

Staff Information Paper

Interstate Child Pornography Review

February 3, 2020

Current policy information and data were requested from Washington, Kansas, Oregon, and North Carolina regarding each jurisdiction's child pornography offenses. The following are the statutory frameworks for Washington, Kansas, Oregon, North Carolina, and Minnesota.

Statutory Framework

Washington Current Statutory Framework

Five statutes, 9 crimes:

- 9.68A.040 ("Sexual Exploitation of a Minor – Elements of Crime – Penalty")
- 9.68A.050 ("Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct")
- 9.68A.060 ("Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct")
- 9.68A.070 ("Possession of Depictions of Minor Engaged in Sexually Explicit Conduct")
- 9.68A.075 ("Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct")

Kansas Current Statutory Framework

2 statutes, 8 crimes:

- 21-5510 ("Sexual Exploitation of a Child")
- 21-5514 ("Internet Trading in Child Pornography; Aggravated Internet Trading in Child Pornography")

Oregon Current Statutory Framework

5 statutes, 5 crimes:

- 163.670 ("Using Child in Display of Sexually Explicit Conduct")
- 163.684 ("Encouraging Child Sexual Abuse in the First Degree")
- 163.686 ("Encouraging Child Sexual Abuse in the Second Degree")

- 163.688 (“Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree”)
- 163.689 (“Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree”)

North Carolina Current Statutory Framework

3 statutes, 3 crimes:

- 14-190.16 (“First degree Sexual Exploitation of a Minor”)
- 14-190.17 (“Second degree Sexual Exploitation of a Minor”)
- 14-190.18 (“Third degree Sexual Exploitation of a Minor”)

Minnesota Current Statutory Framework

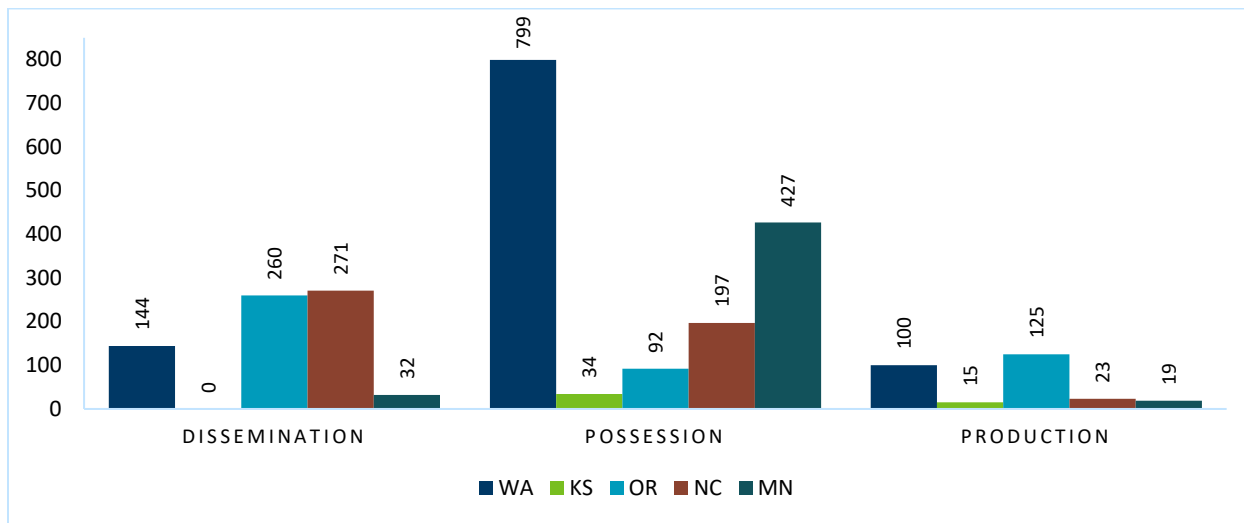
2 statutes, 5 crimes:

- § 617.246 (“Use of Minors in Sexual Performance Prohibited”)
- § 617.247 (“Possession of Pornographic Work Involving Minors”)

Case Volume and Distribution

The distribution of child pornography offenses varies by state (Figure 1). An offense category can have one to several crimes within a category. For example, Washington’s “Dissemination” category includes 4 crimes. A total of 2,538 individuals were sentenced for child pornography offenses. 1,043 individuals were sentenced for child pornography offenses in Washington, compared to 491 individuals in North Carolina, 478 individuals in Minnesota, 477 individuals in Oregon, and 49 individuals in Kansas. 799 (76%) individuals were sentenced for the “Possession” category in Washington. 271 (55%) individuals were sentenced for the “Dissemination” category in North Carolina. Overall, individuals were sentenced for the “Production” category the least (11%).

Figure 1. Distribution of Individuals by Offense Category and State, Sentenced in a 5 Year Span¹



Presumptive Sentences

Minnesota’s presumptive sentence for all child pornography offenses is a stayed sentence (probation) when an individual has zero criminal history (Table 1). Minnesota’s presumptive sentences vary when comparing the other state’s presumptive sentences. Most offense categories presume a prison sentence for individuals convicted of a child pornography offense at a criminal history score zero. The exceptions include Minnesota child pornography offenses, Oregon’s category “Possession”, and North Carolina’s categories “Dissemination” and “Possession.” Also, under certain conditions a probation sentence may be imposed for categories “Production” and “Dissemination” without a departure in Oregon.

Jessica’s Law, [K.S.A. § 21-6627](#), imposes a statutory maximum of 25 years in prison for certain child pornography offenses (Agg. Internet Trading of Child Pornography Child <14 yr. old and Promoting the Performance of Child <14 yr. old, and offender >18 yr. old) in Kansas. Jessica’s Law states that an individual will receive prison for life with a possibility of supervised parole and the sentence cannot be less than 25 years for a first-time child pornography offense.

Table 1. Current Presumptive Sentencing Range for Offense Category by State at Criminal History Score 0

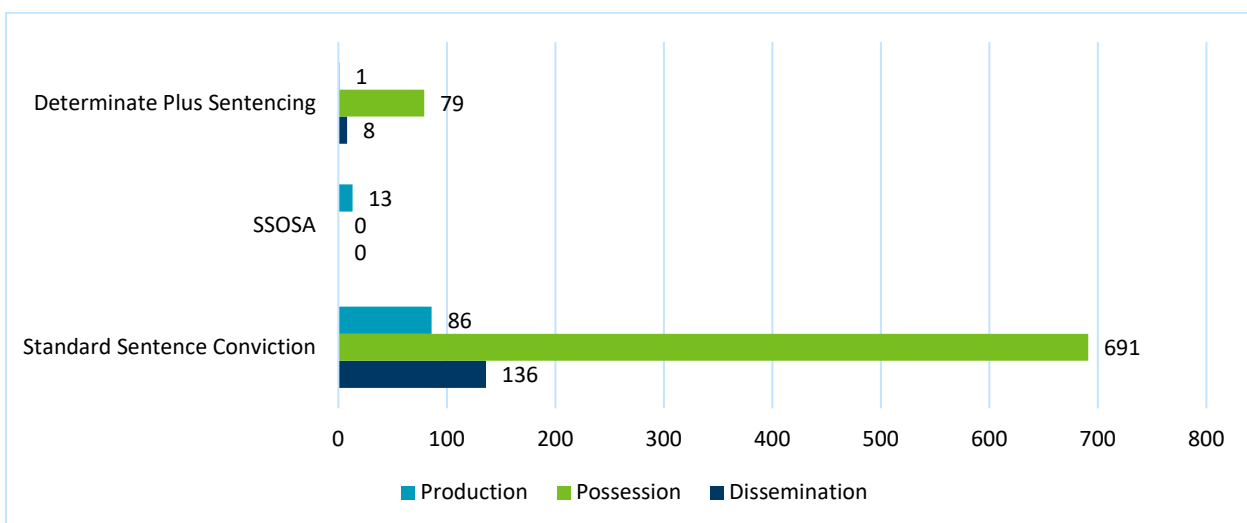
State	Offense Category	Sentencing Range w/ Criminal History of 0
Minnesota	Dissemination	2 years probation
	Possession	15 months probation
	Production	2 years probation

¹ The data collected by year varies for each state. Washington data derives from individuals convicted of child pornography offenses from 2013-2017, Kansas UNKNOWN 5-year span, Oregon 2014-2018, North Carolina 2015-2019, and Minnesota 2014-2018.

State	Offense Category	Sentencing Range w/ Criminal History of 0
Washington	Dissemination	6-20 months prison
	Possession	3-14 months prison
	Production	31-41 months prison
Kansas	Dissemination	31 months-Max 25 years prison
	Possession	31-34 months prison
	Production	31 months-Max 25 years prison
Oregon	Dissemination	16-18 months prison
	Possession	2-3 years probation
	Production	16-18 months prison
North Carolina	Dissemination	20-25 months prison or probation
	Possession	5-6 months prison or probation
	Production	58-73 months prison

The individuals convicted of child pornography offenses range in criminal history for Figure 2 through Figure 6. Washington’s most common type of sentence is a standard sentence conviction (prison) for all three types of offense categories (Figure 2). Determinate plus sentencing is the second most common type of sentence for the “Possession” category. Determinate plus sentencing is for sex offenders (aka "non-persistent offenders") and is an indeterminate sentence. Special Sex Offender Sentencing Alternative (SSOSA) is the second most common type of sentence for the “Production” category. If an individual is eligible for SSOSA and the sentence imposed is less than 11 years, the court may suspend the execution of the sentence.²

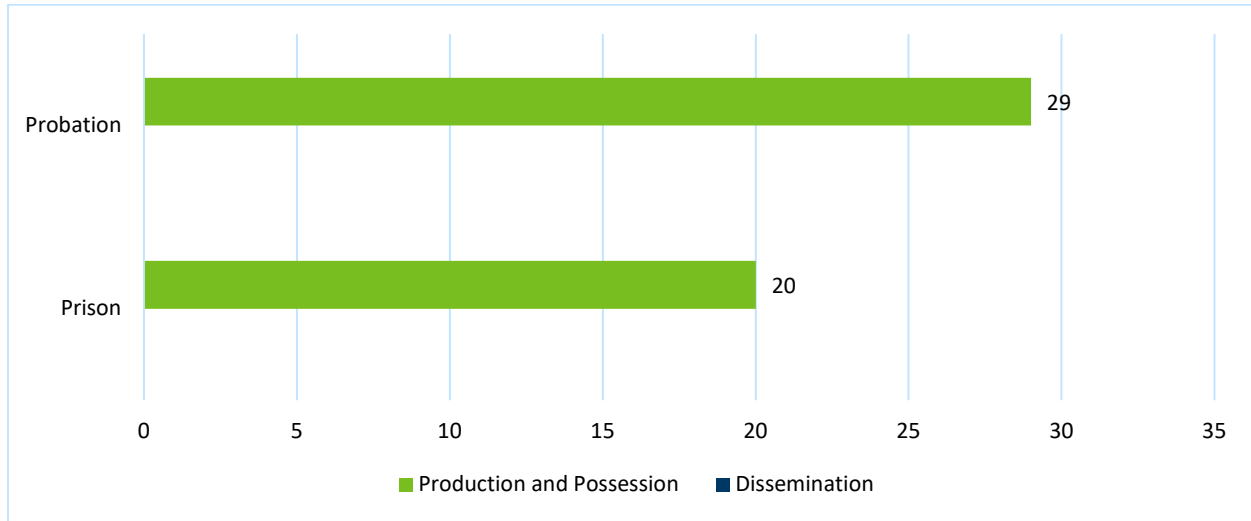
Figure 2. Distribution of Individuals by Type of Sentence Imposed and Offense Category, Sentenced 2013–2017, Washington



² Online at [2019 Washington State Adult Sentencing Guidelines](#) (p.236)

Kansas convicted zero individuals in the 5-year span for the offense category “Dissemination” (Figure 3). Kansas’s dissemination of child pornography includes Internet Trading of Child Pornography and Aggravated Internet Trading of Child Pornography. The types of offenses that were sentenced the most in Kansas include “Production” and “Possession” offenses. Kansas Sentencing Guidelines staff provided the offense categories of “Production” and “Possession” grouped together. In this grouping, 29 (59%) individuals received probation and 20 (41%) individuals received prison.

Figure 3. Distribution of Individuals by Type of Sentence Imposed and Offense Category, Sentenced 5-Year Period, Kansas



Oregon’s most common type of sentence is prison for the “Production” category (81%) and for the “Dissemination” category (61%) (Figure 4). Probation is the most common type of sentence for the “Possession” category (61%). Jail and/or local control was the least common type of sentence for all three offense categories.

Figure 4. Distribution of Individuals by Type of Sentence Imposed and Offense Category, Sentenced 2014–2018, Oregon

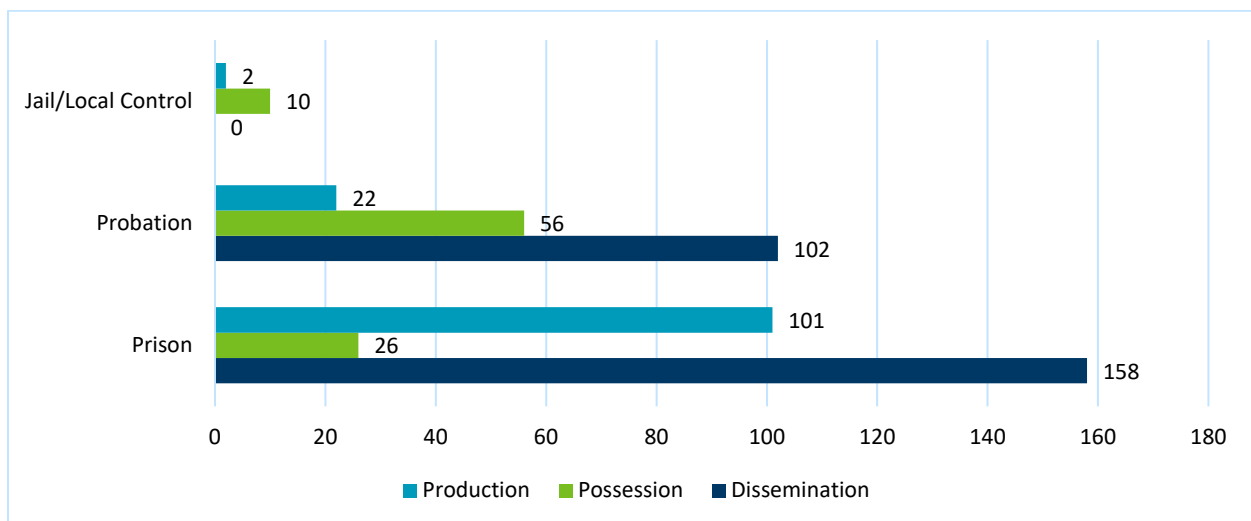


Figure 5. Distribution of Individuals by Type of Sentence Imposed and Offense Category, Sentenced 2015-2019, North Carolina

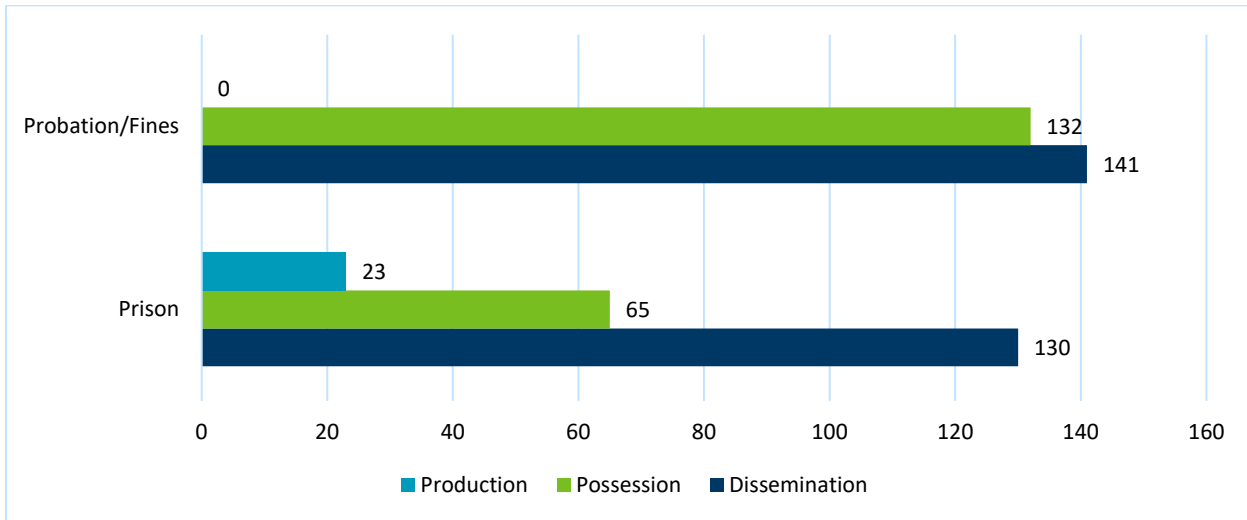


Figure 5 above illustrates the distribution of the type of sentence imposed by offense category in North Carolina. Individuals sentenced for the offense category “Dissemination” received an imposed sentence of prison and probation/fines similarly. Prison was imposed for individuals convicted of “Dissemination” 48 percent of the time and probation and/or fines was imposed for individuals sentenced for “Dissemination” 52 percent of the time. Probation and/or fines was received more for individuals sentenced for “Possession” (67%). All individuals sentenced for the offense category “Production” received prison in North Carolina. This may be due to the fact that prison is mandatory for all individuals convicted of the production of child pornography in North Carolina.

Figure 6. Distribution of Individuals by Type of Sentence Imposed and Offense Category, Sentenced 2014–2018, Minnesota

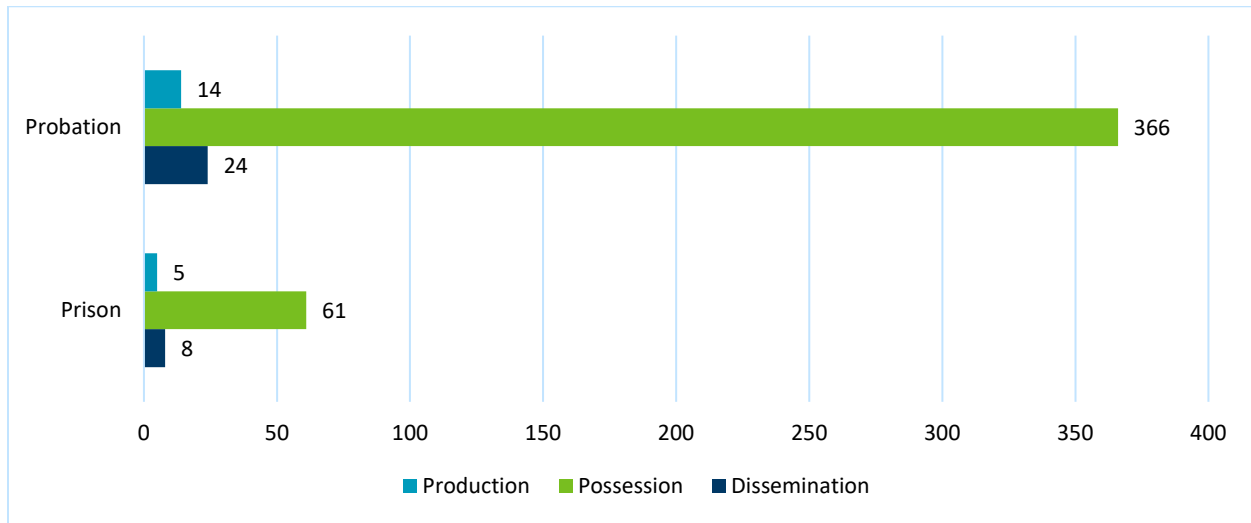


Figure 6 illustrates the distribution of the type of sentence imposed by offense category in Minnesota. Probation was the most imposed sentence for all individuals convicted of each offense category.

The average prison lengths by state are displayed in Table 2. The individuals convicted of child pornography offenses range in criminal history. Oregon represents the median of averages for the prison lengths. MSGC staff were not able to attain the average prison lengths for the five-year period for Oregon and Kansas. Individuals sentenced for the offense category “Production” have the highest average prison lengths. Individuals sentenced for the offense category “Possession” have the lowest average prison lengths.

Table 2. Average Prison Length in months for Child Pornography Offenses by State

State	Offense Category	Type of Offense	Average Prison Length
Minnesota	Dissemination	Dissemination of Child Pornography	71
		Dissemination of Child Pornography Subs.	0
		Dissemination of Child Pornography by Pred. Off.	85
	Possession	Possession of Child Pornography	45
		Possession of Child Pornography Subs.	46
		Possession of Child Pornography by Pred. Off.	60
	Production	Use of Minors in Sexual Performance	107
Washington	Dissemination	Dealing of Child Pornography 1 st Deg.	89.6
		Dealing of Child Pornography 2 nd Deg.	77.2
		Sending of Child Pornography 1 st Deg.	75
		Sending of Child Pornography 2 nd Deg.	0
	Possession	Possession of Child Pornography 1 st Deg.	88.2
		Possession of Child Pornography 2 nd Deg.	45.1

State	Offense Category	Type of Offense	Average Prison Length
		Viewing of Child Pornography 1 st Deg.	61.1
		Viewing of Child Pornography 2 nd Deg.	15.2
	Production	Sexual Exploitation of a Minor	178.7
Kansas	Dissemination	Internet Trading of Child Pornography	--
		Agg. Internet Trading of Child Pornography	--
		Agg. Internet Trading of Child Pornography Child <14 yr. old	--
	Possession	Possess Child Pornography Child <18 yr. old	--
	Production	Sexual Exploitation of a Child <18 yr. old	--
		Parent/Guardian Permitting Child Pornography Child <18 yr. old	--
		Promoting the Performance of Child <18 yr. old	--
		Promoting the Performance of Child <14 yr. old, and offender > 18 yr. old	--
Oregon ³	Dissemination	Encouraging Child Sexual Abuse in the 1 st Deg.	57.1
	Possession	Encouraging Child Sexual Abuse in the 2 nd Deg.	51.0
		Poss. of Materials Depicting Sexually Explicit Conduct of a Child in the 1 st Deg.	0
		Poss. of Materials Depicting Sexually Explicit Conduct of a Child in the 2 nd Deg.	0
	Production	Using Child in Display of Sexually Explicit Conduct	110.3
North Carolina	Dissemination	2 nd Deg. Sexual Exploitation of a Minor	23
	Possession	3 rd Deg. Sexual Exploitation of a Minor	7
	Production	1 st Deg. Sexual Exploitation of a Minor	65

Policy Questions and Answers

The following questions were asked regarding each jurisdiction's policy regarding child pornography offenses:

- 1) With respect to production, can you tell us how your jurisdiction handles co-occurring offenses? For example, if the production consists of recording an illegal sex act, how, if at all, would the offender be punished both for production and the illegal sex act?

³ The average prison length represents the median of the averages of each year due to not receiving the data from Oregon in time for this report.

Table 3. Policy Answers for Co-Occurring Child Pornography Offenses and Other Offenses by State

State	Answer
Minnesota	Individual can be prosecuted for the co-occurring offenses.
Washington	No answer to provide.
Kansas	State v. Schoonover-Individual can be prosecuted for the co-occurring offense, but not convicted of both.
Oregon	State rule governs-no further information given.
North Carolina	No prohibition on a defendant being charged and convicted for offenses co-occurring with an offense of sexual exploitation of a minor. Charging and plea practices may vary.

- 2) With respect to dissemination and possession, how does your jurisdiction handle a collection consisting of multiple images? For example, is the penalty increased for multiple images? If so, how is this done?

Table 4. Policy Answers for Dissemination and Possession Consisting of Multiple Images by State

State	Answer
Minnesota	Multiple convictions for possession of multiple images, even if together on the same computer, may receive multiple sentences. Guidelines policy 2.B.1.e.- Single Course of Conduct/Multiple Victims. State v. Rhodes, 690 N.W.2d 135 (Minn. Ct. App. 2004). As separate behavioral incidents when the images were downloaded at substantially different times and the offenses were not in furtherance of each other. State v. Bakken, 883 N.W.2d 264 (Minn. 2016).
Washington	Each depiction or image of visual or printed matter constitutes a separate offense. Each incident of dealing in one or more depictions or images of visual or printed matter constitutes a separate offense. Each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense. Each separate internet session of intentionally viewing over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct constitutes a separate offense.
Kansas	Yes and No. The individual could be prosecuted for each individual image, but "Double Rule" may apply. "Double Rule": there are multiple convictions in the same complaint or information then the sentence pronounced from the bench cannot be more than double the prison time for the primary count.
Oregon	State rule governs-no further information given.
North Carolina	For multiple images, each individual image can sustain a conviction of its own (see North Carolina v. Howell, 169 N.C. App. 58 (2005), holding that 43 convictions for third degree sexual exploitation of a minor were permitted for a collection of 43 images). There is no double jeopardy violation for a

State	Answer
	defendant convicted of receiving and possessing the same image (see North Carolina v. Anderson, 194 N.C. App. 292 (2008), upholding defendant's convictions for both second- and third-degree sexual exploitation of a minor based on the same image).

- 3) Are there special factors that will aggravate or mitigate punishment for these child pornography offenses? What is the practical effect when such factors are present?

Table 5. Policy Answers for Aggravating and Mitigating Factors of Punishment by State

State	Answer
Minnesota	Enhanced maximum penalty if the individual had a previous conviction under the statutes, the individual was a registered predatory offender, or the violation involved a minor under the age of 13 years.
Washington	Departure Reasons similar to Minnesota- RCW 9.94A.535
Kansas	Departure Reasons similar to Minnesota- K.S.A. 21-6815 and Jessica's Law: If second such offense for Agg. Internet Trading of Child Pornography Child<14 yr.old and Promoting the Performance of Child<14 yr. old, and offender>18 yr. old then 40 year maximum sentence with a possibility of supervised parole.
Oregon	Departure Reasons similar to Minnesota- O.R.S. 213-008-0002
North Carolina	Departure reasons similar to Minnesota- G.S. 15A-1340.16 North Carolina's guidelines policy has the judge decide the presumptive sentence first. The judge chooses a minimum term of imprisonment first and then the maximum term of imprisonment equals 20% more than the minimum term of imprisonment.