

104TH CONGRESS  
2D SESSION

# H. R. 4123

To amend certain provisions of law relating to child pornography, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 19, 1996

Mr. KENNEDY of Massachusetts introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend certain provisions of law relating to child pornography, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Child Pornography  
5       Prevention Act of 1996”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) the use of children in the production of sex-  
9       ually explicit material, including photographs, films,  
10       videos, computer images, and other visual depictions,

1 is a form of sexual abuse which can result in phys-  
2 ical or psychological harm, or both, to the children  
3 involved;

4 (2) where children are used in its production,  
5 child pornography permanently records the victim's  
6 abuse, and its continued existence causes the child  
7 victims of sexual abuse continuing harm by haunting  
8 those children in future years;

9 (3) child pornography is often used as part of  
10 a method of seducing other children into sexual ac-  
11 tivity; a child who is reluctant to engage in sexual  
12 activity with an adult, or to pose for sexually explicit  
13 photographs, can sometimes be convinced by viewing  
14 depictions of other children "having fun" participat-  
15 ing in such activity;

16 (4) child pornography is often used by  
17 pedophiles and child sexual abusers to stimulate and  
18 whet their own sexual appetites, and as a model for  
19 sexual acting out with children; such use of child  
20 pornography can desensitize the viewer to the pa-  
21 thology of sexual abuse or exploitation of children,  
22 so that it can become acceptable to and even pre-  
23 ferred by the viewer;

24 (5) new photographic and computer imaging  
25 technologies make it possible to produce by elec-

1       tronic, mechanical, or other means, visual depictions  
2       of what appear to be children engaging in sexually  
3       explicit conduct that are virtually indistinguishable  
4       to the unsuspecting viewer from unretouched photo-  
5       graphic images of actual children engaging in sexu-  
6       ally explicit conduct;

7               (6) computers and computer imaging tech-  
8       nology can be used to—

9                       (A) alter sexually explicit photographs,  
10                      films, and videos in such a way as to make it  
11                      virtually impossible for unsuspecting viewers to  
12                      identify individuals, or to determine if the of-  
13                      fending material was produced using children;

14                     (B) produce visual depictions of child sex-  
15                      ual activity designed to satisfy the preferences  
16                      of individual child molesters, pedophiles, and  
17                      pornography collectors; and

18                     (C) alter innocent pictures of children to  
19                      create visual depictions of those children engag-  
20                      ing in sexual conduct;

21               (7) The creation or distribution of child pornog-  
22       raphy which includes an image of a recognizable  
23       minor invades the child's privacy and reputational  
24       interests, since images that are created showing a  
25       child's face or other identifiable feature on a body

1 engaging in sexually explicit conduct can haunt the  
2 minor for years to come;

3 (8) the effect of visual depictions of child sexual  
4 activity on a child molester or pedophile using that  
5 material to stimulate or whet his own sexual appe-  
6 tites, or on a child where the material is being used  
7 as a means of seducing or breaking down the child's  
8 inhibitions to sexual abuse or exploitation, is the  
9 same whether the child pornography consists of pho-  
10 tographic depictions of actual children or visual de-  
11 pictions produced wholly or in part by electronic,  
12 mechanical, or other means, including by computer,  
13 which are virtually indistinguishable to the  
14 unsuspecting viewer from photographic images of ac-  
15 tual children;

16 (9) the danger to children who are seduced and  
17 molested with the aid of child sex pictures is just as  
18 great when the child pornographer or child molester  
19 uses visual depictions of child sexual activity pro-  
20 duced wholly or in part by electronic, mechanical, or  
21 other means, including by computer, as when the  
22 material consists of unretouched photographic im-  
23 ages of actual children engaging in sexually explicit  
24 conduct;

1           (10)(A) the existence of and traffic in child por-  
2           nographic images creates the potential for many  
3           types of harm in the community and presents a clear  
4           and present danger to all children; and

5           (B) it inflames the desires of child molesters,  
6           pedophiles, and child pornographers who prey on  
7           children, thereby increasing the creation and dis-  
8           tribution of child pornography and the sexual abuse  
9           and exploitation of actual children who are victim-  
10          ized as a result of the existence and use of these ma-  
11          terials;

12          (11)(A) the sexualization and eroticization of  
13          minors through any form of child pornographic im-  
14          ages has a deleterious effect on all children by en-  
15          couraging a societal perception of children as sexual  
16          objects and leading to further sexual abuse and ex-  
17          ploitation of them; and

18          (B) this sexualization of minors creates an un-  
19          wholesome environment which affects the psycho-  
20          logical, mental and emotional development of chil-  
21          dren and undermines the efforts of parents and fam-  
22          ilies to encourage the sound mental, moral and emo-  
23          tional development of children;

24          (12) prohibiting the possession and viewing of  
25          child pornography will encourage the possessors of

1 such material to rid themselves of or destroy the ma-  
2 terial, thereby helping to protect the victims of child  
3 pornography and to eliminate the market for the  
4 sexual exploitative use of children; and

5 (13) the elimination of child pornography and  
6 the protection of children from sexual exploitation  
7 provide a compelling governmental interest for pro-  
8 hibiting the production, distribution, possession,  
9 sale, or viewing of visual depictions of children en-  
10 gaging in sexually explicit conduct, including both  
11 photographic images of actual children engaging in  
12 such conduct and depictions produced by computer  
13 or other means which are virtually indistinguishable  
14 to the unsuspecting viewer from photographic im-  
15 ages of actual children engaging in such conduct.

16 **SEC. 3. DEFINITIONS.**

17 Section 2256 of title 18, United States Code, is  
18 amended—

19 (1) in paragraph (5), by inserting before the  
20 semicolon the following: “, and data stored on com-  
21 puter disk or by electronic means which is capable  
22 of conversion into a visual image”;

23 (2) in paragraph (6), by striking “and”;

24 (3) in paragraph (7), by striking the period and  
25 inserting “; and”;

1           (4) by adding at the end the following new  
2 paragraph:

3           “(8) ‘child pornography’ means any visual de-  
4 piction, including any photograph, film, video, pic-  
5 ture, or computer or computer-generated image or  
6 picture, whether made or produced by electronic,  
7 mechanical, or other means, of sexually explicit con-  
8 duct, where—

9           “(A) the production of such visual depic-  
10 tion involves the use of a minor engaging in  
11 sexually explicit conduct;

12           “(B) such visual depiction is, or appears to  
13 be, of a minor engaging in sexually explicit con-  
14 duct; or

15           “(C) such visual depiction is advertised,  
16 promoted, presented, described, or distributed  
17 in such a manner that conveys the impression  
18 that the material is or contains a visual depic-  
19 tion of a minor engaging in sexually explicit  
20 conduct.”.

21           “(D) such visual depiction is advertised,  
22 promoted, presented, described, or distributed  
23 in such a manner that conveys the impression  
24 that the material is or contains a visual depic-

1           tion of a minor engaging in sexually explicit  
2           conduct; and

3           “(9) ‘identifiable minor’—

4                   “(A) means a person—

5                           “(i)(I) who was a minor at the time  
6                           the visual depiction was created, adapted,  
7                           or modified; or

8                           “(II) whose image as a minor was  
9                           used in creating, adapting, or modifying  
10                          the visual depiction; and

11                          “(ii) who is recognizable as an actual  
12                          person by the person’s face, likeness, or  
13                          other distinguishing characteristic, such as  
14                          a unique birthmark or other recognizable  
15                          feature; and

16                          “(B) shall not be construed to require  
17                          proof of the actual identity of the identifiable  
18                          minor.”.

19 **SEC. 4. PROHIBITED ACTIVITIES RELATING TO MATERIAL**  
20 **CONSTITUTING OR CONTAINING CHILD POR-**  
21 **NOGRAPHY.**

22           (a) IN GENERAL.—Chapter 110 of title 18, United  
23 States Code, is amended by adding after section 2252 the  
24 following:

1 **“§ 2252A. Certain activities relating to material con-**  
2 **stituting or containing child pornography**

3 “(a) Any person who—

4 “(1) knowingly mails, or transports or ships in  
5 interstate or foreign commerce by any means, in-  
6 cluding by computer, any child pornography;

7 “(2) knowingly receives or distributes—

8 “(A) any child pornography that has been  
9 mailed, or shipped or transported in interstate  
10 or foreign commerce by any means, including  
11 by computer; or

12 “(B) any material that contains child por-  
13 nography that has been mailed, or shipped or  
14 transported in interstate or foreign commerce  
15 by any means, including by computer;

16 “(3) knowingly reproduces any child pornog-  
17 raphy for distribution through the mails, or in inter-  
18 state or foreign commerce by any means, including  
19 by computer;

20 “(4) either—

21 “(A) in the special maritime and territorial  
22 jurisdiction of the United States, or on any  
23 land or building owned by, leased to, or other-  
24 wise used by or under the control of the United  
25 States Government, or in the Indian country  
26 (as defined in section 1151), knowingly sells or

1 possesses with the intent to sell any child por-  
2 nography; or

3 “(B) knowingly sells or possesses with the  
4 intent to sell any child pornography that has  
5 been mailed, or shipped or transported in inter-  
6 state or foreign commerce by any means, in-  
7 cluding by computer, or that was produced  
8 using materials that have been mailed, or  
9 shipped or transported in interstate or foreign  
10 commerce by any means, including by com-  
11 puter; or

12 “(5) either—

13 “(A) in the special maritime and territorial  
14 jurisdiction of the United States, or on any  
15 land or building owned by, leased to, or other-  
16 wise used by or under the control of the United  
17 States Government, or in the Indian country  
18 (as defined in section 1151), knowingly pos-  
19 sesses 3 or more books, magazines, periodicals,  
20 films, videotapes, or other material which con-  
21 tain any visual depiction of child pornography,  
22 or any book, magazine, periodical, film, video-  
23 tape, computer disk, or any other material that  
24 contains 3 or more images of child pornog-  
25 raphy; or

1           “(B) knowingly possesses 3 or more books,  
2           magazines, periodicals, films, videotapes, or  
3           other material which contain any visual depic-  
4           tion of child pornography, or any book, maga-  
5           zine, periodical, film, videotape, computer disk,  
6           or any other material that contains 3 or more  
7           images of child pornography that has been  
8           mailed, or shipped or transported in interstate  
9           or foreign commerce by any means, including  
10          by computer, or that was produced using mate-  
11          rials that have been mailed, or shipped or  
12          transported in interstate or foreign commerce  
13          by any means, including by computer,  
14 shall be punished as provided in subsection (b).

15          “(b)(1) Whoever violates, or attempts or conspires to  
16 violate, paragraphs (1), (2), (3), or (4) of subsection (a)  
17 shall be fined under this title or imprisoned not more than  
18 15 years, or both, but, if such person has a prior convic-  
19 tion under this chapter or chapter 109A, or under the laws  
20 of any State relating to aggravated sexual abuse, sexual  
21 abuse, or abusive sexual conduct involving a minor or  
22 ward, or the production, possession, receipt, mailing, sale,  
23 distribution, shipment, or transportation of child pornog-  
24 raphy, such person shall be fined under this title and im-  
25 prisoned for not less than 5 years nor more than 30 years.

1       “(2) Whoever violates, or attempts or conspires to  
2 violate, subsection (a)(5) shall be fined under this title or  
3 imprisoned not more than 5 years, or both, but, if such  
4 person has a prior conviction under this chapter or chapter  
5 109A, or under the laws of any State relating to the pos-  
6 session of child pornography, such person shall be fined  
7 under this title and imprisoned for not less than 2 years  
8 nor more than 10 years.

9       “(c) It shall be an affirmative defense to a charge  
10 of violating paragraphs (1), (2), (3), or (4) of subsection  
11 (a) that—

12               “(1) the alleged child pornography was pro-  
13 duced using an actual person or persons engaging in  
14 sexually explicit conduct;

15               “(2) each such person was an adult at the time  
16 the material was produced; and

17               “(3) the defendant did not advertise, promote,  
18 present, describe, or distribute the material in such  
19 a manner as to convey the impression that it is or  
20 contains a visual depiction of a minor engaging in  
21 sexually explicit conduct.”.

22       (b) TECHNICAL AMENDMENT.—The table of sections  
23 for chapter 110 of title 18, United States Code, is amend-  
24 ed by adding after the item relating to section 2252 the  
25 following:

“2252A. Certain activities relating to material constituting or containing child pornography.”.

1 **SEC. 5. PENALTIES FOR SEXUAL EXPLOITATION OF CHIL-**  
2 **DREN.**

3 Section 2251(d) of title 18, United States Code, is  
4 amended to read as follows:

5 “(d) Any individual who violates, or attempts or con-  
6 spires to violate, this section shall be fined under this title  
7 or imprisoned not less than 10 years nor more than 20  
8 years, and both, but if such person has one prior convic-  
9 tion under this chapter or chapter 109A, or under the laws  
10 of any State relating to the sexual exploitation of children,  
11 such person shall be fined under this title and imprisoned  
12 for not less than 15 years nor more than 30 years, but  
13 if such person has 2 or more prior convictions under this  
14 chapter of chapter 109A, or under the laws of any State  
15 relating to the sexual exploitation of children, such person  
16 shall be fined under this title and imprisoned not less than  
17 30 years nor more than life. Any organization that vio-  
18 lates, or attempts or conspires to violate, this section shall  
19 be fined under this title. Whoever, in the course of an of-  
20 fense under this section, engages in conduct that results  
21 in the death of a person, shall be punished by death or  
22 imprisoned for any term of years or for life.”.

1 **SEC. 6. MATERIAL INVOLVING SEXUAL EXPLOITATION OF**  
2 **MINORS.**

3 Section 2252 of title 18, United States Code, is  
4 amended—

5 (1) in subparagraphs (A) and (B) of subsection  
6 (a)(4), after “3 or more books, magazines, periodi-  
7 cals, films, videotapes, or other material which con-  
8 tain any visual depiction” by adding “or any book,  
9 magazine, periodical, film, videotape, or other mate-  
10 rial which contains 3 or more visual depictions”; and

11 (2) by striking subsection (b) and inserting the  
12 following:

13 “(b)(1) Whoever violates, or attempts or conspires to  
14 violate, paragraphs (1), (2), or (3) of subsection (a) shall  
15 be fined under this title or imprisoned not more than 15  
16 years, or both, but if such person has a prior conviction  
17 under this chapter or chapter 109A, or under the laws  
18 of any State relating to aggravated sexual abuse, sexual  
19 abuse, or abusive sexual conduct involving a minor or  
20 ward, or the production, possession, receipt, mailing, sale,  
21 distribution, shipment, or transportation of child pornog-  
22 raphy, such person shall be fined under this title and im-  
23 prisoned for not less than 5 years nor more than 30 years.

24 “(2) Whoever violates, or attempts or conspires to  
25 violate, paragraph (4) of subsection (a) shall be fined  
26 under this title or imprisoned not more than 5 years, or

1 both, but if such person has a prior conviction under this  
2 chapter or chapter 109A, or under the laws of any State  
3 relating to the possession of child pornography, such per-  
4 son shall be fined under this title and imprisoned for not  
5 less than 2 years nor more than 10 years.”.

6 **SEC. 7. PRIVACY PROTECTION ACT AMENDMENTS.**

7 Section 101 of the Privacy Protection Act of 1980  
8 (42 U.S.C. 2000aa) is amended—

9 (1) in subsection (a)(1), by inserting before the  
10 parenthesis at the end the following: “, or if the of-  
11 fense involves the production, possession, receipt,  
12 mailing, sale, distribution, shipment, or transpor-  
13 tation of child pornography, the sexual exploitation  
14 of children, or the sale or purchase of children under  
15 section 2251, 2251A, 2252, 2252A, or 2252B of  
16 title 18, United States Code”; and

17 (2) in subsection (b)(1), by inserting before the  
18 parenthesis at the end the following: “, or if the of-  
19 fense involves the production, possession, receipt,  
20 mailing, sale, distribution, shipment, or transpor-  
21 tation of child pornography, the sexual exploitation  
22 of children, or the sale or purchase of children under  
23 section 2251, 2251A, 2252, 2252A, or 2252B of  
24 title 18, United States Code”.

1 **SEC. 8. SEVERABILITY.**

2 If any provision of this Act, an amendment made by  
3 this Act, or the application of such provision or amend-  
4 ment to any person or circumstance is held to be unconsti-  
5 tutional, the remainder of this Act, the amendments made  
6 by this Act, and the application of such to any other per-  
7 son or circumstance shall not be affected thereby.

8 **SEC. 9. PROHIBITED ACTIVITIES RELATING TO MATERIAL**

9 **DEPICTING THE SEXUAL EXPLOITATION OF**  
10 **MINORS.**

11 (a) IN GENERAL.—Chapter 110 of title 18, United  
12 States Code, is amended by adding after section 2252A,  
13 as added by section 4 of this Act, the following:

14 **“§ 2252B. Certain activities relating to material de-**  
15  **picting the sexual exploitation of minors**

16 “(a) Any person who—

17 “(1) knowingly mails, or transports or ships in  
18 interstate or foreign commerce by any means, in-  
19 cluding by computer, any visual depiction, if such  
20 visual depiction has been created, adapted, or modi-  
21 fied to appear that an identifiable minor is engaged  
22 in sexually explicit conduct;

23 “(2) knowingly receives or distributes any visual  
24 depiction or any material that contains a visual de-  
25 piction that has been mailed, or shipped or trans-  
26 ported in interstate or foreign commerce by any

1 means, including by computer, if such visual depic-  
2 tion has been created, adapted, or modified to ap-  
3 pear that an identifiable minor is engaged in sexu-  
4 ally explicit conduct;

5 “(3) knowingly reproduces any visual depiction  
6 for distribution through the mails, or in interstate or  
7 foreign commerce by any means, including by com-  
8 puter, if such visual depiction has been created,  
9 adapted, or modified to appear that an identifiable  
10 minor is engaged in sexually explicit conduct;

11 “(4) either—

12 “(A) in the special maritime and territorial  
13 jurisdiction of the United States, or on any  
14 land or building owned by, leased to, or other-  
15 wise used by or under the control of the United  
16 States Government, or in the Indian country  
17 (as defined in section 1151), knowingly sells or  
18 possesses with the intent to sell any visual de-  
19 picture; or

20 “(B) knowingly sells or possesses with the  
21 intent to sell any visual depiction that has been  
22 mailed, or shipped or transported in interstate  
23 or foreign commerce by any means, including  
24 computer, or that was produced using materials  
25 that have been mailed, or shipped or trans-

1           ported in interstate commerce by any means,  
2           including by computer;  
3           if such visual depiction has been created, adapted, or  
4           modified to appear that an identifiable minor is en-  
5           gaged in sexually explicit conduct; or

6           “(5) either—

7                   “(A) in the special maritime and territorial  
8                   jurisdiction of the United States, or on any  
9                   land or building owned by, leased to, or other-  
10                  wise used by or under the control of the United  
11                  States Government, or in the Indian country  
12                  (as defined in section 1151), knowingly pos-  
13                  sesses 3 or more books, magazines, periodicals,  
14                  films, videotapes, or other material which con-  
15                  tain any visual depiction, or any book, maga-  
16                  zine, periodical, film, videotape, computer disk,  
17                  or any other material that contains 3 or more  
18                  visual depictions; or

19                   “(B) knowingly possesses 3 or more books,  
20                   magazines, periodicals, films, videotapes, or  
21                   other material which contain any visual depic-  
22                   tion, or any book, magazine, periodical, film,  
23                   videotape, computer disk, or any other material  
24                   that contains 3 or more visual depictions that  
25                   has been mailed, or shipped or transported in

1 interstate or foreign commerce by any means,  
2 including by computer;  
3 if such visual depiction has been created, adapted, or  
4 modified to appear that an identifiable minor is en-  
5 gaged in sexually explicit conduct;  
6 shall be punished as provided in subsection (b).

7 “(b)(1) Whoever violates, or attempts or conspires to  
8 violate, paragraph (1), (2), (3), or (4) of subsection (a)  
9 shall be fined under this title or imprisoned not more than  
10 15 years, or both, but, if such person has a prior convic-  
11 tion under this chapter or chapter 109A, or under the laws  
12 of any State relating to the production, possession, receipt,  
13 mailing, sale, distribution, shipment, or transportation of  
14 a visual depiction that would be prohibited under this  
15 chapter if it had occurred within the special maritime and  
16 territorial jurisdiction of the United States, such person  
17 shall be fined under this title and imprisoned for not less  
18 than 5 years nor more than 30 years.

19 “(2) Whoever violates, or attempts or conspires to  
20 violate, subsection (a)(5) shall be fined under this title or  
21 imprisoned not more than 5 years, or both, but, if such  
22 person has a prior conviction under this chapter or chapter  
23 109A, or under the laws of any State relating to the pro-  
24 duction, possession, receipt, mailing, sale, distribution,  
25 shipment, or transportation of a visual depiction that

1 would be prohibited under this chapter if it had occurred  
2 within the special maritime and territorial jurisdiction of  
3 the United States, such person shall be fined under this  
4 title and imprisoned for not less than 2 years nor more  
5 than 10 years.”.

6 (b) CLERICAL AMENDMENT.—The table of sections  
7 for chapter 110 of title 18, United States Code, is amend-  
8 ed by adding after the item for section 2252A the follow-  
9 ing:

“2252B. Certain activities relating to material depicting the sexual exploitation  
of minors.”.

10 (c) DEFINITION.—Section 2256 of title 18, United  
11 States Code, as amended by section 3 of this Act, is  
12 amended—

13 (1) in paragraph (7), by striking “and”;

14 (2) in paragraph (8), by striking the period and  
15 inserting “; and”; and

16 (3) by adding at the end the following new  
17 paragraph:

18 “(9) ‘identifiable minor’—

19 “(A) means a person who—

20 “(i) was a minor at the time the vis-  
21 ual depiction was created or at the time  
22 the person’s image was captured on the  
23 visual medium used in creating, modifying,  
24 or adapting such visual depiction; and

1                   “(ii) is recognizable in the visual de-  
2                   piction as an actual person by the person’s  
3                   likeness or other distinguishing physical  
4                   characteristic, such as a unique birthmark  
5                   or other recognizable feature; and

6                   “(B) shall not be construed to require  
7                   proof of the actual identity of the minor.”.

8 **SEC. 10. AMBER HAGERMAN CHILD PROTECTION ACT OF**  
9                   **1996.**

10           (a) **SHORT TITLE.**—This section may be cited as the  
11 “Amber Hagerman Child Protection Act of 1996”.

12           (b) **AGGRAVATED SEXUAL ABUSE OF A MINOR.**—  
13 Section 2241(c) of title 18, United States Code, is amend-  
14 ed—

15                   (1) by inserting “crosses a State line with in-  
16                   tent to engage in a sexual act with a person who has  
17                   not attained the age of 12 years, or” after “Who-  
18                   ever”; and

19                   (2) by adding at the end the following: “If the  
20                   defendant has previously been convicted of another  
21                   Federal offense under this subsection or under sec-  
22                   tion 2243(a), or of a State offense that would have  
23                   been an offense under either such provision had the  
24                   offense occurred in a Federal prison, unless the

1 death penalty is imposed, the defendant shall be sen-  
2 tenced to life in prison.”.

3 (c) SEXUAL ABUSE OF A MINOR.—Section 2243(a)  
4 of title 18, United States Code, is amended—

5 (1) by inserting “crosses a State line with in-  
6 tent to engage in a sexual act with a person who,  
7 or” after “Whoever”; and

8 (2) by adding at the end the following: “If the  
9 defendant has previously been convicted of another  
10 Federal offense under this subsection or under sec-  
11 tion 2241(c), or of a State offense that would have  
12 been an offense under either such provision had the  
13 offense occurred in a Federal prison, unless the  
14 death penalty is imposed, the defendant shall be sen-  
15 tenced to life in prison.”.

○