

**AMENDMENT TO RULES COMMITTEE PRINT 118-**

**36**

**OFFERED BY MS. DEAN OF PENNSYLVANIA**

At the end of subtitle C of title XVII, insert the following new section:

1 **SEC. 17\_\_\_ . 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 following:  
5

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—

16           “(A) who has attained 18 years of age at  
17 the time the intimate visual depiction is cre-  
18 ated;

19           “(B) who is recognizable to a third party  
20 from the intimate image itself or information or  
21 text displayed in connection with the intimate  
22 image itself or information or text displayed in  
23 connection with the intimate image; and

24           “(C)(i) who is depicted engaging in sexu-  
25 ally explicit conduct; or

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

3           “(4) MINOR.—The term ‘minor’ has the mean-  
4           ing given that term in section 2256.

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

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

21          “(b) OFFENSES.—

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

1 interstate or foreign commerce, an intimate visual  
2 depiction of an individual—

3 “(A) that was obtained or created under  
4 circumstances in which the actor knew or rea-  
5 sonably should have known the individual de-  
6 picted had a reasonable expectation of privacy;

7 “(B) where what is depicted was not volun-  
8 tarily exposed by the individual in a public or  
9 commercial setting;

10 “(C) where what is depicted is not a mat-  
11 ter of public concern; and

12 “(D) if the distribution—

13 “(i) is intended to cause harm; or

14 “(ii) causes harm, including psycho-  
15 logical, financial, or reputational harm, to  
16 the individual depicted.

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

21 “(2) INVOLVING MINORS.—Except as provided  
22 in subsection (d), it shall be unlawful to knowingly  
23 mail, or to knowingly distribute using any means or  
24 facility of interstate or foreign commerce or affect-  
25 ing interstate or foreign commerce, a visual depic-

1       tion of a nude minor with intent to abuse, humiliate,  
2       harass, or degrade the minor, or to arouse or gratify  
3       the sexual desire of any person.

4       “(c) PENALTY.—

5             “(1) IN GENERAL.—

6                     “(A) VISUAL DEPICTION OF A NUDE  
7                     MINOR.—Any person who violates subsection  
8                     (b)(2) shall be fined under this title, imprisoned  
9                     not more than 3 years, or both.

10                    “(B) INTIMATE VISUAL DEPICTION.—Any  
11                    person who violates subsection (b)(1) shall be  
12                    fined under this title, imprisoned for not more  
13                    than 2 years, or both.

14             “(2) FORFEITURE.—

15                    “(A) IN GENERAL.—The court, in impos-  
16                    ing a sentence on any person convicted of a vio-  
17                    lation involving intimate visual depictions or  
18                    visual depictions of a nude minor under this  
19                    section, or convicted of a conspiracy of a viola-  
20                    tion involving intimate visual depictions or vis-  
21                    ual depictions of a nude minor under this sec-  
22                    tion, shall order, in addition to any other sen-  
23                    tence imposed and irrespective of any provision  
24                    of State law, that such person forfeit to the  
25                    United States—

1           “(i) any material distributed in viola-  
2           tion of this section;

3           “(ii) such person’s interest in prop-  
4           erty, real or personal, constituting or de-  
5           rived from any gross proceeds of such vio-  
6           lation, or any property traceable to such  
7           property, obtained or retained directly or  
8           indirectly as a result of such violation; and

9           “(iii) any personal property of the  
10          person used, or intended to be used, in any  
11          manner or part, to commit or to facilitate  
12          the commission of such violation.

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

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

20          “(d) EXCEPTIONS.—

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

23                         “(A) does not prohibit any lawfully author-  
24                         ized investigative, protective, or intelligence ac-  
25                         tivity of a law enforcement agency of the

1 United States, a State, or a political subdivision  
2 of a State, or of an intelligence agency of the  
3 United States; and

4 “(B) shall not apply to distributions that  
5 are made reasonably and in good faith—

6 “(i) to report unlawful or unsolicited  
7 activity or in pursuance of a legal or pro-  
8 fessional or other lawful obligation;

9 “(ii) to seek support or help with re-  
10 spect to the receipt of an unsolicited inti-  
11 mate visual depiction;

12 “(iii) relating to an individual who  
13 possesses or distributes a visual depiction  
14 of himself or herself engaged in nudity or  
15 sexually explicit conduct;

16 “(iv) to assist the depicted individual;

17 “(v) for legitimate medical, scientific,  
18 or educational purposes; or

19 “(vi) as part of a document produc-  
20 tion or filing associated with a legal pro-  
21 ceeding.

22 “(2) SERVICE PROVIDERS.—This section shall  
23 not apply to any provider of a communications serv-  
24 ice with regard to content provided by another infor-  
25 mation content provider unless the provider of the

1       communications service intentionally solicits, or  
2       knowingly and predominantly distributes, such con-  
3       tent.

4       “(e) THREATS.—Any person who intentionally  
5 threatens to commit an offense under subsection (b) for  
6 the purpose of intimidation, coercion, extortion, or to cre-  
7 ate mental distress shall be punished as provided in sub-  
8 section (c).

9       “(f) EXTRATERRITORIALITY.—There is  
10 extraterritorial Federal jurisdiction over an offense under  
11 this section if the defendant or the depicted individual is  
12 a citizen or permanent resident of the United States.

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

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

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

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

