

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5944

To amend title 18, United States Code, to protect our children from child pornographers.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2006

Mr. NADLER introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to protect our children from child pornographers.

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 “Stop Child Pornog-  
5 raphers and Predators Act”.

6 **SEC. 2. PROHIBITION OF OBSCENITY DEPICTING YOUNG**  
7 **CHILDREN.**

8       Chapter 71 of title 18, United States Code, is amend-  
9 ed—

1           (1) by inserting after section 1466 the fol-  
2           lowing:

3   **“§ 1466A. Obscene visual depictions of young children**

4           “(a) Whoever, in a circumstance described in sub-  
5           section (d), knowingly produces, distributes, receives, or  
6           possesses with intent to distribute a visual depiction that  
7           is that of a pre-pubescent child engaging in sexually ex-  
8           plicit conduct, or attempts or conspires to do so, shall be  
9           subject to the penalties set forth in section 2252A(b)(1),  
10          including the penalties provided for cases involving a prior  
11          conviction.

12          “(b) Whoever, in a circumstance described in sub-  
13          section (d), knowingly possesses a visual depiction that is  
14          that of a pre-pubescent child engaging in sexually explicit  
15          conduct, or attempts or conspires to do so, shall be subject  
16          to the penalties set forth in section 2252A(b)(2), including  
17          the penalties provided for cases involving a prior convic-  
18          tion.

19          “(c) For purposes of this section—

20                 “(1) the term ‘visual depiction’ includes unde-  
21                 veloped film and videotape, and data stored on com-  
22                 puter disk or by electronic means which is capable  
23                 of conversion into a visual image, and also includes  
24                 any photograph, film, video, or picture, whether

1 made or produced by electronic, mechanical, or other  
2 means;

3 “(2) the term ‘pre-pubescent child’ means that  
4 (A) the child, as depicted, is one whose physical de-  
5 velopment indicates the child is 12 years of age or  
6 younger; or (B) the child, as depicted, does not ex-  
7 hibit significant pubescent physical or sexual matu-  
8 ration; and

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

11 “(d) The circumstance referred to in subsections (a)  
12 and (b) is that—

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

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

24 “(3) any visual depiction involved in the offense  
25 has been mailed, or has been shipped or transported

1 in interstate or foreign commerce by any means, in-  
2 cluding by computer, or was produced using mate-  
3 rials that have been mailed, or that have been  
4 shipped or transported in interstate or foreign com-  
5 merce by any means, including by computer; or

6 “(4) the offense is committed in the special  
7 maritime and territorial jurisdiction of the United  
8 States or in any territory or possession of the  
9 United States.

10 “(e) In a case under subsection (b), it is an affirma-  
11 tive defense that the defendant—

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

13 “(2) promptly and in good faith, and without  
14 retaining or allowing any person, other than a law  
15 enforcement agency, to access any image or copy  
16 thereof—

17 “(A) took reasonable steps to destroy each  
18 such image; or

19 “(B) reported the matter to a law enforce-  
20 ment agency and afforded that agency access to  
21 each such image.”.

22 **SEC. 3. PROHIBITION ON USE OF MATERIALS TO FACILI-**  
23 **TATE OFFENSES AGAINST MINORS.**

24 Chapter 71 of title 18, United States Code, is amend-  
25 ed—

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

2 **“§ 1471. Use of obscene material or child pornog-**  
3 **raphy to facilitate offenses against mi-**  
4 **nors**

5 “(a) Whoever, in any circumstance described in sub-  
6 section (c), knowingly and with the intention to facilitate  
7 a sexual offense against a minor—

8 “(1) provides or shows to a person below the  
9 age of 16 years any visual depiction that is of a pre-  
10 pubescent child engaging in sexually explicit con-  
11 duct, any obscene matter, or any child pornography;  
12 or

13 “(2) provides or shows any obscene matter or  
14 child pornography, or any visual depiction that is  
15 that of a pre-pubescent child engaging in sexually  
16 explicit conduct, or any other material assistance to  
17 any person in connection with any conduct, or any  
18 attempt, incitement, solicitation, or conspiracy to en-  
19 gage in any conduct, that involves a minor and that  
20 violates chapter 109A, 110, or 117, or that would  
21 violate chapter 109A if the conduct occurred in the  
22 special maritime and territorial jurisdiction of the  
23 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  
6 meaning set forth in section 2256(8);

7 “(2) the terms ‘visual depiction’ and ‘pre-pubes-  
8 cent child’ have the meanings respectively set forth  
9 for those terms in section 1466A(c); and

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

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

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

21 “(2) 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  
24 the offense;

1           “(3) any visual depiction or obscene matter in-  
2           volved in the offense has been mailed, or has been  
3           shipped or transported in interstate or foreign com-  
4           merce by any means, including by computer, or was  
5           produced using materials that have been mailed, or  
6           that have been shipped or transported in interstate  
7           or foreign commerce by any means, including by  
8           computer; or

9           “(4) the offense is committed in the special  
10          maritime and territorial jurisdiction of the United  
11          States or in any territory or possession of the  
12          United States.”; and

13           (2) in the table of chapters at the beginning of  
14          the chapter, by inserting at the end the following:

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

15 **SEC. 4. EXTRATERRITORIAL PRODUCTION OF CHILD POR-**  
16 **NOGRAPHY FOR DISTRIBUTION IN THE**  
17 **UNITED STATES.**

18          Section 2251 is amended—

19           (1) by striking “subsection (d)” each place it  
20          appears in subsections (a), (b), and (c) and inserting  
21          “subsection (e)”;

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

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

3           “(c)(1) Any person who, in a circumstance described  
4 in paragraph (2), employs, uses, persuades, induces, en-  
5 tices, or coerces any minor to engage in, or who has a  
6 minor assist any other person to engage in, any sexually  
7 explicit conduct outside of the United States, its posses-  
8 sions and Territories, for the purpose of producing any  
9 visual depiction of such conduct, shall be punished as pro-  
10 vided under subsection (e).

11           “(2) The circumstance referred to in paragraph  
12 (1) is that the person transports such visual depic-  
13 tion to, or otherwise makes it available within, the  
14 United States, its possessions, or territories, by any  
15 means including by computer or mail.”.

16 **SEC. 5. IMPRISONMENT FOR REPEAT SEX OFFENDERS**  
17 **AGAINST CHILDREN.**

18           Section 3559 of title 18, United States Code, is  
19 amended by adding at the end the following new sub-  
20 section:

21           “(e) UP TO LIFE IMPRISONMENT FOR REPEATED  
22 SEX OFFENSES AGAINST CHILDREN.—

23           “(1) IN GENERAL.—A person who is convicted  
24 of a Federal sex offense in which a minor is the vic-  
25 tim shall be sentenced to up to life imprisonment if

1 the person has a prior sex conviction in which a  
2 minor was the victim.

3 “(2) DEFINITIONS.—For the purposes of this  
4 subsection—

5 “(A) the term ‘Federal sex offense’  
6 means—

7 “(i) an offense under section 1466A  
8 (obscene visual depictions of young chil-  
9 dren), 1471 (use of obscene material or  
10 child pornography to facilitate offense  
11 against a child), 2241 (relating to aggra-  
12 vated sexual abuse), 2242 (relating to sex-  
13 ual abuse), 2243(a) (relating to sexual  
14 abuse of a minor), 2244(a)(1) or (2) (re-  
15 lating to abusive sexual contact), 2245 (re-  
16 lating to sexual abuse resulting in death),  
17 2251 (extraterrestrial production of child  
18 pornography), or 2251A (relating to selling  
19 or buying of children); or

20 “(ii) an offense under section 2423(a)  
21 (relating to transportation of minors) in-  
22 volving prostitution or sexual activity con-  
23 stituting a State sex offense;

24 “(B) the term ‘State sex offense’ means an  
25 offense under State law that consists of conduct

1 that would be a Federal sex offense if, to the  
2 extent or in the manner specified in the applica-  
3 ble provision of this title—

4 “(i) the offense involved interstate or  
5 foreign commerce, or the use of the mails;  
6 or

7 “(ii) the conduct occurred in any com-  
8 monwealth, territory, or possession of the  
9 United States, within the special maritime  
10 and territorial jurisdiction of the United  
11 States, in a Federal prison, on any land or  
12 building owned by, leased to, or otherwise  
13 used by or under the control of the Gov-  
14 ernment of the United States, or in the In-  
15 dian country (as defined in section 1151);

16 “(C) the term ‘prior sex conviction’ means  
17 a conviction for which the sentence was imposed  
18 before the conduct occurred constituting the  
19 subsequent Federal sex offense, and which was  
20 for a Federal sex offense or a State sex offense;

21 “(D) the term ‘minor’ means an individual  
22 who has not attained the age of 17 years; and

23 “(E) the term ‘State’ has the meaning  
24 given that term in subsection (c)(2).”

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