

COVER SHEET
CONFIDENTIAL MATERIAL ENCLOSED

Comment [DW1]: Ok, Summary is terse but typical of law enforcement cases I have seen. Corporate is a little softer typically. For CCE, you should work on developing a Glossary of terms used, policy for evidence handling, etc. per the website. They like to see the policies and that you are following them. Great case, 90 for the missing materials. I would like to use the summary as an example if you don't mind. Credit or anonymous as you like.



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Case:xxxx

Investigator: xxxx

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I. SUMMARY

This investigator conducted a forensic analysis of the of a 3.5 inch diskette received from an administrator at Powder High School. As a result of this examination, this investigator observed communications between Mr. Ripley and a subject identified as David. In a letter addressed to Mr. Ripley, David voices his concerns about what they were doing this year and states that he wants to tell his dad (Item 003). In reply to this letter, Mr. Ripley advises David not to talk to his dad until they have had a chance to talk; this investigator observed that Mr. Ripley referred to himself as Rip in this communication (Item 004). This diskette also contained documents related to the grades of Mr. Ripley's students for the Spring of 2006. In particular, this investigator observed that a student identified as David Jacobs received the grade of A+++ which was the highest grade awarded by Mr. Ripley (Item 005). This investigator also observed a document which contained notes for Friday, April 14, 2006 (Item 006). These notes revealed that Mr. Ripley planned on calling David regarding counseling this summer, wiping his hard drive, and cleaning out his disks and cache. This investigator also observed that this diskette contained ten (10) images of pornography of which five (5) images appeared to be suspected child pornography (Items 010-015). This investigator copied the five (5) images of suspected child pornography to a password protected disk and turned the disk over to the Powder Bluff Police Department in accordance with Title 18-6-403, Sexual exploitation of children, of the General Laws of the State Colorado (Appendix A).

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II. ANALYSIS

On February 20, 2007, this investigator received a 3.5 inch diskette from an administrator at the Powder Bluff High School. This administrator advised that earlier this month a student reported that Mr. Kevin Ripley, a High School English teacher, had approached him and made a sexually suggestive comment that made the student uncomfortable. A school security officer examined Mr. Ripley's computer, but found that the computer's hard drive was completely blank and the machine would not boot. Later in the day, this security officer found a diskette in a trash can located in the basement that was labeled "RIP". He then turned this diskette over to the administrators. These administrators requested that this investigator conduct a forensic analysis on the diskette and produce any information that might shed any light on the subject.

This investigator seized the diskette in question and returned it to KBA, Inc. Headquarters. At this location, this investigator examined and photographed the diskette. This investigator observed that the diskette appeared to be "write" protected. This investigator then utilized a forensic computer outfitted with Encase version 5.05e to make an exact bit-for-bit copy of the diskette. Using Encase, a physical bit-stream image of the diskette was obtained and written to "evidence" files created by the forensic software. These "evidence" files contain the forensic image of the diskette in addition to checksum's, case information, and MD5 hash verification values, which maintain the validity and integrity of the data. The acquisition of the diskette in question reported no read errors and was completely verified.

After acquiring the diskette, this investigator placed the diskette into an evidence bag. The evidence bag was labeled and then the diskette was placed into the evidence locker at KBA, Inc. Headquarters.

This investigator then conducted a forensic analysis of the diskette image. This analysis revealed that the diskette contained three files. The first file was labeled "Grades" and contained the following files: gradesjunior.txt, GradesFresh.txt, gradessoph.txt, and gradessen.txt. The second file was labeled "NOTES" and contained a file labeled as "NOTES.txt." This examiner observed that the third file, labeled "Rip" contained the following files: _I.txt, _IMMY.TXT, _AVID.TXT, _AVIE.JPG, _ILFUFU.JPG, and myprecious.jpg. This investigator also recovered six deleted images from the unallocated disk space to include a file named _HMY.JPG. These aforementioned files were exported from the case file and included in this report. This investigator also placed five (5) images of suspected child pornography on a password protected disk and turned the disk over to the Powder Bluff Police Department.

A. MEDIA

A 3.5 inch Sony diskette color black with a “RIP” written on the label was seized from an administrator at Powder Bluff High School. This investigator verified that this diskette was “write” protected. Photographs of this diskette are provided below and labeled as Items 001 and 002.

Item 001



Item 002

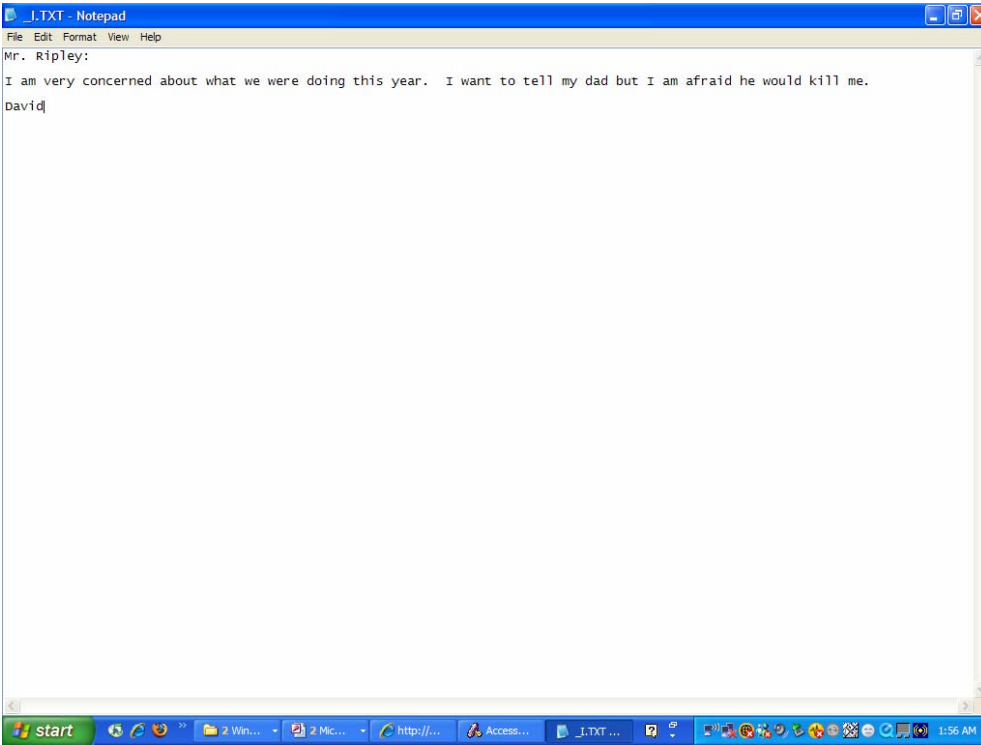


B. DOCUMENTS

Item 003

Name	Last Accessed	File Created
_I.TXT	04/14/06	04/14/06 11:57:28AM

Full Path: Rip_I.TXT



Item 004

Name	Last Accessed	File Created
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_AVID.TXT 04/14/06 04/14/06 11:57:56AM

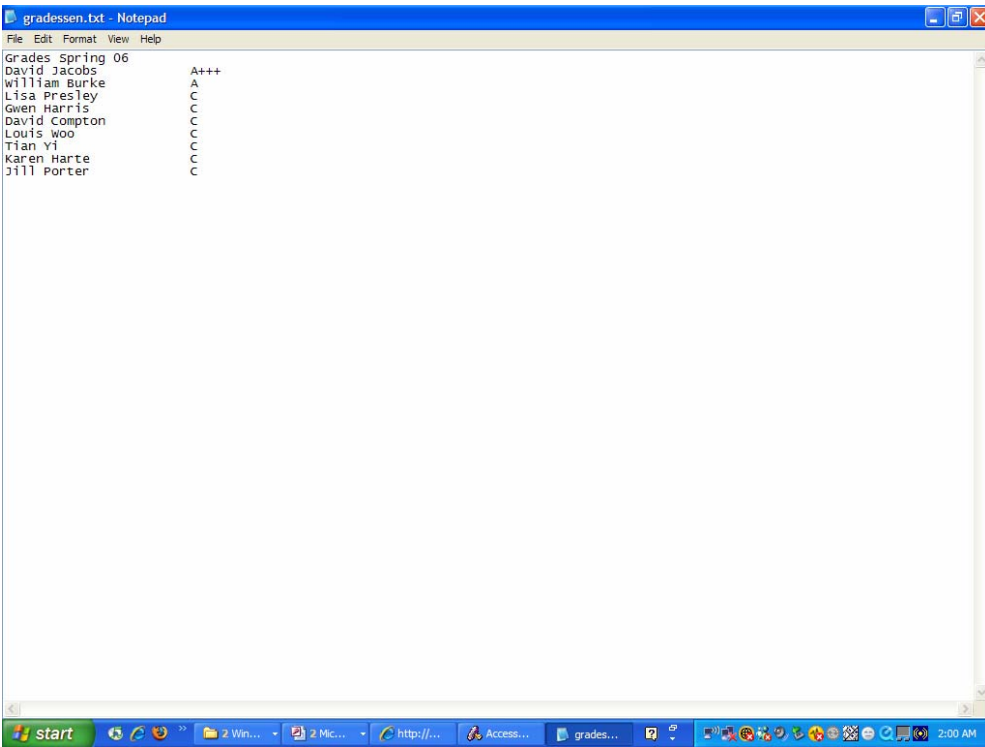
Full Path: Rip_AVID.TXT



Item 005

Name	Last Accessed	File Created
gradessen.txt	04/14/06	04/14/06 11:55:00AM

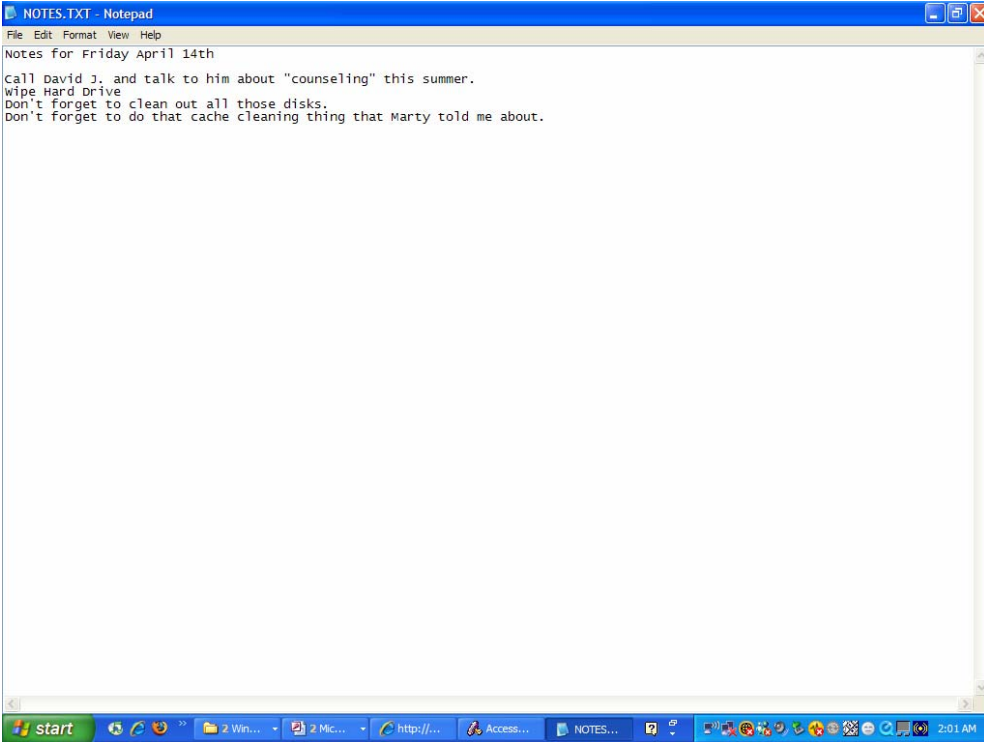
Full Path: Grades\gradessen.txt



Item 006

Name	Last Accessed	File Created
NOTES.TXT	04/14/06	04/14/06 11:56:32AM

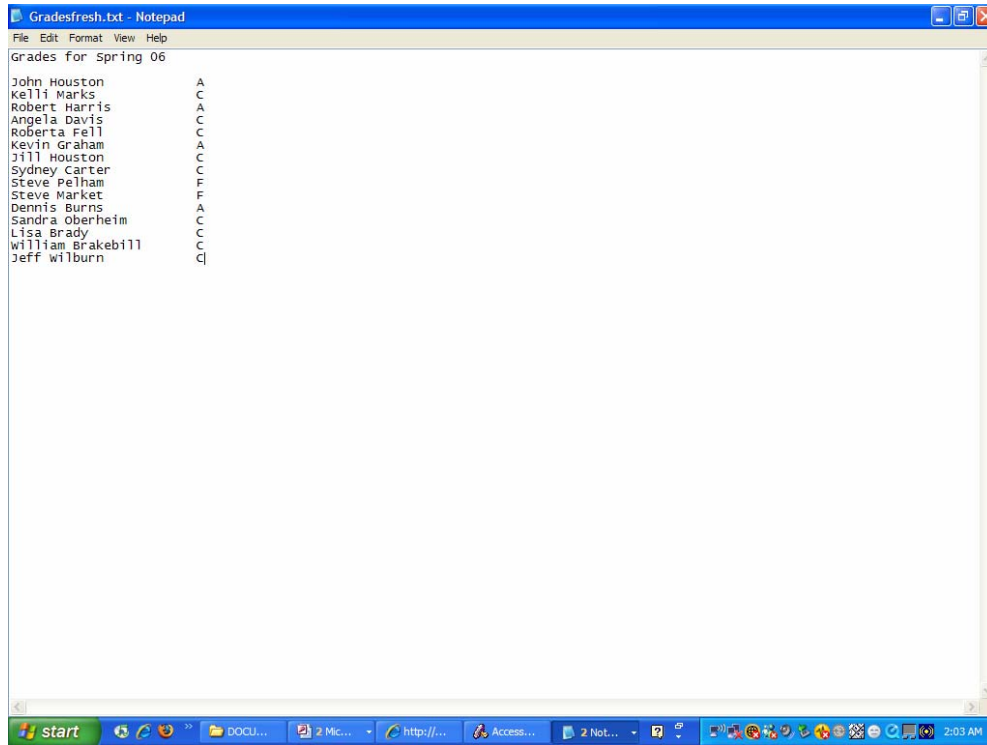
Full Path: Notes\NOTES.TXT



Item 007

Name	Last Accessed	File Created
Gradesfresh.txt	04/14/06	04/14/06 11:52:48AM

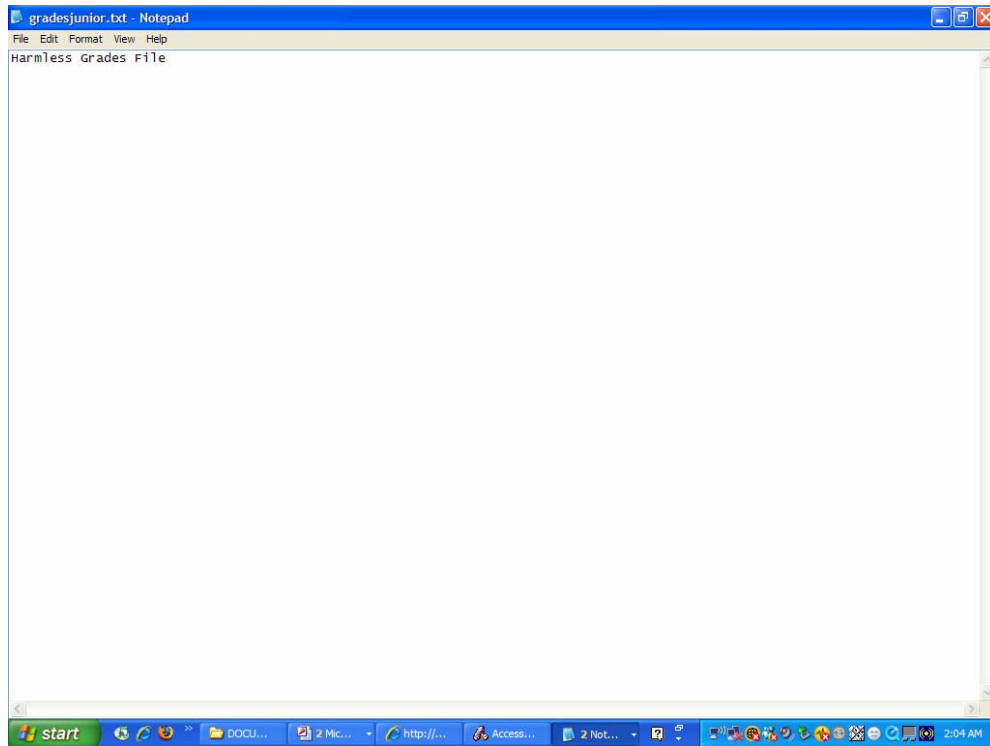
Full Path: Grades\Gradesfresh.txt



Item 008

Name	Last Accessed	File Created
gradesjunior.txt	04/14/06	04/14/06 11:53:14AM

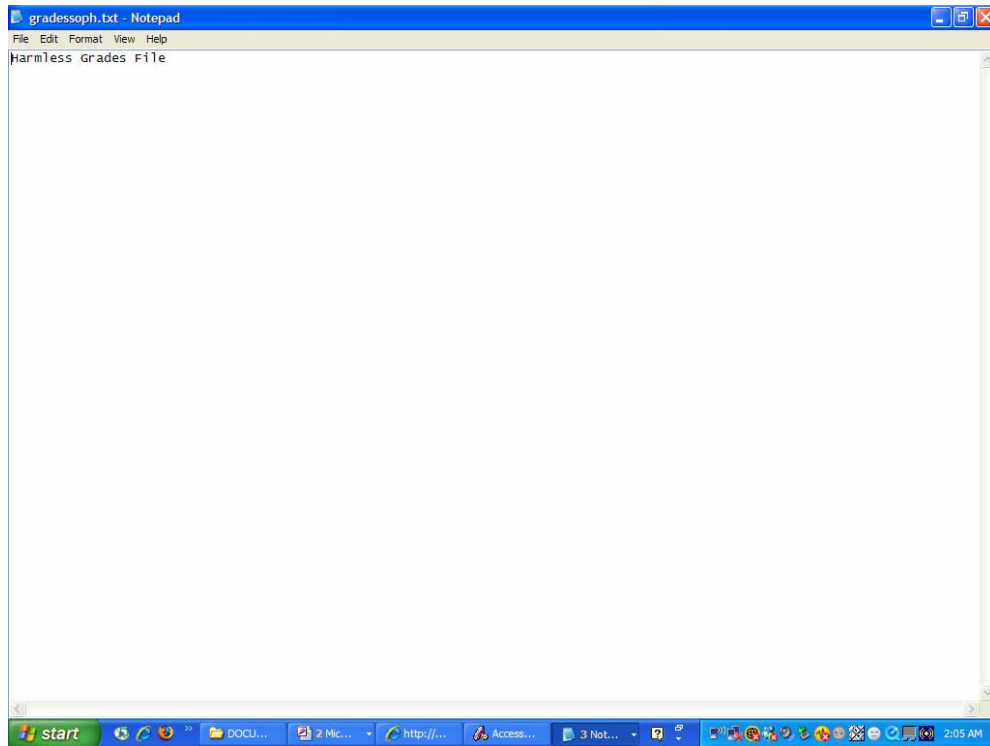
Full Path: Grades\gradesjunior.txt



Item 009

Name	Last Accessed	File Created
gradessoph.txt	04/14/06	04/14/06 11:53:08AM

Full Path: Grades\gradessoph.txt



B. Images

Item 010

Name: _IMMY.JPG

Full Path: Rip_IMMY.JPG



Item 011

Name: _AVIE.JPG

Full Path: Rip_AVIE.JPG



Item 012

Name: _ILFUFU.JPG

Full Path: Rip_ILFUFU.JPG



Item 013

Name: myprecious.jpg

Full Path: Rip\myprecious.jpg



Item 014

Name: _HMY.JPG

Full Path: Recovered Folders\Folder1_HMY.JPG



Item 015

The table below contains five (5) files which are suspected child pornography. These files were placed on a password protected disk.

Name	Last Accessed	File Created	Full Path
_AVIE.JPG	09/14/06	09/14/06 02:04:42 PM	Recovered Folders\Folder1_AVIE.JPG
_HBABY.JPG	09/14/06	09/14/06 02:04:00 PM	Recovered Folders\Folder1_HBABY.JPG
_WINS.JPG	09/14/06	09/14/06 02:04:20 PM	Recovered Folders\Folder1_WINS.JPG
_PAIR.JPG	09/14/06	09/14/06 02:04:34 PM	Recovered Folders\Folder1_PAIR.JPG
_AUGHTY.JPG	09/14/06	09/14/06 02:04:	Recovered Folders\Folder1_AUGHTY.JPG

Comment [DW2]: Nice.

APPENDIX A

18-6-403. Sexual exploitation of children.

(1) The general assembly hereby finds and declares: That the sexual exploitation of children constitutes a wrongful invasion of the child's right of privacy and results in social, developmental, and emotional injury to the **child**; that a **child** below the age of eighteen years is incapable of giving informed consent to the use of his or her body for a sexual purpose; and that to protect children from sexual exploitation it is necessary to prohibit the production of material which involves or is derived from such exploitation and to exclude all such material from the channels of trade and commerce.

(1.5) The general assembly further finds and declares that the mere possession or control of any sexually exploitative material results in continuing victimization of our children by the fact that such material is a permanent record of an act or acts of sexual abuse of a **child**; that each time such material is shown or viewed, the **child** is harmed; that such material is used to break down the will and resistance of other children to encourage them to participate in similar acts of sexual abuse; that laws banning the production and distribution of such material are insufficient to halt this abuse; that in order to stop the sexual exploitation and abuse of our children, it is necessary for the state to ban the possession of any sexually exploitative materials; and that the state has a compelling interest in outlawing the possession of any sexually exploitative materials in order to protect society as a whole, and particularly the privacy, health, and emotional welfare of its children.

(2) As used in this section, unless the context otherwise requires:

(a) "**Child**" means a person who is less than eighteen years of age.

(b) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July 1, 2003.)

(c) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a **child**), buttocks, breasts, or developing or undeveloped breast area (if the person is a **child**), for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

(d) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female **child**, the human breasts, or the undeveloped or developing breast area of the human **child**, for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

(e) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, or sexual excitement.

(f) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a **child**), buttocks, breasts, or developing or undeveloped breast area (if the person is a **child**), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(g) "Sadomasochism" means:

(I) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

(II) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(h) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(i) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(j) "Sexually exploitative material" means any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, chemically, or digitally reproduced visual material that depicts a **child** engaged in, participating in, observing, or being used for explicit sexual conduct.

(3) A person commits sexual exploitation of a **child** if, for any purpose, he or she knowingly:

(a) Causes, induces, entices, or permits a **child** to engage in, or be used for, any explicit sexual conduct for the making of any sexually exploitative material; or

(b) Prepares, arranges for, publishes, including but not limited to publishing through digital or electronic means, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, or distributes, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or

(b.5) Possesses or controls any sexually exploitative material for any purpose; except that this paragraph (b.5) does not apply to peace officers or court personnel in the performance of their official duties, nor does it apply to physicians, psychologists, therapists, or social workers, so long as such persons are licensed in the state of Colorado and the persons possess such materials in the course of a bona fide treatment or evaluation program at the treatment or evaluation site.

(c) Possesses with the intent to deal in, sell, or distribute, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or

(d) Causes, induces, entices, or permits a **child** to engage in, or be used for, any explicit sexual conduct for the purpose of producing a performance.

(4) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July 1, 2003.)

(5) The sexual exploitation of a **child** is a class 3 felony; except that sexual exploitation of a **child** by possession of sexually exploitative material pursuant to paragraph (b.5) of subsection (3) of this section is a class 6 felony, but a second or subsequent offense by such possession or a first or subsequent offense of possession of more than twenty different items qualifying as sexually exploitative material is a class 4 felony.

(6) If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

Source: L. 79: Entire section added, p. 737, § 1, effective July 1. **L. 81:** (3)(a) amended, p. 997, § 1, effective July 1. **L. 84:** (1) and (3) amended, p. 553, § 1, effective July 1. **L. 88:** (1.5) and (3)(b.5) added, (2)(c), (2)(d), (2)(f), and (5) amended, and (4) R&RE, pp. 730, 712, 731, §§ 1, 2, 4, 18, 3, effective July 1. **L. 98:** (2)(j), IP(3), (3)(b), and (3)(c) amended, p. 398, § 3, effective April 21. **L. 2003:** (2)(b), (3)(a), (3)(c), and (4) amended, p. 1882, § 1, effective July 1. **L. 2006:** (5) amended, p. 2043, § 1, effective July 1; (5) amended, p. 2056, § 7, effective July 1.

Editor's note: (1) Amendments to subsection (5) by House Bill 06-1011 and House Bill 06-1092 were harmonized.

(2) Subsection (5) is amended by chapters 359 and 362, Session Laws of Colorado 2006. Section 8 of chapter 359 and section 13 of chapter 362 provide that the acts set out in those chapters amending subsection (5) apply to offenses committed on or after July 1, 2006.

ANNOTATION

Constitutionality. This section does not constitute a denial of due process nor infringe upon first amendment freedom of speech. The sale of **child pornography** is not constitutionally protected conduct. *People v. Enea*, 665 P.2d 1026 (Colo. 1983).

The constitutionality of this section is preserved by the statutory requirements that a person knowingly took sexually explicit photographs of a **child** and that the content of those photographs, viewed objectively, would lead to sexual gratification or stimulation of a reasonable viewer. *People v. Grady*, 126 P.3d 218 (Colo. App. 2005).

Defining "sexual gratification or stimulation of one or more of the persons involved" objectively, so as to include a reasonable viewer of sexual materials that have been distributed, furthers the statute's legislative intent of protecting children from sexual exploitation and does not

cause the statute to be unconstitutionally overbroad and vague. *People v. Grady*, 126 P.3d 218 (Colo. App. 2005).

Subsection (1) is a statement of legislative purpose, and does not alter the elements of the crime as set forth in subsection (3). *People v. Enea*, 665 P.2d 1026 (Colo. 1983).

Section is not unconstitutionally vague. *People v. Gagnon*, 997 P.2d 1278 (Colo. App. 1999).

Subsection (2)(d) that defines "erotic nudity" is not unconstitutionally overbroad. The category of "sexual conduct" proscribed through the definition of "erotic nudity" in subsection (2)(d) is suitably limited to conduct that is not constitutionally protected. *People v. Gagnon*, 997 P.2d 1278 (Colo. App. 1999).

Subsection (3)(a) is not constitutionally overbroad on its face because it prohibits only the use of real children in the production of **pornography** and does not prohibit the making or possession of photographs that "appear to be" of a minor engaged in sexually explicit conduct. *People v. Campbell*, 94 P.3d 1186 (Colo. App. 2004).

Subsection (3)(b) is not unconstitutionally overbroad or vague on its face when used to prosecute for making materials depicting erotic nudity as defined by subsection (2)(d). *People v. Batchelor*, 800 P.2d 599 (Colo. 1990).

Subsection (3)(b) is not overbroad or vague as applied to the defendant who was charged with sexual exploitation of a **child** because he knowingly made photographs of his daughter for no reason other than defendant's sexual gratification. *People v. Batchelor*, 800 P.2d 599 (Colo. 1990).

Subsection (3)(b) does not apply to the duplication of photographs by the prosecution for use by defense counsel in preparation for trial when the court has taken adequate precautions to limit their use. *People v. Arapahoe County Court*, 74 P.3d 429 (Colo. App. 2003).

The requisite mental state of "knowingly" in subsection (3) must be deemed to apply to every element of the offense of sexual exploitation of a child, including the element of age, absent a clear intent to the contrary. *People v. Bath*, 890 P.2d 269 (Colo. App. 1994).

Section [18-3-406](#) (1) eliminates the culpable mental state as to age prescribed by subsection (3), "knowingly", and replaces it with that of § [18-3-406](#) (1), "lack of reasonable belief". *People v. Bath*, 890 P.2d 269 (Colo. App. 1994).

Section [18-3-406](#) (1), by providing for the affirmative defense of reasonable belief, manifests clear legislative intent that the culpable mental state of "knowingly" in subsection (3) does not apply to the age of the victim. *People v. Bath*, 890 P.2d 269 (Colo. App. 1994).

Even if the individual has not developed the film, a prosecution under subsection (3)(a) may be predicated upon an individual's photographing a **child** engaged in sexually explicit conduct. The critical question for the jury to resolve is whether the individual photographed the **child** for the purpose of producing a visual depiction of explicit sexual conduct. *People v. St. James*, 75 P.3d 1122 (Colo. App. 2002).

Evidence that a person has knowingly received prohibited material in an e-mail could be accepted as proof that the person knowingly possessed the material, because a person who

knowingly receives an e-mail is aware of the nature of its content and has immediate and knowing dominion or control over it. *Fabiano v. Armstrong*, ___ P.3d ___ (Colo. App. 2006).

Definition of "erotic nudity" does not require that the "real or simulated overt sexual gratification or stimulation" be depicted in the material, but only that the overt sexual gratification or stimulation be of any of the persons involved in the activity. *People v. Batchelor*, 800 P.2d 599 (Colo. 1990).

A display or picture qualifies as "erotic nudity" under subsection (2)(d) if: (1) The display or picture depicts the human breasts or undeveloped or developing breast area of a **child**; and (2) the display or picture is for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved. *People v. Gagnon*, 997 P.2d 1278 (Colo. App. 1999).

The requirement of "possesses or controls any sexually exploitative material" in subsection (3)(b.5) does not contain any requirement that the material be retained for any minimum period of time. *Fabiano v. Armstrong*, ___ P.3d ___ (Colo. App. 2006).

Court need not find that photos taken of minor by defendant were obscene in order for defendant to be prosecuted for sexual exploitation of a **child**. *People v. Gagnon*, 997 P.2d 1278 (Colo. App. 1999).

Conduct proscribed by this section is different than conduct proscribed by § 18-3-405, sexual assault on a child, and imposing different penalties for the two sections does not offend equal protection. *People v. Slusher*, 844 P.2d 1222 (Colo. App. 1992).

Defendant can be prosecuted under this section for photographing his 18-year-old wife having sex with a 15-year-old girl even if the defendant's wife could not be prosecuted for having sex with the girl pursuant to § 18-3-402 (1)(e). *People v. Campbell*, 94 P.3d 1186 (Colo. App. 2004).

When there is nothing in the statute nor any evidence in the record that would support requiring defendants to inquire regarding the victim's age, the convictions of defendants cannot be sustained based solely on their failure to do so. *People v. Bath*, 890 P.2d 269 (Colo. App. 1994).

A person convicted of violating 18 U.S.C. § 2252 (a)(2) has engaged in conduct that, if committed in Colorado, would constitute sexual exploitation of a child in violation of subsection (3)(b.5) of this section and is, therefore, subject to the registration requirement of § 16-22-103 (1)(b). *Fabiano v. Armstrong*, ___ P.3d ___ (Colo. App. 2006).