

In recent years child pornography has come to the forefront of the internet. This has intern caused new laws to be enacted. With these laws, sentencing is stickier and judges have less latitude.

If you work on computers you should be aware of State statue 586.110 requiring law enforcement be notified when any child pornography is found.

This guide has the basic DO'S and DON'T'S of child pornography, including some Missouri statutes.

Whether the accused is an adult or a minor the laws are the same, it is a felony. If you consider child pornography like it is Methamphetamine, you should be ok.

Don'ts

Don't turn off the computer.

Turning the computer off can sometimes change up to 100 files. This could overwrite evidence, of someone's guilt or innocence.

Don't look around on the computer.

The computer is now a crime scene and looking around in it is altering the machine, therefore spoiling evidence. It would be like picking up the gun next to the body and firing it.

Don't under any circumstances delete anything, period.

If you delete a Child Pornography picture you are destroying evidence. It is a felony and you most likely will be arrested and charged.

Don't move the computer anywhere, period.

If you take the computer somewhere, like to your computer tech, you are now in possession of and transporting Child Pornography, another felony.

Don't accuse anyone and don't spread rumors.

Always remember if the suspect is not guilty there will most likely be lawsuits. In attorney language, get your checkbook out.

Don't make copies of any thing.

Don't try to copy anything from the machine. When they do the forensics they will be able to tell if there was an external drive attached, and they will be looking for it. You don't want to have to explain what you did. You will be given access to your business documents at a later time.

DO'S

DO secure the scene.

It is important to be able to say no one has touched the computer or changed anything from when you found Child Pornography.

DO contact a supervisor.

Don't take all of this on yourself. Even if you are a supervisor there is always someone above you.

DO call the police.

It is the law that you call law enforcement. If a minor is involved also call child protection services.

DO follow the instructions of law enforcement. NO ONE ELSE.

Follow their instructions to the T. It is very important you make no mistakes and preserve evidence.

DO get the name and badge number of the officer you talk to and write it down.

At this point if possible have a witness with you while talking to the police.

DO allow the detectives do whatever it is they need.

Once the police arrive it is now their pig so to speak.

DO get a receipt for the computer.

They are going to take it with them. It is their job and you may not get it back for a long time. If there are critical files on it that you need to do business, there are ways to get copies of them. Don't bug them about that now, you should mention it but don't push it at this point.

DO let them know if there are any classified or HIPAA issues with the machine.

They need to know if there are issues with data that may be protected information. Make sure they put it in their report. In some cases the authorities will have to get a warrant to seize the computer. This could make for a very long day.

Some Hints.

Most Sheriff's departments report everything to the news.

Most Police departments only report arrests. They have too many calls to print.

To protect yourself and the company do not talk about the incident.

Pay close attention to what is said and done; you may have to testify in court.

Keep a log of everyone that was called, when they arrived, what was said and what was done.

If there is an incident you can contact us anytime at 573-303-4271. We will come to your facility and assist you with the process, anytime, night or day.

We have included copies of some Missouri statues pertaining to Child Pornography.

****We are not attorneys and this should not be taken as legal advice.**

Missouri Revised Statutes

Chapter 568 Offenses Against the Family Section 568.110

August 28, 2007

Professional's duty to report on film, photographs, videotapes, failure to report, penalty--exceptions.

568.110. 1. Any film and photographic print processor, computer provider, installer or repair person, or any Internet service provider who has knowledge of or observes, within the scope of the person's professional capacity or employment, any film, photograph, videotape, negative, slide, or computer-generated image or picture depicting a child under the age of eighteen years engaged in an act of sexual conduct shall report such instance to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible.

2. Failure to make such report shall be a class B misdemeanor.

3. Nothing in this section shall be construed to require a provider of electronic communication services or remote computing services to monitor any user, subscriber or customer of the provider, or the content of any communication of any user, subscriber or customer of the provider.

(L. 1984 H.B. 1255, A.L. 2000 S.B. 757 & 602)

Missouri Revised Statutes

Chapter 573 Pornography and Related Offenses Section 573.037

August 28, 2009

Possession of child pornography.

573.037. 1. A person commits the crime of possession of child pornography if such person knowingly or recklessly possesses any child pornography of a minor under the age of eighteen or obscene material portraying what appears to be a minor under the age of eighteen.

2. Possession of child pornography is a class C felony unless the person possesses more than twenty still images of child pornography, possesses one motion picture, film, videotape, videotape production, or other moving image of child pornography, or has pleaded guilty to or has been found guilty of an offense under this section, in which case it is a class B felony.

(L. 1987 H.B. 113, et al., A.L. 2000 S.B. 757 & 602, A.L. 2004 H.B. 1055, A.L. 2008 S.B. 714, et al., A.L. 2009 H.B. 62)

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Missouri General Assembly

Missouri Revised Statutes

Chapter 573 Pornography and Related Offenses Section 573.050

August 28, 2009

Evidence in obscenity and child pornography cases.

573.050. 1. In any prosecution under this chapter evidence shall be admissible to show:

- (1) What the predominant appeal of the material or performance would be for ordinary adults or minors;
- (2) The literary, artistic, political or scientific value of the material or performance;
- (3) The degree of public acceptance in this state and in the local community;
- (4) The appeal to prurient interest in advertising or other promotion of the material or performance;
- (5) The purpose of the author, creator, promoter, furnisher or publisher of the material or performance.

2. Testimony of the author, creator, promoter, furnisher, publisher, or expert testimony, relating to factors entering into the determination of the issues of obscenity or child pornography, shall be admissible.

3. In any prosecution for possession of child pornography or promoting child pornography in the first or second degree, the determination that the person who participated in the child pornography was younger than eighteen years of age may be made as set forth in section 568.100, RSMo, or reasonable inferences drawn by a judge or jury after viewing the alleged pornographic material shall constitute sufficient evidence of the child's age to support a conviction.

4. In any prosecution for promoting child pornography in the first or second degree, no showing is required that the performance or material involved appeals to prurient interest, that it lacks serious literary, artistic, political or scientific value, or that it is patently offensive to prevailing standards in the community as a whole.

(L. 1977 S.B. 60, A.L. 1985 H.B. 366, et al., A.L. 1987 H.B. 113, et al.)

Effective 7-15-87

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Missouri Revised Statutes

Chapter 573 Pornography and Related Offenses Section 573.025

August 28, 2009

Promoting child pornography in the first degree.

573.025. 1. A person commits the crime of promoting child pornography in the first degree if such person possesses with the intent to promote or promotes child pornography of a child less than fourteen years of age or obscene material portraying what appears to be a child less than fourteen years of age.

2. Promoting child pornography in the first degree is a class B felony unless the person knowingly promotes such material to a minor, in which case it is a class A felony. No person who pleads guilty to or is found guilty of, or is convicted of, promoting child pornography in the first degree shall be eligible for probation, parole, or conditional release for a period of three calendar years.

3. Nothing in this section shall be construed to require a provider of electronic communication services or remote computing services to monitor any user, subscriber or customer of the provider, or the content of any communication of any user, subscriber or customer of the provider.

(L. 1985 H.B. 366, et al., A.L. 2000 S.B. 757 & 602, A.L. 2008 S.B. 714, et al., A.L. 2009 H.B. 62)

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Chapter 573 Pornography and Related Offenses Section 573.035

August 28, 2009

Promoting child pornography in the second degree.

573.035. 1. A person commits the crime of promoting child pornography in the second degree if such person possesses with the intent to promote or promotes child pornography of a minor under the age of eighteen or obscene material portraying what appears to be a minor under the age of eighteen.

2. Promoting child pornography in the second degree is a class C felony unless the person knowingly promotes such material to a minor, in which case it is a class B felony. No person who is found guilty of, pleads guilty to, or is convicted of promoting child pornography in the second degree shall be eligible for probation.

(L. 1985 H.B. 366, et al., A.L. 2000 S.B. 757 & 602, A.L. 2008 S.B. 714, et al., A.L. 2009 H.B. 62)

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Missouri Revised Statutes

Chapter 573 Pornography and Related Offenses Section 573.038

August 28, 2009

Property or material constituting child pornography to remain in custody of the state— availability of, when.

573.038. 1. In any criminal proceeding, any property or material that constitutes child pornography shall remain in the care, custody, and control of either the state or the court.

2. (1) Notwithstanding Missouri rule of criminal procedure 25.03 or any other rule or statute to the contrary, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography, so long as the state makes the property or material reasonably available to the defendant.

(2) For the purposes of subdivision (1) of this subsection, property or material shall be deemed to be reasonably available to the defendant if the state provides ample opportunity for inspection, viewing, and examination at a state or other governmental facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

(L. 2008 S.B. 714, et al.)

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