

Calendar No. 545

104TH CONGRESS
2D SESSION**S. 1237**

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13 (legislative day, SEPTEMBER 5), 1995

Mr. HATCH (for himself, Mr. ABRAHAM, Mr. GRASSLEY, Mr. THURMOND, Mr. SIMPSON, Mrs. FEINSTEIN, Mr. INHOFE, and Mr. COATS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 30, 1996

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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 1995”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the use of children in the production of sex-
4 ually explicit material, including photographs, films,
5 videos, computer images, and other visual depictions,
6 is a form of sexual abuse which can result in phys-
7 ical or psychological harm, or both, to the children
8 involved;

9 (2) child pornography permanently records the
10 victim's abuse, and its continued existence causes
11 the child victims of sexual abuse continuing harm by
12 haunting those children in future years;

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

20 (4) prohibiting the possession and viewing of
21 child pornography encourages the possessors of such
22 material to destroy them, thereby helping to protect
23 the victims of child pornography and to eliminate
24 the market for the sexually exploitative use of chil-
25 dren; and

1 ~~(5)~~ the elimination of child pornography and
 2 the protection of children from sexual exploitation
 3 provide a compelling governmental interest for pro-
 4 hibiting the production, distribution, possession, or
 5 viewing of child pornography.

6 **SEC. 3. DEFINITIONS.**

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

9 ~~(1)~~ in paragraph ~~(2)~~(E), by inserting before the
 10 semicolon the following: “, or the buttocks of any
 11 minor, or the breast of any female minor”;

12 ~~(2)~~ in paragraph ~~(5)~~, by inserting before the
 13 semicolon the following: “, and data stored on com-
 14 puter disk or by electronic means which is capable
 15 of conversion into a visual image”;

16 ~~(3)~~ in paragraph ~~(6)~~, by striking “and”;

17 ~~(4)~~ in paragraph ~~(7)~~, by striking the period and
 18 inserting “; and”; and

19 ~~(5)~~ by adding at the end the following new
 20 paragraph:

21 “~~(8)~~ ‘child pornography’ means any visual de-
 22 piction, including any photograph, film, video, pic-
 23 ture, drawing, or computer or computer-generated
 24 image or picture, whether made or produced by elec-

1 tronic, mechanical, or other means, of sexually ex-
 2 plicit conduct, where—

3 “(A) the production of such visual depic-
 4 tion involves the use of a minor engaging in
 5 sexually explicit conduct;

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

9 “(C) such visual depiction is advertised,
 10 promoted, presented, described, or distributed
 11 in such a manner that conveys the impression
 12 that the material is or contains a visual depic-
 13 tion of a minor engaging in sexually explicit
 14 conduct.”.

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

18 (a) IN GENERAL.—Section 2252 of title 18, United
 19 States Code, is amended to read as follows:

20 **“§ 2252. Certain activities relating to material con-**
 21 **stituting or containing child pornography**

22 “(a) Any person who—

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

1 “(2) knowingly receives or distributes—

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

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

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

14 “(4) either—

15 “(A) in the maritime and territorial juris-
16 diction of the United States, or on any land or
17 building owned by, leased to, or otherwise used
18 by or under the control of the United States
19 Government, or in the Indian country (as de-
20 fined in section 1151), knowingly sells or pos-
21 sesses with the intent to sell any child pornog-
22 raphy; or

23 “(B) knowingly sells or possesses with the
24 intent to sell any child pornography that has
25 been mailed, shipped, or transported in inter-

1 state or foreign commerce by any means, in-
2 cluding by computer, or that was produced
3 using materials that have been mailed, shipped,
4 or transported in interstate or foreign com-
5 merce by any means, including by computer; or
6 “(5) either—

7 “(A) in the maritime and territorial juris-
8 diction of the United States, or on any land or
9 building owned by, leased to, or otherwise used
10 by or under the control of the United States
11 Government, or in the Indian country (as de-
12 fined in section 1151), knowingly possesses 3 or
13 more books, magazines, periodicals, films, vid-
14 eotapes, computer disks, or any other material
15 that contains any child pornography; or

16 “(B) knowingly possesses 3 or more books,
17 magazines, periodicals, films, videotapes, com-
18 puter disks, or any other material that contains
19 any child pornography that has been mailed,
20 shipped, or transported in interstate or foreign
21 commerce by any means, including by com-
22 puter;

23 shall be punished as provided in subsection (b).

24 “(b)(1) Whoever violates, or attempts or conspires to
25 violate, paragraphs (1), (2), (3), or (4) of subsection (a)

1 shall be fined under this title or imprisoned not more than
 2 10 years, or both; but, if such person has a prior convic-
 3 tion under this chapter or chapter 109A, such person shall
 4 be fined under this title and imprisoned for not less than
 5 5 years nor more than 15 years.

6 “(2) Whoever violates paragraph (5) of subsection (a)
 7 shall be fined under this title or imprisoned for not more
 8 than 5 years, or both.”.

9 (b) TECHNICAL AMENDMENT.—The table of sections
 10 for chapter 110 of title 18, United States Code, is amend-
 11 ed by amending the item relating to section 2252 to read
 12 as follows:

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

13 **SEC. 5. PRIVACY PROTECTION ACT AMENDMENTS.**

14 Section 101 of the Privacy Protection Act of 1980
 15 (42 U.S.C. 2000aa) is amended—

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

1 (2) in subsection (b)(1), by inserting before the
 2 semicolon 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, or 2252 of title 18, United
 8 States Code”.

9 **SEC. 6. SEVERABILITY.**

10 If any provision of this Act, an amendment made by
 11 this Act, or the application of such provision or amend-
 12 ment to any person or circumstance is held to be unconsti-
 13 tutional, the remainder of this Act, the amendments made
 14 by this Act, and the application of such to any other per-
 15 son or circumstance shall not be affected thereby.

16 **SECTION 1. SHORT TITLE.**

17 *This Act may be cited as the “Child Pornography Pre-*
 18 *vention Act of 1996”.*

19 **SEC. 2. FINDINGS.**

20 *Congress finds that—*

21 *(1) the use of children in the production of sexu-*
 22 *ally explicit material, including photographs, films,*
 23 *videos, computer images, and other visual depictions,*
 24 *is a form of sexual abuse which can result in physical*

1 or psychological harm, or both, to the children in-
2 volved;

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

8 (3) child pornography is often used as part of a
9 method of seducing other children into sexual activity;
10 a child who is reluctant to engage in sexual activity
11 with an adult, or to pose for sexually explicit photo-
12 graphs, can sometimes be convinced by viewing depic-
13 tions of other children "having fun" participating in
14 such activity;

15 (4) child pornography is often used by pedophiles
16 and child sexual abusers to stimulate and whet their
17 own sexual appetites, and as a model for sexual act-
18 ing out with children; such use of child pornography
19 can desensitize the viewer to the pathology of sexual
20 abuse or exploitation of children, so that it can be-
21 come acceptable to and even preferred by the viewer;

22 (5) new photographic and computer imaging
23 technologies make it possible to produce by electronic,
24 mechanical, or other means, visual depictions of what
25 appear to be children engaging in sexually explicit

1 *conduct that are virtually indistinguishable to the*
2 *unsuspecting viewer from unretouched photographic*
3 *images of actual children engaging in sexually ex-*
4 *plicit conduct;*

5 *(6) computers and computer imaging technology*
6 *can be used to—*

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

12 *(B) produce visual depictions of child sex-*
13 *ual activity designed to satisfy the preferences of*
14 *individual child molesters, pedophiles, and por-*
15 *nography collectors; and*

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

19 *(7) The creation or distribution of child pornog-*
20 *raphy which includes an image of a recognizable*
21 *minor invades the child's privacy and reputational*
22 *interests, since images that are created showing a*
23 *child's face or other identifiable feature on a body en-*
24 *gaging in sexually explicit conduct can haunt the*
25 *minor for years to come;*

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

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

22 (10)(A) *the existence of and traffic in child por-*
23 *nographic images creates the potential for many types*
24 *of harm in the community and presents a clear and*
25 *present danger to all children; and*

1 (B) it inflames the desires of child molesters,
2 pedophiles, and child pornographers who prey on
3 children, thereby increasing the creation and distribu-
4 tion of child pornography and the sexual abuse and
5 exploitation of actual children who are victimized as
6 a result of the existence and use of these materials;

7 (11)(A) the sexualization and eroticization of
8 minors through any form of child pornographic im-
9 ages has a deleterious effect on all children by encour-
10 aging a societal perception of children as sexual ob-
11 jects and leading to further sexual abuse and exploi-
12 tation of them; and

13 (B) this sexualization of minors creates an un-
14 wholesome environment which affects the psycho-
15 logical, mental and emotional development of children
16 and undermines the efforts of parents and families to
17 encourage the sound mental, moral and emotional de-
18 velopment of children;

19 (12) prohibiting the possession and viewing of
20 child pornography will encourage the possessors of
21 such material to rid themselves of or destroy the mate-
22 rial, thereby helping to protect the victims of child
23 pornography and to eliminate the market for the sex-
24 ual exploitative use of children; and

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

12 **SEC. 3. DEFINITIONS.**

13 Section 2256 of title 18, United States Code, is amend-
 14 ed—

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

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

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

22 (4) by adding at the end the following new para-
 23 graph:

24 “(8) ‘child pornography’ means any visual de-
 25 piction, including any photograph, film, video, pic-

1 *ture, or computer or computer-generated image or*
 2 *picture, whether made or produced by electronic, me-*
 3 *chanical, or other means, of sexually explicit conduct,*
 4 *where—*

5 *“(A) the production of such visual depiction*
 6 *involves the use of a minor engaging in sexually*
 7 *explicit conduct;*

8 *“(B) such visual depiction is, or appears to*
 9 *be, of a minor engaging in sexually explicit con-*
 10 *duct; or*

11 *“(C) such visual depiction is advertised,*
 12 *promoted, presented, described, or distributed in*
 13 *such a manner that conveys the impression that*
 14 *the material is or contains a visual depiction of*
 15 *a minor engaging in sexually explicit conduct.”.*

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, includ-
3 ing 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 by
8 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 by
12 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 by
16 computer;

17 “(4) either—

18 “(A) in the special maritime and territorial
19 jurisdiction of the United States, or on any land
20 or building owned by, leased to, or otherwise
21 used by or under the control of the United States
22 Government, or in the Indian country (as de-
23 fined in section 1151), knowingly sells or pos-
24 sesses with the intent to sell any child pornog-
25 raphy; 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, includ-
5 ing by computer, or that was produced using
6 materials that have been mailed, or shipped or
7 transported in interstate or foreign commerce by
8 any means, including by computer; or
9 “(5) either—

10 “(A) in the special maritime and territorial
11 jurisdiction of the United States, or on any land
12 or building owned by, leased to, or otherwise
13 used by or under the control of the United States
14 Government, or in the Indian country (as de-
15 fined in section 1151), knowingly possesses any
16 book, magazine, periodical, film, videotape, com-
17 puter disk, or any other material that contains
18 3 or more images of child pornography; or

19 “(B) knowingly possesses any book, maga-
20 zine, periodical, film, videotape, computer disk,
21 or any other material that contains 3 or more
22 images of child pornography that has been
23 mailed, or shipped or transported in interstate
24 or foreign commerce by any means, including by
25 computer, or that was produced using materials

1 *that have been mailed, or shipped or transported*
2 *in interstate or foreign commerce by any means,*
3 *including by computer,*

4 *shall be punished as provided in subsection (b).*

5 “(b)(1) *Whoever violates, or attempts or conspires to*
6 *violate, paragraphs (1), (2), (3), or (4) of subsection (a)*
7 *shall be fined under this title or imprisoned not more than*
8 *15 years, or both, but, if such person has a prior conviction*
9 *under this chapter or chapter 109A, or under the laws of*
10 *any State relating to aggravated sexual abuse, sexual abuse,*
11 *or abusive sexual conduct involving a minor or ward, or*
12 *the production, possession, receipt, mailing, sale, distribu-*
13 *tion, shipment, or transportation of child pornography,*
14 *such person shall be fined under this title and imprisoned*
15 *for not less than 5 years nor more than 30 years.*

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

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

4 “(1) *the alleged child pornography was produced*
 5 *using an actual person or persons engaging in sexu-*
 6 *ally 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 a*
 11 *manner as to convey the impression that it is or con-*
 12 *tains a visual depiction of a minor engaging in sexu-*
 13 *ally explicit conduct.”.*

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

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

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

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

21 “(d) *Any individual who violates, or attempts or con-*
 22 *spires to violate, this section shall be fined under this title*
 23 *or imprisoned not less than 10 years nor more than 20*
 24 *years, and both, but if such person has one prior conviction*

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

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

17 *Section 2252 of title 18, United States Code, is amend-*
 18 *ed—*

19 *(1) in subparagraphs (A) and (B) of subsection*
 20 *(a)(4), by striking “3 or more books, magazines, peri-*
 21 *odicals, films, video tapes, or other material which*
 22 *contain any visual depiction” and inserting “any*
 23 *book, magazine, periodical, film, video tape, or other*
 24 *material which contains 3 or more visual depictions”;*
 25 *and*

1 (2) *by striking subsection (b) and inserting the*
 2 *following:*

3 “(b)(1) *Whoever violates, or attempts or conspires to*
 4 *violate, paragraphs (1), (2), or (3) of subsection (a) shall*
 5 *be fined under this title or imprisoned not more than 15*
 6 *years, or both, but if such person has a prior conviction*
 7 *under this chapter or chapter 109A, or under the laws of*
 8 *any State relating to aggravated sexual abuse, sexual abuse,*
 9 *or abusive sexual conduct involving a minor or ward, or*
 10 *the production, possession, receipt, mailing, sale, distribu-*
 11 *tion, shipment, or transportation of child pornography,*
 12 *such person shall be fined under this title and imprisoned*
 13 *for not less than 5 years nor more than 30 years.*

14 “(2) *Whoever violates, or attempts or conspires to vio-*
 15 *late, paragraph (4) of subsection (a) shall be fined under*
 16 *this title or imprisoned not more than 5 years, or both, but*
 17 *if such person has a prior conviction under this chapter*
 18 *or chapter 109A, or under the laws of any State relating*
 19 *to the possession of child pornography, such person shall*
 20 *be fined under this title and imprisoned for not less than*
 21 *2 years nor more than 10 years.”.*

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

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

1 (1) in subsection (a)(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 of
 6 children, or the sale or purchase of children under sec-
 7 tion 2251, 2251A, 2252, 2252A, or 2252B of title 18,
 8 United States Code”; and

9 (2) in subsection (b)(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 of
 14 children, or the sale or purchase of children under sec-
 15 tion 2251, 2251A, 2252, 2252A, or 2252B of title 18,
 16 United States Code”.

17 **SEC. 8. SEVERABILITY.**

18 If any provision of this Act, an amendment made by
 19 this Act, or the application of such provision or amendment
 20 to any person or circumstance is held to be unconstitu-
 21 tional, the remainder of this Act, the amendments made by
 22 this Act, and the application of such to any other person
 23 or circumstance shall not be affected thereby.

1 **SEC. 9. PROHIBITED ACTIVITIES RELATING TO MATERIAL**
2 **DEPICTING THE SEXUAL EXPLOITATION OF**
3 **MINORS.**

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

7 **“§2252B. Certain activities relating to material de-**
8 **picting the sexual exploitation of minors**

9 “(a) Any person who—

10 “(1) knowingly mails, or transports or ships in
11 interstate or foreign commerce by any means, includ-
12 ing by computer, any visual depiction, if such visual
13 depiction has been created, adapted, or modified to
14 appear that an identifiable minor is engaged in sexu-
15 ally explicit conduct;

16 “(2) knowingly receives or distributes any visual
17 depiction or any material that contains a visual de-
18 piction that has been mailed, or shipped or trans-
19 ported in interstate or foreign commerce by any
20 means, including by computer, if such visual depic-
21 tion has been created, adapted, or modified to appear
22 that an identifiable minor is engaged in sexually ex-
23 plicit conduct;

24 “(3) knowingly reproduces any visual depiction
25 for distribution through the mails, or in interstate or
26 foreign commerce by any means, including by com-

puter, if such visual depiction has been created,
adapted, or modified to appear that an identifiable
minor is engaged in sexually explicit conduct;

“(4) either—

“(A) in the special maritime and territorial
jurisdiction of the United States, or on any land
or building owned by, leased to, or otherwise
used by or under the control of the United States
Government, or in the Indian country (as de-
fined in section 1151), knowingly sells or pos-
sesses with the intent to sell any visual depic-
tion; or

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

if such visual depiction has been created, adapted, or
modified to appear that an identifiable minor is en-
gaged in sexually explicit conduct; or

“(5) either—

1 “(A) in the special maritime and territorial
2 jurisdiction of the United States, or on any land
3 or building owned by, leased to, or otherwise
4 used by or under the control of the United States
5 Government, or in the Indian country (as de-
6 fined in section 1151), knowingly possesses any
7 book, magazine, periodical, film, videotape, com-
8 puter disk, or any other material that contains
9 3 or more visual depictions; or

10 “(B) knowingly possesses any book, maga-
11 zine, periodical, film, videotape, computer disk,
12 or any other material that contains 3 or more
13 visual depictions that has been mailed, or
14 shipped or transported in interstate or foreign
15 commerce by any means, including by computer;
16 if such visual depiction has been created, adapted, or
17 modified to appear that an identifiable minor is en-
18 gaged in sexually explicit conduct;

19 shall be punished as provided in subsection (b).

20 “(b)(1) Whoever violates, or attempts or conspires to
21 violate, paragraphs (1), (2), (3), or (4) of subsection (a)
22 shall be fined under this title or imprisoned not more than
23 15 years, or both, but, if such person has a prior conviction
24 under this chapter or chapter 109A, or under the laws of
25 any State relating to the production, possession, receipt,

1 mailing, sale, distribution, shipment, or transportation of
 2 a visual depiction that would be prohibited under this chap-
 3 ter if it had occurred within the special maritime and terri-
 4 torial jurisdiction of the United States, such person shall
 5 be fined under this title and imprisoned for not less than
 6 5 years nor more than 30 years.

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

18 (b) CLERICAL AMENDMENT.—The table of sections for
 19 chapter 110 of title 18, United States Code, is amended by
 20 adding after the item for section 2252A the following:

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

21 (c) DEFINITION.—Section 2256 of title 18, United
 22 States Code, as amended by section 3 of this Act, is amend-
 23 ed—

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

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

3 (3) *by adding at the end the following new para-*
 4 *graph:*

5 “(9) ‘identifiable minor’—

6 “(A) means a person who—

7 “(i) *was a minor at the time the visual*
 8 *depiction was created or at the time the*
 9 *person’s image was captured on the visual*
 10 *medium used in creating, modifying, or*
 11 *adapting such visual depiction; and*

12 “(ii) *is recognizable in the visual de-*
 13 *piction as an actual person by the person’s*
 14 *likeness or other distinguishing physical*
 15 *characteristic, such as a unique birthmark*
 16 *or other recognizable feature; and*

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

19 **SEC. 10. AMBER HAGERMAN CHILD PROTECTION ACT OF**
 20 **1996.**

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

23 (b) *AGGRAVATED SEXUAL ABUSE OF A MINOR.*—*Sec-*
 24 *tion 2241(c) of title 18, United States Code, is amended—*

1 (1) by inserting “crosses a State line with intent
2 to engage in a sexual act with a person who has not
3 attained the age of 12 years, or” after “Whoever”; and

4 (2) by adding at the end the following: “If the
5 defendant has previously been convicted of another
6 Federal offense under this subsection or under section
7 2243(a), or of a State offense that would have been an
8 offense under either such provision had the offense oc-
9 curred in a Federal prison, unless the death penalty
10 is imposed, the defendant shall be sentenced to life in
11 prison.”.

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

14 (1) by inserting “crosses a State line with intent
15 to engage in a sexual act with a person who, or” after
16 “Whoever”; and

17 (2) by adding at the end the following: “If the
18 defendant has previously been convicted of another
19 Federal offense under this subsection or under section
20 2241(c), or of a State offense that would have been an
21 offense under either such provision had the offense oc-
22 curred in a Federal prison, unless the death penalty
23 is imposed, the defendant shall be sentenced to life in
24 prison.”.