

104TH CONGRESS
2D SESSION

H. R. 4331

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 30, 1996

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

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 a semicolon; 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 has been cre-
16 ated, adapted, or modified to appear that an
17 identifiable minor is engaging in sexually ex-
18 plicit conduct; or

19 “(D) such visual depiction is advertised,
20 promoted, presented, described, or distributed
21 in such a manner that conveys the impression
22 that the material is or contains a visual depic-
23 tion of a minor engaging in sexually explicit
24 conduct; and

25 “(9) ‘identifiable minor’—

1 “(A) means a person—

2 “(i)(I) who was a minor at the time
3 the visual depiction was created, adapted,
4 or modified; or

5 “(II) whose image as a minor was
6 used in creating, adapting, or modifying
7 the visual depiction; and

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

13 “(B) shall not be construed to require
14 proof of the actual identity of the identifiable
15 minor.”.

16 **SEC. 4. PROHIBITED ACTIVITIES RELATING TO MATERIAL**
17 **CONSTITUTING OR CONTAINING CHILD POR-**
18 **NOGRAPHY.**

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

22 **“§ 2252A. Certain activities relating to material con-**
23 **stituting or containing child pornography**

24 “(a) Any person who—

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

4 “(2) knowingly receives or distributes—

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

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

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

17 “(4) either—

18 “(A) in the special maritime and territorial
19 jurisdiction of the United States, or on any
20 land or building owned by, leased to, or other-
21 wise used by or under the control of the United
22 States Government, or in the Indian country
23 (as defined in section 1151), knowingly sells or
24 possesses with the intent to sell any child por-
25 nography; or

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

10 “(5) either—

11 “(A) in the special maritime and territorial
12 jurisdiction of the United States, or on any
13 land or building owned by, leased to, or other-
14 wise used by or under the control of the United
15 States Government, or in the Indian country
16 (as defined in section 1151), knowingly pos-
17 sesses any book, magazine, periodical, film, vid-
18 eotape, computer disk, or any other material
19 that contains 3 or more images of child pornog-
20 raphy; or

21 “(B) knowingly possesses any book, maga-
22 zine, periodical, film, videotape, computer disk,
23 or any other material that contains 3 or more
24 images of child pornography that has been
25 mailed, or shipped or transported in interstate

1 or foreign commerce by any means, including
2 by computer, or that was produced using mate-
3 rials that have been mailed, or shipped or
4 transported in interstate or foreign commerce
5 by any means, including by computer,
6 shall be punished as provided in subsection (b).

7 “(b)(1) Whoever violates, or attempts or conspires to
8 violate, paragraphs (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 aggravated sexual abuse, sexual
13 abuse, or abusive sexual conduct involving a minor or
14 ward, or the production, possession, receipt, mailing, sale,
15 distribution, shipment, or transportation of child pornog-
16 raphy, such person shall be fined under this title and im-
17 prisoned for not less than 5 years nor more than 30 years.

18 “(2) Whoever violates, or attempts or conspires to
19 violate, subsection (a)(5) shall be fined under this title or
20 imprisoned not more than 5 years, or both, but, if such
21 person has a prior conviction under this chapter or chapter
22 109A, or under the laws of any State relating to the pos-
23 session of child pornography, such person shall be fined
24 under this title and imprisoned for not less than 2 years
25 nor more than 10 years.

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

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

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

9 “(3) the defendant did not advertise, promote,
10 present, describe, or distribute the material in such
11 a manner as to convey the impression that it is or
12 contains a visual depiction of a minor engaging in
13 sexually explicit conduct.”.

14 (b) **TECHNICAL AMENDMENT.**—The table of sections
15 for chapter 110 of title 18, United States Code, is amend-
16 ed by adding after the item relating to section 2252 the
17 following:

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

18 **SEC. 5. PENALTIES FOR SEXUAL EXPLOITATION OF CHIL-**
19 **DREN.**

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

22 “(d) Any individual who violates, or attempts or con-
23 spires to violate, this section shall be fined under this title
24 or imprisoned not less than 10 years nor more than 20

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

16 **SEC. 6. MATERIAL INVOLVING SEXUAL EXPLOITATION OF**
17 **MINORS.**

18 Section 2252 of title 18, United States Code, is
19 amended—by striking subsection (b) and inserting the fol-
20 lowing:

21 “(b)(1) Whoever violates, or attempts or conspires to
22 violate, paragraphs (1), (2), or (3) of subsection (a) shall
23 be fined under this title or imprisoned not more than 15
24 years, or both, but if such person has a prior conviction
25 under this chapter or chapter 109A, or under the laws

1 of any State relating to aggravated sexual abuse, sexual
2 abuse, or abusive sexual conduct involving a minor or
3 ward, or the production, possession, receipt, mailing, sale,
4 distribution, shipment, or transportation of child pornog-
5 raphy, such person shall be fined under this title and im-
6 prisoned for not less than 5 years nor more than 30 years.

7 “(2) Whoever violates, or attempts or conspires to
8 violate, paragraph (4) of subsection (a) shall be fined
9 under this title or imprisoned not more than 5 years, or
10 both, but if such person has a prior conviction under this
11 chapter or chapter 109A, or under the laws of any State
12 relating to the possession of child pornography, such per-
13 son shall be fined under this title and imprisoned for not
14 less than 2 years nor more than 10 years.”.

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

16 Section 101 of the Privacy Protection Act of 1980
17 (42 U.S.C. 2000aa) is amended—

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

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

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

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

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

16 “(c) **WITH CHILDREN.**—Whoever crosses a State line
17 with intent to engage in a sexual act with a person who
18 has not attained the age of 12 years, or in the special
19 maritime and territorial jurisdiction of the United States
20 or in a Federal prison, knowingly engages in a sexual act
21 with another person who has not attained the age of 12
22 years, or knowingly engages in a sexual act under the cir-
23 cumstances described in subsections (a) and (b) with an-
24 other person who has attained the age of 12 years but
25 has not attained the age of 16 years (and is at least 4

1 years younger than that person), or attempts to do so,
2 shall be fined under this title, imprisoned for any term
3 of years or life, or both. If the defendant has previously
4 been convicted of another Federal offense under this sub-
5 section, or of a State offense that would have been an of-
6 fense under either such provision had the offense occurred
7 in a Federal prison, unless the death penalty is imposed,
8 the defendant shall be sentenced to life in prison.”.

9 (c) SEXUAL ABUSE OF A MINOR.—Section 2243(a)
10 of title 18, United States Code, is amended by inserting
11 “crosses a State line with intent to engage in a sexual
12 act with a person who has not attained the age of 12
13 years, or” after “Whoever”.

14 **SEC. 9. SEVERABILITY.**

15 If any provision of this Act, an amendment made by
16 this Act, or the application of such provision or amend-
17 ment to any person or circumstance is held to be unconsti-
18 tutional, the remainder of this Act, the amendments made
19 by this Act, and the application of such to any other per-
20 son or circumstance shall not be affected thereby.

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