

112TH CONGRESS
1ST SESSION

S. 1308

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

IN THE SENATE OF THE UNITED STATES

JUNE 30, 2011

Mr. HATCH (for himself, Ms. KLOBUCHAR, and Mr. RUBIO) introduced the
following bill; which was read twice and referred to the Committee on the
Judiciary

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:

1 **“§ 1960A. Financial facilitation of access to child por-**
 2 **nography**

3 “(a) OFFENSE.—Whoever knowingly conducts, or at-
 4 tempts or conspires to conduct, a financial transaction (as
 5 defined in section 1956(c)) in or affecting interstate or
 6 foreign commerce, knowing that such transaction will fa-
 7 cilitate access to, or the possession of, child pornography
 8 (as defined in section 2256) shall be fined under this title
 9 or imprisoned not more than 20 years, or both.

10 “(b) APPLICABILITY OF SECTION.—This section shall
 11 not apply to a financial transaction conducted by a person
 12 in cooperation with, or with the consent of, any Federal,
 13 State, or local law enforcement agency.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
 15 at the beginning of chapter 95 of title 18, United States
 16 Code, is amended by adding at the end the following new
 17 item:

“1960A. Financial facilitation of access to child pornography.”.

18 **SEC. 3. MONEY LAUNDERING PREDICATE.**

19 Section 1956(c)(7)(D) of title 18, United States
 20 Code, is amended—

21 (1) by inserting “1466A (relating to obscene
 22 visual representation of the abuse of children),” be-
 23 fore “section 1708”;

1 (2) by inserting “1960A (relating to financial
2 facilitation of access to child pornography),” before
3 “section 2113”; and

4 (3) by inserting “2260A (relating to increased
5 penalties for registered sex offenders),” before “sec-
6 tion 2280”.

7 **SEC. 4. RETENTION OF CERTAIN RECORDS BY ELECTRONIC**
8 **COMMUNICATION SERVICE PROVIDERS.**

9 (a) **IN GENERAL.**—Section 2703 of title 18, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

12 “(h) **RETENTION OF CERTAIN RECORDS.**—A pro-
13 vider of an electronic communication service or remote
14 computing service shall retain for a period of at least 18
15 months a log of the temporarily assigned network address-
16 es that the service provider assigns to each subscriber ac-
17 count, unless that address is transmitted by radio commu-
18 nication (as defined in section 3 of the Communications
19 Act of 1934).”.

20 (b) **SENSE OF CONGRESS.**—It is the sense of Con-
21 gress that records retained pursuant to section 2703(h)
22 of title 18, United States Code, should be stored securely
23 to protect customer privacy and prevent against breaches
24 of the records.

1 **SEC. 5. NO CAUSE OF ACTION AGAINST A PROVIDER DIS-**
 2 **CLOSING INFORMATION UNDER THIS CHAP-**
 3 **TER.**

4 Section 2703(e) of title 18, United States Code, is
 5 amended by inserting “retaining records or” after “other
 6 specified persons for”.

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

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

11 **SEC. 7. SUBPOENA AUTHORITY.**

12 Section 566(e)(1) of title 28, United States Code, is
 13 amended—

14 (1) in subparagraph (A), by striking “and” at
 15 the end;

16 (2) in subparagraph (B), by striking the period
 17 at the end and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(C) issue administrative subpoenas in accord-
 20 ance with section 3486 of title 18, solely for the pur-
 21 pose of investigating unregistered sex offenders (as
 22 defined in such section 3486).”.

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

24 Section 1514 of title 18, United States Code, is
 25 amended—

26 (1) in subsection (b)—

1 (A) in paragraph (1)—

2 (i) by inserting “or its own motion,”
3 after “attorney for the Government,”; and

4 (ii) by inserting “or investigation”
5 after “Federal criminal case” each place it
6 appears;

7 (B) by redesignating paragraphs (2), (3),
8 and (4) as paragraphs (3), (4), and (5), respec-
9 tively;

10 (C) by inserting after paragraph (1) the
11 following:

12 “(2) In the case of a minor witness or victim, the
13 court shall issue a protective order prohibiting harassment
14 or intimidation of the minor victim or witness if the court
15 finds evidence that the conduct at issue is reasonably like-
16 ly to adversely affect the willingness of the minor witness
17 or victim to testify or otherwise participate in the Federal
18 criminal case or investigation. Any hearing regarding a
19 protective order under this paragraph shall be conducted
20 in accordance with paragraphs (1) and (3), except that
21 the court may issue an ex parte emergency protective
22 order in advance of a hearing if exigent circumstances are
23 present. If such an ex parte order is applied for or issued,
24 the court shall hold a hearing not later than 14 days after
25 the date such order was applied for or is issued.”;

1 (D) in paragraph (4), as so redesignated,
2 by striking “(and not by reference to the com-
3 plaint or other document)”;

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

12 (2) by striking subsection (c) and inserting the
13 following:

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

18 “(d)(1) As used in this section—

19 “(A) the term ‘course of conduct’ means a se-
20 ries of acts over a period of time, however short, in-
21 dicating a continuity of purpose;

22 “(B) the term ‘harassment’ means a serious act
23 or course of conduct directed at a specific person
24 that—

1 “(i) causes substantial emotional distress
2 in such person; and

3 “(ii) serves no legitimate purpose;

4 “(C) the term ‘immediate family member’ has
5 the meaning given that term in section 115 and in-
6 cludes grandchildren;

7 “(D) the term ‘intimidation’ means a serious
8 act or course of conduct directed at a specific person
9 that—

10 “(i) causes fear or apprehension in such
11 person; and

12 “(ii) serves no legitimate purpose;

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

15 “(F) the term ‘serious act’ means a single act
16 of threatening, retaliatory, harassing, or violent con-
17 duct that is reasonably likely to influence the will-
18 ingness of a victim or witness to testify or partici-
19 pate in a Federal criminal case or investigation; and

20 “(G) the term ‘specific person’ means a victim
21 or witness in a Federal criminal case or investiga-
22 tion, and includes an immediate family member of
23 such a victim or witness.

24 “(2) For purposes of subparagraphs (B)(ii) and
25 (D)(ii) of paragraph (1), a court shall presume, subject

1 to rebuttal by the person, that the distribution or publica-
2 tion using the Internet of a photograph of, or restricted
3 personal information regarding, a specific person serves
4 no legitimate purpose, unless that use is authorized by
5 that specific person, is for news reporting purposes, is de-
6 signed to locate that specific person (who has been re-
7 ported to law enforcement as a missing person), or is part
8 of a government-authorized effort to locate a fugitive or
9 person of interest in a criminal, antiterrorism, or national
10 security investigation.”.

11 **SEC. 9. SENTENCING GUIDELINES.**

12 Pursuant to its authority under section 994 of title
13 28, United States Code, and in accordance with this sec-
14 tion, the United States Sentencing Commission shall re-
15 view and amend the Federal sentencing guidelines and
16 policy statements to ensure—

17 (1) that the guidelines provide an additional
18 penalty increase of up to 8 offense levels, if appro-
19 priate, above the sentence otherwise applicable in
20 Part J of the Guidelines Manual if the defendant
21 was convicted of a violation of section 1591 of title
22 18, United States Code, or chapters 109A, 109B,
23 110 or 117 of title 18, United States Code; and

24 (2) if the offense described in paragraph (1) in-
25 volved causing or threatening to cause physical in-

1 jury to a person under 18 years of age, in order to
 2 obstruct the administration of justice, an additional
 3 penalty increase of up to 12 levels, if appropriate,
 4 above the sentence otherwise applicable in Part J of
 5 the Guidelines Manual.

6 **SEC. 10. ENHANCED PENALTIES FOR POSSESSION OF**
 7 **CHILD PORNOGRAPHY.**

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

16 (b) CERTAIN ACTIVITIES RELATING TO MATERIAL
 17 CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.—
 18 Section 2252A(b)(2) of title 18, United States Code, is
 19 amended by inserting after “but, if” the following: “any
 20 image of child pornography involved in the offense in-
 21 volved a prepubescent minor or a minor who had not at-
 22 tained 12 years of age, such person shall be fined under
 23 this title and imprisoned for not more than 20 years, or
 24 if”.

1 **SEC. 11. ADMINISTRATIVE SUBPOENAS.**

2 (a) IN GENERAL.—Section 3486(a)(1) of title 18,
3 United States Code, is amended—

4 (1) in subparagraph (A)—

5 (A) in clause (i), by striking “or” at the
6 end;

7 (B) by redesignating clause (ii) as clause
8 (iii); and

9 (C) by inserting after clause (i) the fol-
10 lowing:

11 “(ii) an unregistered sex offender conducted by
12 the United States Marshals Service, the Director of
13 the United States Marshals Service; or”; and

14 (2) in subparagraph (D)—

15 (A) by striking “paragraph, the term” and
16 inserting the following: “paragraph—

17 “(i) the term”;

18 (B) by striking the period at the end and
19 inserting “; and”; and

20 (C) by adding at the end the following:

21 “(ii) the term ‘sex offender’ means an indi-
22 vidual required to register under the Sex Offender
23 Registration and Notification Act (42 U.S.C. 16901
24 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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