

**TITLE 18 - CRIMES AND CRIMINAL PROCEDURE****PART I - CRIMES****CHAPTER 110 - SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN****§ 2251. Sexual exploitation of children**

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct shall be punished as provided under subsection (e) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(c) (1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

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

(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail; or

(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail.

(d) (1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering—

(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct;

shall be punished as provided under subsection (e).

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

(A) such person knows or has reason to know that such notice or advertisement will be transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed; or

(B) such notice or advertisement is transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed.

(e) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591, chapter 71 section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for not less than 30 years or for life.

(Added Pub. L. 95–225, § 2(a), Feb. 6, 1978, 92 Stat. 7; amended Pub. L. 98–292, § 3, May 21, 1984, 98 Stat. 204; Pub. L. 99–500, § 101(b) [title VII, § 704(a)], Oct. 18, 1986, 100 Stat. 1783–39, 1783–75, and Pub. L. 99–591, § 101(b) [title VII, § 704(a)], Oct. 30, 1986, 100 Stat. 3341–39, 3341–75; Pub. L. 99–628, §§ 2, 3, Nov. 7, 1986, 100 Stat. 3510; Pub. L. 100–690, title VII, § 7511(a), Nov. 18, 1988, 102 Stat. 4485; Pub. L. 101–647, title XXXV, § 3563, Nov. 29, 1990, 104 Stat. 4928; Pub. L. 103–322, title VI, § 60011, title XVI, § 160001(b)(2), (c), (e), title XXXIII, § 330016(1)(S)–(U), Sept. 13, 1994, 108 Stat. 1973, 2037, 2148; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 121[4]], Sept. 30, 1996, 110 Stat. 3009, 3009–26, 3009–30; Pub. L. 105–314, title II, § 201, Oct. 30, 1998, 112 Stat. 2977; Pub. L. 108–21, title I, § 103(a)(1)(A), (b)(1)(A), title V, §§ 506, 507, Apr. 30, 2003, 117 Stat. 652, 653, 683; Pub. L. 109–248, title II, § 206(b)(1), July 27, 2006, 120 Stat. 614; Pub. L. 110–358, title I, § 103(a)(1), (b), Oct. 8, 2008, 122 Stat. 4002, 4003; Pub. L. 110–401, title III, § 301, Oct. 13, 2008, 122 Stat. 4242.)

## Codification

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

## Amendments

2008—Subsecs. (a), (b). Pub. L. 110–401 inserted “or for the purpose of transmitting a live visual depiction of such conduct” after “for the purpose of producing any visual depiction of such conduct” and “or transmitted” after “will be transported”, after “was produced”, and after “has actually been transported”.

Pub. L. 110–358, § 103(a)(1)(A), (B), (b), inserted “using any means or facility of interstate or foreign commerce or” after “be transported” and after “been transported” and substituted “in or affecting interstate” for “in interstate” wherever appearing.

Subsec. (c)(2). Pub. L. 110–358, § 103(a)(1)(C), substituted “using any means or facility of interstate or foreign commerce” for “computer” in subpars. (A) and (B).

Subsec. (d)(2)(A). Pub. L. 110–358, § 103(a)(1)(A), (b), inserted “using any means or facility of interstate or foreign commerce or” after “be transported” and substituted “in or affecting interstate” for “in interstate”.

Subsec. (d)(2)(B). Pub. L. 110–358, § 103(a)(1)(D), (b), inserted “using any means or facility of interstate or foreign commerce or” after “is transported” and substituted “in or affecting interstate” for “in interstate”.

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2006—Subsec. (e). Pub. L. 109–248 inserted “section 1591,” after “one prior conviction under this chapter,” and substituted “aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography” for “the sexual exploitation of children” and “not less than 30 years or for life” for “any term of years or for life”.

2003—Subsecs. (a), (b). Pub. L. 108–21, § 506(1), substituted “subsection (e)” for “subsection (d)”.

Subsec. (c). Pub. L. 108–21, § 506(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 108–21, § 506(1), substituted “subsection (e)” for “subsection (d)” in concluding provisions.

Subsec. (d). Pub. L. 108–21, § 506(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 108–21, § 103(a)(1)(A), (b)(1)(A), substituted “and imprisoned not less than 15” for “or imprisoned not less than 10”, “30 years” for “20 years”, “25 years” for “15 years”, “more than 50 years” for “more than 30 years”, and “35 years nor more than life” for “30 years nor more than life”, and struck out “and both,” before “but if such person has one”.

Subsec. (e). Pub. L. 108–21, § 507, inserted “chapter 71,” before “chapter 109A,” in two places and “or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice),” before “or under the laws” in two places.

Pub. L. 108–21, § 506(2), redesignated subsec. (d) as (e).

1998—Subsec. (a). Pub. L. 105–314, § 201(a), inserted “if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer,” before “or if”.

Subsec. (b). Pub. L. 105–314, § 201(b), inserted “, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer,” before “or if”.

Subsec. (d). Pub. L. 105–314, § 201(c), substituted “, chapter 109A, or chapter 117” for “or chapter 109A” in two places.

1996—Subsec. (d). Pub. L. 104–208 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title, imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this chapter or chapter 109A, such individual shall be fined under this title, imprisoned not less than five years nor more than 15 years, or both. Any organization which violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.”

1994—Pub. L. 103–322, § 330016(1)(S)–(U), which directed the amendment of this section by substituting “under this title” for “not more than \$100,000”, “not more than \$200,000”, and “not more than \$250,000”, could not be executed because those phrases did not appear in text subsequent to amendment of subsec. (d) by Pub. L. 103–322, § 160001(b)(2). See below.

Subsec. (d). Pub. L. 103–322, § 160001(e), inserted “, or attempts or conspires to violate,” after “violates” in two places.

Pub. L. 103–322, § 160001(c), substituted “conviction under this chapter or chapter 109A” for “conviction under this section”.

Pub. L. 103–322, § 160001(b)(2)(C), substituted “fined under this title” for “fined not more than \$250,000” in penultimate sentence.

Pub. L. 103–322, § 160001(b)(2)(B), substituted “fined under this title,” for “fined not more than \$200,000, or” before “imprisoned not less than five years”.

Pub. L. 103–322, § 160001(b)(2)(A), substituted “fined under this title,” for “fined not more than \$100,000, or” before “imprisoned not more than 10 years”.

Pub. L. 103–322, § 60011, inserted at end “Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.”

1990—Subsec. (a). Pub. L. 101–647 substituted “person to engage in,” for “person to engage in,,”.

1988—Subsec. (c)(2)(A), (B). Pub. L. 100–690 inserted “by any means including by computer” after “commerce”.

1986—Subsec. (a). Pub. L. 99–628, §§ 2(1), (3), inserted “, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in,” after “assist any other person to engage in,” and substituted “subsection (d)” for “subsection (c)”.

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Subsec. (b). Pub. L. 99–628, § 2(2), substituted “subsection (d)” for “subsection (c)”.

Subsecs. (c), (d). Pub. L. 99–628, § 2(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

Pub. L. 99–500 and Pub. L. 99–591 substituted “five years” for “two years” in subsec. (c).

1984—Subsecs. (a), (b). Pub. L. 98–292, § 3(1), (2), substituted “visual depiction” for “visual or print medium” in three places and substituted “of” for “depicting” before “such conduct”.

Subsec. (c). Pub. L. 98–292, § 3(3)–(6), substituted “individual” for “person” in three places, “\$100,000” for “\$10,000”, and “\$200,000” for “\$15,000”, and inserted “Any organization which violates this section shall be fined not more than \$250,000.”

### **Short Title of 2006 Amendment**

Pub. L. 109–248, title VII, § 707(a), July 27, 2006, 120 Stat. 650, provided that: “This section [amending section 2255 of this title] may be cited as ‘Masha’s Law’.”

### **Short Title of 1996 Amendment**

Section 101 (a) [title I, § 121] of div. A of Pub. L. 104–208 provided in part that: “This section [enacting section 2252A of this title, amending this section, sections 2241, 2243, 2252, and 2256 of this title, and section 2000aa of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 2241 of this title] may be cited as the ‘Child Pornography Prevention Act of 1996’.”

### **Short Title of 1990 Amendment**

Section 301(a) of title III of Pub. L. 101–647 provided that: “This title [amending sections 1460, 2243, 2252, and 2257 of this title and enacting provisions set out as notes under section 2257 of this title and section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Child Protection Restoration and Penalties Enhancement Act of 1990’.”

### **Short Title of 1988 Amendment**

Section 7501 of title VII of Pub. L. 100–690 provided that: “This subtitle [subtitle N (§§ 7501–7526) of title VII of Pub. L. 100–690, enacting sections 1460, 1466 to 1469, 2251A, and 2257 of this title, amending this section, sections 1465, 1961, 2252 to 2254, 2256, and 2516 of this title, section 1305 of Title 19, Customs Duties, and section 223 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and enacting provisions set out as a note under section 2257 of this title] may be cited as the ‘Child Protection and Obscenity Enforcement Act of 1988’.”

### **Short Title of 1986 Amendments**

Section 1 of Pub. L. 99–628 provided that: “This Act [enacting sections 2421 to 2423 of this title, amending this section and sections 2255 and 2424 of this title, and repealing former sections 2421 to 2423 of this title] may be cited as the ‘Child Sexual Abuse and Pornography Act of 1986’.”

Section 101 (b) [title VII, § 701] of Pub. L. 99–500 and Pub. L. 99–591 provided that: “This title [enacting section 2255 of this title, amending this section and section 2252 of this title, redesignating former section 2255 of this title as 2256, and enacting provisions set out as notes under this section] may be cited as the ‘Child Abuse Victims’ Rights Act of 1986’.”

### **Short Title of 1984 Amendment**

Section 1 of Pub. L. 98–292 provided: “That this Act [enacting sections 2253 and 2254 of this title, amending this section and sections 2252, 2255, and 2516 of this title, and enacting provisions set out as notes under this section and section 522 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Child Protection Act of 1984’.”

### **Short Title**

Section 1 of Pub. L. 95–225 provided: “That this Act [enacting this chapter and amending section 2423 of this title] may be cited as the ‘Protection of Children Against Sexual Exploitation Act of 1977’.”

### **Severability**

Pub. L. 110–401, title V, § 503, Oct. 13, 2008, 122 Stat. 4252, provided that: “If any provision of this title [enacting sections 2258A to 2258E of this title, amending section 2702 of this title, and repealing section 13032 of Title 42, The Public Health and Welfare] or amendment made by this title is held to be unconstitutional, the remainder of the provisions of this title or amendments made by this title—

“(1) shall remain in full force and effect; and

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“(2) shall not be affected by the holding.”

Section 101 (a) [title I, § 121[8]] of Pub. L. 104–208 provided that: “If any provision of this Act [probably means section 121 of Pub. L. 104–208, div. A, title I, § 101(a), see Short Title of 1996 Amendment note above], including any provision or section of the definition of the term child pornography, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, including any other provision or section of the definition of the term child pornography, the amendments made by this Act, and the application of such to any other person or circumstance shall not be affected thereby.”

Section 4 of Pub. L. 95–225 provided that: “If any provision of this Act [see Short Title note set out above] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.”

## Congressional Findings

Pub. L. 110–358, title I, § 102, Oct. 8, 2008, 122 Stat. 4001, provided that: “Congress finds the following:

“(1) Child pornography is estimated to be a multibillion dollar industry of global proportions, facilitated by the growth of the Internet.

“(2) Data has shown that 83 percent of child pornography possessors had images of children younger than 12 years old, 39 percent had images of children younger than 6 years old, and 19 percent had images of children younger than 3 years old.

“(3) Child pornography is a permanent record of a child’s abuse and the distribution of child pornography images revictimizes the child each time the image is viewed.

“(4) Child pornography is readily available through virtually every Internet technology, including Web sites, email, instant messaging, Internet Relay Chat, newsgroups, bulletin boards, and peer-to-peer.

“(5) The technological ease, lack of expense, and anonymity in obtaining and distributing child pornography over the Internet has resulted in an explosion in the multijurisdictional distribution of child pornography.

“(6) The Internet is well recognized as a method of distributing goods and services across State lines.

“(7) The transmission of child pornography using the Internet constitutes transportation in interstate commerce.”

Pub. L. 109–248, title V, § 501, July 27, 2006, 120 Stat. 623, provided that: “Congress makes the following findings:

“(1) The effect of the intrastate production, transportation, distribution, receipt, advertising, and possession of child pornography on the interstate market in child pornography:

“(A) The illegal production, transportation, distribution, receipt, advertising and possession of child pornography, as defined in section 2256 (8) of title 18, United States Code, as well as the transfer of custody of children for the production of child pornography, is harmful to the physiological, emotional, and mental health of the children depicted in child pornography and has a substantial and detrimental effect on society as a whole.

“(B) A substantial interstate market in child pornography exists, including not only a multimillion dollar industry, but also a nationwide network of individuals openly advertising their desire to exploit children and to traffic in child pornography. Many of these individuals distribute child pornography with the expectation of receiving other child pornography in return.

“(C) The interstate market in child pornography is carried on to a substantial extent through the mails and other instrumentalities of interstate and foreign commerce, such as the Internet. The advent of the Internet has greatly increased the ease of transporting, distributing, receiving, and advertising child pornography in interstate commerce. The advent of digital cameras and digital video cameras, as well as videotape cameras, has greatly increased the ease of producing child pornography. The advent of inexpensive computer equipment with the capacity to store large numbers of digital images of child pornography has greatly increased the ease of possessing child pornography. Taken together, these technological advances have had the unfortunate result of greatly increasing the interstate market in child pornography.

“(D) Intrastate incidents of production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the transfer of custody of children for the production of child pornography, have a substantial and direct effect upon interstate commerce because:

“(i) Some persons engaged in the production, transportation, distribution, receipt, advertising, and possession of child pornography conduct such activities entirely within the boundaries of one state. These persons are unlikely to be content with the amount of child pornography they produce, transport, distribute, receive, advertise, or possess. These persons are therefore likely to enter the interstate market in child pornography in search of additional child pornography, thereby stimulating demand in the interstate market in child pornography.

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“(ii) When the persons described in subparagraph (D)(i) enter the interstate market in search of additional child pornography, they are likely to distribute the child pornography they already produce, transport, distribute, receive, advertise, or possess to persons who will distribute additional child pornography to them, thereby stimulating supply in the interstate market in child pornography.

“(iii) Much of the child pornography that supplies the interstate market in child pornography is produced entirely within the boundaries of one state, is not traceable, and enters the interstate market surreptitiously. This child pornography supports demand in the interstate market in child pornography and is essential to its existence.

“(E) Prohibiting the intrastate production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the intrastate transfer of custody of children for the production of child pornography, will cause some persons engaged in such intrastate activities to cease all such activities, thereby reducing both supply and demand in the interstate market for child pornography.

“(F) Federal control of the intrastate incidents of the production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the intrastate transfer of children for the production of child pornography, is essential to the effective control of the interstate market in child pornography.

“(2) The importance of protecting children from repeat exploitation in child pornography:

“(A) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and related media.

“(B) Child pornography is not entitled to protection under the First Amendment and thus may be prohibited.

“(C) The government has a compelling State interest in protecting children from those who sexually exploit them, and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain.

“(D) Every instance of viewing images of child pornography represents a renewed violation of the privacy of the victims and a repetition of their abuse.

“(E) Child pornography constitutes prima facie contraband, and as such should not be distributed to, or copied by, child pornography defendants or their attorneys.

“(F) It is imperative to prohibit the reproduction of child pornography in criminal cases so as to avoid repeated violation and abuse of victims, so long as the government makes reasonable accommodations for the inspection, viewing, and examination of such material for the purposes of mounting a criminal defense.”

Pub. L. 108–21, title V, § 501, Apr. 30, 2003, 117 Stat. 676, provided that: “Congress finds the following:

“(1) Obscenity and child pornography are not entitled to protection under the First Amendment under *Miller v. California*, 413 U.S. 15 (1973) (obscenity), or *New York v. Ferber*, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

“(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. ‘The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance,’ *New York v. Ferber*, 458 U.S. 747, 757 (1982), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. *Osborne v. Ohio*, 495 U.S. 103, 110 (1990).

“(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. ‘The most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe 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) computer generate depictions of children that are indistinguishable from depictions of real children;

“(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 computer generate realistic images of children.

“(6) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and/or related media.

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

“(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic assessment may depend on the quality of the image scanned and the tools used to scan it.

“(9) The impact of the *Free Speech Coalition* decision on the Government’s ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in *Free Speech Coalition*. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court’s affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

“(10) Since the Supreme Court’s decision in *Free Speech Coalition*, defendants in child pornography cases have almost universally raised the contention that the images in question could be virtual, thereby requiring the government, in nearly every child pornography prosecution, to find proof that the child is real. Some of these defense efforts have already been successful. In addition, the number of prosecutions being brought has been significantly and adversely affected as the resources required to be dedicated to each child pornography case now are significantly higher than ever before.

“(11) Leading experts agree that, to the extent that the technology exists to computer generate realistic images of child pornography, the cost in terms of time, money, and expertise is—and for the foreseeable future will remain—prohibitively expensive. As a result, for the foreseeable future, it will be more cost-effective to produce child pornography using real children. It will not, however, be difficult or expensive to use readily available technology to disguise those depictions of real children to make them unidentifiable or to make them appear computer-generated.

“(12) Child pornography results from the abuse of real children by sex offenders; the production of child pornography is a byproduct of, and not the primary reason for, the sexual abuse of children. There is no evidence that the future development of easy and inexpensive means of computer generating realistic images of children would stop or even reduce the sexual abuse of real children or the practice of visually recording that abuse.

“(13) In the absence of congressional action, the difficulties in enforcing the child pornography laws will continue to grow increasingly worse. The mere prospect that the technology exists to create composite or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution; for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable. Moreover, imposing an additional requirement that the Government prove beyond a reasonable doubt that the defendant knew that the image was in fact a real child—as some courts have done—threatens to result in the de facto legalization of the possession, receipt, and distribution of child pornography for all except the original producers of the material.

“(14) 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.

“(15) 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.”

Section 101 (a) [title I, § 121[1]] of Pub. L. 104–208 provided that: “Congress finds that—

“(1) the use of children in the production of sexually explicit material, including photographs, films, videos, computer images, and other visual depictions, is a form of sexual abuse which can result in physical or psychological harm, or both, to the children involved;

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

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

“(3) child pornography is often used as part of a method of seducing other children into sexual activity; a child who is reluctant to engage in sexual activity with an adult, or to pose for sexually explicit photographs, can sometimes be convinced by viewing depictions of other children ‘having fun’ participating in such activity;

“(4) child pornography is often used by pedophiles and child sexual abusers to stimulate and whet their own sexual appetites, and as a model for sexual acting out with children; such use of child pornography can desensitize the viewer to the pathology of sexual abuse or exploitation of children, so that it can become acceptable to and even preferred by the viewer;

“(5) new photographic and computer imagining [sic] technologies make it possible to produce by electronic, mechanical, or other means, visual depictions of what appear to be children engaging in sexually explicit conduct that are virtually indistinguishable to the unsuspecting viewer from unretouched photographic images of actual children engaging in sexually explicit conduct;

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

“(A) alter sexually explicit photographs, films, and videos in such a way as to make it virtually impossible for unsuspecting viewers to identify individuals, or to determine if the offending material was produced using children;

“(B) produce visual depictions of child sexual activity designed to satisfy the preferences of individual child molesters, pedophiles, and pornography collectors; and

“(C) alter innocent pictures of children to create visual depictions of those children engaging in sexual conduct;

“(7) the creation or distribution of child pornography which includes an image of a recognizable minor invades the child’s privacy and reputational interests, since images that are created showing a child’s face or other identifiable feature on a body engaging in sexually explicit conduct can haunt the minor for years to come;

“(8) the effect of visual depictions of child sexual activity on a child molester or pedophile using that material to stimulate or whet his own sexual appetites, or on a child where the material is being used as a means of seducing or breaking down the child’s inhibitions to sexual abuse or exploitation, is the same whether the child pornography consists of photographic depictions of actual children or visual depictions produced wholly or in part by electronic, mechanical, or other means, including by computer, which are virtually indistinguishable to the unsuspecting viewer from photographic images of actual children;

“(9) the danger to children who are seduced and molested with the aid of child sex pictures is just as great when the child pornographer or child molester uses visual depictions of child sexual activity produced wholly or in part by electronic, mechanical, or other means, including by computer, as when the material consists of unretouched photographic images of actual children engaging in sexually explicit conduct;

“(10)(A) the existence of and traffic in child pornographic images creates the potential for many types of harm in the community and presents a clear and present danger to all children; and

“(B) it inflames the desires of child molesters, pedophiles, and child pornographers who prey on children, thereby increasing the creation and distribution of child pornography and the sexual abuse and exploitation of actual children who are victimized as a result of the existence and use of these materials;

“(11)(A) the sexualization and eroticization of minors through any form of child pornographic images has a deleterious effect on all children by encouraging a societal perception of children as sexual objects and leading to further sexual abuse and exploitation of them; and

“(B) this sexualization of minors creates an unwholesome environment which affects the psychological, mental and emotional development of children and undermines the efforts of parents and families to encourage the sound mental, moral and emotional development of children;

“(12) prohibiting the possession and viewing of child pornography will encourage the possessors of such material to rid themselves of or destroy the material, thereby helping to protect the victims of child pornography and to eliminate the market for the sexual exploitative use of children; and

“(13) the elimination of child pornography and the protection of children from sexual exploitation provide a compelling governmental interest for prohibiting the production, distribution, possession, sale, or viewing of visual depictions of children engaging in sexually explicit conduct, including both photographic images of actual children engaging in such conduct and depictions produced by computer or other means which are virtually indistinguishable to the unsuspecting viewer from photographic images of actual children engaging in such conduct.”

Section 101 (b) [title VII, § 702] of Pub. L. 99–500 and Pub. L. 99–591 provided that: “The Congress finds that—

“(1) child exploitation has become a multi-million dollar industry, infiltrated and operated by elements of organized crime, and by a nationwide network of individuals openly advertising their desire to exploit children;



*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

“(2) Congress has recognized the physiological, psychological, and emotional harm caused by the production, distribution, and display of child pornography by strengthening laws prescribing such activity;

“(3) the Federal Government lacks sufficient enforcement tools to combat concerted efforts to exploit children prescribed by Federal law, and exploitation victims lack effective remedies under Federal law; and

“(4) current rules of evidence, criminal procedure, and civil procedure and other courtroom and investigative procedures inhibit the participation of child victims as witnesses and damage their credibility when they do testify, impairing the prosecution of child exploitation offenses.”

Section 2 of Pub. L. 98–292 provided that: “The Congress finds that—

“(1) child pornography has developed into a highly organized, multi-million-dollar industry which operates on a nationwide scale;

“(2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and

“(3) the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the individual child and to society.”

### **Report by Attorney General**

Section 101 (b) [title VII, § 705] of Pub. L. 99–500 and Pub. L. 99–591 required Attorney General, within one year after Oct. 18, 1986, to submit a report to Congress detailing possible changes in Federal Rules of Evidence, Federal Rules of Criminal Procedure, Federal Rules of Civil Procedure, and other Federal courtroom, prosecutorial, and investigative procedures which would facilitate the participation of child witnesses in cases involving child abuse and sexual exploitation.

### **Annual Report to Congress**

Attorney General to report annually to Congress on prosecutions, convictions, and forfeitures under this chapter, see section 9 of Pub. L. 98–292, set out as a note under section 522 of Title 28, Judiciary and Judicial Procedure.