



H.R. 1761 – Protecting Against Child Exploitation Act of 2017 (Rep. Johnson, R-LA)

CONTACT: [Jennifer Weinhart](#), 202-226-0706

FLOOR SCHEDULE:

Scheduled for consideration on May 25, 2017 under a structured [rule](#).

TOPLINE SUMMARY:

[H.R. 1761](#) would criminalize the knowing production of, or consent to the production of, a visual depiction or live transmission of a minor engaging in sexually explicit conduct.

COST:

The Congressional Budget Office (CBO) estimate can be found [here](#). “Because those prosecuted and convicted under H.R. 1761 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation action. CBO expects that any additional revenues and associated direct spending would not be significant because the legislation would probably affect only a small number of cases.”

Moreover, CBO estimates that “enacting H.R. 1761 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.”

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** This legislation preempts state laws pertaining to the transmission of illicit electronic images by internet service providers, if unintentional.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

This legislation [stems](#) from a decision in a Fourth Circuit case in which an individual escaped conviction of child sexual assault because the court was unable to discover specific intent from the images in question – i.e. that he knowingly employed, used, or coerced a minor in sexually explicit conduct, for the *purpose* of producing a visual. While the defendant admitted to the child abuse and the photos, they failed to find specific intent to produce child pornography.

This legislation would amend [Title 18 of the U.S. code](#), to make it a criminal act to knowingly: (1) employ, use, persuade, or coerce a minor to engage in sexually explicit conduct for the purpose of capturing images of the conduct or transmitting a live visual of the conduct; (2) produce or cause a visual to be produced of a

minor engaged in sexually explicit conduct, in which the minor is specifically engaging in the conduct; (3) transmit or lead to the transmission of a visual involving a minor participating in sexually explicit conduct; (4) have a minor assist in any one else engaging in sexually explicit conduct; or (5) transport a minor in or affecting interstate or foreign commerce with the intent that a minor would be used in a production or live transmission of sexually explicit conduct.

It would also criminalize a parent, legal guardian, or custodian of a minor that knowingly permits the above to occur.

An internet service provider (ISP) could only be [charged](#) for the knowing transmission of child pornography if the ISP has actual knowledge the image is child pornography and where “it intentionally transmits the visual depictions.” This legislation also gives immunity to ISPs for sending visual depictions of minors engaging in sexually explicit conduct for the purpose of responding to legal process.

A committee report can be found [here](#).

AMENDMENTS:

1. [Rep. Jackson Lee](#) (D-TX) – This amendment would provide for individuals 19 years of age or younger to be punished for violating the language of this bill by imprisonment of not more than one year, or a fine, if the minor is 15 years or older and not more than four years younger than the person committing the violation, and the conduct that occurred was consensual.

COMMITTEE ACTION:

H.R. 1761 was introduced on March 28, 2017 and was referred to the House Committee on the Judiciary. It was ordered reported by voice vote on May 3, 2017.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

According to the bill’s sponsor: Congress has the power to enact this legislation pursuant to the following: Article I, section 8.