

# Child Pornography is Sex Trafficking

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On December 30, 2011, Former President Obama declared January to be National Slavery and Human Trafficking Prevention Month. The general public's awareness of human trafficking has improved considerably over the past years. At the time of this writing, the last day of the 2017 Human Trafficking Awareness Month, we are grateful that many community activities have been held in St. Louis and surrounding areas. Some activists participated in a series of anti-human trafficking campaigns at the Missouri Capital; some held a vigil for survivors and victims who lost their lives; some held resource dissemination events to better inform service providers, concerned citizens and students.

In light of a very recent high-profile indictment of a St. Louis County child pornography case, we are compelled to providing regional information on child pornography in the context of human trafficking. As defined by the Victims of Trafficking and Violence Protection Act of 2000 (TPVA, 2000), [i] human trafficking includes recruitment, harboring, provision, receipt, transportation and/or obtaining of individuals by using force or threats, coercion, fraud and/or using systems of indebtedness or debt bondage for purposes of sexual or other forms of economic exploitation. Coercion includes threats of physical or psychological harm to the

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trafficked individual or his/her/their children and/or families. A minor (under the age of 18) engaged in commercial sex is a victim of sex trafficking even without the evidence of force, threats, coercion or fraud. The last point makes it clear that any form of commercial sexual exploitation is a form of sex trafficking.<sup>2</sup> Indeed, legal scholars maintain that pornography involving children meets legal criteria for sex trafficking, as a commercial sex act involving a minor is included in this definition. In terms of the commercial aspect of sex acts involving children in pornography, such scholars maintain that when people trade pornographic videos with one another through online sites, they are trading something of value—this constitutes commercialized sex.

At times, cases in which a defendant is charged with sex trafficking may overlap with child pornography. For example in *United States v. Cook*, Cook, a St. Louis resident, was found to have traded digital images and photographs of sexual torture with Edward and Marilyn Bagley, who were sex trafficking a 16 year old girl. Cook also went to the Bagley's residence to rape the girl in and enact sexual torture fantasies. Cook was charged with sex trafficking. This case is relevant to a discussion of child pornography as sex trafficking, as the courts ruled that the digital images, photos, videos, and sex acts themselves constituted “something of value” and thus met conditions for the commercial aspect of sex trafficking. This potentially sets case precedent for charging buyers of child pornography with sex trafficking. Possession of child pornography is not widely considered an act of sex trafficking. However, legal scholars indicate possession, creation, and distribution of child pornography is directly related to sex trafficking in terms of demand. An individual possesses child pornography because they have a demand for the content. This demand creates a market for the production of pornography, where inherently, children are exploited and sex-trafficked to create it. MacKinnon (2005), law professor, suggests sex trafficking can occur through hard-copy photos, digital images, or videos—as seen in *United*

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2. The federal criminal code (18 U.S.C. section 1591) defines a commercial sex act as “any sex act, on account of which anything of value is given to or received by any person.

*States v. Cook*. Any situation where a minor is involved in pornography, regardless of whether the minor is forced, coerced, manipulated, or otherwise enticed into engaging in child pornography, is an act of sex trafficking. [ii] [iii]

There appear to be no credible studies that measure the U.S. general population prevalence of child pornography viewers, as this is a hidden population due to the illegality of the behavior. One recent community study of young men (mean age of 18) reported that 4.2% of the sample ever viewed child pornography. However, this study was based on a Swedish population.[iv] The Crimes against Children Research Center carried out a study to track on-line child pornography trafficking activities over one year from 2010 to 2011 in U.S. computers focusing on one peer-to-peer (P2P) file sharing network. The results showed that in the one year period, over 245,000 computers shared over 120,000 files containing child pornography. It is impossible to deduce this information to annual prevalence of viewers, given this study tracked only one P2P network and the sample consisted of computers, not people. However, the study noted less than 1% of the US computers contributed high annual contributions of file sharing (100 or more). Thus, the percent of those who may be considered “addicted” to child pornography or involved in organized distribution rings may be relatively small.[v]

Lacking credible population data, another approach is to examine data on arrested and/or prosecuted cases of child pornography. Although such data are undoubtedly just the tip of iceberg, they provide a glimpse into criminal cases associated with child pornography. In the Table, we show the results of press releases of cases we collected that were made public under the category of “human trafficking” between January 1 and Jan 31, 2017 for the states of Missouri and Illinois. These press releases were obtained from the Department of Justice through subscription. These press-releases are far from perfect. For example, in Missouri, an expert informed us that the Western District Office tends to issue press releases more “openly” than the Eastern District Office – in which case, the number of cases in our St. Louis region would be downwardly biased compared to the cases identified in the Western part of Missouri.

## Human Trafficking Awareness Month: LOCAL FACT SHEET

### Press Release Data on Missouri and Illinois: January 1- 30, 2017

- **19** - Number of sentenced or indicted cases press-released by the Department of Justice this month (as of Jan 31, 2017)
- **68%** - Percent reported to have occurred in Missouri
- **32%** - Percent reported to have occurred in the St. Louis Metropolitan Statistical Area
- **89%** - Charges involving receiving, distributing and/or creating child pornography

The table above shows that a total of 19 human trafficking cases were press-released during the 31 days of the Human Trafficking Awareness Month. Of the two states, 68% of the cases were reported to have been identified in townships located in Missouri; and 32% occurred inside the St. Louis Metropolitan Statistical Area. Most importantly, 89% (17 out of 19) cases were indicted or sentenced for child pornography charges, which include one or more of possessing, distributing and/or producing child pornography. Of those, three were also charged with act of sex with one or more minors. The reported duration of child pornography possession, distribution or production identified ranged from at least once to 20 years. Some cases were indicted but not yet prosecuted. If sentenced, lengths range from 5 years to over 20 years.

The information on some offenders shown in the table goes beyond our normal comprehension. For example, a 54-year old man living in Holt, a small city with the population less than 500 people in a Western part of Missouri, was found possessing 27,000 images and more than 300 videos of child pornography he obtained using a P2P network, which were stored in his basement computers and external drives. Such a finding makes one wonder about the severe, pathological nature of high-volume child pornography offenders. Some mental health

and addiction scholars actually argue that a child pornography offence is a valid diagnostic indicator of pedophilic disorder, which is a recognized psychiatric disorder in *the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*. [vi] A twin population-based Finnish study suggests a role of genetic influences in pedophilic orientation. [vii] It may be that the criminal justice systems as well as anti-human trafficking advocates need to widen their perspectives to include clinical and public health approaches to child pornography offenses.

Child pornography is not typically charged as sex trafficking, as related legislation, sentencing guidelines, and prosecution efforts are already working well. Prosecutors are familiar with successfully prosecuting these cases, thus, there is no pressing need to fold child pornography into sex trafficking. That said, child pornography offenses are offenses of sex trafficking, and there are some cases in which child pornography is a part of the sex trafficking case (such as in the case described above). As such, the general public needs to view child pornography as a serious means of child sexual exploitation, similar to the way we view situations involving physical sexual contact with a minor. At the same time, we also need to examine causes and risk factors that increase the likelihood of becoming a child pornography offender in a more objective way in order to engage in more effective prevention.

Relating to the child pornography case involving the Subway spokesman Jared Fogle, Thomas Plante, a clinical psychologist known for treating sex offenders in the Catholic Church, commented that a highly stereotypical and largely inaccurate view of pedophiles as men of “despicable lowlifes whom we can spot when we meet them” contributes to our stunned responses when someone we know, directly or indirectly, someone in our neighborhood, gets arrested for child pornography. [viii] If we acknowledge child pornography possession is a serious but prevalent public health problem, if the local authority or those in the leadership position maintain measured but transparent responses when such a case is discovered, we may be able to advance potential solutions more effectively. Such an approach would help reduce

sexual victimization of our future children in the face of ever increasing technological sophistications.

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