

Calendar No. 7

108TH CONGRESS
1ST SESSION**S. 151**

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

IN THE SENATE OF THE UNITED STATES

JANUARY 13, 2003

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

JANUARY 30, 2003

Reported by Mr. HATCH, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prosecutorial Remedies
5 and Tools Against the Exploitation of Children Today Act
6 of 2003” or “PROTECT Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Obscenity and child pornography are not
4 entitled to protection under the First Amendment
5 under *Miller v. California*, 413 U.S. 15 (1973) (ob-
6 scenity), or *New York v. Ferber*, 458 U.S. 747
7 (1982) (child pornography) and thus may be prohib-
8 ited.

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

20 (3) The Government thus has a compelling in-
21 terest in ensuring that the criminal prohibitions
22 against child pornography remain enforceable and
23 effective. “[T]he most expeditious if not the only
24 practical method of law enforcement may be to dry
25 up the market for this material by imposing severe
26 criminal penalties on persons selling, advertising, or

otherwise promoting the product.” Ferber, 458 U.S. at 760.

(4) In 1982, when the Supreme Court decided Ferber, the technology did not exist to: ~~(A) create depictions of virtual children that are indistinguishable from depictions of real children;~~ *(A) computer generate depictions of children that are indistinguishable from depictions of real children;* ~~(B) create depictions of virtual children using compositions of real children to create an unidentifiable child; or~~ *(B) use parts of images of real children to create a composite image that is unidentifiable as a particular child and in a way that prevents even an expert from concluding that parts of images of real children were used; or* (C) disguise pictures of real children being abused by making the image look computer generated.

(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer generated. The technology will soon exist, if it does not already, ~~to make~~

1 ~~depictions of virtual children look real to computer~~
 2 ~~generate realistic images of children.~~

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

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

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

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

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

1 (10) *Since the Supreme Court's decision in Free*
 2 *Speech Coalition, defendants in child pornography*
 3 *cases have almost universally raised the contention*
 4 *that the images in question could be virtual, thereby*
 5 *requiring the government, in nearly every child por-*
 6 *nography prosecution, to find proof that the child is*
 7 *real. Some of these defense efforts have already been*
 8 *successful.*

9 ~~(10)~~ (11) *In the absence of congressional ac-*
 10 *tion, this problem will continue to grow increasingly*
 11 *worse. The mere prospect that the technology exists*
 12 *to create computer or computer-generated depictions*
 13 *that are indistinguishable from depictions of real*
 14 *children will allow defendants who possess images of*
 15 *real children to escape prosecution, for it threatens*
 16 *to create a reasonable doubt in every case of com-*
 17 *puter images even when a real child was abused.*
 18 *This threatens to render child pornography laws*
 19 *that protect real children unenforceable. Moreover,*
 20 *imposing an additional requirement that the Govern-*
 21 *ment prove beyond a reasonable doubt that the de-*
 22 *fendant knew that the image was in fact a real*
 23 *child—as some courts have done—threatens to result*
 24 *in the de facto legalization of the possession, receipt,*

(11) (12) To avoid this grave threat to the Government's unquestioned compelling interest in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

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

15 SEC. 3. CERTAIN ACTIVITIES RELATING TO MATERIAL CON-
16 STITUTING OR CONTAINING CHILD PORNOG-
17 RAPHY.

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

20 (1) in subsection (a)—

21 (A) by striking paragraph (3) and insert-
22 ing the following:

23 “(3) knowingly—

24 “(A) reproduces any child pornography for
25 distribution through the mails, or in interstate

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

“(B) advertises, promotes, presents, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that ~~conveys the impression~~ *reflects the belief, or that is intended to cause another to believe*, that the material or purported material is, or ~~contains, an obscene visual depiction of a minor engaging in sexually explicit conduct;~~”; contains—

“(i) *an obscene visual depiction of a minor engaging in sexually explicit conduct; or*

“(ii) *a visual depiction of an actual minor engaging in sexually explicit conduct;*”;

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

(C) in paragraph (5), by striking the period at the end and inserting “; or”; and

(D) by adding at the end the following:

“(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including

1 any photograph, film, video, picture, or computer
 2 generated image or picture, whether made or pro-
 3 duced by electronic, mechanical, or other means, ~~or~~
 4 ~~sexually explicit conduct~~ where such visual depiction
 5 is, or appears to be, of a minor engaging in sexually
 6 explicit conduct—

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

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

14 “(C) which distribution, offer, sending, or
 15 provision is accomplished using the mails or by
 16 transmitting or causing to be transmitted any
 17 wire communication in interstate or foreign
 18 commerce, including by computer,

19 for purposes of inducing or persuading a minor to
 20 participate in any activity that is illegal.”;

21 (2) in subsection (b)(1), by striking “*para-*
 22 *graphs* (1), (2), (3), or (4)” and inserting “*para-*
 23 *graph* (1), (2), (3), (4), or (6)”;

24 (3) by striking subsection (c) and inserting the
 25 following:

1 “(c) *AFFIRMATIVE DEFENSE*.—It shall be an affirma-
 2 tive defense to a charge of violating paragraph (1), (2),
 3 (3), (4), or (5) of subsection (a) that—

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

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

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

11 No affirmative defense *under subsection (c)(2)* shall be
 12 available in any prosecution that involves ~~obscene child~~
 13 ~~pornography or~~ child pornography as described in section
 14 ~~2256(8)(D)~~ 2256(8)(C). A defendant may not assert an
 15 affirmative defense to a charge of violating paragraph (1),
 16 (2), (3), (4), or (5) of subsection (a) unless, within the
 17 time provided for filing pretrial motions or at such time
 18 prior to trial as the judge may direct, but in no event later
 19 than 10 days before the commencement of the trial, the
 20 defendant provides the court and the United States with
 21 notice of the intent to assert such defense and the sub-
 22 stance of any expert or other specialized testimony or evi-
 23 dence upon which the defendant intends to rely. If the de-
 24 fendant fails to comply with this subsection, the court
 25 shall, absent a finding of extraordinary circumstances that

1 prevented timely compliance, prohibit the defendant from
 2 asserting such defense to a charge of violating paragraph
 3 (1), (2), (3), (4), or (5) of subsection (a) or presenting
 4 any evidence for which the defendant has failed to provide
 5 proper and timely notice.”.

6 **SEC. 4. ADMISSIBILITY OF EVIDENCE.**

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

9 “(e) ADMISSIBILITY OF EVIDENCE.—On motion of
 10 the government, in any prosecution under this chapter, ex-
 11 cept for good cause shown, the name, address, social secu-
 12 rity number, or other nonphysical identifying information,
 13 other than the age or approximate age, of any minor who
 14 is depicted in any child pornography shall not be admis-
 15 sible and may be redacted from any otherwise admissible
 16 evidence, and the jury shall be instructed, upon request
 17 of the United States, that it can draw no inference from
 18 the absence of such evidence in deciding whether the child
 19 pornography depicts an actual minor.”.

20 **SEC. 5. DEFINITIONS.**

21 Section 2256 of title 18, United States Code, is
 22 amended—

23 (1) in paragraph (1), by inserting before the
 24 semicolon the following: “and shall not be construed

1 to require proof of the actual identity of the per-
 2 son”;

3 ~~(2) in paragraph (8)—~~

4 ~~(A) in subparagraph (B), by inserting “is~~
 5 ~~obscene and” before “is”;~~

6 ~~(B) in subparagraph (C), by striking “or”~~
 7 ~~at the end; and~~

8 ~~(C) by striking subparagraph (D) and in-~~
 9 ~~serting the following:~~

10 ~~“(D) such visual depiction—~~

11 ~~“(i) is, or appears to be, of a minor~~
 12 ~~actually engaging in bestiality, sadistic or~~
 13 ~~masochistic abuse, or sexual intercourse,~~
 14 ~~including genital-genital, oral-genital, anal-~~
 15 ~~genital, or oral-anal, whether between per-~~
 16 ~~sons of the same or opposite sex; and~~

17 ~~“(ii) lacks serious literary, artistic, po-~~
 18 ~~litical, or scientific value; or~~

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

22 ~~(2) in paragraph (2)—~~

23 ~~(A) by striking “means actual” and insert-~~
 24 ~~ing the following: “means—~~

25 ~~“(A) actual”;~~

1 (B) in subparagraphs (A), (B), (C), (D),
 2 and (E), by indenting the left margin 2 ems to
 3 the right and redesignating subparagraphs (A),
 4 (B), (C), (D), and (E) as clauses (i), (ii), (iii),
 5 (iv), and (v), respectively;

6 (C) in subparagraph (A)(v), as redesign-
 7 ated, by inserting “or” after the semicolon; and
 8 (D) by adding at the end the following:

9 “(B)(i) actual sexual intercourse, including
 10 genital-genital, oral-genital, anal-genital, or
 11 oral-anal, whether between persons of the same
 12 or opposite sex, or lascivious simulated sexual
 13 intercourse where the genitals, breast, or pubic
 14 area of any person is exhibited;

15 “(ii) actual or lascivious simulated—

16 “(I) bestiality;

17 “(II) masturbation; or

18 “(III) sadistic or masochistic abuse; or

19 “(iii) actual lascivious or simulated lasciv-
 20 ious exhibition of the genitals or pubic area of
 21 any person;”;

22 (3) in paragraph (8)—

23 (A) by striking subparagraph (B) and in-
 24 serting the following:

1 “(B) the production of such visual depiction
 2 involves the use of an identifiable minor engag-
 3 ing in sexually explicit conduct; or”;

4 (B) in subparagraph (C)—

5 (i) by inserting after “is engaging in
 6 sexually explicit conduct” the following: “,
 7 except that the term ‘identifiable minor’ as
 8 used in this subparagraph shall not be con-
 9 strued to include the portion of the defini-
 10 tion contained in paragraph (9)(B)”; and

11 (ii) by striking “or” at the end; and

12 (C) by striking subparagraph (D); and

13 ~~(3)~~ (4) by striking paragraph (9), and inserting
 14 the following:

15 “(9) ‘identifiable minor’—

16 “(A)(i) means a person—

17 “(I)(aa) who was a minor at the time
 18 the visual depiction was created, adapted,
 19 or modified; or

20 “(bb) whose image as a minor was
 21 used in creating, adapting, or modifying
 22 the visual depiction; and

23 “(II) who is recognizable as an actual
 24 person by the person’s face, likeness, or
 25 other distinguishing characteristic, such as

1 a unique birthmark or other recognizable
2 feature; and

3 “(ii) shall not be construed to require
4 proof of the actual identity of the identifiable
5 minor; or

6 ~~“(B) means a computer or computer gen-~~
7 ~~erated image that is virtually indistinguishable~~
8 ~~from an actual minor; and~~

9 ~~“(10) ‘virtually indistinguishable’ means that~~
10 ~~the depiction is such that an ordinary person view-~~
11 ~~ing the depiction would conclude that the depiction~~
12 ~~is of an actual minor.”.~~

13 *“(B) means a computer image, computer*
14 *generated image, or digital image—*

15 *“(i) that is of, or is virtually indistin-*
16 *guishable from that of, an actual minor;*
17 *and*

18 *“(ii) that depicts sexually explicit con-*
19 *duct as defined in paragraph (2)(B); and*

20 *“(10) ‘virtually indistinguishable’—*

21 *“(A) means that the depiction is such that*
22 *an ordinary person viewing the depiction would*
23 *conclude that the depiction is of an actual*
24 *minor; and*

1 “(B) does not apply to depictions that are
 2 drawings, cartoons, sculptures, diagrams, ana-
 3 tomical models, or paintings depicting minors or
 4 adults or reproductions of such depictions.”.

5 **SEC. 6. OBSCENE VISUAL REPRESENTATIONS OF THE SEX-**
 6 **UAL ABUSE OF CHILDREN.**

7 (a) *IN GENERAL.*—Chapter 110 of title 18, United
 8 States Code, is amended by inserting after section 2252A
 9 the following:

10 **“§ 2252B. Obscene visual representations of the sexual**
 11 **abuse of children**

12 “(a) *IN GENERAL.*—Any person who, in a cir-
 13 cumstance described in subsection (d), knowingly produces,
 14 distributes, receives, or possesses with intent to distribute,
 15 a visual depiction of any kind, including a drawing, car-
 16 toon, sculpture, or painting, that—

17 “(1)(A) depicts a minor engaging in sexually ex-
 18 plicit conduct; and

19 “(B) is obscene; or

20 “(2)(A) depicts an image that is, or appears to
 21 be, of a minor engaging in graphic bestiality, sadistic
 22 or masochistic abuse, or sexual intercourse, including
 23 genital-genital, oral-genital, anal-genital, or oral-
 24 anal, whether between persons of the same or opposite
 25 sex; and

1 “(B) lacks serious literary, artistic, political, or
2 scientific value;

3 or attempts or conspires to do so, shall be subject to the
4 penalties provided in section 2252A(b)(1), including the
5 penalties provided for cases involving a prior conviction.

6 “(b) *ADDITIONAL OFFENSES.*—Any person who, in a
7 circumstance described in subsection (d), knowingly pos-
8 sesses a visual depiction of any kind, including a drawing,
9 cartoon, sculpture, or painting, that—

10 “(1)(A) depicts a minor engaging in sexually ex-
11 plicit conduct; and

12 “(B) is obscene; or

13 “(2)(A) depicts an image that is, or appears to
14 be, of a minor engaging in graphic bestiality, sadistic
15 or masochistic abuse, or sexual intercourse, including
16 genital-genital, oral-genital, anal-genital, or oral-
17 anal, whether between persons of the same or opposite
18 sex; and

19 “(B) lacks serious literary, artistic, political, or
20 scientific value;

21 or attempts or conspires to do so, shall be subject to the
22 penalties provided in section 2252A(b)(2), including the
23 penalties provided for cases involving a prior conviction.

1 “(c) *NONREQUIRED ELEMENT OF OFFENSE.*—*It is not*
 2 *a required element of any offense under this section that*
 3 *the minor depicted actually exist.*

4 “(d) *CIRCUMSTANCES.*—*The circumstance referred to*
 5 *in subsections (a) and (b) is that—*

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

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

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

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

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

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

7 *“(e) AFFIRMATIVE DEFENSE.—It shall be an affirma-*
 8 *tive defense to a charge of violating subsection (b) that the*
 9 *defendant—*

10 *“(1) possessed less than 3 such visual depictions;*
 11 *and*

12 *“(2) promptly and in good faith, and without re-*
 13 *taining or allowing any person, other than a law en-*
 14 *forcement agency, to access any such visual depic-*
 15 *tion—*

16 *“(A) took reasonable steps to destroy each*
 17 *such visual depiction; or*

18 *“(B) reported the matter to a law enforce-*
 19 *ment agency and afforded that agency access to*
 20 *each such visual depiction.*

21 *“(f) DEFINITIONS.—For purposes of this section—*

22 *“(1) the term ‘visual depiction’ includes undevel-*
 23 *oped film and videotape, and data stored on a com-*
 24 *puter disk or by electronic means which is capable of*
 25 *conversion into a visual image, and also includes any*

1 *photograph, film, video, picture, digital image or pic-*
 2 *ture, computer image or picture, or computer gen-*
 3 *erated image or picture, whether made or produced*
 4 *by electronic, mechanical, or other means;*

5 *“(2) the term ‘sexually explicit conduct’ has the*
 6 *meaning given the term in section 2256(2); and*

7 *“(3) the term ‘graphic’, when used with respect*
 8 *to a depiction of sexually explicit conduct, means that*
 9 *a viewer can observe any part of the genitals or pubic*
 10 *area of any depicted person or animal during any*
 11 *part of the time that the sexually explicit conduct is*
 12 *being depicted.”.*

13 *(b) TECHNICAL AND CONFORMING AMENDMENT.—The*
 14 *section analysis for chapter 110 of title 18, United States*
 15 *Code, is amended by inserting after the item relating to*
 16 *section 2252A the following:*

“2252B. Obscene visual representations of the sexual abuse of children.”.

17 *(c) SENTENCING GUIDELINES.—*

18 *(1) CATEGORY.—Except as provided in para-*
 19 *graph (2), the applicable category of offense to be used*
 20 *in determining the sentencing range referred to in*
 21 *section 3553(a)(4) of title 18, United States Code,*
 22 *with respect to any person convicted under section*
 23 *2252B of such title, shall be the category of offenses*
 24 *described in section 2G2.2 of the Sentencing Guide-*
 25 *lines.*

1 (2) *RANGES*.—*The Sentencing Commission may*
 2 *promulgate guidelines specifically governing offenses*
 3 *under section 2252B of title 18, United States Code,*
 4 *if such guidelines do not result in sentencing ranges*
 5 *that are lower than those that would have applied*
 6 *under paragraph (1).*

7 **SEC. 6. 7. RECORDKEEPING REQUIREMENTS.**

8 Section 2257 of title 18, United States Code, is
 9 amended—

10 (1) in subsection (d)(2), by striking “of this
 11 section” and inserting “of this chapter or chapter
 12 71,”;

13 (2) in subsection (h)(3), by inserting “, com-
 14 puter generated image, *digital image*, or picture,”
 15 after “video tape”; and

16 (3) in subsection (i)—

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

19 (B) by striking “5 years” and inserting
 20 “10 years”.

21 **SEC. 7. 8. SERVICE PROVIDER REPORTING OF CHILD POR-**
 22 **NOGRAPHY AND RELATED INFORMATION.**

23 Section 227 of the Victims of Child Abuse Act of
 24 1990 (42 U.S.C. 13032) is amended—

(1) in subsection (b)(1), by inserting “or a violation of section 2252B of that title” after “of that title”;

~~(1)~~(2) in subsection (c), by inserting “or pursuant to” after “to comply with”;

~~(2)~~(3) by amending subsection (f)(1)(D) to read as follows:

“(D) where the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.”;

~~(3)~~(4) by redesignating paragraph (3) of subsection (b) as paragraph (4); and

~~(4)~~(5) by inserting after paragraph (2) of subsection (b) the following new paragraph:

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

SEC. 8. 9. CONTENTS DISCLOSURE OF STORED COMMUNICATIONS.

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

1 (1) in subsection (b)—

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

4 (B) in paragraph (6)—

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

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

8 (iii) by redesignating subparagraph
9 (C) as subparagraph (B);

10 (C) by redesignating paragraph (6) as
11 paragraph (7); and

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

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

18 (2) in subsection (c)—

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

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

23 (C) by inserting after paragraph (4) the
24 following:

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

5 **SEC. 9. 10. EXTRATERRITORIAL PRODUCTION OF CHILD**
 6 **PORNOGRAPHY FOR DISTRIBUTION IN THE**
 7 **UNITED STATES.**

8 Section 2251 of title 18, United States Code, is
 9 amended—

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

12 (2) by redesignating subsections (c) and (d) as
 13 subsections (d) and (e), respectively; and

14 (3) by inserting after subsection (b) the fol-
 15 lowing:

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

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

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

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

9 **SEC. ~~10.~~ 11. CIVIL REMEDIES.**

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

13 “(f) CIVIL REMEDIES.—

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

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

21 “(A) temporary, preliminary, or permanent
 22 injunctive relief;

23 “(B) compensatory and punitive damages;
 24 and

1 “(C) the costs of the civil action and rea-
 2 sonable fees for attorneys and expert wit-
 3 nesses.”.

4 **SEC. ~~11.~~ 12. ENHANCED PENALTIES FOR RECIDIVISTS.**

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

8 **SEC. ~~12.~~ 13. SENTENCING ENHANCEMENTS FOR INTER-**
 9 **STATE TRAVEL TO ENGAGE IN SEXUAL ACT**
 10 **WITH A JUVENILE.**

11 Pursuant to its authority under section 994(p) of title
 12 18, United States Code, and in accordance with this sec-
 13 tion, the United States Sentencing Commission shall re-
 14 view and, as appropriate, amend the Federal Sentencing
 15 Guidelines and policy statements to ensure that guideline
 16 penalties are adequate in cases that involve interstate
 17 travel with the intent to engage in a sexual act with a
 18 juvenile in violation of section 2423 of title 18, United
 19 States Code, to deter and punish such conduct.

20 **SEC. ~~13.~~ 14. MISCELLANEOUS PROVISIONS.**

21 (a) APPOINTMENT OF TRIAL ATTORNEYS.—

22 (1) IN GENERAL.—Not later than 6 months
 23 after the date of enactment of this Act, the Attorney
 24 General shall appoint 25 additional trial attorneys to
 25 the Child Exploitation and Obscenity Section of the

1 Criminal Division of the Department of Justice or to
 2 appropriate U.S. Attorney's Offices, and those trial
 3 attorneys shall have as their primary focus, the in-
 4 vestigation and prosecution of Federal child pornog-
 5 raphy laws.

6 (2) AUTHORIZATION OF APPROPRIATIONS.—

7 There are authorized to be appropriated to the De-
 8 partment of Justice such sums as may be necessary
 9 to carry out this subsection.

10 (b) REPORT TO CONGRESSIONAL COMMITTEES.—

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

19 (2) CONTENTS.—The report required under
 20 paragraph (1) shall include—

21 (A) an evaluation of the prosecutions
 22 brought under chapter 110 of title 18, United
 23 States Code;

24 (B) an outcome-based measurement of per-
 25 formance; and

1 (C) an analysis of the technology being
 2 used by the child pornography industry.

3 (c) SENTENCING GUIDELINES.—Pursuant to its au-
 4 thority under section 994(p) of title 18, United States
 5 Code, and in accordance with this section, the United
 6 States Sentencing Commission shall review and, as appro-
 7 priate, amend the Federal Sentencing Guidelines and pol-
 8 icy statements to ensure that the guidelines are adequate
 9 to deter and punish conduct that involves a violation of
 10 paragraph (3)(B) or (6) of section 2252A(a) of title 18,
 11 United States Code, as created by this Act. With respect
 12 to the guidelines for section 2252A(a)(3)(B), the Commis-
 13 sion shall consider the relative culpability of promoting,
 14 presenting, describing, or distributing material in violation
 15 of that section as compared with solicitation of such mate-
 16 rial.

17 **SEC. 15. AUTHORIZATION OF INTERCEPTION OF COMMU-**
 18 **NICATIONS IN THE INVESTIGATION OF SEX-**
 19 **UAL CRIMES AGAINST CHILDREN.**

20 *Section 2516(1)(c) of title 18, United States Code, is*
 21 *amended—*

22 *(1) by inserting “section 1591 (sex trafficking of*
 23 *children by force, fraud, or coercion),” after “section*
 24 *1511 (obstruction of State or local law enforcement),”;*
 25 *and*

1 (2) by inserting “section 2251A (selling or buy-
 2 ing of children), section 2252A (relating to material
 3 constituting or containing child pornography), section
 4 2252B (relating to child obscenity), section 2260 (pro-
 5 duction of sexually explicit depictions of a minor for
 6 importation into the United States), sections 2421,
 7 2422, 2423, and 2425 (relating to transportation for
 8 illegal sexual activity and related crimes),” after “sec-
 9 tions 2251 and 2252 (sexual exploitation of chil-
 10 dren),”.

11 **SEC. 16. 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 all
 15 that follows through “subscriber or customer utilized,” and
 16 inserting “the information specified in section 2703(c)(2)”.

17 **SEC. 14. 17. SEVERABILITY.**

18 If any provision of this Act, an amendment made by
 19 this Act, or the application of such provision or amend-
 20 ment to any person or circumstance is held to be unconsti-
 21 tutional, the remainder of this Act, the amendments made
 22 by this Act, and the application of the provisions of such
 23 to any person or circumstance shall not be affected there-
 24 by.

Calendar No. 7

108TH CONGRESS
1ST SESSION

S. 151

A BILL

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

JANUARY 30, 2003

Reported with amendments