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“They are not victimless crimes...that’s frustrating to hear”: Qualitative insights from prosecutors working on cases related to technology facilitated child sexual abuse material

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ABSTRACT

Background: Child sexual abuse material (CSAM) are any videos or images of individuals under the age of 18 engaging in sexually explicit activities or positions. The incidence and scope of CSAM has increased since the COVID-19 pandemic; however, the prosecution of such crimes has not risen at the same rate.

Objective: This study presents exploratory qualitative findings regarding prosecutors’ challenges prosecuting CSAM cases from the perspectives of experienced CSAM prosecutors.

Participants: A total of 24 prosecutors from 16 different states across the United States who affirmed working on prosecuting CSAM cases participated in a recorded, 1-h, semi-structured interview.

Methods: The semi-structured interview guide questions focused on participant’s professional experiences prosecuting cases, including things that contributed and detracted from the successful prosecution of CSAM cases. Digital recordings of all interviews were transcribed verbatim and subsequently reviewed for accuracy by research team members. Interviews were coded independently by two members of the research team using a grounded theory approach. Methods to enhance the rigor of the research included regular debriefing, and the use of detailed case notes capturing nonverbal participant cues.

Results: Qualitative analysis revealed three main challenges related to prosecution including CSAM awareness, resource allocation, and legal response. Subcategories within themes as well as regional differences are captured and shared.

Conclusions: Findings from the current study provide a context for understanding the role of prosecutors in criminal justice response to CSAM, but also point to directions for systemic improvements that would aid in prosecuting these crimes.

1. Introduction

The dissemination and sharing of child sexual abuse materials (CSAM), which include sexualized images of children and youth, live videos, or youth produced images, has greatly increased with the ubiquity of technology. Indeed, technology has increased both the volume and scope of CSAM, as well as the longevity of images. Law enforcement both within the United States and abroad is working

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diligently to stop CSAM production and distribution, bring offenders to justice, and protect victims. Interestingly, as rates of law enforcement-identified CSAM have increased exponentially, rates of prosecution for individuals creating and/or distributing CSAM have not similarly increased (Cullen et al., 2020; Choi et al., 2024). It is unclear why prosecution rates for CSAM possession and distribution are different; however, the reasons may have important implications for prosecutors, law enforcement personnel, and victim services. Accordingly, the current study seeks to understand challenges, barriers, and future directions for the prosecution of crimes related to CSAM from the perspectives of prosecutors with experience bringing these crimes to trial.

1.1. What is CSAM?

Child Sexual Abuse Material (CSAM), also referred to as child pornography, is defined as “any visual depiction of sexually explicit conduct involving a person less than 18 years old.” (*Child sexual abuse material*, 2023). CSAM includes visual depictions of child sexual abuse by hands-on offenders but may also include youth-produced images wherein a youth captures sexual images of themselves and sometimes shares them via social media or text. Importantly, individuals who do not produce the images, but possess or share pictures and/or videos taken by others are also considered offenders of the crime. While CSAM does include printed materials, CSAM largely happens via technology (Salter & Hanson, 2021). Accordingly, CSAM perpetration often occurs across state and international borders. Indeed, 90 % of reported CSAM is created and uploaded by those outside of the United States (Oremus & Lima-Strong, 2024). Artificial intelligence (AI) and the use of other forms of technology in the creation of computer-generated CSAM is likely to impact the investigation and prosecution of these crimes as it becomes harder to distinguish computer-generated images of children from those that are technologically enhanced or wholly unedited (Thiel et al., 2023).

1.2. Legal response to CSAM

CSAM production, distribution, and possession are criminal offenses across the United States. CSAM crimes are often reported to regional and local law enforcement agencies via CyberTips using the national Cybertipline (<https://report.cybertip.org>), which is operated by the National Center for Missing and Exploited Children (NCMEC). Once a CyberTip is received, NCMEC works to determine a specific location of the cyberdata. When the location is found to be within the United States, NCMEC makes a report to the local law enforcement agency to investigate the crime. For cases in which NCMEC is unable to determine a specific location or if the location is outside of the United States, reports are made to federal law enforcement (e.g., the Federal Bureau of Investigation [FBI] or Homeland Security Investigations [HSI], respectively; *CyberTipline® REPORT*, 2023).

The full incidence and scope of CSAM is difficult to ascertain (Lee et al., 2020) however, extant data makes it clear CSAM is a prevalent issue. More than 36.2 million reports of suspected child exploitation were reported to NCMEC in 2023; of those, 35.9 million pertained to suspected CSAM (*CyberTipline® REPORT*, 2023). By comparison, in 2019, NCMEC had approximately 16.9 million reports of suspected CSAM (Haney, 2021). These data suggest that the number of reported cases of suspected CSAM more than doubled in a 4-year period. While these increases may be attributable to the increased cyber presence of many youth during the COVID-19 pandemic (Europol, 2020), it is also possible that general awareness of the crime increased, thereby increasing reported cases and investigatory action (*Analysis of 2020's CSAM Trends*, n.d.). Both service providers and individuals can (and do) report CyberTips to NCMEC. Importantly, while there is no federal mandate for service providers to investigate for the presence of CSAM, should a service provider gain knowledge of CSAM's existence they are mandated to report it to authorities as soon as reasonably possible (*18 USC 2258: Failure to report child abuse*, n.d.).

CSAM investigations are often handled by specialized personnel. An example of specialized personnel include those within Internet Crimes Against Children (ICAC) Task Forces [<https://www.icactaskforce.org/>] (Mitchell et al., 2022). ICAC Task Forces receive specialized training and funding via federal mechanisms and therefore often serve as a bridge between federal, state and local responses to CSAM crimes (among others) and criminal proceedings. However, law enforcement personnel working within ICAC Task Forces note experiencing high caseloads, complex cases, and high rates of burnout when compared to law enforcement more broadly (Mitchell et al., 2024; O'Brien et al., 2024). There are currently 61 ICAC Task Forces in the United States affiliated with more than 5400 law enforcement and prosecutorial agencies (*Internet Crimes Against Children (ICAC) Task Force Program*, n.d.). Importantly, some law enforcement agencies may have an officer tasked with investigating CSAM cases in addition to their regular workload. These same officers are often also responsible for individually connecting with area prosecutors around CSAM crimes. Given the number and complexity of CSAM cases as well as the large volume of data CSAM cases often include, this can be a sizable and time-consuming assignment. These factors may contribute to the reality that that criminal proceedings related to CSAM are not occurring at the same rate as the CyberTips reporting these offenses, suggesting a sizable gap between the number of CSAM crimes being reported, investigated, and ultimately prosecuted (Bursztein et al., 2019). Prosecution is a key aspect of the criminal justice response in that it ensures investigations lead to legal action and consequence for offenders, as well as safety and justice for survivors and their families.

1.3. The role of prosecutors

Once a case is investigated by law enforcement, prosecutors use evidence gathered to form a case they then present to a judge within a legal court. Generally, the judge views the evidence holistically and decides on consequences based on state and/or federal laws (*Code of conduct for United States judges*, n.d.). Ideally, prosecutors work closely with law enforcement personnel to build a case using evidence gathered during investigation and may sometimes involve survivors and their families in meaningful ways that aid in healing, empowerment, and avoid [re]traumatization (Gilbert & Postel, 2021). However, this is not always the case. In a recent study

regarding 500 child sexual abuse cases, fewer than one-fifth of suspects were successfully prosecuted (Block et al., 2023). Reasons for this include a lack of corroborating evidence, including a reticence of survivors and their families to participate in prosecution due to fear of the abuser, concern for [re]traumatization, and a lack of trust in the larger legal system to provide justice (Block et al., 2023; Cross & Whitcomb, 2017). Extant evidence suggests that child testimony is inconsistent with a trauma-informed approach (Almeida et al., 2021; Gilbert & Postel, 2021), and that its use has limitations for successful prosecution when there is a lack of corroborating evidence (Cross & Whitcomb, 2017). Nonetheless, many survivors and their families are asked to be present in court and sometimes take the stand to provide testimony against the suspect (Cross & Whitcomb, 2017; Levine, 2022). The majority of survivors of childhood sexual abuse note that providing testimony is a negative experience (Almeida et al., 2021; Elmi et al., 2018; Goodman et al., 1992). Furthermore, many survivors of childhood sexual abuse report being most focused on the abuse ending, rather than their offender being successfully prosecuted (Decker et al., 2020). However, the dynamics of CSAM are different than those of other child abuse offenses in that the abuse is propagated each time an image of the victim is distributed (*Child sexual abuse material*, 2023), making a true end to the abuse somewhat difficult to ascertain. Accordingly, closure for victims in the absence of successful prosecution especially complex (Gewirtz-Meydan et al., 2018; Levine, 2022).

Unfortunately, prior research suggests that the prosecution of crimes related to CSAM is inconsistent (Cullen et al., 2020). For example, within the United States, state laws specific to CSAM vary, including whether CSAM first offenses are misdemeanors or felonies (Cullen et al., 2020). Similarly, in regard to AI, computer generated CSAM is protected federally under the first amendment, while CSAM featuring real children does not have this protection (Pfefferkorn, 2024). These definitional nuances, in conjunction with investigative challenges, necessitate experienced prosecutors possessing familiarity with the crime, the needed evidence, as well as the legal nuances of the justice system. Holistically, these challenges underscore the importance of prosecution in providing closure and a sense of justice for survivors and their families, as well as the importance of a well-coordinated criminal justice response. A more robust understanding of how to ensure successful criminal justice outcomes, inclusive of prosecution, in CSAM cases is needed.

1.4. The current study

With one exception (e.g., Cullen et al., 2020), the experience of prosecutors who work with CSAM cases, particularly the frustrations and challenges they face when prosecuting offenders for these crimes, is largely unknown and under-explored. The current study builds on nascent research using qualitative interviews with experienced CSAM prosecutors across the United States. Our guiding research questions explored prosecutor's biggest challenges when working on CSAM cases. Within the purview of this broad topic, we explored specific components of prosecutor experience, including case assignment, job satisfaction, and law enforcement collaboration.

2. Methods

2.1. Participants

This exploratory qualitative study gathered information from 24 prosecutors from 16 different states across the United States working in the area of CSAM prosecution. The sample of prosecutors included slightly more female ($n = 13$) than male ($n = 11$). Participants reported that anywhere from 10 to 100 % (average 51.1 %) of their caseloads consisted of CSAM cases, and the length of time working on CSAM cases ranged from 1 to 20 years (average = 9.0 years). The majority (65.5 %; $n = 15$) were directly affiliated with an ICAC Task force. States represented in the sample included Alaska, Alabama, Arkansas, Arizona, California, Colorado, Delaware, Florida, Georgia, Illinois, Maine, Missouri, Ohio, South Dakota, Virginia, and Wyoming.

2.2. Procedures

Participants for the current study were purposively recruited due to their familiarity and work prosecuting CSAM cases. Specifically, as part of a related study, law enforcement investigators involved with the ICAC Task Forces were asked to refer prosecutors with whom they worked when faced with technology-facilitated CSAM crimes. Prosecutors were subsequently contacted by the research team via email and asked if they would be interested in participating in a phone interview, consisting of 8–10 questions regarding their experiences prosecuting CSAM cases. Phone interviews were scheduled with those who agreed to participate at a day and time of the participant's choosing.

Before each in-depth interview, the interviewer obtained oral consent to conduct and digitally record the interview. All interviews were facilitated using a semi-structured interview guide comprised of open-ended questions and follow-up probes. Probes were used as necessary to seek clarification and responses for greater depth. The interview guides broadly focused on prosecution practices, challenges related to prosecution, collaboration with law enforcement, and perceptions of judicial focus and orientation to the problem of CSAM. Examples of follow-up probes include: "Can you help me understand which of these things were *most* challenging?"; "How do prosecution practices differ given case characteristics, such as the age of the individual depicted in the CSAM, or violence within the imagery?" Interviews lasted approximately 30 min, with an average interview length of 28 min (range 9–75 min). With their permission, the interviews were audio recorded for accuracy.

Upon completion of their interview, prosecutors were thanked for their time and were asked to provide the name and contact information of individuals they had worked with (or were familiar with) who also prosecuted CSAM cases. Not all participants provided names. This process continued until grounded theory analysis suggested saturation was met, as evidenced by repeated themes

and minimal negative cases analysis. All individuals identified in this way were contacted via phone or email, invited to participate, and asked to nominate other individuals in their community suitable for study participation. A total of 24 individuals participated in the study across 16 states. All protocols were reviewed and approved by the Institutional Review Board for the Protection of Human Subjects in Research at [Masked University].

2.2.1. Measures

At the start of the interview, participants provided professional details including titles, state of practice, years having worked as a prosecutor, years having worked on CSAM cases, the percentage of their work related to CSAM, and whether they worked closely with an ICAC task force. They were then asked to provide verbal consent for the qualitative interview.

The semi-structured interview guide was developed using the limited extant literature, expert advisory feedback, as well as research team feedback. Questions focused on participant's professional experiences prosecuting cases, including things that contributed and detracted from the prosecution of CSAM cases. Specific components of participants' jobs including job satisfaction (e.g., "What contributes to job satisfaction for prosecutors who work CSAM cases?"), turnover (e.g., "What is the turnover like for prosecutors who work CSAM cases?"), protocols around case assignment (e.g., "Tell me about the protocols around case assignment for CSAM cases?"), professional supports/collaboration (e.g., "What elements make up a successful collaboration between investigators and prosecutors?"), and legal consequences (e.g., "How often do offenders receive the consequences they deserve from their crimes? What prevents them from receiving appropriate consequences?") were subsequently explored. Prompts were used to clarify and elicit depth of participants' responses.

2.3. Data analysis

Digital recordings of all interviews were transcribed verbatim by a transcription service and subsequently reviewed for accuracy by research team members. Data collection and analysis occurred concurrently so that analyzed data could guide subsequent data collection efforts (Cho & Lee, 2014). All interviews were conducted by the third author (L. Gast), who identifies as a cisgender, white female with extensive experience interviewing members of the legal and criminal justice community regarding crimes against children. The codebook was developed collectively, across authors and was subsequently coded by the second and third authors. The first (J.E. O'Brien) and second author (G.Z. Kahn) also identify as cisgender females. The first and second authors are white and with methodological expertise in qualitative methods and trajectories of childhood victimization.

Interviews were coded using an iterative coding process. Initially, interviews were coded independently by the second and third of the research team using a grounded theory approach. The research team then met to: a) thoroughly review all code phrases developed during the first-round of coding along with the interview transcripts, (b) reduce code phrases by subsuming overlapping categories, (c) create higher-level conceptual clusters of codes related to the interview guide and constructs of interest, and (d) ultimately abstract major themes. During this final round of coding, coders implemented constant comparison procedures by comparing existing themes with the themes generated from each analysis (Glaser & Strauss, 2017). The qualitative project lead (i.e., J.E. O'Brien) determined levels of themes within and across each interview transcript by applying systematic review strategies (Padgett, 2016). Themes were reviewed as a team to ensure diversity of participant perspectives, region, and negative case analysis (Padgett, 2016).

Methods to enhance the rigor of the research included regular debriefing, and the use of detailed case notes capturing nonverbal participant cues (Padgett, 2016).

3. Results

Prosecutors play an integral role in the criminal justice trajectories of CSAM cases, including case outcomes for victims, perpetrators, and bystanders. Grounded theory analysis of interview transcripts revealed three key themes regarding CSAM investigator's experience prosecuting these crimes: 1) frustrations with knowledge and awareness; 2) frustrations with resources; and 3) frustrations with legal consequences. Results are presented to highlight participants' perspectives and readers are encouraged to consider that within the context of qualitative semi-structured interviews. Specifically, semi-structured interviews do not always cover the same topics. Accordingly, interviewees may agree with certain sentiments, but they may not come up in the organic flow of the interview. *Italics* are used to denote direct quotes from key informants.

3.1. Frustrations with knowledge and awareness

The theme "Frustrations with knowledge and awareness" captures prosecutors' experiences prosecuting cases despite many within the legal system having minimal knowledge and awareness of CSAM. In general, prosecutors noted a lack of knowledge and awareness of CSAM displayed by judges, law enforcement investigators, and technology companies.

3.1.1. Judges

Respondents expressed frustration that judges sometimes lacked a basic understanding of CSAM, including what it is, what it can look like, and the detrimental effects of the crime. In the words of one participant, "*Our bench prior to [our current one] was mostly older judges...and they don't know what it actually is. They think teenagers (laughs)- Girls Gone Wild!- that kinda thing. They don't understand the actual nature of what you're talking about when you're talking about [CSAM] cases.*" In a statement echoed by many, one participant reported a limited understanding of CSAM perpetration, particularly in cases where a child is providing pictures to an offender after

being groomed or solicited: *“Some of the [CSAM] production cases that we’ve had recently are more of offenders talking to younger kids through social media or various apps and then requesting that the child take a picture and send it to them. The same kind of statute we would use if somebody were committing a hands-on offense and recording themselves doing it, right? But in a lot of those, the judges kind of look at it and go, well, yes, but they didn’t actually touch the child. So, most of the CSAM possession and distribution cases, if there’s no hands-on, usually don’t result in any kind of incarceration.”* A few participants argued that failure to prosecute such offenders likely results in abuse to children: *“I still feel like...judges that don’t take it as seriously as they should in terms of child pornography or CSAM material. I don’t think they understand the correlation or the link between individuals who look at those images and their likelihood of abusing kids. I don’t think they understand that, you know, those are real [kids].”* Another participant expanded on this point, noting they spent a lot of time finding ways to emphasize the humanity of the children in the CSAM materials: *“I try to get, like, the letters from NCMEC and stuff at sentencings to try to show these are real children and this was a real event for them. There’s a real victim here, you know?”*

In addition to this general lack of understanding, prosecutors also noted a lack of understanding by judges about revictimization inherent to owning or sharing CSAM regardless of whether the individual is a ‘hands on’ perpetrator (i.e., the individual created the CSAM or is actively abusing a child). Specifically, past research has shown that victims of CSAM are negatively impacted when they learn that an image of their past abuse has been shared or uploaded without their permission or knowledge (e.g., Finkelhor et al., 2024; Gewirtz-Meydan et al., 2018). In one particularly poignant quote that is similar in nature to many, a participant noted that images may be saved and shared indefinitely immortalizing the abuse: *“A lot of times when we are in front of judges, they [judges] said, ‘Well, these are victimless crimes.’ They are not victimless crimes... that’s frustrating to hear that these are just victimless crimes because every time an image is shared or uploaded, that child is being re-victimized.”*

Importantly, a few participants reported a sense of optimism about changing views. Largely, this was related to individuals in power organically changing their views, rather than larger training efforts, policy changes, or other sweeping awareness change. In a sentiment similar to a few others, one participant noted: *“I will say that I hope that the landscape is gonna change soon. We have three new judges on our bench who are younger, two of whom are career prosecutors prior to going on the bench. So, I’m hopeful that we’re gonna see a big shift in sentencing because two of those prosecutors have actually prosecuted CSAM cases, which means they’ve actually looked at the material.”*

3.1.2. Law enforcement investigators

Universally, prosecutors acknowledged the importance of working with law enforcement on CSAM cases to help ensure adequate evidence for a successful prosecution. However, prosecutors noted that investigators’ lack of knowledge and awareness of legal processes inherent to these cases can become frustrating for both parties. In an anecdote similar to many provided, one participant reported, *“Law enforcement feels frustrated because they may send the case to us, and we look at it and go, ‘Hey, there’s this issue that we think would preclude us from winning and so we’re not gonna file the case.’ I know that there have been times where they get very frustrated about kind of that dynamic. Similarly, I think that, we [prosecutors] have had frustrations and when they [law enforcement] say, ‘Well, my standard for arrest is probable cause, and so I’m gonna go arrest this person whether you file or not.’”* Another participant was more direct, speaking on the same frustration, noting, *“If you just wanna arrest somebody, you could do that on substantially less proof than prosecuting them. But what’s the point of arresting them if you’re not gonna successfully prosecute them?”*

Importantly, some participants had specific ideas about how to foster ongoing collaborations between prosecutors and law enforcement, generally noting the importance of an ongoing collegial and collaborative relationship: *“I think prosecutors need to be trained in conjunction with their investigators so that they’re building this collaboration so that they’re coming at it from the same foundation. That’s the biggest hurdle.”* A few participants emphasized the importance of specialized detectives over collaborative relationships, *“Those types of things, sex cases in general, and ICAC cases, just require much more specialized training and are really different than other types of cases. So, I think if, if they could have a specialized detective for those cases, that does really improve the quality of the investigation and thereby the quality of the prosecution.”*

3.1.3. Technology companies

Many participants noted that technology companies have minimal awareness of their roles and responsibilities related to CSAM, both in terms of their legal responsibilities to provide data, as well as their social responsibility to keep users generally, and youth in particular, safe. In the words of one participant, *“Like one example is Omegle, right? Their tagline is literally ‘Talk to Strangers.’ And we could get hundreds of cyber tips from Omegle, but the limited information that they supply and maintain, not a single one of them results in even going to somebody’s house. Like even a knock and talk let alone charges.”* Most participants lamented technology company’s limited interest in awareness and changing practices, and many suggested that only legislation and regulation would change their awareness and practices. In a statement similar to many, one participant noted, *“There’s an obligation if the company becomes aware of child sexual abuse and material on their servers, networks, whatever, communications platforms they have, to report it under a statute. However, very few companies actually take steps to screen what is going on within their servers, networks, platforms...I can name a whole host of terrible platforms that are filled with abusers and children.”* Holistically, participants discussed the technology companies of perpetuating a willful ignorance of the atrocities related the CSAM that were occurring on their platforms. As one prosecutor aptly summarized, *“We definitely need to hold the tech industry accountable. We have seat belts in cars. We don’t have leaded paint in homes. We don’t smoke in airplanes or bars anymore. But the internet is the wild, wild west! So, we definitely need to hold big tech, I think, criminally and civilly liable when there’s malfeasance.”*

3.2. Frustrations with resources

The theme “Frustrations with resources” captures participant’s perspectives on the resources needed to successfully investigate and prosecute CSAM crimes and notes any frustrations or difficulty in obtaining or otherwise securing these resources. Several participants expressed frustration regarding the limited available resources to investigate and prosecute CSAM crimes, particularly given their volume and, at times, severity. Resource limitations named by participants included: insufficient money, personnel, and prevention/treatment options for offenders. Importantly, many participants’ frustrations spanned multiple resources. In the words of one participant, *“On a bad day, I’m dealing with limited resources: under-motivated officers, lack of training for first responders in identifying and seizing digital evidence properly, lack of training and understanding among prosecutors and judges. You know, this is the day-to-day reality of this area.”* Importantly, some participants attributed resource limitations to CSAM being perceived as less important to prosecute than other crimes (e.g., homicide): *There are not as many resources for what we [prosecutors of CSAM] do. It frustrates me in my office. We have my unit who specializes in this work [CSAM] as well as a separate unit that prosecutes murder cases. And often the murders are- as well as I think- treated differently. That it’s... more prestigious. But in my mind, these [CSAM] cases have lasting effects just as much as murders and on the victim as well as their family lifelong effects.”*

3.2.1. Money

Participants reported that money is often insufficient for the prosecution of CSAM cases, in terms of funding positions and general manpower to ensure cases are successfully prosecuted in a timely way. In a statement echoed by many, one participant stated: *We spend more money on prosecuting intellectual property crimes than we do child exploitation. And while those are important, I would argue that one kid is worth more than a billion dollars worth of tennis shoe loss to Nike.”* Some participants noted this disparity is also seen at the federal level: *And even within the FBI, their priority is of course national security, intelligence type things after 2001. And so, they generally devote way fewer resources... in the areas of crimes against children...it [crimes against children] is willfully understaffed.”*

Participants noted that the resources most needed for the investigation of CSAM are not always the ones provided, even in communities where need is clear. These needs ranged from general funding for agency initiatives, (e.g., *“I think a lot of the ICAC agencies... are constantly in need of funding, because they’re expensive agencies, right, they have forensics and licensees and training and mental health stuff.”*) to more specific needs, (e.g., *“Some [law enforcement] agencies even get electronic scent detecting dogs, which cost money. You know, we don’t have one.”*).

3.2.2. Trained personnel

More personnel dedicated to these types of cases was mentioned by many participants. As one participant aptly summarized, *“There’s not enough law enforcement, there’s not enough prosecutors, there’s not enough judges, you know...there’s not enough!”* Importantly, several participants reported that the reason for these personnel shortages is the increase in CSAM cases via cyber tips, even in relatively small communities. As one participant reported, *“We’re a small state, but I think the number of cyber tips we were getting in a year has nearly quadrupled, and the manpower or staff in our unit has not changed.”* In the words of another participant, *“I think partly that the team just isn’t big enough to address all of the people out there that are doing it...I know that I only get a very small fraction of the people that are out there downloading, sharing, and looking at this material because we just don’t have the manpower to investigate every single tip the moment it comes in and try to get them shut down.”*

Furthermore, some participants noted that personnel turnover is high, openings are inconsistently filled, and new staff may not have adequate training on CSAM: *“I think that good training is really key to these types of cases. And I think for a lot of the more rural, smaller jurisdictions, funding for that is challenging.”* A few participants reported these concerns specifically regarding their own careers: *“I have 12 more years till retirement because I did six and a half years public defender’s work before I became a prosecutor. So, I mean, I have 12 and a half more years till I can retire at my 30 years, and I am legitimately worried (laughs) about who’s gonna take my caseload over when I retire?”*

3.2.3. Prevention/treatment options

Another resource that many indicated was lacking was effective prevention and treatment. This included ideas for prevention of new CSAM as well as treatment for offenders who had either produced or distributed CSAM in the past. In a statement similar to some, one prosecutor offered this about preventive measures, *“I’m not saying that we should step away from our prosecution and investigation efforts...But at the same time... We need to somehow have a means by which we can get to them [offenders] before they get to that point. I mean, a mechanism by which we can say, ‘Hey, if you feel that you have these feelings, if you have these thoughts or whatever, this is an avenue for you’”* In a statement similar to some, one prosecutor lamented that the lack of treatment options, saying, *“That’s the really frustrating thing...our prison does not have any programs, and we really don’t have them in our communities either. It seems like wasted years because they’re coming out and they haven’t gained anything. We’ve just kept them out of the population for a while.”*

3.3. Frustrations with legal consequences

The theme “Legal consequences” includes participant reflections on the available consequences of a successful prosecution. Within this theme, participants noted three specific areas of frustration including outdated laws, sentencing differences and discrepancies, and minimal sentences.

3.3.1. Outdated laws

Participants noted the fast-changing nature of CSAM crimes, and the evolution of virtual platforms rendering many laws inadequate

or otherwise unable to fully capture the reality of present-day CSAM crimes. The sentiments of one participant were shared by many, stating, *"The statutes and the laws... They were written in the time when, you know, this was considered something that wasn't common. You know, I think most of these statutes are written 40, 50, 60, 70 years ago, right? So, I think a lot of folks back then didn't realize how common it was."* Many participants reflected on how laws may not fully capture the use of technology, including Artificial Intelligence: *"I wish somebody would come up with a way to deal with these computer-generated images and virtual images. I just... There is no literary or artistic value to some of this trash...I just don't see how you can assign any kind of First Amendment protection to this stuff."*

In addition to current laws not reflecting the technology aspects of these types of cases, they also fail to consider the effects prosecuting these crimes have on the victims. One state prosecutor noted, *"A child molestation victim has to testify in an open courtroom in front of her abuser. That is troubling to me. I have to weigh that decision of what is justice and is it justice to give them a lesser sentence so that child doesn't have to testify in trial?"* Holistically, participants noted that the lack of attention and urgency to modify these laws connected back to the aforementioned themes around awareness, *"Again, people think it's, 'I didn't touch that kid. I just possessed pictures of somebody that touched a kid.'"*

3.3.2. Sentencing differences and discrepancies

Most participants noted the sentencing differences and discrepancies across states, federally, and between judges were a source of frustration. As one participant noted, *"In [Southern US State], it's like 20 is the maximum and it's parole-able. And they even have this five [years] as a minimum sentence, but if there are certain conditions, like the offender isn't a felon previously then the judge can just go below that...it can change within the state and across states."* Indeed, many participants noted differences regionally within states regarding laws, prosecution, and sentencing. In the words of one participant, *"I feel that because I have defense attorneys that come in from other areas of the state and say, 'Well, I'm from X jurisdiction and if we were in X jurisdiction, I would be getting probation. And here I am offering like 10 years.' And I'm like, 'Are you kidding me?'"*

A few participants discussed experiences prosecuting across state lines and noted frustratingly different norms. One participant noted, *"There are significant regional differences in between the states. And so, having worked in [West Coast State], I will tell you across the board, [West Coast State] sentences are going to be way lower than say the Southeast."* Another similarly compared their states laws with neighboring states, *"When I think about [neighboring state], where everyone does jail or prison for the same amount or less quantity [of CSAM]- or even for less graphic material than [Participant's state]- it's frustrating."* Importantly, participants noted that when a state issues the same sentence as a federally prosecuted case, the offender with the state sentence will likely serve less time. One prosecutor clearly explained this occurrence, which was described by many, noting, *"Let's say you get a 8-year state sentence, and it's not a violent crime... Just say... CSAM possession is one of the offenses. That sentence would be done in less than two- They would be out, they would be off parole and everything in less than two [years]. But, if [the same offender] gets an 8-year sentence in federal court, they're gonna serve 8 years."*

3.3.3. Minimal sentences

Several participants shared their frustration with minimal sentencing for perpetrators including perpetrator's eligibility for parole. In a statement echoed by many, one participant reflected that parole can sometimes be offered, even when it is not solicited: *"Sometimes when we get a guilty plea [from the perpetrator] and they [the perpetrator] say, 'I'm gonna plead guilty, but I'm not gonna take your offer, I'm gonna take my chances with the judge,' and the judge is like, 'All right, well, here's your probation. Go forth, sin no more.'" Another participant noted that plea deals were common, which may limit a judge hearing the full details of a case: "So there's that sense of frustration. You put all this work into it [prosecuting the case]. It's horrific crimes. And people get plea sentences ... if somebody takes a plea deal, you know, the judge never really hears about the horrific nature of the crime."*

Some prosecutors reported that they are often encouraged to seek probation to keep offenders out of already overcrowded jails. One prosecutor shared, *"There's an overall pressure to give lesser sentences. Sentences, again, that are more focused on rehabilitation, not on punishment. And I'm all for rehabilitation. But I think there's a time when punishment is needed, as well."* Not only are prosecutors encouraged to seek probation, but even when offenders are given jail time they are often released early due to overcrowding. *"The state is under a lot of pressure to release inmates anyways, and it's probably true in a lot of places. But I guess going back to one of your other questions, this is also a source of frustration that when you've worked out a conviction and the defendants get released early as non-violent offenders, then that's kind of frustrating too."*

Importantly, a few participants noted an acquiescence rather than frustration with the sentencing process ending with a judge, even in cases where they disagreed with the ultimate sentence. In the words of one participant, *"I can put forward the best case and get the best possible plea that I think is most appropriate to hold the offender accountable. Our courts have the ability or are the ones that decide the sentence, and sometimes I respectfully disagree with their decision. But to the extent that my unit or I am able to hold them responsible, I think we do the best we can."*

4. Discussion

CSAM cases are complex and diverse in terms of perpetration, victim identification, and investigation. Prosecuting these cases is similarly complex, necessitating an understanding of federal and state-level laws, technical expertise, and prosecutorial practice. The current study builds on limited extant knowledge about the experiences of prosecutors working on CSAM cases through qualitative interviews with experienced CSAM prosecutors from across the United States. The guiding research question for the current study was "What are the biggest challenges for prosecutors in successfully prosecuting CSAM cases?" We also explored specific areas of frustration, and ways prosecution experiences may vary by judge, region, or state. Given our sample of twenty-four prosecutors from 16 different states, we found remarkable similarities in terms of identified challenges.

Qualitative themes from the current study included frustrations with knowledge and awareness; frustrations with resources; and frustrations with legal consequences. The first theme, frustrations with knowledge and awareness, is well represented across the literature on technology-facilitated abuse. Indeed, many professionals working with youth impacted by CSAM note a general lack of awareness on the issue by various parties, including the general public, parents, the children and youth themselves, school personnel, medical professionals, and those in the criminal justice system (Cullen et al., 2020). Current findings suggest that a lack of awareness impacts all aspects of the prosecution process from investigation and case development, to sentencing. Indeed, extant data suggest that in 2019, the majority (59 %) of non-production child pornography offenders received a variance below the guideline range of 103 months (United States Sentencing Commission, 2019). Such data suggest that judges view CSAM in the absence of a hands-on offense as differentially benign, despite data to the contrary (Finkelhor et al., 2023; Finkelhor et al., 2024; Gewirtz-Meydan et al., 2018).

Importantly, the term CSAM encompasses a wide variety of crimes- anything from the recorded sexual abuse of infants to self-negotiated exchanges of images by adolescent-aged youth. Accordingly, misunderstandings about the true nature and impact of CSAM on victims and their families may be difficult to combat as an individual may generalize knowledge of one specific type of case to all CSAM cases, thereby minimizing the vast array of experiences the crime may encompass. Similarly, there is also variance among offender profiles, with some offenders viewing and re-distributing images, and others producing new CSAM images via hands-on sexual offenses. Images suggesting hands-on sexual abuse has occurred (or is occurring) are often prioritized by investigators, with a differential focus on the most egregious acts (e.g., younger children, torture; Levine, 2022). While these particularly egregious crimes may more readily elicit an emotional response, it is important to note that regardless of the type of CSAM images (e.g., hand on abuse or self-negotiated exchanges; Finkelhor et al., 2023), the majority of CSAM survivors report negative emotions and symptomology following their victimization (Finkelhor et al., 2023; Finkelhor et al., 2024; Gewirtz-Meydan et al., 2018), underscoring both the trauma and victimization inherent to the crime. The need for greater awareness about CSAM is clear, and researchers have noted that trainings may be useful in ensuring a basic understanding of technology-facilitated crimes generally, and CSAM in particular (Cullen et al., 2020; Leclerc et al., 2022).

The theme related to resources is prolific in the extant literature, particularly in relation to technology-facilitated crimes. As noted elsewhere in this manuscript, crimes that occur via the Internet require both special training and equipment (Mitchell et al., 2022). Specialized law enforcement personnel are incredibly helpful; however, not every community has equal access to such resources (Mitchell et al., 2022). Findings suggest that specialized task forces are especially useful in CSAM cases due to their complexity and, in many instances, the sheer volume of evidence within a case. In communities where specialized task forces are less accessible, it is likely that one or two individuals are asked to investigate a bevy of technology-facilitated crimes with limited training and resources (Mitchell et al., 2022), leading to overwhelm and potentially burnout (Mitchell et al., 2024). In such cases, the efficiency of investigators, as well as prosecution, may be ultimately hindered (Powell et al., 2014). Findings from the current study suggest that communication between prosecutors and investigators is key to prosecutorial success, underscoring the importance of investigator efficiency and wellness.

Though temporal order of frustrations was not assessed within the context of the study, it is easy to imagine that the listed frustrations may be sequential in nature such that a lack of understanding by many within the legal system limits the amount and breadth of resources available, which subsequently limits the legal consequences available to the court. It is important to note that so much of CSAM is now occurring online; however, much of the legislation around CSAM was created before the ubiquity of the Internet. Indeed, videos and photos may be shared more widely and often by a variety of people, across a variety of locations, with a variety of goals. Furthermore, over 95 % of youth have access to a smartphone, making it easy for them to take pictures and share them via social media with minimal adult screening (Pew Research Center, 2023). Indeed, the investigation of CSAM has become increasingly complicated as compared with a time when hard-copy images were being shared by perpetrators (Cullen et al., 2020). CSAM crosses international borders with continually advancing technology, requiring law enforcement to be innovative with their partners (Christensen et al., 2021). With the exponential growth of CSAM in recent years, there is also a growing need for technology companies, including those online sharing platforms, to be more proactive in automatically detecting and reporting CSAM (Bursztein et al., 2019). This need is mirrored in the international literature (Cullen et al., 2020), which may suggest that both national and international protocols for technology companies may be useful in the detection and erasure of CSAM materials.

4.1. Limitations

As with all studies, it is important to consider the findings of the current study in the context of their limitations. Specifically, this study was exploratory and qualitative in nature. Accordingly, the interview guide was semi-structured to allow for broad responses. While this was done intentionally to elicit a more general understanding of CSAM prosecutor's experiences, it also makes it difficult to understand the true prevalence of a theme, as certain themes/responses may not have been evoked as a function of the natural flow of the interview. Members of the research team were entirely cisgender, white females, which may have introduced some coding bias, as well as bias within the interview itself. We attempted to guard against this through the use of double coding and regular team meetings; however, given the similar social positions of all members of the research team, it is possible that bias still existed. It is important to note that the research team largely mirrored the study population in all areas except gender (e.g., the study population was mostly male). The snowball recruitment method used may introduce bias, as participants may recommend others for participation that share their own viewpoints. Nonetheless, prosecutors specializing in CSAM cases are a very specific group and may be hard to otherwise recruit for study participation. Finally, given the fast-changing nature of technology (and therefore CSAM crimes), the current study is reflective of only the time in which it was collected. It is an unfortunate truism that research related to technology, and technology-facilitated crimes, can quickly become outdated. While many of the themes presented in the current study may continue to be pertinent

for years to come, it is likely that specific examples are time-limited and must be contextualized within the period during which data were collected.

4.2. Implications for research and practice

Even with these limitations, the current study offers a number of important implications for both research and practice that may be informative and useful in years to come. We offer implications for research and practice distinctly below, with that caveat that ideally, research and practice inform one another to ensure holistic and evidence-informed responses.

4.2.1. Practice

Participants in the current study noted that many professionals including law enforcement, judges, and prosecutors had a limited understanding of CSAM, its impact on victims, CSAM's link to ongoing perpetration, as well as the breadth of potential crimes it may encompass. Accordingly, CSAM trainings for multidisciplinary teams may be useful. However, many law enforcement professionals note feeling overwhelmed by the variety of trainings they must attend, and a lack of both funding and time for ongoing continuing education (Mitchell et al., 2022; Williams, 2000). While it remains unclear if there are salient pieces of CSAM trainings that may be integrated into extant programming, such integration may be particularly useful to increase general knowledge and awareness with minimal new programming (Marenin, 2004). Findings from the current study emphasized the complexity of CSAM cases, as well as the importance of prosecutors and investigator's working together. Multi-disciplinary training that includes content on CSAM may serve a dual purpose both in increasing knowledge and awareness of CSAM, as well as facilitating interactions and relationships among the diverse groups of professionals who must work together to successfully prosecute CSAM cases. Such trainings may also need to include professional well-being tools for those who work on CSAM cases. Proactive screening and mental health supports may be key to supporting these professionals' well-being (Mitchell et al., 2024; O'Brien et al., 2024).

In addition to trainings, findings underscore the importance of timely legislation that can be used to both protect children and keep online communities safe. Internationally, such legislation is being enacted in several places, including the United Kingdom (i.e., The Online Safety Act; Department for Science, Innovation, and Technology, 2024); France (i.e., SREN Law; Bettach, 2024); and Canada (i.e., Online Harms Act; Sullivan, 2024) among others (see Song & Holzer, 2023). Many of these pieces of legislation feature clear reporting protocols for harmful content such as CSAM, and clear timeframes for image removal (Song & Holzer, 2023). Importantly, the United States' only federal legislation for the digital protection of children is the Children's Online Personal Protection Act of 1998 (Federal Trade Commission, 2023). Given the rapid change in digital platforms, states have supplemented this federal legislation with their own legislation; however, state-level laws are not uniform and vary widely in specific content. This understandably complicates legal response, as well as reporting protocols for Internet Service Providers. Given the international borders of the Internet, clear laws, responses, and consequences are necessary to ensure consistent enactment and safety for children and youth.

4.2.2. Research

Research on crimes that are technology-facilitated, including CSAM, are still in their nascent stages, and we are just beginning to learn these crimes' impact on victims, families, law enforcement, as well as trajectories of perpetration. Thus, recommendations for research are far-reaching and include evaluation of extant trainings for professionals working on CSAM cases, analysis of perpetration and arrest timelines to understand how CSAM perpetration is related to the perpetration of additional crimes, and exploration of multi-disciplinary approaches to CSAM identification, service provision, and prosecutorial success. Holistically, each of these may help elucidate promising practices for prosecution, including ideal consequences, legal reform, and victim advocacy.

In addition, it is important to consider all of these recommendations in the context of survivor experience and a trauma-informed approach. Though scant, extant research does suggest that survivors of CSAM are particularly vulnerable, and often have a negative experience during prosecution (Turner et al., 2024). It will be important to create new and ongoing opportunities for survivors and their families to provide input on extant processes to ensure those that are developed in a trauma-informed manner that is experienced as both helpful and empowering to those who have been directly impacted by this egregious crime.

In conclusion, prosecution is an important part of the criminal justice response to CSAM possession, distribution, and production. Findings from the current study illuminate challenges related to prosecution and underscore the importance of expanding knowledge about CSAM generally, particularly within the criminal justice and legal system. Such knowledge may aid in the allocation of greater resources for law enforcement and prosecutors, as well as updated laws related to technology-facilitated CSAM. Given the volume and complexity of CSAM cases, this is a pressing need that spans beyond region, necessitating holistic response.

CRediT authorship contribution statement

Jennifer E. O'Brien: Writing – review & editing, Writing – original draft, Supervision, Methodology, Formal analysis, Conceptualization. **Gina Zwerling Kahn:** Writing – review & editing, Writing – original draft. **Leanne Gast:** Writing – review & editing, Writing – original draft, Project administration. **Kimberly J. Mitchell:** Writing – review & editing, Supervision, Funding acquisition, Conceptualization.

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Data availability

The data that has been used is confidential.

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