

Union Calendar No. 224

112TH CONGRESS
1ST SESSION

H. R. 1981

[Report No. 112-281, Part I]

To amend title 18, United States Code, with respect to child pornography
and child exploitation offenses.

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2011

Mr. SMITH of Texas (for himself and Ms. WASSERMAN SCHULTZ) introduced
the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 10, 2011

Reported with an amendment and referred to the Committee on Energy and
Commerce for a period ending not later than December 9, 2011, for con-
sideration of such provisions of the bill and amendment as fall within the
jurisdiction of that committee pursuant to clause 1(f), rule X

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

DECEMBER 9, 2011

Referral to the Committee on Energy and Commerce extended for a period
ending not later than December 16, 2011

DECEMBER 16, 2011

Additional sponsors: Mr. RUPPERSBERGER, Mr. FLORES, Mr. FORBES, Mr. COBLE, Mr. FRANKS of Arizona, Mr. GALLEGLY, Mr. GOWDY, Mr. CHABOT, Mr. DEUTCH, Mr. SHULER, Mr. DANIEL E. LUNGREN of California, Mr. CRITZ, Mr. UPTON, Mr. LATOURETTE, Mrs. EMERSON, Mrs. LUMMIS, Mr. QUIGLEY, Mr. MARINO, Mr. SCHIFF, Mr. CALVERT, Ms. JACKSON LEE of Texas, Mr. STARK, Mr. PIERLUISI, Mr. GRIFFIN of Arkansas, Mr. ROSS of Florida, Mr. PENCE, Mr. AMODEI, Mr. REICHERT, Mr. NUGENT, Ms. HERRERA BEUTLER, Mr. MILLER of Florida, Mr. WILSON of South Carolina, Mr. JORDAN, Mr. KLINE, Mr. MCINTYRE, Mr. AUSTRIA, Mr. WOMACK, and Mr. FITZPATRICK

DECEMBER 16, 2011

The Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on May 25, 2011]

A BILL

To amend title 18, United States Code, with respect to child pornography and child exploitation offenses.

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 “Protecting Children*
 5 *From Internet Pornographers Act of 2011”.*

6 **SEC. 2. FINANCIAL FACILITATION OF ACCESS TO CHILD**
 7 **PORNOGRAPHY.**

8 *(a) OFFENSE.—Chapter 95 of title 18, United States*
 9 *Code, is amended by adding at the end the following:*

10 **“§ 1960A. Financial facilitation of access to child por-**
 11 **nography**

12 *“(a) IN GENERAL.—Whoever knowingly conducts, or*
 13 *attempts or conspires to conduct, a financial transaction*
 14 *(as defined in section 1956(c)) in or affecting interstate or*
 15 *foreign commerce, knowing that such transaction will fa-*
 16 *cilitate access to, or the possession of, child pornography*
 17 *(as defined in section 2256) shall be fined under this title*
 18 *or imprisoned not more than 20 years, or both.*

19 *“(b) EXCLUSION FROM OFFENSE.—This section does*
 20 *not apply to a financial transaction conducted by a person*
 21 *in cooperation with, or with the consent of, any Federal,*
 22 *State, or local law enforcement agency.”.*

23 *(b) CLERICAL AMENDMENT.—The table of sections at*
 24 *the beginning of chapter 95 of title 18, United States Code,*
 25 *is amended by adding at the end the following new item:*
“1960A. Financial facilitation of access to child pornography.”.

1 **SEC. 3. MONEY LAUNDERING PREDICATE.**

2 *Section 1956(c)(7)(D) of title 18, United States Code,*
3 *is amended—*

4 *(1) by inserting “1466A (relating to obscene vis-*
5 *ual representation of the abuse of children),” before*
6 *“section 1708”; and*

7 *(2) by inserting “1960A (relating to financial*
8 *facilitation of access to child pornography),” before*
9 *“section 2113”.*

10 **SEC. 4. RETENTION OF CERTAIN RECORDS BY ELECTRONIC**
11 **COMMUNICATION SERVICE PROVIDERS.**

12 *(a) IN GENERAL.—Section 2703 of title 18, United*
13 *States Code, is amended by adding at the end the following:*

14 *“(h) RETENTION OF CERTAIN RECORDS.—*

15 *“(1) A commercial provider of an electronic com-*
16 *munication service shall retain for a period of at least*
17 *one year a log of the temporarily assigned network*
18 *addresses the provider assigns to a subscriber to or*
19 *customer of such service that enables the identification*
20 *of the corresponding customer or subscriber informa-*
21 *tion under subsection (c)(2) of this section.*

22 *“(2) Access to a record or information required*
23 *to be retained under this subsection may not be com-*
24 *pelled by any person or other entity that is not a gov-*
25 *ernmental entity.*

1 “(3) *The Attorney General shall make a study to*
2 *determine the costs associated with compliance by*
3 *providers with the requirement of paragraph (1).*
4 *Such study shall include an assessment of all the*
5 *types of costs, including for hardware, software, and*
6 *personnel that are involved. Not later than 2 years*
7 *after the date of the enactment of this paragraph, the*
8 *Attorney General shall report to Congress the results*
9 *of that study.*

10 “(4) *In this subsection—*

11 “(A) *the term ‘commercial provider’ means*
12 *a provider of electronic communication service*
13 *that offers Internet access capability for a fee to*
14 *the public or to such classes of users as to be ef-*
15 *fectively available to the public, regardless of the*
16 *facilities used; and*

17 “(B) *the term ‘Internet’ has the same mean-*
18 *ing given that term in section 230(f) of the Com-*
19 *munications Act of 1934.”.*

20 (b) *SENSE OF CONGRESS.—It is the sense of Con-*
21 *gress—*

22 (1) *to encourage electronic communication serv-*
23 *ice providers to give prompt notice to their customers*
24 *in the event of a breach of the data retained pursuant*
25 *to section 2703(h) of title 18 of the United States*

1 *Code, in order that those effected can take the nec-*
2 *essary steps to protect themselves from potential mis-*
3 *use of private information; and*

4 (2) *that records retained pursuant to section*
5 *2703(h) of title 18, United States Code, should be*
6 *stored securely to protect customer privacy and pre-*
7 *vent against breaches of the records.*

8 (c) *TRANSITION RULE.—The amendment made by this*
9 *section shall not apply until 180 days after the date of the*
10 *enactment of this Act to a provider of an electronic commu-*
11 *nications service that does not, on that date of enactment,*
12 *have in effect a system of retention of records that complies*
13 *with the requirements of that amendment.*

14 (d) *STUDY.—*

15 (1) *The Attorney General, not later than 2 years*
16 *after the date of the enactment of this Act, shall com-*
17 *plete a study of providers affected by section 2703(h)*
18 *of title 18, United States Code.*

19 (2) *Such study shall include—*

20 (A) *the privacy standards and consider-*
21 *ations implemented by those providers as they*
22 *comply with the requirements of section 2703(h);*
23 *and*

24 (B) *the frequency of any reported breaches*
25 *of data retained pursuant to section 2703(h).*

1 (3) *The Attorney General shall, upon the comple-*
2 *tion of the study, report the results of the study to*
3 *Congress.*

4 **SEC. 5. NO CAUSE OF ACTION AGAINST A PROVIDER DIS-**
5 **CLOSING INFORMATION UNDER THIS CHAP-**
6 **TER.**

7 *Section 2703(e) of title 18, United States Code, is*
8 *amended by inserting “retaining records,” after “other spec-*
9 *ified persons for”.*

10 **SEC. 6. GOOD FAITH RELIANCE ON REQUIREMENT.**

11 *Section 2707(e)(1) of title 18, United States Code, is*
12 *amended by inserting “, or the requirement to retain*
13 *records under section 2703(h),” after “section 2703(f)”.*

14 **SEC. 7. SUBPOENA AUTHORITY.**

15 *Section 566(e)(1) of title 28, United States Code, is*
16 *amended—*

17 (1) *in subparagraph (A), by striking “and” at*
18 *the end;*

19 (2) *in subparagraph (B), by striking the period*
20 *at the end and inserting “; and”; and*

21 (3) *by adding at the end the following:*

22 “(C) *issue administrative subpoenas in accord-*
23 *ance with section 3486 of title 18, solely for the pur-*
24 *pose of investigating unregistered sex offenders (as de-*
25 *finied in such section 3486).”.*

1 **SEC. 8. PROTECTION OF CHILD WITNESSES.**

2 *Section 1514 of title 18, United States Code, is amend-*
3 *ed—*

4 *(1) in subsection (b)—*

5 *(A) in paragraph (1)—*

6 *(i) by inserting “or its own motion,”*
7 *after “attorney for the Government,”; and*

8 *(ii) by inserting “or investigation”*
9 *after “Federal criminal case” each place it*
10 *appears;*

11 *(B) by redesignating paragraphs (2), (3),*
12 *and (4) as paragraphs (3), (4), and (5), respec-*
13 *tively;*

14 *(C) by inserting after paragraph (1) the fol-*
15 *lowing:*

16 *“(2) In the case of a minor witness or victim, the court*
17 *shall issue a protective order prohibiting harassment or in-*
18 *timidation of the minor victim or witness if the court finds*
19 *evidence that the conduct at issue is reasonably likely to*
20 *adversely affect the willingness of the minor witness or vic-*
21 *tim to testify or otherwise participate in the Federal crimi-*
22 *nal case or investigation. Any hearing regarding a protec-*
23 *tive order under this paragraph shall be conducted in ac-*
24 *cordance with paragraphs (1) and (3), except that the court*
25 *may issue an ex parte emergency protective order in ad-*
26 *vance of a hearing if exigent circumstances are present. If*

1 *such an ex parte order is applied for or issued, the court*
2 *shall hold a hearing not later than 14 days after the date*
3 *such order was applied for or is issued.”;*

4 *(D) in paragraph (4), as so redesignated, by*
5 *striking “(and not by reference to the complaint*
6 *or other document)”;* and

7 *(E) in paragraph (5), as so redesignated, in*
8 *the second sentence, by inserting before the pe-*
9 *riod at the end the following: “, except that in*
10 *the case of a minor victim or witness, the court*
11 *may order that such protective order expires on*
12 *the later of 3 years after the date of issuance or*
13 *the date of the eighteenth birthday of that minor*
14 *victim or witness”;* and

15 *(2) by striking subsection (c) and inserting the*
16 *following:*

17 *“(c) Whoever knowingly and intentionally violates or*
18 *attempts to violate an order issued under this section shall*
19 *be fined under this title, imprisoned not more than 5 years,*
20 *or both.*

21 *“(d)(1) As used in this section—*

22 *“(A) the term ‘course of conduct’ means a series*
23 *of acts over a period of time, however short, indi-*
24 *cating a continuity of purpose;*

1 “(B) the term ‘harassment’ means a serious act
2 or course of conduct directed at a specific person
3 that—

4 “(i) causes substantial emotional distress in
5 such person; and

6 “(ii) serves no legitimate purpose;

7 “(C) the term ‘immediate family member’ has
8 the meaning given that term in section 115 and in-
9 cludes grandchildren;

10 “(D) the term ‘intimidation’ means a serious act
11 or course of conduct directed at a specific person
12 that—

13 “(i) causes fear or apprehension in such
14 person; and

15 “(ii) serves no legitimate purpose;

16 “(E) the term ‘restricted personal information’
17 has the meaning give that term in section 119;

18 “(F) the term ‘serious act’ means a single act of
19 threatening, retaliatory, harassing, or violent conduct
20 that is reasonably likely to influence the willingness
21 of a victim or witness to testify or participate in a
22 Federal criminal case or investigation; and

23 “(G) the term ‘specific person’ means a victim or
24 witness in a Federal criminal case or investigation,

1 *and includes an immediate family member of such a*
2 *victim or witness.*

3 “(2) *For purposes of subparagraphs (B)(ii) and*
4 *(D)(ii) of paragraph (1), a court shall presume, subject to*
5 *rebuttal by the person, that the distribution or publication*
6 *using the Internet of a photograph of, or restricted personal*
7 *information regarding, a specific person serves no legiti-*
8 *mate purpose, unless that use is authorized by that specific*
9 *person, is for news reporting purposes, is designed to locate*
10 *that specific person (who has been reported to law enforce-*
11 *ment as a missing person), or is part of a government-au-*
12 *thorized effort to locate a fugitive or person of interest in*
13 *a criminal, antiterrorism, or national security investiga-*
14 *tion.”.*

15 **SEC. 9. SENTENCING GUIDELINES.**

16 *Pursuant to its authority under section 994 of title*
17 *28, United States Code, and in accordance with this section,*
18 *the United States Sentencing Commission shall review and,*
19 *if appropriate, amend the Federal sentencing guidelines*
20 *and policy statements to ensure—*

21 *(1) that the guidelines provide an additional*
22 *penalty increase above the sentence otherwise applica-*
23 *ble in Part J of Chapter 2 of the Guidelines Manual*
24 *if the defendant was convicted of a violation of section*
25 *1591 of title 18, United States Code, or chapters*

1 109A, 109B, 110, or 117 of title 18, United States
2 Code; and

3 (2) if the offense described in paragraph (1) in-
4 volved causing or threatening to cause physical injury
5 to a person under 18 years of age, in order to obstruct
6 the administration of justice, an additional penalty
7 increase above the sentence otherwise applicable in
8 Part J of Chapter 2 of the Guidelines Manual.

9 **SEC. 10. ENHANCED PENALTIES FOR POSSESSION OF**
10 **CHILD PORNOGRAPHY.**

11 (a) *CERTAIN ACTIVITIES RELATING TO MATERIAL IN-*
12 *VOLVING THE SEXUAL EXPLOITATION OF MINORS.*—Section
13 2252(b)(2) of title 18, United States Code, is amended by
14 inserting after “but if” the following: “any visual depiction
15 involved in the offense involved a prepubescent minor or
16 a minor who had not attained 12 years of age, such person
17 shall be fined under this title and imprisoned for not more
18 than 20 years, or if”.

19 (b) *CERTAIN ACTIVITIES RELATING TO MATERIAL*
20 *CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.*—
21 Section 2252A(b)(2) of title 18, United States Code, is
22 amended by inserting after “but, if” the following: “any
23 image of child pornography involved in the offense involved
24 a prepubescent minor or a minor who had not attained 12

1 *years of age, such person shall be fined under this title and*
2 *imprisoned for not more than 20 years, or if’.*

3 **SEC. 11. ADMINISTRATIVE SUBPOENAS.**

4 (a) *IN GENERAL.*—Section 3486(a)(1) of title 18,
5 *United States Code, is amended—*

6 (1) *in subparagraph (A)—*

7 (A) *in clause (i), by striking “or” at the*
8 *end;*

9 (B) *by redesignating clause (ii) as clause*
10 *(iii); and*

11 (C) *by inserting after clause (i) the fol-*
12 *lowing:*

13 “(i) *an unregistered sex offender conducted by*
14 *the United States Marshals Service, the Director of*
15 *the United States Marshals Service; or”;* and

16 (2) *in subparagraph (D)—*

17 (A) *by striking “paragraph, the term” and*
18 *inserting the following: “paragraph—*

19 *“(i) the term”;*

20 (B) *by striking the period at the end and*
21 *inserting “; and”;* and

22 (C) *by adding at the end the following:*

23 “(ii) *the term ‘sex offender’ means an individual*
24 *required to register under the Sex Offender Registra-*
25 *tion and Notification Act (42 U.S.C. 16901 et seq.).”.*

1 (b) *TECHNICAL AND CONFORMING AMENDMENTS.*—
2 *Section 3486(a) of title 18, United States Code, is amend-*
3 *ed—*

4 (1) *in paragraph (6)(A), by striking “United*
5 *State” and inserting “United States”;*

6 (2) *in paragraph (9), by striking “(1)(A)(ii)”*
7 *and inserting “(1)(A)(iii)”;* and

8 (3) *in paragraph (10), by striking “paragraph*
9 *(1)(A)(ii)” and inserting “paragraph (1)(A)(iii)”.*

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112TH CONGRESS
1ST Session

H. R. 1981

[Report No. 112-281, Part I]

A BILL

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DECEMBER 16, 2011

The Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed