

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, IMPRISONMENT FOR 10 YEARS OR A FINE NOT EXCEEDING \$25,000 OR BOTH; AND

(2) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING \$50,000 OR BOTH.

(C) EVIDENCE.

(1) (I) THIS PARAGRAPH APPLIES ONLY IF THE MINOR'S IDENTITY IS UNKNOWN OR THE MINOR IS OUTSIDE THE JURISDICTION OF THE STATE.

(II) IN AN ACTION BROUGHT UNDER THIS SECTION, THE STATE IS NOT REQUIRED TO IDENTIFY OR PRODUCE TESTIMONY FROM THE MINOR WHO IS DEPICTED IN THE OBSCENE MATTER OR IN ANY VISUAL REPRESENTATION OR PERFORMANCE THAT DEPICTS THE MINOR ENGAGED AS A SUBJECT IN SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT.

(2) THE TRIER OF FACT MAY DETERMINE WHETHER AN INDIVIDUAL WHO IS DEPICTED IN AN OBSCENE MATTER, OR ANY VISUAL REPRESENTATION OR PERFORMANCE AS THE SUBJECT IN SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT, WAS A MINOR BY:

(I) OBSERVATION OF THE MATTER DEPICTING THE INDIVIDUAL;

(II) ORAL TESTIMONY BY A WITNESS TO THE PRODUCTION OF THE MATTER, REPRESENTATION, OR PERFORMANCE;

(III) EXPERT MEDICAL TESTIMONY; OR

(IV) ANY OTHER METHOD AUTHORIZED BY AN APPLICABLE PROVISION OF LAW OR RULE OF EVIDENCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 419A(b) through (g).

In subsection (a)(3) of this section, the phrase "use a computer" is substituted for the former reference "by means of a computer" for clarity.

In subsection (b) of this section, the former references to "the discretion of the court" are deleted as implicit in setting maximum penalties.

In subsection (b)(1) of this section, the qualification "for a first violation" is added for clarity.

Also in subsection (b)(1) of this section, the reference to being "subject to imprisonment" is substituted for the former phrase "shall be imprisoned" to reflect that the term of imprisonment for a first violation of this section is discretionary, in the same manner as the discretionary imprisonment for a subsequent violation under subsection (b)(2) of this section. See Letter of