Amendment to Rules Committee Print 118–10

Offered by Ms. Dean of Pennsylvania

At the end of title XVIII, insert the following:

SEC. 18. CERTAIN ACTIVITIES RELATING TO INTIMATE VISUAL DEPICTIONS.

(a) In General.—Chapter 88 of title 18, United States Code, is amended by adding at the end the following:

“§1802. Certain activities relating to intimate visual depictions

“(a) Definitions.—In this section:

“(1) Communications service.—The term ‘communications service’ means—

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

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

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

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

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

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

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

“(4) VISUAL DEPICTION OF A NUDE MINOR.—The term ‘visual depiction of a nude minor’ means any visual depiction (as that term is defined in sec-
tion 2256(5)) of an individual who is recognizable by
an individual other than the depicted individual from
the intimate image itself or information or text dis-
played in connection with the intimate image who
was under 18 years of age at the time the visual de-
piction was created in which the actual anus, geni-
tals, or pubic area, or post-pubescent female nipple,
of the minor are unclothed, visible, and displayed in
a manner that does not constitute sexually explicit
conduct.

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

“(b) OFFENSES.—

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

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

“(B) where what is depicted was not volun-
tarily exposed by the individual in a public or
commercial setting; and
“(C) where what is depicted is not a matter of public concern.

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

“(2) MINORS.—Except as provided in subsection (d), it shall be unlawful to knowingly mail, or to knowingly distribute using any means or facility of interstate or foreign commerce or affecting interstate or foreign commerce, a visual depiction of a nude minor with intent to abuse, humiliate, harass, or degrade the minor, or to arouse or gratify the sexual desire of any person.

“(c) PENALTY.—

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

“(2) FORFEITURE.—

“(A) IN GENERAL.—The court, in imposing a sentence on any person convicted of a violation involving intimate visual depictions or visual depictions of a nude minor under this section, or convicted of a conspiracy of a viola-
tion involving intimate visual depictions or visual depictions of a nude minor under this section, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person forfeit to the United States—

“(i) any material distributed in violation of this section;

“(ii) such person’s interest in property, real or personal, constituting or derived from any gross proceeds of such violation, or any property traceable to such property, obtained or retained directly or indirectly as a result of such violation; and

“(iii) any property, real or personal, used or intended to be used to commit or to facilitate the commission of such offense.

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

“(3) RESTITUTION.—Restitution shall be available as provided in section 2264 of this title.
“(d) Exceptions.—

“(1) Law enforcement, lawful reporting, and other legal proceedings.—This section—

“(A) does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States;

“(B) shall not apply in the case of an individual acting in good faith to report unlawful or unsolicited activity or in pursuance of a legal or professional or other lawful obligation; and

“(C) shall not apply in the case of a document production or filing associated with a legal proceeding.

“(2) Service providers.—This section shall not apply to any provider of a communications service with regard to content provided by another information content provider unless the provider of the communications service intentionally solicits, or knowingly and predominantly distributes, such content.
“(e) THREATS.—Any person who threatens to com-
mit an offense under subsection (b) shall be punished as
provided in subsection (c).
“(f) EXTRATERRITORIALITY.—There is
extraterritorial Federal jurisdiction over an offense under
this section if the defendant or the depicted individual is
a citizen or permanent resident of the United States.
“(g) RULE OF CONSTRUCTION.—Nothing in this sec-
tion shall be construed to limit the application of any other
relevant law, including section 2252 of this title.”.

(b) CLERICAL AMENDMENT.—The table of sections
for chapter 88 of title 18, United States Code, is amended
by inserting after the item relating to section 1801 the
following:
“1802. Certain activities relating to intimate visual depictions.”.

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