

18 USC 2256: Definitions for chapter

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From Title 18-CRIMES AND CRIMINAL PROCEDURE

PART I-CRIMES

CHAPTER 110-SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

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§2256. Definitions for chapter

For the purposes of this chapter, the term-

- (1) "minor" means any person under the age of eighteen years;
- (2)(A) Except as provided in subparagraph (B), "sexually explicit conduct" means actual or simulated-
 - (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
 - (ii) bestiality;
 - (iii) masturbation;
 - (iv) sadistic or masochistic abuse; or
 - (v) lascivious exhibition of the genitals or pubic area of any person;
- (B) For purposes of subsection 8(B) ¹ of this section, "sexually explicit conduct" means-
 - (i) graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;
 - (ii) graphic or lascivious simulated;
 - (I) bestiality;
 - (II) masturbation; or
 - (III) sadistic or masochistic abuse; or
 - (iii) graphic or simulated lascivious exhibition of the genitals or pubic area of any person;
- (3) "producing" means producing, directing, manufacturing, issuing, publishing, or advertising;
- (4) "organization" means a person other than an individual;
- (5) "visual depiction" includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format;
- (6) "computer" has the meaning given that term in section 1030 of this title;
- (7) "custody or control" includes temporary supervision over or responsibility for a minor whether legally or illegally obtained;
- (8) "child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where-
 - (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
 - (B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
 - (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.
- (9) "identifiable minor"-
 - (A) means a person-
 - (i)(I) who was a minor at the time the visual depiction was created, adapted, or modified; or
 - (II) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and
 - (ii) who is recognizable as an actual person by the person's face, likeness, or other distinguishing

characteristic, such as a unique birthmark or other recognizable feature; and

(B) shall not be construed to require proof of the actual identity of the identifiable minor.

(10) “graphic”, when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted; and

(11) the term “indistinguishable” used with respect to a depiction, means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

(Added Pub. L. 95–225, §2(a), Feb. 6, 1978, 92 Stat. 8, §2253; renumbered §2255 and amended Pub. L. 98–292, §5, May 21, 1984, 98 Stat. 205; renumbered §2256, Pub. L. 99–500, §101(b) [title VII, §703(a)], Oct. 18, 1986, 100 Stat. 1783–39, 1783–74, and Pub. L. 99–591, §101(b) [title VII, §703(a)], Oct. 30, 1986, 100 Stat. 3341–39, 3341–74; Pub. L. 99–628, §4, Nov. 7, 1986, 100 Stat. 3510; Pub. L. 100–690, title VII, §§7511(c), 7512(b), Nov. 18, 1988, 102 Stat. 4485, 4486; Pub. L. 104–208, div. A, title I, §101(a) [title I, §121[2]], Sept. 30, 1996, 110 Stat. 3009, 3009–26, 3009–27; Pub. L. 108–21, title V, §502(a)–(c), Apr. 30, 2003, 117 Stat. 678, 679; Pub. L. 110–401, title III, §302, Oct. 13, 2008, 122 Stat. 4242.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2008–Par. (5). Pub. L. 110–401 struck out “and” before “data stored” and inserted “, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format” before semicolon at end.

2003–Par. (2). Pub. L. 108–21, §502(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(2) ‘sexually explicit conduct’ means actual or simulated–

“(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

“(B) bestiality;

“(C) masturbation;

“(D) sadistic or masochistic abuse; or

“(E) lascivious exhibition of the genitals or pubic area of any person;”.

Par. (8)(B). Pub. L. 108–21, §502(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;”.

Par. (8)(C). Pub. L. 108–21, §502(a)(2), substituted a period for “; or” at end.

Par. (8)(D). Pub. L. 108–21, §502(a)(3), struck out subpar. (D) which read as follows: “such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct; and”.

Pars. (10), (11). Pub. L. 108–21, §502(c), added pars. (10) and (11).

1996–Par. (5). Pub. L. 104–208, §101(a) [title I, §121[2(1)]], inserted “, and data stored on computer disk or by electronic means which is capable of conversion into a visual image” before semicolon at end.

Pars. (8), (9). Pub. L. 104–208, §101(a) [title I, §121[2(2)–(4)]], added pars. (8) and (9).

1988–Par. (6). Pub. L. 100–690, §7511(c), added par. (6).

Par. (7). Pub. L. 100–690, §7512(b), added par. (7).

1986–Pub. L. 99–500 and Pub. L. 99–591 renumbered section 2255 of this title as this section.

Par. (5). Pub. L. 99–628, which directed that par. (5) be added to section 2255 of this title, was executed by adding par. (5) to section 2256 of this title to reflect the probable intent of Congress and the renumbering of section 2255 as 2256 by Pub. L. 99–500 and Pub. L. 99–591.

1984–Pub. L. 98–292, §5(b), renumbered section 2253 of this title as this section.

Par. (1). Pub. L. 98–292, §5(a)(1), substituted “eighteen” for “sixteen”.

Par. (2)(D). Pub. L. 98–292, §5(a)(2), (3), substituted “sadistic or masochistic” for “sado-masochistic” and struck out “(for the purpose of sexual stimulation)” after “abuse”.

Par. (2)(E). Pub. L. 98–292, §5(a)(4), substituted “lascivious” for “lewd”.

Par. (3). Pub. L. 98–292, §5(a)(5), struck out “, for pecuniary profit” after “advertising”.

Par. (4). Pub. L. 98–292, §5(a)(6), substituted “ ‘organization’ means a person other than an individual” for “ ‘visual or print medium’ means any film, photograph, negative, slide, book, magazine, or other visual or print medium”.

CONFIRMATION OF INTENT OF CONGRESS IN ENACTING SECTIONS 2252 AND 2256 OF THIS TITLE

For provisions declaring and confirming intent of Congress in enacting this section, see section 160003(a) of Pub. L. 103–322, set out as a note under section 2252 of this title.

¹ So in original. Probably should be “(8)(B)”.