MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 11:00 a. m. ~~p. m.~~, on February 8, 19 78.

All members were present except: Senators Gaar, Gaines, Hein and Hess

The next meeting of the Committee will be held at 11:00 a. m. ~~p. m.~~, on February 9, 19 78.

~~These minutes of the meeting held on ... were considered, corrected and approved.~~

Chairman

The conferees appearing before the Committee were:

Ann Hebberger - League of Women Voters of Kansas

Staff present:
Art Griggs - Revisor of Statutes
Paul Purcell - Legislative Research Department
Jerry Stephens - Legislative Research Department

Senate Bill 212 - Age of juveniles subject to the provisions of the Kansas Juvenile Code.
Senate Bill 553 - Juvenile code revision.
Senate Bill 761 - Juvenile code, juveniles committing certain crimes may be prosecuted like adults.
Senate Bill 825 - Juvenile code revision.

Ann Hebberger of the League of Women Voters of Kansas presented a statement concerning the four bills. A copy of her statement is attached hereto. Discussion with the committee followed.

Senate Bill 550 - Mentally ill persons.
Mr. Griggs distributed copies of the bill with the wording that he had prepared to carry out the directions of the committee yesterday. By consensus, the wording was approved.

Senate Bill 474 - Relating to promoting obscenity.
Copies of Mr. Hiebert's letter were distributed to the committee. A copy of that letter is attached hereto.

The chairman announced committee should plan on a working session Friday afternoon.

Senate Bill 579 - Civil action to protect adults and children from abuse by persons residing with them.
Senator Parrish requested that the committee defer action on this bill pending preparation of proposed amendments.

continued -

CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary February 8, 19 78.

Senate Bill 593 - Wrongful making of improvements by entities having power of eminent domain.
Following committee discussion, Senator Steineger moved to chage "shall" to "may" in line 31 and the other appropriate places; Senator Parrish seconded the motion. Senator Everett made a substitute motion to report the bill adversely. Senator Burke seconded the substitute motion. The substitute motion failed. The original motion carried. Senator Allegrucci moved to further amend the bill in line 35 to change "may" to "shall"; Senator Steineger seconded the motion, and the motion carried. Senator Allegrucci moved to report the bill favorably as amended; Senator Steineger seconded the motion, and the motion carried.

Senate Bill 601 - Unlawful sale of a child.
Following committee discussion, Senator Burke moved to strike "female" in line 22, and to insert in lieu thereof "parent or guardian"; Senator Hess seconded the motion. The motion carried. Following further committee discussion, Senator Burke moved that the bill be amended to include payments to lawyers and doctors; Senator Allegrucci seconded the motion. Senator Steineger made a substitute motion to strike lines 20 to 26; Senator Mulich seconded the motion. The substitute motion failed. Following further committee discussion, Senator Burke, with the consent of the second, withdrew the original motion. Staff was requested to prepare proposed amendments and bring them back to the committee.

Meeting adjourned.

These minutes were read and approved by the committee on 2-21-78.

2-8-78

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Barbara Weidmyer	3115 Shadowlan, Topeka	Topeka Jr. League
Joan Lee Gale	1315 Lakeside	Top. Jr League
Linda Neaburg	1415 Collins	Junior League of Topeka
Ann Heldenger	6703 Hadley - O.P.	L.W.V.K.
Cynthia Robinson	PO Box 5314, Top.	Kansas Children's Lobby
dg Stearns	1126 Woodlawn	CACK
James A Hays	Statehouse, Topeka	Division of the Budget
D Sabol	" "	SRS
Matt Ruppe	Statehouse Topeka	
Bill Henry	"	Governor's Office
Charles S. Hamm	State Office Bldg.	S. R. S.

2-8-78

league of women voters of kansas

STATEMENT TO THE SENATE JUDICIARY COMMITTEE
CONCERNING SB 212, SB 553, SB 761 AND SB 825

February 8, 1978

Mr. Chairman and Members of the Committee:

I am Ann Hebberger, speaking for the League of Women Voters of Kansas.

Most legislators would agree, we think, that there are many problems in the Kansas juvenile justice system, the Juvenile Code being just one of them. We are positive that there is a real need to move away from the angry rhetoric that has too often surrounded this whole issue, and move toward a factual analysis so that some of the issues can be resolved. The League has asked and will continue to do so, for an in-depth Legislative study concerning public and private facilities and programs for the care, treatment or detention of juveniles in Kansas. HCR 5061 happens to have almost the same wording, and we whole-heartedly support it.

This year, because we have a choice of juvenile codes, the League opposes SB 553 and supports SB 825 with some exceptions. Our reason for support of SB 825 is that we have favored removal of status offenders from the Code for the last few years. There are alternatives now that were not in existence before, and more are being suggested and implemented all the time. Examples are:

Truants: We are aware that most juveniles who don't attend school have learning disabilities or other real problems. With the full funding of special education, some alternative schools, work-study programs, elementary guidance counselors being seriously discussed, and the Governor's recommendation for the expansion of vocational education in unified school districts, we think that if the family and the schools can't solve the problem, the courts can't either.

Waywards: A few children run for a great adventure, but we know now that there are many reasons such as physical, mental and sexual abuse, neglect or communication breakdown in the home. Besides more money for foster care and group homes, the Governor has recommended that Kansas participate in the Federal Juvenile Justice and Delinquency Act which provides funds and technical assistence for programs dealing with runaways (and truants). The Governor has also recommended programs for family crisis support and some increase in professional child abuse staff. The proposed Community

Corrections Act would also provide for alternative services for juveniles.

We would assume that the way the bill is written, that status offenders are included under the 48 hour detention provision, and that any child can be declared a deprived child, if necessary, by the court. Also included is the child who runs from a court ordered placement by declaring the child miscreant. This leads us to suspect that even though status offenders are removed, the court still has power over them.

Minor traffic offenders should certainly be removed. If juveniles are old enough to be licensed, they are old enough to go through the same process that adults do.

The League does not agree with Section 12(a), but supports Section 12(b) which would allow for automatic expungement of records by a judge. We also would prefer the word "shall" to be changed to "may", on page 14, line 513, giving the judge a mandate to do so. Since juvenile cases are classified as civil matters, not criminal, records can serve no useful purpose once a child has reached the age of majority.

We cannot support Section 13. League members believe strongly in the principle that every child shall be guaranteed equal protection under the law. Without proper legal counsel to protect that right, we think that the Code is considerably weakened. We understand that this is a controversial issue because it costs money. The Legislature and the courts seem to go to great lengths to protect the rights of adults, but for some reason, childrens' rights come off second best. Many parents do care what is best for their children, but provisions should be included to protect all childrens' legal rights, and especially when conflicts of interest arise.

As for the rest of the bill, we think it is the best one produced so far, and really attempts to protect, except in the sections mentioned, more rights of juveniles.

The League of Women Voters of Kansas opposes SB 212 because we think that the waiver statute takes care of the issue for those juveniles who commit serious crimes.

We also oppose SB 761 as we can see no reason to place the burden of proof on a juvenile rather than the prosecutor, to prove that he or she is a fit and proper subject for juvenile treatment. There appears to be nothing close to this procedure in the Penal Code, with the possible exception of a defense of innocence by reason of insanity. Even with that process, expert witnesses are called in to determine the outcome. The bill is no doubt constitutional, but it sounds very unjust to us.

The League urges your support of SB 825 as well as your opposition to SB 212, SB 553 and SB 761.

Thank you for the opportunity to speak before you today.

League of Women Voters
909 Topeka Blvd.
Topeka, KS
354-7478

2-8-78

Overland Park SUN-3/3/78

Options pay off

Options. A term commonly associated with the stock market.

But soon options will correlate with Overland Park's juvenile justice system.

And if the plan proves successful, it could envelop all of Johnson County.

The Mayor's Steering Committee on Juvenile Delinquency is formulating a Community Accountability Program to establish a means of analyzing the "why" behind the actions of the youth labeled as a trouble-maker.

"Youth in Trouble," a booklet reporting ideas shared by doctors, psychologists, educators and juvenile judges, reports: "About six of every ten juveniles in jail — and I mean jail with locks and bars and guards — have committed no criminal acts. They are in trouble with their schools or victims of bad homes or no homes or runaways or emotionally or physically handicapped or victims of health problems no one has bothered to hunt for."

Now Overland Park is starting to hunt for these problems.

A Community Accountability Board, composed of community volunteers, will offer first-offender juveniles a means of becoming accountable to the community instead of being committed to a so-called reformatory where discipline, not reform, is the pattern.

Through a screening process, the Steering Committee plans to interrelate community, schools and court into finding the "why" behind the youth's actions.

The youngster who can't read, can't associate, can't remember, can't sit still, can't pay attention — and the list continues — needs analysis, not an institution.

The volunteer board now will formulate the model program. The program results will take time to analyze — it may be five years before the real impact can be seen. But the importance remains — the committee is acting now to rehabilitate not incarcerate.

Overland Park Mayor Ben Sykes said, "We can't take the whole big ball of wax and get our arms around it . . . break it down, start with small numbers."

Small numbers offer a foundation. And even if the 4,000 delinquents now reported in Johnson County decrease by only 500, the program will have its merits — the options will pay off.

herein as they do in said act.

(14) The term "peace officer" shall mean any sheriff, regularly employed deputy sheriff, state highway patrolman, regularly employed city police officer or a law enforcement officer of any county law enforcement department.

Sec. 2. K.S.A. 59-2905 is hereby amended to read as follows: 59-2905. Any person may be admitted to a treatment facility as a voluntary patient when there are available accommodations and in the judgment of the head of the treatment facility or his or her designee such person is in need of treatment therein. Such person, if ~~eighteen (18)~~ *fourteen (14)* years of age or older, shall make written application for admission. If such person is less than ~~eighteen (18)~~ *fourteen (14)* years of age, then the parent or person *in loco parentis* to such person shall make such written application. In any case, if such person has a guardian, the guardian shall make such application ~~*after obtaining the approval of the court that appointed the guardian*~~. The head of the treatment facility or his or her designee may require a statement of such person's attending physician or a statement of the county health officer of the county in which such person resides that such person is in need of treatment in a treatment facility. *Whenever a minor fourteen (14) years of age or older is admitted as a voluntary patient, the head of the treatment facility shall promptly notify the minor's parent or other person in loco parentis of the admittance of such minor* ~~*and of the right to be heard upon the filing of an objection in the district court of the county where the treatment facility is located. Whenever such an objection is filed, the district court shall hold a hearing thereon within seventy-two (72) hours, excluding Saturdays, Sundays and legal holidays. At the hearing the judge shall determine whether or not the acceptance of the minor as a voluntary patient is in such minor's best interest.*~~

No person shall be admitted as a voluntary patient under the provisions of this act to any treatment facility unless the head of the treatment facility or his or her designee has informed such person or such person's parent, guardian or person *in loco parentis* in writing of the following: (a) The rules and procedures of the treatment facility relating to the discharge of voluntary

2-8-78

eighteen (18)

If such person is fourteen (14) years of age or over, such person may make such written application on his or her own behalf without the consent or written application of such person's parent or any other person.

makes written application on his or her own behalf and

patients; (b) the legal rights of a voluntary patient receiving treatment from a treatment facility; and (c) the types of treatment which are available to the voluntary patient from the treatment facility.

Sec. 3. K.S.A. 59-2907 is hereby amended to read as follows: 59-2907. Except as hereinafter provided, the head of the treatment facility shall discharge any voluntary patient who has requested discharge, in writing, or whose discharge is requested, in writing, by another person, within a reasonable time but not to exceed three (3) days, excluding Sundays and legal holidays after the receipt of such request. If, however, such request is made by another person, such discharge shall be conditioned upon the written consent of the voluntary patient, except that if the voluntary patient be under ~~eighteen (18)~~ *fourteen (14)* years of age, such discharge shall be conditioned upon the consent of such patient's parent~~, guardian~~ or person *in loco parentis*. If, however, such voluntary patient has a guardian, such discharge shall be conditioned only upon the consent of the guardian. *Whenever a minor fourteen (14) years of age or older has requested to be discharged, the head of the treatment facility shall promptly inform the minor's parent or other person in loco parentis of the request.*

No application to determine whether a person is a mentally ill person shall be filed with respect to a voluntary patient unless such patient has requested or consented to his or her discharge or, if the voluntary patient is under ~~eighteen (18)~~ *fourteen (14)* years of age, the discharge has been requested by the parent, guardian or person *in loco parentis* to such patient.

Sec. 4. K.S.A. 1977 Supp. 59-2908 is hereby amended to read as follows: 59-2908. *(a)* Any peace officer who has reasonable belief upon observation, that any person is a mentally ill person and because of such person's illness is likely to do physical injury to himself or herself or others if allowed to remain at liberty may take such person into custody without a warrant. ~~If a peace officer takes such person into custody when the district court of the county of the presence of such person is open for the transaction of business, the peace officer shall forthwith present to such court an application for an order of protective custody pursuant to~~

eighteen (18)

guardian

unless such patient made written application to become a voluntary patient on his or her own behalf

has made written application to become a voluntary patient on his or her own behalf and

eighteen (18)

and did not apply to become a voluntary patient on his or her own behalf

SESSION OF 1978

SUPPLEMENTAL INFORMATION ON
SENATE BILL 550

AS AMENDED BY SENATE COMMITTEE ON
JUDICIARY

Brief of Bill*

S.B. 550 would amend the Act for Obtaining Treatment for a Mentally Ill Person and specifically:

1. Amend the definition of "treatment facility" to include a psychiatric unit of a medical care facility; and amend the definition of "head of treatment facility" to require that any designee of a chief medical officer of a treatment facility be a physician;

2. Require a peace officer in all cases in which the peace officer takes an apparently dangerous, mentally ill person into custody without a warrant, to apply for an order of protective custody as soon as the court is open for the transaction of business;

3. Allow treatment in cases of emergency observation; make additional requirements with regard to the contents of an application for admission and detention for emergency observation and treatment; and relieve from civil and criminal liability any treatment facility or its personnel where in good faith treatment is rendered to any person admitted for emergency observation and treatment;

4. Require that, unless otherwise ordered by the court, the discharge of a person admitted for emergency observation and treatment shall be no later than 48 (instead of 72) hours following the admission date of such person;

5. Make an additional requirement with regard to the contents of an application for an order of protective custody; exclude Saturdays from the period of time (48 hours) by which a court must hold a hearing to determine whether there is a probable cause to believe the allegations of the application for an order of protective custody; allow the county or district attorney to represent the applicant for an order of protective custody only if the applicant is financially unable to retain counsel or is a peace officer; and

6. Require the county or district attorney to represent the applicant for a determination whether a person is a mentally ill person only if the applicant is financially unable to retain counsel or is a peace officer.

The Senate Committee on Judiciary amended proposed changes to the voluntary admission and discharge procedure (K.S.A. 59-2905 and 59-2907) so that the statute would authorize, as a part of and in addition to current procedure, the self-admission and discharge of minors 14 years of age and over. Provisions which would have required self-admission of such minors and that would have required a guardian to get court approval before voluntarily admitting the guardian's ward were deleted by Committee amendment.

Senator Elwaine F. Pomeroy,
Chairperson

PP/dmb

2-8-78

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LEONARD H. AXE, S.J.D.(1975)

February 2, 1978

Senator Elwaine F. Pomeroy, Chairman
Senate Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

Re: Senate Bills 587 and 474

Dear Senator Pomeroy:

This letter is in amplification of the position previously articulated by us on behalf of the Kansas Magazine Wholesalers Association.

Once again the legislature has before it proposed legislation in an area where it may be unpopular to take a position adverse to increased governmental regulation. In contemporary times, the public consumes, publishers print, distributors distribute and retailers sell, significant quantities of material having some sexual orientation. No element of the media is exempt from this process. Fawcett Publications, a subsidiary of CBS, Incorporated, distributes many items which are clearly of this nature. This is not intended to be justification, in any way, for the state of the industry. It merely is a report of such state.

That public acceptance of sexually oriented material is widespread is well demonstrated by the fact that both Playboy and Penthouse magazines have circulations in excess of those of Time and Newsweek. Of publications classified as business-social-literary, Penthouse Forum, a sex advice magazine, has a newsstand circulation very nearly equal to the newsstand distribution of the next three publications combined, High Times, Scientific American, and Psychology Today. In fact, Penthouse Forum has a newsstand circulation very nearly equal to that of the remaining 20 magazines in this classification, including Fortune, Barons, Harper's Magazine, The Catholic Digest, Atlantic Monthly, Business Week, Saturday Review, National Observer, Forbes, and National Review.

Of further significance is the fact that magazines of this type are not in general distribution. For example, the largest member of the Association might serve approximately 800 different retailers. Of those 800, however, only approximately 200 receive Playboy. Titles that are generically less "tame" than Playboy receive even more limited distribution. Thus, the distribution industry and the retailer both realize that availability of items of this particular nature must be treated differently than a news magazine.

Furthermore, upon request of the retailer, the wholesaler has been willing to place "blinder" plates over material which may depict nudity on its cover. So called "adult" items are generally placed at the top of display racks where they are not accessible, or visible, to the juvenile. Thus, the industry has always recognized that there are display problems attendant to this very sensitive area.

That is not to say, however, that the industry has an encompassing answer to the problem which is recurringly hashed out in the legislatures, the Congress, and the Courts. Furthermore, the "answer" has tended to become less, rather than more, clear with each passing action. Definitions of "obscenity" fashioned in courtrooms and legislatures, tend to be unrealistic when applied in the industry. Local interpretation solves the problem of defining "obscenity" in terms of local prosecution, but thoroughly chills the entire subject area as far as the retailer and national distributor and wholesaler are concerned. Since the retailer depends on the wholesaler to give appropriate service, broad, non-definitive and elusive standards merely cause the distributor to become a censor, a function which even Courts and juries have not been successful in carrying out.

The Association recognizes the noble purpose enunciated by Senator Meyers in Senate Bill 587, and is wholly in agreement with the concepts set forth in that bill. As a practical matter, however, paragraph (1)(c) of Section 1 of the Bill creates significant problems to the Association. Obviously, it lacks the requirements

of scienter set forth in Smith v. California, 361 U.S. 147. Additionally, however, the recognition of age in a photograph is virtually impossible. It is not known whether or not reasonable cause arrests could emanate from Courts where judicial guesswork on age is used either. If the Committee were to strike that particular paragraph from the Bill, and appropriately modify paragraph (1)(b) by eliminating the words "in any way" the Bill would receive Association support. It is noted, however, that presently pending before the House of Representatives of the United States is Senate Bill 1585 which has been referred to the House by Joint Committee of the House and Senate. A copy of that bill is enclosed.

Senate Bill 474 poses more far reaching problems to the Association and its members. The basic problem has been outlined in the statement we submitted to the Committee on January 26, but, in addition, certain other points should be made.

While we recognize that it is not the province of the legislature to determine the constitutionality or nonconstitutionality of bills before it, certainly it is a consideration of the legislature inasmuch as a bill not meeting constitutional requirements would, upon a determination of such by an appropriate Court, effectively nullify the act of the legislature. From the point of view of the Association, legislation, whether constitutional or nonconstitutional, which causes distributors and retailers to recurringly defend themselves in Court, at tremendous expense, is most undesirable. In the case of a nonconstitutional act by the legislature, an otherwise legal act, the free exercise of speech, becomes a very costly practice. The Assocation therefore urges the Committee to consider the constitutional question as it relates to Senate Bill 474.

Mr. Miller, the Sedgwick County District Attorney, has furnished a copy of Ginsberg v. New York to the Committee members. Paragraph (3) of the syllabus of that opinion rendered by Justice Brennan states:

> It is not constitutionally impermissible for New York, under this statute, to accord minors under 17 years of a more restricted right than

> that assured to adults to judge and determine ~~for themselves what~~ sex material they may read and see.

And such was Justice Brennan's dissenting opinion in the now landmark case in obscenity, Miller v. California, 413 U.S. 15. In Miller, because the Court was again split in its decision, Chief Justice Burger apparently wanted to rebut the dissenting opinions of the minority. Thus, the Chief Justice directly responds to the argument of Justice Brennan:

> Paradoxically, Mr. Justice Brennan indicates that suppression of unprotected obscene material is permissible to avoid exposure to unconsenting adults, as in this case, and to juveniles, although he gives no indication of how the division between protected and nonprotected materials may be drawn with greater precision for these purposes than for regulation of commercial exposure to consenting adults only. Nor does he indicate where in the Constitution he finds the authority to distinguish between a willing 'adult' one month past the state law age of majority and a willing 'juvenile' one month younger. (emphasis added)

Furthermore, the Chief Justice makes it amply clear that it is the Miller decision, and not its predecessors, that is to determine the perimeters of protected expression:

> It is in this context that we are called on to define the standards which must be used to identify obscene material that a state may regulate without infringing the First Amendment as applicable to the states through the Fourteenth Amendment. (emphasis added)

Again, we recognize that the Committee is not a forum for constitutional argument. Nevertheless, we find it difficult to ignore

the response of the majority to the dissent of Justice Brennan. And it appears to us that it is that language that forecloses the possibility of enacting constitutionally valid legislation as set forth in Senate Bill 474.

The Committee's attention has already been directed, by one of its members, to paragraph (1)(a) of Section 1 of the bill wherein it would be impermissible for any person to "manufacture...any obscene material to a minor." In that particular instance, the language obviously must be modified if the prohibition is to make sense at all. We would like to direct the Committee's attention, however, to other activities made unlawful by the bill which are equally difficult to visualize in reality. Those activities wherein there is a direct relationship between the actor and the minor pose little or no problem. However, general prohibitions against distributing (normally distribution takes place between a wholesaler and a retailer) and advertising do not have the requisite relationship and create monumental problems. Should it be forbidden to advertise Playboy magazine because a particular issue of that title may be "obscene" as defined by the bill? Clearly this cannot be the intent of the legislature since the effect is to forbid the free exercise of otherwise permissible speech.

Paragraph (1)(b) of Section 1 of the bill seems extraneous. How could one determine if there was possession of a lawful item with intent to distribute to a minor?

Paragraph (1)(c) of Section 1 is fraught with the same difficulties as paragraph (1)(a) above.

That portion of the bill which reads "evidence that materials were promoted to emphasize their prurient appeal or sexually provocative aspect shall be relevant in determining the question of the obscenity of such materials, and shall create a presumption that the person promoting the same did so knowingly or recklessly," is problematical in that the Court held in Roth v. United States, 354 U.S. 476 at 487 that "sex and obscenity are not synonymous." Or in the words of Justice Brennan, joined by Justices Stewart and

Marshall, in the dissenting opinion of Paris Adult Theatre I v. Slaton, 413 U.S. 49: "...that matter which is sexually oriented but not obscene is fully protected by the Constitution." Since the bill creates a dual definition of obscenity, advertisement of items that are within the protection of the Constitution, though they be sexually oriented, could operate presumptively against the promoter should they ultimately be sold to a minor.

Paragraph (2)(a) of Section 1 of the bill contains the "new" standard by which obscenity is to be determined in the case of a minor. We take specific issue with this standard, reiterating the position that it is overly broad, exceeds the limitations imposed by Miller v. California, and is wholly unworkable.

We note that paragraph (3) of Section 1 is a new defense under the law.

While we are not in possession of the amendment offered by Senator Francisco, we understand that paragraph (4) of Section 1 is amended to provide for a defense in the event the material was sold, leased, distributed, or disseminated by a parent in addition to the other classes permitted by the bill. We note, however, that this does not include a church, some of which have utilized similar material in sexual awareness classes. Due to the broad cast of the bill, it would be assumed that there may be even further justification for addition of church sanctioned dissemination.

As a final note, we add that any censorship legislation imposes significant burdens on the industry which provides the citizens of this state and county with a considerable majority of the wealth of written material which is available no where else in this world. If this industry is to be forced to exercise god-like judgment on each issue of each title it distributes we should be prepared to accept responsibility for its probable contraction of operations and ultimate demise.

For the reasons set forth above, we respectfully but emphatically urge that if Senate Bill 474 must be reported, that the Committee report the bill unfavorably.

Very truly yours,

SCHROEDER, HEENEY, GROFF & HIEBERT

HLH:cjw

Enclosure

Calendar No. 398

95TH CONGRESS
1ST SESSION

S. 1585

[Report No. 95–438]

IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, MAY 18), 1977

Mr. MATHIAS (for himself, Mr. CULVER, Mr. BAYH, Mr. BROOKE, Mr. BIDEN, Mr. BURDICK, Mr. CASE, Mr. CHILES, Mr. CHURCH, Mr. CLARK, Mr. DECONCINI, Mr. EAGLETON, Mr. FORD, Mr. GARN, Mr. GRAVEL, Mr. GRIFFIN, Mr. HASKELL, Mr. HAYAKAWA, Mr. HUMPHREY, Mr. INOUYE, Mr. KENNEDY, Mr. LAXALT, Mr. MAGNUSON, Mr. MATSUNAGA, Mr. MCCLURE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. METCALF, Mr. METZENBAUM, Mr. MORGAN, Mr. MOYNIHAN, Mr. PELL, Mr. PROXMIRE, Mr. RIBICOFF, Mr. RIEGLE, Mr. SCHMITT, Mr. STAFFORD, Mr. STEVENS, Mr. WALLOP, Mr. ZORINSKY, Mr. HUDDLESTON, and Mr. WILLIAMS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 16 (legislative day, SEPTEMBER 15), 1977

Reported by Mr. CULVER, with an amendment, and an amendment to the title

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title 18, United States Code, to make unlawful the use of minors engaged in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, or magazine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Protection of Children Against Sexual Exploitation Act of 1977".

~~SEC. 2. (a) The Congress finds that—~~

(1) the use of children as subjects in the production of pornographic materials is very harmful to both the children involved and to society as a whole;

(2) the production and sale of such pornographic materials represent many millions of dollars in annual revenue and that the sale and distribution of such materials are carried on to a substantial extent through interstate and foreign commerce and through the means and instrumentalities of such commerce; and

(3) existing Federal laws dealing with the interstate distribution of pornographic materials are adequate, but do not protect against the use of children in the production of such materials and that specific legislation in this area is both advisable and needed.

(b) The Congress determines that the provisions of chapter 110 of title 18, United States Code, are necessary and proper for the purpose of carrying out the powers of Congress to regulate commerce and to established uniform and effective laws on the subject of sexual exploitation of children.

SEC. 3. (a) Title 18, United States Code, is amended by adding immediately after chapter 109 the following:

"Chapter 110—SEXUAL EXPLOITATION OF CHILDREN

"Sec.

"2251. Sexual exploitation of children.

"§ 2251. Sexual exploitation of children

"(a) It shall be unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in, or to have a minor assist any other person to engage in, any sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium.

"(b) It shall be unlawful for any parent, legal guardian, or person having custody or control of a minor to knowingly permit the minor to engage in, or to assist any other person to engage in, sexually explicit conduct.

"(c) For the purposes of this section, the term—

"(1) 'minor' means any person under the age of sixteen years;

"(2) 'sexually explicit conduct' means actual or simulated—

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

"(B) beastiality;

"(C) masturbation;

"(D) sado-masochistic abuse, including but not limited to flagellation, torture, or bondage;

"(E) lewd exhibition of the genitals or pubic area of any person; and

~~"(3) 'promoting' means producing, directing, manufacturing, issuing, publishing, or advertising.~~

~~"(d) Any person who violates this section shall be fined not more than $10,000, or imprisoned not more than ten years, or both."~~

~~(b) The table of chapters of part I of title 18, United States Code, is amended by inserting immediately after the item relating to chapter 109 the following:~~

~~"110. Sexual exploitation of children ---------- 2251".~~

SEC. 2. (a) The Congress finds that—

(1) the use of children as subjects in the production of pornographic materials is very harmful to both the children and to society as a whole;

(2) the production and sale of such pornographic materials represent many millions of dollars in annual revenue and that the sale and distribution of such materials are carried on to a substantial extent through interstate and foreign commerce and through the means and instrumentalities of such commerce; and

(3) existing Federal laws dealing with the interstate distribution of pornographic materials do not protect against the use of children in the production of such materials and that specific legislation in this area is both advisable and needed.

(b) The Congress determines that the provisions of

chapter 110 of title 18, United States Code, are necessary and proper for the purpose of carrying out the powers of Congress to regulate commerce and to establish uniform and effective laws on the subject of sexual exploitation of children.

SEC. 3. (a) Title 18, United States Code, is amended by adding immediately after chapter 109 the following:

"Chapter 110—SEXUAL EXPLOITATION OF CHILDREN

"§ 2251. Sexual exploitation of children

"(a) It shall be unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in, or to have a minor assist any other person to engage in, any sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, if such person knows or has reason to know that such film, photograph, negative, slide, book, magazine, or other print or visual medium will be mailed or otherwise transported in interstate or foreign commerce.

"(b) It shall be unlawful for any parent, legal guardian, or person having custody or control of a minor to knowingly permit such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of

promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, if such parent, legal guardian, or person knows or has reason to know that such film, photograph, negative, slide, book, magazine, or other print or visual medium will be mailed or otherwise transported in interstate or foreign commerce.

"(c) For the purposes of this section, the term—

"(1) 'minor' means any person under the age of sixteen years;

"(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) sado-masochistic abuse (for the purpose of sexual stimulation; and

"(E) lewd exhibition of the genitals or pubic area of any person; and

"(3) 'promoting' means producing, directing, manufacturing, issuing, publishing, or advertising for pecuniary profit.

"(d) Any person who violates this section shall be fined not more than $10,000, or imprisoned not less than two years nor more than ten years, or both, for the first offense, or fined not more than $15,000, or imprisoned for not less than five years nor more than fifteen years, or both, for each such offense thereafter."

(b) The table of chapters of part I of title 18, United States Code, is amended by inserting immediately after the item relating to chapter 109 the following:

"110. Sexual exploitation of children---------- 2251".

SEC. 4. (a) Section 2423 of title 18, United States Code, is amended to read as follows:

"§ 2423. Coercion or enticement of minor

"(a)(1) It shall be unlawful for any person to transport, or to cause to be transported, in interstate or foreign commerce or within the District of Columbia or any territory or possession of the United States, any minor for the purpose of such minor engaging in prostitution or with intent to induce, entice, or compel such minor to engage in prostitution.

"(2) For purposes of this section, the term 'minor' means any person under the age of eighteen years.

"(b) Any person who violates this section shall be fined not more than $10,000, or imprisoned not more than ten years, or both.".

(b) The table of sections of chapter 117 of title 18, United States Code, is amended by striking out in the item relating to section 2423 the word "Female".

SEC. 5. (a) Section 1461 of title 18, United States Code, is amended by inserting immediately before the period in the eighth paragraph a comma and "except that if such thing involved the use of any person under the age of sixteen years engaging in sexually explicit conduct (as defined in section 2251 of this title), the punishment shall be a fine of not more than $10,000, or imprisonment of not less than one year nor more than ten years, or both for the first offense, or a fine of not more than $15,000, or imprisonment of not less than two years nor more than fifteen years, or both, for each such offense thereafter".

(b) Section 1462 of title 18, United States Code, is amended by inserting immediately before the period a comma and "except that if any such matter or thing involved the use of any person under the age of sixteen years engaging in sexually explicit conduct (as defined in section 2251 of this title), the punishment shall be a fine of not more than $10,000 or imprisonment of not less than one year nor more than ten years, or both, for the first offense, or a fine of not more than $15,000, or imprisonment of not less than two years nor more than fifteen years, or both, for each such offense thereafter".

(c) Section 1465 of title 18, United States Code, is

amended by inserting immediately before the period in the first paragraph a comma and "except that if any matter described in this section involved the use of any person under the age of sixteen years engaging in sexually explicit conduct (as defined in section 2251 of this title), the punishment shall be a fine of not more than $10,000, or imprisonment of not less than one year nor more than ten years, or both, for the first offense, or a fine of not more than $15,000, or imprisonment of not less than two years nor more than fifteen years, or both, for each such offense thereafter".

SEC. 6. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Amend the title so as to read: "A bill to amend title 18, United States Code, to make unlawful the use of minors engaged in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, and for other purposes.".