

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.”

Pub. L. 99-500, §101(b) [title VII, §702], Oct. 18, 1986, 100 Stat. 1783-39, 1783-74, and Pub. L. 99-591, §101(b) [title VII, §702], Oct. 30, 1986, 100 Stat. 3341-39, 3341-74 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;

“(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.”

Pub. L. 98-292, §2, May 21, 1984, 98 Stat. 204, 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

Pub. L. 99-500, §101(b) [title VII, §705], Oct. 18, 1986, 100 Stat. 1783-39, 1783-75, and Pub. L. 99-591, §101(b) [title VII, §705], Oct. 30, 1986, 100 Stat. 3341-39, 3341-75, 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 41301 of Title 34, Crime Control and Law Enforcement.

### § 2251A. Selling or buying of children

(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either—

(1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) with intent to promote either—

(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 30 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either—

(1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) with intent to promote either—

(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 30 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(c) The circumstances referred to in subsections (a) and (b) are that—

(1) in the course of the conduct described in such subsections the minor or the actor traveled in or was transported in or affecting interstate or foreign commerce;

(2) any offer described in such subsections was communicated or 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 mail; or

(3) the conduct described in such subsections took place in any territory or possession of the United States.

(Added Pub. L. 100-690, title VII, §7512(a), Nov. 18, 1988, 102 Stat. 4486; amended Pub. L. 108-21, title I, §103(b)(1)(B), Apr. 30, 2003, 117 Stat. 653; Pub. L. 110-358, title I, §103(a)(2), (b), Oct. 8, 2008, 122 Stat. 4002, 4003.)

#### AMENDMENTS

2008—Subsec. (c). Pub. L. 110-358, §103(b), substituted “in or affecting interstate” for “in interstate” in pars. (1) and (2).

Subsec. (c)(2). Pub. L. 110-358, §103(a)(2), inserted “using any means or facility of interstate or foreign commerce or” after “or transported”.

2003—Subsecs. (a), (b). Pub. L. 108-21 substituted “30 years” for “20 years” in concluding provisions.

**§ 2252. Certain activities relating to material involving the sexual exploitation of minors**

(a) Any person who—

(1) knowingly transports or ships 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 mails, any visual depiction, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(2) knowingly receives, or distributes, any visual depiction using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or through the mails, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(3) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly sells or possesses with intent to sell any visual depiction; or

(B) knowingly sells or possesses with intent to sell any visual depiction that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce, or has been shipped or transported in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported using any means or facility of interstate or foreign commerce, including by computer, if—

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct; or

(4) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

(B) knowingly possesses, or knowingly accesses with intent to view, 1 or more books,

magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if—

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but if such person has a prior conviction under this chapter, 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, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both, but if any visual depiction involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if such person has a prior conviction 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 aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, 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 10 years nor more than 20 years.

(c) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant—

(1) possessed less than three matters containing any visual depiction proscribed by that paragraph; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof—

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

(Added Pub. L. 95-225, §2(a), Feb. 6, 1978, 92 Stat. 7; amended Pub. L. 98-292, §4, May 21, 1984, 98