

CRIMES AGAINST CHILDREN AND ELDERLY PERSONS  
INCREASED PUNISHMENT ACT

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MAY 1, 1996.—Committed to the Committee of the Whole House on the State of the  
Union and ordered to be printed

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Mr. MCCOLLUM, from the Committee on the Judiciary,  
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 2974]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2974) to amend the Violent Crime Control and Law Enforcement Act of 1994 to provide enhanced penalties for crimes against elderly and child victims, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following.

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Crimes Against Children and Elderly Persons Increased punishment Act”.

**SEC. 2. ENHANCED PENALTIES FOR VULNERABLE VICTIMS.**

Section 240002 of the Violent Crime Control and Law Enforcement Act of 1994 is amended to read as follows:

**“SEC. 240002. ENHANCED PENALTIES FOR VULNERABLE VICTIMS.**

“(a) IN GENERAL.—The United States Sentencing Commission shall amend the Federal sentencing guidelines to provide a sentencing enhancement of not less than 5 levels above the offense level otherwise provided for a crime of violence, if the crime of violence is against a child, elderly person, or other vulnerable person.

“(b) DEFINITIONS.—As used in this section—

“(1) the term ‘crime of violence’ has the meaning given that term in section 16 of title 18, United States Code;

“(2) the term ‘child’ means a person who is 14 years of age, or younger;

“(3) the term ‘elderly person’ means a person who is 65 years of age or older; and

“(4) the term ‘vulnerable person’ means a person whom the defendant knew or should have known was unusually vulnerable due to age, physical or mental condition, or otherwise particularly susceptible to the criminal conduct.”

#### PURPOSE AND SUMMARY

This bill, The Crimes Against Children and Elderly Increased Punishment Act, introduced by Mr. Chrysler of Michigan, would increase the length of the sentence for violent crimes against children 14 years of age, or younger, seniors 65 years, or older, and vulnerable persons. It would do so by directing the U.S. Sentencing Commission to provide a sentencing enhancement of not less than five levels above the offense level otherwise provided for a crime of violence against such victims.

#### BACKGROUND AND NEED FOR THE LEGISLATION

From 1985 to 1991 there was a 90 percent increase in personal crimes committed against senior citizens, from 627,318 to 1,146,929. While the overall homicide rate for children decreased from 1985 to 1993, there was a 47 percent increase in the homicide rate of children. In 1992, one out of every six rape victims was a female under the age of twelve. H.R. 2974 was introduced to provide additional deterrence and punishment for those who victimize the most vulnerable in society.

The impetus for this legislation also arises from the U.S. Sentencing Commission’s failure to take action in response to a directive in the Violent Crime Control and Law Enforcement Act of 1994. Title XXIV, Section 240002 of the Act directed the Commission to “ensure that the applicable guideline range for a defendant convicted of a crime of violence against an elderly victim is sufficiently stringent to deter such a crime, to protect the public from additional crimes of such a defendant, and to adequately reflect the heinous nature of such an offense.” The Commission determined to make no amendment to the guidelines in response to this directive. This bill seeks to ensure that the guideline penalty accomplishes the goal Congress established in its 1994 directive.

While the bill applies on to federal crimes, another purpose of this legislation is to establish a model for state criminal justice systems. Only a uniform approach which communicates society’s intolerance for these heinous crimes will provide sufficient deterrence.

#### HEARINGS

The Committee’s Subcommittee on Crime held a hearing on H.R. 2974 on March 7, 1996. Testimony was received from two witnesses, Representative Dick Chrysler, of Michigan, and Mr. Kevin V. Di Gregory, Deputy Assistant Attorney General, Criminal Division, representing the U.S. Department of Justice, with additional material submitted by Maureen Kanka of the Megan Nicole Kanka Foundation and Ernest E. Allen, President and CEO for the National Center for Missing and Exploited Children.

#### COMMITTEE CONSIDERATION

On March 21, 1996, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 2974, as amended, by a vote of 8 to 1, quorum being present. On April 24, 1996, the Committee met in open session and ordered reported the bill H.R. 2974 with amendments by voice vote, a quorum being present.

#### VOTE OF THE COMMITTEE

There were no recorded votes.

1. An amendment by Ms. Lofgren to change the definition of a child from "a person who is 11 years of age, or younger," to "a person who is 14 years of age, or younger." The Lofgren amendment was agreed to by voice vote.

2. An amendment by Ms. Lofgren to include vulnerable persons to the victims covered under the provisions of the bill. The Lofgren amendment was agreed to by voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2974, the following cost estimate.

The Committee estimates that the costs associated with the increased sentences under H.R. 2974 are \$5.1 million at the conclusion of the fifth year after the enactment of the bill, and \$22 million after thirty years. These figures are based on U.S. Sentencing Commission estimates for prison construction and operating costs associated with the expected number of cases receiving increased sentences.

#### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2974 will

have no significant inflationary impact on prices and costs in the national economy.

#### SECTION-BY-SECTION ANALYSIS

##### SECTION 1. SHORT TITLE

This section states that the short title of the bill is the “Crimes Against Children and Elderly Persons Increased Punishment Act.”

##### SECTION 2. ENHANCED PENALTIES FOR VULNERABLE VICTIMS

This section amends Section 240002 of the Violent Crime Control and Law Enforcement Act of 1994 to provide for increased sentences for violent crimes against children 14 years of age or younger, seniors 65 years or older, and vulnerable persons. The increased sentences would be accomplished by directing the Sentencing Commission to provide a sentencing enhancement of not less than 5 levels above the offense level otherwise provided for a crime of violence against a child, elderly person, or other vulnerable person.

The term “crime of violence” has the meaning given in Section 16 of Title 18 of the United States Code. Section 16 defines a crime of violence as “an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.”

The term “child” is defined as “a person who is 14 years of age, or younger.”

The term “elderly person” is defined as “a person who is 65 years of age or older.”

The term “vulnerable person” is defined as “a person whom the defendant knew or should have known was unusually vulnerable due to age, physical or mental condition, or otherwise particularly susceptible to the criminal conduct.”

#### AGENCY VIEWS

The Committee received a letter from the U.S. Department of Justice providing Administration views on H.R. 2974, the “Crimes Against Children and Elderly Persons Increased Punishment Act”, and other bills. This letter addressed the pertinent issues presented in H.R. 2974 as follows:

##### H.R. 2974—CRIMES AGAINST CHILDREN AND ELDERLY PERSONS PUNISHMENT AND PREVENTION ACT

H.R. 2974 would direct the Sentencing Commission to increase by five levels (or generally more than fifty percent) the sentence for certain crimes of violence committed against victims 65 years of age or older or 11 years of age or younger. The impetus for the legislation evidently stems from the fact that the Sentencing Commission took virtually no action in response to the enactment by Congress of section 240002 of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA). That provision had directed the Commission to “ensure that the applicable guideline range for a de-

defendant convicted of a crime of violence against an elderly victim is sufficiently stringent to deter such a crime, to protect the public from additional crimes of such a defendant, and to adequately reflect the heinous nature of such an offense.” The Commission determined to make no amendment of the guidelines pursuant to this provision,<sup>1</sup> evidently concluding that the guidelines already provided an adequate adjustment for crimes against elderly victims, through section 3A1.1 of the guidelines, dating from 1990, which directs a court to increase the sentence by two levels if “the defendant knew or should have known that a victim of the offense was unusually vulnerable due to age, physical or mental condition, or that a victim was otherwise particularly susceptible to the criminal conduct.”

Victims of crime who are particularly vulnerable due to advanced age or youth deserve special protection under the law. In light of the current guidelines covering all vulnerable victims, we have several suggestions to improve this proposal.

First, we share the Commission’s belief, reflected in the scope of section 3A1.1, that all vulnerable victims should receive comparable protection. A person who assaults a disabled thirty year old victim should not be treated more leniently than one who assaults a physically robust elderly victim.

Second, the list of violent crimes as defined in H.R. 2974 is incomplete. It covers only ten enumerated violent offenses for which there is federal jurisdiction based largely on their commission in the special maritime and territorial jurisdiction of the United States, and omits far more frequently prosecuted violent offenses such as bank and postal robbery (18 U.S.C. 2113, 2114).<sup>2</sup> We see no reason why the generic definition of “crime of violence” in 18 U.S.C. § 16 should not be applicable here.

Third, we believe that requiring some knowledge of the victim’s vulnerable status, as does the current guideline, is preferable to requiring a penalty increase triggered solely by the fact of the victim’s age or vulnerability.

Finally, we believe that mandating that the Commission increase its guidelines by a specific level may be unnecessary. We would prefer that the bill mandate the Commission provide an appropriate further increase in section 3A1.1, but confer more discretion on the Commission as to the precise degree of penalty enhancement to be imposed.

We look forward to the opportunity to work with the Subcommittee to provide greater protection to all vulnerable victims, including those specifically enumerated in H.R. 2974.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

<sup>1</sup>The Commission amended its commentary to suggest that an upward departure from the guidelines might be warranted if the offense were the second such crime by the defendant against a vulnerable victim, but departures are wholly discretionary.

<sup>2</sup>We recognize that section 24002 of the VCCLEA, which the draft bill would amend, was similarly drafted.

is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**SECTION 240002 OF THE VIOLENT CRIME CONTROL AND  
LAW ENFORCEMENT ACT OF 1994**

**[SEC. 240002. CRIMES AGAINST THE ELDERLY.**

**[(a) IN GENERAL.—**Pursuant to its authority under the Sentencing Reform Act of 1984 and section 21 of the Sentencing Act of 1987 (including its authority to amend the sentencing guidelines and policy statements) and its authority to make such amendments on an emergency basis, the United States Sentencing Commission shall ensure that the applicable guideline range for a defendant convicted of a crime of violence against an elderly victim is sufficiently stringent to deter such a crime, to protect the public from additional crimes of such a defendant, and to adequately reflect the heinous nature of such an offense.

**[(b) CRITERIA.—**In carrying out subsection (a), the United States Sentencing Commission shall ensure that—

**[(1)** the guidelines provide for increasingly severe punishment for a defendant commensurate with the degree of physical harm caused to the elderly victim;

**[(2)** the guidelines take appropriate account of the vulnerability of the victim; and

**[(3)** the guidelines provide enhanced punishment for a defendant convicted of a crime of violence against an elderly victim who has previously been convicted of a crime of violence against an elderly victim, regardless of whether the conviction occurred in Federal or State court.

**[(c) DEFINITIONS.—**In this section—

**["crime of violence"** means an offense under section 113, 114, 1111, 1112, 1113, 1117, 2241, 2242, or 2244 of title 18, United States Code.

**["elderly victim"** means a victim who is 65 years of age or older at the time of an offense.]

**SEC. 240002. ENHANCED PENALTIES FOR VULNERABLE VICTIMS.**

*(a) IN GENERAL.—The United States Sentencing Commission shall amend the Federal sentencing guidelines to provide a sentencing enhancement of not less than 5 levels above the offense level otherwise provided for a crime of violence, if the crime of violence is against a child, elderly person, or other vulnerable person.*

*(b) DEFINITIONS.—As used in this section—*

*(1) the term "crime of violence" has the meaning given that term in section 16 of title 18, United States Code;*

*(2) the term "child" means a person who is 14 years of age, or younger;*

*(3) the term "elderly person" means a person who is 65 years of age or older; and*

*(4) the term "vulnerable person" means a person whom the defendant knew or should have known was unusually vulnerable due to age, physical or mental condition, or otherwise particularly susceptible to the criminal conduct.*

## DISSENTING VIEWS

HR 2974, the Crimes Against Children and Elderly Persons Punishment and Prevention Act directs the United States Sentencing Commission (“Sentencing Commission”) to enhance Sentencing Guidelines penalties for crimes committed against vulnerable victims, such as children, the elderly and the disabled. Without commenting on the underlying substance of the legislation, we oppose any legislation which directs the Sentencing Commission to amend its Guidelines to reflect the politics of the Congress.

The Sentencing Commission was established in 1984, with strong bipartisan support, as an independent, permanent agency in the judicial branch of government. Among its mandates was the development of guidelines for federal criminal offenses that would bring greater certainty, honesty, and uniformity to federal sentencing. One objective of establishing the Sentencing Commission was to remove politics from these decisions. Maintaining the independence of the Sentencing Commission, therefore, is of paramount importance to the fulfillment of this mandate.

Several prior pieces of legislation have already passed the 104th Congress (over our objection) which undermined the independence of the Sentencing Commission and the mandate given to it. We cannot support any additional legislation—even legislation which may have substantive value—which undermines it further.

MELVIN L. WATT.  
BOBBY SCOTT.

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