

CHILD PROTECTION AND SEXUAL PREDATOR
PUNISHMENT ACT OF 1998

JUNE 3, 1998.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3494]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3494) to amend title 18, United States Code, with respect to violent sex crimes against children, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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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 “Child Protection and Sexual Predator Punishment Act of 1998”.

TITLE I—PROTECTING CHILDREN FROM SEXUAL PREDATORS AND COMPUTER PORNOGRAPHY

SEC. 101. CONTACTING MINORS FOR SEXUAL PURPOSES.

Section 2422 of title 18, United States Code, is amended by adding at the end the following:

“(c) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States—

“(1) knowingly contacts an individual who has not attained the age of 18 years; or

“(2) knowingly contacts an individual, who has been represented to the person making the contact as not having attained the age of 18 years; for the purposes of engaging in any sexual activity, with a person who has not attained the age of 18 years, for which any person may be criminally prosecuted, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both. It is a defense to a prosecution for an offense under this section that the sexual activity is prosecutable only because of the age of the individual contacted, the individual contacted had attained the age of 12 years, and the defendant was not more than 4 years older than the individual contacted.”.

SEC. 102. TRANSFER OF OBSCENE MATERIAL TO MINORS.

(a) **IN GENERAL.**—Chapter 71 of title 18, United States Code, is amended by adding at the end the following:

“§ 1470. Transfer of obscene material to minors

“Whoever, using the mail or any facility or means of interstate or foreign commerce—

“(1) knowingly transfers obscene matter to an individual who has not attained the age of 18 years, or attempts to do so; or

“(2) knowingly transfers obscene matter to an individual who has been represented to the transferor as not having attained the age of 18 years; shall be fined under this title or imprisoned not more than 5 years, or both.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding at the end the following new item:

“1470. Transfer of obscene material to minors.”.

SEC. 103. INCREASED PRISON SENTENCES FOR ENTICEMENT OF MINORS.

Section 2422 of title 18, United States Code, is amended—

(1) in subsection (a), by adding at the end “If the individual had not attained the age of 18 years at the time of the offense, the maximum imprisonment for an offense under this subsection is 10 years.”; and

(2) in subsection (b), by striking “10” and inserting “15”.

SEC. 104. ADDITIONAL JURISDICTIONAL BASE FOR PROSECUTION OF PRODUCTION OF CHILD PORNOGRAPHY.

(a) **USE OF A CHILD.**—Subsection (a) of section 2251 of title 18, United States Code, is amended by inserting “if such visual depiction was produced with materials

that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including a computer,” before “or if”.

(b) ALLOWING USE OF A CHILD.—Subsection (b) of section 2251 of title 18, United States Code, is amended by inserting “, if such visual depiction was produced with materials that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including a computer,” before “or if”.

SEC. 105. INCREASED PENALTIES FOR CERTAIN ACTIVITIES RELATING TO MATERIAL INVOLVING THE SEXUAL EXPLOITATION OF MINORS OR CHILD PORNOGRAPHY AND TECHNICAL CORRECTION.

(a) INCREASED PENALTIES IN SECTION 2252.—Section 2252(b) of title 18, United States Code, is amended—

(1) in each of paragraphs (1) and (2), by striking “or chapter 109A” and inserting “, chapter 109A, or chapter 117”; and

(2) in paragraph (2), by inserting “the offense consisted of the possession of 50 or more items of the sort described in subsection (a)(4) or” after “if”.

(b) INCREASED PENALTIES IN SECTION 2251(d).—Section 2251(d) of title 18, United States Code, is amended by striking “or chapter 109A” each place it appears and inserting “, chapter 109A, or chapter 117”.

(c) INCREASED PENALTIES IN SECTION 2252A.—Section 2252A(b)(2) of title 18, United States Code, is amended by inserting “the offense consisted of the possession of 50 or more images of the sort described in subsection (a)(4) or” after “if”.

(d) TECHNICAL CORRECTION.—Section 2252(a) of title 18, United States Code, is amended so that paragraph (4) reads as follows:

“(4) either—

“(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country (as defined in section 1151 of this title), knowingly possesses—

“(i) 3 or more books, magazines, periodicals, computer disks, films, video tapes, or other matter that contain any visual depiction, if—

“(I) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

“(II) such visual depiction is of such conduct; or

“(ii) any book, magazine, periodical, computer disk, film, videotape, computer disk, or any other material that contains 3 or more visual depictions, if—

“(I) the producing of each visual depiction involves the use of a minor engaging in sexually explicit conduct; and

“(II) each visual depiction is of such conduct; or

“(B) knowingly possesses—

“(i) 3 or more books, magazines, periodicals, computer disks, films, video tapes, or other matter that contain any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if—

“(I) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

“(II) such visual depiction is of such conduct; or

“(ii) any book, magazine, periodical, computer disk, film, videotape, computer disk, or any other material that contains 3 or more visual depictions, if—

“(I) the producing of each visual depiction involves the use of a minor engaging in sexually explicit conduct; and

“(II) each visual depiction is of such conduct;”.

SEC. 106. CRIMINAL FORFEITURE FOR SOLICITATION OF MINORS AND INTERSTATE PROSTITUTION.

Section 2253(a) of title 18, United States Code, is amended by inserting “, or who is convicted of an offense under section 2421, 2422, or 2423 of this title,” after “2252 of this chapter” in the matter preceding paragraph (1).

SEC. 107. PRETRIAL DETENTION OF CHILD SEX OFFENDERS.

Subparagraph (C) of section 3156(a)(4) of title 18, United States Code, is amended to read as follows:

“(C) any felony under chapter 109A, 110, or 117, or section 2252A or 2260; and”

SEC. 108. INCREASED PRISON SENTENCES.

Subsection (b) of section 2422 of title 18, United States Code, is amended by adding at the end the following: “If in the course of committing the offense under this subsection, the defendant used a computer to transmit a communication to the minor, the minimum term of imprisonment for the offense under this subsection is 3 years.”.

SEC. 109. REPEAT OFFENDERS IN TRANSPORTATION OFFENSE.

(a) **GENERALLY.**—Chapter 117 of title 18, United States Code, is amended by adding at the end the following:

“§ 2425. Repeat offenders

“(a) The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term otherwise provided by this chapter.

“(b) As used in this section, the term ‘prior sex offense conviction’ means a conviction for an offense—

“(1) under this chapter or chapter 109A or 110; or

“(2) under State law for an offense consisting of conduct that would have been an offense under a chapter referred to in paragraph (1) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States or in any Territory or Possession of the United States.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 117 of title 18, United States Code, is amended by adding at the end the following new item:

“2425. Repeat offenders.”.

SEC. 110. DEFINITION AND ADDITION OF ATTEMPT OFFENSE.

(a) **DEFINITION.**—

(1) **GENERALLY.**—Chapter 117 of title 18, United States Code, is amended by adding at the end the following:

“§ 2426. Definition for chapter

“For the purposes of this chapter, sexual activity for which any person can be charged with a criminal offense includes the production of child pornography, as defined in section 2256(8).”.

(2) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 117 of title 18, United States Code, is amended by adding at the end the following new item:

“2426. Definition for chapter.”.

(b) **ATTEMPT OFFENSE.**—Section 2422(a) of title 18, United States Code, is amended by inserting “or attempts to do so,” after “criminal offense.”.

SEC. 111. USE OF INTERSTATE FACILITIES TO TRANSMIT IDENTIFYING INFORMATION ABOUT A MINOR FOR CRIMINAL SEXUAL PURPOSES.

(a) **IN GENERAL.**—Chapter 110 of title 18, United States Code, is amended by adding at the end the following:

“§ 2260A. Use of interstate facilities to transmit information about a minor

“Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, knowingly transmits, prints, publishes, or reproduces, or causes to be transmitted, printed, published, or reproduced, the name, address, telephone number, electronic mail address, or other identifying information of an individual who has not attained the age of 18 years for the purposes of facilitating, encouraging, offering, or soliciting any person to engage in any sexual activity for which any person may be criminally prosecuted, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2260A. Use of interstate facilities to transmit information about a minor.”.

TITLE II—PUNISHING SEXUAL PREDATORS

SEC. 201. SENTENCING ENHANCEMENT IN SECTION 2423 CASES.

(a) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the sentencing guidelines to provide a sentencing enhancement for any offense listed in section 2423 of title 18, United States Code.

(b) INSTRUCTION TO COMMISSION.—The Sentencing Commission shall ensure that the sentences, guidelines, and policy statements for offenders convicted of offenses described in subsection (a) are appropriately severe and reasonably consistent with other relevant directives and with other guidelines.

SEC. 202. INCREASED PENALTIES FOR TRANSPORTATION OF MINORS OR ASSUMED MINORS FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES.

Section 2423 of title 18, United States Code, is amended to read as follows:

§ “2423. Transportation of minors and assumed minors

“(a) TRANSPORTATION WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY.—A person who knowingly—

“(1) transports an individual who has not attained the age of 18 years; or

“(2) transports an individual who has been represented to the person doing that transportation as not having attained the age of 18 years; in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than 15 years, or both.

“(b) TRAVEL WITH INTENT TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.—A person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual activity, with another person who has not attained the age of 18 years or who has been represented to the traveler or conspirator as not having attained the age of 18 years, for which any person can be charged with a criminal offense, shall be fined under this title, imprisoned not more than 15 years, or both.”.

SEC. 203. INCREASED PENALTIES FOR ABUSIVE SEXUAL CONTACT.

Section 2244 of title 18, United States Code, is amended by adding at the end the following:

“(c) OFFENSES INVOLVING YOUNG CHILDREN.—If the sexual contact that violates this section is with an individual who has not attained the age of 12 years, the maximum term of imprisonment that may be imposed for the offense shall be twice that otherwise provides in this section.”.

SEC. 204. PUNISHMENT FOR REPEAT OFFENDERS.

Section 2241 of title 18, United States Code, is amended by inserting after subsection (d) the following:

“(e) PUNISHMENT FOR REPEAT OFFENDERS.—(1) Whoever has twice previously been convicted of a serious State or Federal sex crime and who—

“(A) violates this section; or

“(B) in a circumstance described in paragraph (2) of this subsection, engages in conduct that would have violated this section if the conduct had occurred in the special maritime and territorial jurisdiction of the United States; shall be imprisoned for life.

“(2) The circumstance referred to in paragraph (1) of this subsection is that—

“(A) the person engaging in such conduct traveled in interstate or foreign commerce or used the mail or any facility or means of interstate or foreign commerce in furtherance of the offense; or

“(B) such conduct occurs in or affects interstate or foreign commerce and would have violated this section if the conduct had occurred in the special maritime and territorial jurisdiction of the United States.

“(f) SERIOUS STATE OR FEDERAL SEX CRIME.—For the purposes of subsections (e) and (f), the term serious State or Federal sex crime means a State or Federal offense for conduct which—

“(1) is an offense under this section or section 2242 of this title; or

“(2) would have been an offense under either of such sections if the offense had occurred in the special maritime or territorial jurisdiction of the United States.”.

SEC. 205. REPEAT OFFENDERS IN SEXUAL ABUSE CASES.

Section 2247 of title 18, United States Code, is amended to read as follows:

“§ 2247. Repeat offenders

“(a) The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term otherwise provided by this chapter.

“(b) As used in this section, the term ‘prior sex offense conviction’ has the meaning given that term in section 2425.”

SEC. 206. CIVIL REMEDY FOR PERSONAL INJURIES RESULTING FROM CERTAIN SEX CRIMES AGAINST CHILDREN.

Section 2255(a) of title 18, United States Code, is amended by striking “2251 or 2252” and inserting “2241(c), 2243, 2251, 2252, 2421, 2422, or 2423”.

SEC. 207. ELIMINATION OF REDUNDANCY AND AMBIGUITIES.

(a) REDUNDANCY.—Section 2243(a) of title 18, United States Code, is amended by striking “crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or”.

(b) MAKING CONSISTENT LANGUAGE ON AGE DIFFERENTIAL.—Section 2241(c) of title 18, United States Code, is amended by striking “younger than that person” and inserting “younger than the person so engaging”.

(c) DEFINITION OF STATE.—Section 2246 of title 18, United States Code, is amended—

(1) in paragraph (5), by striking the period and inserting a semicolon; and

(2) by adding a new paragraph as follows:

“(6) the term ‘State’ means a State of the United States, the District of Columbia, and any commonwealth, possession, or territory of the United States.”

SEC. 208. DEATH OR LIFE IN PRISON FOR CERTAIN OFFENSES WHOSE VICTIMS ARE CHILDREN.

Section 3559 of title 18, United States Code, is amended by adding at the end the following:

“(d) DEATH OR IMPRISONMENT FOR CRIMES AGAINST CHILDREN.—Notwithstanding any other provision of law, a person who is convicted of a Federal offense that is a serious violent felony (as defined in subsection (c)) or a violation of section 2251 shall, unless the sentence of death is imposed, be sentenced to imprisonment for life, if the victim of the offense is under 14 years of age, the victim dies as a result of the offense, and the defendant, in the course of the offense, engages in conduct described in section 3591(a)(2).”

TITLE III—FEDERAL INVESTIGATIONS OF SEX CRIMES AGAINST CHILDREN AND SERIAL KILLERS

SEC. 301. ADMINISTRATIVE SUBPOENAS.

(a) IN GENERAL.—Chapter 203 of title 18, United States Code, is amended by adding at the end the following:

“§ 3064. Administrative subpoenas

“(a) AUTHORIZATION OF USE.—In an investigation of an alleged violation of section 2241(c), 2243, 2421, 2422, or 2423 of this title where a victim is an individual who has not attained the age of 18 years, the Attorney General may subpoena witnesses, compel the production of any records (including books, papers, documents, electronic data, and other tangible things which constitute or contain evidence) which the Attorney General finds relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place of hearing, except that a witness shall not be required to appear at any hearing more than 500 miles distant from the place where the witness was served with a subpoena. Witnesses summoned under this section shall be paid the same fees and commissions that are paid witnesses in the courts of the United States.

“(b) SERVICE.—A subpoena issued under this section may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to that person or by certified mail with return receipt requested. Service may be made upon a domestic or foreign corpora-

tion or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

“(c) ENFORCEMENT.—In the case of contumacy by or the refusal to obey a subpoena issued to any person under this section, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on, or of which the person is an inhabitant or in which the person carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony regarding the matter under investigation. Any failure to obey the order of the court may be punished by the court as contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 203 of title 18, United States Code, is amended by adding at the end the following new item:

“3064. Administrative subpoenas.”.

SEC. 302. KIDNAPPING.

(a) 24-HOUR RULE.—Section 1201(b) of title 18, United States Code, is amended by adding at the end the following: “However, the fact that the presumption under this section has not yet taken effect does not preclude a Federal investigation of a possible violation of this section before the twenty-four hour period has ended.”

(b) JURISDICTIONAL ELEMENTS.—Section 1201(a) of title 18, United States Code, is amended—

(1) by striking “or” at the end of paragraph (4); and

(2) by adding after paragraph (5) the following:

“(6) the mail or any facility or means of interstate or foreign commerce is used in furtherance of the offense; or

“(7) the offense affects interstate or foreign commerce, or would do so if the offense were consummated;”

(c) CLARIFICATION OF ELEMENT OF OFFENSE.—Section 1201(a) of title 18, United States Code, is amended by inserting “, regardless of whether such person was alive when transported across a State boundary provided the person was alive when the transportation began” before the semicolon at the end of paragraph (1);

SEC. 303. AUTHORITY TO INVESTIGATE SERIAL KILLINGS.

(a) IN GENERAL.—Chapter 33 of title 28, United States Code, is amended by inserting after section 537 the following:

“§ 540B. Investigation of serial killings

“(a) The Attorney General and the Federal Bureau of Investigation may investigate serial killings in violation of the laws of a State or political subdivision, when such investigation is requested by the head of a law enforcement agency with investigative or prosecutive jurisdiction over the offense.

“(b) For purposes of this section—

“(1) the term ‘serial killings’ means a series of 3 or more killings, at least one of which was committed within the United States, having common characteristics such as to suggest the reasonable possibility that the crimes were committed by the same actor or actors;

“(2) the term ‘killing’ means conduct that would constitute an offense under section 1111 of title 18, United States Code, if Federal jurisdiction existed; and

“(3) the term ‘State’ means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.”

(b) The table of sections at the beginning of chapter 33 of title 28, United States Code, is amended by adding at end the following new item:

“540B. Investigation of serial killings.”.

SEC. 304. MORGAN P. HARDIMAN CHILD ABDUCTION AND SERIAL MURDER INVESTIGATIVE RESOURCES CENTER.

(a) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this Act, the Attorney General shall establish a Child Abduction and Serial Murder Investigative Resources Center to be known as the “Morgan P. Hardiman Child Abduction and Serial Murder Investigative Resources Center” (hereinafter in this section referred to as the “CASMIRC”).

(b) PURPOSE.—The purpose of this section is to establish a Federal Bureau of Investigation Child Abduction and Serial Murder Investigative Resources Center managed by the FBI's Critical Incident Response Group's National Center for the Analysis of Violent Crime (NCAVC) and multidisciplinary resource teams in FBI field offices to provide investigative support through the coordination and provision of Federal law enforcement resources, training, and application of other multidisciplinary expertise, to assist Federal, State, and local authorities in matters involving child abductions, mysterious disappearance of children, child homicide, and serial murder across the country. The CASMIRC shall be co-located with the NCAVC.

(c) DUTIES OF THE CASMIRC.—The CASMIRC shall perform such duties as the Attorney General deems appropriate to carry out the purposes of the CASMIRC, including but not limited to—

(1) identifying, developing, researching, acquiring, and refining multidisciplinary information and specialities to provide for the most current expertise available to advance investigative knowledge and practices used in child abduction, mysterious disappearance of children, child homicide, and serial murder investigations;

(2) providing advice and coordinating the application of current and emerging technical, forensic, and other Federal assistance to Federal, State, and local authorities in child abduction, mysterious disappearances of children, child homicide, and serial murder investigations;

(3) providing investigative support, research findings, and violent crime analysis to Federal, State, and local authorities in child abduction, mysterious disappearances of children, child homicide, and serial murder investigations;

(4) providing, if requested by a Federal, State, or local law enforcement agency, on site consultation and advice in child abduction, mysterious disappearances of children, child homicide and serial murder investigations;

(5) coordinating the application of resources of pertinent Federal law enforcement agencies, and other Federal entities including, but not limited to, the United States Customs Service, the Secret Service, the Postal Inspection Service, and the United States Marshals Service, as appropriate, and with the concurrence of the agency head to support Federal, State, and local law enforcement involved in child abduction, mysterious disappearance of a child, child homicide, and serial murder investigations;

(6) conducting ongoing research related to child abductions, mysterious disappearances of children, child homicides, and serial murder, including identification and investigative application of current and emerging technologies, identification of investigative searching technologies and methods for physically locating abducted children, investigative use of offender behavioral assessment and analysis concepts, gathering statistics and information necessary for case identification, trend analysis, and case linkages to advance the investigative effectiveness of outstanding abducted children cases, develop investigative systems to identify and track serious serial offenders that repeatedly victimize children for comparison to unsolved cases, and other investigative research pertinent to child abduction, mysterious disappearance of a child, child homicide, and serial murder covered in this section;

(7) working under the Federal Bureau of Investigation's NCAVC in coordination with the National Center For Missing and Exploited Children (NCMEC) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to provide appropriate training to Federal, State, and local law enforcement in matters regarding child abductions, mysterious disappearances of children, child homicides; and

(8) establishing a centralized repository based upon case data reflecting child abductions, mysterious disappearances of children, child homicides and serial murder submitted by State and local agencies, and an automated system for the efficient collection, retrieval, analysis, and reporting of information regarding CASMIRC investigative resources, research, and requests for and provision of investigative support services.

(d) APPOINTMENT OF PERSONNEL TO THE CASMIRC.—

(1) SELECTION OF MEMBERS OF THE CASMIRC AND PARTICIPATING STATE AND LOCAL LAW ENFORCEMENT PERSONNEL.—The Director of the Federal Bureau of Investigation shall appoint the members of the CASMIRC. The CASMIRC shall be staffed with FBI personnel and other necessary personnel selected for their expertise that would enable them to assist in the research, data collection, and analysis, and provision of investigative support in child abduction, mysterious disappearance of children, child homicide and serial murder investigations. The Director may, with concurrence of the appropriate State or local agency, also appoint State and local law enforcement personnel to work with the CASMIRC.

(2) STATUS.—Each member of the CASMIRC (and each individual from any State or local law enforcement agency appointed to work with the CASMIRC) shall remain as an employee of that member's or individual's respective agency for all purposes (including the purpose of performance review), and service with the CASMIRC shall be without interruption or loss of civil service privilege or status and shall be on a nonreimbursable basis, except where appropriate to reimburse State and local law enforcement for overtime costs for an individual appointed to work with the resource team. Additionally, reimbursement of travel and per diem expenses will occur for State and local law enforcement participation in resident fellowship programs at the NCAVC when offered.

(3) TRAINING.—CASMIRC personnel, under the guidance of the Federal Bureau of Investigation's National Center for the Analysis of Violent Crime and in consultation with the NCMEC, shall develop a specialized course of instruction devoted to training members of the CASMIRC consistent with the purpose of this section. The CASMIRC shall also work with the NCMEC and OJJDP to develop a course of instruction for State and local law enforcement personnel to facilitate the dissemination of the most current multidisciplinary expertise in the investigation of child abductions, mysterious disappearances of children, child homicides, and serial murder of children.

(e) REPORT TO CONGRESS.—One year after the establishment of the CASMIRC, the Attorney General shall provide a report to Congress that describes the goals and activities of the CASMIRC. The report shall also contain information regarding the number and qualifications of the members appointed to the CASMIRC, provision for equipment, administrative support, and office space for the CASMIRC, and projected resource needs for the CASMIRC.

(f) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 1999 and each of the two succeeding fiscal years.

(g) CONFORMING REPEAL.—Subtitle C of title XVII of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 5776a et seq.) is repealed.

TITLE IV—RESTRICTED ACCESS TO INTERACTIVE COMPUTER SERVICE

SEC. 401. PRISONER ACCESS.

Notwithstanding any other provision of law, no agency, officer, or employee of the United States shall implement, or provide any financial assistance to, any Federal program or Federal activity in which a Federal prisoner is allowed access to any interactive computer service without the supervision of an official of the Government.

SEC. 402. RECOMMENDED PROHIBITION.

(a) FINDINGS.—Congress finds that—

(1) a Minnesota State prisoner, serving 23 years for molesting teenage girls, worked for a nonprofit work and education program inside the prison, through which the prisoner had unsupervised access to the Internet;

(2) the prisoner, through his unsupervised access to the Internet, trafficked in child pornography over the Internet;

(3) Federal law enforcement authorities caught the prisoner with a computer disk containing 280 pictures of juveniles engaged in sexually explicit conduct;

(4) a jury found the prisoner guilty of conspiring to trade in child pornography and possessing child pornography;

(5) the United States District Court for the District of Minnesota sentenced the prisoner to 87 months in Federal prison, to be served upon the completion of his 23-year State prison term; and

(6) there has been an explosion in the use of the Internet in the United States, further placing our Nation's children at risk of harm and exploitation at the hands of predators on the Internet and increasing the ease of trafficking in child pornography.

(b) SENSE OF CONGRESS.—Congress strongly urges State Governors, State legislators, and State prison administrators to prohibit unsupervised access to the Internet by State prisoners.

SEC. 403. SURVEY.

(a) SURVEY.—Not later than 6 months after the date of the enactment of this Act, the Attorney General shall conduct a survey of the States to determine to what

extent each State allows prisoners access to any interactive computer service and whether such access is supervised by a prison official.

(b) REPORT.— The Attorney General shall submit a report to Congress of the findings of the survey conducted pursuant to subsection (a).

(c) DEFINITION.—For the purposes of this section, the term “State” means each of the 50 States and the District of Columbia.

PURPOSE AND SUMMARY

H.R. 3494, the “Child Protection and Sexual Predator Punishment Act of 1998,” is a comprehensive response to the horrifying menace of sex crimes against children, particularly assaults facilitated by computers. While there are currently no estimates as to the number of children victimized in cyberspace, the rate at which federal, state, and local law enforcement are confronted with these types of cases is growing at a rapid pace. As we usher in the computer age, law enforcement will be confronted with even newer challenges. The “Child Protection and Sexual Predator Punishment Act” seeks to address those challenges by providing law enforcement with the tools it needs to investigate and bring to justice those individuals who prey on our nation’s children.

Protecting Children from Sexual Predators and Child Pornography

H.R. 3494 targets pedophiles who stalk children on the Internet. It prohibits contacting a minor over the Internet for the purposes of engaging in illegal sexual activity and prohibits knowingly transferring obscene materials to a minor over the Internet. H.R. 3494 also prohibits the use of interstate facilities to transmit identifying information about a minor for criminal sexual purposes. The bill doubles the maximum prison sentence from 5 to 10 years for enticing a minor to travel across state lines to engage in illegal sexual activity and increases the maximum prison sentence from 10 to 15 years for persuading a minor to engage in prostitution or a sexual act. Moreover, the bill establishes a minimum sentence of 3 years for using a computer to coerce or entice a minor to engage in illegal sexual activity.

H.R. 3494 cracks down on pedophiles who use and distribute child pornography to lure children into sexual encounters. The bill increases penalties for distributing child pornography after a previous conviction for an offense involving the transportation of another person for sexual activity and increases penalties for possessing 50 or more images of or items containing child pornography. The bill broadens the scope of current law relating to the coercion of a minor to travel in interstate commerce to engage in sexual activity to include the “production of child pornography.” The same expansion applies to the offense of travel in interstate commerce for such purposes. In addition, the bill allows for the prosecution of production of pornography cases where materials used to make child pornography were transported through interstate commerce, and it permits the forfeiture of assets utilized to distribute or possess “morphed” child pornography.

H.R. 3494 also authorizes pretrial detention of federal child sex offenders and allows for criminal forfeiture for certain federal sex offenses, including the: (1) transportation of a minor for illegal sexual activity; (2) coercion or enticement of a minor to engage in criminal sexual activity; and (3) transportation in interstate com-

merce with intent to engage in criminal sexual activity with a minor, (4) transmitting child pornography in interstate commerce, and (5) production of child pornography. H.R. 3494 also doubles the maximum prison sentence for repeat sex offenders who commit the federal crime involving the transportation of another person for sexual activity.

Punishing Sexual Predators

H.R. 3494 mandates life in prison for serial rapists—those who commit federal sexual assaults and have been convicted twice previously of serious state or federal sex crimes. The bill increases the maximum prison sentence from 10 to 15 years for transporting a minor in interstate commerce for prostitution or sexual activity, and requires the U.S. Sentencing Commission to review and amend the sentencing guidelines to increase the penalties for: (1) transporting a minor across state lines for the purposes of engaging in certain sexual abuse offenses; and (2) traveling in interstate commerce with the intent to engage in sexual activities with a minor. H.R. 3494 also doubles prison sentences for abusive sexual contact if the victim is under the age of 12 and doubles the maximum prison sentence available for second-time sex offenders. The bill also authorizes the pursuit of a civil remedy for personal injuries resulting from certain sex crimes against children.

Federal Investigations of Sex Crimes Against Children

H.R. 3494 gives law enforcement the tools it needs to track down pedophiles, kidnappers, and serial killers. Importantly, the bill allows for administrative subpoenas in certain child exploitation investigations and provides for the immediate commencement of federal investigations in kidnapping cases. H.R. 3494 authorizes federal jurisdiction in kidnapping cases if: (1) any facility or means of interstate or foreign commerce was used in furtherance of the offense, or (2) the kidnapping offense affects interstate or foreign commerce. The bill allows for the federal investigation of serial murder offenses when such an investigation is requested by a state or local law enforcement agency with jurisdiction over the offense. H.R. 3494 also restructures the currently existing Morgan P. Hardiman Missing and Exploited Children’s Task Force into a resource center to improve its effectiveness in kidnapping and serial murder investigations. Finally, the bill prohibits unsupervised access to the Internet by federal prisoners; expresses a sense of Congress that state governors, state legislators, and state prison officials should also prohibit unsupervised access to the Internet by state prisoners; and requires the Attorney General to report to Congress on the extent to which states currently allow prisoner access to the Internet.

BACKGROUND AND NEED FOR THE LEGISLATION

With the advent of ever-growing computer technology, law enforcement officials are discovering that criminals roam the Internet just as they roam the streets. While parents strive to warn their children about the dangers outside of the home, they are often unaware of the dangers within—on the World Wide Web. “Cyber-predators” often “cruise” the Internet in search of lonely, rebellious

or trusting young people. The anonymous nature of the on-line relationship allows users to misrepresent their age, gender, or interests. Perfect strangers can reach into the home and befriend a child.

Recent, highly publicized news accounts in which pedophiles have used the Internet to seduce or persuade children to meet them to engage in sexual activities have sparked vigorous debate about the wonders and perils of the information superhighway. Youths who have agreed to such meetings have been kidnapped, photographed for child pornography, raped, beaten, robbed, and worse.

During the 104th and 105th Congresses, the Subcommittee on Crime held seven hearings on issues related to crimes against children. At those hearings, the Subcommittee heard testimony from victim parents, child safety advocacy groups, and federal, state and local law enforcement about the nature, threat and best ways to stop pedophiles who prey on innocent children. Parents urged Congress to provide faster, more efficient federal assistance in kidnapping and serial murder investigations. When an abducted child is not found in the first 24 hours, it becomes far more difficult to find the child at all. While the FBI may initiate an investigation under current law as soon as it is notified about a child abduction, local law enforcement officials are often hesitant to provide such notification because of confusion over the "24-hour rule." The rule establishes a presumption of federal jurisdiction if a person has been missing for more than 24 hours.

At the Subcommittee hearings, federal law enforcement also testified about the nature of child sex offenders, how they seek out relationships with children and how the recidivism rates for such offenders are 10 times higher than other types of criminal offenders. Nearly two-thirds of prisoners serving time for rape and sexual assault victimized children. Almost one-third of these victims were less than 11-years-old. Law enforcement urged Congress to provide them with the tools necessary to investigate and bring to justice those individuals who prey on our nation's children.

H.R. 3494, the "Child Protection and Sexual Predator Punishment Act of 1998," is a response to requests of victim parents and law enforcement to address public safety issues involving the most vulnerable members of our society, our children. H.R. 3494 is the most comprehensive package of new crimes and increased penalties ever developed in response to crimes against children, particularly assaults facilitated by computers. The bill attacks pedophiles who stalk children on the Internet. It prohibits contacting a minor over the Internet for the purposes of engaging in illegal sexual activity and punishes those who knowingly send obscenity to children. In addition to Internet-related crimes, this bill also includes other very important provisions, such as cracking down on serial rapists and authorizing pretrial detention for federal sex offenders. Those who commit these heinous crimes must be sent a message that they will be punished swiftly and severely. H.R. 3494 intends to do just that.

HEARINGS

The Committee's Subcommittee on Crime held 2 days of hearings on H.R. 3494 on November 7, 1997, and April 30, 1998. At the November 7, 1997, hearing, witnesses invited by the Subcommittee were members of law enforcement who had worked cases involving Internet crimes against children on a day-to-day basis, or they were individuals who had worked with children and families to promote on-line safety on the Internet. They included: Mr. Steven Wiley, Section Chief, Violent Crimes Unit, Federal Bureau of Investigation; Ms. Carol Ellison, senior editor, HomePC Magazine; Mr. D. Douglas Rehman, Special Agent, Florida Department of Law Enforcement; Ms. Cathy Cleaver, Legal Counsel, Family Research Council; and Mr. Paul Reid, Detective, Arlington County Police Department.

Witnesses for the April 30, 1998, hearing included Mrs. Deborah Neimann-Boehle, the mother of a young girl who was harassed by pedophiles who got her name over the Internet, Chicago, Illinois; the Honorable Jerry Weller, 11th District, Illinois; the Honorable Bob Franks, 7th District, New Jersey; the Honorable Gil Gutknecht, 1st District, Minnesota; the Honorable Debra Pryce, 15th District, Ohio; the Honorable Nick Lampson, 9th District, Texas; the Honorable Bob Riley, 3rd District, Alabama. Mr. Kevin DiGregory, Deputy Assistant Attorney General of the Criminal Division at the U.S. Department of Justice testified on a second panel.

In the 104th and 105th Congresses, the Subcommittee on Crime held a total of seven hearings on the topic of crimes against children. On September 14th, 1995, the Subcommittee held a hearing regarding child abduction and serial killing and how federal agencies respond to these crimes. The Subcommittee heard testimony from Mr. Ernie E. Allen, President of the National Center for Missing and Exploited Children; Mr. William Hagmaier, III, Supervisory Special Agent and Unit Chief with the Child Abduction and Serial Killer Unit of the FBI; Mr. Kenneth V. Lanning, Supervisory Agent of the Behavioral Science Unit of the FBI; Mr. Robin L. Montgomery, Special Agent in Charge of the Critical Incident Response Group of the FBI; Captain Patrick Parks of the Petaluma, California Police Department; Mr. John Walsh, host of "America's Most Wanted;" and Mrs. Patty Wetterling, co-founder of the Jacob Wetterling Foundation.

On March 7, 1996, the Subcommittee held a hearing on sex offender community notification and on the bill H.R. 2137, "Megan's Law," a bill which became law and now requires notification of residents when convicted sex offenders move into a neighborhood. Witnesses for the hearing included Congressman Dick Zimmer of New Jersey. Written testimony was submitted by Ms. Maureen Kanka, co-founder of the Megan Nicole National Center for Missing and Exploited Children. On that same date, the Subcommittee also discussed H.R. 2974, the "Crimes Against Children and Elderly Increased Punishment Act." Congressman Dick Chrysler of Michigan testified on behalf of the bill.

On June 19, 1996, the Subcommittee held a hearing on federal record-keeping and sex offenders. Testimony was heard from Mr.

Richard Hagerman and Ms. Donna Whitsom, parents of Amber Hagerman; Congressman Martin Frost of Texas; Congressman Gil Gutknecht of Minnesota; Congressman Dick Zimmer of New Jersey; Mr. Harlin R. McEwen, Deputy Assistant Director of the Criminal Justice Information Services of the FBI; and Mr. Ernie Allen, President of the National Center for Missing and Exploited Children.

On September 12, 1996, the Subcommittee held a hearing on H.R. 3508, the "Children's Privacy and Parental Empowerment Act." Witnesses included Congressman Bob Franks of New Jersey; Ms. Mariam Bell, Executive Vice President of Enough is Enough; Mr. Marc Klaas of the Klaas Foundation for Children and Kids Off Lists; Mr. Marc Rotenberg, Director of the Electronic Privacy Information Center; Sergeant R.P. "Toby" Tyler, Supervisor of the Crimes Against Children Detail with the San Bernardino Sheriff's Department; Mr. Fred Seigel, Executive Director of Enrollment Services at the George Washington University; Mr. Richard Barton, Senior Vice President of Congressional Affairs for Direct Marketing Association, Inc.; Mr. Martin Lerner, President of American Student Lists Company, Inc.; and Mr. Dante Cirilli, President of Grolier Enterprises, Inc.

COMMITTEE CONSIDERATION

On May 6, 1998, the Committee met in open session and ordered reported favorably the bill H.R. 3494 with an amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

Mr. Chabot offered an amendment which prohibits unsupervised access to the Internet by federal prisoners, and expresses a Sense of Congress that state governors, state legislators, and state prison officials should also prohibit unsupervised access to the Internet by state prisoners. The amendment also requires the Attorney General to submit to Congress a report of the findings of a survey of the states to determine the extent to which prisoners currently have unsupervised access to the Internet. The Chabot amendment passed by voice vote.

ROLLCALL VOTE NO. 1

Mr. Frank offered an amendment to the Chabot amendment which would strike the provisions requiring the Attorney General to submit to Congress a report of the findings of a survey of the states to determine the extent to which prisoners currently have unsupervised access to the Internet. The Frank amendment was defeated by a vote of 7-17.

AYES
Mr. Pease
Mr. Rogan
Mr. Conyers
Mr. Frank
Mr. Scott
Mr. Watt

NAYES
Mr. McCollum
Mr. Gekas
Mr. Smith (TX)
Mr. Gallegly
Mr. Canady
Mr. Inglis

Mr. Delahunt

Mr. Goodlatte
 Mr. Buyer
 Mr. Bryant
 Mr. Chabot
 Mr. Jenkins
 Mr. Hutchinson
 Ms. Lofgren
 Ms. Jackson Lee
 Mr. Wexler
 Mr. Rothman
 Mr. Hyde, Chairman

Mr. McCollum offered an amendment which incorporated recommendations from the Department of Justice, language from two bills related to crimes against children, and language suggested by the minority to clarify that certain provisions did not apply to certain cases involving teenaged, consensual sexual activity. The amendment was adopted 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.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3494, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 18, 1998.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3494, the Child Protection and Sexual Predator Punishment Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs), who can be reached at 226-2860, and Leo Lex (for the state and local impact), who can be reached at 225-3220.

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

cc: Hon. John Conyers, Jr.,
Ranking Minority Member.

H.R. 3494—Child Protection and Sexual Predator Punishment Act of 1998

Summary

H.R. 3494 would establish new crimes related to sexual offenses against children and increase fines and maximum sentences for some existing crimes involving the abduction and sexual abuse of children. This bill also would expand the government's forfeiture authority to certain sexual offenses. In addition, H.R. 3494 would restructure the existing Morgan P. Hardiman Missing and Exploited Children's Task Force into a resource center within the Federal Bureau of Investigation (FBI) to more effectively address cases of child abduction and serial murders.

Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would result in additional costs of about \$32 million over the next five years to accommodate more prisoners in federal prisons and to operate the proposed FBI resource center. Because enactment of H.R. 3494 could affect direct spending and receipts as a result of additional fines and forfeiture receipts, pay-as-you-go procedures would apply to the bill. However, CBO estimates that any impact on direct spending and receipts would not be significant.

H.R. 3494 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and it would impose no costs on the budgets of state, local, and tribal governments. By providing federal training opportunities and investigative support, the bill may augment state and local investigations of child abduction and sexual abuse.

Estimated Cost to the Federal Government

Assuming the appropriation of the necessary amounts, CBO estimates that implementing H.R. 3494 would increase spending for prison operating costs by about \$6 million over the 1999-2003 period, and would increase spending for FBI operating costs by about \$26 million over the same period. The estimated budgetary impact of H.R. 3494 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

[By Fiscal Year, In Millions Of Dollars]

	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for						
FBI and Prison Operations						
Estimated Authorization Level ^a	5,537	5,777	5,998	6,218	6,416	6,682
Estimated Outlays	5,116	5,624	5,934	6,156	6,528	6,617
Proposed Changes						
FBI Operating Costs						
Estimated Authorization Level	0	5	5	5	5	6
Estimated Outlays	0	4	5	5	5	6
Prison Operating Costs						
Estimated Authorization Level	0	0	1	1	2	2
Estimated Outlays	0	0	1	1	2	2
Total Spending Under H.R. 3494						
for FBI and Prison Operations						
Estimated Authorization Level	5,537	5,782	6,004	6,224	6,423	6,690
Estimated Outlays	5,116	5,628	5,940	6,162	6,535	6,625
CHANGES IN REVENUES AND DIRECT SPENDING						
Additional Fines and Forfeiture Receipts						
Estimated Revenues	0	b	b	b	b	b
Spending from Crime Victims Fund						
Estimated Budget Authority	0	b	b	b	b	b
Estimated Outlays	0	b	b	b	b	b

^aThe 1998 level is the amount appropriated for that year. The estimated authorization levels for 1999 through 2003 reflect CBO baseline estimates, assuming adjustment for inflation.

^b Less than \$500,000.

Basis of Estimate

For purposes of this estimate, CBO assumes that H.R. 3494 will be enacted by October 1, 1998, and that the estimated authorization amounts will be appropriated for each fiscal year.

SPENDING SUBJECT TO APPROPRIATION

Based on information from the FBI, CBO expects that the FBI would require about \$5 million in appropriated funds in 1999 and a total of \$26 million over the next five years to meet the increased responsibilities specified under the bill. Currently, the FBI manages a nationwide task force to address child abductions. This additional funding would be required to establish and operate a centralized resource center at the FBI's training facility in Quantico, Virginia, that would assist federal, state, and local law enforcement authorities in their investigation of various crimes involving children. The funding would cover the costs of salaries and benefits for additional agents and support personnel, data base support, and resources required for training assistance for state and local law enforcement authorities.

According to the U.S. Sentencing Commission, about 150 prisoners each year would be affected by the bill's provisions, with the majority of those prisoners likely to serve—on average—an additional year in prison under H.R. 3494. At an annual cost per prisoner of about \$9,000 (at 1998 prices), CBO estimates that the cost to support these additional prisoners would total about \$6 million over the 1999–2003 period. This estimate assumes that no additional prisons would be constructed over the next five years to accommodate this increase in prison population.

Because CBO expects that states will continue to prosecute the majority of sexual offenses, we do not expect that the likely increase in the number of prosecutions and convictions as a result of this bill would lead to any significant increase in the federal prison

population. Any additional costs for prison operations would be subject to the availability of appropriations.

REVENUES AND DIRECT SPENDING

Enacting H.R. 3494 could increase revenues, but CBO expects that the federal government would not collect a significant amount of additional fines from sexual predators who are prosecuted under federal law. Such fines are recorded in the budget as governmental receipts, or revenues, which are deposited in the Crime Victims Fund and spent in the following year. Because any increase in direct spending would equal the fines collected with a one-year lag, the additional direct spending also would be insignificant. CBO further estimates that enacting H.R. 3494 would result in little or no change in the amount of receipts deposited in the Assets Forfeiture Fund.

Pay-as-You-Go Considerations

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Although enacting H.R. 3494 could affect both direct spending and receipts, CBO estimates that any such effects would be less than \$500,000 a year.

Estimated Impact on State, Local, and Tribal Governments

H.R. 3494 contains no intergovernmental mandates as defined in UMRA and it would impose no costs on the budgets of state, local, or tribal governments. By providing federal training opportunities and investigative support, the bill may augment child abduction and sexual abuse investigations at the state and local level.

Estimated Impact on the Private Sector

H.R. 3494 would impose no private-sector mandates as defined in UMRA.

Estimate Prepared By:

Federal Costs: Susanne S. Mehlman (226–2860)
Impact on State, Local, and Tribal Governments: Leo Lex (225–3220)

Estimate Approved By:

Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. This section provides that the Act may be cited as the “Child Protection and Sexual Predator Punishment Act of 1998.”

Title I: Protecting Children from Sexual Predators and Computer Pornography

Sec. 101. Contacting minors for sexual purposes. This section amends the federal criminal code by establishing a fine and up to 5 years in prison for anyone who, using the mail or any facility of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly contacts (or attempts to contact) an individual who has not attained age 18, or who has been represented to the person making the contact as not having attained age 18, for purposes of engaging in criminal sexual activity. Under current law, the Federal Government must prove that a pedophile “persuaded, induced, enticed or coerced” a child to engage in a sexual act. This standard allows the criminal to establish a prolonged, intimate and highly destructive relationship with the victim, involving explicit sexual language, without actually violating the law. This new crime, which is similar to laws being enacted at the state level, establishes a lower penalty for initiating a harmful relationship with a child for the purpose of engaging in illegal sexual activity. Section 101 also clarifies that this provision is not intended to apply to minors who engage in consensual sexual activity with other minors.

Sec. 102. Transfer of obscene material to minors. This section amends the federal criminal code by establishing a fine and up to 5 years in prison for anyone who, using the mail or any facility of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly transfers obscene matter to a minor. Pedophiles often send child pornography and obscene materials to minors for the purpose of desensitizing the child to obscene behavior and to entice the child to believe that such sexual activities are “normal.” Law enforcement officials have testified before the Subcommittee on Crime that the sending of child pornography and obscene materials is often the *modus operandi* of many pedophiles who cruise the Internet seeking to build relationships with minors to victimize them. While the sending of obscene material is currently an offense punishable by fine or up to 5 years in prison under 18 U.S.C. 1462, there is no specific prohibition against sending obscene material to minors nor is there prohibition against sending obscene material to someone who has been represented to the transferor as not having attained the age of 18. This provision specifically targets individuals who are not necessarily in the actual business of selling or transferring obscene material, but are attempting to use obscene material to lure a child to be victimized. This section will serve to ensure that the transfers prohibited under this section are subject to federal penalties when the transfers are sent to minors.

It is the view of the Committee that law enforcement plays an important role in discovering child sex offenders on the Internet before they are able to victimize an actual child. Those who believe they are victimizing children, even if they come into contact with a law enforcement officer who poses as a child, should be punished just as if a real child were involved. It is for this reason that several provisions in this Act prohibit certain conduct involving minors and *assumed* minors.

Sec. 103. Increased prison sentence for enticement of minors. This section doubles the maximum prison sentence from 5 to 10 years for enticing a minor to travel across state lines to engage in illegal sexual activity and increases the maximum prison sentence from 10 to 15 years for enticing or coercing a minor to engage in prostitution or a sexual act.

Sec. 104. Additional jurisdictional base for prosecution of production of child pornography. This section allows for the prosecution of child pornography production cases where materials used to make the child pornography were transported in interstate or foreign commerce. While current law regarding the possession of child pornography proscribes the possession of child pornography that was produced with materials that had been mailed, shipped or transported in interstate or foreign commerce, the child pornography production statute only allows for prosecution if the defendant knows or has reason to know that the visual depictions themselves will be transported in interstate or foreign commerce. Federal law enforcement officials confront numerous cases where the defendant produced the child pornography but did not intend to transport the images in interstate commerce. This section will allow for such prosecutions.

Sec. 105. Increased penalties for certain activities relating to material involving the sexual exploitation of minors or child pornography and technical correction. Subsection 105(a)(1) increases penalties for distributing child pornography after a previous conviction for an offense involving the transportation of another person for sexual activity and other related offenses under Chapter 117 of title 18, United States Code. Current law provides for a sentence of not less than 5 years for distributing child pornography after a previous rape or sexual abuse conviction. This section would add Chapter 117 offenses to the list of prior offenses which would trigger a stiffer penalty if an individual is convicted of distributing child pornography.

Subsection 105(a)(2) increases penalties for possessing 50 or more images of or items containing child pornography. There is currently no greater punishment for the possession of large quantities of child pornography. While possession of child pornography carries a punishment of up to 5 years in prison, this provision would establish a penalty of not less than 2 years if the quantity possessed exceeds 50 items or images. Law enforcement experts have testified before the Subcommittee on Crime that those who possess large quantities of child pornography are frequently child sex offenders and use such materials to lure children into sexual encounters.

Subsection 105(b) increases penalties for sexual exploitation of children after previous convictions involving the transportation of another person for sexual activity and other related offenses under Chapter 117 of the federal criminal code. Current law provides for a sentence for sexual exploitation of children of not less than 15 years if the offender has one prior rape or sexual abuse conviction and not less than 30 years if the offender has two or more previous rape or sexual abuse convictions. This section would add Chapter 117 offenses to the list of prior offenses which would trigger stiffer

penalties if an individual is convicted of sexual exploitation of children.

Sec. 106. Criminal forfeiture for solicitation of minors and interstate prostitution. This section establishes criminal forfeiture for federal sex offenses, including the: (1) transportation of a minor for illegal sexual activity; (2) coercion or enticement of a minor to engage in criminal sexual activity; and (3) transportation in interstate commerce with intent to engage in criminal sexual activity with a minor, (4) transmitting child pornography in interstate commerce, and (5) production of child pornography.

Sec. 107. Pretrial detention of sex offenders. This section provides for pretrial detention of persons who commit federal sex offenses under Chapter 117 of title 18. Current law requires pretrial detention for federal crimes of violence including rape, sexual abuse, sexual exploitation, and distribution of child pornography, but does not require pretrial detention for offenses involving: (1) transportation of a minor for illegal sexual activity; (2) coercion or enticement of a minor to engage in criminal sexual activity; or (3) transportation in interstate commerce with intent to engage in criminal sexual activity with a minor. This section would add these offenses to the list of offenses in which pretrial detention is authorized.

Sec. 108. Increased prison sentences. This section establishes a 3-year minimum term of imprisonment for using a computer or any facility of interstate or foreign commerce to entice or coerce a minor to engage in illegal sexual activity. The Committee believes that the proliferation of home computers and the virtually limitless access to children facilitated by such computers require a tough penalty for this offense. The public's absolute intolerance of child-stalking on the Internet must be unmistakably communicated.

Sec. 109. Repeat offenders in transportation offense. This section doubles the maximum term of imprisonment for a violation of provisions relating to the transportation of minors for illegal sexual activity and other related offenses under Chapter 117 of the federal criminal code after a prior sex offense conviction.

Sec. 110. Definition and addition of attempt offense. This section includes "production of child pornography" and "attempt" in the coercion of a minor statute and the travel to engage in sexual activity with a minor statute (18 U.S.C. 2422). There is currently no federal penalty for individuals who travel or use facilities of interstate commerce to persuade minors to engage in the production of child pornography. The addition of "production of child pornography" to section 2422 would allow federal prosecution in these circumstances. The "attempt" language added to 18 U.S.C. 2422(a) would enable law enforcement to charge a defendant who attempts to lure individuals into illegal sexual activity, but where the travel did not take place (*i.e.*, only an attempt occurred). Existing sections 2422(b) and the Act's proposed section 2422(c) already include attempt provisions.

Sec. 111. Use of Interstate facilities to transmit identifying information about a minor for criminal sexual purposes. This section establishes a new offense for knowingly transmitting, printing, publishing or reproducing the name, address, telephone number, e-mail address, or other identifying information about a minor for the purposes of facilitating, encouraging, offering or soliciting any person

to engage in illegal sexual activity. The offense carries a penalty of a fine or up to 5 years imprisonment. The Committee is aware of at least one instance in which the name and phone number of a 9-year-old girl was posted on the Internet, inviting pedophiles to call her 24-hours a day for sex acts. The harassment which followed forced the family to move to a new town. There is currently no prohibition against posting information about a child for the purpose of facilitating illegal sexual activity. It is the intent of this section to respond to such crimes.

Title II: Punishing Sexual Predators

Sec. 201. Sentencing enhancement in Section 2423 cases. This section directs the United States Sentencing Commission to review and amend the Federal Sentencing Guidelines to provide a sentencing enhancement for transportation of a minor with intent to engage in criminal sexual activity or for travel with intent to engage in a sexual act with a minor. It is the view of the Committee that the Sentencing Commission should ensure that the sentencing ranges corresponding to these offenses are appropriately severe. During the hearings held by the Subcommittee on Crime, numerous cases were cited in which pedophiles received only a 2- to 3-year sentence for luring children over the Internet to engage in sexual acts. In one particular case discussed at one of the Subcommittee's hearings, the U.S. Attorney asked the judge to depart from the guidelines because the penalties available to the judge were too low. The Committee is concerned that such requests have been necessary and believes that the Sentencing Commission should review the guidelines to make sure penalties for these horrendous crimes are adequate, particularly in light of the increased maximum sentences for these crimes established in this Act.

Sec. 202. Increased penalties for transportation of minors or assumed minors for illegal sexual activity and related crimes. This section increases the maximum prison sentence from 10 to 15 years for transportation of a minor or assumed minor with intent to engage in criminal sexual activity and for travel with intent to engage in a sexual act with a minor or assumed minor.

Sec. 203. Increased penalties for abusive sexual contact. This section doubles penalties for abusive sexual contact where the victim is under age 12.

Sec. 204. Punishment for repeat offenders. This section mandates life in prison for serial rapists—those who commit a federal sexual assault and have been convicted twice previously of serious state or federal sex crimes. Serious state or federal sex crimes are defined as offenses under 18 U.S.C. 2241 and 2242 (which include aggravated rape and rape) or a state offense in which the conduct, if it were committed on federal property, would constitute a violation under 18 U.S.C. 2241 or 2242.

The amendment to current law establishes a new offense which mandates life in prison for a person who has two prior serious sex crime convictions, and who commits an aggravated sex crime in which the person's conduct, if it were committed in federal jurisdiction would constitute a federal offense and either the person traveled in interstate or foreign commerce or used the mail or any facility of interstate or foreign commerce to commit the crime, or the

person's conduct occurred in or affected interstate or foreign commerce. Under the current federal "three-strikes-you're-out" law, a sexual assault after two "strikes" carries a mandatory life sentence only if it is committed on federal property. This provision would expand federal jurisdiction to include sexual assaults involving travel in, or the use of a facility or means of interstate commerce, but only after an offender has been convicted twice previously of a serious state or federal sex crime.

Sec. 205. Repeat offenders in sexual abuse cases. This section amends current repeat offender provisions by doubling the maximum term of imprisonment after a prior sex offense conviction.

Sec. 206. Civil remedy for personal injuries resulting from certain sex crimes against children. This section provides a civil remedy for personal injuries resulting from certain sex crimes against children. Current law provides for a civil remedy for personal injuries resulting from child pornography offenses. This section expands the number of sex offenses in which a minor may pursue a civil remedy for personal injuries resulting from the offense. It is the intention of the Committee that only the offender who perpetrated the offense against the minor is liable for damages under this section.

Sec. 208. Death or life in prison for certain offense whose victims are children. This section amends the federal criminal code to require that any person convicted of a federal offense involving a serious violent felony or the sexual exploitation of a child shall, unless the death sentence is imposed, be sentenced to life in prison if the victim is under 14-years-old and dies as a result of the offense. In order to be eligible for this sentence, the defendant must have acted with the state-of-mind described in section 3591 of title 18, United States Code. This section defines the requisite intentional behavior or aggravated recklessness necessary for the imposition of a death sentence.

Title III: Federal Investigations of Sex Crimes Against Children and Serial Killers

Sec. 301. Administrative Subpoenas. This section amends the federal criminal code to authorize the Attorney General, in investigations of alleged violations of certain federal provisions regarding sexual abuse of children, to subpoena witnesses and compel the production of records deemed relevant or material to the investigation. Under current law, federal law enforcement authorities may subpoena records in drug and health care fraud investigations without a court authorized subpoena. In this section, the Attorney General or her designee is authorized to issue such subpoenas in cases of: (1) aggravated sexual abuse of a child; (2) sexual abuse of a child; (3) transportation of any individual in interstate commerce for prostitution or illegal sexual activity; (4) using a facility of interstate commerce to coerce or entice a minor to travel in interstate commerce to engage in illegal sexual activity; or (5) traveling in interstate commerce to engage in illegal sexual activity with a minor. The FBI has experienced difficulty in obtaining subpoenas in jurisdictions where U.S. attorneys lack sufficient resources to support an investigation of child pedophiles.

Sec. 302. Kidnapping. This section allows for the immediate commencement of federal investigations in kidnapping cases. When an

abducted child is not found in the first 24 hours, it becomes frequently far more difficult to recover the child alive, if at all. While the FBI may initiate an investigation under current law as soon as it is notified about a child abduction, local law enforcement officials are often hesitant to provide such notification because of confusion over the "24-hour rule." This rule establishes a presumption of federal jurisdiction if a person has been missing for more than 24 hours. This provision clarifies that the rule does not preclude immediate investigative authority for federal law enforcement in kidnapping cases.

This section also authorizes federal jurisdiction in kidnapping cases if any facility or means of interstate or foreign commerce was used in furtherance of the offense or the kidnapping offense affects interstate or foreign commerce. The federal kidnapping law (18 U.S.C. 1201) was originally fashioned in reaction to the interstate kidnapping of the Lindbergh baby in 1932. Because of this, it is limited generally to instances in which the victim is transported interstate and does not include other traditional bases for federal jurisdiction such as travel by the offender in interstate commerce, or the use of a facility of interstate commerce or the mails in the commission of the crime. While the FBI may initiate a preliminary kidnapping investigation immediately after it is notified, once it has been determined that the case is intrastate, the FBI is often required to end its investigation. This section would enable federal prosecution in such cases as the recent kidnapping of an Exxon executive in New Jersey, where the FBI, after a painstaking investigation, apprehended the perpetrators but lacked the federal jurisdiction to prosecute because the victim had never been transported out of New Jersey, although the defendants had used interstate facilities during the commission of the crime. The Committee believes that expanding federal jurisdiction in this area is well justified because of the preeminent need to bring the most effective resources to bear in seeking to protect children from sexual predators.

Section 303. Authority to Investigate Serial Killings. This section provides authority for the Attorney General and the FBI to investigate serial murders when such an investigation is requested by a state or local law enforcement agency with jurisdiction over the offense. "Serial killing" is defined to require at least 3 prior murders which appear to have been committed by the same perpetrator.

The Committee believes that use of federal resources in serial killing investigations is well justified. Serial killings are among the most difficult to investigate successfully. Often, child abduction and serial murder crimes involve offenders who travel through multiple jurisdictions, thus complicating the ability to coordinate effectively such investigations. Many serial murder investigations result in out-of-state leads which can be costly and labor intensive to pursue and require specialized training. Moreover, these cases frequently pose exceptionally unique challenges due to the often unusual motivations of the perpetrators and seeming randomness of the acts. While the FBI keeps track of such killings, and may provide information to local law enforcement, it has no investigative powers itself over these crimes. This section would grant the FBI authority to investigate serial killings only upon the request of a state or

local official with investigative or prosecutorial jurisdiction over the offense. With federal, state, and local law enforcement working together to effectively investigate these crimes, serial killers can be apprehended before they are able to take the life of more victims.

Sec. 304. Morgan P. Hardiman Child Abduction and Serial Murder Investigative Resources Center. This section restructures the currently existing Morgan P. Hardiman Missing and Exploited Children's Task Force into a resource center to improve its effectiveness in kidnapping and serial murder investigations. The resource center would be simplified through the establishment of regional coordinators in FBI field offices who would serve as liaisons for state and local law enforcement and other federal law enforcement agencies in cases of child abduction and serial murders. The Committee favors the continued relationships with and between the Task Force and the United States Customs Service, the United States Secret Service, the Postal Inspection Service, and the Marshals Service, so that their resources and expertise will be available to the unit whenever necessary.

Subsection 304(f) authorizes to be appropriated to carry out this section such sums as necessary for fiscal year 1999 and the next two fiscal years. It is the view of the Committee that increased funds will be necessary to pay for state and local training as the task force works with the National Center for Missing and Exploited Children and the Office of Juvenile Justice and Delinquency Prevention to provide instruction on the investigation of child abductions, mysterious disappearances of children, and serial murder of children. Funds will also be necessary to enhance agent and analytical staff, operational support, and research capabilities of the National Center for the Analysis of Violent Crime (formerly the Child Abduction and Serial Killer Unit) at the FBI. Federal support may also be necessary to pay overtime for state and local law enforcement personnel who work with the Morgan P. Hardiman Task Force. The Committee estimates that these activities should not exceed \$7 million in the first year of operation.

Title IV—Restricted Access to Interactive Computer Service

Sec. 401. Prisoner Access. This section prohibits the implementation of federal financial assistance to any federal program or activity in which a federal prisoner is allowed unsupervised access to the Internet.

Sec. 402. Recommended Prohibition. Section 402 provides Congressional findings which summarize an incident in which an inmate who was serving a 23-year sentence in a Minnesota State prison for child molestation, was found trafficking in child pornography over the Internet from prison. This section also includes a sense of the Congress that urges state governors, state legislators, and state prison administrators to prohibit unsupervised access to the Internet by state prisoners.

Sec. 403. Survey. This section requires the Attorney General to conduct a survey of the states to determine to what extent they allow prisoners access to any interactive computer service and whether such access is supervised by a prison official. This section also requires the Attorney General to submit a report to Congress regarding the findings of this survey.

AGENCY VIEWS

APRIL 28, 1998

Hon. BILL MCCOLLUM,
*Chairman, Subcommittee on Crime,
Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: We are pleased to present the views of the Department of Justice on H.R. 3494, the "Child Protection and Sexual Predator Punishment Act of 1998," as well as our views on H. Con. Res. 125, H.R. 1972, H.R. 2122, H.R. 2173, H.R. 2488, H.R. 2815 and H.R. 3185, other measures that have as their goal the reduction or elimination of the sexual or other exploitation of children.

At the outset, we commend you for moving H.R. 3494 forward and state the strong support of the Administration for H.R. 3494's goal of combating child pornography and the sexual exploitation of minors. Toward that end, we offer the following suggestions, which we believe will strengthen H.R. 3494 by making it more workable and effective.

Inclusion of "production of child pornography" and "attempt" in the coercion of a minor statute and the travel to engage in sexual activity with a minor statute. Proposed Sections 101 and 103 amend 18 U.S.C. § 2422, which proscribes using the mail or a facility or means of interstate or foreign commerce to contact a minor for the purposes of engaging in criminal sexual activity. Section 202 amends 18 U.S.C. § 2423, which prohibits the transportation of minors to engage in any sexual activity for which any person can be charged with a criminal offense. The production of child pornography is not encompassed within the statutes' definition of prohibited sexual activity, however. As a result, individuals who travel or use facilities of interstate commerce to persuade minors to engage in the production of child pornography have not been subject to federal prosecution. The addition of "production of child pornography" would allow federal prosecution in these circumstances.

We also believe that inclusion of "attempt" language in 18 U.S.C. § 2422(a) would be helpful in charging cases where the defendant attempts to lure individuals into illegal sexual activity, but the travel did not take place (i.e., only an attempt occurred). Existing Section 2422(b) and the bill's proposed Section 2422(c) already include attempt provisions.

Allowing prosecution of production of child pornography cases where materials used to make the child pornography were transported in interstate or foreign commerce. Although the bill amends 18 U.S.C. § 2252, the child pornography distribution and possession statute, it does not amend 18 U.S.C. § 2251, the child pornography production statute. We suggest a section that amends 18 U.S.C. §§ 2251(a) and (b) to include language permitting prosecution of the person "if such visual depiction was produced with materials that had been mailed, shipped or transported in interstate or foreign commerce by any means, including, but not limited to, computer." The child pornography possession statutes in 18 U.S.C. §§ 2252 and 2252A proscribe the possession of child pornography that was produced with materials that had been mailed, or shipped or trans-

ported in interstate or foreign commerce. The child pornography production statute, however, only allows prosecution if the defendant knows or has reason to know that the visual depictions themselves will be transported in interstate or foreign commerce, or if the depictions actually were so transported. There have been a number of cases where the defendant produced the child pornography but did not intend to transport the images in interstate commerce. In such cases, the federal government cannot prosecute the production of child pornography charge, but, instead, must turn the production case over to state prosecutors. The suggested amendment will enable the case to be prosecuted federally, which will ensure that an appropriately severe sentence is available.

Permitting forfeiture of assets utilized to distribute or possess “morphed” child pornography or certain items of child pornography or to produce child pornography overseas for importation into the United States, or the proceeds of such offenses, or in cases under the Mann Act. We suggest that in Section 105, 18 U.S.C. § 2252A and 18 U.S.C. § 2260 should be inserted in the list of statutes that subject property to criminal and civil forfeiture under 18 U.S.C. §§ 2253 and 2254, respectively, and that chapter 117 in its entirety be added to the criminal forfeiture predicates in sections 2253 and 2254. Sections 2252A and 2260 are the only statutes referring to child pornography that are not referenced in the child pornography forfeiture section, 18 U.S.C. § 2253. As a result, the government has not been able to seek forfeiture of computers that were utilized to receive or distribute “morphed” child pornography, or computers containing substantial images of child pornography in situations where all the child pornography was found in the computer, under the new child pornography statute, 18 U.S.C. § 2252A. Inclusion of these two child pornography statutes within the forfeiture section will permit forfeiture of assets or proceeds involved in these child pornography offenses.

Correction of amendment of the pretrial detention statute. Section 106 creates the possibility of pretrial detention for certain child sex offenders. However, the proposed section, which would amend 18 U.S.C. § 3142(f), is partially redundant with 18 U.S.C. § 3156(a)(4), which defines “crime of violence” to include offenses under Chapter 109A and Chapter 110. We suggest that an amendment of the definition section to include Chapter 117 offenses would be a simpler and better alternative.

Change the definition of sexual act in the “travel to engage in sexual activity with a minor” statute. Section 202 amends 18 U.S.C. § 2423 to create the new crimes of transporting an individual the person believes to be a minor for illegal sexual activity and traveling in interstate commerce for the purpose of engaging in illegal sexual activity with an individual the person believes to be a minor. Initially, we note that the phrase “belief that the individual has not attained the age of 18 years” should be stricken, and the phrase “an individual who has been represented to the person as not having attained the age of 18 years” should be substituted. This is the same language found in Section 101 of the bill.

We also suggest that in Section 2423(b), the phrase “for the purpose of engaging in any sexual act (as defined in Section 2246) with another person who has not attained the age of 18 years, or whom

the person believes has not attained the age of 18 years, that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States,” should be stricken and the phrase “for the purpose of engaging in any sexual activity with another person who has not attained the age of 18 years, or who has been represented to have not attained the age of 18 years, for which any person can be charged with a criminal offense” substituted therefor.

An anomaly is apparent when one compares subsection 2423(a) with subsection 2423(b). Subsection (a) permits prosecution of persons who transport a minor in interstate commerce with the intent that the minor engage in any sexual activity for which any person could be charged with a criminal offense. Thus, if the defendant intended to commit a state sex crime with the minor, such as statutory rape, the transportation would come under the proscriptions of the statute. Subsection (b), by contrast, permits prosecution of those who travel themselves with the intent to commit sex crimes that would violate Chapter 109A, if the sexual activity had occurred within federal jurisdiction. In these circumstances, a person who traveled in interstate commerce with the intention of having consensual sexual activity with a 16-year-old minor would not violate the statute, because Chapter 109A only punishes consensual sexual activity between the defendant and a minor between the ages of 13 and 15, if the perpetrator is four or more years older than the minor. The existing language has been a barrier to prosecution of Section 2423(b) crimes in cases where the person travels to meet a minor aged 16–18. If the state has a statute prohibiting consensual sex with minors under the age of 18, the bill language would inappropriately permit travel to engage in sexual activity that is proscribed under state law.

Sentences for possession of 50 or more items of child pornography and for using a computer to contact a minor for sexual activity. Section 104 inserts language in the child pornography possession statute that requires a mandatory two-year sentence if the possession consists of 50 or more items. Section 107 amends the coercion statute, 18 U.S.C. §2422, by requiring a mandatory three-year sentence for using a computer to persuade a minor to engage in sexual activity. Instead of this approach, we would prefer a directive to the Federal Sentencing Commission to develop Federal Sentencing Guidelines enhancements in cases where the computer is an instrument used in any attempted or actual sexual exploitation of a minor under the age of 18. These enhancements should be applicable to cases under 18 U.S.C. §§2422 and 2423.

Striking Section 204, the Punishment for Repeat Offenders Section. We recommend that Section 204 be stricken for two reasons. The section amends 18 U.S.C. §2241, the aggravated sex offense statute, by adding a new subsection (e) that punishes repeat offenders by imposing life imprisonment for those who violate Section 2241 and who had twice been previously convicted of either: (1) a serious state or federal sex crime, which is defined as an offense under Sections 2241 or 2242; or (2) crimes that would have been an offense under either of such sections, if the offense had occurred within federal jurisdiction. This proposed subsection is at least partially redundant. The three strikes statute, found at 18 U.S.C.

§ 3559(c), already includes federal or state offenses consisting of aggravated sexual abuse and sexual abuse as described in 18 U.S.C. §§ 2241 and 2242. Under the three strikes statute, defendants would similarly receive life imprisonment if they had two prior serious sex crime convictions.

Proposed subsection (e)(1)(B) actually creates a new federal crime, even though it is placed in a “punishment for repeat offenders” subsection. It would mandate a mandatory life sentence for a person who has two prior serious sex crime convictions, and who commits an aggravated sex crime in which either: (1) the person travelled in interstate or foreign commerce or used the mail or any facility of interstate or foreign commerce to commit the crime; or (2) the person’s conduct occurred in or affected interstate or foreign commerce. Presumably, states have concurrent jurisdiction over the offenses covered by the proposed amendment. Unless there are significant gaps in state criminal codes or evidence of failure by state criminal justice systems to effectively punish rapists, expansion of federal jurisdiction would be difficult to justify.

Eliminate the redundancy of placing the crime of “crossing state lines to have sexual activity with a minor under 12 years” in two different sections by combining Sections 2241 and 2243(a). Section 207 corrects an anomaly in the Amber Hagerman Act by striking the phrase “crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years” from 18 U.S.C. § 2243(a). We support the objective of this provision but suggest substitute language in section 2241, combining elements of Section 2241 and 2243(a). The new language would proscribe: (1) crossing State lines with intent to engage in sexual relations with a minor under 12 years old and then engaging in or attempting to engage in the sexual activity; (2) engaging in aggravated sexual activity, under the circumstances described in subsections (a) or (b) with a minor aged 12 to 17; and (3) crossing State lines with intent to engage in a sexual act with a minor aged 12 to 17, and then engaging in or attempting to engage in the sexual activity, if the perpetrator is at least four years older than the minor. A principal effect of our suggestion is that these last two crimes would raise the age of the protected minor from 15 to 17 years old, with maximum penalties of imprisonment of up to 15 years, a fine, or both, whereas the first crime would maintain the maximum penalty of life. The combined statutes would also have a “state of mind” requirement, as specified in Section 2241(d), and a “defenses” subsection as specified in Section 2243(c). Section 2243 would remain intact only as to subsection (b) (sexual abuse of a ward).

The rationale behind our suggested change relates to the fact that Chapter 109A and Chapter 110 have differing penalties for essentially the same offense. The crime of “crossing State lines to engage in a sexual act with a minor under the age of 12” is now proscribed by Sections 2241(c), 2243(a) and 2423(b), which uses the language “individual under the age of 18.” By combining 2241(c) with 2243(a), and by requiring that the sexual act actually occurred, the statute’s harsher penalty of any term of years or life would appropriately fit the crime. Section 2423(b) and its maximum penalty of ten years would still be available if no sexual activity actually occurred.

In addition, the suggested increase in the protected age of the minor from age 16 to age 18 in the aggravated child rape section and the statutory rape section would be consistent with the protection of minors statutes, the majority of which refer to a minor as an individual under the age of 18. See, Chapter 110 and Chapter 117 offenses.

Deletion of federal jurisdictional base in kidnapping statute if the offense affects interstate or foreign commerce. Section 302 permits federal jurisdiction over a state kidnapping if the mail or any facility or means of interstate or foreign commerce is used in furtherance of the offense or if the kidnapping “affects interstate or foreign commerce.” We support the former (mail or use of a facility of commerce base, to which we suggest also the addition of “travel in interstate or foreign commerce language as in 18 U.S.C. § 1952), but believe that the proposed “affecting commerce” base is too broad for kidnapping offenses. In light of the fact that the kidnapping statute has a 24-hour presumption that permits the FBI to investigate, regardless of the circumstances of the offense, there is simply no need for federal jurisdiction over purely intrastate activity.

Creation of a new resources center on child abduction and serial murder investigations. Section 304 proposes to repeal the current Missing and Exploited Child Task Force (42 U.S.C. § 5776a) and create a new unit within the FBI to work child abduction and serial killer cases. This section appears to combine the functions of the current Child Abduction/Serial Killer Unit (CASKU) in the FBI with the functions of the multi-agency missing children task force into one unit to use the resources of the FBI more effectively. We support this idea. It also appears to address many of the operational and procedural problems encountered by the current task force. However, the bill spells out in detail how the unit would operate and what tasks it would carry out. Perhaps less detail in its functions would permit more flexibility, so that the unit could better achieve its goals. We also question whether creating a national unit, as well as units in each of the FBI field offices, is the best use of resources. It seems redundant to have so many units when other mechanisms are already in place (e.g., through the designation of Crimes Against Children Coordinators in each field office who are available to act as liaisons with the national unit, as needed). We are, in any event, in favor of the continued relationships with and between the United States Customs Service, the United States Secret Service, the Postal Inspection Service, and the Marshals Service, so that their resources and expertise will be available to the unit whenever necessary.

Other matters. Section 104 makes clear that illegal possession of child pornography, as proscribed by 18 U.S.C. § 2252, can refer to possession of three or more matters, each of which contains a visual depiction of child pornography, or one matter containing three or more visual depictions of child pornography. We suggest that the phrase “computer disk” be inserted in the phrase “three or more books, magazines, periodicals, films, video tapes, or other matter” to clarify that possession of three or more computer disks, each of which contains at least one visual depiction of child pornography, also violates the possession statute, just as possession of one com-

puter disk, containing three or more visual depictions of child pornography, violates the possession statute.

We also believe that Chapter 117 offenses should be recognized as enhancement offenses throughout Chapter 110 and Chapter 109A. For example, 18 U.S.C. § 2251(d) permits an enhancement if the person has a conviction under Chapters 110 or 109A, but does not include prior convictions under Chapter 117. Similarly, while there is a 5-year mandatory minimum sentence for individuals charged with receipt or distribution of child pornography and who have prior state convictions for child molestation (18 U.S.C. §§ 2252(b)(1) and 2252A(b)(1)), there is no enhanced provision for those individuals charged with possession of child pornography who have prior convictions for child abuse. (18 U.S.C. §§ 2252(b)(2) and 2252A(b)(2) provide only for increased minimums for state convictions for possession.) We suggest an increased mandatory minimum sentence of 2 years for individuals charged with a violation of any subsection of 2252 or 2252A, if the individual had a prior conviction for sexual abuse of a minor. In addition, although there is a mandatory restitution statute for Chapter 110 offenses (18 U.S.C. § 2259) and for Chapter 109A offenses (18 U.S.C. § 2248), there is no mandatory restitution statute for Chapter 117 offenses. The bill should include a section mandating restitution for Chapter 117 offenses, as well.

Section 301 would provide for the use of administrative subpoenas in cases involving crimes against minors, or individuals represented to be minors. We support this section but recommend its extension to all crimes involving minors under chapters 53 (Indians), 109A (sexual abuse), 110 (sexual exploitation and other abuse of children), and 117 (travel for illegal sexual activity and related crimes) of title 18, United States Code.

Section 303 proposes a new federal offense (proposed 18 U.S.C. § 1123) for the crossing of state lines with intent to commit murder in the first degree. Under the proposal, a prosecution would be permitted only if the Attorney General or other appropriate official certifies that “the conduct intended to be engaged in [by the defendant] was a serial killing.”

We note that murder is usually a local violation that is usually and most effectively addressed by local law enforcement. Officers and detectives handle these investigations on a daily basis and have developed an expertise in this area. Through the National Center for the Analysis of Violent Crime (NCAVC), the FBI currently assists local law enforcement in serial murder investigations, when requested, by providing technical and forensic resource coordination and immediate investigative support through onsite consultations and by sharing research findings and violent crime analysis. The FBI laboratory also provides forensic support and resources to state and local law enforcement. We therefore are opposed to this provision. We do support the proposed language in H.R. 3494 that provides resources for funding the Morgan P. Hardiman Child Abduction and Serial Murder Investigative Resources Center. We believe that this legislation would enhance the FBI's existing ability to assist state and local law enforcement in serial murder investigations.

H. Con. Res. 125, H.R. 1972, H.R. 2122, H.R. 2173, H.R. 2488, H.R. 2815 and H.R. 3185. We are pleased to offer our views on the additional bills and resolution mentioned in your letter of March 20, 1998. H. Con. Res. 125 would express the sense of Congress that each state should establish an advisory board to conduct risk assessments of sex offenders for the purposes of community notification. While the Department strongly supports efforts to assist states in developing effective community notification programs for sex offenders, we are concerned that, if H. Con. Res. 125 were to pass, states may have the impression that the highly detailed program set forth in the Resolution is the only acceptable method for notifying their communities about dangerous sex offenders.

In fact, since the passage of Megan's Law (Pub. L. 104-145), which amended the community notification provisions of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Pub. L. 103-322), to require the release of relevant information that is necessary to protect the public concerning registered sex offenders, states have developed a variety of different methods for notifying communities about sex offenders. We believe it is appropriate for states to retain some flexibility in how they conduct notifications in their communities under the general guidelines of the Wetterling Act and Megan's Law. Indeed, recent amendments to the Wetterling Act that were included in the fiscal year 98 Commerce, Justice, State Appropriations Act were designed to give states greater flexibility in deciding what procedures should be used in setting up and maintaining their sex offender registration programs. The Department of Justice has been working, and will continue to work, with the states in crafting their community notification programs. In particular, the Department, through the Bureau of Justice Assistance, is funding two studies examining community notification. We would be pleased to brief interested Members on our efforts in this area.

H.R. 2488, the Volunteers for Children Act, proposes to facilitate fingerprint checks for individuals seeking to work in youth serving organizations. The National Child Protection Act (42 U.S.C. § 5119a) provides for background screening of individuals who work with children, the elderly and the disabled. Fingerprint checks by the FBI, pursuant to Pub. L. 92-544, are limited by the requirement that state law on the subject must authorize the federal check, as well. This bill proposes to bypass these restrictions in states that have not addressed background checks of individuals in youth-serving organizations.

The concept of the legislation, which proposes to facilitate completion of thorough background checks for individuals working with youth, is laudable. We note that the bill provides little motivation or incentive to states to implement background check systems. Indeed, the proposal appears to minimize the benefit of local record background checks, which are often more timely and germane to the individual's activity in the community. In the absence of state statutory guidance, an agency responsible for relaying the results of a background check would be required to make difficult choices between the privacy rights of the applicant and public safety concerns. We would oppose any further bypass of these systems that

would result in background checks based on applicant's name, rather than on fingerprints.

H.R. 1972 prohibits the sale or purchase, by "list brokers," of personal information about a child without the consent of the child's parents. This bill is designed to provide protection for children, so that personal information cannot be so easily acquired by those individuals who use that information to harm or exploit children. It is our understanding that the Federal Trade Commission (FTC) is currently preparing a report to Congress on the effectiveness of self-regulation as a means of protecting consumer privacy on the Internet. It would, in our view, be appropriate to wait for the FTC report before this legislation is further considered. The bill also provides for disclosure of these lists to the National Center for Missing and Exploited Children, in order to permit comparison with the names of the children listed with that organization as missing. The language of the bill does not address privacy issues involved with disclosure to NCMEC and management of the information, nor does it provide for any penalty for failure to disclose.

There are two technical comments we offer regarding H.R. 1972, as well. First, please note that paragraph (2) in subsection (b) explicitly assumes that the person is a list broker. This is evidently a drafting error, resulting from a failure fully to revise the language from subsection (a)(3), relating to list brokers, when it was adapted in formulating the parallel offense in subsection (b) for persons who offer commercial products or services to children. Second, the offense defined in paragraph (1) of subsection (c) refers to any worker registered pursuant to the Jacob Wetterling Act. Since the actual sex offender registration programs are established by the states, and sex offenders' legal obligations to register arise from the state laws that establish the state programs, this section should probably refer, instead, to any worker registered pursuant to a state sex offender registration program.

Two bills, H.R. 2173 and H.R. 2815, address concerns about those who prey upon children through use of the Internet. H.R. 2815 creates a new offense, 18 U.S.C. § 2260A, that prohibits anyone from using the Internet to target a child for "sexually explicit messages or contacts." The coercion of a minor statute, 18 U.S.C. § 2422(b), already punishes an individual who uses, or attempts to use, the Internet to persuade a minor to engage in illegal sexual activity. Similarly, the travel with intent statute, 18 U.S.C. § 2423(b), already punishes an individual who travels to meet a minor with the intent to engage in illegal sexual activity. We would also note that if, under *Reno v. ACLU*, 117 S. Ct. 2329 (1997), Congress cannot prohibit the "display" of indecent messages to minors, it could be argued that a statute proscribing the sending of sexually explicit messages to minors is unconstitutional, as well.

H.R. 2173, which requires reporting of child abuse by electronic communications service providers, could be a step toward making the Internet a safer environment for our children. Presently, some Internet service providers voluntarily report known occurrences of individuals using their services to exploit children. The Department previously supported bills similar to H.R. 2173. However, as drafted, this bill is unclear as to whom a report is made and where it is to be referred for further investigation. (Presumably a report

would be filed with an appropriate law enforcement or social services agency, depending upon the circumstances.) Nor does the bill provide for any sanctions for failure to make a report. It is unclear if the bill refers only to those incidents reported to the provider, or whether it might require the provider to develop a monitoring or policing system for all communications. The latter is not practical for providers because of cost and resource issues.

H.R. 2122 would amend 18 U.S.C. § 3559 (“sentencing classification of offenses”) to provide for a mandatory life sentence (unless the death penalty is imposed) if a victim of the production of child pornography or a serious violent felony dies as a result of the offense and the victim is under 14. We would not object to the proposal, if it were amended to provide that the death of the victim must have been intentional. In addition, we note that there are other situations that might result in the death of a victim under the age of 14 (e.g., cases under the Mann Act) but that would not be afforded the same protection under this bill.

H.R. 3185 removes the requirement in the child pornography possession statute that the individual must possess at least three matters containing a visual depiction of child pornography. Under the proposed language, an individual could be charged with possession of child pornography if he or she possessed one illegal image. We have no objection to this proposal.

We look forward to working with you and your staff to enact tough and effective legislation to combat child exploitation. Please do not hesitate to call upon us if we may be of additional assistance in connection with this or any other matter. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration’s program to the presentation of this report.

Sincerely,

ANN M. HARKINS,
Acting Assistant Attorney General.

cc: Hon. Charles E. Schumer,
Ranking Minority Member.

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

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 55—KIDNAPPING

* * * * *

§ 1201. Kidnapping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—

(1) the person is willfully transported in interstate or foreign commerce, *regardless of whether such person was alive when transported across a State boundary provided the person was alive when the transportation began;*

* * * * *

(4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title; **[or]**

* * * * *

(6) *the mail or any facility or means of interstate or foreign commerce is used in furtherance of the offense; or*

(7) *the offense affects interstate or foreign commerce, or would do so if the offense were consummated;*

shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

(b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported to interstate or foreign commerce. *However, the fact that the presumption under this section has not yet taken effect does not preclude a Federal investigation of a possible violation of this section before the twenty-four hour period has ended.*

* * * * *

CHAPTER 71—OBSCENITY

Sec.
1460. Possession with intent to sell, and sale, of obscene matter on Federal property.

* * * * *

1470. *Transfer of obscene material to minors.*

* * * * *

§ 1470. Transfer of obscene material to minors

Whoever, using the mail or any facility or means of interstate or foreign commerce—

(1) *knowingly transfers obscene matter to an individual who has not attained the age of 18 years, or attempts to do so; or*

(2) *knowingly transfers obscene matter to an individual who has been represented to the transferor as not having attained the age of 18 years;*

shall be fined under this title or imprisoned not more than 5 years, or both.

* * * * *

CHAPTER 109A—SEXUAL ABUSE

* * * * *

§ 2241. Aggravated sexual abuse

(a) * * *

* * * * *

(c) WITH CHILDREN.—Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years [younger than that person] younger than the person so engaging), or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

* * * * *

(e) PUNISHMENT FOR REPEAT OFFENDERS.—(1) Whoever has twice previously been convicted of a serious State or Federal sex crime and who—

- (A) violates this section; or
- (B) in a circumstance described in paragraph (2) of this subsection, engages in conduct that would have violated this section if the conduct had occurred in the special maritime and territorial jurisdiction of the United States;

shall be imprisoned for life.

(2) The circumstance referred to in paragraph (1) of this subsection is that—

- (A) the person engaging in such conduct traveled in interstate or foreign commerce or used the mail or any facility or means of interstate or foreign commerce in furtherance of the offense; or
- (B) such conduct occurs in or affects interstate or foreign commerce and would have violated this section if the conduct had occurred in the special maritime and territorial jurisdiction of the United States.

(f) SERIOUS STATE OR FEDERAL SEX CRIME.—For the purposes of subsections (e) and (f), the term serious State or Federal sex crime means a State or Federal offense for conduct which—

- (1) is an offense under this section or section 2242 of this title; or

(2) would have been an offense under either of such sections if the offense had occurred in the special maritime or territorial jurisdiction of the United States.

* * * * *

§ 2243. Sexual abuse of a minor or ward

(a) OF A MINOR.—Whoever [crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or], in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who—

(1) has attained the age of 12 years but has not attained the age of 16 years; and

(2) is at least four years younger than the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

* * * * *

§ 2244. Abusive sexual contact

(a) * * *

* * * * *

(c) OFFENSES INVOLVING YOUNG CHILDREN.—If the sexual contact that violates this section is with an individual who has not attained the age of 12 years, the maximum term of imprisonment that may be imposed for the offense shall be twice that otherwise provides in this section.

* * * * *

§ 2246. Definitions for chapter

As used in this chapter—

(1) * * *

* * * * *

(5) the term “official detention” means—

(A) * * *

(B) custody by a Federal officer or employee, or under the direction of a Federal officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation;

but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency[.];

(6) the term “State” means a State of the United States, the District of Columbia, and any commonwealth, possession, or territory of the United States.

[§ 2247. Repeat offenders

【Any person who violates a provision of this chapter, after one or more prior convictions for an offense punishable under this chapter, or after one or more prior convictions under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual contact have become final, is punishable by a term of imprisonment up to twice that otherwise authorized.】

§ 2247. Repeat offenders

(a) *The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term otherwise provided by this chapter.*

(b) *As used in this section, the term “prior sex offense conviction” has the meaning given that term in section 2425.*

* * * * *

CHAPTER 110—SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

Sec.
2251. Sexual exploitation of children.

* * * * *

2260A. *Use of interstate facilities to transmit information about a minor.*

§ 2251. Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (d), if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, *if such visual depiction was produced with materials that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including a computer*, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished as provided under subsection (d) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, *if such visual depiction was produced with materials that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including a computer*, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

* * * * *

(d) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title or imprisoned not less than 10 years nor more than 20 years, or both, but if such person has one prior conviction under this chapter [or chapter 109A], *chapter 109A, or chapter 117*, or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 30 years, but if such person has 2 or more prior convictions under this chapter [or chapter 109A], *chapter 109A, or chapter 117*, or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 30 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.

* * * * *

§ 2252. Certain activities relating to material involving the sexual exploitation of minors

(a) Any person who—

(1) * * *

* * * * *

[(4) either—

[(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly possesses 3 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

[(B) knowingly possesses 3 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if—

[(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

[(ii) such visual depiction is of such conduct;]

(4) either—

(A) *in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country (as defined in section 1151 of this title), knowingly possesses—*

(i) *3 or more books, magazines, periodicals, computer disks, films, video tapes, or other matter that contain any visual depiction, if—*

(I) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(II) such visual depiction is of such conduct; or
(ii) any book, magazine, periodical, computer disk, film, videotape, computer disk, or any other material that contains 3 or more visual depictions, if—

(I) the producing of each visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(II) each visual depiction is of such conduct; or
(B) knowingly possesses—

(i) 3 or more books, magazines, periodicals, computer disks, films, video tapes, or other matter that contain any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if—

(I) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(II) such visual depiction is of such conduct; or
(ii) any book, magazine, periodical, computer disk, film, videotape, computer disk, or any other material that contains 3 or more visual depictions, if—

(I) the producing of each visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(II) each visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

(b)(1) Whoever violates, or attempts or conspires to violate, paragraphs (1), (2), or (3) of subsection (a) shall be fined under this title or imprisoned not more than 15 years, or both, but if such person has a prior conviction under this chapter [or chapter 109A], chapter 109A, or chapter 117, or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 5 years nor more than 30 years.

(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 5 years, or both, but if the offense consisted of the possession of 50 or more items of the sort described in subsection (a)(4) or such person has a prior conviction under this chapter [or chapter 109A], chapter 109A, or chapter 117, or under the laws of any State relating to the possession of child pornography, such person shall be fined under this title and imprisoned for not less than 2 years nor more than 10 years.

§ 2252A. Certain activities relating to material constituting or containing child pornography

(a) * * *

(b)(1) * * *

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 5 years, or both, but, if *the offense consisted of the possession of 50 or more images of the sort described in subsection (a)(4) or such person has a prior conviction under this chapter or chapter 109A, or under the laws of any State relating to the possession of child pornography, such person shall be fined under this title and imprisoned for not less than 2 years nor more than 10 years.*

* * * * *

§ 2253. Criminal forfeiture

(a) PROPERTY SUBJECT TO CRIMINAL FORFEITURE.—A person who is convicted of an offense under this chapter involving a visual depiction described in section 2251, 2251A, or 2252 of this chapter, or who is convicted of an offense under section 2421, 2422, or 2423 of this title, shall forfeit to the United States such person’s interest in—

(1) * * *

* * * * *

§ 2255. Civil remedy for personal injuries

(a) Any minor who is a victim of a violation of section [2251 or 2252] 2241(c), 2243, 2251, 2252, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation may sue in any appropriate United States District Court and shall recover the actual damages such minor sustains and the cost of the suit, including a reasonable attorney’s fee. Any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than \$50,000 in value.

(b) Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability.

* * * * *

§ 2260A. Use of interstate facilities to transmit information about a minor

Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, knowingly transmits, prints, publishes, or reproduces, or causes to be transmitted, printed, published, or reproduced, the name, address, telephone number, electronic mail address, or other identifying information of an individual who has not attained the age of 18 years for the purposes of facilitating, encouraging, offering, or soliciting any person to engage in any sexual activity for which any person may be criminally prosecuted, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both.

* * * * *

CHAPTER 117—TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES

Sec.
2421. Transportation generally.
* * * * *
2425. Repeat offenders.
2426. Definition for chapter.
* * * * *

§ 2422. Coercion and enticement

(a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or *attempts to do so*, shall be fined under this title or imprisoned not more than five years, or both. *If the individual had not attained the age of 18 years at the time of the offense, the maximum imprisonment for an offense under this subsection is 10 years.*

(b) Whoever, using any facility or means of interstate or foreign commerce, including the mail, or within the special maritime and territorial jurisdiction of the United States, knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years to engage in prostitution or any sexual act for which any person may be criminally prosecuted, or attempts to do so, shall be fined under this title or imprisoned not more than **[10]** 15 years, or both. *If in the course of committing the offense under this subsection, the defendant used a computer to transmit a communication to the minor, the minimum term of imprisonment for the offense under this subsection is 3 years.*

(c) *Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States—*

(1) knowingly contacts an individual who has not attained the age of 18 years; or

(2) knowingly contacts an individual, who has been represented to the person making the contact as not having attained the age of 18 years;

for the purposes of engaging in any sexual activity, with a person who has not attained the age of 18 years, for which any person may be criminally prosecuted, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both. It is a defense to a prosecution for an offense under this section that the sexual activity is prosecutable only because of the age of the individual contacted, the individual contacted had attained the age of 12 years, and the defendant was not more than 4 years older than the individual contacted.

§ 2423. Transportation of minors

[(a) TRANSPORTATION WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY.—A person who knowingly transports any individual under the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent

that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than ten years, or both.

[(b) TRAVEL WITH INTENT TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.—A person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States shall be fined under this title, imprisoned not more than 10 years, or both.]

§ 2423. Transportation of minors and assumed minors

(a) *TRANSPORTATION WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY.*—A person who knowingly—

(1) transports an individual who has not attained the age of 18 years; or

(2) transports an individual who has been represented to the person doing that transportation as not having attained the age of 18 years;

in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than 15 years, or both.

(b) *TRAVEL WITH INTENT TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.*—A person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual activity, with another person who has not attained the age of 18 years or who has been represented to the traveler or conspirator as not having attained the age of 18 years, for which any person can be charged with a criminal offense, shall be fined under this title, imprisoned not more than 15 years, or both.

* * * * *

§ 2425. Repeat offenders

(a) *The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term otherwise provided by this chapter.*

(b) *As used in this section, the term “prior sex offense conviction” means a conviction for an offense—*

(1) *under this chapter or chapter 109A or 110; or*

(2) *under State law for an offense consisting of conduct that would have been an offense under a chapter referred to in paragraph (1) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States or in any Territory or Possession of the United States.*

§ 2426. Definition for chapter

For the purposes of this chapter, sexual activity for which any person can be charged with a criminal offense includes the production of child pornography, as defined in section 2256(8).

* * * * *

PART II—CRIMINAL PROCEDURE

* * * * *

CHAPTER 203—ARREST AND COMMITMENT

Sec.

3041. Power of courts and magistrates.

* * * * *

3064. Administrative subpoenas.

* * * * *

§ 3064. Administrative subpoenas

(a) AUTHORIZATION OF USE.—In an investigation of an alleged violation of section 2241(c), 2243, 2421, 2422, or 2423 of this title where a victim is an individual who has not attained the age of 18 years, the Attorney General may subpoena witnesses, compel the production of any records (including books, papers, documents, electronic data, and other tangible things which constitute or contain evidence) which the Attorney General finds relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place of hearing, except that a witness shall not be required to appear at any hearing more than 500 miles distant from the place where the witness was served with a subpoena. Witnesses summoned under this section shall be paid the same fees and commissions that are paid witnesses in the courts of the United States.

(b) SERVICE.—A subpoena issued under this section may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to that person or by certified mail with return receipt requested. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

(c) ENFORCEMENT.—In the case of contumacy by or the refusal to obey a subpoena issued to any person under this section, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on, or of which the person is an inhabitant or in which the person carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed per-

son to appear before the Attorney General to produce records, if so ordered, or to give testimony regarding the matter under investigation. Any failure to obey the order of the court may be punished by the court as contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

* * * * *

CHAPTER 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS

* * * * *

§ 3156. Definitions

(a) As used in sections 3141–3150 of this chapter—

(1) * * *

* * * * *

(4) the term “crime of violence” means—

(A) an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another;

(B) 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; or

[(C) any felony under chapter 109A or chapter 110; and]

(C) any felony under chapter 109A, 110, or 117, or section 2252A or 2260; and

* * * * *

CHAPTER 227—SENTENCES

* * * * *

SUBCHAPTER A—GENERAL PROVISIONS

* * * * *

§ 3559. Sentencing classification of offenses

(a) * * *

* * * * *

(d) *DEATH OR IMPRISONMENT FOR CRIMES AGAINST CHILDREN.—Notwithstanding any other provision of law, a person who is convicted of a Federal offense that is a serious violent felony (as defined in subsection (c)) or a violation of section 2251 shall, unless the sentence of death is imposed, be sentenced to imprisonment for life, if the victim of the offense is under 14 years of age, the victim dies as a result of the offense, and the defendant, in the course of the offense, engages in conduct described in section 3591(a)(2).*

* * * * *



TITLE 28, UNITED STATES CODE

* * * * *

PART II—DEPARTMENT OF JUSTICE

* * * * *

CHAPTER 33—FEDERAL BUREAU OF INVESTIGATION

Sec.

531. Federal Bureau of Investigation.

* * * * *

540B. *Investigation of serial killings.*

* * * * *

§540B. *Investigation of serial killings*

(a) *The Attorney General and the Federal Bureau of Investigation may investigate serial killings in violation of the laws of a State or political subdivision, when such investigation is requested by the head of a law enforcement agency with investigative or prosecutive jurisdiction over the offense.*

(b) *For purposes of this section—*

(1) *the term “serial killings” means a series of 3 or more killings, at least one of which was committed within the United States, having common characteristics such as to suggest the reasonable possibility that the crimes were committed by the same actor or actors;*

(2) *the term “killing” means conduct that would constitute an offense under section 1111 of title 18, United States Code, if Federal jurisdiction existed; and*

(3) *the term “State” means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.*

**VIOLENT CRIME CONTROL AND LAW ENFORCEMENT
ACT OF 1994**

* * * * *

**TITLE XVII—CRIMES AGAINST
CHILDREN**

* * * * *

**[Subtitle C—Missing and Exploited
Children**

[SEC. 170301. SHORT TITLE.

[This subtitle may be cited as the “Morgan P. Hardiman Task Force on Missing and Exploited Children Act”.

[SEC. 170302. PURPOSE.

【The purpose of this subtitle is to establish a task force comprised of law enforcement officers from pertinent Federal agencies to work with the National Center for Missing and Exploited Children (referred to as the “Center”) and coordinate the provision of Federal law enforcement resources to assist State and local authorities in investigating the most difficult cases of missing and exploited children.

[SEC. 170303. ESTABLISHMENT OF TASK FORCE.

【Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5771 et seq.) is amended—

【(1) by redesignating sections 407 and 408 as sections 408 and 409, respectively; and

【(2) by inserting after section 406 the following new section:

【“TASK FORCE

【“SEC. 407. (a) ESTABLISHMENT.—There is established a Missing and Exploited Children’s Task Force (referred to as the “Task Force”).

【“(b) MEMBERSHIP.—

【“(1) IN GENERAL.—The Task Force shall include at least 2 members from each of—

【“(A) the Federal Bureau of Investigation;

【“(B) the Secret Service;

【“(C) the Bureau of Alcohol, Tobacco and Firearms;

【“(D) the United States Customs Service;

【“(E) the Postal Inspection Service;

【“(F) the United States Marshals Service; and

【“(G) the Drug Enforcement Administration.

【“(2) CHIEF.—A representative of the Federal Bureau of Investigation (in addition to the members of the Task Force selected under paragraph (1)(A)) shall act as chief of the Task Force.

【“(3) SELECTION.—(A) The Director of the Federal Bureau of Investigation shall select the chief of the Task Force.

【“(B) The heads of the agencies described in paragraph (1) shall submit to the chief of the Task Force a list of at least 5 prospective Task Force members, and the chief shall select 2, or such greater number as may be agreeable to an agency head, as Task Force members.

【“(4) PROFESSIONAL QUALIFICATIONS.—The members of the Task Force shall be law enforcement personnel selected for their expertise that would enable them to assist in the investigation of cases of missing and exploited children.

【“(5) STATUS.—A member of the Task Force shall remain an employee of his or her respective agency for all purposes (including the purpose of performance review), and his or her service on the Task Force shall be without interruption or loss of civil service privilege or status and shall be on a non-reimbursable basis.

【“(6) PERIOD OF SERVICE.—(A) Subject to subparagraph (B), 1 member from each agency shall initially serve a 1-year term, and the other member from the same agency shall serve

a 1-year term, and may be selected to a renewal of service for 1 additional year; thereafter, each new member to serve on the Task Force shall serve for a 2-year period with the member's term of service beginning and ending in alternate years with the other member from the same agency; the period of service for the chief of the Task Force shall be 3 years.

["(B) The chief of the Task Force may at any time request the head of an agency described in paragraph (1) to submit a list of 5 prospective Task Force members to replace a member of the Task Force, for the purpose of maintaining a Task Force membership that will be able to meet the demands of its case-load.

["(c) SUPPORT.—

["(1) IN GENERAL.—The Administrator of the General Services Administration, in coordination with the heads of the agencies described in subsection (b)(1), shall provide the Task Force office space and administrative and support services, such office space to be in close proximity to the office of the Center, so as to enable the Task Force to coordinate its activities with that of the Center on a day-to-day basis.

["(2) LEGAL GUIDANCE.—The Attorney General shall assign an attorney to provide legal guidance, as needed, to members of the Task Force.

["(d) PURPOSE.—

["(1) IN GENERAL.—The purpose of the Task Force shall be to make available the combined resources and expertise of the agencies described in paragraph (1) to assist State and local governments in the most difficult missing and exploited child cases nationwide, as identified by the chief of the Task Force from time to time, in consultation with the Center, and as many additional cases as resources permit, including the provision of assistance to State and local investigators on location in the field.

["(2) TECHNICAL ASSISTANCE.—The role of the Task Force in any investigation shall be to provide advice and technical assistance and to make available the resources of the agencies described in subsection (b)(1); the Task Force shall not take a leadership role in any such investigation.

["(e) CROSS-DESIGNATION OF TASK FORCE MEMBERS.—The Attorney General may cross-designate the members of the Task Force with jurisdiction to enforce Federal law related to child abduction to the extent necessary to accomplish the purposes of this section.".]

* * * * *

DISSENTING VIEWS ON H.R. 3494

Because there is no evidence that harsher mandatory minimum penalties deter crime, because the United States Sentencing Commission is the proper body to determine whether existing sentences are sufficient, and because draconian penalties tend to disproportionately affect African-Americans, we oppose the new mandatory minimums created by this legislation.

The majority has offered no evidence that these new mandatory minimums will have any deterrent effect or that the existing penalties are insufficient to deter the crimes. The Sentencing Commission, the body charged by Congress with monitoring the federal sentencing system and with changing the guidelines as necessary, has never suggested changes to the penalties at issue in this bill. In addition, sentencing issues are best left to the discretion of judges, who have an opportunity to hear the specific facts of each case, allowing them to impose more intelligent and informed sentences.

Moreover, at least one of the new penalties is completely illogical. Why create a 3 year mandatory minimum for persuading a minor to cross state lines to participate in a sex act *by computer*? Why is this more serious than persuading the minor to participate in such activity either over the telephone or in person? This sort of nonsensical penalty undermines respect for the criminal justice system overall.

Finally, punishment by slogan—such as “truth-in-sentencing” and “three strikes and you’re out”—has led to some of the most violent criminals, including Richard Allen Davis, the notorious murderer of California teenager Polly Klass, being freed from prison because “tough on crime” slogans increase punishment *in general*, but frequently lead to a *reduction* in the sentences for the highest risk prisoners.

Everyone from the U.S. Sentencing Commission to the RAND Center has concluded that mandatory minimum sentences are wasteful and counterproductive. The Judiciary Committee should be repealing mandatory minimums, not adding new ones to the books.

ROBERT C. SCOTT.
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