

107TH CONGRESS
2D SESSION

S. 2520

To amend title 18, United States Code, with respect to the sexual exploitation of children.

IN THE SENATE OF THE UNITED STATES

MAY 15, (legislative day, MAY 9), 2002

Mr. HATCH (for himself, Mr. LEAHY, Mr. SESSIONS, Mr. HUTCHINSON, Mr. BROWNBACK, Mr. EDWARDS, and Mr. DEWINE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, with respect to the sexual exploitation of children.

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 “Prosecutorial Remedies
5 and Tools Against the Exploitation of Children Today Act
6 of 2002”.

1 **SEC. 2. CERTAIN ACTIVITIES RELATING TO MATERIAL CON-**
2 **STITUTING OR CONTAINING CHILD PORNOG-**
3 **RAPHY.**

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

6 (1) in subsection (a)—

7 (A) by striking paragraph (3) and insert-
8 ing the following:

9 “(3) knowingly—

10 “(A) reproduces any child pornography for
11 distribution through the mails, or in interstate
12 or foreign commerce by any means, including
13 by computer; or

14 “(B) advertises, promotes, presents, de-
15 scribes, distributes, or solicits through the
16 mails, or in interstate or foreign commerce by
17 any means, including by computer, any material
18 in a manner that conveys the impression that
19 the material is, or contains, an obscene visual
20 depiction of a minor engaging in sexually ex-
21 plicit conduct;”;

22 (B) in paragraph (4), by striking “or” at
23 the end;

24 (C) in paragraph (5), by striking the pe-
25 riod at the end and inserting “; or”; and

26 (D) by adding at the end the following:

1 “(6) knowingly distributes, offers, sends, or
2 provides to a minor any visual depiction, including
3 any photograph, film, video, picture, or computer
4 generated image or picture, whether made or pro-
5 duced by electronic, mechanical, or other means, of
6 sexually explicit conduct where such visual depiction
7 is, or appears to be, of a minor engaging in sexually
8 explicit conduct—

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

12 “(B) that was produced using materials
13 that have been mailed, shipped, or transported
14 in interstate or foreign commerce by any
15 means, including by computer; or

16 “(C) which distribution, offer, sending, or
17 provision is accomplished using the mails or by
18 transmitting or causing to be transmitted any
19 wire communication in interstate or foreign
20 commerce, including by computer,
21 for purposes of inducing or persuading such minor
22 to participate in any activity that is illegal.”;

23 (2) in subsection (b)(1), by striking “(1), (2),
24 (3), or (4)” and inserting “(1), (2), (3), (4), or (6)”;
25 and

1 (3) by striking subsection (c) and inserting the
2 following:

3 “(c) It shall be an affirmative defense to a charge
4 of violating paragraph (1), (2), (3), (4), or (5) of sub-
5 section (a) that—

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

9 “(B) each such person was an adult at the time
10 the material was produced; or

11 “(2) the alleged child pornography was not pro-
12 duced using any actual minor or minors.

13 No affirmative defense shall be available in any prosecu-
14 tion that involves obscene child pornography or child por-
15 nography as described in section 2256(8)(D). A defendant
16 may not assert an affirmative defense to a charge of vio-
17 lating paragraph (1), (2), (3), (4), or (5) of subsection
18 (a) unless, within the time provided for filing pretrial mo-
19 tions or at such time prior to trial as the judge may direct,
20 but in no event later than 10 days before the commence-
21 ment of the trial, the defendant provides the court and
22 the United States with notice of the intent to assert such
23 defense and the substance of any expert or other special-
24 ized testimony or evidence upon which the defendant in-
25 tends to rely. If the defendant fails to comply with this

1 subsection, the court shall, absent a finding of extraor-
 2 dinary circumstances that prevented timely compliance,
 3 prohibit the defendant from asserting a defense to a
 4 charge of violating paragraph (1), (2), (3), (4), or (5) of
 5 subsection (a) or presenting any evidence for which the
 6 defendant has failed to provide proper and timely notice.”.

7 **SEC. 3. ADMISSIBILITY OF EVIDENCE.**

8 Section 2252A of title 18, United States Code, is
 9 amended by adding at the end the following:

10 “(e) ADMISSIBILITY OF EVIDENCE.—In any prosecu-
 11 tion under this chapter, the name, address, or other identi-
 12 fying information, other than the age or approximate age,
 13 of any minor who is depicted in any child pornography
 14 shall not be admissible and the jury shall be instructed,
 15 upon request of the United States, that it can draw no
 16 inference from the absence of such evidence in deciding
 17 whether the child pornography depicts an actual minor .”.

18 **SEC. 4. DEFINITIONS.**

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

21 (1) in paragraph (1), by inserting before the
 22 semicolon the following: “and shall not be construed
 23 to require proof of the actual identity of the per-
 24 son”;

25 (2) in paragraph (8)—

1 (A) in subparagraph (B), by inserting “is
2 obscene and” before “is”;

3 (B) in subparagraph (C), by striking “or”
4 at the end; and

5 (C) by striking subparagraph (D) and in-
6 serting the following:

7 “(D) such visual depiction—

8 “(i) is of a minor, or an individual
9 who appears to be a minor, actually engag-
10 ing in bestiality, sadistic or masochistic
11 abuse, or sexual intercourse, including gen-
12 ital-genital, oral-genital, anal-genital, or
13 oral-anal, whether between persons of the
14 same or opposite sex; and

15 “(ii) lacks serious literary, artistic, po-
16 litical, or scientific value; or

17 “(E) the production of such visual depic-
18 tion involves the use of an identifiable minor
19 engaging in sexually explicit conduct; and”;

20 (3) in paragraph (9)(A)(ii)—

21 (A) by striking “(ii) who is” and inserting
22 the following:

23 “(ii)(I) who is”; and

24 (B) by striking “and” at the end and in-
25 serting the following: “or

1 “(II) who is virtually indistinguishable
2 from an actual minor; and”.

3 **SEC. 5. RECORDKEEPING REQUIREMENTS.**

4 Section 2257 of title 18, United States Code, is
5 amended—

6 (1) in subsection (d)(2), by striking “of this
7 section” and inserting “of this chapter or chapter
8 71,”;

9 (2) in subsection (h)(3), by inserting “, com-
10 puter generated image or picture,” after “video
11 tape”; and

12 (3) in subsection (i)—

13 (A) by striking “not more than 2 years”
14 and inserting “not more than 5 years”; and

15 (B) by striking “5 years” and inserting
16 “10 years”.

17 **SEC. 6. FEDERAL VICTIMS’ PROTECTIONS AND RIGHTS.**

18 Section 227(f)(1)(D) of the Victims of Child Abuse
19 Act of 1990 (42 U.S.C. 13032(f)(1)(D)) is amended to
20 read as follows:

21 “(D) where the report discloses a violation
22 of State criminal law to an appropriate official
23 of that State or subdivision of that State for
24 the purpose of enforcing such State law.”.

1 **SEC. 7. CONTENTS DISCLOSURE OF STORED COMMUNICA-**
2 **TIONS.**

3 Section 2702 of title 18, United States Code, is
4 amended—

5 (1) in subsection (b)—

6 (A) in paragraph (5), by striking “or” at
7 the end;

8 (B) in paragraph (6)—

9 (i) in subparagraph (A)(ii), by insert-
10 ing “or” at the end;

11 (ii) by striking subparagraph (B); and

12 (iii) by redesignating subparagraph
13 (C) as subparagraph (B);

14 (C) by redesignating paragraph (6) as
15 paragraph (7); and

16 (D) by inserting after paragraph (5) the
17 following:

18 “(6) to the National Center for Missing and
19 Exploited Children, in connection with a report sub-
20 mitted under section 227 of the Victims of Child
21 Abuse Act of 1990 (42 U.S.C. 13032); or”; and

22 (2) in subsection (c)—

23 (A) in paragraph (4), by striking “or” at
24 the end;

25 (B) by redesignating paragraph (5) as
26 paragraph (6); and

1 (C) by inserting after paragraph (4) the
2 following:

3 “(5) to the National Center for Missing and
4 Exploited Children, in connection with a report sub-
5 mitted under section 227 of the Victims of Child
6 Abuse Act of 1990 (42 U.S.C. 13032); or”.

7 **SEC. 8. EXTRATERRITORIAL PRODUCTION OF CHILD POR-**
8 **NOGRAPHY FOR DISTRIBUTION IN THE**
9 **UNITED STATES.**

10 Section 2251 of title 18, United States Code, is
11 amended—

12 (1) by striking “subsection (d)” each place that
13 term appears and inserting “subsection (e)”;

14 (2) by redesignating subsections (c) and (d) as
15 subsections (d) and (e), respectively; and

16 (3) by inserting after subsection (b) the fol-
17 lowing:

18 “(c)(1) Any person who, in a circumstance described
19 in paragraph (2), employs, uses, persuades, induces, en-
20 tices, or coerces any minor to engage in, or who has a
21 minor assist any other person to engage in, any sexually
22 explicit conduct outside of the United States, its territories
23 or possessions, for the purpose of producing any visual de-
24 piction of such conduct, shall be punished as provided
25 under subsection (e).

1 “(2) The circumstance referred to in paragraph (1)
2 is that—

3 “(A) the person intends such visual depiction to
4 be transported to the United States, its territories or
5 possessions, by any means, including by computer or
6 mail; or

7 “(B) the person transports such visual depic-
8 tion to the United States, its territories or posses-
9 sions, by any means, including by computer or
10 mail.”.

11 **SEC. 9. CIVIL REMEDIES.**

12 Section 2252A of title 18, United States Code, as
13 amended by this Act, is amended by adding at the end
14 the following:

15 “(f) CIVIL REMEDIES.—

16 “(1) IN GENERAL.—Any person aggrieved by
17 reason of the conduct prohibited under subsection
18 (a) or (b) may commence a civil action for the relief
19 set forth in paragraph (2).

20 “(2) RELIEF.—In any action commenced in ac-
21 cordance with paragraph (1), the court may award
22 appropriate relief, including—

23 “(A) temporary, preliminary, or permanent
24 injunctive relief;

1 “(B) compensatory and punitive damages;
2 and
3 “(C) the costs of the civil action and rea-
4 sonable fees for attorneys and expert wit-
5 nesses.”.

6 **SEC. 10. ENHANCED PENALTIES FOR RECIDIVISTS.**

7 Sections 2251(d), 2252(b), and 2252A(b) of title 18,
8 United States Code, are amended by inserting “chapter
9 71,” before “chapter 109A,” each place it appears.

10 **SEC. 11. SENTENCING ENHANCEMENTS FOR INTERSTATE**
11 **TRAVEL TO ENGAGE IN SEXUAL ACT WITH A**
12 **JUVENILE.**

13 Pursuant to its authority under section 994(p) of title
14 18, United States Code, and in accordance with this sec-
15 tion, the United States Sentencing Commission shall re-
16 view and, as appropriate, amend the Federal Sentencing
17 Guidelines and policy statements to ensure that guideline
18 penalties are adequate in cases that involve interstate
19 travel with the intent to engage in a sexual act with a
20 juvenile in violation of section 2423 of title 18, United
21 States Code, to deter and punish such conduct.

22 **SEC. 12. MISCELLANEOUS PROVISIONS.**

23 (a) APPOINTMENT OF TRIAL ATTORNEYS.—Not later
24 than 6 months after the date of enactment of this Act,
25 the Attorney General shall appoint 25 additional trial at-

1 torneys to the Child Exploitation and Obscenity Section
2 of the Criminal Division of the Department of Justice or
3 to appropriate U.S. Attorney's Offices, and those trial at-
4 torneys shall have as their primary focus, the investigation
5 and prosecution of Federal child pornography laws.

6 (b) REPORT TO CONGRESSIONAL COMMITTEES.—

7 (1) IN GENERAL.—Not later than 9 months
8 after the date of enactment of this Act, and every
9 2 years thereafter, the Attorney General shall report
10 to the Chairpersons and Ranking Members of the
11 Committees on the Judiciary of the Senate and the
12 House of Representatives on the Federal enforce-
13 ment actions under chapter 110 of title 18, United
14 States Code.

15 (2) CONTENTS.—The report required under
16 paragraph (1) shall include—

17 (A) an evaluation of the prosecutions
18 brought under chapter 110 of title 18, United
19 States Code;

20 (B) an outcome-based measurement of per-
21 formance; and

22 (C) an analysis of the technology being
23 used by the child pornography industry.

24 (c) SENTENCING GUIDELINES.—Pursuant to its au-
25 thority under section 994(p) of title 18, United States

1 Code, and in accordance with this section, the United
2 States Sentencing Commission shall review and, as appro-
3 priate, amend the Federal Sentencing Guidelines and pol-
4 icy statements to ensure that the guidelines are adequate
5 to deter and punish conduct that involves a violation of
6 paragraph (3)(B) or (6) of section 2252A(a) of title 18,
7 United States Code, as created by this Act. With respect
8 to the guidelines for section 2252A(a)(3)(B), the Commis-
9 sion shall consider the relative culpability of promoting,
10 presenting, describing, or distributing material in violation
11 of that section as compared with solicitation of such mate-
12 rial.

13 **SEC. 13. SEVERABILITY.**

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

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