



Senate Amendment to H.R. 4120 - Effective Child Pornography Prosecution Act of 2007

FLOOR SITUATION

The Senate Amendment to H.R. 4120 is being considered on the House floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Representative Nancy Boyda (D-KS) on November 8, 2007. The bill was referred to the House Committee on Judiciary.

H.R. 4120 was originally passed by the House on November 14, 2007, by a vote of 407 to 0. The Senate passed H.R. 4120 with an amendment on September 23, 2008, by unanimous consent.

The Senate Amendment to H.R. 4120 is expected to be considered on the House floor on September 25, 2008.

SUMMARY

TITLE I – Effective Child Pornography Prosecution Act

H.R. 4120 changes the current law (described above) to include “using any means or facility of interstate or foreign commerce or” in order to avoid a court from ruling that “in commerce” requires the actual movement between states.

TITLE II – Enhancing the Effective Prosecution of Child Pornography Act

**Note: Title II was originally passed by the House as a stand alone bill, H.R. 4136, on November 15, 2007, by a vote of 416-0, and was added by the Senate as an amendment to this bill.*

Under current money laundering statutes, violators are those that knowingly conduct or attempt to conduct a financial transaction which involves the proceeds of “specified unlawful activities.” These activities range in scope from the destruction of aircraft to smuggling goods into the United States. HR 4136 adds to that list child pornography when it involves minors and the production of pornography for importation into the United States.

**Note: A complete list of the “specified unlawful activities” can be found at 18 USC 1956(a)(7)(d).*

The bill adds “knowingly accesses” child pornography on the internet “with intent to view it” to a list of violations that are subject to penalties ranging from fines to imprisonment for 20 years.

**Note: other violations include (which the above language would be added to):*

- *knowingly possesses 1 or more books, magazines, periodicals, films, video tapes, other matter which contain any visual depiction of child pornography;*
- *knowingly possesses 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction of child pornography that has been mailed, or has been shipped or transported in 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; and*
- *knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography.*



BACKGROUND

Current law prohibits (18 USC 2252(a)(2):

knowingly receiving, or distributing, any visual depiction that has been mailed, or has been shipped or transported in 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 in interstate or foreign commerce or through the mails, if—

- the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and
- such visual depiction is of such conduct;

Additionally, the law prohibits (10 USC 2252(a)(4)(b):

knowingly possessing 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 in 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—

- the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and
- such visual depiction is of such conduct

In a recent criminal case a defendant (William Schaefer) was found guilty of both “knowingly receiving” and “knowingly possessing” child pornography that had been “transported in interstate commerce, by any means including by computer” in accordance with the laws referenced above.

However, the 10th U.S. Circuit Court of Appeals reversed the decision on September 5, 2007. The court’s ruling stated (in part): “Mr. Schaefer contends the government failed to offer evidence to show that any single visual image he received or possessed traveled across state lines. Mr. Schaefer seeks a reversal and acquittal on both counts...we hold that the government failed to offer sufficient evidence to establish the requisite jurisdictional nexus of a movement across state lines (i.e., a movement in interstate commerce). Specifically, we conclude that the government’s evidence concerning Mr. Schaefer’s use of the Internet, standing alone, was not sufficient to establish that the child-pornography images at issue moved across state lines... Congress’s use of the ‘in commerce’ language, as opposed to phrasing such as ‘affecting commerce’ or a ‘facility of interstate commerce,’ signals its decision to limit federal jurisdiction and require actual movement between states to satisfy the interstate nexus...we decline to assume that Internet use automatically equates with a movement across state lines. With respect to such interstate movement, the government must introduce sufficient evidence to satisfy its burden of proof.”

COST

At the time of publication, the Congressional Budget Office (CBO) had not yet scored this legislation.

STAFF CONTACT

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