

## NMDPS - CHILD PORNOGRAPHY - POSSESSION

Two people possessed child porn pictures. One had three binders jam packed with sixty pictures and computer images. The other person had numerous video clips which had been downloaded at least five times. They were charged under NMSA 1978, Section 30-6A-3(A), Sexual exploitation of children:

“It is unlawful for a person to intentionally possess any obscene visual or print medium depicting any prohibited sexual act or simulation of such act . . . if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age.” The penalty is a fourth degree felony (eighteen months).

One looks at the statute and wonders how many counts to charge. Sixty counts for sixty pictures or one count for a scrapbook of pictures? Is there a separate charge each time something is downloaded? If a video shows a child a number of times, is it one count for the video or one count for each time the child appears?

The problem is that the statute doesn't say and when statutes are unclear, courts must favor the defendant. The Supreme Court merged multiple counts into one count. They also recommended that the legislature review the statute to clarify how many counts to charge. In the meantime, recommend charging one count only. State v. Olsson (2014).

- - - Elliott Guttman, Law Enforcement Academy



**So big deal you caught me, it's only a 4th degree felony, I'll probably get probation.**