

AMENDMENT TO RULES COMMITTEE PRINT 118-

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OFFERED BY MS. DEAN OF PENNSYLVANIA

At the end of title XVIII, insert the following:

1 **SEC. 18 ___. CERTAIN ACTIVITIES RELATING TO INTIMATE**
2 **VISUAL DEPICTIONS.**

3 (a) IN GENERAL.—Chapter 88 of title 18, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 1802. Certain activities relating to intimate visual**
7 **depictions**

8 “(a) DEFINITIONS.—In this section:

9 “(1) COMMUNICATIONS SERVICE.—The term
10 ‘communications service’ means—

11 “(A) a service provided by a person that is
12 a common carrier, as that term is defined in
13 section 3 of the Communications Act of 1934
14 (47 U.S.C. 153), insofar as the person is acting
15 as a common carrier;

16 “(B) an electronic communication service,
17 as that term is defined in section 2510;

1 “(C) an information service, as that term
2 is defined in section 3 of the Communications
3 Act of 1934 (47 U.S.C. 153); and

4 “(D) an interactive computer service, as
5 that term is defined in section 230(f) of the
6 Communications Act of 1934 (47 U.S.C.
7 230(f)).

8 “(2) INFORMATION CONTENT PROVIDER.—The
9 term ‘information content provider’ has the meaning
10 given that term in section 230(f) of the Communica-
11 tions Act of 1934 (47 U.S.C. 230(f)).

12 “(3) INTIMATE VISUAL DEPICTION.—The term
13 ‘intimate visual depiction’ means any visual depic-
14 tion (as that term is defined in section 2256(5)) of
15 an individual who is recognizable by an individual
16 other than the depicted individual from the intimate
17 image who has attained 18 years of age at the time
18 the intimate visual depiction is created and—

19 “(A) who is depicted engaging in sexually
20 explicit conduct; or

21 “(B) whose genitals, anus, pubic area, or
22 female nipple are unclothed and visible.

23 “(4) VISUAL DEPICTION OF A NUDE MINOR.—
24 The term ‘visual depiction of a nude minor’ means
25 any visual depiction (as that term is defined in sec-

1 tion 2256(5)) of an individual who is recognizable by
2 an individual other than the depicted individual from
3 the intimate image itself or information or text dis-
4 played in connection with the intimate image who
5 was under 18 years of age at the time the visual de-
6 piction was created in which the actual anus, geni-
7 tals, or pubic area, or post-pubescent female nipple,
8 of the minor are unclothed, visible, and displayed in
9 a manner that does not constitute sexually explicit
10 conduct.

11 “(5) SEXUALLY EXPLICIT CONDUCT.—The term
12 ‘sexually explicit conduct’ has the meaning given
13 that term in section 2256(2)(A).

14 “(b) OFFENSES.—

15 “(1) IN GENERAL.—Except as provided in sub-
16 section (d), it shall be unlawful to knowingly mail,
17 or to knowingly distribute using any means or facil-
18 ity of interstate or foreign commerce or affecting
19 interstate or foreign commerce, an intimate visual
20 depiction of an individual—

21 “(A) with knowledge of the lack of consent
22 of the individual to the distribution;

23 “(B) where what is depicted was not volun-
24 tarily exposed by the individual in a public or
25 commercial setting; and

1 “(C) where what is depicted is not a mat-
2 ter of public concern.

3 For purposes of this paragraph, the fact that the
4 subject of the depiction consented to the creation of
5 the depiction shall not establish that that person
6 consented to its distribution.

7 “(2) MINORS.—Except as provided in sub-
8 section (d), it shall be unlawful to knowingly mail,
9 or to knowingly distribute using any means or facil-
10 ity of interstate or foreign commerce or affecting
11 interstate or foreign commerce, a visual depiction of
12 a nude minor with intent to abuse, humiliate, har-
13 ass, or degrade the minor, or to arouse or gratify
14 the sexual desire of any person.

15 “(c) PENALTY.—

16 “(1) IN GENERAL.—Any person who violates
17 subsection (b), or attempts or conspires to do so,
18 shall be fined under this title, imprisoned not more
19 than 5 years, or both.

20 “(2) FORFEITURE.—

21 “(A) IN GENERAL.—The court, in impos-
22 ing a sentence on any person convicted of a vio-
23 lation involving intimate visual depictions or
24 visual depictions of a nude minor under this
25 section, or convicted of a conspiracy of a viola-

1 tion involving intimate visual depictions or vis-
2 ual depictions of a nude minor under this sec-
3 tion, shall order, in addition to any other sen-
4 tence imposed and irrespective of any provision
5 of State law, that such person forfeit to the
6 United States—

7 “(i) any material distributed in viola-
8 tion of this section;

9 “(ii) such person’s interest in prop-
10 erty, real or personal, constituting or de-
11 rived from any gross proceeds of such vio-
12 lation, or any property traceable to such
13 property, obtained or retained directly or
14 indirectly as a result of such violation; and

15 “(iii) any property, real or personal,
16 used or intended to be used to commit or
17 to facilitate the commission of such of-
18 fense.

19 “(B) PROCEDURES.—Section 413 of the
20 Controlled Substances Act (21 U.S.C. 853),
21 with the exception of subsections (a) and (d),
22 applies to the criminal forfeiture of property
23 pursuant to subparagraph (A).

24 “(3) RESTITUTION.—Restitution shall be avail-
25 able as provided in section 2264 of this title.

1 “(d) EXCEPTIONS.—

2 “(1) LAW ENFORCEMENT, LAWFUL REPORTING,
3 AND OTHER LEGAL PROCEEDINGS.—This section—

4 “(A) does not prohibit any lawfully author-
5 ized investigative, protective, or intelligence ac-
6 tivity of a law enforcement agency of the
7 United States, a State, or a political subdivision
8 of a State, or of an intelligence agency of the
9 United States;

10 “(B) shall not apply in the case of an indi-
11 vidual acting in good faith to report unlawful or
12 unsolicited activity or in pursuance of a legal or
13 professional or other lawful obligation; and

14 “(C) shall not apply in the case of a docu-
15 ment production or filing associated with a legal
16 proceeding.

17 “(2) SERVICE PROVIDERS.—This section shall
18 not apply to any provider of a communications serv-
19 ice with regard to content provided by another infor-
20 mation content provider unless the provider of the
21 communications service intentionally solicits, or
22 knowingly and predominantly distributes, such con-
23 tent.

1 “(e) THREATS.—Any person who threatens to com-
2 mit an offense under subsection (b) shall be punished as
3 provided in subsection (c).

4 “(f) EXTRATERRITORIALITY.—There is
5 extraterritorial Federal jurisdiction over an offense under
6 this section if the defendant or the depicted individual is
7 a citizen or permanent resident of the United States.

8 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
9 tion shall be construed to limit the application of any other
10 relevant law, including section 2252 of this title.”.

11 (b) CLERICAL AMENDMENT.—The table of sections
12 for chapter 88 of title 18, United States Code, is amended
13 by inserting after the item relating to section 1801 the
14 following:

“1802. Certain activities relating to intimate visual depictions.”.

15 (c) CONFORMING AMENDMENT.—Section 2264(a) of
16 title 18, United States Code, is amended by inserting “,
17 or under section 1802 of this title” before the period.

