering” provisions, which affect the requirement to register or the duration

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<sup>548</sup> See [www.smart.ojp.gov](http://www.smart.ojp.gov).

of registration.<sup>549</sup> Consequently, prosecution under 18 U.S.C. § 2250 may be difficult or impossible because of marginal differences in the definition of state sex offenses, even if there is no question that the sex offender was convicted of a serious state sex offense against a child and later violated state registration laws. The problem would be substantially ameliorated by allowing prosecution of state law registration violations by sex offenders under 18 U.S.C. § 2250, where grounds for federal jurisdiction exist.

Additionally, legislative and administrative changes are needed to fully effectuate the reforms of International Megan’s Law (IML). All jurisdictions that have not yet done so should incorporate in their sex offender registration programs the IML international travel reporting requirements, and all jurisdictions should consistently notify their registrants of these reporting requirements. The SORNA regulations will facilitate federal enforcement of the international travel reporting requirements by fully articulating these requirements. To help identify sex offenders who are subject to the IML passport marking requirement, the Department of State should ask passport applicants about their sex offender registration status, and the automated pre-screening system for passport applicants should be enhanced with sex offender registration information to facilitate referral of potentially covered offenders to AWC. If a sex offender misrepresents his sex offender registration requirement on the passport application, he can be charged with making a false statement under 18 U.S.C. § 1001. As discussed above, since the IML passport marking requirement for sex offenders against children is currently limited to sex offenders required to register in a U.S. jurisdiction, the marking requirement can be avoided by a sex offender who retains his U.S. passport but moves to a foreign country, which puts him outside the scope of the registration requirements of domestic U.S. jurisdictions. Congress should address this issue by strengthening the IML legislation to require passport marking of sex offenders living abroad if (i) they would be required to register under SORNA if they returned to the United States, or (ii) they would be required to register under the law of any U.S. jurisdiction in which they were previously required to register if they returned to that jurisdiction.

Finally, Congress and the states must *reject* legislative proposals reflecting recommendations that conflict with the SORNA national standards for sex offender registration and notification – such as the American Law Institute’s “Model Penal Code: Sexual Assault and Related Offenses.” If adopted, proposals of this nature would greatly decrease the availability of information to law enforcement and the public about released sex offenders in the community and weaken the sex offender registration and notification systems that protect children and adults from sexual abuse and exploitation.

### *Funding/Resources*

The Adam Walsh Act Implementation Grant program provides funding to support grantee registration jurisdictions in one or more of their sex offender registration and notification activities. SORNA also includes a federal justice assistance funding reduction for states that have

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<sup>549</sup> See, e.g., *United States v. Montgomery*, 966 F.3d 335 (5<sup>th</sup> Cir. 2020); *United States v. Walker*, 931 F.3d 576 (7<sup>th</sup> Cir. 2019); *United States v. George*, 223 F.Supp.3d 159 (S.D.N.Y. 2016); *United States v. Salazar*, 2021 WL 2366086 (D. Or. 2021); *United States v. Torchia*, 2021 WL 2169484, 2166863 (N.D. Ga. 2021); *United States v. Laney*, 2021 WL 1821188 (N.D. Iowa 2021).

not yet substantially implemented SORNA. But those jurisdictions may recapture the designated funds to work specifically on furthering their implementation of SORNA, and most continue to request that reallocation. Jurisdictions that have not yet substantially implemented SORNA should continue to be encouraged to utilize the available grants and recapture the reduced funding to enhance their registration and notification programs and meet the minimum national standards.

## Survivors, Caretakers, and Access to Survivor Care

According to the Centers for Disease Control and Prevention (CDC), approximately 1 in 4 girls and 1 in 13 boys experience sexual abuse at some point during childhood.<sup>550</sup> NCMEC statistics also reflect increasing volumes of child sexual exploitation. Between 2020 and 2021, reports of potential child sexual exploitation to the National Center for Missing & Exploited Children's (NCMEC) CyberTipline increased by 35%.<sup>551</sup>



Centers for Disease Control and Prevention, Preventing Child Sexual Abuse

Child sexual exploitation is a significant but preventable adverse childhood experience (ACE) and a public health problem that can affect how a person thinks, acts, and feels over a lifetime, resulting in short- and long-term physical and mental/emotional health consequences. The stress and trauma that result from ACEs, including child sexual abuse and exploitation, can damage a child's brain and severely interfere with their health and development, with effects lasting well into adulthood. There are decades of research linking ACEs to an increased risk of developing chronic diseases and behavioral challenges, including obesity, autoimmune disease, diabetes, heart disease, poor mental health, alcoholism, and even reduced life expectancy by as much as 20 years.<sup>552</sup> Survivors of child sexual abuse also attempt suicide at rates that are six times higher for men and nine times higher for women.<sup>553</sup>

Child sexual abuse also increases a person's risk for future revictimizations. Women survivors are 2 to 13 times more susceptible to future sexual victimization, and male and female survivors have twice the risk of suffering non-sexual intimate partner violence.<sup>554</sup>

<sup>550</sup> <https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html>

<sup>551</sup> <https://www.missingkids.org/gethelpnow/cybertipline#bythenumbers>

<sup>552</sup> <https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html>

<sup>553</sup> *Id.*

<sup>554</sup> *Id.*

Despite the prevalence of child sexual exploitation, it is well-known that child sexual exploitation incidents are significantly underreported.<sup>556</sup> One study indicates that almost 90 percent of child rape incidents go unreported.<sup>557</sup> Consequently, victim identification of child sexual exploitation largely relies on self-disclosure. Research on complex trauma and the dynamics of child sexual exploitation indicate most victims delay disclosure of abuse until adulthood.<sup>558</sup> Age, gender, intellectual ability, fear/shame, embarrassment, cultural norms/race, family dysfunction, relationship to the perpetrator, and nature of the abuse impact the ability or willingness of victims to disclose abuse. As a result, many survivors of child sexual abuse and their caregivers do not receive timely or adequate resources and support from the institutions that are commissioned to help them.

The cumulative impact of the physical, mental health, and behavioral consequences from child sexual exploitation also creates a heavy economic toll on the United States. In 2015, the CDC estimated the total lifetime economic cost of child sexual abuse in the United States to be at least \$9.3 billion.<sup>559</sup> One study estimated the costs to be \$283,000 over the lifetime of each female survivor, which was significantly higher than that attributed to victims of physical child abuse (\$77,000).<sup>560</sup> Lack of data and difficulty fully estimating the appropriate valuation of quality-of-life lost make it difficult to accurately quantify the economic burden resulting from child sexual abuse. However, given the underreporting of these offenses, these initial figures likely underestimate the true financial impact of the problem.<sup>561</sup>

### What is Complex Trauma?

Complex trauma describes both an individual's exposure to multiple traumatic events—often of an invasive, interpersonal nature—and the wide-ranging, long-term effects of this exposure. These events are severe and pervasive, such as abuse or profound neglect. They usually occur early in life and can disrupt many aspects of the child's development and the formation of a sense of self. Since these events often occur with a caregiver, they can interfere with the child's ability to form a secure attachment, inhibiting the child's healthy physical and mental development by removing their primary source of safety and stability.<sup>555</sup>

Internet-facilitated and commercial child sexual exploitation create additional aggravating impacts on survivors. Children whose sexual abuse imagery still circulates online decades after their abuse, suffer repetitive victimization that does not end when the child is recovered or a

<sup>555</sup> <https://www.nctsn.org/what-is-child-trauma/trauma-types/complex-trauma>.

<sup>556</sup> Delayed Disclosure A Factsheet Based On Cutting-Edge Research On Child Sex Abuse, Child USA, March 2020 <https://childusa.org/wp-content/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>

<sup>557</sup> <https://pubmed.ncbi.nlm.nih.gov/10391513/>.

<sup>558</sup> <https://childusa.org/wp-content/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.

<sup>559</sup> *Id.* at 1.

<sup>560</sup> *The Economic Burden of Child Sexual Abuse in the United States*, Elizabeth LeTourneau et al, *Journal of Child Abuse and Neglect*, vol 79, 413-422, 2018.

<sup>561</sup> Male and LGBTQI+ youth, children of color and indigenous victims often are not identified due to a variety of factors including gaps in services and public awareness.



criminal investigation concludes.<sup>562</sup> Children enticed online are often subjected to escalating threats that compound a child’s victimization and can lead to increased feelings of hopelessness and suicidal ideation.<sup>563</sup> Lack of resources to prevent and respond to this victimization creates a gap for these victims, who may be at risk for self-harm.

### Survivor Story

“In the early 2000s, when the internet was still new and starting to enter homes, there was no internet safety education. I was groomed online. I was 13 years old. I thought I was talking to a boy my own age, and after 8 or 9 months I agreed to meet this “boy” in person.”

“He took me from my home in Pennsylvania. He held me captive in a basement dungeon. I knew he was going to kill me, and I had to do what I needed to do to survive. I tried to fight back, and it did not work. I remembered reading something about that if you are ever a victim of a violent crime you should try to humanize yourself – it makes it harder for the predator to kill a person and not an object.”

“Miraculously, I was recognized because of my NCMEC poster. I would not be here today if that poster was not created. The offender was live streaming his torture of me—someone saw the live stream, saw the poster, and contacted law enforcement, who ultimately found me through the IP address.”

“After my rescue, I soon learned I was the first known case of internet child abduction and because of that there was a lot of victim blaming. I got no advocacy or services. They attacked my family. They attacked me. It went on for months and even up to today.”<sup>564</sup>

Child sexual exploitation impacts not only child victims, but also non-offending caregivers. Research indicates 91% of child sexual abuse is perpetrated by someone the child or their family knows.<sup>565</sup> The impacts of familial abuse or abuse by a known offender can have additional traumatic impacts: the child may feel guilty because their exploitation has disrupted the family or that they are responsible for the arrest of the offender family member. An investigation and prosecution may end the abuse, but also upend a family’s financial and psychological stability and create divergent emotional and legal impacts as the family moves through recovery. For caregivers, realizing someone they know harmed their child can cause depression, guilt, and anger. With familial abuse, the non-offending caregiver may be blamed if their spouse or partner perpetrated the abuse and they failed to recognize or stop it. It is important to assess the caregiver’s mental health needs as that person works through the healing process with their child.

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<sup>562</sup> See Keller, M. H., & Dance, G. J. X. (2020, January 1). Child Abusers Run Rampant as Tech Companies Look the Other Way. *The New York Times*. <https://www.nytimes.com/interactive/2019/11/09/us/internet-child-sex-abuse.html> and <https://www.nytimes.com/interactive/2019/09/28/us/child-sex-abuse.html>

<sup>563</sup> <https://www.missingkids.org/content/dam/missingkids/pdfs/ncmec-analysis/Online%20Enticement%20Pre-Travel1.pdf>.

<sup>564</sup> This survivor story was shared with representatives from the Department of Justice during Listening Sessions conducted to inform the content of this report.

<sup>565</sup> <https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html>

Once a survivor has revealed exploitation, the long and arduous journey of healing begins, and access to support services becomes critical. While preventing ACEs from occurring in the first place is critical in protecting children, providing adequate care and support services to children that have been victimized by sexual abuse is also critical to mitigate these harmful outcomes.

Most service delivery is community-based, and standards of care vary across the country. DOJ's Office for Victims of Crime (OVC) and HHS's Office on Trafficking in Persons (OTIP) have recently launched a collaborative effort to develop joint Standards of Care for Anti-Trafficking Service Providers. As the two principal federal agencies supporting services and assistance to victims of human trafficking in the United States, OVC and OTIP have a unique role in collaborating on the development of standards that individuals who experience trafficking can expect to receive when seeking help from OVC and OTIP-funded programs.

There are several stages to the investigation and prosecution of child sexual exploitation, including a potential sexual assault forensic medical exam, interviews, court hearings, and possibly a trial. Child victims may need to be placed in out-of-home care and separated from offending or complicit family members for their own safety. Regardless of the circumstances, child victims and their non-offending families should receive equitable, comprehensive services to support them with every step of their recovery process.

While advances have occurred in the last 10 years, there remains a significant lack of trauma-informed, holistic survivor care programs for victims of child sexual exploitation and their caretakers, especially for CSAM, enticement, and sextortion offenses. Survivors benefit from services that are evidence-informed, culturally sensitive, gender-responsive, individualized, survivor-informed, and coordinated across systems, particularly the child welfare, juvenile justice, health, and mental health systems.

### **Limited Evidence Base and Research**

Child sexual exploitation is a public health issue and should be treated as such to better develop evidence-based practices to help victims. In September 2020, the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States said that “[a]s an issue that affects the health, safety, and well-being of individuals, families, communities, and societies, it is appropriate to consider human trafficking as a major public health problem.”<sup>566</sup> The Committee’s report suggested that a public health approach be adopted because it “emphasizes the use of rigorous scientific research to develop an evidence base that drives the development of policies, procedures, and programs.” There is evidence that advocacy-based models that respond to an individual child’s need for access to resources may also be effective.<sup>567</sup> In addition, programs based on and grounded in the experiences of other survivors may help sexually

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<sup>566</sup> National Advisory Committee on the Sex Trafficking of Children and Youth in the United States. September 2020. *Best Practices and Recommendations for States*. Available at: [https://www.acf.hhs.gov/sites/default/files/documents/otip/nac\\_report\\_2020.pdf](https://www.acf.hhs.gov/sites/default/files/documents/otip/nac_report_2020.pdf).

<sup>567</sup> New York University Steinhardt. 2021. Resilience, Opportunity, Safety, Education, Strength (ROSES). Available at: <https://steinhardt.nyu.edu/metrocenter/roses>.

exploited children live a life free from exploitation, assisting them in rebuilding their lives and becoming future leaders.<sup>568</sup>

Existing research on the impacts of child sexual exploitation does not adequately address subtypes of child sexual abuse. Although research exists on the trauma effects of Adverse Childhood Experiences, and on the effects of other kinds of child abuse, there is limited research on child victims of CSAM, enticement, sextortion, and sex trafficking. There are few longitudinal studies designed to identify evidence-based therapeutic interventions and model programs for child sex trafficking and CSAM.

Therefore, service providers may have “preferred” or “promising” practices, but not “evidence-based” practices. Symptomology and treatment responses are applied based on best efforts rather than empirical research. Survivors report being treated as case studies by professionals who have never encountered their circumstances in practice. Because these crimes do not occur in isolation, treatment must better address long-term effects. Research must focus on effective treatment, brain/body connections, survivor exposure to images, survivor progress using standardized tools and individual developmental milestones, long-term physical/medical impact, and challenges for care during recovery.

The lack of accurate, comprehensive data on the scope of child sexual exploitation affects all cross-system work on this issue. Without the data, we cannot understand the extent or demographics of child sexual exploitation. A lack of data means a lack of public awareness. Even where there is data, the databases (e.g., child welfare, law enforcement, courts, public health) may not speak to each other either within states or among states.<sup>569</sup> Thus, a child who runs away from foster care in Washington, may be trafficked in Las Vegas, and get picked up for theft in Arizona, and the child welfare, juvenile justice, and health care databases for each state may not know about the history in the other states.

Strong evidence centered in the complex considerations related to child exploitation is needed to lay the foundation for effective services, trainings, screening tools, interventions, policies, and best practices. The Preventing Sex Trafficking and Strengthening Families Act requires the National Advisory Committee on the Sex Trafficking of Children and Youth to develop best practices recommendations for states “based on multidisciplinary research and promising evidence-based models and programs...”<sup>570</sup> This requirement sets an important standard for survivor care programs, however, more work is needed both in building the evidence base on this issue and centering the development of these programs on research.

Components across the DOJ are partnering with one another, and with their counterparts in other agencies, to track victimization more accurately and build the evidence base for more effective interventions. OVC provides funding to the National Institute of Justice (NIJ) and the Bureau of Justice Statistics (BJS) to generate and analyze quantitative and qualitative data on victimization, victim services, and related critical topics. For example, in FY 2020, Northeastern University

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<sup>568</sup> My Life My Choice. 2019. Available at: <https://www.mylifemychoice.org/survivor-empowerment>.

<sup>569</sup> Washington State Supreme Court Gender and Justice Commission, 2021 Gender Justice Study (2021). <https://www.courts.wa.gov/?fa=home.sub&org=gjc&page=studyReport&layout=2&parent=study>.

<sup>570</sup> <https://www.congress.gov/113/plaws/publ183/PLAW-113publ183.pdf>

received nearly \$1 million to enhance understanding of the short- and long-term physical and psychological health consequences of sex trafficking on minor victims, and the factors that facilitate and impede health care access. NIJ regularly publishes reports about services for minor victims of human trafficking. A March 2021 NIJ report found that safe harbor laws do in fact increase protections for sex-trafficked youth.<sup>571</sup> These data points are important to improve our ability to help child and youth victims of sexual exploitation. Newly announced funding has been allocated to better understand trauma faced by child survivors of sexual exploitation. Specifically, the study will focus on the impact of abuse on child survivors of CSAM, as well as evaluate the effectiveness of current trauma treatment methods used by health care providers, law enforcement personnel and forensic interviewers.<sup>572</sup>

It is important to recognize that some child sexual exploitation victims may not be identified based on current data collection mechanisms. For instance, if a child is sexually exploited by their family in their own home, or children in images are unidentified, it can be incredibly difficult to quantify the scope of the problem or identify trends for these most hidden forms of abuse. Importantly, the Centers for Disease Control and Prevention's (CDC) Youth Risk Behavior Survey,<sup>573</sup> does not include any questions about trafficking or other forms of child sexual exploitation. CDC's Violence Against Children and Youth Surveys (VACS) are population surveys that include data on all forms of violence against children and capture some information about child sexual abuse and exploitation. However, VACS have primarily been conducted globally, and only limited data collection from VACS has been conducted in the U.S. due to funding limitations. Filling these gaps represents a significant opportunity to capture information about child exploitation prevalence over time.

In 2020, the National Advisory Committee on the Sex Trafficking of Children and Youth recommended that states "Require state agencies, including child welfare, juvenile justice, law enforcement, and prosecutor's offices, to collect and report aggregate data about the sex trafficking of children and youth and their agency's response to the state legislature or governor's office for public dissemination;" that states "Collect aggregate data about the number of children and youth who are screened, assessed, and provided services (including housing) related to sex trafficking;" "establish a system for monitoring and evaluating services and housing provided to known or suspected victims of sex trafficking;" and "develop a statewide system for gathering and disseminating data from agency reports on the implementation of state and federal laws that require the identification of and response to children and youth who have experienced sex trafficking."<sup>574</sup> As discussed above, improved data will contribute to research on improved interventions.

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<sup>571</sup> National Institute of Justice. *Study Revealed Safe Harbor Laws Increased Protections for Sex-Trafficked Youth, Identified Needs for Agency Support and Judicial Training*. March 8, 2021. Available at:

<https://nij.ojp.gov/library/publications/study-revealed-safe-harbor-laws-increased-protections-sex-trafficked-youth>.

<sup>572</sup> <https://www.shaheen.senate.gov/news/press/shaheen-leads-nh-delegation-in-announcing-nearly-15-million-heading-to-unh-to-support-research-to-address-trauma-faced-by-child-survivors-of-sexual-exploitation>

<sup>573</sup> <https://www.cdc.gov/healthyyouth/data/yrbs/index.htm>

<sup>574</sup> National Advisory Committee on the Sex Trafficking of Children and Youth in the United States. September 2020. *Best Practices and Recommendations for States*. Pgs. 81–83. Available at: [https://www.acf.hhs.gov/sites/default/files/documents/otip/nac\\_report\\_2020.pdf](https://www.acf.hhs.gov/sites/default/files/documents/otip/nac_report_2020.pdf).

## Insufficient Funding

According to a 2016 GAO report, in Fiscal Years 2014 and 2015, there were 42 federal grant programs that could be used for the purpose of combating human trafficking or assisting victims of human trafficking in the United States.<sup>575</sup> Only two of those programs were specific to child sex trafficking. Since then, anti-trafficking funding has increased significantly, as has programming specifically focused on responding to minor victims of trafficking, but investment in preventing or treating other forms of child sexual exploitation, such as online child sexual exploitation and abuse, has lagged behind funding for human trafficking programs.

Similarly, while funding for services specifically for victims of child sex trafficking has increased in recent years, there has not been a commensurate increase in funding for victims of other forms of child sexual exploitation, including CSAM offenses, sextortion, enticement, livestreaming, etc. Over the past two years, reporting of child sexual exploitation and online abuse has reached its highest levels. This includes increases in online grooming, the volume of CSAM available online, the incidence of sharing and distribution of CSAM online, and livestreaming child sexual abuse for payment.<sup>576</sup> These continued increases in online victimization increases heighten the urgency to prioritize the development, research, and evaluation of resources and support services for victims of image-based online child sexual exploitation.

CSAM victims have unique needs that differ from those of child sex trafficking victims. There is little research on the ongoing trauma of knowing digital images depicting one's victimization are circulating endlessly, or the fear of encountering a visual record of the victim's own abuse. The traumatic impact of online exploitation is an emerging field, and no recognized behavioral health services have been developed to address these issues. This significant gap must be addressed. Organizations grappling with all forms of child exploitation still need more and dedicated funding streams that allow them to do more than identify or provide emergency response to victims. Funding opportunities should account for the different needs of the communities that organizations serve; the sustainability of long-term services; and the need for flexibility to serve specific populations while complying with civil rights nondiscrimination requirements.

In some cases, services are not lacking, but state budgets do not cover costs required to implement these specialized programs. Alternatively, survivors may have long term recovery needs that are not adequately covered by victim compensation benefits.<sup>577</sup> Increased funding for local nonprofits, child advocacy centers, and community-based services, as well as ongoing training, will help address mental health needs for survivors. Specialized mental health intervention can promote healing and break the cycle of revictimization.<sup>578</sup>

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<sup>575</sup> U.S. Government Accountability Office. GAO-16-555, HUMAN TRAFFICKING: Agencies Have Taken Steps to Assess Prevalence, Address Victim Issues, and Avoid Grant Duplication. June 2016. Available at: <https://www.gao.gov/assets/gao-16-555.pdf>

<sup>576</sup> Global Threat Assessment 2021. We Protect Global Alliance Available at: [https://www.weprotect.org/global-threat-assessment-21/?utm\\_source=ActiveCampaign&utm\\_medium=email&utm\\_content=Global+Threat+Assessment+2021+launched+today&utm\\_campaign=Global+Threat+Assessment+2021#report](https://www.weprotect.org/global-threat-assessment-21/?utm_source=ActiveCampaign&utm_medium=email&utm_content=Global+Threat+Assessment+2021+launched+today&utm_campaign=Global+Threat+Assessment+2021#report).

<sup>577</sup> <https://www.missingkids.org/content/dam/missingkids/pdfs/Captured%20on%20Film.pdf>.

<sup>578</sup> <https://www.missingkids.org/content/dam/missingkids/pdfs/Captured%20on%20Film.pdf>.

## Hurdles in Identifying Victims

Reliable data that identifies types of victimization, and research that supports the policies, procedures, and programs that most effectively meet survivors' needs, will improve delivery of services. All child sexual exploitation offenses, including sex trafficking, are underreported. This is due, in part, to a lack of understanding of scope and nature of the crime, of how and where the crimes occur, of inability to identify victims and survivors, and of related cultural issues.<sup>580,581</sup> Many victims never come forward with their abuse due to fear of repercussions for themselves or their abuser, threats of violence if they ever disclose, shame and trauma stemming from their abuse, and other concerns.

### What are hashes?

PhotoDNA is an image-identification technology that creates a unique digital signature (known as a “hash”) to represent each image, which can then be used to identify other instances of the image (matching hashes), even if the image has been recolored or resized.<sup>579</sup> The technology allows online service providers to detect, report, and remove child sexual abuse images shared on their sites, and the collective database of the images that have been found to date allows law enforcement to prioritize investigations into newly produced CSAM. Hash sharing and hash lists allow law enforcement, technology companies, and NGOs to proactively scan servers, report imagery to NCMEC, and quickly remove imagery to reduce online prevalence.

Identifying victims is a first step in connecting them with services, and far too many victims today are not receiving the care and services needed. However, access is expanding. Between 2015 and 2019, the number of OVC grantees who reported serving child and youth victims of sex trafficking victims nearly doubled, as did the number of victims served.

Currently, victim identification largely relies on self-disclosure reports of victims to law enforcement or to others who disclose to law enforcement. Family members also frequently report abuse to child protective agencies when abuse is discovered. Almost all states have laws requiring child-care professionals to report suspicions of child maltreatment, reports that are significant in identifying abuse. Under 42 U.S.C. § 13031, a provision of the Victims of Child Abuse Act of 1990, certain federal employees and contractors who learn of suspected child abuse while engaged in enumerated activities and professions on federal land or in federal facilities must report that abuse, regardless of where the suspected victim is cared for or resides.

Advances in technology have led to the development of digital tools that can analyze photos and videos and identify victims. For more than a decade, NCMEC and other non-profits have engaged with tech companies to encourage a survivor-focused approach to removal of child sexual exploitation content. NCMEC has expanded these initiatives to include hash sharing

<sup>579</sup> <https://www.microsoft.com/en-us/photodna>

<sup>580</sup> Institute of Medicine and National Research Council. 2013. *Confronting commercial sexual exploitation and sex trafficking of minors in the United States*. Pg. 2. Washington, DC: The National Academies Press. Available at: <https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/243838.pdf>.

<sup>581</sup> National Advisory Committee on the Sex Trafficking of Children and Youth in the United States. September 2020. *Best Practices and Recommendations for States*. Available at: [https://www.acf.hhs.gov/sites/default/files/documents/otip/nac\\_report\\_2020.pdf](https://www.acf.hhs.gov/sites/default/files/documents/otip/nac_report_2020.pdf).

initiatives, which provide tech companies with hash values of CSAM and sexually exploitative images to be used to proactively scan servers, report imagery to NCMEC, and quickly remove imagery to reduce online prevalence. In 2020, NCMEC added over 3.8 million hashes to its hash lists, and as of March 2021, hashes on this list represent over 360 additional identified child victims. Although technical innovations in computing and artificial intelligence improve automated identification processes, there are not enough resources to analyze these materials. The amount of online CSAM has grown exponentially making it impossible to keep up.

Because of the impacts of trauma, and the barriers to disclosure of abuse, professionals must be trained to identify and respond to signs of trauma and exploitation. Children who don't disclose need services as much as those who do. Systems create significant harm by failing to identify and provide services to all victims.

### **Lack of Training and Uniform Trauma-Informed Treatments and Standards of Care**

Children and youth who have experienced sexual exploitation often encounter a variety of professionals, including law enforcement officers, attorneys, judges, child protective service providers, educators, and physical and mental health service providers. Many of these professionals lack the training needed to identify and respond to sexual exploitation and may unknowingly engage in harmful practices that further traumatize survivors. These may include practices that fail to adequately consider safety, trustworthiness, transparency, and empowerment in their relationships with survivors.

*Evidence-informed professional development and training is essential to increase the likelihood that children and youth who have experienced or are at risk of experiencing sexual exploitation are identified and receive effective responses and services from professionals who have a shared understanding of protocols and victim resources.*

Survivors require equitable, comprehensive, integrated services for optimal recovery. Implementing a continuum of care is essential for survivors to address the abuse they have suffered, resources they need, and healing processes they are undergoing as their recovery needs evolve. According to My Life My Choice, a program of the Justice Resource Institute, “evidence-informed professional development and training is essential to increase the likelihood that children and youth who have experienced or are at risk of experiencing sexual exploitation are identified and receive effective responses and services from professionals who have a shared understanding of protocols and victim resources.”<sup>582</sup>

Uniform standards of care and training for people and programs that serve all sexually exploited children, and their non-offending caregivers, need to be developed, especially among law enforcement, prosecutors, and mental health professionals. More technical assistance on trauma-responsive care is needed for grantees and the field at large, especially for organizations new to serving child victims. These efforts should leverage existing and ongoing efforts to develop

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<sup>582</sup> My Life My Choice. 2019. Available at: <https://www.mylifemychoice.org/survivor-empowerment>.

standards of care, such as the joint OVC and OTIP Standards of Care initiative,<sup>583</sup> as well as the work of the SAMHSA-funded National Center on Child Trafficking.<sup>584</sup>

### *Lack of trauma-informed policing/prosecution standards*

Law enforcement interactions with victims of child sexual exploitation and their caregivers can have a significant impact on investigation and prosecution of the case and can influence how a victim begins the healing process. Goals of policing and prosecution often focus on the offender first, sometimes at the expense of victims. Survivors have reported that policing techniques can exacerbate prior and create new trauma. Law enforcement policy makers should determine why many victims are uncomfortable disclosing their exploitation to police, understand those reasons, and should develop trauma-responsive, victim-centered practices, in service of both public safety and victim healing. Trauma-informed policing currently lacks appropriate training on traumatic memory functioning (e.g., why victims' memories may be unclear or inconsistent), gender/age/power dynamics, shaming or victim blaming, use of appropriate terminology, victim interrogation versus interview, recovery planning, and victimology.

#### **Revising the Attorney General's Guidelines for Victim & Witness Assistance**

On October 21, 2022, the Justice Department released revised Attorney General Guidelines for Victim and Witness Assistance. The revised guidelines updated, for the first time in a decade, when and how Department employees work with victims and witnesses of crime to ensure that their voices are heard and that they are protected during criminal justice proceedings. The guidelines apply to all department employees engaged in the investigative, prosecutorial, correctional, and parole functions within the criminal justice system. The update improves and expands the Department's policies for engaging with victims and witnesses of crime and will allow those affected by crime to be heard and protected throughout the criminal justice process.<sup>585</sup>

Minimizing victim trauma is a critical priority for federal law enforcement. The *Attorney General Guidelines for Victim and Witness Assistance* reinforce that "department personnel should be aware of the trauma that child victims and witnesses may experience when they are asked to recount the crime during the investigation and prosecution of a criminal case, particularly when testifying in court. A primary goal of Department personnel, therefore, shall be to reduce the potential trauma to child victims and witnesses that may result from their contact with the criminal justice system."<sup>586</sup> OVC's suite of Child Victims and Witnesses Support Materials,<sup>587</sup> released between 2020 and 2022, was created to support children and youth during their involvement with the justice system as a victim or witness to a crime. State and local law enforcement agencies are also increasingly using a multi-disciplinary team (MDT) to deliver timely specialized

victim assistance and ongoing training for law enforcement. Multidisciplinary teams (MDTs) may include lawyers, healthcare providers, law enforcement, the judiciary, school counselors,

<sup>583</sup> <https://ovc.ojp.gov/program/human-trafficking/standards-of-care>

<sup>584</sup> See <https://ncct.gsu.edu/>

<sup>585</sup> <https://www.justice.gov/opa/pr/justice-department-updates-guidelines-victim-and-witness-assistance>

<sup>586</sup> [https://www.justice.gov/d9/pages/attachments/2022/10/21/new\\_ag\\_guidelines\\_for\\_vwa.pdf](https://www.justice.gov/d9/pages/attachments/2022/10/21/new_ag_guidelines_for_vwa.pdf)

<sup>587</sup> <https://ovc.ojp.gov/child-victims-and-witnesses-support>



probation counselors, child welfare, therapists, or others working collaboratively to develop and implement protocols, policies, and standards of care, direct services and provide victims with essential trauma-informed support and individualized responses.

However, victims have reported that lack of services, trauma from disclosing, and negative contact with the criminal justice system, reinforces their decisions not to report sexual exploitation to the authorities. As a result, many victims do not receive timely, proper, and necessary services. It is of paramount importance that policymakers, law enforcement, and victim service providers work together to ensure disclosure of victimization is met with appropriate support services.

### *Lack of long-term, accessible, trained mental health services*

Survivors overwhelmingly cite a lack of long-term, accessible mental health services with providers who specialize in child sexual exploitation. While some mental health practitioners are well-trained on traumatic sexual abuse, most have not been trained on the unique trauma needs of survivors of CSAM, child sex trafficking, online enticement, or sextortion.

### What is polyvictimization?

Polyvictimization refers to having experienced multiple victimizations such as sexual abuse, physical abuse, bullying, and exposure to family violence. The definition emphasizes experiencing different kinds of victimization, rather than multiple episodes of the same kind of victimization.<sup>588</sup>

An Attorney General Task Force report on children exposed to violence found that, “appropriately selected evidence-based treatments and services provided in a timely manner,” including, but not limited to, therapeutic medications and mental health services that continue for a sufficient duration “can mitigate the adverse effects of violence and psychological trauma and put children back on a healthy developmental course.”<sup>589</sup> Support services must meet victims where they are and address the unique dynamics of:

- **Geography:** The lack of trained providers makes local or regionalized accessible care challenging, especially in rural areas.
- **Diverse populations:** The lack of awareness and messaging for diverse and underserved populations<sup>590</sup> can inhibit healing and exacerbate harm to victims.
- **Multiple victimization:** Child sexual exploitation encompasses a wide range of complex and interdependent crimes. While children are often subject to multiple forms of abuse,

<sup>588</sup> [https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/programs/safestart/TipSheetFor\\_Polyvictimization.pdf](https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/programs/safestart/TipSheetFor_Polyvictimization.pdf)

<sup>589</sup> *Report of the Attorney General’s National Task Force on Children Exposed to Violence*. December 12, 2012.

This project was supported by Grant No. 2011-DD-BX-K037 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Available at: <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

<sup>590</sup> To include male, LGBTQI+ youth, children of color or indigenous children, and children with mental disabilities.

service delivery, funding for resources, and practitioner training rarely deals with polyvictimization.

- **Available financial resources:** Support services for these types of crimes tend to be more comprehensive and thus more costly than those typically available through child-serving agencies. Even if adequate resources exist, they may not be covered by traditional victim services funding mechanisms. Additionally, in some circumstances a child's failure to disclose abuse may be a barrier to accessing these financial resources.

### *Increased Need for Caregiver-Oriented Support Services*

Greater consideration should be given to providing support to non-offending family members and a child victim's possible reintegration into safe family settings and educational life. The trauma caregiver's experience can significantly impact the child's healing, and more services are needed, both for the caregiver's sake and so that they are able to effectively take care of their child. Many children come from families who have experienced multigenerational trauma, with parents who have their own histories of trauma. It's important that professionals in the survivor care field recognize this when working with survivors and their families. Additionally, continuing with education after exploitation, whether returning to a previous school setting or enrolling in an alternative learning path, is critical because education is a strong protective factor against further exploitation.

#### **Caretaker Story**

"We adopted our kids after they were abused in the home with their biological parents. There were 6 of them in the home, including the biological father, who made videos of all of them, and an older brother who also participated in it. The brother eventually went back to live with the biological mother as an adult, which created issue between the children. They've cut ties with him."

"The father was initially sentenced to 45 years, but that was dropped to 40 years. We don't hear anything from law enforcement about it, so we were surprised to hear that it was lowered."

"I'm sure we have a victim advocate for the children because we adopted them through the foster care system. But I've never spoken to that person; they've never reached out to us. We had to find our own therapist. Our kids are all still minors, but our kids were made to act the abuse upon each other, and I do not see a lot of therapists who deal with that. The kids still have a lot of resentment and anger with each other. We did have a situation where one child had blocked out the abuse so much that she didn't realize her brother was partaking in sexual abuse. We had to let her know that, because she had all this anger towards him that she didn't understand."<sup>591</sup>

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<sup>591</sup> This survivor caretaker story was shared with representatives from the Department of Justice during Listening Sessions conducted to inform the content of this report.

## *Shortage of Culturally Specific and Gender-Responsive Services*

Services must be gender-responsive, as well as culturally responsive. According to the National Advisory Committee on the Sex Trafficking of Children and Youth, “research shows that lesbian, gay, bisexual, transgender, queer (or questioning), Two-Spirit, and other (LGBTQ2S+) children and Black, Latinx, and Native American children are disproportionately victimized by this crime.”<sup>592</sup> And yet, there is an acute shortage of culturally specific victim services for children in communities of color, indigenous populations, and in the LGBTQI+ community, and considerable need for programs developed and operated by and for these communities.

There is also a commonly perpetuated belief that victims of child sex trafficking are almost exclusively female. Though males may comprise a smaller proportion of victims, their numbers are significant nationally and internationally, yet there is a vast discrepancy in the services available for them.<sup>593</sup> Young males also share many of the risk factors for involvement in child sex trafficking as young females, such as child maltreatment and family violence.<sup>594</sup> However, resources and public awareness activities are focused largely on women and girls—many men and boys do not identify as victims or request services.<sup>595</sup>

“Interventions, treatment and services before, during, and following court involvement” can vary in effectiveness by culture and gender.<sup>596</sup> Because of these differences, more funding is needed to support culturally specific and gender-responsive programs that acknowledge and respect a child’s sexual orientation, gender identity, and gender expression.

*Boys and men comprise a significant portion of human trafficking victims nationally and internationally, but there is a vast discrepancy in the services available for them. Resources and public awareness activities are focused largely on women and girls—many men and boys do not identify as victims or request services.<sup>597</sup>*

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<sup>592</sup> National Advisory Committee on the Sex Trafficking of Children and Youth in the United States. September 2020. *Best Practices and Recommendations for States*. Available at:

[https://www.acf.hhs.gov/sites/default/files/documents/otip/nac\\_report\\_2020.pdf](https://www.acf.hhs.gov/sites/default/files/documents/otip/nac_report_2020.pdf).

<sup>593</sup> An Analysis of Missing Male Victims of Child Sex Trafficking (CST), National Center for Missing & Exploited Children, [https://www.missingkids.org/content/dam/missingkids/pdfs/nemec-analysis/Missing%20Male%20Victims%20of%20Child%20Sex%20Trafficking\\_EXTERNAL.PDF](https://www.missingkids.org/content/dam/missingkids/pdfs/nemec-analysis/Missing%20Male%20Victims%20of%20Child%20Sex%20Trafficking_EXTERNAL.PDF)

<sup>594</sup> Commercial Sexual Exploitation of Children and Sex Trafficking, Office of Juvenile Justice and Delinquency Prevention, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/csecsextrafficking.pdf>

<sup>595</sup> United States Advisory Council on Human Trafficking Annual Report 2020, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, July 28, 2020 <https://www.state.gov/united-states-advisory-council-on-human-trafficking-annual-report-2020/>

<sup>596</sup> Coalition for Juvenile Justice. (n.d.). National Standards: Gender-Responsive Services. Available at: <https://www.juvjustice.org/our-work/safety-opportunity-and-success-project/national-standards/section-i-principles-responding-4>.

<sup>597</sup> United States Advisory Council on Human Trafficking Annual Report 2020, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, July 28, 2020 <https://www.state.gov/united-states-advisory-council-on-human-trafficking-annual-report-2020/>

## **Advancing Technology**

The increasing number of social platforms, explosion of online access to children during COVID, lack of adequate online safety measures, and lack of robust reporting and response by technology companies has increased the risk of online child victimization. Recent increases in youth generated CSAM and the movement of child sex trafficking to new platforms during COVID also contribute to increases in online child sexual exploitation. Child survivors of online enticement have reported being subjected to escalating threats that compound their trauma and can lead to increased hopelessness and suicidal ideation. Insufficient resources exist to protect these victims, who may be at greater risk for self-harm.

End-to-end encryption threatens many established detection methods tech companies use to identify child sexual exploitation. Offenders increasingly use technological tools to hide their criminal online activity and identity. Survivors of online child sexual exploitation and abuse have been vocal in asserting the need for tech companies to balance the importance of child safety and online privacy when making business decisions about services offered to users.

The viral circulation of some CSAM makes it nearly impossible to remove the images from the internet. Survivors have reported that tech companies who use public reporting mechanisms for victims often lack transparency about their processes and are oblivious to the impacts of the trauma. Survivors are required to search for, review, document and submit their own CSAM material to the tech platform. In some instances, companies require legal action or proof of identity before removing a survivor's content. Trusted flagger programs, with robust identified hash value lists, and dedicated response pipelines for NGOs and others reporting on behalf of survivors should become standard industry practice.

## **Inaccurate public messaging**

Public messaging often suggests survivors are broken or damaged or highlights survivors who have “overcome” abuse. However, the challenges and triumphs of survivors in between these two extremes are part of a multifaceted recovery process. Survivors talk about the benefits of public messaging that is survivor-informed and survivor-focused. They also acknowledge that the sexual nature of these crimes often prevents self-disclosure and leaves survivors feeling isolated, guilty, and ashamed. This can be especially challenging for LGBTQI+ victims and victims from communities of color. Public messaging and fundraising efforts tend to focus on young, white, cisgender victims. This can hinder victim identification and investigation efforts for the majority of victims who don't fit that narrow mold, including teenagers, people of color, indigenous people, LGBTQI+ youth, or victims whose offender wasn't an unknown third-party.

## **Significant Developments**

Significant progress has been made in understanding and addressing the complex trauma survivors and their caregivers experience. However, survivors and caregivers report that trauma-informed practices are not consistently used. Survivors have recommended comprehensive, trauma-responsive victim assistance that addresses four essential components to meet the central needs of survivors and caregivers:

1. Financial resources;
2. Immediate and long-term therapeutic and mental health support;
3. Legal assistance; and
4. Technical support to mitigate long-term impacts of online crimes.

This comprehensive response is best accommodated by a multi-disciplinary recovery services team that can connect families and child survivors with multiple professionals. Survivors also note the importance of non-traditional therapeutic options, including survivor peers, group support, and life skills training. Because basic rights like choice, consent<sup>598</sup> or control are violated or denied by abusers, survivors suffer trauma when they feel these rights are ignored during support delivery. Having some control and choice in their support approach makes victims feel safer, helps with long-term recovery, and may facilitate cooperation during the investigation.

The U.S. has also made progress towards adopting safe harbor laws, improving restitution for survivors, increasing funding, improving coordination across systems that serve trafficking victims, developing focused research initiatives, providing immigration status for foreign victims, and better incorporating survivor perspectives into survivor care programs and services, from inception through development. The examples listed below demonstrate the progress achieved in addressing gaps in access to care for survivors of child sex trafficking as the result of focused efforts at the local, state, and national level.

#### *Advancing the Work through Survivors' Expertise*

Over the past 4 years, survivor advocacy has increased significantly, as shown by the increasing number of survivor advocates speaking publicly, and the favorable response to their advocacy. CSAM survivors face particularly unique challenges to public advocacy because offenders often try to locate and harass survivors whose imagery continues to circulate online. In 2018, a group of CSAM survivors came together publicly as the survivor advocacy group, the Phoenix 11, and brought a unified voice to the needs of CSAM survivors. For the first time, survivors and caregivers have participated in discussions relating to this National Strategy report, demonstrating both the availability and active participation of survivor voices. These courageous advocates have spoken to domestic and international governments, advised non-profit organizations, served in a variety of key roles at organizations across the country, and used their voices to send strong public messages of support and demands for change.

Survivor engagement is a central tenet of the federal government's approach to establishing effective anti-trafficking strategies. In furtherance of the federal government's commitment to ensuring survivors' role in shaping policy, the federal government has committed to supporting survivor leadership opportunities, including the following:

1. U.S. Advisory Council on Human Trafficking,<sup>599</sup>

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<sup>598</sup> The word "consent," as used here, does not imply the legal or statutory meanings of the word, but is used in a more general sense of giving a victim a chance to feel they are an active, not unwilling, participant in the process.

<sup>599</sup> <https://www.state.gov/united-states-advisory-council-on-human-trafficking-annual-report-2020/>.

2. Human Trafficking Leadership Academy;<sup>600</sup> and
3. Human Trafficking Expert Consultant Network.<sup>601</sup>

## The Phoenix 11

The Phoenix 11 is a group of 11 female survivors whose childhood sexual abuse was recorded and distributed online. The group was formed through a series of survivor meetings organized by the Canadian Centre for Child Protection and the National Center for Missing & Exploited Children. In 2018, the Phoenix 11 issued a collective statement calling on the Canadian and U.S. governments to do more to end the spread of child sexual abuse imagery:

“For a long time we were afraid. We were afraid of the dark, we were afraid of the unknown, we were afraid of our past and what it meant for our future. Alone, isolated, yet exposed to the world, we knew there were others like us out there, yet we were scared to confront their pain because of what they understood about our pain.

Last year we all took a bold step to overcome the fears about ourselves, to band together to become a force for change. To speak for all those who cannot speak for themselves. To make the invisible visible. To make the two dimensional three dimensions.

We are the Phoenix 11. Sexually abused as children, reduced to child sex abuse images, and stripped of our dignity and humanity, we have risen together as powerful young women who are retaking our identities and self-worth.

No longer content to live in the shadows, we are redefining what it means to be victims who were powerless to stop the relentless onslaught of the technology of abuse.

We are survivors of sexual torture, child rape, erotic photoshoots, pedophile sleepovers, elementary school sex shows, streaming BDSM, and twisted sexual desires whose digital images are trafficked worldwide to fulfill the endless needs of an evil perverted community which takes pleasure from our pain.

Now we are putting the world on notice that we will no longer be a silent suffering collage of young girls and boys whose nameless and often faceless images and videos circulate worldwide in the internet cesspool of humanity.

**We are the Phoenix 11. Hear our voice. See our strength. Answer our call. We will not be stopped. We will not be silent.”<sup>602</sup>**

The passage of the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018 created a new process for CSAM victims seeking restitution from defendants possessing, receiving, and distributing their sexual abuse imagery.<sup>603</sup> Specifically, the Act establishes the

<sup>600</sup> <https://www.acf.hhs.gov/otip/training/nhttac/human-trafficking-leadership-academy>.

<sup>601</sup> [www.state.gov/humantrafficking-survivor-leadership/](http://www.state.gov/humantrafficking-survivor-leadership/).

<sup>602</sup> <https://projectarachnid.ca/en/phoenix11-advocacy-statement/>.

<sup>603</sup> <https://www.congress.gov/bill/115th-congress/senate-bill/2152>.

Child Pornography Victims Reserve (“Reserve”) to provide restitution to eligible individuals who are depicted in CSAM. While the Reserve is not yet fully implemented, federal courts are already using the new law to levy monetary penalties against convicted defendants that will be utilized to support survivors. In 2015, the Child Abuse Prevention and Treatment Act’s (CAPTA)<sup>604</sup> expansion of the definition of “child abuse” to specifically include child sex trafficking, was a crucial shift toward ensuring child sex trafficking victims receive additional benefits.<sup>605</sup> Increased funding is necessary to support an already overburdened child welfare system. Child welfare agencies need resources to expand capacity and develop specialized programs to meet service needs in addressing complex trauma for survivors of these crimes. Some states have narrowly interpreted CAPTA’s revision to apply only to children trafficked by a family member or caregiver as defined under their state child abuse laws. This leaves limited response and resources for youth who are trafficked by a non-familial offender or gang or exploited directly by a buyer.

As stated by the Survivor-Informed Leadership Committee of the United States Advisory Council on Human Trafficking, “to empower survivors, federal agencies must engage them in meaningful collaboration, support their efforts to become self-sufficient, and promote the creation and sustainment of survivor-led organizations,” including those working with children and youth who are sexually exploited.<sup>606</sup> This Council was created by legislation in 2015 and has modeled the importance of a survivor-informed approach to anti-trafficking efforts. In its 2020 annual report, the Council highlighted multiple efforts by DOJ’s Office for Victims of Crime and HHS’s Office on Trafficking in Persons (OTIP) to increase capacity building for survivor-led organizations; offer compensated consulting or professional development roles to survivors; incorporate meaningful survivor engagement in program development-related activities in all applicable funding announcements; and implement leadership development programs. In fact, the TIP Office created a survivor consultant network to inform DOS anti-trafficking programming and policies.<sup>607</sup> Similarly, the Department of Homeland Security established the Blue Campaign, which engages survivors in the development of public awareness materials and trainings and compensates survivors for their time.<sup>608</sup> These efforts have contributed to healing and resilience for young survivors. Study of long-term benefits of these efforts could help to improve training and standards of care.

### *Recognition of Child Sex Trafficking Through Safe Harbor Laws*

Law enforcement and criminal and juvenile justice systems have historically often viewed child and youth sex trafficking victims as offenders. In recent years, there has been widespread

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<sup>604</sup> “CAPTA provides Federal funding and guidance to States in support of prevention, assessment, investigation, prosecution, and treatment activities and also provides grants to public agencies and nonprofit organizations, including Indian Tribes and Tribal organizations, for demonstration programs and projects. Additionally, CAPTA identifies the Federal role in supporting research, evaluation, technical assistance, and data collection activities; establishes the Office on Child Abuse and Neglect; and establishes a national clearinghouse of information relating to child abuse and neglect.” <https://www.childwelfare.gov/pubpdfs/about.pdf>

<sup>605</sup> <https://www.childwelfare.gov/pubs/factsheets/about/>.

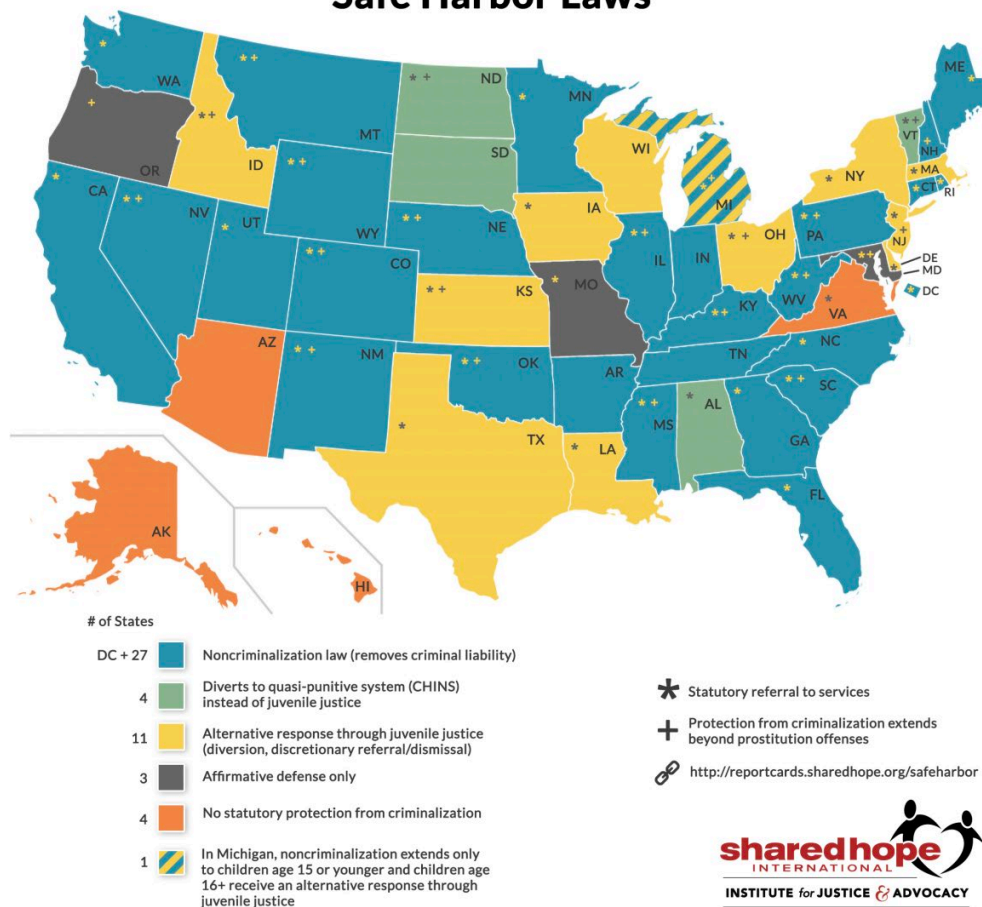
<sup>606</sup> United States Advisory Council on Human Trafficking. Annual Report 2020. Available at: <https://www.state.gov/united-states-advisory-council-on-human-trafficking-annual-report-2020/>.

<sup>607</sup> *Id.*

<sup>608</sup> *Id.*

recognition that trafficked children and youth are victims, not criminals. Recent federal and state laws, such as the Preventing Sex Trafficking and Strengthening Families Act<sup>609</sup> and Safe Harbor laws,<sup>610</sup> have worked to ensure victims of child sex trafficking are not criminalized for crimes committed against them. These legislative and policy shifts are critical to a trauma-informed response. However, law enforcement, advocates, and survivors lament that successful, specialized, and appropriate services and support have not been fully developed within the child protective response.

## Safe Harbor Laws



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State safe harbor laws prevent children and youth from being prosecuted for prostitution, and refer or divert victims to non-punitive specialized services, such as health care, trauma-informed treatment and therapy, emergency and long-term housing, education assistance, job training, language access, and legal services.<sup>612</sup> As of 2019, 30 states and the District of Columbia prohibit the criminalization of child sex trafficking victims for prostitution offenses.<sup>613</sup> However,

<sup>609</sup> <https://www.congress.gov/bill/113th-congress/house-bill/4980>.

<sup>610</sup> <https://www.ojp.gov/pdffiles1/ojdp/grants/253244.pdf>.

<sup>611</sup> <https://reportcards.sharedhope.org/wp-content/uploads/2022/01/SafeHarborLawsMapRevD.pdf>

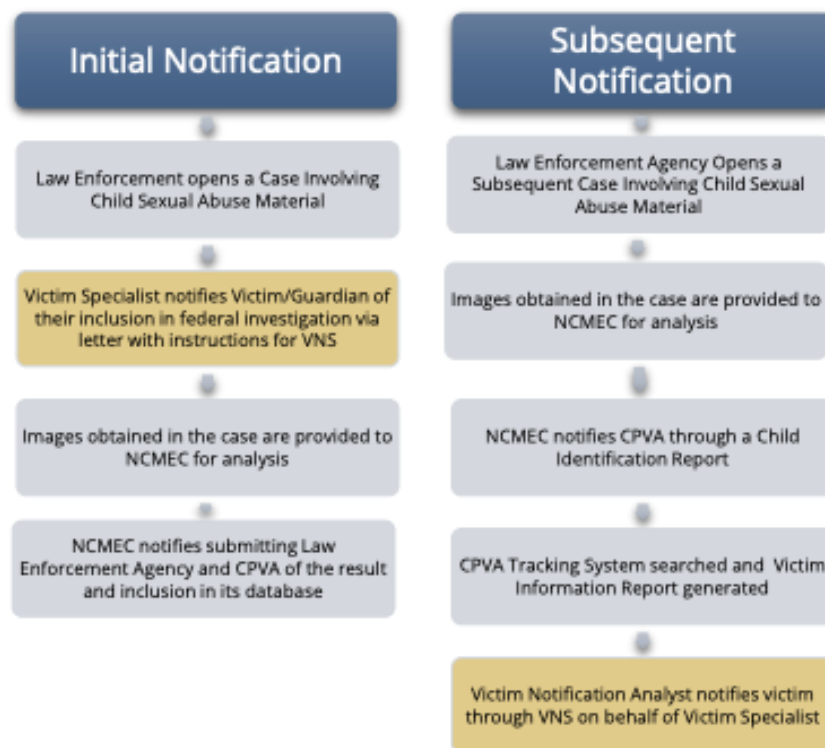
<sup>612</sup> National Council of Jewish Women. September 2016. Fact Sheet: Safe Harbor Laws. Available at: [https://www.ncjw.org/wp-content/uploads/2017/07/Fact-Sheet\\_Safe-Harbor\\_Updated-2016.pdf](https://www.ncjw.org/wp-content/uploads/2017/07/Fact-Sheet_Safe-Harbor_Updated-2016.pdf).

<sup>613</sup> Shared Hope International. Protected Innocence Challenge Toolkit 2019: State Action. National Change. Available at: <https://sharedhope.org/PICframe9/2019ProtectedInnocenceChallengeToolkit.pdf>.



state safe harbor laws vary and are applied inconsistently. Children and youth may be charged, detained, and prosecuted for other offenses related to or resulting from their exploitation, which impedes access to services. Although juvenile arrests have gone down in recent years, many young people, the majority of whom are girls, are still being arrested for trafficking-related crimes.<sup>614</sup> Additionally, the law may not require that the child be provided with appropriate services even when they are identified as a victim of sex trafficking by law enforcement or other professionals.

### Notification Processes for FBI Investigative Cases Involving Child Sexual Abuse Material



Source: OIG Analysis

#### *Improvements to Practices Related to Notifying CSAM Victims*

Sadly, many victims depicted in CSAM may not be aware of the long-term implications surrounding the creation of sexual images and videos, let alone how pervasively the images and videos of their abuse are being shared online. Generally, child victims and their guardians are notified by investigators and victim specialists when their images or videos are first identified in a federal investigation involving CSAM. However, an audit conducted by the Department of Justice’s Office of the Inspector General found that, when CSAM involving the same victim was found in subsequent investigations, the FBI did not consistently notify the child victims and their guardians or advise them of their rights if their images or videos were in more than one

<sup>614</sup> Office of Juvenile Justice and Delinquency Prevention. May 2021. *Juvenile Justice Statistics National Report Series Bulletin*. NCJ 256032. Available at: <https://ojjdp.ojp.gov/publications/juvenile-arrests-2019.pdf>.

investigation.<sup>615</sup> Instead, victims were only notified again when the documentation material depicting their abuse was considered “actively traded.” Because of the actively traded threshold, an unknown number of victims have potentially been denied rights afforded to them under the law. Victims complete a Notification Preference Form (NPF) to opt in or out of notifications regarding any subsequent investigations related to their images. The tracking system used to support the FBI’s notification efforts only contained actively traded CSAM with a completed Notification Preference Form (NPF). Without completed NPFs, FBI victim assistance staff did not know victims’ or guardians’ notification preferences and were unable to notify all victims of actively traded CSAM properly and sufficiently. Some NPFs were outstanding or incomplete for as long as 6 years.

In response to these findings, the FBI’s Child Pornography Victim Assistance Program (CPVA), the unit responsible for notifying victims when their images and videos are found in an investigation, is adjusting its protocols to ensure victims can be informed and act when their images or videos are identified, should they choose. They are currently engaged in a multi-phased project to digitize and consolidate documentation related to all series. The project will also centralize the tracking of victim outreach efforts, enabling CPVA to serve as a comprehensive, reliable, and central repository for all victim information and the source of all reports regarding the status of victim notification information and preferences.

#### *Increased Federal Funding for Services for Exploited Children and Youth*

Child and youth survivors of sexual exploitation and their nonoffending caregivers require a multifaceted, multidisciplinary, and specialized response to support them in their healing journeys. Since 2016, Congress has increased funding for services for children and youth who are victims of child sex trafficking.

- In FY 2020, DOJ awarded nearly \$101 million in anti-trafficking funding, with much of it intended to enhance the quality and increase the quantity of services available to survivors of human trafficking, including children and youth.<sup>616</sup>
- In FY 2020, OVC awarded over \$6 million to four grantees under the Services for Minor Victims of Sex Trafficking Program to achieve increased safety, self-sufficiency, and well-being for minor victims of sex trafficking.
- In FY2019, OVC awarded over \$15 million to 32 grantees under the Integrated Services for Minor Victims of Human Trafficking Program to provide minor victims with high-quality, developmentally appropriate services tailored to their individual needs.<sup>617</sup>

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<sup>615</sup> Audit of the Federal Bureau of Investigation’s Efforts to Notify Victims of Child Sexual Abuse Material, Office of the Inspector General, September 21, 2021 <https://oig.justice.gov/reports/audit-federal-bureau-investigations-efforts-notify-victims-child-sexual-abuse-material>

<sup>616</sup> U.S. Department of Justice. 2020. Justice Department Awards Nearly \$101 Million to Combat Human Trafficking and Assist Victims. Available at: <https://www.justice.gov/opa/pr/justice-department-awards-nearly-101-million-combat-human-trafficking>.

<sup>617</sup> U.S. Department of Justice. 2019. Department of Justice Awards More than \$100 Million to Combat Human Trafficking and Assist Victims. Available at: <https://www.justice.gov/opa/pr/department-justice-awards-more-100-million-combat-human-trafficking-and-assist-victims>.

- Between FY 2016 and FY 2020, OVC has awarded over \$20 million to 12 state organizations under the Improving Outcomes for Child and Youth Victims of Human Trafficking Program to foster greater collaboration at the state and tribal level. This program enhances coordinated, multidisciplinary, and statewide approaches to at-risk populations to improve outcomes for child and youth victims of human trafficking. Acknowledging that systems charged with caring for children and families exposed to human trafficking are fragmented, program grantees were able to provide trauma-informed and developmentally, culturally, and linguistically appropriate services for child and youth victims of sex and labor trafficking up to age 24 in every Nebraska county; strengthen data collection across multiple systems of care in New Mexico; and fund new Safe Harbor Coordinators to develop and implement safe harbor protocols in juvenile courts in Ohio.<sup>618</sup>

### What does it mean to be trauma-informed and victim-centered?

Trauma-informed approaches are delivered with an understanding of the vulnerabilities and experiences of trauma survivors, including the prevalence and physical, social, and emotional impact of trauma. A trauma-informed approach recognizes signs of trauma in staff, clients, and others and responds by integrating knowledge about trauma into policies, procedures, practices, and settings. Trauma-informed approaches place priority on restoring the survivor’s feelings of safety, choice, and control. Programs, services, agencies, and communities can be trauma-informed.

Similarly, a victim-centered approach places the crime victim’s priorities, needs, and interests at the center of the work with the victim; providing nonjudgmental assistance, with an emphasis on client self-determination, where appropriate, and assisting victims in making informed choices; ensuring that restoring victims’ feelings of safety and security are a priority and safeguarding against policies and practices that may inadvertently re-traumatize victims; ensuring that victims’ rights, voices, and perspectives are incorporated when developing and implementing system- and community-based efforts that impact crime victims.

During that same time period, Congressional funding for specialized grants providing services for minors depicted in CSAM lagged behind the increase in funding for trafficking victims.

The National Center for Missing & Exploited Children (NCMEC) recently launched the Child Sex Trafficking Recovery Services Team to “provide specialized technical assistance, support and resources to child welfare and other child-serving professionals working with missing children who are victims of sex trafficking,” including “case-based assistance in the development of trauma-informed and victim-centered recovery plans.”<sup>619</sup> State child welfare systems have also taken on additional responsibility with child sex trafficking emergency response, placement, and services. However, most child welfare agencies are already overburdened and under

<sup>618</sup> <https://ovc.ojp.gov/funding/opportunities/ovc-2020-18412>

<sup>619</sup>

<https://www.missingkids.org/content/dam/missingkids/pdfs/NCMEC%20Child%20Sex%20Trafficking%20Recovery%20Services%20Team.pdf>

resourced. Limited resources delay responses and impose barriers to services immediately following the return of a child to care or recovery by law enforcement. These barriers were identified by survivors, advocates, and law enforcement as harming recovery efforts, causing survivors to distrust the system’s ability to meet their needs. A more informed, successful, and streamlined recovery is likely where child welfare and law enforcement agencies are engaged in a multi-disciplinary team to discuss needs and align recovery plans for a missing child.

### Strategic Response

Short-Term Goals	Long-Term Goals
<p><b>Increase funding for holistic, child-centered survivor care programs, including for CSAM victims:</b> While funding for services for survivors of child sex trafficking has increased since the last report, there remains a great need for services for survivors of other forms of child sexual exploitation, including CSAM. Survivors need tailored, comprehensive, appropriate short- and long-term survivor-informed services, coordinated by multidisciplinary teams. Service gaps in rural and Native American tribal areas and marginalized communities also need to be addressed. Programs and interventions should be culturally specific and gender responsive.</p>	<p><b>Improve victim identification with screening across health, social services, and juvenile justice systems:</b> To identify potential victims of all forms of child sexual exploitation, universal screening procedures and consistent state-wide, trauma-informed responses are needed for children and youth who encounter the child welfare and juvenile justice systems. Program funding should additionally be coordinated across state and federal agencies and flexible, to allow organizations to serve specific populations while complying with civil rights nondiscrimination requirements. Stipends to support basic needs should be paid to youth transitioning out of the child welfare and juvenile justice system.</p>
<p><b>Enhance Access to Trauma-Informed Mental Health Treatment and Other Specialized Services for CSAM and Child Sexual Abuse Survivors:</b> Increase availability and accessibility of services throughout a survivor’s recovery from child sexual abuse and constant re-victimization due to the circulation of CSAM.</p>	<p><b>Increase research on effective interventions for child victims of sexual exploitation:</b> There are few best practices and longitudinal studies that focus on effective services for child victims of all forms of sexual exploitation, versus child abuse generally. More funding is needed to develop interventions that reflect best practices for these survivors.</p>
<p><b>Continue to support a survivor-informed response to delivering victim services:</b> While survivor engagement and representation have grown in recent years, survivors should not just be consulted, but should continue to be involved in the design, implementation, and evaluation of victim service programs for children and youth. These survivors should include those who were victimized as children and youth. Children and youth receiving</p>	<p><b>Adopt a two- and three-generation/ whole-family approach to service delivery.</b> Familial relationships, including extended family and other trusted, caring adults should be incorporated into support programs to prevent unaddressed trauma caused by sexual exploitation to manifest into larger issues that impact survivors and their families. Two- and three-generation approaches should focus on creating opportunities for and addressing the</p>

Short-Term Goals	Long-Term Goals
services should be provided the opportunity to have a voice in their services. Survivors should also be compensated for their time and expertise, whenever possible.	needs of children and youth survivors, the caring adults in their lives, and the survivors' children.
	<p><b>Create legislation to address barriers to financial compensation for survivors and address continued circulation of CSAM.</b> Legislation is necessary to enable survivors to seek legal redress against all entities that facilitate distribution of their sexual abuse images and require providers to remove content upon request. Legislation should also remove barriers for victims to receive the full financial compensation owed.</p>

*Increase Funding for Holistic, Child-Centered Survivor Care Programs*

A holistic approach to survivor care focuses on the individual’s needs, recognizing that there may be many interrelated needs, such as housing, legal assistance, health care, and trauma-responsive treatment. In a victim-centered approach, the victim’s wishes, safety, and holistic well-being are prioritized in all matters and procedures.<sup>620</sup>

Funding for programs that serve children and youth victims of sexual exploitation is limited and competitive. Additional resources or funding streams are needed to offset the disproportionate impact of sexual exploitation on children and youth, especially those of color, including indigenous children and youth, and those in the LGBTQI+ community. More directed funding as well as legislative changes removing limitations on research funding are also needed to assess evidence-based interventions and promising practices for survivors and to conduct program evaluations. Greater flexibility should be built into how grants are awarded and allocated, since different communities have different service needs. Service providers need to have better, user-friendly access to potential funding streams, and Grants.gov must continue to improve as a centralized information source for funding opportunities.

Resources are also needed to increase the number of child forensic interviewers and victim advocates, which would reduce the potential harm of the criminal justice process to survivors and caregivers by prioritizing a trauma-responsive approach. Child forensic interviewers use “a developmentally sensitive and legally sound method of gathering information regarding allegations of abuse or exposure to violence. These interviews are conducted by a competently trained, neutral professionals using research and practice-informed techniques as part of the larger investigative process.”<sup>621</sup> Currently, child forensic interviewers are not available in every local community, and interviews of children may be performed by law enforcement officers who

<sup>620</sup> Office for Victims of Crime Training and Technical Assistance Center. Human Trafficking Task Force e-Guide. Available at: <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/>.

<sup>621</sup> <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248749.pdf>.

are not trained on trauma-informed or culturally competent practices. Additional funding should be provided to embed specialized child exploitation victim advocates within each Internet Crimes Against Children (ICAC) taskforce agency to provide specialized, individualized care plans and recovery services for victims in child sexual exploitation cases. Currently, victim advocates carry a wide range of cases; designating such professionals in each geographic area to specialize in child exploitation will improve support and services for these youth.

RETHINKING THE FRAMEWORK	
Medical Model	Advocacy Framework
<ul style="list-style-type: none"> <li>■ Concept of disease or pathology</li> <li>■ Centrality of diagnosis</li> <li>■ Need for symptom reduction</li> <li>■ Doctor as "expert"</li> <li>■ Patient as compliant</li> <li>■ Location of the problem: the person</li> </ul>	<ul style="list-style-type: none"> <li>■ Concept of resource distribution</li> <li>■ Centrality of rights</li> <li>■ Need for strength enhancement</li> <li>■ Advocate as collaborator</li> <li>■ Patient as "expert"</li> <li>■ Location of the problem: the context</li> </ul>

*The ROSES Program: Applying Evidence-Based Models of Advocacy Intervention with Girls*  
<https://www.bwjp.org/resource-center/resource-results/roses-advocacy-intervention.html>

Culturally specific and gender-responsive services should be available so that all survivors of sexual exploitation receive meaningful services. This means the organization that is providing services account for the culture, language, and background of the individuals it serves, helping to build trust with victims. Advocacy models should be designed to be accountable to the needs of a child or youth, rather than having a child be accountable to the program. The advocacy framework should look at the context and circumstances of the crime (e.g., what happened?) and focus on the strengths of children and the needs they define for themselves.<sup>622</sup>

Funders should explicitly support, and organizations should be encouraged to apply for, culturally specific interventions in line with the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.<sup>623</sup> A centralized information source for all culturally specific funding across the federal government may also be needed.<sup>624</sup> Similarly, funding should support services that are gender-responsive and acknowledge and respect the gender identity and sexual orientation of the children and youth being served. Consistent with the Executive Order on Establishment of the White House Gender Policy Council, funders should advance equal rights and opportunities, regardless of gender or gender identity.<sup>625</sup>

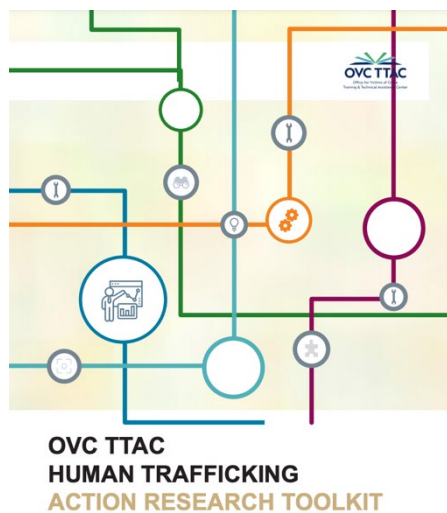
<sup>622</sup> Javdani, S. Avalon S. (editor). *The ROSES Program: Applying Evidence-Based Models of Advocacy Intervention with Girls*. June 2016. Battered Women’s Justice Project. Available at: <https://www.bwjp.org/resource-center/resource-results/roses-advocacy-intervention.html>.

<sup>623</sup> The White House. Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. January 20, 2021. Available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

<sup>624</sup> Grants.gov currently serves as a primary centralized resource for many of the federal government’s grant programs.

<sup>625</sup> The White House. Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. March 8, 2021. Available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executive-order-on-establishment-of-the-white-house-gender-policy-council/>.

*Improve victim identification with screening across health, social services, and juvenile justice systems*



Organizations need to be able to screen for different types of victimization and polyvictimization to ensure there is no wrong door for services. Health care providers, educators, and others who have daily contact with children and youth should know how to identify symptoms of trauma and sexual abuse/exploitation. When youth are identified as abused or exploited, an MDT should be established to provide appropriate services. The team may include lawyers, health care providers, law enforcement, the judiciary, school counselors, probation counselors, child welfare, therapists, or others, depending on who is involved in the child's life. OVC's Linking Systems of Care for Children and Youth multi-site demonstration project is an excellent example of how a MDT, through communication, collaboration, and coordination of caregivers, service providers, policymakers, and other stakeholders can meet victims' immediate and ongoing needs.<sup>626</sup>

A linked systems of care approach should be broadly applied, including but not limited to within the child welfare and juvenile justice systems. The juvenile justice system can re-traumatize children and youth who have been sexually exploited, which can hinder their healing. Similarly, parents and caregivers involved with child welfare agencies see it as a punitive measure for parents, which may deter them from requesting the assistance they and the victims need. It is important to reframe child welfare services as a prevention measure and community engagement service that supports children and families holistically. The Family First Prevention Services Act of 2018 (FFPSA) was designed to keep children safe with their families, or in the least-restrictive, most family-like setting appropriate to their individual needs when child welfare systems become involved. Under the FFPSA, child welfare agencies offer families services (i.e., mental health, substance abuse, or in-home parenting skills training),<sup>627</sup> to try to prevent removal of minors from their homes. A linked systems of care approach would divert exploited children and youth to trauma-informed services and local programs that are alternatives to detention.

Survivors of sexual exploitation who are involved in the child welfare or juvenile justice systems need ongoing advocacy and support that assist them to transition successfully out of lives of trauma, and, where involved, out of these systems. This support should include employment assistance, and support for independent living, education, and basic needs. Some jurisdictions

<sup>626</sup> Office for Victims of Crime. Linking Systems of Care for Children and Youth. 2019. Available at: <https://ovc.ojp.gov/news/grantee-news/linking-systems-care-children-and-youth>.

<sup>627</sup> The Children's Defense Fund, et al. *Implementing the Family First Prevention Services Act*. Updated February 18, 2020. Available at: <https://www.childrensdefense.org/wp-content/uploads/2020/07/FFPSA-Guide.pdf>.

offer stipends to pay for food, housing, and other basic expenses.<sup>628</sup> These supports, even if short-term, can have substantial life-changing results for children and youth exiting exploitation.

*Enhance Access to Trauma-Informed Mental Health Treatment and Other Specialized Services for CSAM and Child Sexual Abuse Survivors*

Survivors identified significant gaps in mental health and other services, noting the need for increasing availability and accessibility of services at the time child sexual exploitation is discovered and throughout a survivor's recovery and life if necessary. Of special note, a recommendation for a lifetime of mental health care can help survivors qualify for an expansion of subsidized therapy costs under crime victim compensation funds.

A mental health professional can make a lifetime of care recommendation based on an evaluation that determines future projected expenses the victim might incur as a direct result of the crime. Where offenders in CSAM cases continue to circulate images of child sexual abuse, it causes continuous and constant re-victimization, and significant psychological harm to the child.<sup>629</sup> In federal prosecutions and in many states, victims depicted in CSAM or subject to other forms of exploitation and their caretakers can submit victim impact statements relaying to the court the profound and enduring harm caused by the defendant, including a defendant who possessed CSAM depicting the victim. These statements can be considered in determining the appropriate sentence for the defendant, including the length of incarceration.

Knowing that such images exist on the internet, including receiving notices through the Victim Notification System,<sup>630</sup> also can cause anxiety, dread, and shame. The costs of this additional harm can include long-term medical treatment; physical or occupational rehabilitation or therapy; mental health counseling or therapy; and time off from work to receive any of these treatments and services.<sup>631</sup>

To determine lifetime of care costs, licensed psychologists perform a series of assessments of the individual, noting indicators through the ACES study,<sup>632</sup> family history, current victimization, and other indicators. These assessments result in a projection of the lifetime of care costs for that person and is submitted as part of court records. Full restitution should include all immediate and expected monetary costs of the crime to victims, including property loss, physical and mental health costs, and, when appropriate, education expenses and future vocational training.<sup>633</sup>

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<sup>628</sup> Newcombe, A., French, E., Walker Brown, K., & Guymon, M. Building Bridges: How Los Angeles County Came Together to Support Children and Youth Impacted by Commercial Sexual Exploitation (2020). Los Angeles County; National Center for Youth Law. Available at: <https://youthlaw.org/resources/building-bridges-how-los-angeles-county-came-together-support-children-and-youth-impacted>

<sup>629</sup> <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1140&context=scholarship>.

<sup>630</sup> <https://www.missingkids.org/content/dam/missingkids/pdfs/Captured%20on%20Film.pdf>.

<sup>631</sup> <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/publications/infores/victims/victserv.pdf>.

<sup>632</sup> <https://pubmed.ncbi.nlm.nih.gov/33653771/>.

<sup>633</sup> [https://www.ncjrs.gov/ovc\\_archives/directions/pdfxtxt/chap15.pdf](https://www.ncjrs.gov/ovc_archives/directions/pdfxtxt/chap15.pdf). See also *United States v. Danser*, 270 F.3d 451, 455 (7th Cir. 2001) “In light of Congress's intent to make whole those victims of sexual exploitation, we find that [section 2259](#) allows for restitutionary damages for the future costs of therapy.”; *United States v. Doe*, 488 F.3d 1154, 1161 (9th Cir. 2007) “We likewise do not think it was an abuse of discretion to award costs for alternative education programs and vocational training in phone repair based upon this record.”



Survivors will require different services at different life stages (transition to adulthood, interpersonal relationships, becoming parents) which should allow for shifting service needs and a wider range of therapeutic modalities. For example, there is currently a lack of peer-based support for CSAM survivors/non-offending caregivers, who have knowledge and experience with underrepresented populations (boys, LGBTQI+, children of color, indigenous populations, foster care children, intergenerational abuse victims). Survivors want to connect with other survivors, but it is difficult to create a public, online space to do so without leading to threats from online stalking and public shaming from offenders or non-survivors. The sexual nature of these crimes creates a social stigma that silences discussion and leaves survivors feeling isolated, guilty, and ashamed. Peer-based services instill hope, dispel myths, provide education and resources, and break down barriers.

In addition, medical and mental health professionals need comprehensive standardized trauma-informed training on CSAM and child sexual abuse survivor issues. This can be accomplished by partnering with leading clinicians and professional organizations to develop training opportunities for mental health professionals, especially relating to continuum of care models.

A wide variety of organizations respond to child sexual trauma. Some have inadequate experience, lack trained or licensed staff, or may inadvertently engage in harmful practices that further traumatize survivors. Some programs screen out children and youth who are survivors of child sex trafficking because program staff do not feel equipped to deal with them, are concerned about recruiting members or disruption of therapy sessions or other operations (particularly in group settings) or want to make their programs look more effective by excluding victim populations that may require more tailored services or have more barriers to healing. Children and youth must have access to the services they need to exit exploitation and recover from trauma safely and successfully.

Certain principles should guide every provider of trauma-responsive services for children and their families. These include preserving safety, promoting choice, building resilience and inclusivity, empowering with knowledge and skills, fostering collaboration, sharing information transparently, moving beyond stereotypes, developing a support network for each client, and promoting nonviolence.<sup>634</sup> The National Children's Alliance (NCA) has established standards<sup>635</sup> to ensure all children across the United States who are served by Children's Advocacy Centers (CACs) receive interventions that help them heal. Uniform standards of care are provided and monitored through the Accreditation Standards under NCA to ensure that CACs function within a trauma-informed framework designed to reduce harm and support healing.<sup>636</sup> Further work is needed across CACs nationwide to increase the availability and access to mental health services. Beyond CACs, child victimization services in general need the ability to increase access to and deliver evidence-based mental health services and trauma-informed care so that all care provided

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<sup>634</sup> *Report of the Attorney General's National Task Force on Children Exposed to Violence*. December 12, 2012. This project was supported by Grant No. 2011-DD-BX-K037 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Available at: <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>

<sup>635</sup> National Children's Alliance. Standards for Accredited Members. 2017 Edition. Available at: [https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/os\\_nca\\_standards\\_child\\_advocacy\\_centers-508.pdf](https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/os_nca_standards_child_advocacy_centers-508.pdf)

<sup>636</sup> <https://www.nationalchildrensalliance.org/wp-content/uploads/2021/10/2023-RedBook-v5B-t-Final-Web.pdf>

is consistent with national standards of care such as those outlined in the NCA Standards as well as those provided by SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach.<sup>637</sup>

### *Increase Research on Effective Interventions*

Action research is an effective complement to traditional research. Traditional research attempts to generate knowledge applicable to a variety of populations and contexts. Action research focuses on quickly finding solutions to specific problems in specific contexts. The OVC Training and Technical Assistance Center (TTAC) released a Human Trafficking Action Research Toolkit in FY 2020 to provide information, strategies, tools, and other resources to help organizations and programs understand and conduct action research.<sup>638</sup> Continued promotion of action research is important as a tool for stakeholders to confront challenges as they arise, while also encouraging traditional research studies when funding is available to determine best practices for treating child victims of sex trafficking and CSAM.

Additionally, the families of children who are sexually exploited are often economically disadvantaged. While offenders may sexually exploit children from every socioeconomic status and location, additional research is needed to determine how poverty drives exploitation. Robust, well-funded family support systems can help protect children from exploitation.

### *Continue to Support a Survivor-Informed Response to Service Delivery*

One of SAMHSA’s six key principles to a trauma-informed framework is “Empowerment, Voice, and Choice,” giving survivors a voice in their treatment and ensuring they are supported by service providers in shared decision-making.<sup>639</sup> While some federal funders encourage this through training, technical assistance and direct service programs, this goal is still missing from some programs. At every step of the design, implementation, and evaluation of survivor care programs, a broad and

#### **SAMHSA’s Six Principles of a Trauma-Informed Approach**

According to the Substance Abuse and Mental Health Services Administration (SAMHSA), a trauma-informed approach focuses on six key principles, rather than a prescribed set of practices or procedures.

Those principles are:

1. Safety
2. Trustworthiness and Transparency
3. Peer Support
4. Collaboration and Mutuality
5. Empowerment, Voice, and Choice
6. Cultural, Historical, and Gender Issues

<sup>637</sup> Substance Abuse and Mental Health Services Administration. SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach. HHS Publication No. (SMA) 14-4884. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014. <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4884.pdf>.

<sup>638</sup> Henninger, A. M., Lowry, S., & Tripathi, T. (2020). OVC TTAC human trafficking action research toolkit. Office for Victims of Crime Training and Technical Assistance Center, Washington, DC. Available at: [https://www.ovcttac.gov/downloads/views/HowWeCanHelp/HT/OVC\\_TTAC\\_Human\\_Trafficking\\_Action\\_Research\\_Toolkit\\_Revised\\_Dec2020\\_FINAL\\_508c\\_011921\\_JE.pdf](https://www.ovcttac.gov/downloads/views/HowWeCanHelp/HT/OVC_TTAC_Human_Trafficking_Action_Research_Toolkit_Revised_Dec2020_FINAL_508c_011921_JE.pdf).

<sup>639</sup> Ibid.

diverse range of survivors should be consulted to inform overall program development, including men and women of color and LGBTQI+ survivors.

Soliciting feedback from children and youth must be done with care, but their perspective is essential. A good starting point for organizations to learn how to support and collaborate with survivors are the federally-funded Toolkit for Building Survivor-Informed Organizations, originally created in 2018 and updated in 2021-2022, and the Practical Guide: Survivor-Informed Services, released in 2020.<sup>640</sup>

#### *Adopt a Two and Three Generation/Whole Family Approach to Service Delivery*

Service providers should also adopt a whole-family, two- and three-generation approach to service delivery wherever possible. Many youth survivors of sexual exploitation are parents themselves, and some families have intergenerational histories of child sexual abuse trauma. This approach works with both the child and the non-offending parents, family members, and other safe adults in their lives<sup>641</sup> in the delivery of services. It can provide families with holistic access to the services and resources they need to build health and well-being intergenerationally, including pre-natal care and care for infants born to young survivors.

Of course, not all child survivors should be reunited with their immediate families. When someone in the family is the offender, extended family members or other trusted, caring adults with whom the child feels safe can potentially be brought in to assist with a plan to help the victim. Appropriate residential placement of housing and shelter services for survivors, like so many aspects of survivor care, must be based on an individualized assessment.

#### *Improve standards and transparency of internet platforms for detection and reporting of child sexual exploitation*

In recent years, attention has been focused on the role of the technology industry in child sexual exploitation and on improving measures to address technology industry accountability. For example, the Five Country Ministerial (FCM) Digital Industry Roundtable issued eleven Voluntary Principles that were developed to counter online child sexual exploitation and abuse. The principles were designed to prevent CSAM, target online grooming and preparatory behavior, target livestreaming, address search results, use specialized approaches for children and survivors, and collaborate and respond to evolving threats. According to the statement issued by FCM, “[t]hese principles are intended to provide a consistent and high-level framework for industry actors that is flexible and can be applied across different services. Some companies have already implemented measures similar”<sup>642</sup> to these principles.

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<sup>640</sup> National Human Trafficking Training and Technical Assistance Center. Toolkit for Building Survivor-Informed Organizations. This publication was funded by contract no. HHSP233201500071I/HHSP23337011T awarded by the U.S. Department of Health and Human Services, Administration for Children and Families, Office on Trafficking in Persons. [https://www.acf.hhs.gov/sites/default/files/documents/otip/toolkit\\_for\\_building\\_survivor\\_informed\\_organizations.pdf](https://www.acf.hhs.gov/sites/default/files/documents/otip/toolkit_for_building_survivor_informed_organizations.pdf).

<sup>641</sup> United States Advisory Council on Human Trafficking. Annual Report 2020. Available at: <https://www.state.gov/united-states-advisory-council-on-human-trafficking-annual-report-2020/>.

<sup>642</sup> <https://www.justice.gov/opa/pr/departments-justice-homeland-security-and-international-partners-announce-launch-voluntary>; <https://www.justice.gov/opa/press-release/file/1256061/download>

While the FCM statement provides a framework to discuss consistent prevention, detection, and transparency principles, more sustained and substantive industry efforts are needed. Specifically, many companies have internal policies on removing CSAM and child sex trafficking or grooming content, but they fail to address the full range of exploitative imagery, their algorithms may not catch the content, and they don't have enough analysts to do the work. This can range from non-CSAM imagery moments before or after the abuse, to predatory text or personally identifiable information of survivors, posted online, connecting them to the original exploitation. The industry should adopt best practices and standards on public reporting to improve survivor reporting experience is also needed. While some industry members are taking steps to create more transparency and substance in their detection and reporting functions, much remains to be done to move the entire industry forward and implement essential tools and processes to eliminate the circulation of CSAM online and to disrupt and prevent online grooming and recruiting of children for the purpose of sexual exploitation.<sup>643</sup>

*Create legislation to address barriers to financial compensation for survivors and address continued circulation of CSAM*

Even after an offender is prosecuted for production and trafficking of CSAM, the distribution of those images continues, sometime for decades. The continual re-circulation of these images by new offenders in future cases creates a horrific situation for survivors. To address this, federal law must provide remedies to enable survivors to seek legal redress against all entities that facilitate distribution of their sexual abuse images. Such remedies would include revising Section 230 of the Communications Decency Act to enable survivors to pursue legal action against online providers that facilitate CSAM offenses and allow the Department to seek injunctive relief against online providers to stop online sharing of CSAM. Additionally, victims need a civil or administrative mechanism to require online providers to quickly remove content upon the request of the victim.

While restitution is mandatory for child exploitation victims in federal cases, many offenders lack resources to pay any restitution award. Even if some funds are available, it could be many years before any money goes to the victims, particularly if offenders are serving long sentences and not required to make significant payments during incarceration. Prosecutors need additional means of seizing non-liquid assets to ensure victims receive the restitution payments ordered.

A child's trauma from online sexual abuse is unique in that "rather than occurring in a single moment, the process of disclosure can take decades to come to fruition."<sup>644</sup> Therefore, it is important to remove barriers for victims of child sexual exploitation so they can pursue civil remedies when they are at the appropriate place in their recovery process. Legislation could also extend or delete statutes of limitations applicable to the rights of victims of CSAM trafficking offenses to seek compensation through civil lawsuits.

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<sup>643</sup> Further information on supporting victims of child exploitation occurring overseas can be found in the Extraterritorial Child Sexual Abuse chapter.

<sup>644</sup> <https://childusa.org/wp-content/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.

## Wellness Challenges for Law Enforcement Personnel

In the United States, there are more than 800,000 sworn law enforcement officers.<sup>645</sup> The mental health and wellness of law enforcement personnel<sup>646</sup> involved in the prevention and interdiction of child exploitation are vital for the safety of our communities. Failure to provide proper support and services to protect the overall well-being and safety of these professionals is not only harmful to them but also impacts their families and puts public safety in jeopardy.

*“The repeated exposure to obscene, toxic and exceptionally disturbing pictures and videos of child victims is routinely ranked among the top four stressors in the law enforcement profession, following only a fatal line-of-duty shooting, the line-of-duty death of a fellow officer, and the survival of a physical attack.”*

*Meredith Krause Ph.D.*<sup>647</sup>

Researchers identify law enforcement as one of the most stressful occupations in the United States.<sup>648</sup> Within the law enforcement profession, those who are constantly exposed to details, images, and videos of child sexual abuse cope with an even greater strain on their mental health.<sup>649</sup> Daily exposure to child sexual abuse materials (CSAM) and regular engagement with victims and survivors of child sexual abuse can have widespread and prolonged impacts on the dedicated professionals working to protect children and apprehend offenders.

Law enforcement personnel constantly experience dangerous and challenging work-related situations.<sup>650</sup> As discussed in the Offender Psychology chapter of this report, the unique psychological dynamics of child exploitation offenders require special care to protect officers’ physical safety when they make personal contact with offenders or execute search and arrest warrants. However, the mental health impacts are also pressing. Law enforcement professionals are more likely to experience high levels of trauma, burnout, and post-traumatic stress disorder (PTSD) than other occupations.<sup>651</sup> This stress and trauma can lead to cardiovascular disease, digestive disorders, heart attack, and stroke. Family, romantic, and other relationships can also be negatively impacted. Personnel who work in this field are at greater risk of mental health issues, including mood disturbances (such as depression and post-traumatic stress disorder) and suicidal

<sup>645</sup> Updated estimates 2019; available at: <https://nleomf.org/facts-figures/law-enforcement-facts> (Law Enforcement Facts, 2019)

<sup>646</sup> For the purposes of this document, a law enforcement agency is a government agency involved in the detection, investigation, or prosecution of, or the supervision or incarceration of any person for, any violation of law.

<sup>647</sup> In Harm’s Way, FBI Law Enforcement Bulletin, January 2009 <https://leb.fbi.gov/file-repository/archives/january09leb.pdf/view>

<sup>648</sup> Purba, A. Demou, E. The relationship between organizational stressors and mental wellbeing within police officers: a systematic review. *BMC Public Health* 19, 1286 (2019).

<sup>649</sup> Quick, J., & Henderson, D. (2016). Occupational Stress: Preventing Suffering, Enhancing Wellbeing. *International Journal of Environmental Research and Public Health*, 13(5), 459. <https://doi.org/10.3390/ijerph13050459>

<sup>650</sup> Donnelly, E., Valentine, C., & Oehme, K. (2015). Law enforcement officers and Employee Assistance Programs. *Policing: An International Journal of Police Strategies & Management*, 38(2), 206–220. <https://doi.org/10.1108/PIJPSM-11-2014-0116>

<sup>651</sup> Burruss, G. W., Holt, T. J., & Wall-Parker, A. (2018). The Hazards of Investigating Internet Crimes Against Children: Digital Evidence Handlers’ Experiences with Vicarious Trauma and Coping Behaviors. *American Journal of Criminal Justice*, 43(3), 433–447. <https://doi.org/10.1007/s12103-017-9417-3>

ideation.<sup>652</sup> Law enforcement professionals suffer higher rates of substance abuse, domestic violence, suicide, and other maladaptive coping mechanisms.<sup>653</sup> Sadly, research has found that law enforcement officers are at higher risk to have suicidal ideation than the general population.<sup>654</sup> While more research is needed on the unique risk posed to officers and other law enforcement professionals coping with exposure to child sexual abuse and child sexual abuse content, these effects are deeply concerning.



The impact of stress, fatigue, and burnout not only affects individuals and their families, but has organization-wide effects, including decreased employee performance, high rates of employee absence, workplace conflicts between employees, and higher levels of turnover.<sup>655</sup> In some situations, law enforcement professionals have also faced increased financial burdens for medication management and treatment for both physical and mental health conditions, resulting from significant work-related stress.<sup>656</sup>

### **Child Exploitation Cases and the Well-Being of Law Enforcement Professionals**

Law enforcement professionals across the globe working child exploitation cases are chronically exposed to extremely disturbing situations and material. In addition to the risk factors shared by others in law enforcement personnel, they suffer from repeated exposure to extreme violence and exploitation of the most vulnerable victims – children, including infants. Frequent exposure to such material and the depravity of the cases has significant physical, emotional, mental, and spiritual repercussions for law enforcement professionals, often resulting in secondary traumatic stress. Unwanted recall of images and material, hypervigilance, sleep disturbances, and maladaptive coping mechanisms like social isolation are all signs of secondary traumatic stress.<sup>657</sup>

<sup>652</sup> O’Keefe, L. C., Brown, K. C., & Christian, B. J. (2014). Policy Perspectives on Occupational Stress. *Workplace Health & Safety*, 62(10), 432–438. <https://doi.org/10.3928/21650799-20140813-02>

<sup>653</sup> Burruss, G. W., Holt, T. J., & Wall-Parker, A. (2018). The Hazards of Investigating Internet Crimes Against Children: Digital Evidence Handlers’ Experiences with Vicarious Trauma and Coping Behaviors. *American Journal of Criminal Justice*, 43(3), 433–447. <https://doi.org/10.1007/s12103-017-9417-3>

<sup>654</sup> Violanti, J., Charles, L., Hartley, T. (2008). Shift-work and suicide ideation among police officers.

<sup>655</sup> Developing a Law Enforcement Stress Program for Officers and Their Families, P. Finn & J. E. Tomz, Office of Juvenile Justice & Delinquency Prevention, December 1996, <https://www.ojp.gov/pdffiles/163175.pdf>

<sup>656</sup> Stephens, C., Long, N., & Miller, I. (1997). The impact of trauma and social support on Posttraumatic Stress Disorder: A study of New Zealand police officers. *Journal of Criminal Justice*, 25(4), 303–314.

<sup>657</sup> Polak, S., Bailey, R., & Bailey, E. (2019). Secondary Traumatic Stress in the Courtroom: Suggestions for Preventing Vicarious Trauma Resulting from Child Sexual Abuse Imagery. *Juvenile and Family Court Journal*, 70(2), 69–75. <https://doi.org/10.1111/jfcj.12137>

## Exacerbating Factors for Law Enforcement Well-Being

Multiple factors, including the following, can exacerbate the negative effects of working on child exploitation cases<sup>658</sup>:

- Lack of supportive leadership and culture within law enforcement;
- Investigative challenges;
- Workplace isolation;
- Officer safety concerns;
- Lack of investigative resources; and
- Lack of mental health professional resources.

### *Law Enforcement Agency Leadership and Culture*

Child exploitation cases are handled by law enforcement professionals at all levels, including those in local, state, federal, territory, and tribal jurisdictions. Many agencies have knowledgeable and supportive leadership that proactively address wellness as part of their agency operations or through the child exploitation investigations program. Unfortunately, leadership in some agencies do not fully understand the significant impact of child exploitation cases on the mental health of those involved. This decreased understanding can contribute to an agency's lack of proactive management and response to the wellness needs of law enforcement professionals. The Internet Crimes Against Children (ICAC) task forces have prioritized officer wellness through training and support programs. However, many ICAC affiliated agencies do not have the resources or training needed to protect their personnel during these challenging investigations. When leadership does not support addressing mental health issues or understand the nature of child exploitation cases, it can increase the stress level of personnel who work these cases.

*Secondary traumatic stress is the trauma someone receives from viewing another person being traumatized. It is also commonly referred to as vicarious trauma. Compassion fatigue, the loss of the ability to empathize because of over-exposure to the content, is another emotion experienced by law enforcement who work these cases.*

Although some progress has been made, stigma continues to contribute to the lack of interest among many law enforcement professionals in seeking mental health support and assistance and has perpetuated a culture where help-seeking behavior is viewed negatively. Internalized norms requiring toughness and control in all situations encourage the repression of emotion that would otherwise provide stress reduction.<sup>659</sup> While control is crucial in some aspects of the job, it may discourage professionals from discussing difficult experiences with colleagues and other trusted

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<sup>658</sup> Based on listening sessions conducted with subject matter experts as part of the development of this report.

<sup>659</sup> Powell, M., Cassematis, P., Benson, M., Smallbone, S., & Wortley, R. (2014). Police officers' strategies for coping with the stress of investigating internet child exploitation. *Traumatology: An International Journal*, 20(1), 32–42. <https://doi.org/10.1037/h0099378>

sources of support.<sup>660</sup> Many investigators and law enforcement professionals understand the need for support, especially when working with child sexual abuse material (CSAM) and heavy caseloads, but they are often concerned that expressing mental health needs to supervisors or seeking help from a mental health professional could lead to a transfer to a different specialty area or lead others to question their fitness for the job and could lead to more limited opportunities for promotion, or even termination.<sup>661</sup> Some also worry that confiding in others will negatively impact the person they confide in. Mental health professionals may also not have adequate training to address the unique issues pertaining to law enforcement’s work investigating child exploitation cases.<sup>662</sup> Research shows that law enforcement personnel are reluctant to use Employee Assistance Programs (EAP) and affiliated providers due to this perception of inadequate understanding of their work and the lack of trust surrounding confidentiality.<sup>663</sup>

### Wellness Initiatives at the 2022 National Law Enforcement Training on Child Exploitation

At the 2022 National Law Enforcement Training on Child Exploitation funded by the Department of Justice, there was a dedicated wellness room available throughout the event for the almost 1,400 live attendees. In addition, lecture sessions on wellness included:

- Shielding Your Well-Being: Powerful Tools and Resets for Everyday Living
- Resilient Leadership: Well-Being for You and Your Team
- Allies in the Trenches: Staying Healthy When Immersed in the Ugly
- Keeping the Faith: Spirituality and Mental Wellness
- Vicarious Trauma Training and Mitigation Tools for Judicial Staff

Emotional support canines were also deployed during breaks and were very popular with many attendees.

### *Investigative Challenges & Workplace Isolation*

The number of child exploitation cases being referred for investigation has been increasing exponentially.<sup>664</sup> For investigators, challenges with heavy and ever-increasing caseloads may

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<sup>660</sup> Stephens, C., Long, N., & Miller, I. (1997). The impact of trauma and social support on Posttraumatic Stress Disorder: A study of New Zealand police officers. *Journal of Criminal Justice*, 25(4), 303–314.

<sup>661</sup> Cullen, O., Ernst, K. Z., Dawes, N., Binford, W., & Dimitropoulos, G. (2020). “Our Laws Have Not Caught up with the Technology”: Understanding Challenges and Facilitators in Investigating and Prosecuting Child Sexual Abuse Materials in the United States. *Laws*, 9(4), 28. <https://doi.org/10.3390/laws9040028>

<sup>662</sup> Seigfried-Spellar, K. C. (2018). Assessing the Psychological Well-being and Coping Mechanisms of Law Enforcement Investigators vs. Digital Forensic Examiners of Child Pornography Investigations. *Journal of Police and Criminal Psychology*, 33(3), 215–226. <https://doi.org/10.1007/s11896-017-9248-7>

<sup>663</sup> Cullen, O., Ernst, K. Z., Dawes, N., Binford, W., & Dimitropoulos, G. (2020). “Our Laws Have Not Caught up with the Technology”: Understanding Challenges and Facilitators in Investigating and Prosecuting Child Sexual Abuse Materials in the United States. *Laws*, 9(4), 28. <https://doi.org/10.3390/laws9040028>

<sup>664</sup> <https://www.missingkids.org/blog/2021/rise-in-online-enticement-and-other-trends--ncmec-releases-2020->



exceed the stress of exposure to the material.<sup>665</sup> From an organizational perspective, limited resources to hire and train investigators can be extremely challenging and another source of stress. The high volume of cases, insufficient numbers of investigators, and lack of resources to proactively address cases compounds the stress for individual investigators and teams.<sup>666</sup> Furthermore, rapid changes in technology require equipment, training, and expertise for law enforcement agencies to keep pace with technological advancements, all of which require supplemental funding.<sup>667</sup> Funding for ICAC task forces and other child exploitation programs has not increased to meet the overwhelming workload and equipment demands, leaving many teams understaffed and without necessary resources to be fully equipped.

What results for many professionals is stress and trauma in the workplace, exacerbated by isolation associated with investigating and prosecuting child sexual abuse cases. Many investigators spend their days sitting at a computer looking at images or livestreamed videos of child sexual abuse. They grapple constantly with the knowledge that there are children, increasingly younger in age and vulnerability, being violently sexually abused, with little chance of rescue due to limited investigatory resources. This plagues professionals who feel a profound need to combat these crimes. Faced with exploding numbers of tips and cases, many involving young children and infants, investigators may have difficulty limiting the amount of time spent working, increasing their stress and exposure to trauma.

The sensitive nature of the materials involved in exploitation cases may make it harder for personnel on these cases to work with others. Close team connections are a protective factor for trauma. Isolation, on the other hand, can be a compounding factor for stress and burnout and increase the risk of traumatization and long-term negative consequences. Even in a close team environment, isolation can occur. Safeguarding against such isolation is important to reduce stress and trauma.

### *Officer Safety Concerns*

Officer safety is a concern for officers' mental wellness, because physical and mental well-being are inextricably linked.<sup>668</sup> While violence against police

#### **Bureau of Justice Assistance (BJA) VALOR Initiative**

The Officer Robert Wilson III Preventing Violence Against Law Enforcement Officers and Ensuring Officer Resilience and Survivability (VALOR) Initiative is an effort to improve the immediate and long-term safety, wellness, and resilience of our nation's law enforcement officers. Through no-cost training, research, and partnerships, the VALOR Initiative seeks to provide resources and skills to confront the many complex issues that officers face and use the latest research and practices to address all aspects of officer safety and wellness.

<sup>665</sup> Powell, M., Cassematis, P., Benson, M., Smallbone, S., & Wortley, R. (2014). Police officers' strategies for coping with the stress of investigating internet child exploitation. *Traumatology: An International Journal*, 20(1), 32–42. <https://doi.org/10.1037/h0099378>

<sup>666</sup> Cullen, O., Ernst, K. Z., Dawes, N., Binford, W., & Dimitropoulos, G. (2020). "Our Laws Have Not Caught up with the Technology": Understanding Challenges and Facilitators in Investigating and Prosecuting Child Sexual Abuse Materials in the United States. *Laws*, 9(4), 28. <https://doi.org/10.3390/laws9040028>

<sup>667</sup> Bursztein, E., Bright, T., Clarke, E., DeLaune, M., Eliff, D. M., Hsu, N., Olson, L., Shehan, J., Thakur, M., & Thomas, K. (2019). Rethinking the Detection of Child Sexual Abuse Imagery on the Internet. *The World Wide Web Conference on -WWW '19*, 2601–2607. <https://doi.org/10.1145/3308558.3313482>

<sup>668</sup> Catanese, S. A. (2010). Traumatized by Association: The Risk of Working Sex Crimes. 74(2), 4.

by sex offenders is not well-studied, in a sample of 1,107 significant incidents where a subject posed a serious threat to officers executing arrest warrants, 11.2% involved a sex offender.<sup>669</sup> In those situations, 61.3% threatened law enforcement officers with a weapon or attempted to run them over with a vehicle. Data from the U.S. Marshals Service found that in a 10-year period, 17.4% of the law enforcement officers killed were murdered by sex offenders.<sup>670</sup>

Officer safety can be at greatest risk during offender apprehension. Child sex offenders, particularly CSAM offenders, may be assessed as low risk for violence because most lack prior arrests for violent crimes; or indeed, *any* crimes.<sup>671</sup> However, they dread the thought of going to prison, where they believe they will be targets for violence<sup>672</sup> and an arrest may irreparably damage their reputation and carefully created self-image,<sup>673</sup> affect or destroy their relationships with friends and family, drain their life's savings, and eliminate their means to earn a living. This level of fear, exposure, and desperation can lead offenders to take drastic measures that put officer safety at risk when faced with apprehension. Any interaction with a suspect carries a multitude of risks for the safety and well-being of law enforcement professionals.

### *Lack of Training and Resources*

Although all law enforcement agencies undoubtedly believe the safety and wellness of their personnel is a priority, competing demands, including investigative efforts, often prevent a stronger focus on funding these wellness programs. Additionally, funding has not adequately increased for hiring and training investigators to work on child exploitation cases given the increase in incoming Cybertips and other investigative leads. As a result, many teams are understaffed and without necessary resources. Organizational challenges and chronic underfunding to meet staffing, training and technology needs, high levels of professional burnout and increased traumatization present ongoing obstacles to many ICAC task force teams. Failure to provide resources for staffing and wellness causes expensive burnout and high turnover, which increases hiring and training needs for new personnel, and increased costs for physical and mental health treatment.

*"We have no problem spending thousands of dollars to protect our people physically, but what are we doing to protect our investigators that are viewing thousands of images of child exploitation? It's just as important to include wellness tools that are going to minimize their exposure to this type of material. It is like wearing a Kevlar vest to protect your mental health and wellness"*  
*Eric Oldenburg, Detective Ret., Arizona ICAC Task Force*<sup>674</sup>

Limited resources can force personnel to bear increasingly heavy workloads due to the rapid increase in child exploitation cases, the quickly evolving technological landscape, and

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<sup>669</sup> Unpublished data (2004-2016), United States Marshals Service

<sup>670</sup> *Id.*

<sup>671</sup> Shelton, J., Eakin, J., Muirhead, Y., Owens, J. (2016). Online child sexual exploitation: An investigative analysis of offender characteristics and offending behavior. *Aggression and Violent Behavior, 30*, 15-23.

<sup>672</sup> Acts of aggression against sex offenders in federal custody is exaggerated in movies and media. When inmates are managed appropriately, violence is very uncommon. For example, out of more than 1,000 inmates who participated in the BOP's Sex Offender Treatment Program between 2000 and 2008, only two participants were ever assaulted, and the perpetrators were other sex offenders.

<sup>673</sup> *Id.*

<sup>674</sup> Shared during listening sessions for this National Strategy report.

insufficient numbers of investigators. Faced with an exploding volume of CyberTips<sup>675</sup> and cases, investigators are exhausted, which increases stress and trauma. Crushing caseloads and the inability for investigators to work anything but the most pressing cases exacerbate that stress, knowing that many children will continue to get abused and will not receive justice.<sup>676</sup>

## Significant Developments

Despite the challenges, law enforcement professionals are beginning to speak more freely about stress and trauma and how agencies can and should support their employees. For child exploitation investigators and other professionals seeking additional support, the cultural shifts may feel like they are moving at a glacial pace. However, some shifts provide some hope around wellness. For example, ICAC Task Force commanders have recognized the need for wellness support. Since 2009, officer safety and wellness provisions have been put into place through training and technical assistance provided by The Innocent Justice Foundation through the Supporting Heroes in Mental Health Foundational Training (SHIFT) program. This support has provided training to ICAC and law enforcement professionals in every state and has expanded training provisions to affiliated judicial professionals. The SHIFT program has more than doubled the amount of training and technical assistance to the ICAC Task Forces. It has created a resource center that provides training materials, topical resources relating to wellness, and commander resources to assist ICAC Task Forces, their affiliated agencies, and mental health/wellness providers.<sup>677</sup> They have also developed pattern interruption tools to assist with mitigating the effects of exposure to traumatic material and reduce the likelihood of unwanted recall of images. These efforts have led to positive results, including a 2019 ICAC Task Force survey of commanders showing overwhelming support of mandatory wellness programs including one-on-one sessions with mental wellness providers.

The National Center for Missing & Exploited Children created the Safeguard Program in 1999, becoming one of the first models for protecting and providing support to staff who view objectionable material in the workplace. During the first 6-months of employment, each new analyst participates in monthly individual and group sessions with outside Safeguard consultants, which aids in building trust and ensuring analyst confidentiality. After this period, analysts and managers are required to participate in bi-annual individual sessions and quarterly psychoeducational trainings are offered to all staff.<sup>678</sup>

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<sup>675</sup> The National Center for Missing & Exploited Children's CyberTipline is the nation's centralized reporting system for the online exploitation of children.

<sup>676</sup> Cullen, O., Ernst, K. Z., Dawes, N., Binford, W., & Dimitropoulos, G. (2020). "Our Laws Have Not Caught up with the Technology": Understanding Challenges and Facilitators in Investigating and Prosecuting Child Sexual Abuse Materials in the United States. *Laws*, 9(4), 28. <https://doi.org/10.3390/laws9040028>

<sup>677</sup> Password protected resource center available to ICAC Task Force Agencies and affiliates. Access granted with an agency email and verification through <https://shiftwellnessresources.com/register>

<sup>678</sup> The National Center for Missing & Exploited Children, The Safeguard Program, June 22, 2015 Lanae J. Holmes, LICSW, Senior Family Advocacy Specialist, Family Advocacy Division, NCMEC, Duane T. Bowers, LPC, NCMEC Safeguard Consultant [https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/imp\\_ncmec\\_safeguard\\_program-508.pdf](https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/imp_ncmec_safeguard_program-508.pdf)

*“Utilizing the recommendations from SHIFT is crucial to developing a healthy work environment; however, merely providing, and not requiring, mental health services may not be enough. If law enforcement personnel are unwilling, or unaware of the need, to seek mental health services, then it may be the agency’s duty to require mandatory counseling sessions until the climate changes so that seeking mental health services is no longer stigmatized.”<sup>679</sup>*  
*Dr. Seigfried-Spellar, Purdue University, Department of Computer & Information Technology*

Although the creation of programs, materials, and assistance surrounding this issue have increased over the past few years, the need still exists for additional material and curriculum development to support child protection professionals and affiliated agencies. Funding is needed to support development and evaluation of a robust law enforcement wellness programs in child exploitation and beyond.

### Strategic Response

Short-Term Goals	Long-Term Goals
<p><b>Secure Increased Resources:</b> Law enforcement agencies, including federal agencies, should request dedicated resources/funds for mental health and wellness programs as authorized by the PROTECT Act. This should include (but not be limited to) providing funding for law enforcement wellness services and programs to all agencies and staff involved in investigating child exploitation cases via ICAC Task Forces.</p>	<p><b>Provide Mandatory Training:</b> Congress must mandate psycho-educational training that includes building resilience, psychological first aid, pre-exposure training, imminent danger, and risk identification, and training for leadership within law enforcement agencies to reduce stigma and suicide and improve agency culture associated with seeking mental health support and assistance.</p>
<p><b>Make Law Enforcement Wellness a Priority:</b> The PROTECT Act should be expanded to require any entity receiving funds under the Act to include budgetary line items for mental health and wellness. Funding should also be increased for the hiring of additional personnel to lessen the burden on each individual investigator, including at the federal level.</p>	<p><b>Expand access to officer wellness programs within the federal criminal justice system:</b> Officer wellness resources should be readily available for all federal criminal justice personnel to access. Prosecutors, defense attorneys, judges, courtroom staff, jurors and others who are exposed to CSAM material should have access to mental health and wellness resources following exposure. This could potentially be embedded within child exploitation prevention-focused units and made available to local partner agencies during investigatory collaborations.</p>

<sup>679</sup> Seigfried-Spellar, K. C. (2018). Assessing the Psychological Well-being and Coping Mechanisms of Law Enforcement Investigators vs. Digital Forensic Examiners of Child Pornography Investigations. *Journal of Police and Criminal Psychology*, 33(3), 215–226. <https://doi.org/10.1007/s11896-017-9248-7>

<p><b>Wellness Inter-Agency Working Group:</b> An inter-agency working group should be created to address mental health and wellness best practices for those specifically involved in child sexual exploitation cases. The Working Group should collaborate and coordinate with the Department of Justice’s efforts related to the Law Enforcement Mental Health and Wellness Act to improve information sharing and inter-agency wellness programs.</p>	<p><b>Partner with Community Leaders:</b> Work with stakeholders to educate the public about the nature and scope of work done by law enforcement and justice professionals and the impact the work has on mental health and wellness.</p>
	<p><b>Encourage and facilitate research:</b> In order to better understand the impact of child exploitation investigations and prosecutions on law enforcement and prosecutors and identify the most effective wellness strategies and tools, additional research is necessary.</p>

*Funding & Mandatory Training*

Funding should also be increased for the hiring of additional personnel to lessen the burden on each individual investigator, which will allow for less exposure to the material, less possibility of vicarious trauma and more opportunity for taking steps to safeguard their well-being. Wellness experts agree that training on mental health and wellness is essential to mitigate the effects of trauma exposure during an investigator’s work. Currently, mental health and wellness training in many law enforcement agencies is not adequate. However, both personnel who work on child exploitation cases and leadership need specialized training to improve the well-being of law enforcement in this area.

Biannual mental health and wellness training for all personnel working with CSAM should be mandatory nation-wide once additional funding is secured. These trainings would be a first step in demonstrating that law enforcement well-being is a priority. Investigators across the country have been at the forefront of providing these types of mental health trainings to their teams and affiliates. These trainings have shown great results in employee retention, job satisfaction and reduced signs of burnout and stress.<sup>680</sup> However, they are localized, are not mandated, and do not occur as frequently as necessary.

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<sup>680</sup> Officer Wellness Survey Report, 2019

Psycho-educational training helps individuals cope better when stressful situations arise. This training teaches individuals how to properly identify whether they have a mental health issue, and how to obtain services to address these issues. It not only provides individuals with the self-awareness to identify issues pertaining to mental health or trauma, but it can assist in building skills that enhance a person’s resilience when exposed to traumatic materials. Pre-exposure training refers to training that occurs before an officer is exposed to CSAM. Law enforcement personnel consistently rate pre-exposure training as highly beneficial for preparing them for the possible effects of viewing disturbing materials. Pre-exposure training, in conjunction with wellness programs, leads to better preparedness for the job. It also leads to better long-term job morale, wellness, retention, and emotional health for the officers involved in these cases, their families, and the communities they serve.<sup>681</sup> Mandating both psycho-educational and pre-exposure wellness training for all personnel working on child exploitation cases will have positive results for individuals and agencies.

#### Definitions

**Psycho-educational training** teaches individuals how to properly identify whether they have a mental health issue, and how to receive mental health services to address these issues.

**Pre-exposure training** for officers occurs before they begin investigating child exploitation cases and are regularly exposed to child sexual abuse material.

Law enforcement agency leaders and executive staff may not have experience investigating child exploitation offenses. As a result, they often struggle to recognize the signs and symptoms of stress and trauma and may fail to offer wellness support or implement stress mitigation techniques. Because building an effective team and supporting their staff is critical, mental health and wellness training for leadership should be encouraged around attunement, self-care, self-compassion, and strategies for staff support. During a seminar on protecting law enforcement against stress and trauma held in 2020,<sup>682</sup> speakers from both law enforcement and the academic community emphasized the importance of providing training and resources to leadership so they can identify the possible signs of trauma and ensure treatment in order to prevent work-related trauma and reduce the risk of suicide in law enforcement personnel.<sup>683</sup> These trainings will give leadership the tools to make lasting improvements in the wellness of their teams and the culture of law enforcement.

#### *Make Law Enforcement Wellness a Priority*

Wellness must be elevated as a priority within law enforcement agency culture. Leadership is tasked with the enormous responsibility of ensuring cases are completed, personnel are motivated and healthy, and administrative requirements are met. They too should be supported

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<sup>681</sup> Building and Sustaining an Officer Wellness Program: Lessons from the San Diego Police Department. (2018)

<sup>682</sup> the Research for the Real-World seminar on Protecting Against Stress & Trauma: Research Lessons for Law Enforcement

<sup>683</sup> Violanti, J., Stiver, W., & Grupe, D. (2020, January). Key Points About Stress and Wellness for Law Enforcement Leadership | Office of Justice Programs [Interview]. <https://www.ojp.gov/library/abstracts/key-points-about-stress-and-wellness-law-enforcement-leadership>

and trained in their own mental health and wellness in conjunction with being given the tools to make lasting, improvements in the mental and physical health of their teams and the culture of law enforcement agencies. It is critical that leadership address and change the perception of mental health and wellness from the top down to erase the stigma around asking for help and affect the culture of toughness and emotional repression common in some police departments.<sup>684</sup> Lack of organizational support leads to morbidity and mortality rates that are nearly three times higher for law enforcement personnel when compared to the general population.<sup>685</sup>

Securing funding and mandating wellness training will ensure that federal agencies charged with preventing and investigating child exploitation are able to better perform their jobs and maintain their own health. A change in culture from the top down will minimize workplace isolation and the tendency for personnel working these types of cases to disregard their stress and vicarious trauma. In the long term, access to mandated wellness training and funding should be made available to all federal agents that are affiliated or partnered during investigatory collaborations.

### *Wellness Working Group and Community Partnerships*

Mental health and wellness programs within law enforcement agencies that are involved in the prevention and interdiction of child exploitation and abuse cases may vary. A “one size fits all” program may not ensure everyone’s needs are met and that improvements towards a healthy and strong team are being made. Creating an interagency working group that meets regularly to share what has worked within their agencies, ask questions, and express needs or concerns will help answer questions and design programs. First, it will provide an opportunity to share what has shown measurable benefits for some teams, providing valuable avenues for federal agencies that do not know where to begin to develop wellness programs. Secondly, the presence and use of social support is a strong protective factor for resilience and mental health and wellness.<sup>686</sup> Creating a space for leaders in wellness to come together and discuss these topics will benefit agency teams by providing collaborative strategies and will also benefit the individual members of the working group by ensuring they do not feel isolated and unsupported while creating a path to well-being for their teams. The Working Group should collaborate and coordinate with the Department of Justice’s efforts related to the Law Enforcement Mental Health and Wellness Act to avoid duplication of efforts and improve information sharing and inter-agency wellness programs.

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<sup>684</sup> As expressed during listening sessions conducted with subject matter experts on law enforcement wellness as part of the development of this report.

<sup>685</sup> Mumford, E. A., Taylor, B. G., & Kubu, B. (2015). Law enforcement officer safety and wellness. *Police Quarterly*, 18(2), 111–133. <https://doi.org/10.1177/1098611114559037>

<sup>686</sup> American Psychological Association (2014). *The Road to Resilience*. Washington DC: American Psychological Association. <http://www.apa.org/helpcenter/road-resilience.aspx> and Ozbay F, Fitterling H, Charney D, Southwick S. Social support and resilience to stress across the life span: a neurobiologic framework. *Curr Psychiatry Rep*. 2008 Aug;10(4):304-10. doi: 10.1007/s11920-008-0049-7. PMID: 18627668. <https://pubmed.ncbi.nlm.nih.gov/18627668/>