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Number 22 of 1998

CHILD TRAFFICKING AND PORNOGRAPHY ACT, 1998

ARRANGEMENT OF SECTIONS

Section

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[No. 22.] *Child Trafficking and Pornography Act, 1998.* [1998.]

Acts Referred to

Bail Act, 1997	1997, No. 16
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Criminal Evidence Act, 1992	1992, No. 12
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Number 22 of 1998

CHILD TRAFFICKING AND PORNOGRAPHY ACT, 1998

AN ACT TO PROHIBIT TRAFFICKING IN, OR THE USE OF, CHILDREN FOR THE PURPOSES OF THEIR SEXUAL EXPLOITATION AND THE PRODUCTION, DISSEMINATION, HANDLING OR POSSESSION OF CHILD PORNOGRAPHY, AND TO PROVIDE FOR RELATED MATTERS. [29th June, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) This Act may be cited as the Child Trafficking and Pornography Act, 1998. Short title and commencement.

(2) This Act shall come into operation one month after the date of its passing.

2.—(1) In this Act, except where the context otherwise requires— Interpretation.

“audio representation” includes—

- (a) any such representation by means of tape, computer disk or other thing from which such a representation can be produced, and
- (b) any tape, computer disk or other thing on which any such representation is recorded;

“child” means a person under the age of 17 years;

“child pornography” means—

- (a) any visual representation—
 - (i) that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is engaged in or is depicted as being engaged in explicit sexual activity,
 - (ii) that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is or is depicted as witnessing any such activity by any person or persons, or

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- S.2
- (iii) whose dominant characteristic is the depiction, for a sexual purpose, of the genital or anal region of a child,
 - (b) any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity,
 - (c) any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence under any enactment, or
 - (d) any visual representation or description of, or information relating to, a child that indicates or implies that the child is available to be used for the purpose of sexual exploitation within the meaning of *section 3*,

irrespective of how or through what medium the representation, description or information has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing, includes any representation, description or information produced by or from computer-graphics or by any other electronic or mechanical means but does not include—

- (I) any book or periodical publication which has been examined by the Censorship of Publications Board and in respect of which a prohibition order under the Censorship of Publications Acts, 1929 to 1967, is not for the time being in force,
- (II) any film in respect of which a general certificate or a limited certificate under the Censorship of Films Acts, 1923 to 1992, is in force, or
- (III) any video work in respect of which a supply certificate under the Video Recordings Acts, 1989 and 1992, is in force;

“document” includes—

- (a) any book, periodical or pamphlet, and
- (b) where appropriate, any tape, computer disk or other thing on which data capable of conversion into any such document is stored;

“photographic representation” includes the negative as well as the positive version;

“visual representation” includes—

- (a) any photographic, film or video representation, any accompanying sound or any document,
- (b) any copy of any such representation or document, and
- (c) any tape, computer disk or other thing on which the visual representation and any accompanying sound are recorded.

(2) The reference in *paragraph (a)* of the definition of child pornography to a person shall be construed as including a reference to a figure resembling a person that has been generated or modified by computer-graphics or otherwise, and in such a case the fact, if it is a

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fact, that some of the principal characteristics shown are those of an adult shall be disregarded if the predominant impression conveyed is that the figure shown is a child. S.2

(3) In any proceedings for an offence under *section 3, 4, 5 or 6* a person shall be deemed, unless the contrary is proved, to be or have been a child, or to be or have been depicted or represented as a child, at any time if the person appears to the court to be or have been a child, or to be or have been so depicted or represented, at that time.

(4) For the purposes of this Act, except where the context otherwise requires—

- (a) a reference to a section is to a section of this Act,
- (b) a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs,
- (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended, whether before or after the passing of this Act, by or under any subsequent enactment.

- 3.—**(1) Any person who organises or knowingly facilitates—
- (a) the entry into, transit through or exit from the State of a child for the purpose of his or her sexual exploitation, or
 - (b) the provision of accommodation for a child for such a purpose while in the State,

Child trafficking and taking, etc., child for sexual exploitation.

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.

(2) Any person who—

- (a) takes, detains, or restricts the personal liberty of, a child for the purpose of his or her sexual exploitation,
- (b) uses a child for such a purpose, or
- (c) organises or knowingly facilitates such taking, detaining, restricting or use,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(3) In this section “sexual exploitation” means—

- (a) inducing or coercing the child to engage in prostitution or the production of child pornography,
- (b) using the child for prostitution or the production of child pornography,
- (c) inducing or coercing the child to participate in any sexual activity which is an offence under any enactment, or
- (d) the commission of any such offence against the child.

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Allowing child to be used for child pornography.

4.—(1) Without prejudice to *section 3*, any person who, having the custody, charge or care of a child, allows the child to be used for the production of child pornography shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding £25,000 or to imprisonment for a term not exceeding 14 years or both.

(2) For the purposes of this section—

- (a) any person who is the parent or guardian of a child or who is liable to maintain a child shall be presumed to have the custody of the child and, as between parents, one parent shall not be deemed to have ceased to have the custody of the child by reason only that he or she has deserted, or does not reside with, the other parent and child,
- (b) any person to whose charge a child is committed by any person who has the custody of the child shall be presumed to have charge of the child, and
- (c) any person exercising authority over or having actual control of a child shall be presumed to have care of the child.

Producing, distributing, etc., child pornography.

5.—(1) Subject to *sections 6(2) and 6(3)*, any person who—

- (a) knowingly produces, distributes, prints or publishes any child pornography,
- (b) knowingly imports, exports, sells or shows any child pornography,
- (c) knowingly publishes or distributes any advertisement likely to be understood as conveying that the advertiser or any other person produces, distributes, prints, publishes, imports, exports, sells or shows any child pornography,
- (d) encourages or knowingly causes or facilitates any activity mentioned in *paragraph (a), (b) or (c)*, or
- (e) knowingly possesses any child pornography for the purpose of distributing, publishing, exporting, selling or showing it,

shall be guilty of an offence and shall be liable—

- (i) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both, or
- (ii) on conviction on indictment to a fine or to imprisonment for a term not exceeding 14 years or both.

(2) In this section “distributes”, in relation to child pornography, includes parting with possession of it to, or exposing or offering it for acquisition by, another person, and the reference to “distributing” in that context shall be construed accordingly.

Possession of child pornography.

6.—(1) Without prejudice to *section 5(1)(e)* and subject to *subsections (2) and (3)*, any person who knowingly possesses any child pornography shall be guilty of an offence and shall be liable—

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- (a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both, or
 - (b) on conviction on indictment to a fine not exceeding £5,000 or to imprisonment for a term not exceeding 5 years or both.
- (2) *Section 5(1)* and *subsection (1)* shall not apply to a person who possesses child pornography—
- (a) in the exercise of functions under the Censorship of Films Acts, 1923 to 1992, the Censorship of Publications Acts, 1929 to 1967, or the Video Recordings Acts, 1989 and 1992, or
 - (b) for the purpose of the prevention, investigation or prosecution of offences under this Act.
- (3) Without prejudice to *subsection (2)*, it shall be a defence in a prosecution for an offence under *section 5(1)* or *subsection (1)* for the accused to prove that he or she possessed the child pornography concerned for the purposes of bona fide research.

7.—(1) Where, on the sworn information of a member of the Garda Síochána not below the rank of sergeant, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under *section 3, 4, 5 or 6* is to be found at a place specified in the information, the judge may issue a warrant for the search of that place and any persons found at that place.

Entry, search and seizure.

- (2) A warrant issued under this section shall authorise a named member of the Garda Síochána, alone or accompanied by such other members of the Garda Síochána and such other persons as may be necessary—
- (a) to enter, within 7 days from the date of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,
 - (b) to search it and any persons found there, and
 - (c) to seize anything found there, or anything found in the possession of a person present there at the time of the search, which that member reasonably believes to be evidence of or relating to an offence under *section 3, 4, 5 or 6*.
- (3) A member of the Garda Síochána acting in accordance with a warrant issued under this section may require any person found at the place where the search is carried out to give the member his or her name and address.
- (4) Any person who—
- (a) obstructs or attempts to obstruct any member of the Garda Síochána acting in accordance with a warrant issued under *subsection (1)*,
 - (b) fails or refuses to comply with a requirement under this section, or
 - (c) gives a name or address which is false or misleading,

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S.7 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both.

(5) A member of the Garda Síochána may arrest without warrant any person whom the member suspects of having committed an offence under *subsection (4)*.

(6) In this section “place” includes any dwelling, any building or part of a building and any vehicle, vessel or structure.

Forfeiture. **8**—(1) The court by or before which a person is convicted of an offence under *section 3, 4, 5 or 6* may order—

(a) anything seized pursuant to *section 7*, or

(b) anything shown to the satisfaction of the court to relate to the offence,

to be forfeited and either destroyed or otherwise disposed of in such manner as the court may determine.

(2) A court shall not order anything to be forfeited under this section if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless the opportunity has been given to him or her to show cause why the order should not be made.

(3) An order under this section shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.

Offences by bodies corporate.

9—(1) Where an offence under *section 3, 4, 5 or 6* is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person, being a director, manager, secretary or other similar officer of such body or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in relation to the acts and defaults of a member of that body in connection with the member’s functions of management as if he or she were a director or manager of it.

Amendment of Criminal Evidence Act, 1992.

10—The Criminal Evidence Act, 1992, is hereby amended in section 12—

(a) by the deletion of “or” in paragraph (b) where it last occurs and by the substitution of “paragraph (a) or (b), or” for “paragraph (a) or (b).” in paragraph (c), and

(b) by the insertion of the following paragraph after paragraph (c):

“(d) an offence under *section 3, 4, 5 or 6* of the *Child Trafficking and Pornography Act, 1998*.”.

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11.—The Sexual Offences (Jurisdiction) Act, 1996, is hereby amended in the Schedule thereto by the insertion of the following paragraphs after paragraph 9: Amendment of Sexual Offences (Jurisdiction) Act, 1996.

“10. *Section 3 of the Child Trafficking and Pornography Act, 1998.*

11. *Section 4 of the Child Trafficking and Pornography Act, 1998.*”.

12.—The Bail Act, 1997, is hereby amended in the Schedule thereto by the insertion of the following paragraph after paragraph 12: Amendment of Bail Act, 1997.

“12A. Any offence under the following provisions of the *Child Trafficking and Pornography Act, 1998*—

- (a) *section 3* (child trafficking and taking, etc., child for sexual exploitation);
- (b) *section 5* (producing, distributing, etc., child pornography).”.



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**AN BILLE UM GHÁINNEÁIL AR LEANAÍ AGUS PORNAG-
RAFAÍOCHT LEANAÍ, 1997**
CHILD TRAFFICKING AND PORNOGRAPHY BILL, 1997

EXPLANATORY MEMORANDUM

General

The purpose of the Bill is to strengthen the legislative measures which aim to protect children from sexual exploitation by targeting two manifestations of such exploitation — child trafficking and child pornography. In so providing, account has been taken of the EU Joint Action against Trafficking in Human Beings and the Sexual Exploitation of Children, in so far as it applies to children, as well as of Article 34 of the UN Convention on the Rights of the Child which influenced the text of the Joint Action.

Provisions of the Bill

Section 1 (Short title and commencement)

This section contains standard provisions in relation to the Bill's short title and commencement date. The Bill will come into operation one month after it is passed by the Oireachtas.

Section 2 (Interpretation)

Subsection (1) provides for the definition of a number of expressions used in the Bill. Of particular relevance is the definition of "child pornography" which covers three main types of pornographic material. First, the definition covers visual material which either shows children engaged in explicit sexual activity or the dominant characteristic of which is the depiction, for a sexual purpose, of the genital or anal regions of children. Second, the definition extends to material which is capable of being heard and which represents a child engaged in explicit sexual activity. Third, the definition applies to visual or audio material that advocates, encourages or counsels unlawful sexual activity with children. The definition applies to child pornography irrespective of how, or the medium through which, it has been produced.

In order to ensure that the provisions of the Bill extend to pornographic images that are not of real persons, such as those produced by computer-graphics, *subsection (2)* provides that a reference to a person in paragraph (a) of the definition of "child pornography" shall be construed as including a reference to a figure resembling a person no matter how produced.

For consistency with the age of consent to sexual relations a "child" is defined as a person under the age of 17 years.

Section 3 (Child trafficking and taking, etc., child for sexual exploitation)

Subsection (1) makes it an offence to organise or knowingly facilitate child trafficking, that is, the entry into, transit through or exit from the State of a child for the purpose of his or her sexual exploitation. The subsection also creates an offence of organising or knowingly facilitating the provision of accommodation for such children while in the State. The offence is punishable on conviction by up to life imprisonment.

Under *subsection (2)* a person who takes, detains or restricts the personal liberty of a child for the purpose of the child's sexual exploitation is liable on conviction to up to 10 years imprisonment. The same penalty applies to persons who organise or knowingly facilitate such taking, detaining or restricting of children's liberty for that purpose.

Subsection (3) provides for a definition of "sexual exploitation" which encompasses sexual abuse.

Section 4 (Allowing child to be used for child pornography)

This section makes it an offence for any person who has the custody, charge or care of a child to allow the child to be used for the production of child pornography. Such persons found guilty of the offence will be liable to a fine not exceeding £10,000, or up to 10 years imprisonment, or both.

Section 5 (Producing, distributing, etc., child pornography)

Subsection (1) makes it an offence to knowingly produce, distribute, print, publish, import, export, sell or show child pornography. It also makes it an offence to knowingly publish or distribute any advertisement that conveys that the advertiser or any other person produces, etc., child pornography. Persons found guilty of such offences will be liable on conviction on indictment to a fine of up to £100,000, or up to 10 years imprisonment, or both.

Subsection (2) defines distribution in such a manner as to ensure that it includes distribution to another person.

Section 6 (Possession of child pornography)

Subsection (1) makes it an offence for any person to knowingly possess child pornography, that is, to be in possession of it for personal use. The maximum penalties provided for under the section are a £5,000 fine, or 5 years imprisonment, or both.

Subsection (2) provides that the section shall not apply to persons whose official duties require them to be in possession of child pornography. In particular persons exercising functions under the Censorship of Films Acts, the Censorship of Publications Acts and the Video Recordings Acts will not be liable under the section nor will persons such as Gardaí and Customs Officers or others who may temporarily possess child pornography for the purposes of the prevention, investigation or prosecution of offences provided for in the Bill.

Section 7 (Entry, search and seizure)

This is a standard provision which will enable members of the Garda Síochána to obtain warrants to search for evidence relating to child trafficking and child pornography offences.

Subsection (1) enables a judge of the District Court to issue a warrant for the search of a place, or any person found at the place, where he or she is satisfied that there are reasonable grounds for suspecting

that evidence of or relating to an offence under *section 3, 4, 5 or 6* of the Bill is to be found at the place.

Under *subsection (2)* the search warrant will authorise a particular Garda, alone or accompanied by any other Garda or by other persons, to enter, if necessary by using reasonable force, the place named on the warrant, in order to search the place or any persons found there, and to seize anything appearing to the Garda to be evidence of an offence under *sections 3 to 6*. A Garda searching a place may require any person found at the place to give the Garda his or her name and address (*subsection (3)*).

Subsection (4) provides that anyone who obstructs or attempts to obstruct a Garda acting in accordance with a search warrant, who fails or refuses to comply with a requirement to give his or her name and address or who gives a name or address which is false or misleading, will be liable to a fine not exceeding £1,500, or up to 12 months imprisonment, or both. Under *subsection (5)* a Garda will have power to arrest without warrant any person whom the Garda suspects of having committed an offence under *subsection (4)*. *Subsection (6)* defines the word “place” for the purposes of the section.

Section 8 (Forfeiture)

This section gives the courts power to order the forfeiture or the destruction of anything seized following a search under *section 7* or anything else shown to the satisfaction of the court to relate to an offence under *section 3, 4, 5 or 6*.

Section 9 (Offences by bodies corporate)

This is a standard provision which enables persons working in a body corporate as well as the body corporate itself to be dealt with for child trafficking and child pornography offences.

Section 10 (Amendment of Criminal Evidence Act, 1992)

This section amends the Criminal Evidence Act, 1992 by extending the provisions of Part III of that Act to offences under the Bill. This means that, for instance, evidence may be taken from children by video-link in cases involving child trafficking and child pornography.

Section 11 (Amendment of Bail Act, 1997)

This provides for the listing of child trafficking offences as well as child pornography production or distribution, etc., offences in the Schedule to the Bail Act, 1997. This means that a court may refuse bail to a person charged with such an offence on the ground that such a refusal is reasonably considered necessary to prevent the commission of a serious offence by that person.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,
Nollaig, 1997.*