

108TH CONGRESS
1ST SESSION

H. R. 1161

To prevent trafficking in child pornography and obscenity, to proscribe pandering and solicitation relating to visual depictions of minors engaging in sexually explicit conduct, to prevent the use of child pornography and obscenity to facilitate crimes against children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2003

Mr. SMITH of Texas (for himself, Mr. COBLE, Mr. SENSENBRENNER, Mr. POMEROY, Mr. LAMPSON, Mr. FOLEY, Mr. BAKER, Mr. BARTLETT of Maryland, Mr. CANNON, Mr. CULBERSON, Mr. DELAY, Mr. WAMP, Mr. RYUN of Kansas, Mr. GILCHREST, Mr. WILSON of South Carolina, Mr. GREEN of Wisconsin, Mr. HUNTER, Ms. JACKSON-LEE of Texas, Mr. JENKINS, Mrs. JOHNSON of Connecticut, Mr. PICKERING, Mr. SIMMONS, Mr. SOUDER, Mr. SPRATT, Mr. STENHOLM, Mr. WELDON of Florida, Mr. PENCE, Mr. OXLEY, Mr. MATHESON, Mr. LOBIONDO, Mr. KENNEDY of Minnesota, Mr. ROGERS of Michigan, Mr. WELLER, Mr. BACHUS, Ms. HART, Mr. GOODLATTE, Mr. KELLER, Mrs. CAPITO, and Mr. VISCLOSKEY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prevent trafficking in child pornography and obscenity, to proscribe pandering and solicitation relating to visual depictions of minors engaging in sexually explicit conduct, to prevent the use of child pornography and obscenity to facilitate crimes against children, 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 Obscenity and
5 Pornography Prevention Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Obscenity and child pornography are not
9 entitled to protection under the First Amendment
10 under *Miller v. California*, 413 U.S. 15 (1973) (ob-
11 scenity), or *New York v. Ferber*, 458 U.S. 747
12 (1982) (child pornography) and thus may be prohib-
13 ited.

14 (2) The Government has a compelling state in-
15 terest in protecting children from those who sexually
16 exploit them, including both child molesters and
17 child pornographers. “The prevention of sexual ex-
18 ploitation and abuse of children constitutes a gov-
19 ernment objective of surpassing importance,” *New*
20 *York v. Ferber*, 458 U.S. 747, 757 (1982), and this
21 interest extends to stamping out the vice of child
22 pornography at all levels in the distribution chain.
23 *Osborne v. Ohio*, 495 U.S. 103, 110 (1990).

24 (3) The Government thus has a compelling in-
25 terest in ensuring that the criminal prohibitions

1 against child pornography remain enforceable and
2 effective. “The most expeditious if not the only prac-
3 tical method of law enforcement may be to dry up
4 the market for this material by imposing severe
5 criminal penalties on persons selling, advertising, or
6 otherwise promoting the product.” Ferber, 458 U.S.
7 at 760.

8 (4) In 1982, when the Supreme Court decided
9 Ferber, the technology did not exist to:

10 (A) computer generate depictions of chil-
11 dren that are indistinguishable from depictions
12 of real children;

13 (B) use parts of images of real children to
14 create a composite image that is unidentifiable
15 as a particular child and in a way that prevents
16 even an expert from concluding that parts of
17 images of real children were used; or

18 (C) disguise pictures of real children being
19 abused by making the image look computer-
20 generated.

21 (5) Evidence submitted to the Congress, includ-
22 ing from the National Center for Missing and Ex-
23 ploited Children, demonstrates that technology al-
24 ready exists to disguise depictions of real children to
25 make them unidentifiable and to make depictions of

1 real children appear computer-generated. The tech-
2 nology will soon exist, if it does not already, to com-
3 puter generate realistic images of children.

4 (6) The vast majority of child pornography
5 prosecutions today involve images contained on com-
6 puter hard drives, computer disks, and/or related
7 media.

8 (7) There is no substantial evidence that any of
9 the child pornography images being trafficked today
10 were made other than by the abuse of real children.
11 Nevertheless, technological advances since Ferber
12 have led many criminal defendants to suggest that
13 the images of child pornography they possess are not
14 those of real children, insisting that the government
15 prove beyond a reasonable doubt that the images are
16 not computer-generated. Such challenges increased
17 significantly after the decision in *Ashcroft v. Free*
18 *Speech Coalition* 535 U.S. 234 (2002).

19 (8) Child pornography circulating on the Inter-
20 net has, by definition, been digitally uploaded or
21 scanned into computers and has been transferred
22 over the Internet, often in different file formats,
23 from trafficker to trafficker. An image seized from
24 a collector of child pornography is rarely a first-gen-
25 eration product, and the retransmission of images

1 can alter the image so as to make it difficult for
2 even an expert conclusively to opine that a particular
3 image depicts a real child. If the original image has
4 been scanned from a paper version into a digital for-
5 mat, this task can be even harder since proper fo-
6 rensic assessment may depend on the quality of the
7 image scanned and the tools used to scan it.

8 (9) The impact of the Free Speech Coalition de-
9 cision on the Government's ability to prosecute child
10 pornography offenders is already evident. The Ninth
11 Circuit has seen a significant adverse effect on pros-
12 ecutions since the 1999 Ninth Circuit Court of Ap-
13 peals decision in Free Speech Coalition. After that
14 decision, prosecutions generally have been brought in
15 the Ninth Circuit only in the most clear-cut cases in
16 which the government can specifically identify the
17 child in the depiction or otherwise identify the origin
18 of the image. This is a fraction of meritorious child
19 pornography cases. The National Center for Missing
20 and Exploited Children testified that, in light of the
21 Supreme Court's affirmation of the Ninth Circuit
22 decision, prosecutors in various parts of the country
23 have expressed concern about the continued viability
24 of previously indicted cases as well as declined po-
25 tentially meritorious prosecutions.

1 (10) Since the Supreme Court’s decision in
2 Free Speech Coalition, defendants in child pornog-
3 raphy cases have almost universally raised the con-
4 tention that the images in question could be virtual,
5 thereby requiring the government, in nearly every
6 child pornography prosecution, to find proof that the
7 child is real. Some of these defense efforts have al-
8 ready been successful. In addition, the number of
9 prosecutions being brought has been significantly
10 and adversely affected as the resources required to
11 be dedicated to each child pornography case now are
12 significantly higher than ever before.

13 (11) Leading experts agree that, to the extent
14 that the technology exists to computer generate real-
15 istic images of child pornography, the cost in terms
16 of time, money, and expertise is—and for the fore-
17 seeable future will remain—prohibitively expensive.
18 As a result, for the foreseeable future, it will be
19 more cost-effective to produce child pornography
20 using real children. It will not, however, be difficult
21 or expensive to use readily available technology to
22 disguise those depictions of real children to make
23 them unidentifiable or to make them appear com-
24 puter-generated.

1 (12) Child pornography results from the abuse
2 of real children by sex offenders; the production of
3 child pornography is a byproduct of, and not the pri-
4 mary reason for, the sexual abuse of children. There
5 is no evidence that the future development of easy
6 and inexpensive means of computer generating real-
7 istic images of children would stop or even reduce
8 the sexual abuse of real children or the practice of
9 visually recording that abuse.

10 (13) In the absence of congressional action, the
11 difficulties in enforcing the child pornography laws
12 will continue to grow increasingly worse. The mere
13 prospect that the technology exists to create com-
14 posite or computer-generated depictions that are in-
15 distinguishable from depictions of real children will
16 allow defendants who possess images of real children
17 to escape prosecution; for it threatens to create a
18 reasonable doubt in every case of computer images
19 even when a real child was abused. This threatens
20 to render child pornography laws that protect real
21 children unenforceable. Moreover, imposing an addi-
22 tional requirement that the Government prove be-
23 yond a reasonable doubt that the defendant knew
24 that the image was in fact a real child—as some
25 courts have done—threatens to result in the de facto

1 legalization of the possession, receipt, and distribu-
2 tion of child pornography for all except the original
3 producers of the material.

4 (14) To avoid this grave threat to the Govern-
5 ment's unquestioned compelling interest in effective
6 enforcement of the child pornography laws that pro-
7 tect real children, a statute must be adopted that
8 prohibits a narrowly-defined subcategory of images.

9 (15) The Supreme Court's 1982 *Ferber v. New*
10 *York* decision holding that child pornography was
11 not protected drove child pornography off the shelves
12 of adult bookstores. Congressional action is nec-
13 essary now to ensure that open and notorious traf-
14 ficking in such materials does not reappear, and
15 even increase, on the Internet.

16 **SEC. 3. IMPROVEMENTS TO PROHIBITION ON VIRTUAL**
17 **CHILD PORNOGRAPHY.**

18 (a) Section 2256(8)(B) of title 18, United States
19 Code, is amended to read as follows:

20 “(B) such visual depiction is a digital
21 image, computer image, or computer-generated
22 image that is, or is indistinguishable (as defined
23 in section 1466A) from, that of a minor engag-
24 ing in sexually explicit conduct; or”.

1 (b) Section 2256(2) of title 18, United States Code,
2 is amended to read as follows:

3 “(2)(A) Except as provided in subparagraph
4 (B), ‘sexually explicit conduct’ means actual or sim-
5 ulated—

6 “(i) sexual intercourse, including genital-
7 genital, oral-genital, anal-genital, or oral-anal,
8 whether between persons of the same or oppo-
9 site sex;

10 “(ii) bestiality;

11 “(iii) masturbation;

12 “(iv) sadistic or masochistic abuse; or

13 “(v) lascivious exhibition of the genitals or
14 pubic area of any person;

15 “(B) For purposes of subsection 8(B) of this
16 section, ‘sexually explicit conduct’ means—

17 “(i) graphic sexual intercourse, including
18 genital-genital, oral-genital, anal-genital, or
19 oral-anal, whether between persons of the same
20 or opposite sex, or lascivious simulated sexual
21 intercourse where the genitals, breast, or pubic
22 area of any person is exhibited;

23 “(ii) graphic or lascivious simulated;

24 “(I) bestiality;

25 “(II) masturbation; or

1 “(III) sadistic or masochistic abuse;

2 or

3 “(iii) graphic or simulated lascivious exhi-
4 bition of the genitals or pubic area of any per-
5 son;”.

6 (c) Section 2256 is amended—

7 (1) in paragraph 8(D), by striking “and” at the
8 end;

9 (2) in paragraph (9), by striking the period at
10 the end and inserting “; and”; and

11 (3) by inserting at the end the following new
12 paragraph:

13 “(10) ‘graphic’, when used with respect to a de-
14 piction of sexually explicit conduct, means that a
15 viewer can observe any part of the genitals or pubic
16 area of any depicted person or animal during any
17 part of the time that the sexually explicit conduct is
18 being depicted.”.

19 (d) Section 2252A(c) of title 18, United States Code,
20 is amended to read as follows:

21 “(c)(1) Except as provided in paragraph (2), it shall
22 be an affirmative defense to a charge of violating this sec-
23 tion that the production of the alleged child pornography
24 did not involve the use of a minor or an attempt or con-

1 spiracy to commit an offense under this section involving
2 such use.

3 “(2) A violation of, or an attempt or conspiracy to
4 violate, this section which involves child pornography as
5 defined in section 2256(8)(A) or (C) shall be punishable
6 without regard to the affirmative defense set forth in para-
7 graph (1).”.

8 **SEC. 4. PROHIBITION ON PANDERING MATERIALS AS**
9 **CHILD PORNOGRAPHY.**

10 (a) Section 2256(8) of title 18, United States Code,
11 is amended—

12 (1) in subparagraph (C), by striking “or” at
13 the end and inserting “and”; and

14 (2) by striking subparagraph (D).

15 (b) Chapter 110 of title 18, United States Code, is
16 amended—

17 (1) by inserting after section 2252A the fol-
18 lowing:

19 **“§ 2252B. Pandering and solicitation**

20 “(a) Whoever, in a circumstance described in sub-
21 section (d), offers, agrees, attempts, or conspires to pro-
22 vide or sell a visual depiction to another, and who in con-
23 nection therewith knowingly advertises, promotes, pre-
24 sents, or describes the visual depiction with the intent to
25 cause any person to believe that the material is, or con-

1 tains, a visual depiction of an actual minor engaging in
2 sexually explicit conduct shall be subject to the penalties
3 set forth in section 2252A(b)(1), including the penalties
4 provided for cases involving a prior conviction.

5 “(b) Whoever, in a circumstance described in sub-
6 section (d), offers, agrees, attempts, or conspires to receive
7 or purchase from another a visual depiction that he be-
8 lieves to be, or to contain, a visual depiction of an actual
9 minor engaging in sexually explicit conduct shall be sub-
10 ject to the penalties set forth in section 2252A(b)(1), in-
11 cluding the penalties provided for cases involving a prior
12 conviction.

13 “(c) It is not a required element of any offense under
14 this section that any person actually provide, sell, receive,
15 purchase, possess, or produce any visual depiction.

16 “(d) The circumstance referred to in subsection (a)
17 and (b) is that—

18 “(1) any communication involved in or made in
19 furtherance of the offense is communicated or trans-
20 ported by the mail, or in interstate or foreign com-
21 merce by any means, including by computer, or any
22 means or instrumentality of interstate or foreign
23 commerce is otherwise used in committing or in fur-
24 therance of the commission of the offense;

1 “(2) any communication involved in or made in
2 furtherance of the offense contemplates the trans-
3 mission or transportation of a visual depiction by the
4 mail, or in interstate or foreign commerce by any
5 means, including by computer;

6 “(3) any person who travels or is transported in
7 interstate or foreign commerce in the course of the
8 commission or in furtherance of the commission of
9 the offense;

10 “(4) any visual depiction involved in the offense
11 has been mailed, or has been shipped or transported
12 in interstate or foreign commerce by any means, in-
13 cluding by computer, or was produced using mate-
14 rials that have been mailed, or that have been
15 shipped or transported in interstate or foreign com-
16 merce by any means, including by computer; or

17 “(5) the offense is committed in the special
18 maritime and territorial jurisdiction of the United
19 States or in any territory or possession of the
20 United States.”; and

21 (2) in the table of sections at the beginning of
22 the chapter, by inserting after the item relating to
23 section 2252A the following:

“2252B. Pandering and solicitation.”.

1 **SEC. 5. PROHIBITION OF OBSCENITY DEPICTING YOUNG**
2 **CHILDREN.**

3 (a) Chapter 71 of title 18, United States Code, is
4 amended—

5 (1) by inserting after section 1466 the fol-
6 lowing:

7 **“§ 1466A. Obscene visual depictions of young children**

8 “(a) Whoever, in a circumstance described in sub-
9 section (d), knowingly produces, distributes, receives, or
10 possesses with intent to distribute a visual depiction that
11 is, or is indistinguishable from, that of a pre-pubescent
12 child engaging in sexually explicit conduct, or attempts or
13 conspires to do so, shall be subject to the penalties set
14 forth in section 2252A(b)(1), including the penalties pro-
15 vided for cases involving a prior conviction.

16 “(b) Whoever, in a circumstance described in sub-
17 section (d), knowingly possesses a visual depiction that is,
18 or is indistinguishable from, that of a pre-pubescent child
19 engaging in sexually explicit conduct, or attempts or con-
20 spires to do so, shall be subject to the penalties set forth
21 in section 2252A(b)(2), including the penalties provided
22 for cases involving a prior conviction.

23 “(c) For purposes of this section—

24 “(1) the term ‘visual depiction’ includes unde-
25 veloped film and videotape, and data stored on com-
26 puter disk or by electronic means which is capable

1 of conversion into a visual image, and also includes
2 any photograph, film, video, picture, or computer or
3 computer-generated image or picture, whether made
4 or produced by electronic, mechanical, or other
5 means;

6 “(2) the term ‘pre-pubescent child’ means that
7 (A) the child, as depicted, is one whose physical de-
8 velopment indicates the child is 12 years of age or
9 younger; or (B) the child, as depicted, does not ex-
10 hibit significant pubescent physical or sexual matu-
11 ration. Factors that may be considered in deter-
12 mining significant pubescent physical maturation in-
13 clude body habitus and musculature, height and
14 weight proportion, degree of hair distribution over
15 the body, extremity proportion with respect to the
16 torso, and dentition. Factors that may be considered
17 in determining significant pubescent sexual matura-
18 tion include breast development, presence of axillary
19 hair, pubic hair distribution, and visible growth of
20 the sexual organs;

21 “(3) the term ‘sexually explicit conduct’ has the
22 meaning set forth in section 2256(2); and

23 “(4) the term ‘indistinguishable’ used with re-
24 spect to a depiction, means virtually indistinguish-
25 able, in that the depiction is such that an ordinary

1 person viewing the depiction would conclude that the
2 depiction is of an actual minor engaged in sexually
3 explicit conduct. This definition does not apply to
4 depictions that are drawings, cartoons, sculptures, or
5 paintings depicting minors or adults.

6 “(d) The circumstance referred to in subsections (a)
7 and (b) is that—

8 “(1) any communication involved in or made in
9 furtherance of the offense is communicated or trans-
10 ported by the mail, or in interstate or foreign com-
11 merce by any means, including by computer, or any
12 means or instrumentality of interstate or foreign
13 commerce is otherwise used in committing or in fur-
14 therance of the commission of the offense;

15 “(2) any communication involved in or made in
16 furtherance of the offense contemplates the trans-
17 mission or transportation of a visual depiction by the
18 mail, or in interstate or foreign commerce by any
19 means, including by computer;

20 “(3) any person travels or is transported in
21 interstate or foreign commerce in the course of the
22 commission or in furtherance of the commission of
23 the offense;

24 “(4) any visual depiction involved in the offense
25 has been mailed, or has been shipped or transported

1 in interstate or foreign commerce by any means, in-
2 cluding by computer, or was produced using mate-
3 rials that have been mailed, or that have been
4 shipped or transported in interstate or foreign com-
5 merce by any means, including by computer; or

6 “(5) the offense is committed in the special
7 maritime and territorial jurisdiction of the United
8 States or in any territory or possession of the
9 United States.

10 “(e) In a case under subsection (b), it is an affirma-
11 tive defense that the defendant—

12 “(1) possessed less than three such images; and

13 “(2) promptly and in good faith, and without
14 retaining or allowing any person, other than a law
15 enforcement agency, to access any image or copy
16 thereof—

17 “(A) took reasonable steps to destroy each
18 such image; or

19 “(B) reported the matter to a law enforce-
20 ment agency and afforded that agency access to
21 each such image.

22 **“§ 1466B. Obscene visual representations of sexual**
23 **abuse of minors**

24 “(a) Whoever, in a circumstance described in sub-
25 section (e), knowingly produces, distributes, receives, or

1 possesses with intent to distribute a visual depiction of any
2 kind, including a drawing, cartoon, sculpture, or painting,
3 that—

4 “(1) depicts a minor engaging in sexually ex-
5 plicit conduct; and

6 “(2) is obscene;

7 or attempts or conspires to do so, shall be subject to the
8 penalties set forth in section 2252A(b)(1), including the
9 penalties provided for cases involving a prior conviction.

10 “(b) Whoever, in a circumstance described in sub-
11 section (e), knowingly possesses a visual depiction of any
12 kind, including a drawing, cartoon, sculpture, or painting,
13 that—

14 “(1) depicts a minor child engaging in sexually
15 explicit conduct, and

16 “(2) is obscene,

17 or attempts or conspires to do so, shall be subject to the
18 penalties set forth in section 2252A(b)(2), including the
19 penalties provided for cases involving a prior conviction.

20 “(c) It is not a required element of any offense under
21 this section that the minor child depicted actually exist.

22 “(d) For purposes of this section, the terms ‘visual
23 depiction’ has the meaning given that term in section
24 1466A, and the terms ‘sexually explicit conduct’ and

1 ‘minor’ have the meanings given those terms in section
2 2256(2)(B).

3 “(e) The circumstance referred to in subsection (a)
4 and (b) is that—

5 “(1) any communication involved in or made in
6 furtherance of the offense is communicated or trans-
7 ported by the mail, or in interstate or foreign com-
8 merce by any means, including by computer, or any
9 means or instrumentality of interstate or foreign
10 commerce is otherwise used in committing or in fur-
11 therance of the commission of the offense;

12 “(2) any communication involved in or made in
13 furtherance of the offense contemplates the trans-
14 mission or transportation of a visual depiction by the
15 mail, or in interstate or foreign commerce by any
16 means, including by computer;

17 “(3) any person travels or is transported in
18 interstate or foreign commerce in the course of the
19 commission or in furtherance of the commission of
20 the offense;

21 “(4) any visual depiction involved in the offense
22 has been mailed, or has been shipped or transported
23 in interstate or foreign commerce by any means, in-
24 cluding by computer, or was produced using mate-
25 rials that have been mailed, or that have been

1 shipped or transported in interstate or foreign com-
 2 merce by any means, including by computer; or

3 “(5) the offense is committed in the special
 4 maritime and territorial jurisdiction of the United
 5 States or in any territory or possession of the
 6 United States.

7 “(f) In a case under subsection (b), it is an affirma-
 8 tive defense that the defendant—

9 “(1) possessed less than three such images; and

10 “(2) promptly and in good faith, and without
 11 retaining or allowing any person, other than a law
 12 enforcement agency, to access any image or copy
 13 thereof—

14 “(A) took reasonable steps to destroy each
 15 such image; or

16 “(B) reported the matter to a law enforce-
 17 ment agency and afforded that agency access to
 18 each such image.”; and

19 (2) in table of sections at the beginning of the
 20 chapter, by inserting after the item relating to sec-
 21 tion 1466 the following new items:

“1466A. Obscene visual depictions of young children.

“1466B. Obscene visual representations of pre-pubescent sexual abuse.”.

22 (b)(1) Except as provided in paragraph (2), the appli-
 23 cable category of offense to be used in determining the
 24 sentencing range referred to in section 3553(a)(4) of title

1 18, United States Code, with respect to any person con-
 2 victed under section 1466A or 1466B of such title, shall
 3 be the category of offenses described in section 2G2.2 of
 4 the Sentencing Guidelines.

5 (2) The Sentencing Commission may promulgate
 6 guidelines specifically governing offenses under sections
 7 1466A and 1466B of title 18, United States Code, pro-
 8 vided that such guidelines shall not result in sentencing
 9 ranges that are lower than those that would have applied
 10 under paragraph (1).

11 **SEC. 6. PROHIBITION ON USE OF MATERIALS TO FACILI-**
 12 **TATE OFFENSES AGAINST MINORS.**

13 Chapter 71 of title 18, United States Code, is amend-
 14 ed—

15 (1) by inserting at the end the following:

16 **“§1471. Use of obscene material or child pornog-**
 17 **raphy to facilitate offenses against mi-**
 18 **nors**

19 “(a) Whoever, in any circumstance described in sub-
 20 section (c), knowingly—

21 “(1) provides or shows to a person below the
 22 age of 16 years any visual depiction that is, or is in-
 23 distinguishable from, that of a pre-pubescent child
 24 engaging in sexually explicit conduct, any obscene
 25 matter, or any child pornography; or

1 “(2) provides or shows any obscene matter or
2 child pornography, or any visual depiction that is, or
3 is indistinguishable from, that of a pre-pubescent
4 child engaging in sexually explicit conduct, or pro-
5 vides any other material assistance to any person in
6 connection with any conduct, or any attempt, incite-
7 ment, solicitation, or conspiracy to engage in any
8 conduct, that involves a minor and that violates
9 chapter 109A, 110, or 117, or that would violate
10 chapter 109A if the conduct occurred in the special
11 maritime and territorial jurisdiction of the United
12 States,

13 shall be subject to the penalties set forth in section
14 2252A(b)(1), including the penalties provided for cases in-
15 volving a prior conviction.

16 “(b) For purposes of this section—

17 “(1) the term ‘child pornography’ has the
18 meaning set forth in section 2256(8);

19 “(2) the terms ‘visual depiction’, ‘pre-pubescent
20 child’, and ‘indistinguishable’ have the meanings re-
21 spectively set forth for those terms in section
22 1466A(c); and

23 “(3) the term ‘sexually explicit conduct’ has the
24 meaning set forth in section 2256(2).

1 “(c) The circumstance referred to in subsection (a)
2 is that—

3 “(1) any communication involved in or made in
4 furtherance of the offense is communicated or trans-
5 ported by the mail, or in interstate or foreign com-
6 merce by any means, including by computer, or any
7 means or instrumentality of interstate or foreign
8 commerce is otherwise used in committing or in fur-
9 therance of the commission of the offense;

10 “(2) any communication involved in or made in
11 furtherance of the offense contemplates the trans-
12 mission or transportation of a visual depiction or ob-
13 scene matter by the mail, or in interstate or foreign
14 commerce by any means, including by computer;

15 “(3) any person travels or is transported in
16 interstate or foreign commerce in the course of the
17 commission or in furtherance of the commission of
18 the offense;

19 “(4) any visual depiction or obscene matter in-
20 volved in the offense has been mailed, or has been
21 shipped or transported in interstate or foreign com-
22 merce by any means, including by computer, or was
23 produced using materials that have been mailed, or
24 that have been shipped or transported in interstate

1 or foreign commerce by any means, including by
2 computer; or

3 “(5) the offense is committed in the special
4 maritime and territorial jurisdiction of the United
5 States or in any territory or possession of the
6 United States.”; and

7 (2) in the table of sections at the beginning of
8 the chapter, by inserting at the end the following:

“1471. Use of obscene material or child pornography to facilitate offenses
against minors.”.

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

12 Section 2251 is amended—

13 (1) by striking “subsection (d)” each place it
14 appears in subsections (a), (b), and (c) and inserting
15 “subsection (e)”;

16 (2) by redesignating subsections (c) and (d), re-
17 spectively, as subsections (d) and (e); and

18 (3) by inserting after subsection (b) a new sub-
19 section (c) as follows:

20 “(c)(1) Any person who, in a circumstance described
21 in paragraph (2), employs, uses, persuades, induces, en-
22 tices, or coerces any minor to engage in, or who has a
23 minor assist any other person to engage in, any sexually
24 explicit conduct outside of the United States, its posses-

1 sions and Territories, for the purpose of producing any
 2 visual depiction of such conduct, shall be punished as pro-
 3 vided under subsection (e).

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

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

10 “(B) the person transports such visual depic-
 11 tion to, or otherwise makes it available within, the
 12 United States, its possessions, or territories, by any
 13 means including by computer or mail.”.

14 **SEC. 8. STRENGTHENING ENHANCED PENALTIES FOR RE-**
 15 **PEAT OFFENDERS.**

16 Sections 2251(e) (as redesignated by section 7(2)),
 17 2252(b), and 2252A(b) of title 18, United States Code,
 18 are each amended by inserting “chapter 71,” immediately
 19 before each occurrence of “chapter 109A,”.

20 **SEC. 9. SERVICE PROVIDER REPORTING OF CHILD POR-**
 21 **NOGRAPHY AND RELATED INFORMATION.**

22 (a) Section 227 of the Victims of Child Abuse Act
 23 of 1990 (42 U.S.C. 13032) is amended—

24 (1) in subsection (b)(1)—

1 (A) by inserting “2252B,” after “2252A,”;

2 and

3 (B) by inserting “or a violation of section
4 1466A or 1466B of that title,” after “of that
5 title),”;

6 (2) in subsection (c), by inserting “or pursuant
7 to” after “to comply with”;

8 (3) by amending subsection (f)(1)(D) to read as
9 follows:

10 “(D) where the report discloses a violation
11 of State criminal law, to an appropriate official
12 of a State or subdivision of a State for the pur-
13 pose of enforcing such State law.”;

14 (4) by redesignating paragraph (3) of sub-
15 section (b) as paragraph (4); and

16 (5) by inserting after paragraph (2) of sub-
17 section (b) the following new paragraph:

18 “(3) In addition to forwarding such reports to
19 those agencies designated in subsection (b)(2), the
20 National Center for Missing and Exploited Children
21 is authorized to forward any such report to an ap-
22 propriate official of a state or subdivision of a state
23 for the purpose of enforcing state criminal law.”.

24 (b) Section 2702 of title 18, United States Code is
25 amended—

1 (1) in subsection (b)—

2 (A) in paragraph (6)—

3 (i) by inserting “or” at the end of
4 subparagraph (A)(ii);

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

6 (iii) by redesignating subparagraph
7 (C) as subparagraph (B);

8 (B) by redesignating paragraph (6) as
9 paragraph (7);

10 (C) by striking “or” at the end of para-
11 graph (5); and

12 (D) by inserting after paragraph (5) the
13 following new paragraph:

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

19 (2) in subsection (c)—

20 (A) by striking “or” at the end of para-
21 graph (4);

22 (B) by redesignating paragraph (5) as
23 paragraph (6); and

24 (C) by adding after paragraph (4) the fol-
25 lowing new paragraph:

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

5 **SEC. 10. SEVERABILITY.**

6 If any provision of this Act, or the application of such
7 provision to any person or circumstance, is held invalid,
8 the remainder of this Act, and the application of such pro-
9 vision to other persons not similarly situated or to other
10 circumstances, shall not be affected by such invalidation.

11 **SEC. 11. INVESTIGATIVE AUTHORITY RELATING TO CHILD**
12 **PORNOGRAPHY.**

13 Section 3486(a)(1)(C)(i) of title 18, United States
14 Code, is amended by striking “the name, address” and
15 all that follows through “subscriber or customer utilized”
16 and inserting “the information specified in section
17 2703(c)(2)”.

18 **SEC. 12. DE NOVO REVIEW OF DEPARTURES.**

19 (a) IN GENERAL.—Section 3742 of title 18, United
20 States Code, is amended—

21 (1) in subsection (e)(3), by striking “unreason-
22 able” and inserting “unwarranted”;

23 (2) at the end of subsection (e), by striking
24 “clearly erroneous and shall give due deference to
25 the district court’s application of the guidelines to

1 the facts.” and inserting “clearly erroneous. If the
2 sentence is outside the applicable guideline range,
3 the court of appeals shall review de novo the district
4 court’s determination under section 3553(b) that a
5 departure is warranted on the ground that there ex-
6 ists an aggravating or mitigated circumstance of a
7 kind, or to a degree, not adequately taken into con-
8 sideration by the Sentencing Commission in formu-
9 lating the guidelines, that should result in a sentence
10 outside the applicable guideline range. In reviewing
11 the district court’s determination of the applicable
12 guideline range referred to in section 3553(a)(4), the
13 court of appeals shall give due deference to the dis-
14 trict court’s application of the guidelines to the
15 facts.”; and

16 (3) in subsection (f)(2), by striking “is unrea-
17 sonable” and inserting “is unwarranted”.

18 (b) REPORT BY THE ATTORNEY GENERAL.—

19 (1) Not later than 15 days after a district
20 court’s grant of a downward departure in any case,
21 other than a case involving a downward departure
22 for substantial assistance to authorities pursuant to
23 section 5K1.1 of the Sentencing Guidelines, the At-
24 torney General shall report to the House and Senate
25 Committees on the Judiciary, setting forth the case,

1 the facts involved, the identity of the district court
2 judge, the district court's stated reasons, whether or
3 not the court provided the United States with ad-
4 vance notice of its intention to depart, the position
5 of the parties with respect to the downward depart-
6 ure, whether or not the United States has filed, or
7 intends to file, a motion for reconsideration; whether
8 or not the defendant has filed a notice of appeal con-
9 cerning any aspect of the case, and whether or not
10 the United States has filed, or intends to file, a no-
11 tice of appeal of the departure pursuant to section
12 3742 of the title 18, United States Code.

13 (2) In any such case, the Attorney General
14 shall thereafter report to the House and Senate
15 Committees on the Judiciary not later than 5 days
16 after a decision by the Solicitor General whether or
17 not to authorize an appeal of the departure, inform-
18 ing the committees of the decision and the basis for
19 it.

20 **SEC. 13. AUTHORIZATION OF INTERCEPTION OF COMMU-**
21 **NICATIONS IN THE INVESTIGATION OF SEX-**
22 **UAL CRIMES AGAINST CHILDREN.**

23 Section 2516(1)(c) of title 18, United States Code,
24 is amended by inserting "1466A, 1466B," before "2251".

1 **SEC. 14. RECORDKEEPING TO DEMONSTRATE MINORS**
2 **WERE NOT USED IN PRODUCTION OF POR-**
3 **NOGRAPHY.**

4 Not later than 1 year after enactment of this Act,
5 the Attorney General shall submit to Congress a report
6 detailing the number of times since January 1993 that
7 the Department of Justice has inspected the records of
8 any producer of materials regulated pursuant to section
9 2257 of title 18, United States Code, and section 75 of
10 title 28 of the Code of Federal Regulations. The Attorney
11 General shall indicate the number of violations prosecuted
12 as a result of those inspections.

○