

Union Calendar No. 316

107TH CONGRESS
2^D SESSION

H. R. 4623

[Report No. 107-526]

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

APRIL 30, 2002

Mr. SMITH of Texas (for himself, Mr. POMEROY, Mr. FOLEY, Ms. HART, Mr. DELAY, Mr. BRYANT, Mr. GOODLATTE, Mr. JENKINS, Mr. CANNON, Mr. GREEN of Wisconsin, Mr. KELLER, Mrs. JOHNSON of Connecticut, Mr. STEARNS, Mr. NUSSLE, Mrs. CAPITO, Mr. GILCHREST, Mr. CULBERSON, Mr. WELLER, and Mr. UPTON) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 24, 2002

Additional sponsors: Mr. WAMP, Mr. PENCE, Mr. HUNTER, Mr. SHOWS, Mr. CHAMBLISS, Mr. SIMMONS, Mr. BAKER, Mr. OSBORNE, Mr. ROGERS of Michigan, Mr. LAMPSON, Mr. LOBIONDO, Mr. WELDON of Florida, Mr. CRAMER, Mr. BACHUS, Mr. GREEN of Texas, Ms. JACKSON-LEE of Texas, Mr. SCHIFF, Mr. STUMP, Mr. SAM JOHNSON of Texas, Mr. HANSEN, Mr. OXLEY, Mr. SULLIVAN, Mr. GORDON, Mr. KENNEDY of Minnesota, Mr. PHELPS, Mr. VITTER, Mr. COBLE, Mr. STENHOLM, Mr. RILEY, Mr. GEKAS, Mr. RYUN of Kansas, Mr. PICKERING, Mr. FROST, Mr. CUNNINGHAM, Ms. CARSON of Indiana, Mr. SHUSTER, Mr. BROWN of South Carolina, Mr. SESSIONS, Mr. ISTOOK, Mr. BARTLETT of Maryland, Mr. MATHESON, Ms. LOFGREN, Mr. BARR of Georgia, Mr. WICKER, Mr. STUPAK, Mr. WILSON of South Carolina, Mr. MOORE, Mr. DEAL of Georgia, Mr. JONES of North Carolina, Mr. SOUDER, and Mr. VISCLOSKY

JUNE 24, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on April 30, 2002]

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 2002”.*

6 **SEC. 2. FINDINGS.**

7 *Congress finds the following:*

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

13 (2) *The Government has a compelling state in-*
14 *terest in protecting children from those who sexually*
15 *exploit them, including both child molesters and child*
16 *pornographers. “The prevention of sexual exploitation*

1 *and abuse of children constitutes a government objec-*
2 *tive of surpassing importance,”* *New York v. Ferber,*
3 *458 U.S. 747, 757 (1982) (emphasis added), and this*
4 *interest extends to stamping out the vice of child por-*
5 *nography at all levels in the distribution chain.*
6 *Osborne v. Ohio, 495 U.S. 103, 110 (1990).*

7 (3) *The Government thus has a compelling inter-*
8 *est in ensuring that the criminal prohibitions against*
9 *child pornography remain enforceable and effective.*
10 *“[T]he most expeditious if not the only practical*
11 *method of law enforcement may be to dry up the mar-*
12 *ket for this material by imposing severe criminal pen-*
13 *alties on persons selling, advertising, or otherwise*
14 *promoting the product.”* *Ferber, 458 U.S. at 760.*

15 (4) *In 1982, when the Supreme Court decided*
16 *Ferber, the technology did not exist to: (A) create de-*
17 *pications of virtual children that are indistinguishable*
18 *from depictions of real children; (B) create depictions*
19 *of virtual children using compositions of real children*
20 *to create an unidentifiable child; or (C) disguise pic-*
21 *tures of real children being abused by making the*
22 *image look computer generated.*

23 (5) *Evidence submitted to the Congress, includ-*
24 *ing from the National Center for Missing and Ex-*
25 *ploited Children, demonstrates that technology al-*

1 *ready exists to disguise depictions of real children to*
2 *make them unidentifiable and to make depictions of*
3 *real children appear computer generated. The tech-*
4 *nology will soon exist, if it does not already, to make*
5 *depictions of virtual children look real.*

6 *(6) The vast majority of child pornography pros-*
7 *ecutions today involve images contained on computer*
8 *hard drives, computer disks, and/or related media.*

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

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

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

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

1 (10) *In the absence of congressional action, this*
2 *problem will continue to grow increasingly worse. The*
3 *mere prospect that the technology exists to create com-*
4 *puter or computer-generated depictions that are indis-*
5 *tinguishable from depictions of real children will*
6 *allow defendants who possess images of real children*
7 *to escape prosecution, for it threatens to create a rea-*
8 *sonable doubt in every case of computer images even*
9 *when a real child was abused. This threatens to*
10 *render child pornography laws that protect real chil-*
11 *dren unenforceable.*

12 (11) *To avoid this grave threat to the Govern-*
13 *ment's unquestioned compelling interest in effective*
14 *enforcement of the child pornography laws that pro-*
15 *tect real children, a statute must be adopted that pro-*
16 *hibits a narrowly-defined subcategory of images.*

17 (12) *The Supreme Court's 1982 Ferber v. New*
18 *York decision holding that child pornography was not*
19 *protected drove child pornography off the shelves of*
20 *adult bookstores. Congressional action is necessary to*
21 *ensure that open and notorious trafficking in such*
22 *materials does not reappear.*

1 **SEC. 3. IMPROVEMENTS TO PROHIBITION ON VIRTUAL**
2 **CHILD PORNOGRAPHY.**

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

5 “(B) *such visual depiction is a computer*
6 *image or computer-generated image that is, or is*
7 *indistinguishable (as defined in section 1466A)*
8 *from, that of a minor engaging in sexually ex-*
9 *PLICIT conduct; or”.*

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

12 “(2)(A) *Except as provided in subparagraph*
13 *(B), ‘sexually explicit conduct’ means actual or*
14 *simulated—*

15 “(i) *sexual intercourse, including genital-*
16 *genital, oral-genital, anal-genital, or oral-anal,*
17 *whether between persons of the same or opposite*
18 *sex;*

19 “(ii) *bestiality;*

20 “(iii) *masturbation;*

21 “(iv) *sadistic or masochistic abuse; or*

22 “(v) *lascivious exhibition of the genitals or*
23 *pubic area of any person;*

24 “(B) *For purposes of subsection 8(B) of this sec-*
25 *tion, ‘sexually explicit conduct’ means—*

1 “(i) actual sexual intercourse, including
2 genital-genital, oral-genital, anal-genital, or
3 oral-anal, whether between persons of the same
4 or opposite sex, or lascivious simulated sexual
5 intercourse where the genitals, breast, or pubic
6 area of any person is exhibited;

7 “(ii) actual or lascivious simulated;

8 “(I) bestiality;

9 “(II) masturbation; or

10 “(III) sadistic or masochistic abuse; or

11 “(iii) actual or simulated lascivious exhi-
12 bition of the genitals or pubic area of any per-
13 son;”.

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

16 “(c)(1) Except as provided in paragraph (2), it shall
17 be an affirmative defense to a charge of violating this sec-
18 tion that the alleged offense did not involve the use of a
19 minor or an attempt or conspiracy to commit an offense
20 under this section involving such use.

21 “(2) A violation of, or an attempt or conspiracy to
22 violate, this section which involves child pornography as de-
23 fined in section 2256(8)(A) or (C) shall be punishable with-
24 out regard to the affirmative defense set forth in paragraph
25 (1).”.

1 **SEC. 4. PROHIBITION ON PANDERING MATERIALS AS CHILD**
2 **PORNOGRAPHY.**

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

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

7 (2) by striking subparagraph (D).

8 (b) Chapter 110 of title 18, United States Code, is
9 amended—

10 (1) by inserting after section 2252A the fol-
11 lowing:

12 **“§ 2252B. Pandering and solicitation**

13 “(a) Whoever, in a circumstance described in sub-
14 section (d), offers, agrees, attempts, or conspires to provide
15 or sell a visual depiction to another, and who in connection
16 therewith knowingly advertises, promotes, presents, or de-
17 scribes the visual depiction with the intent to cause any
18 person to believe that the material is, or contains, a visual
19 depiction of a minor engaging in sexually explicit conduct
20 shall be subject to the penalties set forth in section
21 2252A(b)(1), including the penalties provided for cases in-
22 volving a prior conviction.

23 “(b) Whoever, in a circumstance described in sub-
24 section (d), offers, agrees, attempts, or conspires to receive
25 or purchase from another a visual depiction that he believes
26 to be, or to contain, a visual depiction of a minor engaging

1 *in sexually explicit conduct shall be subject to the penalties*
2 *set forth in section 2252A(b)(1), including the penalties*
3 *provided for cases involving a prior conviction.*

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

7 “(d) *The circumstance referred to in subsection (a) and*
8 *(b) is that—*

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

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

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

1 *in section 2252A(b)(1), including the penalties provided for*
2 *cases involving a prior conviction.*

3 “(b) *Whoever, in a circumstance described in sub-*
4 *section (d), knowingly possesses a visual depiction that is,*
5 *or is indistinguishable from, that of a pre-pubescent child*
6 *engaging in sexually explicit conduct, or attempts or con-*
7 *spires to do so, shall be subject to the penalties set forth*
8 *in section 2252A(b)(2), including the penalties provided for*
9 *cases involving a prior conviction.*

10 “(c) *For purposes of this section—*

11 “(1) *the term ‘visual depiction’ includes undevel-*
12 *oped film and videotape, and data stored on computer*
13 *disk or by electronic means which is capable of con-*
14 *version into a visual image, and also includes any*
15 *photograph, film, video, picture, or computer or com-*
16 *puter-generated image or picture, whether made or*
17 *produced by electronic, mechanical, or other means;*

18 “(2) *the term ‘pre-pubescent child’ means that*
19 *(A) the child, as depicted, is one whose physical devel-*
20 *opment indicates the child is 12 years of age or*
21 *younger; or (B) the child, as depicted, does not exhibit*
22 *significant pubescent physical or sexual maturation.*
23 *Factors that may be considered in determining sig-*
24 *nificant pubescent physical maturation include body*
25 *habitus and musculature, height and weight propor-*

1 *tion, degree of hair distribution over the body, extrem-*
2 *ity proportion with respect to the torso, and*
3 *dentition. Factors that may be considered in deter-*
4 *mining significant pubescent sexual maturation in-*
5 *clude breast development, presence of axillary hair,*
6 *pubic hair distribution, and visible growth of the sex-*
7 *ual organs;*

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

10 *“(4) the term ‘indistinguishable’ used with re-*
11 *spect to a depiction, means virtually indistinguish-*
12 *able, in that the depiction is such that an ordinary*
13 *person viewing the depiction would conclude that the*
14 *depiction is of an actual minor engaged in sexually*
15 *explicit conduct. This definition does not apply to de-*
16 *pictions that are drawings, cartoons, sculptures, or*
17 *paintings depicting minors or adults.*

18 *“(d) The circumstance referred to in subsections (a)*
19 *and (b) is that—*

20 *“(1) any communication involved in or made in*
21 *furtherance of the offense is communicated or trans-*
22 *ported by the mail, or in interstate or foreign com-*
23 *merce by any means, including by computer, or any*
24 *means or instrumentality of interstate or foreign com-*

1 *merce is otherwise used in committing or in further-*
2 *ance of the commission of the offense;*

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

8 “(3) *any person travels or is transported in*
9 *interstate or foreign commerce in the course of the*
10 *commission or in furtherance of the commission of the*
11 *offense;*

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

19 “(5) *the offense is committed in the special mari-*
20 *time and territorial jurisdiction of the United States*
21 *or in any territory or possession of the United States.*

22 “(e) *In a case under subsection (b), it is an affirmative*
23 *defense that the defendant—*

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

1 “(2) promptly and in good faith, and without re-
2 taining or allowing any person, other than a law en-
3 forcement agency, to access any image or copy
4 thereof—

5 “(A) took reasonable steps to destroy each
6 such image; or

7 “(B) reported the matter to a law enforce-
8 ment agency and afforded that agency access to
9 each such image.

10 **“§ 1466B. Obscene visual representations of pre-pubes-**
11 **cent sexual abuse**

12 “(a) Whoever, in a circumstance described in sub-
13 section (e), knowingly produces, distributes, receives, or pos-
14 sesses with intent to distribute a visual depiction of any
15 kind, including a drawing, cartoon, sculpture, or painting,
16 that—

17 “(1) depicts a pre-pubescent child engaging in
18 sexually explicit conduct, and

19 “(2) is obscene, or who attempts or conspires to
20 do so, shall be subject to the penalties set forth in sec-
21 tion 2252A(b)(1), including the penalties provided for
22 cases involving a prior conviction.

23 “(b) Whoever, in a circumstance described in sub-
24 section (e), knowingly possesses a visual depiction of any

1 *kind, including a drawing, cartoon, sculpture, or painting,*
2 *that—*

3 “(1) *depicts a pre-pubescent child engaging in*
4 *sexually explicit conduct, and*

5 “(2) *is obscene,*

6 “*or who attempts or conspires to do so, shall be subject*
7 *to the penalties set forth in section 2252A(b)(2), including*
8 *the penalties provided for cases involving a prior convic-*
9 *tion.*

10 “(c) *It is not a required element of any offense under*
11 *this section that the pre-pubescent child depicted actually*
12 *exist.*

13 “(d) *For purposes of this section, the terms ‘visual de-*
14 *piction’ and ‘pre-pubescent child’ have respectively the*
15 *meanings given those terms in section 1466A, and the term*
16 *‘sexually explicit conduct’ has the meaning given that term*
17 *in section 2256(2)(B).*

18 “(e) *The circumstance referred to in subsection (a) and*
19 *(b) is that—*

20 “(1) *any communication involved in or made in*
21 *furtherance of the offense is communicated or trans-*
22 *ported by the mail, or in interstate or foreign com-*
23 *merce by any means, including by computer, or any*
24 *means or instrumentality of interstate or foreign com-*

1 *merce is otherwise used in committing or in further-*
2 *ance of the commission of the offense;*

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

8 “(3) *any person travels or is transported in*
9 *interstate or foreign commerce in the course of the*
10 *commission or in furtherance of the commission of the*
11 *offense;*

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

19 “(5) *the offense is committed in the special mari-*
20 *time and territorial jurisdiction of the United States*
21 *or in any territory or possession of the United States.*

22 “(f) *In a case under subsection (b), it is an affirmative*
23 *defense that the defendant—*

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

1 “(2) promptly and in good faith, and without re-
2 taining or allowing any person, other than a law en-
3 forcement agency, to access any image or copy
4 thereof—

5 “(A) took reasonable steps to destroy each
6 such image; or

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

10 (2) in the analysis for the chapter, by inserting
11 after the item relating to section 1466 the following:

“1466A. Obscene visual depictions of young children.

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

12 (b)(1) Except as provided in paragraph (2), the appli-
13 cable category of offense to be used in determining the sen-
14 tencing range referred to in section 3553(a)(4) of title 18,
15 United States Code, with respect to any person convicted
16 under section 1466A or 1466B of such title, shall be the
17 category of offenses described in section 2G2.2 of the Sen-
18 tencing Guidelines.

19 (2) The Sentencing Commission may promulgate
20 guidelines specifically governing offenses under section
21 1466A of title 18, United States Code, provided that such
22 guidelines shall not result in sentencing ranges that are
23 lower than those that would have applied under paragraph
24 (1).

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

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

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

6 **“§ 1471. Use of obscene material or child pornography**
7 **to facilitate offenses against minors**

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

10 “(1) provides or shows to a person below the age
11 of 16 years any visual depiction that is, or is indis-
12 tinguishable from, that of a pre-pubescent child en-
13 gaging in sexually explicit conduct, any obscene mat-
14 ter, or any child pornography; or

15 “(2) provides or shows any obscene matter or
16 child pornography, or any visual depiction that is, or
17 is indistinguishable from, that of a pre-pubescent
18 child engaging in sexually explicit conduct, or any
19 other material assistance to any person in connection
20 with any conduct, or any attempt, incitement, solici-
21 tation, or conspiracy to engage in any conduct, that
22 involves a minor and that violates chapter 109A, 110,
23 or 117, or that would violate chapter 109A if the con-
24 duct occurred in the special maritime and territorial
25 jurisdiction of the United States,

1 *shall be subject to the penalties set forth in section*
2 *2252A(b)(1), including the penalties provided for cases in-*
3 *volving a prior conviction.*

4 *“(b) For purposes of this section—*

5 *“(1) the term ‘child pornography’ has the mean-*
6 *ing set forth in section 2256(8);*

7 *“(2) the terms ‘visual depiction’, ‘pre-pubescent*
8 *child’, and ‘indistinguishable’ have the meanings re-*
9 *spectively set forth for those terms in section*
10 *1466A(c); and*

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

13 *“(c) The circumstance referred to in subsection (a) is*
14 *that—*

15 *“(1) any communication involved in or made in*
16 *furtherance of the offense is communicated or trans-*
17 *ported by the mail, or in interstate or foreign com-*
18 *merce by any means, including by computer, or any*
19 *means or instrumentality of interstate or foreign com-*
20 *merce is otherwise used in committing or in further-*
21 *ance of the commission of the offense;*

22 *“(2) any communication involved in or made in*
23 *furtherance of the offense contemplates the trans-*
24 *mission or transportation of a visual depiction or ob-*

1 *scene matter by the mail, or in interstate or foreign*
 2 *commerce by any means, including by computer;*

3 *“(3) any person travels or is transported in*
 4 *interstate or foreign commerce in the course of the*
 5 *commission or in furtherance of the commission of the*
 6 *offense;*

7 *“(4) any visual depiction or obscene matter in-*
 8 *volved in the offense has been mailed, or has been*
 9 *shipped or transported in interstate or foreign com-*
 10 *merce by any means, including by computer, or was*
 11 *produced using materials that have been mailed, or*
 12 *that have been shipped or transported in interstate or*
 13 *foreign commerce by any means, including by com-*
 14 *puter; or*

15 *“(5) the offense is committed in the special mari-*
 16 *time and territorial jurisdiction of the United States*
 17 *or in any territory or possession of the United*
 18 *States.”;*

19 *(2) in the analysis for the chapter, by inserting*
 20 *at the end the following:*

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

21 **SEC. 7. EXTRATERRITORIAL PRODUCTION OF CHILD POR-**
 22 **NOGRAPHY FOR DISTRIBUTION IN THE**
 23 **UNITED STATES.**

24 *Section 2251 is amended—*

1 (1) by striking “subsection (d)” each place it ap-
2 pears in subsections (a), (b), and (c) and inserting
3 “subsection (e)”;

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

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

8 “(c)(1) Any person who, in a circumstance described
9 in paragraph (2), employs, uses, persuades, induces, entices,
10 or coerces any minor to engage in, or who has a minor
11 assist any other person to engage in, any sexually explicit
12 conduct outside of the United States, its possessions and
13 Territories, for the purpose of producing any visual depic-
14 tion of such conduct, shall be punished as provided under
15 subsection (e).

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

18 “(A) the person intends such visual depiction to
19 be transported to the United States, its possessions, or
20 territories, by any means including by computer or
21 mail;

22 “(B) the person transports such visual depiction
23 to, or otherwise makes it available within, the United
24 States, its possessions, or territories, by any means
25 including by computer or mail.”.

1 **SEC. 8. STRENGTHENING ENHANCED PENALTIES FOR RE-**
2 **PEAT OFFENDERS.**

3 *Sections 2251(e) (as redesignated by section 7(2)),*
4 *2252(b), and 2252A(b) of title 18, United States Code, are*
5 *each amended by inserting “chapter 71,” immediately be-*
6 *fore each occurrence of “chapter 109A.”*

7 **SEC. 9. SERVICE PROVIDER REPORTING OF CHILD PORNOG-**
8 **RAPHY AND RELATED INFORMATION.**

9 *(a) Section 227 of the Victims of Child Abuse Act of*
10 *1990 (42 U.S.C. 13032) is amended—*

11 *(1) in subsection (b)(1)—*

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

13 *and*

14 *(B) by inserting “or a violation of section*
15 *1466A or 1466B of that title,” after “of that*
16 *title),”;*

17 *(2) in subsection (c), by inserting “or pursuant*
18 *to” after “to comply with”;*

19 *(3) by amending subsection (f)(1)(D) to read as*
20 *follows:*

21 *“(D) where the report discloses a violation*
22 *of State criminal law, to an appropriate official*
23 *of a State or subdivision of a State for the pur-*
24 *pose of enforcing such State law.”;*

25 *(4) by redesignating paragraph (3) of subsection*
26 *(b) as paragraph (4); and*

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

3 “(3) In addition to forwarding such reports to
4 those agencies designated in subsection (b)(2), the Na-
5 tional Center for Missing and Exploited Children is
6 authorized to forward any such report to an appro-
7 priate official of a state or subdivision of a state for
8 the purpose of enforcing state criminal law.”.

9 (b) Section 2702 of title 18, United States Code is
10 amended—

11 (1) in subsection (b)—

12 (A) in paragraph (6)—

13 (i) by inserting “or” at the end of sub-
14 paragraph (A)(ii);

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

16 (iii) by redesignating subparagraph
17 (C) as subparagraph (B);

18 (B) by redesignating paragraph (6) as
19 paragraph (7);

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

22 (D) by inserting after paragraph (5) the fol-
23 lowing new paragraph:

24 “(6) to the National Center for Missing and Ex-
25 ploited Children, in connection with a report sub-

1 mitted thereto under section 227 of the Victims of
2 Child Abuse Act of 1990 (42 U.S.C. 13032); or”; and

3 (2) in subsection (c)—

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

6 (B) by redesignating paragraph (5) as
7 paragraph (6); and

8 (C) by adding after paragraph (4) the fol-
9 lowing new paragraph:

10 “(5) to the National Center for Missing and Ex-
11 ploited Children, in connection with a report sub-
12 mitted thereto under section 227 of the Victims of
13 Child Abuse Act of 1990 (42 U.S.C. 13032); or”.

14 **SEC. 10. SEVERABILITY.**

15 If any provision of this Act, or the application of such
16 provision to any person or circumstance, is held invalid,
17 the remainder of this Act, and the application of such provi-
18 sion to other persons not similarly situated or to other cir-
19 cumstances, shall not be affected by such invalidation.

20 **SEC. 11. INVESTIGATIVE AUTHORITY RELATING TO CHILD**
21 **PORNOGRAPHY.**

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

Union Calendar No. 316

107TH CONGRESS
2^D SESSION

H. R. 4623

[Report No. 107-526]

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.

JUNE 24, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed