109TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 109–218
Part 1

CHILDREN'S SAFETY ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 3132

together with

DISSENTING VIEWS

SEPTEMBER 9, 2005.—Ordered to be printed

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

R E P O R T

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[To accompany H.R. 3132]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3132) to make improvements to the national sex offender registration program, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Children's Safety Act of 2005".

(b) TABLE OF CONTENTS.—

TITLE I—SEX OFFENDER REGISTRATION AND NOTIFICATION ACT

SEC. 101. SHORT TITLE.

This title may be cited as the "Sex Offender Registration and Notification Act".

SEC. 102. DECLARATION OF PURPOSE.

In response to the vicious attacks by violent sexual predators against the victims listed below, Congress in this Act establishes a comprehensive national system for the registration of sex offenders:

(1) Jacob Wetterling, who was 11 years old, was abducted in 1989 in Minnesota, and remains missing.

(2) Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted and murdered in 1994, in New Jersey.

(3) Pam Lychner, who was 31 years old, was attacked by a career offender in Houston, Texas.

(4) Jetseta Gage, who was 10 years old, was kidnapped, sexually assaulted, and murdered in 2005 in Cedar Rapids, Iowa.

(5) Dru Sjodin, who was 22 years old, was sexually assaulted and murdered in 2003, in North Dakota.

(6) Jessica Lunsford, who was 9 years, was abducted, sexually assaulted, buried alive, and murdered in 2005, in Homosassa, Florida.

(7) Sarah Lunde, who was 13 years old, was strangled and murdered in 2005, in Ruskin, Florida.

(8) Amie Zyla, who was 8 years old, was sexually assaulted in 1996 by a juvenile offender in Waukesha, Wisconsin, and has become an advocate for child victims and protection of children from juvenile sex offenders.

(9) Christy Ann Fornoff, who was 13 years old, was abducted, sexually assaulted and murdered in 1984, in Tempe, Arizona.

(10) Alexandra Nicole Zapp, who was 30 years old, was brutally attacked and murdered in a public restroom by a repeat sex offender in 2002, in Bridgewater, Massachusetts.

Subtitle A—Jacob Wetterling Sex Offender Registration and Notification Program

SEC. 111. RELEVANT DEFINITIONS, INCLUDING AMIE ZYLA EXPANSION OF SEX OFFENDER DEFINITION AND EXPANDED INCLUSION OF CHILD PREDATORS.

In this title the following definitions apply:

(1) SEX OFFENDER REGISTRY.—The term "sex offender registry" means a registry of sex offenders, and a notification program, maintained by a jurisdiction.

(2) JURISDICTION.—The term jurisdiction means any of the following:

(A) A State.
(B) The District of Columbia.
(C) The Commonwealth of Puerto Rico.
(D) Guam.
(E) American Somoa.
(F) Northern Mariana Islands.
(G) The United States Virgin Islands.
(H) A federally recognized Indian tribe.

(3) AMIE ZYLA EXPANSION OF SEX OFFENDER DEFINITION.—The term "sex offender" means an individual who, either before or after the enactment of this Act, was convicted of, or adjudicated a juvenile delinquent for, an offense (other than an offense involving sexual conduct where the victim was at least 13 years old and the offender was not more than 4 years older than the victim and the sexual conduct was consensual, or an offense consisting of consensual sexual conduct with an adult) whether Federal, State, local, tribal, foreign (other than an offense based on conduct that would not be a crime if the conduct took place in the United States), military, juvenile or other, that is—

(A) a specified offense against a minor;
(B) a serious sex offense; or
(C) a misdemeanor sex offense against a minor.

(4) EXPANSION OF DEFINITION OF OFFENSE TO INCLUDE ALL CHILD PREDATORS.—The term "specified offense against a minor" means an offense against a minor that involves any of the following:

(A) Kidnapping (unless committed by a parent).
(B) False imprisonment (unless committed by a parent).
(C) Solicitation to engage in sexual conduct.
(D) Use in a sexual performance.
(E) Solicitation to practice prostitution.
(F) Possession, production, or distribution of child pornography.
(G) Criminal sexual conduct towards a minor.
(H) Any conduct that by its nature is a sexual offense against a minor.

(I) Any other offense designated by the Attorney General for inclusion in this definition.

(J) Any attempt or conspiracy to commit an offense described in this paragraph.

(5) SEX OFFENSE.—The term "sex offense" means a criminal offense that has an element involving sexual act or sexual contact with another, or an attempt or conspiracy to commit such an offense.

(6) SERIOUS SEX OFFENSE.—The term "serious sex offense" means—

(A) a sex offense punishable under the law of a jurisdiction by imprisonment for more than one year;

(B) any Federal offense under chapter 109A, 110, 117, or section 1591 of title 18, United States Code;

(C) an offense in a category specified by the Secretary of Defense under section 115(a)(8)(C) of title I of Public Law 105–119 (10 U.S.C. 951 note);

(D) any other offense designated by the Attorney General for inclusion in this definition.

(7) MISDEMEANOR SEX OFFENSE AGAINST A MINOR.— The term "misdemeanor sex offense against a minor" means a sex offense against a minor punishable by imprisonment for not more than one year.

(8) STUDENT.—The term "student" means an individual who enrolls or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.

(9) EMPLOYEE.—The term "employee" includes an individual who is self-employed or works for any other entity, whether compensated or not.

(10) RESIDES.—The term "resides" means, with respect to an individual, the location of the individual's home or other place where the individual lives.

(11) MINOR.—The term "minor" means an individual who has not attained the age of 18 years.

SEC. 112. REGISTRY REQUIREMENTS FOR JURISDICTIONS.

Each jurisdiction shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this title. The Attorney General shall issue and interpret guidelines to implement the requirements and purposes of this title.

SEC. 113. REGISTRY REQUIREMENTS FOR SEX OFFENDERS.

(a) IN GENERAL.—A sex offender must register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student.

(b) INITIAL REGISTRATION.—The sex offender shall initially register—

(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

(2) not later than 5 days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

(c) KEEPING THE REGISTRATION CURRENT.—A sex offender must inform each jurisdiction involved, not later than 5 days after each change of residence, employment, or student status.

(d) RETROACTIVE DUTY TO REGISTER.—The Attorney General shall prescribe a method for the registration of sex offenders convicted before the enactment of this Act.

(e) STATE PENALTY FOR FAILURE TO COMPLY.—Each jurisdiction shall provide a criminal penalty, that includes a maximum term of imprisonment that is greater than one year, for the failure of a sex offender to comply with the requirements of this title.

SEC. 114. INFORMATION REQUIRED IN REGISTRATION.

(a) PROVIDED BY THE OFFENDER.—The sex offender must provide the following information to the appropriate official for inclusion in the sex offender registry:

(1) The name of the sex offender (including any alias used by the individual).

(2) The Social Security number of the sex offender.

(3) The address and location of the residence at which the sex offender resides or will reside.

(4) The place where the sex offender is employed or will be employed.

(5) The place where the sex offender is a student or will be a student.

(6) The license plate number of any vehicle owned or operated by the sex offender.

(7) A photograph of the sex offender.

(8) A set of fingerprints and palm prints of the sex offender, if the appropriate official determines that the jurisdiction does not already have available an accurate set.

(9) A DNA sample of the sex offender, if the appropriate official determines that the jurisdiction does not already have available an appropriate DNA sample.

(10) Any other information required by the Attorney General.

(b) PROVIDED BY THE JURISDICTION.—The jurisdiction in which the sex offender registers shall include the following information in the registry for that sex offender:

(1) A statement of the facts of the offense giving rise to the requirement to register under this title.

(2) The criminal history of the sex offender.

(3) Any other information required by the Attorney General.

SEC. 115. DURATION OF REGISTRATION REQUIREMENT.

A sex offender shall keep the registration current—

(1) for the life of the sex offender, if the offense is a specified offense against a minor, a serious sex offense, or a second misdemeanor sex offense against a minor; and

(2) for a period of 20 years, in any other case.

SEC. 116. IN PERSON VERIFICATION.

A sex offender shall appear in person and verify the information in each registry in which that offender is required to be registered not less frequently than once every six months.

SEC. 117. DUTY TO NOTIFY SEX OFFENDERS OF REGISTRATION REQUIREMENTS AND TO REGISTER.

An appropriate official shall, shortly before release from custody of the sex offender, or, if the sex offender is not in custody, immediately after the sentencing of the sex offender, for the offense giving rise to the duty to register—

(1) inform the sex offender of the duty to register and explain that duty;

(2) require the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement; and

(3) ensure that the sex offender is registered.

SEC. 118. JESSICA LUNSFORD ADDRESS VERIFICATION PROGRAM.

(a) ESTABLISHMENT.—There is established the Jessica Lunsford Address Verification Program (hereinafter in this section referred to as the "Program").

(b) VERIFICATION.—In the Program, an appropriate official shall verify the residence of each registered sex offender not less than monthly or, in the case of a sex offender required to register because of a misdemeanor sex offense against a minor, not less than quarterly.

(c) USE OF MAILED FORM AUTHORIZED.—Such verification may be achieved by mailing a nonforwardable verification form to the last known address of the sex offender. The date of the mailing may be selected at random. The sex offender must return the form, including a notarized signature, within a set period of time. A failure to return the form as required may be a failure to register for the purposes of this title.

SEC. 119. NATIONAL SEX OFFENDER REGISTRY.

The Attorney General shall maintain a national database at the Federal Bureau of Investigation for each sex offender and other person required to register in a jurisdiction's sex offender registry. The database shall be known as the National Sex Offender Registry.

SEC. 120. DRU SJODIN NATIONAL SEX OFFENDER PUBLIC WEBSITE.

(a) ESTABLISHMENT.—There is established the Dru Sjodin National Sex Offender Public Website (hereinafter referred to as the "Website").

(b) INFORMATION TO BE PROVIDED.—The Attorney General shall maintain the Website as a site on the Internet which allows the public to obtain relevant information for each sex offender by a single query in a form established by the Attorney General.

(c) ELECTRONIC FORWARDING.—The Attorney General shall ensure (through the National Sex Offender Registry or otherwise) that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions, unless the Attroney General determines that each jurisdiction has so modified its sex offender registry and notification program that there is no longer a need for the Attorney General to do.

SEC. 121. PUBLIC ACCESS TO SEX OFFENDER INFORMATION THROUGH THE INTERNET.

Each jurisdiction shall make available on the Internet all information about each sex offender in the registry, except for the offender's Social Security number, the identity of any victim, and any other information exempted from disclosure by the

Attorney General. The jurisdiction shall provide this information in a manner that is readily accessible to the public.

SEC. 122. MEGAN NICOLE KANKA AND ALEXANDRA NICOLE ZAPP COMMUNITY NOTIFICATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—There is established the Megan Nicole Kanka and Alexandra Nicole Zapp Community Program (hereinafter in this section referred to as the "Program").

(b) NOTIFICATION.—In the Program, as soon as possible, and in any case not later than 5 days after a sex offender registers or updates a registration, an appropriate official in the jurisdiction shall provide the information in the registry (other than information exempted from disclosure by the Attorney General) about that offender to the following:

(1) The Attorney General, who shall include that information in the National Sex Offender Registry.

(2) Appropriate law enforcement agencies (including probation agencies, if appropriate), and each school and public housing agency, in each area in which the individual resides, is employed, or is a student.

(3) Each jurisdiction from or to which a change of residence, work, or student status occurs.

(4) Any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a).

(5) Social service entities responsible for protecting minors in the child welfare system.

(6) Volunteer organizations in which contact with minors or other vulnerable individuals might occur.

SEC. 123. ACTIONS TO BE TAKEN WHEN SEX OFFENDER FAILS TO COMPLY.

An appropriate official shall notify the Attorney General and appropriate State and local law enforcement agencies of any failure by a sex offender to comply with the requirements of a registry. The appropriate official, the Attorney General, and each such State and local law enforcment agency shall take any appropriate action to ensure compliance.

SEC. 124. IMMUNITY FOR GOOD FAITH CONDUCT.

Law enforcement agencies, employees of law enforcement agencies and independent contractors acting at the direction of such agencies, and officials of jurisdictions and other political subdivisions shall not be civilly or criminally liable for good faith conduct under this title.

SEC. 125. DEVELOPMENT AND AVAILABILITY OF REGISTRY MANAGEMENT SOFTWARE.

The Attorney General shall develop and support software for use to establish, maintain, publish, and share sex offender registries.

SEC. 126. FEDERAL DUTY WHEN STATE PROGRAMS NOT MINIMALLY SUFFICIENT.

If the Attorney General determines that a jurisdiction does not have a minimally sufficient sex offender registration program, the Department of Justice shall, to the extent practicable, carry out the duties imposed on that jurisdiction by this title.

SEC. 127. PERIOD FOR IMPLEMENTATION BY JURISDICTIONS.

Each jurisdiction shall implement this title not later than 2 years after the date of the enactment of this Act. However, the Attorney General may authorize a one-year extension of the deadline.

SEC. 128. FAILURE TO COMPLY.

(a) IN GENERAL.—For any fiscal year after the end of the period for implementation, a jurisdiction that fails to implement this title shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under each of the following programs:

(1) BYRNE.—Subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), whether characterized as the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, the Edward Byrne Memorial Justice Assistance Grant Program, or otherwise.

(2) LLEBG.—The Local Government Law Enforcement Block Grants program.

(b) REALLOCATION.—Amounts not allocated under a program referred to in paragraph (1) to a jurisdiction for failure to fully implement this title shall be reallocated under that program to jurisdictions that have not failed to implement this title.

SEC. 129. SEX OFFENDER MANAGEMENT ASSISTANCE (SOMA) PROGRAM.

(a) IN GENERAL.—The Attorney General shall establish and implement a Sex Offender Management Assistance program (in this title referred to as the "SOMA program") under which the Attorney General may award a grant to a jurisdiction to offset the costs of implementing this title.

(b) APPLICATION.—The chief executive of a jurisdiction shall, on an annual basis, submit to the Attorney General an application in such form and containing such information as the Attorney General may require.

(c) BONUS PAYMENTS FOR PROMPT COMPLIANCE.—A jurisdiction that, as determined by the Attorney General, has implemented this title not later than two years after the date of the enactment of this Act is eligible for a bonus payment. Such payment shall be made under the SOMA program for the first fiscal year beginning after that determination. The amount of the payment shall be—

(1) 10 percent of the total received by the jurisdiction under the SOMA program for the preceding fiscal year, if implementation is not later than one year after the date of enactment of this Act; and

(2) 5 percent of such total, if not later than two years after that date.

(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts otherwise authorized to be appropriated, there are authorized to be appropriated such sums as may be necessary to the Attorney General, to be available only for the SOMA program, for fiscal years 2006 through 2008.

SEC. 130. DEMONSTRATION PROJECT FOR USE OF ELECTRONIC MONITORING DEVICES.

(a) PROJECT REQUIRED.—The Attorney General shall carry out a demonstration project under which the Attorney General makes grants to jurisdictions to demonstrate the extent to which electronic monitoring devices can be used effectively in a sex offender management program.

(b) USE OF FUNDS.—The jurisdiction may use grant amounts under this section directly, or through arrangements with public or private entities, to carry out programs under which the whereabouts of sex offenders are monitored by electronic monitoring devices.

(c) PARTICIPANTS.—Not more than 10 jurisdictions may participate in the demonstration project at any one time.

(d) FACTORS.—In selecting jurisdictions to participate in the demonstration project, the Attorney General shall consider the following factors:

(1) The total number of sex offenders in the jurisdiction.

(2) The percentage of those sex offenders who fail to comply with registration requirements.

(3) The threat to public safety posed by those sex offenders who fail to comply with registration requirements.

(4) Any other factor the Attorney General considers appropriate.

(e) DURATION.—The Attorney General shall carry out the demonstration project for fiscal years 2007, 2008, and 2009.

(f) REPORTS.—The Attorney General shall submit to Congress an annual report on the demonstration project. Each such report shall describe the activities carried out by each participant, assess the effectiveness of those activities, and contain any other information or recommendations that the Attorney General considers appropriate.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

SEC. 131. BONUS PAYMENTS TO STATES THAT IMPLEMENT ELECTRONIC MONITORING.

(a) IN GENERAL.—A State that, within 3 years after the date of the enactment of this Act, has in effect laws and policies described in subsection (b) shall be eligible for a bonus payment described in subsection (c), to be paid by the Attorney General from any amounts available to the Attorney General for such purpose.

(b) ELECTRONIC MONITORING LAWS AND POLICIES.—

(1) IN GENERAL.—Laws and policies referred to in subsection (a) are laws and policies that ensure that electronic monitoring is required of a person if that person is released after being convicted of a State sex offense in which an individual who has not attained the age of 18 years is the victim.

(2) MONITORING REQUIRED.—The monitoring required under paragraph (1) is a system that actively monitors and identifies the person's location and timely reports or records the person's presence near or within a crime scene or in a prohibited area or the person's departure from specified geographic limitations.

(3) DURATION.—The electronic monitoring required by paragraph (1) shall be required of the person—

(A) for the life of the person, if—

(i) an individual who has not attained the age of 12 years is the victim; or

(ii) the person has a prior sex conviction (as defined in section 3559(e) of title 18, United States Code); and

(B) for the period during which the person is on probation, parole, or supervised release for the offense, in any other case.

(4) STATE REQUIRED TO MONITOR ALL SEX OFFENDERS RESIDING IN STATE.—In addition, laws and policies referred to in subsection (a) also includee laws and policies that ensure that the State frequently monitors each person residing in the State for whom electronic monitoring is required, whether such monitoring is required under this section or under section 3563(a)(9) of title 18, United States Code.

(c) BONUS PAYMENTS.—The bonus payment referred to in subsection (a) is a payment equal to 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under each of the following programs:

(1) BYRNE.—Subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), whether characterized as the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, the Edward Byrne Memorial Justice Assistance Grant Program, or otherwise.

(2) LLEBG.—The Local Government Law Enforcement Block Grants program.

(d) DEFINITION.—In this section, the term "State sex offense" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by the following:

(1) A specified offense against a minor.

(2) A serious sex offense.

SEC. 132. NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN ACCESS TO INTERSTATE IDENTIFICATION INDEX.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Attorney General shall ensure that the National Center for Missing and Exploited Children has access to the Interstate Identification Index, to be used by the Center only within the scope of its duties and responsibilities under Federal law. The access provided under this section shall be authorized only to personnel of the Center that have met all the requirements for access, including training, certification, and background screening.

(b) IMMUNITY.—Personnel of the Center shall not be civilly or criminally liable for any use or misuse of information in the Interstate Identification Index if in good faith.

SEC. 133. LIMITED IMMUNITY FOR NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN WITH RESPECT TO CYBERTIPLINE.

Section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032) is amended by adding at the end the following new subsection:

"(g) LIMITATION ON LIABILITY.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the National Center for Missing and Exploited Children, including any of its directors, officers, employees, or agents, is not liable in any civil or criminal action for damages directly related to the performance of its CyberTipline responsibilities and functions as defined by this section.

"(2) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Paragraph (1) does not apply in an action in which a party proves that the National Center for Missing and Exploited Children, or its officer, employee, or agent as the case may be, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this section.

"(3) ORDINARY BUSINESS ACTIVITIES.—Paragraph (1) does not apply to an act or omission related to an ordinary business activity, such as an activity involving general administration or operations, the use of motor vehicles, or personnel management.".

Subtitle B—Criminal Law Enforcement of Registration Requirements

SEC. 151. AMENDMENTS TO TITLE 18, UNITED STATES CODE, RELATING TO SEX OFFENDER REGISTRATION.

(a) CRIMINAL PENALTIES FOR NONREGISTRATION.—Part I of title 18, United States Code, is amended by inserting after chapter 109A the following:

"CHAPTER 109B—SEX OFFENDER AND CRIMES AGAINST CHILDREN REGISTRY

"Sec.
"2250. Failure to register.

"§ 2250. Failure to register

"Whoever receives a notice from an official that such person is required to register under the Sex Offender Registration and Notification Act and—

"(1) is a sex offender as defined for the purposes of that Act by reason of a conviction under Federal law; or

"(2) thereafter travels in interstate or foreign commerce, or enters or leaves Indian country;

and knowingly fails to register as required shall be fined under this title and imprisoned not less than 5 years nor more than 20 years.".

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 109A the following new item:

"109B. Sex offender and crimes against children registry ..... 2250".

(c) FALSE STATEMENT OFFENSE.—Section 1001(a) of title 18, United States Code, is amended by adding at the end the following: "If the matter relates to an offense under chapter 109A, 109B, 110, or 117, then the term of imprisonment imposed under this section shall be not less than 5 years nor more than 20 years."

(d) PROBATION.—Paragraph (8) of section 3563(a) of title 18, United States Code, is amended to read as follows:

"(8) for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act; and".

(e) SUPERVISED RELEASE.—Section 3583 of title 18, United States Code, is amended—

(1) in subsection (d), in the sentence beginning with "The court shall order, as an explicit condition of supervised release for a person described in section 4042(c)(4)", by striking "described in section 4042(c)(4)" and all that follows through the end of the sentence and inserting "required to register under the Sex Offender Registration and Notification Act that the person comply with the requirements of that Act."

(2) in subsection (k)—

(A) by striking "2244(a)(1), 2244(a)(2)" and inserting "2243, 2244, 2245, 2250";

(B) by inserting "not less than 5," after "any term of years"; and

(C) by adding at the end the following: "If a defendant required to register under the Sex Offender Registration and Notification Act violates the requirements of that Act or commits any criminal offense for which imprisonment for a term longer than one year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years, and if the offense was an offense under chapter 109A, 109B, 110, or 117, not less than 10 years." .

(f) DUTIES OF BUREAU OF PRISONS.—Paragraph (3) of section 4042(c) of title 18, United States Code, is amended to read as follows:

"(3) The Director of the Bureau of Prisons shall inform a person who is released from prison and required to register under the Sex Offender Registration and Notification Act of the requirements of that Act as they apply to that person and the same information shall be provided to a person sentenced to probation by the probation officer responsible for supervision of that person.".

(g) CONFORMING AMENDMENT OF CROSS REFERENCE.—Paragraph (1) of section 4042(c) of title 18, United States Code, is amended by striking "(4)" and inserting "(3)".

(h) CONFORMING REPEAL OF DEADWOOD.—Paragraph (4) of section 4042(c) of title 18, United States Code, is repealed.

SEC. 152. INVESTIGATION BY UNITED STATES MARSHALS OF SEX OFFENDER VIOLATIONS OF REGISTRATION REQUIREMENTS.

(a) IN GENERAL.—The Attorney General shall use the authority provided in section 566(e)(1)(B) of title 28, United States Code, to assist States and other jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for fiscal years 2006 through 2008 to implement this section.

SEC. 153. SEX OFFENDER APPREHENSION GRANTS.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by adding at the end the following new part:

"PART JJ—SEX OFFENDER APPREHENSION GRANTS

"SEC. 3011. AUTHORITY TO MAKE SEX OFFENDER APPREHENSION GRANTS.

"(a) IN GENERAL.—From amounts made available to carry out this part, the Attorney General may make grants to States, units of local government, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia thereof for activities specified in subsection (b).

"(b) COVERED ACTIVITIES.—An activity referred to in subsection (a) is any program, project, or other activity to assist a State in enforcing sex offender registration requirements.

"SEC. 3012. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such sums as may be necessary for fiscal years 2006 through 2008 to carry out this part.".

SEC. 154. USE OF ANY CONTROLLED SUBSTANCE TO FACILITATE SEX OFFENSE.

(a) INCREASED PUNISHMENT.—Chapter 109A of title 18, United States Code, is amended by adding at the end the following:

"§ 2249. Use of any controlled substance to facilitate sex offense

"(a) Whoever, knowingly uses a controlled substance to substantially impair the ability of a person to appraise or control conduct, in order to commit a sex offense, other than an offense where such use is an element of the offense, shall, in addition to the punishment provided for the sex offense, be imprisoned for any term of years not less than 10, or for life.

"(b) As used in this section, the term 'sex offense' means an offense under this chapter other than an offense under this section.".

(b) AMENDMENT TO TABLE.—The table of sections at the beginning of chapter 109A of title 18, United States Code, is amended by adding at the end the following new item:

"2249. Use of any controlled substance to facilitate sex offense.".

SEC. 155. REPEAL OF PREDECESSOR SEX OFFENDER PROGRAM.

Sections 170101 (42 U.S.C. 14071) and 170102 (42 U.S.C. 14072) of the Violent Crime Control and Law Enforcement Act of 1994, and section 8 of the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 (42 U.S.C. 14073), are repealed.

TITLE II—DNA FINGERPRINTING

SEC. 201. SHORT TITLE.

This title may be cited as the "DNA Fingerprinting Act of 2005".

SEC. 202. EXPANDING USE OF DNA TO IDENTIFY AND PROSECUTE SEX OFFENDERS.

(a) EXPANSION OF NATIONAL DNA INDEX SYSTEM.—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132) is amended—

(1) in subsection (a)(1)(C), by striking ", provided" and all that follows through "System"; and

(2) by striking subsections (d) and (e).

(b) DNA SAMPLE COLLECTION FROM PERSONS ARRESTED OR DETAINED UNDER FEDERAL AUTHORITY.—

(1) IN GENERAL.—Section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a) is amended

(A) in subsection (a)—

(i) in paragraph (1), by striking "The Director" and inserting the following:

"(A) The Attorney General may, as provided by the Attorney General by regulation, collect DNA samples from individuals who are arrested, detained, or convicted under the authority of the United States. The Attorney General may delegate this function within the Department of Justice as

provided in section 510 of title 28, United States Code, and may also authorize and direct any other agency of the United States that arrests or detains individuals or supervises individuals facing charges to carry out any function and exercise any power of the Attorney General under this section.

"(B) The Director"; and

(ii) in paragraphs (3) and (4), by striking "Director of the Bureau of Prisons" each place it appears and inserting "Attorney General, the Director of the Bureau of Prisons,"; and

(B) in subsection (b), by striking "Director of the Bureau of Prisons" and inserting "Attorney General, the Director of the Bureau of Prisons,".

(2) CONFORMING AMENDMENT.—Subsections (b) and (c)(1)(A) of section 3142 of title 18, United States Code, are each amended by inserting "and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a)" after "period of release".

(c) TOLLING OF STATUTE OF LIMITATIONS IN SEXUAL ABUSE CASES.—Section 3297 of title 18, United States Code, is amended by striking "except for a felony offense under chapter 109A,".

SEC. 203. STOPPING VIOLENT PREDATORS AGAINST CHILDREN.

In carrying out Acts of Congress relating to DNA databases, the Attorney General shall give appropriate consideration to the need for the collection and testing of DNA to stop violent predators against children.

SEC. 204. MODEL CODE ON INVESTIGATING MISSING PERSONS AND DEATHS.

(a) MODEL CODE REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Attorney General shall publish a model code setting forth procedures to be followed by law enforcement officers when investigating a missing person or a death. The procedures shall include the use of DNA analysis to help locate missing persons and to help identify human remains.

(b) SENSE OF CONGRESS.—It is the sense of Congress that each State should, not later than 1 year after the date on which the Attorney General publishes the model code, enact laws implementing the model code.

(c) GAO STUDY.—Not later than 2 years after the date on which the Attorney General publishes the model code, the Comptroller General shall submit to Congress a report on the extent to which States have implemented the model code. The report shall, for each State—

(1) describe the extent to which the State has implemented the model code; and

(2) to the extent the State has not implemented the model code, describe the reasons why the State has not done so.

TITLE III—PREVENTION AND DETERRENCE OF CRIMES AGAINST CHILDREN ACT OF 2005

SEC. 301. SHORT TITLE.

This title may be cited as the "Prevention and Deterrence of Crimes Against Children Act of 2005".

SEC. 302. ASSURED PUNISHMENT FOR VIOLENT CRIMES AGAINST CHILDREN.

(a) SPECIAL SENTENCING RULE.—Subsection (d) of section 3559 of title 18, United States Code, is amended to read as follows:

"(d) MANDATORY MINIMUM TERMS OF IMPRISONMENT FOR VIOLENT CRIMES AGAINST CHILDREN.—A person who is convicted of a felony crime of violence against the person of an individual who has not attained the age of 18 years shall, unless a greater mandatory minimum sentence of imprisonment is otherwise provided by law and regardless of any maximum term of imprisonment otherwise provided for the offense—

"(1) if the crime of violence results in the death of a person who has not attained the age of 18 years, be sentenced to death or life in prison;

"(2) if the crime of violence is kidnapping, aggravated sexual abuse, sexual abuse, or maiming, or results in serious bodily injury (as defined in section 2119(2)) be imprisoned for life or any term of years not less than 30;

"(3) if the crime of violence results in bodily injury (as defined in section 1365) or is an offense under paragraphs (1), (2), or (5) of section 2244(a), be imprisoned for life or for any term of years not less than 20;

"(4) if a dangerous weapon was used during and in relation to the crime of violence, be imprisoned for life or for any term of years not less than 15; and

"(5) in any other case, be imprisoned for life or for any term of years not less than 10.".

SEC. 303. ENSURING FAIR AND EXPEDITIOUS FEDERAL COLLATERAL REVIEW OF CONVICTIONS FOR KILLING A CHILD.

(a) LIMITS ON CASES.—Section 2254 of title 28, United States Code, is amended by adding at the end the following:

"(j)(1) A court, justice, or judge shall not have jurisdiction to consider any claim relating to the judgment or sentence in an application described under paragraph (2), unless the applicant shows that the claim qualifies for consideration on the grounds described in subsection (e)(2). Any such application that is presented to a court, justice, or judge other than a district court shall be transferred to the appropriate district court for consideration or dismissal in conformity with this subsection, except that a court of appeals panel must authorize any second or successive application in conformity with section 2244 before any consideration by the district court.

"(2) This subsection applies to an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court for a crime that involved the killing of a individual who has not attained the age of 18 years.

"(3) For an application described in paragraph (2), the following requirements shall apply in the district court:

"(A) Any motion by either party for an evidentiary hearing shall be filed and served not later than 90 days after the State files its answer or, if no timely answer is filed, the date on which such answer is due.

"(B) Any motion for an evidentiary hearing shall be granted or denied not later than 30 days after the date on which the party opposing such motion files a pleading in opposition to such motion or, if no timely pleading in opposition is filed, the date on which such pleading in opposition is due.

"(C) Any evidentiary hearing shall be—

"(i) convened not less than 60 days after the order granting such hearing; and

"(ii) completed not more than 150 days after the order granting such hearing.

"(D) A district court shall enter a final order, granting or denying the application for a writ of habeas corpus, not later than 15 months after the date on which the State files its answer or, if no timely answer is filed, the date on which such answer is due, or not later than 60 days after the case is submitted for decision, whichever is earlier.

"(E) If the district court fails to comply with the requirements of this paragraph, the State may petition the court of appeals for a writ of mandamus to enforce the requirements. The court of appeals shall grant or deny the petition for a writ of mandamus not later than 30 days after such petition is filed with the court.

"(4) For an application described in paragraph (2), the following requirements shall apply in the court of appeals:

"(A) A timely filed notice of appeal from an order issuing a writ of habeas corpus shall operate as a stay of that order pending final disposition of the appeal.

"(B) The court of appeals shall decide the appeal from an order granting or denying a writ of habeas corpus—

"(i) not later than 120 days after the date on which the brief of the appellee is filed or, if no timely brief is filed, the date on which such brief is due; or

"(ii) if a cross-appeal is filed, not later than 120 days after the date on which the appellant files a brief in response to the issues presented by the cross-appeal or, if no timely brief is filed, the date on which such brief is due.

"(C)(i) Following a decision by a panel of the court of appeals under subparagraph (B), a petition for panel rehearing is not allowed, but rehearing by the court of appeals en banc may be requested. The court of appeals shall decide whether to grant a petition for rehearing en banc not later than 30 days after the date on which the petition is filed, unless a response is required, in which case the court shall decide whether to grant the petition not later than 30 days after the date on which the response is filed or, if no timely response is filed, the date on which the response is due.

"(ii) If rehearing en banc is granted, the court of appeals shall make a final determination of the appeal not later than 120 days after the date on which the order granting rehearing en banc is entered.

"(D) If the court of appeals fails to comply with the requirements of this paragraph, the State may petition the Supreme Court or a justice thereof for a writ of mandamus to enforce the requirements.

"(5)(A) The time limitations under paragraphs (3) and (4) shall apply to an initial application described in paragraph (2), any second or successive application described in paragraph (2), and any redetermination of an application described in paragraph (2) or related appeal following a remand by the court of appeals or the Supreme Court for further proceedings.

"(B) In proceedings following remand in the district court, time limits running from the time the State files its answer under paragraph (3) shall run from the date the remand is ordered if further briefing is not required in the district court. If there is further briefing following remand in the district court, such time limits shall run from the date on which a responsive brief is filed or, if no timely responsive brief is filed, the date on which such brief is due.

"(C) In proceedings following remand in the court of appeals, the time limit specified in paragraph (4)(B) shall run from the date the remand is ordered if further briefing is not required in the court of appeals. If there is further briefing in the court of appeals, the time limit specified in paragraph (4)(B) shall run from the date on which a responsive brief is filed or, if no timely responsive brief is filed, from the date on which such brief is due.

"(6) The failure of a court to meet or comply with a time limitation under this subsection shall not be a ground for granting relief from a judgment of conviction or sentence, nor shall the time limitations under this subsection be construed to entitle a capital applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.".

(b) VICTIMS' RIGHTS IN HABEAS CASES.—Section 3771(b) of title 18, United States Code, is amended by adding at the end the following: "The rights established for crime victims by this section shall also be extended in a Federal habeas corpus proceeding arising out of a State conviction to victims of the State offense at issue.".

(c) APPLICATION TO PENDING CASES.—

(1) IN GENERAL.—The amendment made by this section apply to cases pending on the date of the enactment of this Act as well as to cases commenced on and after that date.

(2) SPECIAL RULE FOR TIME LIMITS.—In a case pending on the date of the enactment of this Act, if the amendment made by subsection (a) provides that a time limit runs from an event or time that has occurred before that date, the time limit shall instead run from that date.

TITLE IV—PROTECTION AGAINST SEXUAL EXPLOITATION OF CHILDREN ACT OF 2005

SEC. 401. SHORT TITLE.

This title may be cited as the "Protection Against Sexual Exploitation of Children Act of 2005".

SEC. 402. INCREASED PENALTIES FOR SEXUAL OFFENSES AGAINST CHILDREN.

(a) SEXUAL ABUSE AND CONTACT.—

(1) AGGRAVATED SEXUAL ABUSE OF CHILDREN.—Section 2241(c) of title 18, United States Code, is amended by striking ", imprisoned for any term of years or life, or both." and inserting "and imprisoned for not less than 30 years or for life.".

(2) ABUSIVE SEXUAL CONTACT WITH CHILDREN.—Section 2244 of chapter 109A of title 18, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1), by inserting "subsection (a) or (b) of" before "section 2241";

(ii) by striking "or" at the end of paragraph (3);

(iii) by striking the period at the end of paragraph (4) and inserting "; or"; and

(iv) by inserting after paragraph (4) the following:

"(5) subsection (c) of section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title and imprisoned for not less than 10 years and not more than 25 years."; and

(B) in subsection (c), by inserting "(other than subsection (a)(5))" after "violates this section".

(3) SEXUAL ABUSE OF CHILDREN RESULTING IN DEATH.—Section 2245 of title 18, United States Code, is amended—

(A) by inserting ", chapter 110, chapter 117, or section 1591" after "this chapter";

(B) by striking "A person" and inserting "(a) IN GENERAL.—A person"; and

(C) by adding at the end the following:

"(b) OFFENSES INVOLVING YOUNG CHILDREN.—A person who, in the course of an offense under this chapter, chapter 110, chapter 117, or section 1591 engages in conduct that results in the death of a person who has not attained the age of 12 years, shall be punished by death or imprisoned for not less than 30 years or for life.".

(4) DEATH PENALTY AGGRAVATING FACTOR.—Section 3592(c)(1) of title 18, United States Code, is amended by inserting "section 2245 (sexual abuse resulting in death)," after "(wrecking trains),".

(b) SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN.—

(1) SEXUAL EXPLOITATION OF CHILDREN.—Section 2251(e) of title 18, United States Code, is amended—

(A) by striking "15 years nor more than 30 years" and inserting "25 years or for life";

(B) by inserting "section 1591," after "this chapter," the first place it appears;

(C) by striking "the sexual exploitation of children" the first place it appears and inserting "aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography";

(D) by striking "not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), 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 35 years nor more than life." and inserting "life."; and

(E) by striking "any term of years or for life" and inserting "not less than 30 years or for life".

(2) ACTIVITIES RELATING TO MATERIAL INVOLVING THE SEXUAL EXPLOITATION OF CHILDREN.—Section 2252(b) of title 18, United States Code, is amended—

(A) in paragraph (1)—

(i) by striking "paragraphs (1)" and inserting "paragraph (1)";

(ii) by inserting "section 1591," after "this chapter,";

(iii) by inserting ", or sex trafficking of children" after "pornography";

(iv) by striking "5 years and not more than 20 years" and inserting "25 years or for life"; and

(v) by striking "not less than 15 years nor more than 40 years." and inserting "life."; and

(B) in paragraph (2)—

(i) by striking "or imprisoned not more than 10 years" and inserting "and imprisoned for not less than 10 nor more than 30 years";

(ii) by striking ", or both"; and

(iii) by striking "10 years nor more than 20 years." and inserting "30 years or for life.".

(3) ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.—Section 2252A(b) of title 18, United States Code, is amended—

(A) in paragraph (1)—

(i) by inserting "section 1591," after "this chapter,";

(ii) by inserting ", or sex trafficking of children" after "pornography";

(iii) by striking "5 years and not more than 20 years" and inserting "25 years or for life"; and

(iv) by striking "not less than 15 years nor more than 40 years" and inserting "life"; and

(B) in paragraph (2)—

(i) by striking "or imprisoned not more than 10 years, or both" and inserting "and imprisoned for not less than 10 nor more than 30 years"; and

(ii) by striking "10 years nor more than 20 years" and inserting "30 years or for life".

(4) USING MISLEADING DOMAIN NAMES TO DIRECT CHILDREN TO HARMFUL MATERIAL ON THE INTERNET.—Section 2252B(b) of title 18, United States Code, is amended by striking "or imprisoned not more than 4 years, or both" and inserting " and imprisoned not less than 10 nor more than 30 years".

(5) PRODUCTION OF SEXUALLY EXPLICIT DEPICTIONS OF CHILDREN.—Section 2260(c) of title 18, United States Code, is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) shall be fined under this title and imprisoned for any term or years not less than 25 or for life; and

"(2) if the person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), shall be fined under this title and imprisoned for life.".

(c) MANDATORY LIFE IMPRISONMENT FOR CERTAIN REPEATED SEX OFFENSES AGAINST CHILDREN.—Section 3559(e)(2)(A) of title 18, United States Code, is amended—

(1) by striking "or 2423(a)" and inserting "2423(a)"; and

(2) by inserting ", 2423(b) (relating to travel with intent to engage in illicit sexual conduct), 2423(c) (relating to illicit sexual conduct in foreign places), or 2425 (relating to use of interstate facilities to transmit information about a minor)" after "minors)".

TITLE V—FOSTER CHILD PROTECTION AND CHILD SEXUAL PREDATOR DETERRENCE

SEC. 501. SHORT TITLE.

This title may be cited as the "Foster Child Protection and Child Sexual Predator Sentencing Act of 2005".

SEC. 502. REQUIREMENT TO COMPLETE BACKGROUND CHECKS BEFORE APPROVAL OF ANY FOSTER OR ADOPTIVE PLACEMENT AND TO CHECK NATIONAL CRIME INFORMATION DATABASES AND STATE CHILD ABUSE REGISTRIES; SUSPENSION AND SUBSEQUENT ELIMINATION OF OPT-OUT.

(a) REQUIREMENT TO COMPLETE BACKGROUND CHECKS BEFORE APPROVAL OF ANY FOSTER OR ADOPTIVE PLACEMENT AND TO CHECK NATIONAL CRIME INFORMATION DATABASES AND STATE CHILD ABUSE REGISTRIES; SUSPENSION OF OPT-OUT.—

(1) REQUIREMENT TO CHECK NATIONAL CRIME INFORMATION DATABASES AND STATE CHILD ABUSE REGISTRIES.—Section 471(a)(20) of the Social Security Act (42 U.S.C. 671(a)(20)) is amended—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i)—

(I) by inserting ", including checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28, United States Code)," after "criminal records checks"; and

(II) by striking "on whose behalf foster care maintenance payments or adoption assistance payments are to be made" and inserting "regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child"; and

(ii) in each of clauses (i) and (ii), by inserting "involving a child on whose behalf such payments are to be so made" after "in any case"; and

(B) by adding at the end the following:

"(C) provides that the State shall—

"(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part;

"(ii) comply with any request described in clause (i) that is received from another State; and

"(iii) have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this subparagraph from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases;".

(2) SUSPENSION OF OPT-OUT.—Section 471(a)(20)(B) of such Act (42 U.S.C. 671(a)(20)(B)) is amended—

(A) by inserting ", on or before September 30, 2005," after "plan if"; and

(B) by inserting ", on or before such date," after "or if".

(b) ELIMINATION OF OPT-OUT.—Section 471(a)(20) of such Act (42 U.S.C. 671(a)(20)), as amended by subsection (a) of this section, is amended—

(1) in subparagraph (A), in the matter preceding clause (i), by striking "unless an election provided for in subparagraph (B) is made with respect to the State,"; and

(2) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall take effect on October 1, 2005, and shall apply with respect to payments under part E of title IV of the Social Security Act for calendar quarters beginning on or after such date, without regard to whether regulations to implement the amendments are promulgated by such date.

(2) ELIMINATION OF OPT-OUT.—The amendments made by subsection (b) shall take effect on October 1, 2007, and shall apply with respect to payments under part E of title IV of the Social Security Act for calendar quarters beginning on or after such date, without regard to whether regulations to implement the amendments are promulgated by such date.

(3) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan under section 471 of the Social Security Act to meet the additional requirements imposed by the amendments made by a subsection of this section, the plan shall not be regarded as failing to meet any of the additional requirements before the first day of the first calendar quarter beginning after the first regular session of the State legislature that begins after the otherwise applicable effective date of the amendments. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

SEC. 503. ACCESS TO FEDERAL CRIME INFORMATION DATABASES BY CHILD WELFARE AGENCIES FOR CERTAIN PURPOSES.

(a) IN GENERAL.—The Attorney General shall, upon request of the chief executive of a State, ensure that appropriate officers of child welfare agencies have the authority for "read only" online access to the databases of the national crime information databases (as defined in section 534 of title 28, United States Code) to carry out criminal history records checks, subject to subsection (b).

(b) LIMITATION.—An officer may use the authority under subsection (a) only in furtherance of the purposes of the agency and only on an individual relevant to casework of the agency.

(c) PROTECTION OF INFORMATION.—An individual having information derived as a result of a check under subsection (a) may release that information only to appropriate officers of child welfare agencies or another person authorized by law to receive that information.

(d) CRIMINAL PENALTIES.—An individual who knowingly exceeds the authority in subsection (a), or knowingly releases information in violation of subsection (c), shall be imprisoned not more than 10 years or fined under title 18, United States Code, or both.

(e) CHILD WELFARE AGENCY DEFINED.—In this section, the term "child welfare agency" means—

(1) the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act; and

(2) any other public agency, or any other private agency under contract with the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act, that is responsible for the placement of foster or adoptive children.

SEC. 504. PENALTIES FOR COERCION AND ENTICEMENT BY SEX OFFENDERS.

Section 2422(a) of title 18, United States Code, is amended by striking "or imprisoned not more than 20 years, or both" and inserting "and imprisoned not less than 10 years nor more than 30 years".

SEC. 505. PENALTIES FOR CONDUCT RELATING TO CHILD PROSTITUTION.

Section 2423 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "5 years and not more than 30 years" and inserting "30 years or for life";

(2) in subsection (b), by striking "or imprisoned not more than 30 years, or both" and inserting "and imprisoned for not less than 10 years and not more than 30 years";

(3) in subsection (c), by striking "or imprisoned not more than 30 years, or both" and inserting "and imprisoned for not less than 10 years and not more than 30 years"; and

(4) in subsection (d), by striking "imprisoned not more than 30 years, or both" and inserting "and imprisoned for not less than 10 nor more than 30 years".

SEC. 506. PENALTIES FOR SEXUAL ABUSE.

(a) AGGRAVATED SEXUAL ABUSE.—Section 2241 of title 18, United States Code, is amended—

(1) in subsection (a), by striking ", imprisoned for any term of years or life, or both" and inserting "and imprisoned for any term of years not less than 30 or for life"; and

(2) in subsection (b), by striking ", imprisoned for any term of years or life, or both" and inserting "and imprisoned for any term of years not less than 25 or for life".

(b) SEXUAL ABUSE.—Section 2242 of title 18, United States Code, is amended by striking ", imprisoned not more than 20 years, or both" and inserting "and imprisoned not less than 15 years nor more than 40 years".

(c) ABUSIVE SEXUAL CONTACT.—Section 2244(a) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking ", imprisoned not more than three years, or both" and inserting "and imprisoned not less than 5 years nor more than 30 years";

(2) in paragraph (3), by striking ", imprisoned not more than two years, or both" and inserting "and imprisoned not less than 4 years nor more than 20 years"; and

(3) in paragraph (4), by striking ", imprisoned not more than six months, or both" and inserting "and imprisoned not less than 2 years nor more than 10 years".

SEC. 507. SEX OFFENDER SUBMISSION TO SEARCH AS CONDITION OF RELEASE.

(a) CONDITIONS OF PROBATION.—Section 3563(a) of title 18, United States Code, is amended——

(1) in paragraph (9), by striking the period and inserting "; and"; and

(2) by inserting after paragraph (9) the following:

"(10) for a person who is a felon or required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.".

(b) SUPERVISED RELEASE.—Section 3583(d) of title 18, United States Code, is amended by adding at the end the following: "The court may order, as an explicit condition of supervised release for a person who is a felon or required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions."

SEC. 508. KIDNAPPING PENALTIES AND JURISDICTION.

Section 1201 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by striking "if the person was alive when the transportation began" and inserting ", or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense"; and

(2) in subsection (b), by striking "to interstate" and inserting "in interstate".

SEC. 509. MARITAL COMMUNICATION AND ADVERSE SPOUSAL PRIVILEGE.

(a) IN GENERAL.—Chapter 119 of title 28, United States Code, is amended by inserting after section 1826 the following:

"§ 1826A. Marital communications and adverse spousal privilege

"The confidential marital communication privilege and the adverse spousal privilege shall be inapplicable in any Federal proceeding in which a spouse is charged with a crime against—

"(1) a child of either spouse; or

"(2) a child under the custody or control of either spouse.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 119 of title 28, United States Code, is amended by inserting after the item relating to section 1826 the following:

"1826A. Marital communications and adverse spousal privilege.".

SEC. 510. ABUSE AND NEGLECT OF INDIAN CHILDREN.

Section 1153(a) of title 18, United States Code, is amended by inserting "felony child abuse or neglect," after "years,".

SEC. 511. CIVIL COMMITMENT.

Chapter 313 of title 18, United States Code, is amended—

(1) in the chapter analysis—

(A) in the item relating to section 4241, by inserting "or to undergo postrelease proceedings" after "trial"; and

(B) by inserting at the end the following:

"4248. Civil commitment of a sexually dangerous person.";

(2) in section 4241—

(A) in the heading, by inserting "or to undergo postrelease proceedings" after "trial";

(B) in the first sentence of subsection (a), by inserting "or at any time after the commencement of probation or supervised release and prior to the completion of the sentence," after "defendant,";

(C) in subsection (d)—

(i) by striking "trial to proceed" each place it appears and inserting "proceedings to go forward"; and

(ii) by striking "section 4246" and inserting "sections 4246 and 4248"; and

(D) in subsection (e)—

(i) by inserting "or other proceedings" after "trial"; and

(ii) by striking "chapter 207" and inserting "chapters 207 and 227";

(3) in section 4247—

(A) by striking ", or 4246" each place it appears and inserting ", 4246, or 4248";

(B) in subsections (g) and (i), by striking "4243 or 4246" each place it appears and inserting "4243, 4246, or 4248";

(C) in subsection (a)—

(i) by amending subparagraph (1)(C) to read as follows:

"(C) drug, alcohol, and sex offender treatment programs, and other treatment programs that will assist the individual in overcoming a psychological or physical dependence or any condition that makes the individual dangerous to others; and";

(ii) in paragraph (2), by striking "and" at the end;

(iii) in paragraph (3), by striking the period at the end and inserting a semicolon; and

(iv) by inserting at the end the following:

"(4) 'bodily injury' includes sexual abuse;

"(5) 'sexually dangerous person' means a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others; and

"(6) 'sexually dangerous to others' means that a person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.";

(D) in subsection (b), by striking "4245 or 4246" and inserting "4245, 4246, or 4248"; and

(E) in subsection (c)(4)—

(i) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F) respectively; and

(ii) by inserting after subparagraph (C) the following:

"(D) if the examination is ordered under section 4248, whether the person is a sexually dangerous person;"; and

(4) by inserting at the end the following:

"§ 4248. Civil commitment of a sexually dangerous person

"(a) INSTITUTION OF PROCEEDINGS.—In relation to a person who is in the custody of the Bureau of Prisons, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons relating to the mental condition of the person, the Attorney General or any individual authorized by the Attorney General or the Direc-

tor of the Bureau of Prisons may certify that the person is a sexually dangerous person, and transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is a sexually dangerous person. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

"(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

"(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

"(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall place the person for treatment in a suitable facility, until—

"(1) such a State will assume such responsibility; or

"(2) the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment;

whichever is earlier. The Attorney General shall make all reasonable efforts to have a State to assume such responsibility for the person's custody, care, and treatment.

"(e) DISCHARGE.—When the Director of the facility in which a person is placed pursuant to subsection (d) determines that the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the person or, on motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person's condition is such that—

"(1) he will not be sexually dangerous to others if released unconditionally, the court shall order that he be immediately discharged; or

"(2) he will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the court shall—

"(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the Director of the facility in which he is committed, and that has been found by the court to be appropriate; and

"(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

"(f) REVOCATION OF CONDITIONAL DISCHARGE.—The director of a facility responsible for administering a regimen imposed on a person conditionally discharged under subsection (e) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that he is sexually dangerous to others in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

"(g) RELEASE TO STATE OF CERTAIN OTHER PERSONS.—If the director of the facility in which a person is hospitalized or placed pursuant to this chapter certifies to the Attorney General that a person, against him all charges have been dismissed for reasons not related to the mental condition of the person, is a sexually dangerous person, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than 10 days after certification by the director of the facility.".

SEC. 512. MANDATORY PENALTIES FOR SEX-TRAFFICKING OF CHILDREN.

Section 1591(b) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking "or imprisonment" and inserting "and imprisonment";

(B) by inserting "not less than 20" after "any term of years"; and

(C) by striking ", or both"; and

(2) in paragraph (2)—

(A) by striking "or imprisonment for not" and inserting "and imprisonment for not less than 10 years nor"; and

(B) by striking ", or both".

SEC. 513. SEXUAL ABUSE OF WARDS.

Chapter 109A of title 18, United States Code, is amended—

(1) in section 2243(b), by striking "one year" and inserting "five years";

(2) in section 2244(b), by striking "six months" and inserting "two years"; and

(3) by inserting after "Federal prison," each place it appears, other than the second sentence of section 2241(c), the following: "or being in the custody of the Attorney General or the Bureau of Prisons or confined in any institution or facility by direction of the Attorney General or the Bureau of Prisons,".

PURPOSE AND SUMMARY

H.R. 3132, the "Children's Safety Act of 2005," is a comprehensive bill to address the growing epidemic of sexual violence against children. Recently, public attention has been focused on several tragic attacks in which young children have been murdered, kidnapped, and sexually assaulted by sexual offenders and career criminals, including: (1) the abduction, rape and killing of 9-year-old Jessica Lunsford who was buried alive in Florida; (2) the slaying of 13-year-old Sarah Lunde in Florida; (3) the murder of Jetseta Marie Gage by a sex offender in Iowa; and (4) the kidnapping of Ashta and Dylan Grohne, and murder of Dylan and their family members in Idaho.

These tragic events have underscored the continuing epidemic of violence against children, and the need to reexamine existing laws intended to protect children—*i.e.,* the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act," "Megan's Law," and the "Pam Lyncher Sex Offender Trafficking and Identification Act." During the 109th Congress, several bills were introduced by Members of Congress to address loopholes and deficiencies in existing laws.[1]

The "Children's Safety Act of 2005," incorporates these proposals into a comprehensive child safety bill. Title I of the legislation, the Sex Offender Registration and Notification Act: (1) expands the coverage of registration and notification requirements to a larger number of sex offenders; (2) increases the duration of registration requirements for sex offenders; (3) requires States to provide Inter-

[1] H.R. 764, The Child Abuse and Neglect Database Act; H.R. 95, The Dru Sjodin National Sex Offender Public Database Act of 2005; H.R. 1355, The Child Predator Act of 2005; H.R. 1505, The Jessica Lunsford Act; H.R. 2423, The Sex Offender Registration and Notification Act; H.R. 244, The Save Our Children: Stop the Violent Predators Against Children DNA Act of 2005; H.R. 2796, The DNA Fingerprinting Act of 2005; and H.R. 2797, The Amie Zyla Act of 2005.

net availability of sex offender information; (4) ensures timely registration by sex offenders and verification of information provided by sex offenders; (5) requires sex offenders to register in-person and on a regular basis, and to provide detailed personal information whenever they move to a new area to live, attend school or work; (6) requires a State to notify the Attorney General, law enforcement agencies, schools, housing agencies, and development, background check agencies, social service agencies and volunteer organizations in the area where a sex offender may live, work or attend school; (7) authorizes demonstration programs for new electronic monitoring programs (*e.g.* anklets and Global Positioning Satellite (GPS) monitoring which will require examination of multi-jurisdictional monitoring procedures); (8) creates a new National Sex Offender Registry; (9) creates a new Federal crime punishable by a 5-year mandatory minimum when a sex offender fails to register; and (10) authorizes the U.S. Marshals to apprehend sex offenders who fail to register and increases grants to States to apprehend sex offenders who are in violation of the registration requirements.

Title II of H.R. 3132, the DNA Fingerprinting Act of 2005, revises DNA laws to include arrestee DNA profiles, strikes the expungement provisions for removal of DNA profiles from existing databases, and strikes the exclusion of sexual abuse offenses from the statute of limitations tolling provisions for John Doe indictments.

Title III of H.R. 3132, the Prevention and Deterrence of Crimes Against Children Act of 2005, adopts new mandatory minimum penalties for violent crimes committed against children. Criminal penalties range from: a death sentence or life imprisonment when a child is murdered; a mandatory minimum of 30 years imprisonment to life when the crime of violence against the child is a kidnapping, maiming, or aggravated sexual abuse, or where the crime results in serious bodily injury (§ 1365); a mandatory minimum of 20 years when the crime of violence results in bodily injury to the child (as defined in § 1365); a mandatory minimum of 15 years to life imprisonment when the defendant uses a dangerous weapon; and a mandatory minimum of 10 years imprisonment or up to life in any other case (*e.g.* attempt or conspiracy to commit any crime of violence against a child). Title III also imposes time limits and substantive limits on Federal courts' review of habeas corpus petitions challenging a State-court conviction for killing a child.

Title IV of the legislation, the Protection Against Sexual Exploitation of Children Act of 2005, modifies the criminal penalties for several existing sexual offenses against children by raising existing mandatory penalties for: engaging in a sexual act with a child; committing abusive sexual contact; sexual exploitation of children; trafficking in child pornography, and using misleading domain names.

Title V of H.R. 3132, the Foster Child Protection Act of 2005: (1) adopts requirements for States to complete background checks using national criminal history databases before approving a foster or adoptive parent placement; (2) authorizes child welfare agencies to obtain read-only access to national criminal history databases; (3) requires sex offenders to submit to searches as a condition of supervised release or probation, modifies kidnapping and sex traf-

ficking statutes, and establishes procedures for civil commitment of Federal sex offenders who are dangerous to others because of serious mental illness, abnormality or disorder; and (4) adopts increased penalties for sexual abuse and sex trafficking involving children.

BACKGROUND AND NEED FOR THE LEGISLATION

The sexual victimization of children is overwhelming in magnitude and largely unrecognized and underreported. Statistics show that 1 in 5 girls and 1 in 10 boys are sexually exploited before they reach adulthood, yet less than 35 percent of these assaults are reported to authorities. This problem is exacerbated by the number of children who are solicited online—according to the Department of Justice, 1 in 5 children (10 to 17 years old) receive unwanted sexual solicitations online.[2]

The Department of Justice statistics underscore the staggering toll that violence takes on our youth.[3] Data from 12 States during the period of 1991 to 1996 show that 67 percent of all victims of sexual assault were juveniles (under the age of 18), and 34 percent were under the age of 12. One of every seven victims of sexual assault was under the age of 6.[4]

SEX OFFENDERS AND RECIDIVISM

Sex offenders have recidivism rates that often exceed those of other criminals. In a 2001 Report, the Center for Sex Offender Management reached the following staggering conclusions as to recidivism by sex offenders:[5]

- Sexual offense recidivism rates are underreported. Researchers compared official records of a sample of sex offenders with "unofficial" sources of data. They found that the number of subsequent sex offenses revealed through unofficial sources was 2.4 times higher than the number that was recorded in official reports.
- Research using information generated through polygraph examinations on a sample of imprisoned sex offenders with fewer than two known victims (on average), found that these offenders actually had an average of 110 victims and 318 offenses.
- Another polygraph study found a sample of imprisoned sex offenders to have extensive criminal histories, committing sex crimes for an average of 16 years before being apprehended and convicted.

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[2] U.S. Department of Justice Office of Justice Programs—Office of Juvenile Justice and Delinquency Prevention Fact Sheet, *Highlights of the Youth Internet Safety Survey (March 2004), available at http://www.ncjrs.gov/pdffiles1/ojjdp/fs200104.pdf.*

[3] DOJ national crime surveys do not account for victims under the age of 12, but even for 12 to 18 year olds, the figures are alarming.

[4] In a June 1997 report, the Justice Department found that sexual offenses are more likely than other types of criminal conduct to elude the criminal justice system. Offenders report vastly more victim-involved incidents than those for which they were convicted. Child abusers have been known to re-offend as late as 20 years following release into the community. U.S. Department of Justice Office of Justice Programs—National Institute of Justice Research Report, *Child Sexual Molestation: Research Issues (June 1997), available at http://www.ncjrs.org/pdffiles/163390.pdf..*

[5] U.S. Department of Justice A Project of the Office of Justice Programs—Center for Sex Offender Management, *Recidivism of Sex Offenders (May 2001), available at http://www.csom.org/pubs/recidsexof.html.*

In a 2003 report, the Justice Department found that released child molesters were more likely to be rearrested for child molesting than non-child molesters.[6] Released sex offenders were *four times* more likely to be rearrested for a sex crime than released non-sex offenders. The median age of the victims of imprisoned sexual assaulters was less than 13 years old; the median age of rape victims was about 22 years. On average, child molesters were released after serving about 3 years of their 7-year sentence (43 percent of their sentence). Justice Department data also shows that in 15 States in 1994, 5.3 percent of 9,691 sex offenders who were released from prison were arrested for a new sex crime within 3 years of release—in real terms that means approximately 480 sex offenders committed new sex crimes.

One of the most prevalent manifestations of the growing problem of child exploitation and sexual abuse crimes is the escalating presence of child pornography. There has been an explosive growth in the trade of child pornography due to the ease and speed of distribution, and the relative anonymity afforded by the Internet. The distribution of child pornography has progressed beyond exchanges between individuals and now includes commercial ventures. Furthermore, once on the Internet, the images are easily transmitted from offender to offender. The ease of electronic transmission of these images may reinforce the sexual predators of child offenders or motivate those who have contemplated assaulting a child to do so.[7]

SEX OFFENDER AND NOTIFICATION PROGRAM

Recent events have underscored gaps and problems with existing Federal and State laws, as well as implementation of sex offender registration and notification programs. There is a wide disparity among State registration requirements and notification obligations for sex offenders. This lack of uniformity has been exploited by child sexual offenders with tragic consequences. Given the transient nature of sex offenders and the inability of the States to track these offenders, it is conservatively estimated that approximately 20 percent of 400,000 sex offenders are "lost" under State sex offender registry programs. In addition, there is a disparity among State programs as to the existence of Internet availability of relevant sex offender information, as well as the type of information included on such websites. Recently, the Justice Department announced that it has begun implementing a public, national sex offender database connecting State sexual offender registries into one

[6] U.S. Department of Justice Office of Justice Programs—Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994 (November 2003), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/rsorp94.pdf.*

[7] While recidivism by sex offenders is a significant problem, the treatment of sex offenders is problematic. Several studies have evaluated the outcomes of offenders receiving sex offender treatment, compared to a group of offenders not receiving treatment. The results of these studies are mixed. For example, Barbaree and Marshall (1988) found a substantial difference in the recidivism rates of extra-familial child molesters who participated in a community based cognitive-behavioral treatment program, compared to a group of similar offenders who did not receive treatment. Those who participated in treatment had a recidivism rate of 18 percent over a 4-year follow-up period, compared to a 43 percent recidivism rate for the nonparticipating group of offenders. However, no positive effect of treatment was found in several other quasi-experiments involving an institutional behavioral program (Rice, Quinsey, and Harris, 1991) or a milieu therapy approach in an institutional setting (Hanson, Steffy, and Gauthier, 1993).

national website, starting with the linking of 22 State Internet websites for search purposes.[8]

Given the lack of basic uniformity and effective operation among the various States in administering sex registry programs, there is a need to re-evaluate basic requirements for such registries, particularly the need to ensure sex offender compliance with registration requirements when a sex offender changes residence, employment or student status. As noted above, 20 percent of sexual offenders are "lost," and there is a strong public interest in finding them and having them register with current information to mitigate the risks of additional crimes against children. The Federal Government's recent announcement of the creation of a National Sex Offender Public Registry, the State's role in providing accurate data will be even more critical. In order to ensure their utility, Internet websites maintained by States need to include basic information about an offender, such as the offender's name, address, specific offense(s) committed, vehicle used, place of employment or school, current picture, and other relevant information. Current limitations in existing law further require an increase in apprehension resources to bring sexual offenders into compliance by authorizing the United States Marshals Service to participate in locating sex offenders who are not in compliance with registry requirements.

Compounding the problem of "lost" sex offenders, States tend to take a passive role in disseminating sex offender information, relying instead on law enforcement to disseminate such information to interested entities such as schools and community groups. H.R. 3132 requires the Federal Government and the States to take a more active role in disseminating sex offender information to notify other States, entities, organizations and local communities of the status and location of convicted sexual offenders.

DEFINITIONS AND APPLICATION TO EXPANDED CATEGORY OF SEX OFFENDERS

H.R. 3132 includes a new and broader definition of sex offenders—two classes—those who commit serious felonies and those that commit misdemeanors involving a minor. This broader definition provides a clearer distinction for imposing sex offender registration and notification requirements. Existing legal definitions of a "sexually violent predator" are unworkable, too narrow, and depend on determinations of "mental abnormality or personality disorder," which may vary from State-to-State based on generalized concepts. H.R. 3132 draws the line on a simple principal—if the offender was subject to imprisonment for more than one year for a sex crime, then he should be treated differently than a misdemeanor sex offense against a minor where the offender was subject to a penalty of less than one year.[9]

H.R. 3132 also expands the coverage of the registration and notification requirements to include foreign sex crimes (so long as ac-

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[8] U.S. Department of Justice Office of Justice Programs Press Release, July 20, 2005, *Department of Justice Activates National Sex Offender Public Registry Website, available at http://www.ojp.usdoj.gov/pressreleases/BJA05028.htm.*

[9] It is important to note that misdemeanor offenses against adults are not included, and that consensual sex offenses are, for the most part, excluded, except where such conduct involves younger children who are unable, as a matter of law, to consent.

tivity would have constituted a crime if committed in the United States), tribal, military, and Federal. There is no reason that a criminal sex offender—no matter what law—should be exempted from any State registration and notification requirements.

EXPANDING COVERAGE TO INCLUDE JUVENILES

H.R. 3132 expands the coverage of sex offenders to include juvenile sex offenders. Juvenile sex offenders commit a significant number of sexual abuse crimes. According to recent FBI crime data, approximately 34 percent of forcible rape arrests were of juveniles; and 42 percent of all other sexual offenses were committed by juveniles.

Several States, including Wisconsin, have modified their sex offender registration and notification programs to include juvenile sex offenders. All too often, juvenile sex offenders have exploited current limitations that permit them to escape notification requirements to commit sexual offenses. While the Committee recognizes that States typically protect the identity of a juvenile who commits criminal acts, in the case of sexual offenses, the balance needs to change; no longer should the rights of the juvenile offender outweigh the rights of the community and victims to be free from additional sexual crimes. For victims, whether the offenders is an adult or a juvenile has no bearing on the impact of that sexual offense on the life of the victim. H.R. 3132 strikes the balance in favor of protecting victims, rather than protecting the identity of juvenile sex offenders.

EXPANDED NOTIFICATION REQUIREMENTS

As noted above, H.R. 3132 expands the notification requirements to implement a more proactive approach to the dissemination of sex offender information. Some may argue that requiring notification to so many entities could tend to "vilify" or "ostracize" sex offenders once they reach a community. For that reason, H.R. 3132 includes a new requirement that the community have access to information relating to the specific facts underlying the sex offender's criminal case—so that law enforcement, the community, parents, and other interested persons can assess the risk themselves, and take the appropriate steps they believe are necessary to protect their families or themselves from sex offenders.

The National Center for Missing and Exploited Children has reported that one of the primary deficiencies in the current program is reliance on "passive" notification rather than proactive steps to notify members of the community. Under the current system, law enforcement is notified subsequently and required to notify the community and take active steps to verify the sex offender's compliance. Such steps are not typical, and law enforcement has been practically unable to take any proactive steps. H.R. 3132 includes additional notification requirements consistent with those recommended by the National Center for Missing and Exploited Children—broad and active notification of the community including law enforcement, volunteer organizations, child welfare agencies, public housing agencies, and ensuring wide public availability of such information on both State and Federal websites in order to maximize the availability of sexual offender information to the public.

ENSURING COMPLIANCE AND CRIMINAL ENFORCEMENT

The most significant enforcement issue in the sex offender program is that over 100,000 sex offenders, or nearly one-fifth in the Nation are "missing," meaning that they have not complied with sex offender registration requirements. This typically occurs when the sex offender moves from one State to another. When a sex offender fails to register in a State in which he or she resides, there is no effective system by which the States can notify each other about the change in a sex offenders status. H.R. 3132 will address this problem in several ways.

First, H.R. 3132 requires sex offenders to keep addresses, employment and student status, and do so within 5 days of any change. Second, failure would subject a sex offender to a felony criminal penalty. Third, the proposed law would require a sex offender to verify his information by an in-person appearance every 6 months, and States would be required to conduct address verification programs, including the Jessica Lunsford Verification Program, as frequently as every month for felony sex offenders and every quarter for misdemeanor sex offenders. Fourth, if the sex offender either moves to a new State, works in a new State, or attends school in a new State, the new State is required to notify the other State that the sex offender is doing so in that State.

To ensure compliance, States are required to inform the sex offender of his or her obligations, and obtain a signed form indicating that he or she understands legal requirements and will comply with them. Sex offenders who fail to comply will face felony criminal prosecution. More importantly, in order to address the problem of sex offenders, sex offenders will now face Federal prosecution with a mandatory minimum penalty of 5 years in prison if they cross a State line and fail to comply with the sex offender registration and notification requirements contained in the legislation. To assist in the apprehension of those that do not comply with sex offender registration requirements, the bill includes provisions authorizing the United States Marshals to help locate and apprehend non-complying sex offenders and provides grants to States to assist in any apprehension programs. The combination of incentives for the sex offender to comply, enhanced criminal penalties, and additional law enforcement resources to focus on this problem will reduce the overwhelming number of non-complying or "lost" sex offenders in our communities.

STATE COMPLIANCE AND FUNDING

The changes required by this legislation are significant at both the Federal and the State level. H.R. 3132 requires the States to comply in 2 years, and the Attorney General may extend this deadline for an additional year. To assist the States in funding obligations contained in the legislation, H.R. 3132 creates new incentive grants for States that comply before the two-year deadline. The existing program is funded from a variety of sources, including Violence Agaisnt Women Act ("VAWA"), National Criminal History Improvement Programs, Byrne grants, and other funding sources. The proposal reauthorizes the Sex Offender Management Assistance (SOMA) program as the primary vehicle for funding the program.

ELECTRONIC TRACKING DEVICES

Several States, including Florida, are using electronic tracking devices—ankle bracelets or Global Positioning Service (GPS) devices—to track sex offenders in their communities. There are a number of technical and logistical issues relating to those technologies, including compatibility and interoperability among States. Given the technical issues that need to be resolved, H.R. 3132 authorizes up to 10 demonstration programs to identify the effectiveness of such technologies and to examine how to utilize these technologies most effectively to ensure coordination among the States.

FEDERAL PROSECUTION OF SEX OFFENSES AND CHILD PORNOGRAPHY

Child pornography offenses, as well as other child exploitation offenses involving enticement of minors to engage in illegal sexual activity, travel to engage in illegal sexual activity with a minor, or transportation of a minor to engage in illegal sexual activity often implicate interstate or foreign commerce. Accordingly, these offenses are often prosecuted under Federal law. On the other hand, sexual abuse of children is typically prosecuted under State law. When a child is sexually abused on Federal land such as a military base or Indian territory, the offense may be prosecuted under Federal law. Accordingly, Federal laws prohibiting sexual abuse have an important role in combating these devastating crimes, even though most sexual abuse cases are prosecuted under State statutes.

Crimes against children such as child exploitation and sexual abuse are a growing problem. For example, according to the Executive Office for United States Attorneys, in Fiscal Year 1997, 352 cases were filed by the Department of Justice charging child pornography crimes (18 U.S.C. §§ 2251–2260), and 299 convictions were obtained. In Fiscal Year 2004, child pornography charges were filed against approximately 1,486 defendants, and approximately 1,066 convictions on such charges were obtained.

Nationwide, according to a Department of Health and Human Services' 2003 report on child maltreatment, an estimated 906,000 children were victims of child abuse or neglect.[10] Approximately 20 percent of these victims were physically abused, and approximately 10 percent were sexually abused. Moreover, according to that report, Pacific Islander children and American Indian or Alaska Native children are among those experiencing the highest rates of victimization. As the special maritime and territorial jurisdiction of the United States may cover many of these children, a Federal legislative response to violence against children and child sexual abuse is clearly neccessary.

The Federal sentences imposed for sexual abuse and exploitation of children appear to be unduly lenient. More frequently, judges are exercising their discretion to impose sentences that depart from the carefully considered ranges developed by the U.S. Sentencing Commission. In the process, we risk losing a sentencing system that requires serious sentences for serious offenders and helps prevent disparate sentences for equally serious crimes.

[10] U.S. Department of Health and Human Services Administration for Children and Families—Administration on Children, Youth and Families Children's Bureau *Child Maltreatment 2003, available at http://www.acf.hhs.gov/programs/cb/publications/cm03/cm2003.pdf.*

The sentencing data for the last year shows that for sexual abuse crimes, the mean sentence length was only 73 months and the median was 41 months. For pornography and prostitution, the mean sentence was 63 months and the median was 33 months. Judges continued to hand out a number of downward departures for offenders who commit criminal sexual abuse (U.S. Sentencing Guidelines Manual § 2A3.1) where approximately 15 percent (15 of 97 sentences) of offenders received Government-sponsored downward departures (non-substantial assistance) and 13 percent (13 of 97 sentences) of the offenders received non-Government-sponsored downward departures; for criminal sexual abuse (U.S. Sentencing Guidelines Manual § 2A3.2), 4.5 percent (6 of 133) offenders received Government-sponsored downward departures (non-substantial assistance), and approximately 11 percent (15 of 133) of the offenders received non-Government sponsored downward departures.

For child exploitation crimes, sentencing data shows a similar pattern. For trafficking in material involving the sexual exploitation of a minor (U.S. Sentencing Guidelines Manual §§ 2G2.2 and 2G2.4) approximately 17 percent (94 of 536 of the sentences) of the offenders received non-Government sponsored downward departures. (Less than one percent of the offenders received Government-sponsored downward departures).[11]

To ensure that a proper minimum sentence is imposed on sex offenders,[12] H.R. 3132 includes a section modifying the existing statute, section 3559(d), of title 18, governing the sentencing of defendants for crimes committed against children, and adopts new penalties for felony crimes of violence (18 U.S.C. § 16) crimes committed against children. Criminal penalties range from a death sentence or life imprisonment when a child is killed; a mandatory minimum of 30 years imprisonment to life where the crime of violence is a kidnapping, maiming, aggravated sexual abuse, sexual abuse or where the crime results in serious bodily injury (18 U.S.C. 2119(2)); a mandatory minimum of 20 years where the crime of violence results in bodily injury to the child (as defined in 1365); a mandatory minimum of 15 years to life imprisonment where the defendant uses a dangerous weapon; and a mandatory minimum of

[11] The 2003 sentencing data shows that a total of 355 sexual abuse cases were filed, and approximately 45 percent (166) involved white defendants, approximately 38 percent (136) involved Native American defendants, 7 percent (25) involved Hispanic defendants, and 6 percent (23) involved Black defendants. The 2003 sentencing data shows that a total 734 cases for promoting a commercial sex act, sexually exploiting a minor, trafficking in or possession of material involving sexual exploitation of a minor, and importing, mailing or transporting obscene matter—629 of the cases or 88 percent involved white defendants, 49 involved Hispanic defendants, 26 involved Asian of Pacific Islanders, 23 involved Black defendants, and 5 involved Native Americans.

[12] Mandatory Sentencing Schemes Mandatory sentencing schemes—truth-in-sentencing, determinate sentencing practices, "three-strikes and you're out," have resulted in dramatic reductions in crime since the 1970's. Steven D. Levitt, *Understanding Why Crime Fell in the 1990's: Four Factors That Explain the Decline and Seven That Do Not,* 18 J.Econ. Perspectives 163 (2004); Joanna M. Shepherd, *Police, Prosecutors, Criminals and Determinate Sentencing: The Truth about Truth-in-Sentencing Laws,* 45 J.L. & Econ. 509 (2002). Other studies confirm the obvious point—incarcerating an offender prevents him from repeating his crimes while he is in prison. Peter W. Greenwood et al., *Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory-Sentencing Law, in Three Strikes and You're Out: Vengeance as Public Policy* (David Schichor & Dale K. Sechrest eds. 1996). Joanna M. Shepherd, *Fear of First Strike: The Full Deterrent Effect of California's Two- and Three-Strikes Legislation,* 31 J. Legal Stud. 159 (2002). John J. Donahue III & Peter Siegelman, *Allocating Resources Among Prisons and Social Programs in the Battle Against Crime,* 27 J. Legal STUD. 1, 12–14 (1998); James Q. Qilson, *Prisons in a Free Society,* 117 Pub. Interest 37, 38 (Fall 1994); Thomas Marvell & Carlisle Moody, *Prison Population Growth and Crime Reduction,* 10 J. Quantitative Criminal. 109 (1994).

10 years imprisonment or up to life in any other case (*e.g.* attempt or conspiracy to commit any crime of violence against a child). Section 402 of H.R. 3132 increases penalties for several existing sexual offenses against children.[13]

Likewise, the mandatory minimum provisions of H.R. 10, passed last Congress with overwhelming bipartisan support to assure appropriate penalties for serious offenses—possession and threats of atomic, chemical and biological weapons and anti-aircraft missiles. Sections 2403–2406 providing for tough mandatory minimums (30 years and Life imprisonment) was passed as a floor amendment to H.R. 10 by a vote of 385–30 with 164 Democrats voting in favor. Every Democrat Member of the House Judiciary voted for the amendment except for Reps. Watt and Scott. Every House conferee, including every Democrat conferee (Reps. Harman, Menendez, Skelton) voted in favor of the mandatory minimums.

CIVIL COMMITMENT

H. R. 3132 authorizes civil commitment of certain Federal sex offenders who are dangerous to others because of serious mental illness, abnormality or disorder. Such procedures would apply, for example, in circumstances in which a pedophile who was sentenced to imprisonment for child molestation offenses and States his intention to resume such conduct upon his release from jail. Under the civil commitment provisions in existing law, the sex offender must be hospitalized while incarcerated and the director of the facility must certify that the offender is suffering from a "mental disease or defect" creating a substantial risk of harm to others. Such a standard is narrow and does not include sex offenders with mental disorders who are clearly dangerous but who do not fall within the narrowly applied definition of metal illness. The first condition—prior hospitalization—is an unjustified impediment to seeking civil commitment. The civil commitment provision contained in this legislation combines commitment standards substantively similar to those approved by the Supreme Court in *Kansas v. Hendricks,* 521 U.S. 346 (1997), and *Kansas v. Crane,* 122 S.Ct 867 (2002).

DNA FINGERPRINTING

In light of the critical role played by DNA evidence in solving sex crimes, and recent examples of successes in solving such crimes through the collection of DNA information from persons arrested for various crimes, the legislation expands the use of DNA. More specifically, the proposed language amends the DNA Identification Act to eliminate the restrictions on the DNA profiles that can be included in the National DNA Index (NDIS). Specifically, it strikes limiting language in Section 14132(a)(1)(C) which excludes

[13] Contrary to claims made by opponents of mandatory-minimum sentencing schemes, such laws have typically been passed by large bi-partisan majorities. For example, in the 107th Congress, the House Judiciary Committee passed HR 5422 the "Child Abduction Prevention Act of 2002" containing mandatory minimum provisions for child abductions. Only four members of the Committee expressed concern with the mandatory minimum provisions as reflected in the Dissenting Views. [Report 107–723]. On the Floor of the House, 178 Democrats voted for the bill with its mandatory minimum provisions, including 11 Democrat Members of the Judiciary Committee [See, rollcall 446, Oct.8, 2002.] Only 23 Members voted against the bill. The mandatory minimums were included in the PROTECT Act which passed the Senate 98–0 and the House 400–25 (April 10, 2003).

unindicted arrestee and elimination DNA profiles from NDIS; strikes the expungement provisions of Section 14132(d); and strikes the "keyboard search" provisions of Section 14132(e), which serve no purpose once the unjustified restrictions on including DNA profiles in NDIS are eliminated. This section also would authorize the Attorney General to collect DNA samples from Federal arrestees and detainees. Finally, this section strikes the exclusion of chapter 109A ("sexual abuse ") offenses from the statute of limitations tolling provision for cases involving DNA identification under 18 U.S.C. § 3297.

The importance of collecting DNA from arrested persons or voluntary samples has been highlighted by recent cases in which crimes were solved using such data:

> In April 2005, a man suspected of setting fires to 46 houses and apartments in the Washington area was apprehended through DNA analysis of items found at several crime scenes and eventually identified through comparison to a voluntary sample given by the offender to law enforcement several weeks before to a different law enforcement agency. Just recently, in Albany New York, police solved a series of murder and rape charges in three separate incidents where they had DNA evidence linking the three incidents but no suspect to identify. It was not until several years later, after the suspect was convicted of a robbery offense, that his DNA data was placed in the database—which eventually revealed a match. If the data had been put in the database at the time of the suspect's arrest on the robbery charge, rather than awaiting the conviction, the three separate murders and rapes would have been solved that much earlier.

It is also important to note that privacy concerns associated with the use of DNA data are far less significant than other types of evidence; in practice, the taking of a swab of saliva is no different than a photograph, a fingerprint or other identifying information. Once entered, such data cannot be used for discrimination purposes since the only identifiable information from a DNA sample to the naked eye is the sex of the person.

HABEAS REVISIONS FOR CHILD KILLERS

Currently Federal *habeas corpus* cases involving State death penalty prosecutions require 10, 15, or even 20 years to complete. These delays burden the courts and deny justice to defendants with meritorious claims. They also are deeply unfair to victims of serious, violent crimes and their families. A parent whose child has been murdered, or someone who has been the victim of a violent assault, cannot be expected to "move on" without knowing how the case against the attacker has been resolved. Endless litigation, and the uncertainty that it brings, is unnecessarily cruel to these victims and their families.

As President Clinton noted of the 1996 habeas corpus reforms, "it should not take eight or nine years and three trips to the Supreme Court to finalize whether a person in fact was properly con-

victed or not." [14] Unfortunately, the facts, particularly with respect to murders of children, show that habeas review of child killers continues to move at a snail's pace, where petitions sometimes sit at the Federal court for anywhere between 7 and 15 years before being resolved.

Time limits are necessary given the Federal courts inability or unwillingness to decide habeas cases in a timely manner. In *Morales v. Woodford,* 336 F.3d 1136 (9th Cir. 2003), for example, the Ninth Circuit took 3 years to decide the case after briefing was completed, and after issuing its decision, the court took another 16 months to reject a petition for a rehearing. Similarly, in *Williams v. Woodford,* 306 F.3d 665 (9th Cir. 2002), the court waited 25 months to decide the case—and then waited another 27 months to reject a petition for rehearing for a total delay of almost four and a half years after appellate briefing had been completed. This is too long for either defendants or victims to have to wait for justice.

Ms. Carol Fornoff testified before the Committee on the circumstances of the murder of her daughter Christy Ann in 1984, and the extraordinary delays caused by Federal habeas review of the killer's conviction. In 1985, the man responsible for the sexual assault and murder of Christy Ann was convicted, based on overwhelming evidence of his guilt. The conviction was upheld in a lengthy opinion by the Arizona Supreme Court. The killer raised many more challenges, but his last State appeals were finally rejected in 1992.

In 1992 the killer filed another challenge to his conviction in the United States District Court. That challenge remained in that court for another seven years. Finally, in November 1999, the district court dismissed the case. A few years later, the Federal Court of Appeals for the Ninth Circuit sent the case back to the district court for more hearings. Today, the case remains before that same Federal district court. It has now been over 21 years since Christy was murdered. By this fall, the case will have been in the Federal courts for longer than Christy was ever alive.

Ms. Fornoff eloquently described the pain caused by the continuing delays in Federal habeas review of her daughter's murder case in testimony received by the Subcommittee on Crime, Terrorism, and Homeland Security.

> I cannot describe to you how painful our experience with the court system has been. I cannot believe that just one court took over 7 years to decide our case. Some might ask why we can't just move on, and forget about the killer's appeals. But it doesn't work that way. She was our daughter, our beautiful little girl, and he took her away. We want to know if he was properly convicted. We want to know, will his conviction be thrown out? Will there be another trial? I cannot imagine testifying at a trial again. And would they even be able to convict this man again? It has been 21 years. How many witnesses are still here, is all of the evidence even still available? Could this man 1 day be released? Could I run into him on the street, a free man—the man who assaulted and killed our little daughter? The courts have turned this case into an open wound for

[14] Purdum, Tom S. "Terror in Oklahoma: The President; Clinton Warns Partisan Bickering Could Stall Effort to Combat Terrorism." *New York Times 29 Apr. 1995,* late ed.: A11

> our family—a wound that has not been allowed to heal for 21 years.
>
> I understand that people are concerned about innocent people being behind bars, but that is not what my daughter's killer is suing about. Right now, the issue that is being litigated in the Federal courts is whether the trial court made a mistake by allowing the jury to hear that he told a prison counselor that he "didn't mean to kill the little Fornoff girl." He claims that the counselor was like his doctor, and that the statement is private, even though he said it in front of other prisoners. Earlier this year, a Federal court held a hearing on whether the killer had a right to prevent the jury from hearing about this statement. But the statement is irrelevant. Whether or not he said it, the evidence of his guilt—the hairs, the fibers, the bodily fluids—is overwhelming. The issue that the killer is suing about was already resolved before by the Arizona Supreme Court—over 17 years ago. Yet here we are, 21 years after my daughter died, arguing about the same legal technicalities.
>
> I urge you, Mr. Chairman, to do what you can to fix this system. My family and I have forgiven our daughter's murderer. But we cannot forgive a justice system that would treat us this way.

Unfortunately, stories like Ms. Fornoff's are quite common. A second case recently in the news underscores the improper role of Federal habeas review of State court convictions. In June 1983, a defendant murdered three members of the Ryen family and Christopher Hughes in Chino Hills, California. The killer in that case was an escaped convict from a nearby prison. He has since admitted that he spent two days hiding in a vacant house next to the home of the Ryen family. After several unsuccessful telephone calls to friends asking them to give him a ride, the killer took a hatchet and buck knife from the vacant house and set out to find a vehicle. The California Supreme Court describes the rest of what occurred (53 Cal.3d 771, 794–95):

> On Saturday, June 4, 1983, the Ryens and Chris Hughes attended a barbecue in Los Serranos, a few miles from the Ryen home in Chino. Chris had received permission to spend the night with the Ryens. Between 9 and 9:30 p.m., they left to drive to the Ryen home. Except for Josh [the Ryen's 8-year-old son], they were never seen alive again.
>
> The next morning, June 5, Chris's mother, Mary Hughes, became concerned when he did not come home. A number of telephone calls to the Ryen residence received only busy signals. [Mary's husband] William went to the Ryen home to investigate.
>
> William observed the Ryen truck at the home, but not the family station wagon. Although the Ryens normally did not lock the house when they were home, it was locked on this occasion. William walked around the house trying to look inside. When he reached the sliding glass doors leading to the master bedroom, he could see inside. William saw the bodies of his son and Doug and Peggy Ryen on the bedroom floor. Josh was lying between Peggy and Chris. Only Josh appeared alive.

William frantically tried to open the sliding door; in his emotional state, he pushed against the fixed portion of the doors, not the sliding door. He rushed to the kitchen door, kicked it in, and entered. As he approached the master bedroom, he found Jessica on the floor, also apparently dead. In the bedroom, William touched the body of his son. It was cold and stiff. William asked Josh who had done it. Josh appeared stunned; he tried to talk but could only make unintelligible sounds.

William tried to use a telephone in the house but it did not work. He drove to a neighbor's house seeking help. The police arrived shortly. Doug, Peggy, Chris, and Jessica were dead, the first three in the master bedroom, Jessica in the hallway leading to that bedroom. Josh was alive but in shock, suffering from an obvious neck wound. He was flown by helicopter to Loma Linda University Hospital.

The victims died from numerous chopping and stabbing injuries. Doug Ryen had at least 37 separate wounds, Peggy 32, Jessica 46, and Chris 25. The chopping wounds were inflicted by a sharp, heavy object such as a hatchet or axe, the stabbing wounds by a weapon such as a knife.

The escaped prisoner who committed this crime was caught two months later. He admitted that he stayed in the house next door, but denied any involvement in the murders. According to the California Supreme Court, however, the evidence of defendant's guilt was "overwhelming." Not only had the defendant stayed at the vacant house right next door at the time of the murders; the hatchet used in the murders was taken from the vacant house; shoe prints in the Ryen house matched those in the vacant house and were from a type of shoe issued to prisoners; bloody items, including a prison-issue button, were found in the vacant house; prison-issue tobacco was found in the Ryen station wagon, which was recovered in Long Beach; and the defendant's blood type and hair matched that found in the Ryen house. The defendant was convicted of the murders and sentenced to death in 1985, and the California Supreme Court upheld the defendant's conviction and sentence in 1991.

The defendant's Federal habeas proceedings began shortly thereafter, and they continue to this day—22 years after the murders. In 2000, the defendant asked the courts for DNA testing of a blood spot in the Ryen house, a t-shirt near the crime scene, and the tobacco found in the car. Despite the overwhelming evidence of his guilt, the courts allowed more testing. All three tests found that the blood and saliva matched the defendant, to a degree of certainty of one in 320 billion. Blood on the t-shirt matched both the defendant and one of the victims.

One might have thought that this would end the case, but in February 2004, the en banc Ninth Circuit *sua sponte* authorized defendant to file a second habeas petition to pursue theories that police had planted this DNA evidence. Since the evidence had been in court custody since 1983, the Ninth Circuit's theory not only required police to plan and execute a vast conspiracy to plant the evidence—it also required them to foresee the future invention of the DNA technology that would make that evidence useful in future habeas proceedings.

The record before the Committee is replete with other examples of unreasonable delays in resolving Federal habeas petitions. In California, over 100 of the inmates on California's death row have been there for over two decades. For example, the case of Robin Samsoe, a 12-year-old, was kidnapped on the beach in Huntington Beach, California, and murdered in June 1979. A friend who had been with her on the beach described a strange man who had taken pictures of her. Police produced a composite sketch of this man, who was soon recognized by his parole officer. He had a history of kidnapping and sexually assaulting young girls—he had raped and nearly killed an 8-year-old girl, for which he served just two years in prison. He was awaiting trial for raping another girl at the time that Robin disappeared. He had taken that girl to the mountains outside Los Angeles—which is also where Robin's body was found. He attacked a third girl near the same spot on the beach where Robin was last seen. When police tracked this man down, the television news began broadcasting his composite sketch. A friend of Robin's family recognized him as the man who was with Robin on the beach. And in a locker that he rented, police officers found an earring that Robin had borrowed from her mother. Robin's mother recognized the earring as hers because of changes that she had made to it with a nail clipper.

Despite all this evidence, in June 2003—exactly 24 years after Robin was murdered—the Federal Court of Appeals for the Ninth Circuit granted this man a new trial. This protracted delay imposed a terrible burden on Robin's mother. According to one newspaper story, she described her reaction to the decision as "like somebody had slapped me hard in the face." At the same time that he was granted a new trial in Robin's killing, DNA evidence linked him to a rape and murder that he committed in 1977, and police have said that they will prosecute him for that case—after his new trial in Robin's case. Nevertheless, the impact on the family of the way that this case has been handled in the courts has been horrific. One of the news stories notes that Robin's family has even lost their home because they have spent so much time away from work at the trials and hearings in the case. Today, Robin's family is preparing for another trial of the man who killed their 12-year-old daughter. If Robin had lived, she would be 37 years old today.

Or consider the case of Benjamin Brenneman, who was murdered in 1981 and was 12 years old. Benjamin was a newspaper carrier, and also was kidnapped, sexually assaulted, and killed while delivering newspapers at an apartment complex. Benjamin's killer tied him up in a way that strangled him when he moved. Police began by questioning a man in the building who was a prior sex offender. They found Benjamin's special orthopedic sandals in the suspect's apartment. When they interviewed him, he admitted that he kidnapped Benjamin, but claimed that "he was alive when I left him." Police found Benjamin's body in a nearby rural area the next day.[15]

Benjamin's killer was convicted and sentenced to death. After the State courts finished their review of the case, the killer filed a habeas corpus petition in the Federal District Court in 1990. Today, 15 years later, the case is still before that same court. To put the

[15] More information about the case is available in the court opinion for the State appeal, *People v. Thompson,* 785 P.2d 857.

matter in perspective, so far, and with no end in sight, the litigation before that one district court has outlived Benjamin by 3 years.

In another case Michelle and Melissa Davis, ages 7 and 2, were killed in 1982. An ex-boyfriend of the sister of Kathy Davis took revenge on the sister for severing their relationship by killing Kathy's husband and her two young daughters, Michelle and Melissa. The killer confessed to the crime. The State courts finished their review of the case in 1991. (*People v. Deere,* 808 P.2d 1181.)

The next year, the defendant went to the Federal District Court. He remained there for the rest of the decade, until 2001. When he lost there, he appealed, and in 2003, the Federal Court of Appeals for the Ninth Circuit sent the case back to the district court for another hearing. Today, 14 years after State appeals were completed, and 23 years after Michelle and Melissa were taken from their mother, the case remains before the same district court.

Vanessa Iberri and her friend Kelly, also 12 years old, were both shot in the head while walking through a campground in 1981. Kelly survived, but Vanessa did not. The killer did not dispute that he shot the two girls. (The case is described in *People v. Edwards,* 819 P.2d 436.) The State courts finished their review of the case in 1991—a full decade after the crimes were comitted. The killer then went to Federal court in 1993. The Federal District Court finally held an evidentiary hearing in December 2004, and dismissed the case in March of this year. Twelve years after the case entered the Federal courts, and 24 years after the murders occurred, the appeal to the Federal Court of Appeals is just beginning.

Michelle Melander was 5 months old, and her brother Michael, then 5 years old, were kidnapped in Parker, Arizona, in July 1981. The killer dropped off Michael along the road. Michelle's body was discovered six days later at a garbage dump several miles down the same road. She had been severely beaten and sexually mutilated. The State court opinion describes the many injuries that this helpless baby suffered. The man who committed this horrific crime later attempted to kidnap and rape a 10-year-old girl.

State courts finished their review of his case in 1991. (*People v. Pensinger,* 805 P.2d 899.) The case then went to Federal District Court in 1992. The defendant raised claims that he had never argued in State court, so the Federal court sent the case back to State court. Five years later, the case returned to Federal court. Today, the case remains before the same Federal District Court where the Federal appeals began in 1992. Baby Michelle would be 24 years old now if she had lived, and there is no end in sight for her killer's appeals.

The *habeas corpus* reforms enacted with the Antiterrorism and Effective Death Penalty Act of 1996 were supposed to prevent delays in Federal collateral review. As the Justice Department noted in testimony before the House Crime Subcommittee in July 2003, there are "significant gaps [in the *habeas corpus* statutes] * * * which can result in highly protracted litigation, and some of the reforms that Congress did adopt in 1996 have been substantially undermined in judicial application." [16]

[16] *Advancing Justice Through Forensic DNA Technology: Hearing Before the Subcomm. on Crime, Terrorism and Homeland Security of the House.* Comm. on the Judiciary, 108th Cong.

Continued

SECTION 303

Section 303 of H.R. 3132 would effectively restrict the jurisdiction of Federal courts to entertain a first petition for Federal *habeas corpus* review, in cases involving the murder of a child, to the same grounds that now govern their ability to consider second or successive petitions for Federal *habeas corpus* review filed by any State prisoner. Thus, in State cases involving the murder of a child, Federal habeas courts would no longer be able to review any exhausted Federal constitutional claim; rather, Federal courts would only have jurisdiction to consider habeas claims based on: (1) new rules of constitutional law that have been made retroactively applicable by the Supreme Court; or (2) newly discovered evidence that clearly and convincingly establishes that, but for the existence of a constitutional error, no reasonable fact finder would have found the petitioner guilty of the underlying offense.

Section 303 also imposes time limits and substantive limits on Federal courts' review of *habeas corpus* petitions challenging a State-court conviction for killing a child. In the district court, parties will be required to move for an evidentiary hearing within 90 days of the completion of briefing, the court must act on the motion within 30 days, and the hearing must begin 60 days later and last no longer than 3 months. All district court review must be completed within 15 months of the completion of briefing. In the court of appeals, the court must complete review within 120 days of the completion of briefing. In most cases, these limits will ensure that Federal review of a defendant's appeal is completed within less than two years. This section also makes these deadlines practical and enforceable by limiting Federal review to those claims presenting meaningful evidence that the defendant did not commit the crime—defendants would be barred from re-litigating claims unrelated to guilt or innocence. Defendants will continue to be permitted to litigate all their claims in State court on direct review and State-habeas review, and in petitions for certiorari in the U.S. Supreme Court.

Some critics contend that Congress lacks the authority to narrow the set of issues that Federal courts may review on collateral review of State convictions—and that any such narrowing would "suspend" the writ of *habeas corpus.*

First, it bears emphasis that the legislation in no way limits the State courts' review of State criminal convictions, nor does it affect the U.S. Supreme Court's review of either a defendant's direct appeals or State-habeas petitions. The provision only restricts the Federal habeas review that begins in the lower Federal courts *after* all State appeals and U.S. Supreme Court certiorari reviews are completed. Congress has clear authority to limit such review.

When the 1996 limits on Federal habeas were enacted, some criminal defendants argued that those restrictions constituted an unconstitutional "suspension" of Federal habeas. The Federal courts rejected this argument at the time, ruling that Congress has the power both to expand and to limit Federal habeas review of State convictions. In *Felker v. Turpin,* 116 S.Ct. 2333 (1996), the U.S. Supreme Court noted the utter lack of basis for the view that

22–23 (2003) (prepared statement of Sarah V. Hart, Director, National Institute of Justice, Department of Justice).

Congress is *required* to grant lower Federal courts unrestricted power over State convictions:

> The first Congress made the writ of *habeas corpus* available only to prisoners confined under the authority of the United States, not under State authority. * * * * It was not until 1867 that Congress made the writ generally available in "all cases where any person may be restrained of his or her liberty in violation of [federal law]." And it was not until well into this century that this Court interpreted that provision to allow a final judgment of conviction to be collaterally attacked on habeas.

The Supreme Court concluded: "We have long recognized that the power to award the writ by any of the courts of the United States, must be given by written law, and we have likewise recognized that judgments about the proper scope of the writ are normally for Congress to make."

The U.S. Court of Appeals for the Seventh Circuit elaborated on this point in *Lindh v. Murphy,* 96 F.3d 856 (*rev'd on other grounds,* 521 U.S. 320), explaining the nature of the constitutional habeas right:

> The writ known in 1789 was the pre-trial contest to the executive's power to hold a person captive, the device that prevents arbitrary detention without trial. The power thus enshrined did not include the ability to reexamine judgments rendered by courts possessing jurisdiction. Under the original practice, "a judgment of conviction rendered by a court of general criminal jurisdiction was conclusive proof that confinement was legal * * * [and] prevented issuance of a writ." The founding-era historical evidence suggests a prevailing view that State courts were adequate fora for protecting Federal rights. Based on this assumption, there was (and is) no constitutionally enshrined right to mount a collateral attack on a State court's judgment in the inferior Article III courts and, *a fortiori,* no mandate that State court judgments embracing questionable (or even erroneous) interpretations of the Federal Constitution be reviewed by the inferior Article III courts. (Citations omitted.)

The Seventh Circuit concluded: "Any suggestion that the [Constitution] forbids every contraction of the [federal habeas] power bestowed by Congress in 1885, and expanded by the 1948 and 1966 amendments, is untenable."

The scope of Federal review of State convictions clearly is a matter for legislative determination—it is not dictated by constitutional mandates. It is for Congress to decide how much review, and under what conditions and limits, is appropriate. Under section 303 of the legislation, habeas claims may continue to go forward if they meet the "actual innocence" test in 28 U.S.C. § 2254(e)(2). Section 2254(e)(2) does not simply require that the evidence could show actual innocence. Rather, it requires that the evidence of innocence be *clear and convincing, and it requires that petitioner show that he could not previously have discovered the evidence through due diligence.*

The Justice Department proposed using the actual innocence test contained in title 18 U.S.C. § 2254(e)(2) (or the related provision in

§ 2244(b)(2)) as the standard for allowing unexhausted or defaulted claims to go forward in its July 17, 2003 testimony before the House Crime Subcommittee. State prosecutors also have stressed the importance of using this standard—rather than a simple claim of actual innocence—as a gateway for allowing procedurally improper claims to proceed. The purpose of habeas review is not simply to litigate the trial to reweigh the same evidence that the jury already considered. However, if the standard for an exception to procedural rules were just a claim of innocence, any defendant who went to trial could simply present the same evidence that he presented to (and that was rejected by) the jury. Moreover, in every criminal trial, the defense counsel will choose not to use some of the exculpatory evidence that is available to him. Such evidence may be cumulative—it merely reproves a fact whose existence already is strongly proved by other evidence. Alternatively, the evidence may be insubstantial—it does not show much. A system of procedure simply could not function if all of such evidence could be used as a basis for further litigation and further hearings. There must be a gatekeeper in place for narrowing the range of evidence to that which is truly worth a second look. Evidence that previously was not available to the defense meets this standard.

Existing sections 2254(e)(2) and 2244(b)(2) of title 18, are proven and flexible. These two code sections were enacted as part of the 1996 reforms—they have been in use for nearly a decade. "Discoverable through due diligence" is a flexible standard that gives courts discretion to decide whether the defendant really could have presented his evidence earlier (and thus it likely is merely cumulative or is not probative), or whether it is evidence that the defendant surely would have presented if he had access to it (and thus it is important).

Opponents of this standard cannot cite a single case where 18 U.S.C. §§ 2254(e)(2) or 2244(b)(2) have prevented a court from considering a compelling claim of actual innocence. If these standards are so overly restrictive, surely opponents would be able to cite at least one case where these sections barred a claim that we could all agree should have been allowed to go forward.

The reason for requiring that habeas evidence be able to show "clear and convincing" proof of innocence (rather than just preponderance) is simple: it is the jury which heard all of the witnesses testify and that heard all of the evidence when it was still fresh. If the jury comes to a conclusion about the facts after reviewing all of the evidence at trial, that conclusion is entitled to deference. The jury's findings should be set aside only if a contrary finding is clear enough that it outweighs the superior access to the evidence enjoyed by the jury.

DEATH PENALTY PROVISIONS IN THE CHILDREN'S SAFETY ACT

Sections 302 and 402 of H.R. 3132 expand application of the death penalty to any killing of a minor or sexual abuse of a minor resulting in the death of the minor. The need for a swift and effective death penalty is significant in the case of violent offenders who murder children.

Several scientifically valid statistical studies—those that examine a period of years, and control for national trends—consistently show that capital punishment is a substantial deterrent and saves

lives—recent estimates show that each execution deters 18 murders. H. Naci Mocan, R. Kaj Gittings, *Removals from Death Row, Executions, and Homicide,* University of Colorado at Denver, Dep't of Economics, at 21 (available on the Internet at: *http://econ.cudenver.edu/gittings/KajPaperJune.pdf).* Hashem Dezhbaksh, Paul H. Rubin, Joanna Mehlhop Shepherd, *Does Capital Punishment Have A Deterrent Effect? New Evidence from Post-moratorium Panel Data,* Emory University (January 2002), at 27 (study available on the Internet at: *http://userwww.service.emory.edu/~*cozden/Dezhbakhsh—01—01—paper.pdf); Layson, *Homicide and Deterrence: A Reexamination of the United States Time-Series Evidence,* 52 S. Econ. J. 68, 75, 80 (1984); Layson, *United States Time-Series Homicide Regressions with Adaptive Expectations,* 62 Bull. N.Y. Acad. Med. 589 (1986).

With respect to the Federal death penalty, opponents continue to argue, contrary to the evidence, that imposition of the death penalty has been racially-biased and had a disproportionate impact on minority populations. To the contrary, the evidence demonstrates that the Federal death penalty, with its rigorous review procedures, is imposed at a higher rate against white defendants than minority defendants.

The Justice Department has concluded, after two comprehensive studies—one conducted in 2000 (Attorney General Janet Reno) and another in 2001, that at no stage of the [death penalty] review process were decisions to recommend or approve the seeking of a capital sentence made at higher rates for black or hispanic defendants than for white defendants.[17] For example, as noted in the September 12, 2000 Justice Department study, in the cases considered by the Attorney General, the Attorney General approved seeking the death penalty for 38 percent of white defendants, 25 percent of black defendants, and 20 percent of hispanic defendants.

At every stage of the Federal penalty review process (*i.e.,* U.S. Attorney recommendation, Capital Case Review Committee, Attorney General decision), the recommendation and decision to seek the death penalty was less likely at each stage of the process for black and hispanic defendants than for white defendants. In other words, United States Attorneys recommended the death penalty in smaller proportions of the submitted cases involving black or hispanic defendants than in those involving white defendants; the Attorney General's capital case review committee likewise recommended the death penalty in smaller proportions of the submitted cases involving black or hispanic defendants than in those involving white defendants; and the Attorney General made a decision to seek the death penalty in smaller proportions of the submitted cases involving black or hispanic defendants than in those involving white defendants. (2000 Report at p. 7)

More specifically, in the cases considered by the Attorney General, the Attorney General decided to seek the death penalty for 38 percent of the white defendants, 25 percent of the black defendants, and 20 percent of the hispanic defendants. (Sept. 12 report

[17] U.S. Department of Justice, 12 Sept. 2000—*Survey of the Federal Death Penalty System (1988–2000), available at http://www.usdoj.gov/dag/pubdoc/dp—survey—toc.pdf.* U.S. Department of Justice, 6 June 2001–*The Federal Death Penalty System: Supplementary Data, Analysis and Revised Protocols for Capitol Case Review, available at http://www.usdoj.gov/dag/pubdoc/dp—survey—toc.pdf.*

at 7.) The finding that the death penalty was sought at lower rates for black and hispanic defendants than for white defendants held true both in "intraracial" cases, involving defendants and victims of the same race and ethnicity, and in "interracial" cases, involving defendants and victims of different races or ethnicities. (Sept. 12 report at 25–26.)

The 2001 Report reached similar findings—there was no evidence of favoritism towards White defendants in comparison with minority defendants. Rather, potential capital cases involving black or hispanic defendants were less likely to result in capital charges and submission of the case to the review procedure. Specifically, capital charges were brought and the case was submitted for review for 81 percent of the white defendants; the corresponding figures for black defendants and hispanic defendants were 79 percent and 56 percent respectively.

Likewise, considering the process as a whole, potential capital cases involving black or hispanic defendants were less likely to result in decisions to seek the death penalty. Specifically, the Attorney General ultimately decided to seek the death penalty for 27 percent of the white defendants (44 out of 166), 17 percent of the black defendants (71 out of 408), and 9 percent of the hispanic defendants (32 out of 350).

Despite these facts, critics continue to maintain that these rates are disproportionate to the percentages of minority populations. Such a claim ignores one simple truth—crime and victimization are not evenly distributed across the general population, and there is no reason to expect that the racial and ethnic proportions in potential capital cases will be the same as the racial and ethnic proportions in the general population.

HEARINGS

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held a series of three hearings on child crime issues related to H.R. 3132, on June 7 and 9, 2005. The first hearing focused on H.R. 2138, the "Prevention and Deterrence of Violence Against Children's Act," and H.R. 2188, the "Protection Against Sexual Exploitation of Children Act." Testimony was received from four witnesses, representing the United States Department of Justice, the Attorney General from the State of Florida, Ms. Carol Fornoff, the mother of Christy Ann Fornoff, who was murdered in 1984, and a representative from the Federal Public Defender in Montana.

The second hearing, on June 9, 2005, focused on legislative proposals relating to child safety. Testimony was received from: the Honorable Mark Foley, from the 16th Congressional District of the State of Florida; the Honorable Ted Poe, from the 2nd Congressional District of the State of Texas; the Honorable Ginny Brown-Waite, from the 5th Congressional District of the State of Florida; and the Honorable Earl Pomeroy, who serves At Large in the State of North Dakota.

The third hearing, on June 9, 2005, focused on protecting children from sexual predators and violent criminals. Testimony was received from a representative from the United States Department of Justice, Ernie Allen, President of the National Center for Missing and Exploited Children; Amie Zyla, a child victim of sexual as-

sault by a convicted sex offender; and Dr. Fred Berlin, Associate Professor in the Department of Psychiatry at the Johns Hopkins University School of Medicine.

COMMITTEE CONSIDERATION

On July 27, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 3132 with an amendment by a recorded vote of 22 yeas to 4 nays, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the following rollcall votes occurred during the Committee's consideration of H.R. 3132.

1. The Committee voted 16 yeas to 17 nays not to adopt an amendment offered by Rep. Scott which would have deleted the 5-year mandatory minimum penalty for failing to register in Section 105 of H.R. 3132.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Lungren	X		
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis	X		
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake	X		
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert	X		
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff		X	
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Total	16	17	

2. The Committee voted 12 yeas to 18 nays not to adopt an amendment offered by Rep. Scott which would have struck section 303, relating to habeas reform, in H.R. 3132.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	12	18	

3. The Committee voted 9 yeas to 17 nays not to adopt an amendment offered by Rep. Nadler to amend sections 922(d) and (g) of title 18 United States Code to include as a prohibited person anyone convicted of a sex offense against a minor.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde			

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney			
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	9	17	

4. The Committee voted 22 yeas to 4 nays to report favorably H.R. 3132, as amended.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus			
Mr. Inglis	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa			

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Flake			
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Conyers		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez		X	
Mr. Van Hollen	X		
Ms. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman	X		
Total	22	4	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII 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.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 3132, is intended to improve the national sex offender registration program and protect children from sexual abuse and exploitation and other violent crimes.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII 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 AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title; Table of Contents

This section designates the short title as the "Children's Safety Act of 2005," and lists a table of contents for the five titles in the Act.

TITLE I—SEX OFFENDER REGISTRATION AND NOTIFICATION ACT

Sec. 101. Short Title

This section names the short title for title I as the "Sex Offender Registration Act."

Sec. 102. Declaration of Purpose

This section states the purpose of title I is for Congress to create a comprehensive national system for the registration of sex offenders in order to protect children, and is in response to brutal sexual attacks against children and adults by convicted sexual offenders: (1) Jacob Wetterling; (2) Megan Nicole Kanka; (3) Pam Lyncher; (4) Jetseta Gaga; (5) Dru Sjodin; (6) Jessica Lunsford; (7) Sarah Lunde; (8) Amie Zyla; (9) Christy Fornoff; and (10) Alexandra Nicole Zapp.

SUBTITLE A—JACOB WETTERLING SEX OFFENDER REGISTRATION AND NOTIFICATION PROGRAM

Sec. 111. Relevant Definitions, Including Amie Zyla Expansion of Sex Offender Definition and Expanded Inclusion of Child Predators

This section sets forth the definitions for title I of the Act and expands several existing terms to include a broader category of sexual offenders, additional specified crimes against minors, and needed clarifications to the existing law. In particular, the category of crimes covered by the Act is expanded to include juvenile sex offenses, possession of child pornography, and a new definition of sex offense.

Sec. 112. Registry Requirements for Jurisdictions

This section requires each jurisdiction to maintain a jurisdiction-wide sex offender registry conforming to the requirements of this title and authorizes the Attorney General to prescribe guidelines to carry out the purposes of the title.

Sec. 113. Registry Requirements for Sex Offenders

This section requires a sex offender to register, and maintain current information in each jurisdiction where the sex offender resides, is employed or attends school. It also requires that such registration be filed prior to release from jail or no later than 5 days after a sentence not requiring imprisonment is imposed, not later than 5 days after any change in residence, employment or student status. The Attorney General is authorized to issue guidelines on application of the Act to sex offenders who were not previously covered by the sex offender registration requirements. Each jurisdic-

tion is required to provide a felony criminal offense for failure to comply with the registration requirements.

Sec. 114. Information Required in Registration

This section specifies, at a minimum, what information the registry must include. The sex offender must provide: (1) the name (and any alias) of the sex offenders; (2) the sex offender's Social Security number; (3) the sex offender's address; (4) the sex offender's employment address; (5) the sex offender's school address; (6) the license plate of any vehicle owned or used by the sex offender; (7) a photograph; (8) a set of fingerprints and palm prints; (9) DNA information; and (10) any other information required by the Attorney General. The jurisdiction must provide: (1) a statement of the facts underlying the conviction for which the sex offender is registering; (2) the sex offender's criminal history; and (3) any other information required by the Attorney General.

Sec. 115. Duration of Registration Requirement

This section specifies the duration of the registration requirement: (a) life for sex offenders who commit a felony sex offense, commit a specified crime against a minor, or commit a second misdemeanor sex offense against a minor; or (b) 20 years for a sex offender who commits a misdemeanor sex offense involving a minor.

Sec. 116. In Person Verification

This section requires a sex offender to appear in person for verification of registration information no less frequently than once every 6 months.

Sec. 117. Duty to Notify Sex Offenders of Registration Requirements and to Register

This section requires a jurisdiction official to inform the sex offender of the registration requirements, make sure the sex offender understands the requirements by executing a form that confirms the sex offender's understanding, and register the sex offender.

Sec. 118. Jessica Lunsford Address Verification Program

This section establishes the Jessica Lunsford Verification Program that requires State officials to verify the residence of each registered sex offender every month if the underlying conviction is a felony sex offense or specified criminal offense against a minor, or every quarter if the underlying conviction is a misdemeanor sex offense. In carrying out such verification, the jurisdiction official can use a nonforwardable mailing which can be sent on a random date and returned, including a notarized signature, by a set date. The failure to return such a mailing would constitute a failure to register.

Sec. 119. National Sex Offender Registry

This section requires the Attorney General to maintain a National Sex Offender Registry.

Sec. 120. Dru Sjodin National Sex Offender Public Website

This section creates the Dru Sjodin National Sex Offender Public Website which allows the public to obtain relevant information

about sex offenders through a single query to the website. In addition, the Attorney General is required to forward electronically to any relevant jurisdiction any changes in the registry information for a sex offender.

Sec. 121. Public Access to Sex Offender Information through the Internet

This section requires each jurisdiction to make available to the public through an Internet site information pertaining to a sex offender except for the offender's Social Security Number, the victim's identity or any other information exempted by the Attorney General.

Sec. 122. Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program

This section requires an appropriate official to notify, within 5 days of a change in a sex offender's information, the following: (1) the Attorney General, who shall include the update information in the National Sex Offender Registry; (2) an appropriate law enforcement agency in the area where the sex offender resides, is employed or is a student; (3) each jurisdiction to or from which a change in residence, work or student status occurs; (4) any agency responsible for conducting employment-related background checks; (5) social service entities responsible for protecting minors in the child welfare system; and (6) volunteer organizations where contact with minors or other vulnerable individuals might occur.

Sec. 123. Actions to be Taken When Sex Offender Fails to Comply

This section requires an appropriate official from the State or other jurisdiction to notify the Attorney General and appropriate State and local law enforcement agencies to inform them of any failure by a sex offender to comply with the registry requirements. The appropriate official, the Attorney General, and each such State and local law enforcement agency is required to take any appropriate action to ensure compliance.

Sec. 124. Immunity for Good Faith Conduct

This section provides that law enforcement agencies, employees of law enforcement agencies, contractors acting at the direction of law enforcement agencies, and officials from State and other jurisdictions shall not be held criminally or civilly liable for carrying out a duty in good faith.

Sec. 125. Development and Availability of Registry Management Software

This section requires the Attorney General to develop software and make it available to States and jurisdictions to establish, maintain, publish and share sex offender registries.

Sec. 126. Federal Duty when State Programs Not Minimally Sufficient

This section requires that, if the Attorney General determines that a jurisdiction does not have a minimally sufficient sex offender registry program, the Attorney General shall seek, to the extent practicable, to carry out the obligations of the registry program.

Sec. 127. Compliance by State and Other Jurisdictions

This section requires jurisdictions to comply with the requirements of this title within two years of enactment. The Attorney General may authorize a one-year extension to a jurisdiction to comply.

Sec. 128. Failure to Comply

This section imposes a 10-percent reduction in Byrne grant and Local Government Law Enforcement Block grants in funding to any jurisdiction that fails to comply with the requirements of this Act.

Sec. 129. Sex Offender Management Assistance (SOMA) Program

This section authorizes the Sex Offender Management Assistance (SOMA) Program to fund grants to jurisdictions to implement the sex offender registry requirements. Bonus payments to jurisdictions are authorized at 10 percent of prior fiscal year funding for those entities complying with the requirements within 1 year of enactment; and 5 percent bonus payments for those entities complying with the requirements within 2 years of enactment. Finally, this section authorizes funding of such sums necessary to carry out this title for fiscal years 2006 through 2008.

Sec. 130. Demonstration Projects for Use of Electronic Monitoring Devices

This section authorizes the Attorney General to create up to 10 projects to demonstrate the extent to which electronic monitoring devices can be used effectively in a sex offender registry program.

Sec. 131. Bonus Payments to States that Implement Electronic Monitoring

This section authorizes the Attorney General to award grants to States that implement electronic monitoring programs for life for certain dangerous sex offenders and for the period of court supervision for any other case.

Sec. 132. National Center for Missing and Exploited Children Access to Interstate Identification Index

This section provides NCMEC with access to Interstate Identification Index data to carry out its duties and responsibilities, and is limited to only those personnel who have met all requirements for training, certification and background screening.

Sec. 133. Limited Immunity for National Center for Missing and Exploited Children with Respect to Cybertipline

This section provides NCMEC with limited immunity related to its CyberTipline, except for intentional, reckless or other deliberate misconduct.

SUBTITLE B—CRIMINAL LAW ENFORCEMENT OF REGISTRATION REQUIREMENTS

Sec. 151. Amendments to Title 18, United States Code, Relating to Sex Offender Registration

This section creates a new Federal crime for a sex offender who receives notice of the requirements to register in a sex offender registry and: (1) is a Federal sex offender or (2) a State or local sex offender who travels in interstate or foreign commerce, or enters or leaves Indian country, and; (3) knowingly fails to register. Such an offense is punishable by a mandatory minimum sentence of 5 years imprisonment and a maximum of 20 years imprisonment. In addition, this modifies section 1001, of title 18 to add a mandatory minimum penalty of 5 years imprisonment and a maximum of 20 years imprisonment for a false statement made in the investigation of various sex offenses. This section also requires a defendant to comply with registration requirements as a mandatory condition of probation or supervised release, and if such a violation of that condition occurs, the defendant's probation or supervised release shall be revoked and the defendant detained pending resolution of such revocation proceeding. The court shall impose a 5 year mandatory minimum sentence of imprisonment for a failure to register and a 10 year mandatory minimum sentence for an offense involving a violation of Chapters 109A, 109B, 110 or 117. Finally, this section requires the Bureau of Prisons to register sex offenders as required under this title for the applicable jurisdiction.

Sec. 152. Investigation by United States Marshals of Sex Offender Violations of Registration Requirements

This section reiterates the United States Marshals authority to assist in the apprehension of sex offenders who have failed to comply with applicable registration requirements. In addition, this section authorizes funding of such sums as necessary to undertake these activities for fiscal years 2006 to 2008.

Sec. 153. Sex Offender Apprehension Grants

This section authorizes funding of such sums as necessary for fiscal years 2006 to 2008 for the Attorney General to provide grants to States and other jurisdictions to apprehend sex offenders who fail to comply with registration requirements.

Sec. 154. Use of Any Controlled Substances to Facilitate Sex Offense

This section creates an enhanced criminal penalty for the use of a controlled substance against a victim to facilitate the commission of a sex offense.

Sec. 155. Repeal of Predecessor Sex Offender Program

This section repeals the predecessor sex offender registry program.

TITLE II—DNA FINGERPRINTING

Sec. 201. Short Title

This section names the short title as the "DNA Fingerprinting Act of 2005."

Sec. 202. Expanding Use of DNA to Identify and Prosecute Sex Offenders

This section amends the DNA Identification Act to eliminate the restrictions on the DNA profiles that can be included in the national DNA index (NDIS). Specifically, it strikes limiting language in Section 14132(a)(1)(C) that excludes unindicted arrestees and eliminates DNA profiles from NDIS; strikes the expungement provisions of Section 14132(d); and strikes the "keyboard search" provisions of Section 14132(e), which serve no purpose once the unjustified restrictions on including DNA profiles in NDIS are eliminated. This section also would authorize the Attorney General to collect DNA samples from Federal arrestees and detainees. Finally, this section strikes the exclusion of chapter 109A ("sexual abuse ") offenses from the statute of limitations tolling provision for cases involving DNA identification under 18 U.S.C. 3297.

Sec. 203. Stopping Violent Predators Against Children

This section directs the Attorney General to give appropriate consideration to the need for collection and testing of DNA to stop violent predators against children.

Sec. 204. Model Code on Investigating Missing Persons and Deaths

This section requires the Attorney General, within 60 days of enactment, to publish a model code for law enforcement officers when investigating a missing person or a death, including DNA analysis to help locate missing persons and identify human remains. In addition, this section directs the GAO to conduct a study 2 years after the publication of the model code on the extent to which States have implemented it.

TITLE III—PREVENTION AND DETERRENCE OF CRIMES AGAINST CHILDREN ACT OF 2005

Sec. 301. Short Title

This section designates this title as the "Prevention and Deterrence of Crimes Against Children Act of 2005."

Sec. 302. Assured Punishment for Violent Crimes Against Children

This section modifies the existing statute, section 3559(d), of title 18, governing the sentencing of defendants for crimes committed against children, and adopts new penalties for felony crimes of violence (section 16 of title 18) crimes committed against children. Criminal penalties range from a death sentence or life imprisonment when a child is killed; a mandatory minimum of 30 years imprisonment to life where the crime of violence is a kidnapping, maiming, aggravated sexual abuse, sexual abuse or where the crime results in serious bodily injury (section 2119(2)); a mandatory minimum of 20 years where the crime of violence results in bodily injury to the child (as defined in 1365); a mandatory minimum of 15 years to life imprisonment when the defendant uses a dangerous weapon; and a mandatory minimum of 10 years imprisonment or up to life in any other case (*e.g.* attempt or conspiracy to commit any crime of violence against a child).

Sec. 303. Ensuring Fair and Expeditious Federal Collateral Review of Convictions for Killing of a Child.

This section imposes time limits and substantive limits on Federal courts' review of habeas corpus petitions challenging a State-court conviction for killing a child. In the district court, parties will be required to move for an evidentiary hearing within 90 days of the completion of briefing, the court must act on the motion within 30 days, and the hearing must begin 60 days later and last no longer than 3 months. All district-court review must be completed within 15 months of the completion of briefing. In the court of appeals, the court must complete review within 120 days of the completion of briefing. In most cases, these limits will ensure that Federal review of a defendant's appeal is completed within less than two years. This section also makes these deadlines practical and enforceable by limiting Federal review to those claims presenting meaningful evidence that the defendant did not commit the crime—defendants would be barred from re-litigating claims unrelated to guilt or innocence. (Defendants still will be permitted to litigate all their claims in State court on direct review and State-habeas review, and in petitions for certiorari in the U.S. Supreme Court).

TITLE IV—PROTECTION AGAINST SEXUAL EXPLOITATION OF CHILDREN ACT OF 2005

Sec. 401. Short Title

The short title of the section is entitled the "Protection Against Sexual Exploitation of Children Act of 2005".

Sec. 402. Increased Penalties for Sexual Offenses Against Children

This section modifies the criminal penalties for several existing sexual offenses against children by amending:

(a) *Section 2241* to impose a mandatory minimum penalty of 30 years to life for knowingly engaging in a sexual act with either a child less than 12 years old, or a child that is 12–16 years old by using force or intoxicants if the perpetrator is at least 4 years older than the child; current law provides that the perpetrator may be imprisoned for zero years up to life;

(b) *Section 2241* to require a mandatory minimum of 10 years and a maximum of 25 years for engaging in abusive sexual contact—*i.e.,* intentional touching of private parts with intent to abuse, humiliate, or sexually arouse, a child less than 12 years old, or 12–16 years old where the perpetrator used force or intoxicants and was at least 4 years older than the child; the current penalty is imprisonment for zero up to 10 years;

(c) *Section 2245* to impose a mandatory minimum of 30 years imprisonment to life, or death where a perpetrator commits a sexual-abuse offense against a child less than 12 years old that results in death (current penalty is a sentence of death or imprisonment for zero years up to life);

(d) *Section 2251* to impose a mandatory minimum penalty of 25 years up to life, life imprisonment for a second conviction; and death or life imprisonment, where the death of the child results from sexual abuse of a minor for the purpose of producing a visual depiction of such conduct, or where a legal guardian of a minor knowingly permits the minor to engage in such conduct for such

purposes, or to advertise for a minor to engage in such conduct for such purposes. (Current law makes this offense punishable by 15 to 30 years imprisonment, and if the perpetrator has one prior conviction for sexual exploitation or abuse of children, 25 to 50 years imprisonment, and if the perpetrator has two such prior convictions, 35 years imprisonment up to life, and if conduct in the course of the offense results in death, punishment by death or imprisonment for zero years up to life.);

(e) *Section 2252* to impose a mandatory minimum of 20 years imprisonment up to life, or mandatory life imprisonment where the defendant has a prior conviction for the same offense, where a defendant knowingly ships, receives, distributes, sells, or possesses with intent to sell, except that a mandatory minimum of 10 years to a maximum of 30 years imprisonment would be imposed for possession of such material or imprisonment for 20 years if the perpetrator has a prior conviction for sexual exploitation or abuse of children.. (Current law makes all of these offenses other than simple possession punishable by 5 to 25 years' imprisonment, and if the perpetrator has a prior conviction for sexual exploitation or abuse of children, imprisonment for 15 to 40 years;

(f) *Section 2252A* to impose new mandatory minimum penalties of 20 years up to life, and 10 years to life for possession to knowingly mail, ship, reproduce for distribution, sell, possess with intent to sell, or simply knowingly possess child pornography, or to knowingly provide to a minor a visual depiction of a minor engaging in sexually explicit conduct. (Current law makes all of these offenses other than simple possession punishable by 5 to 20 years imprisonment, and zero to 10 years for simple possession).

(g) *Section 2252B* to increase the mandatory minimum penalty from 4 years imprisonment to 10 years to a maximum of 30 years imprisonment for use of a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors.

(h) *Section 2260* to increase mandatory minimum penalties to 25 years to life imprisonment (30 years if perpetrator has prior conviction for sexual exploitation or abuse of child) for use of a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct for importation into the United States or receive, ship, distribute, or sell, or possess with intent to ship, distribute, or sell, a visual depiction of a minor engaging in sexually explicit conduct for the purpose of importing such visual depiction into the United States. (Current law makes this offense punishable by zero to 10 years imprisonment, and if the perpetrator has a prior conviction for sexual exploitation or abuse of children, punishable by zero to 20 years imprisonment.);

(i) *Section 2423* to increase mandatory minimum penalties to 30 years up to life to knowingly transport in interstate commerce a minor with the intent that the minor engage in child prostitution or in sexual activity for which any person can be charged with a criminal offense. (Current law makes this offense punishable by imprisonment for 5 to 30 years). In addition, this section would impose a mandatory minimum of 10 to 30 years imprisonment to travel in interstate commerce or into the United States for the purpose of engaging in a sexual act with a minor if that act would be an offense under chapter 109A if it occurred in a Federal jurisdic-

tion, or for the purpose of engaging in a commercial sex act with a minor, or to be a U.S. citizen or permanent resident and travel in foreign commerce (without regard to the purpose of the travel) and either engage in a sexual act with a minor if that act would be an offense under chapter 109A. Also, this section imposes a 30 year mandatory minimum where a perpetrator, for commercial advantage or financial gain, arrange or facilitate the travel of a person knowing that such person is traveling in interstate or foreign commerce in order to either engage in a sexual act with a minor if that act would be an offense under chapter 109A if it occurred in a Federal jurisdiction, or to engage in a commercial sex act with a minor. (Current law makes this offense punishable by zero to 30 years imprisonment.)

TITLE V—FOSTER CHILD PROTECTION AND CHILD SEXUAL PREDATOR DETERRENCE ACT

Sec. 501. Short Title

This section creates a short title "Foster Child Protection and Child Sexual Predator Deterrence Act."

Sec. 502. Requirement to Complete Background Checks Before Approval of Any Foster or Adoptive Placement and to Check National Crime Information databases and State Child Abuse Registries abd Suspension and Subsequent Elimination of Opt-Out

This section amends section 471(a)(20) of the Social Security Act to require each State to complete background checks and abuse registries and to check the national criminal information databases relating to any foster parent or adoptive parent application, before approval of such an application, and provides read-only access to agencies responsible for foster parent or adoptive parent placements.

Sec. 503. Access to Federal Crime Information Databases by Child Welfare Agencies For Certain Purposes

This section authorizes the Attorney General to provide read-only access to the national crime information databases (section 435 of title 28, United States Code) to carry out criminal history records checks. An individual who misuses such information would be subject to criminal penalties of up to 10 years incarceration.

Sec. 504. Penalties for Coercion and Enticement by Sex Offenders

This section amends section 2422(a) of title 18, United States Code, to increase penalties for coercion and enticement of a minor by a sex offender.

Sec. 505. Penalties for Conduct Relating to Child Prostitution

This section increases mandatory-minimum penalties for conduct relating to child prostitution ranging from a mandatory minimum of 10 years to a mandatory minimum of 20 years depending on the severity of the conduct.

Sec. 506. Penalties for Sexual Abuse

This section amends several statutes relating to sexual abuse to create mandatory minimum sentences of 30 years to life, and 25 years to life, respectively, for aggravated sexual abuse; 15 to 40 years for sexual abuse; and new mandatory minimums for abusive sexual contact ranging from 2 years to 5 years, and maximum terms ranging from 10 to 30 years, depending on the severity of the conduct.

Sec. 507. Sex Offender Submission to Search as Condition of Release

This section expands the list of mandatory conditions of probation and supervised release to include submission by the sex offender under supervision to searches by law enforcement and probation officers with reasonable suspicion, and to searches by probation officers in the lawful discharge of their supervision functions. This provision is important to permit effective monitoring and oversight of released offenders, and to enforce the conditions of their release.

Sec. 508. Kidnapping Jurisdiction

This section expands the Federal jurisdiction nexus for kidnapping comparable to that of many other Federal crimes to include travel by the offender in interstate or foreign commerce, or use of the mails or other means, facilities, or instrumentalities of interstate or foreign commerce in furtherance of the offense.

Sec. 509. Marital Communication and Adverse Spousal Privilege

This section restricts the scope of the common law marital privileges by making them inapplicable in a criminal child abuse case in which the abuser or his or her spouse invokes a privilege to avoid testifying.

Sec. 510. Abuse and Neglect of Indian Children

This section amends 18 U.S.C. Section 1153, the "Major Crimes Act" for Indian country cases to add felony child abuse or neglect to the predicate offenses. Such offenses would typically be subject to felony penalties under State law, and the only criminal recourse in Indian country is the possibility of a misdemeanor prosecution in tribal court.

Sec. 511. Civil Commitment

This section authorizes civil commitment of certain sex offenders who are dangerous to others because of serious mental illness, abnormality or disorder. Such procedures would apply, for example, where a pedophile who was sentenced to imprisonment for child molestation offenses, states his intention to resume such conduct upon his release from jail. Under the civil commitment provisions in existing law, the sex offender must be hospitalized while incarcerated and the director of the facility must certify that the offender is suffering from a "mental disease or defect" creating a substantial risk of harm to others. Such a standard is narrow and does not include sex offenders with mental disorders who are clearly dangerous but who do not fall within the narrowly applied definition of mental illness.

The proposed new section on civil commitment addresses the problem in relation to sex offenders in Federal custody by creating anew substantive section on this issue, and with conforming and related amendments to the general provisions for that chapter in Section 4247. The proposed provision combines commitment standards substantively similar to those approved by the Supreme Court in *Kansas v. Hendricks,* 521 U.S. 346 (1997), and *Kansas v. Crane,* 122 S.Ct 867 (2002).

Sec. 512. Mandatory Penalties for Sex Trafficking of Children

This section amends section 1591 of title 18, United States Code, to impose a mandatory-minimum penalty of 20 years when the offense involved trafficking of a child under the age of 14, and a mandatory minimum penalty of 10 years when the offense involved trafficking of a child between the ages of 14 and 17.

Sec. 513. Sexual Abuse of Wards

This section amends 2243 and 2244 to increase maximum penalties for sexual abuse of wards. It also clarifies the applicability of the criminal prohibition to Federal contract prison facilities.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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):

SECTION 227 OF THE VICTIMS OF CHILD ABUSE ACT OF 1990

SEC. 227. REPORTING OF CHILD PORNOGRAPHY BY ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

(a) * * *

* * * * * * *

(g) LIMITATION ON LIABILITY.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the National Center for Missing and Exploited Children, including any of its directors, officers, employees, or agents, is not liable in any civil or criminal action for damages directly related to the performance of its CyberTipline responsibilities and functions as defined by this section.

(2) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Paragraph (1) does not apply in an action in which a party proves that the National Center for Missing and Exploited Children, or its officer, employee, or agent as the case may be, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this section.

(3) ORDINARY BUSINESS ACTIVITIES.—Paragraph (1) does not apply to an act or omission related to an ordinary business

activity, such as an activity involving general administration or operations, the use of motor vehicles, or personnel management.

TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

CHAPTER 47—FRAUD AND FALSE STATEMENTS

* * * * * * *

§ 1001. Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) * * *

* * * * * * *

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. *If the matter relates to an offense under chapter 109A, 109B, 110, or 117, then the term of imprisonment imposed under this section shall be not less than 5 years nor more than 20 years.*

* * * * * * *

CHAPTER 53—INDIANS

* * * * * * *

§ 1153. Offenses committed within Indian country

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, *felony child abuse or neglect,* arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

* * * * * * *

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 the person was alive when transported across a State boundary [if the person was alive when the transportation began], *or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense*;

* * * * * * *

(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] *in* interstate or foreign commerce. Notwithstanding the preceding sentence, 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 24-hour period has ended.

* * * * * * *

CHAPTER 77—PEONAGE, SLAVERY, AND TRAFFICKING IN PERSONS

* * * * * * *

§ 1591. Sex trafficking of children or by force, fraud, or coercion

(a) * * *

(b) The punishment for an offense under subsection (a) is—

(1) if the offense was effected by force, fraud, or coercion or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine under this title [or] *and* imprisonment for any term of years *not less than 20* or for life[, or both]; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title [or imprisonment for not] *and imprisonment for not less than 10 years nor* more than 40 years[, or both].

* * * * * * *

CHAPTER 109A—SEXUAL ABUSE

§ 2241. Aggravated sexual abuse

(a) BY FORCE OR THREAT.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, *or being in the custody of the Attorney General or the Bureau of Prisons or confined in any institution or facility by direction of the Attorney General or the Bureau of Prisons,* knowingly causes another person to engage in a sexual act—

(1) * * *

* * * * * * *

or attempts to do so, shall be fined under this title**[**, imprisoned for any term of years or life, or both**]** *and imprisoned for any term of years not less than 30 or for life*.

(b) BY OTHER MEANS.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, *or being in the custody of the Attorney General or the Bureau of Prisons or confined in any institution or facility by direction of the Attorney General or the Bureau of Prisons,* knowingly—

(1) * * *

* * * * * * *

or attempts to do so, shall be fined under this title**[**, imprisoned for any term of years or life, or both**]** *and imprisoned for any term of years not less than 25 or for life*.

(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, *or being in the custody of the Attorney General or the Bureau of Prisons or confined in any institution or facility by direction of the Attorney General or the Bureau of Prisons,* 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 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.**]** *and imprisoned for not less than 30 years or for life.* 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.

* * * * * * *

§ 2242. Sexual abuse

Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, *or being in the custody of the Attorney General or the Bureau of Prisons or confined in any*

institution or facility by direction of the Attorney General or the Bureau of Prisons, knowingly—

(1) * * *

* * * * * * *

or attempts to do so, shall be fined under this title[, imprisoned not more than 20 years, or both] *and imprisoned not less than 15 years nor more than 40 years*.

§ 2243. Sexual abuse of a minor or ward

(a) OF A MINOR.—Whoever in the special maritime and territorial jurisdiction of the United States or in a Federal prison, *or being in the custody of the Attorney General or the Bureau of Prisons or confined in any institution or facility by direction of the Attorney General or the Bureau of Prisons,* knowingly engages in a sexual act with another person who—

(1) * * *

* * * * * * *

(b) OF A WARD.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, *or being in the custody of the Attorney General or the Bureau of Prisons or confined in any institution or facility by direction of the Attorney General or the Bureau of Prisons,* knowingly engages in a sexual act with another person who is—

(1) * * *

* * * * * * *

or attempts to do so, shall be fined under this title, imprisoned not more than [one year] *five years*, or both.

* * * * * * *

§ 2244. Abusive sexual contact

(a) SEXUAL CONDUCT IN CIRCUMSTANCES WHERE SEXUAL ACTS ARE PUNISHED BY THIS CHAPTER.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, *or being in the custody of the Attorney General or the Bureau of Prisons or confined in any institution or facility by direction of the Attorney General or the Bureau of Prisons,* knowingly engages in or causes sexual contact with or by another person, if so to do would violate—

(1) *subsection (a) or (b) of* section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than ten years, or both;

(2) section 2242 of this title had the sexual contact been a sexual act, shall be fined under this title[, imprisoned not more than three years, or both] *and imprisoned not less than 5 years nor more than 30 years*;

(3) subsection (a) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title[, imprisoned not more than two years, or both; or] *and imprisoned not less than 4 years nor more than 20 years;*

(4) subsection (b) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title[, imprisoned not more than six months, or both.] *and imprisoned not less than 2 years nor more than 10 years; or*

(5) subsection (c) of section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title and imprisoned for not less than 10 years and not more than 25 years.

(b) IN OTHER CIRCUMSTANCES.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, *or being in the custody of the Attorney General or the Bureau of Prisons or confined in any institution or facility by direction of the Attorney General or the Bureau of Prisons,* knowingly engages in sexual contact with another person without that other person's permission shall be fined under this title, imprisoned not more than **[**six months**]** *two years*, or both.

(c) OFFENSES INVOLVING YOUNG CHILDREN.—If the sexual contact that violates this section *(other than subsection (a)(5))* 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 provided in this section.

§ 2245. Sexual abuse resulting in death

[A person**]** *(a) IN GENERAL.—A person* who, in the course of an offense under this chapter*, chapter 110, chapter 117, or section 1591*, 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.

(b) OFFENSES INVOLVING YOUNG CHILDREN.—A person who, in the course of an offense under this chapter, chapter 110, chapter 117, or section 1591 engages in conduct that results in the death of a person who has not attained the age of 12 years, shall be punished by death or imprisoned for not less than 30 years or for life.

* * * * * * *

§ 2249. Use of any controlled substance to facilitate sex offense

(a) Whoever, knowingly uses a controlled substance to substantially impair the ability of a person to appraise or control conduct, in order to commit a sex offense, other than an offense where such use is an element of the offense, shall, in addition to the punishment provided for the sex offense, be imprisoned for any term of years not less than 10, or for life.

(b) As used in this section, the term "sex offense" means an offense under this chapter other than an offense under this section.

CHAPTER 109B—SEX OFFENDER AND CRIMES AGAINST CHILDREN REGISTRY

§ 2250. Failure to register

Whoever receives a notice from an official that such person is required to register under the Sex Offender Registration and Notification Act and—

(1) is a sex offender as defined for the purposes of that Act by reason of a conviction under Federal law; or

(2) thereafter travels in interstate or foreign commerce, or enters or leaves Indian country;

and knowingly fails to register as required shall be fined under this title and imprisoned not less than 5 years nor more than 20 years.

CHAPTER 110—SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

* * * * * * *

§ 2251. Sexual exploitation of children

(a) * * *

* * * * * * *

(e) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than **[**15 years nor more than 30 years**]** *25 years or for life*, but if such person has one prior conviction under this chapter, *section 1591,* chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to **[**the sexual exploitation of children**]** *aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, 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 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), 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 35 years nor more than life.**]** *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**]** *not less than 30 years or for life.*.

* * * * * * *

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

(a) * * *

(b)(1) Whoever violates, or attempts or conspires to violate, **[**paragraphs (1)**]** *paragraph (1)*, (2), or (3) of subsection (a) shall be fined under this title and imprisoned not less than **[**5 years and not more than 20 years**]** *25 years or for life*, but if such person has a prior conviction under this chapter, *section 1591,* chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), 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*, or sex trafficking of children*, such person shall be fined under this title and imprisoned for **[**not less than 15 years nor more than 40 years.**]** *life.*

(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 10 years, or both] *and imprisoned for not less than 10 nor more than 30 years*, but if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), 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 [10 years nor more than 20 years.] *30 years or for life.*

* * * * * * *

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

(a) * * *

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), (4), or (6) of subsection (a) shall be fined under this title and imprisoned not less than [5 years and not more than 20 years] *25 years or for life*, but, if such person has a prior conviction under this chapter, *section 1591,* chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), 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*, or sex trafficking of children*, such person shall be fined under this title and imprisoned for [not less than 15 years nor more than 40 years] *life*.

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title [or imprisoned not more than 10 years, or both] *and imprisoned for not less than 10 nor more than 30 years*, but, if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), 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 [10 years nor more than 20 years] *30 years or for life*.

* * * * * * *

§ 2252B. Misleading domain names on the Internet

(a) * * *

(b) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors on the Internet shall be fined under this title [or imprisoned not more than 4 years, or both] *and imprisoned not less than 10 nor more than 30 years*.

* * * * * * *

§ 2260. Production of sexually explicit depictions of a minor for importation into the United States

(a) * * *

* * * * * * *

(c) PENALTIES.—A person who violates subsection (a) or (b), or conspires or attempts to do so—

[(1) shall be fined under this title, imprisoned not more than 10 years, or both; and

[(2) if the person has a prior conviction under this chapter or chapter 109A, shall be fined under this title, imprisoned not more than 20 years, or both.]

(1) shall be fined under this title and imprisoned for any term or years not less than 25 or for life; and

(2) if the person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), shall be fined under this title and imprisoned for life.

* * * * * * *

CHAPTER 117—TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES

* * * * * * *

§ 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 20 years, or both] *and imprisoned not less than 10 years nor more than 30 years*.

* * * * * * *

§ 2423. Transportation of minors

(a) TRANSPORTATION WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY.—A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, 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 and imprisoned not less than [5 years and not more than 30 years] *30 years or for life*.

(b) TRAVEL WITH INTENT TO ENGAGE IN ILLICIT SEXUAL CONDUCT.—A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title [or imprisoned not more than 30 years, or both] *and imprisoned for not less than 10 years and not more than 30 years*.

(c) ENGAGING IN ILLICIT SEXUAL CONDUCT IN FOREIGN PLACES.—Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title [or imprisoned not more than 30 years, or both] *and imprisoned for not less than 10 years and not more than 30 years*.

(d) ANCILLARY OFFENSES.—Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, [imprisoned not more than 30 years, or both] *and imprisoned for not less than 10 nor more than 30 years*.

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PART II—CRIMINAL PROCEDURE

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CHAPTER 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS

* * * * * * *

§ 3142. Release or detention of a defendant pending trial

(a) * * *

(b) RELEASE ON PERSONAL RECOGNIZANCE OR UNSECURED APPEARANCE BOND.—The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release *and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a)*, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) RELEASE ON CONDITIONS.—(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release *and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a)*; and

* * * * * * *

CHAPTER 213—LIMITATIONS

* * * * * * *

§ 3297. Cases involving DNA evidence

In a case in which DNA testing implicates an identified person in the commission of a felony, [except for a felony offense under chapter 109A,] no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.

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CHAPTER 227—SENTENCES

SUBCHAPTER A—GENERAL PROVISIONS

* * * * * * *

§ 3559. Sentencing classification of offenses

(a) * * *

* * * * * * *

[(d) DEATH OR IMPRISONMENT FOR CRIMES AGAINST CHILDREN.—

[(1) IN GENERAL.—Subject to paragraph (2) and 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 2422, 2423, or 2251 shall, unless the sentence of death is imposed, be sentenced to imprisonment for life, if—

[(A) the victim of the offense has not attained the age of 14 years;

[(B) the victim dies as a result of the offense; and

[(C) the defendant, in the course of the offense, engages in conduct described in section 3591(a)(2).

[(2) EXCEPTION.—With respect to a person convicted of a Federal offense described in paragraph (1), the court may impose any lesser sentence that is authorized by law to take into account any substantial assistance provided by the defendant in the investigation or prosecution of another person who has committed an offense, in accordance with the Federal Sentencing Guidelines and the policy statements of the Federal Sentencing Commission pursuant to section 994(p) of title 28, or for other good cause.]

(d) MANDATORY MINIMUM TERMS OF IMPRISONMENT FOR VIOLENT CRIMES AGAINST CHILDREN.—A person who is convicted of a felony crime of violence against the person of an individual who has not attained the age of 18 years shall, unless a greater mandatory minimum sentence of imprisonment is otherwise provided by law and regardless of any maximum term of imprisonment otherwise provided for the offense—

(1) if the crime of violence results in the death of a person who has not attained the age of 18 years, be sentenced to death or life in prison;

(2) if the crime of violence is kidnapping, aggravated sexual abuse, sexual abuse, or maiming, or results in serious bodily in-

jury (as defined in section 2119(2)) be imprisoned for life or any term of years not less than 30;

(3) if the crime of violence results in bodily injury (as defined in section 1365) or is an offense under paragraphs (1), (2), or (5) of section 2244(a), be imprisoned for life or for any term of years not less than 20;

(4) if a dangerous weapon was used during and in relation to the crime of violence, be imprisoned for life or for any term of years not less than 15; and

(5) in any other case, be imprisoned for life or for any term of years not less than 10.

(e) MANDATORY LIFE IMPRISONMENT FOR REPEATED SEX OFFENSES AGAINST CHILDREN.—

(1) * * *

(2) DEFINITIONS.—For the purposes of this subsection—

(A) the term "Federal sex offense" means an offense under section 2241 (relating to aggravated sexual abuse), 2242 (relating to sexual abuse), 2244(a)(1) (relating to abusive sexual contact), 2245 (relating to sexual abuse resulting in death), 2251 (relating to sexual exploitation of children), 2251A (relating to selling or buying of children), 2422(b) (relating to coercion and enticement of a minor into prostitution), [or 2423(a)] *2423(a)* (relating to transportation of minors)*, 2423(b) (relating to travel with intent to engage in illicit sexual conduct), 2423(c) (relating to illicit sexual conduct in foreign places), or 2425 (relating to use of interstate facilities to transmit information about a minor)*;

* * * * * * *

SUBCHAPTER B—PROBATION

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§ 3563. Conditions of probation

(a) MANDATORY CONDITIONS.—The court shall provide, as an explicit condition of a sentence of probation—

(1) * * *

* * * * * * *

[(8) for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994); and]

(8) for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act;

(9) that the defendant cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000[.]*; and*

(10) for a person who is a felon or required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

* * * * * * *

SUBCHAPTER D—IMPRISONMENT

* * * * * * *

§ 3583. Inclusion of a term of supervised release after imprisonment

(a) * * *

* * * * * * *

(d) CONDITIONS OF SUPERVISED RELEASE.—The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person [described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994).] *required to register under the Sex Offender Registration and Notification Act that the person comply with the requirements of that Act.* The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000. The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are

positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition—

(1) * * *

* * * * * * *

any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20) , and any other condition it considers to be appropriate. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation. *The court may order, as an explicit condition of supervised release for a person who is a felon or required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.*

* * * * * * *

(k) Notwithstanding subsection (b), the authorized term of supervised release for any offense under section 1201 involving a minor victim, and for any offense under section 1591, 2241, 2242, **[**2244(a)(1), 2244(a)(2)**]** *2243, 2244, 2245, 2250*, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425, is any term of years *not less than 5,* or life. *If a defendant required to register under the Sex Offender Registration and Notification Act violates the requirements of that Act or commits any criminal offense for which imprisonment for a term longer than one year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years, and if the offense was an offense under chapter 109A, 109B, 110, or 117, not less than 10 years.*

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CHAPTER 228—DEATH SENTENCE

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§ 3592. Mitigating and aggravating factors to be considered in determining whether a sentence of death is justified

(a) * * *

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(c) AGGRAVATING FACTORS FOR HOMICIDE.—In determining whether a sentence of death is justified for an offense described in section 3591(a)(2), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

(1) DEATH DURING COMMISSION OF ANOTHER CRIME.—The death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 37 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 1118 (prisoners serving life term), section 1201 (kidnapping), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1203 (hostage taking), section 1992 (wrecking trains), *section 2245 (sexual abuse resulting in death),* section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2332a (use of weapons of mass destruction), or section 2381 (treason) of this title, or section 46502 of title 49, United States Code (aircraft piracy).

* * * * * * *

CHAPTER 237—CRIME VICTIMS' RIGHTS

* * * * * * *

§ 3771. Crime victims' rights

(a) * * *

(b) RIGHTS AFFORDED.—In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record. *The rights established for crime victims by this section shall also be extended in a Federal habeas corpus pro-*

ceeding arising out of a State conviction to victims of the State offense at issue.

* * * * * * *

PART III—PRISONS AND PRISONERS

* * * * * * *

CHAPTER 303—BUREAU OF PRISONS

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§ 4042. Duties of Bureau of Prisons

(a) * * *

* * * * * * *

(c) NOTICE OF SEX OFFENDER RELEASE.—(1) In the case of a person described in paragraph [(4)] *(3)* who is released from prison or sentenced to probation, notice shall be provided to—

(A) * * *

* * * * * * *

[(3) The Director of the Bureau of Prisons shall inform a person described in paragraph (4) who is released from prison that the person shall be subject to a registration requirement as a sex offender in any State in which the person resides, is employed, carries on a vocation, or is a student (as such terms are defined for purposes of section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994), and the same information shall be provided to a person described in paragraph (4) who is sentenced to probation by the probation officer responsible for supervision of the person or in a manner specified by the Director of the Administrative Office of the United States Courts.

[(4) A person is described in this paragraph if the person was convicted of any of the following offenses (including such an offense prosecuted pursuant to section 1152 or 1153):

[(A) An offense under section 1201 involving a minor victim.

[(B) An offense under chapter 109A.

[(C) An offense under chapter 110.

[(D) An offense under chapter 117.

[(E) Any other offense designated by the Attorney General as a sexual offense for purposes of this subsection.]

(3) The Director of the Bureau of Prisons shall inform a person who is released from prison and required to register under the Sex Offender Registration and Notification Act of the requirements of that Act as they apply to that person and the same information shall be provided to a person sentenced to probation by the probation officer responsible for supervision of that person.

* * * * * * *

CHAPTER 313—OFFENDERS WITH MENTAL DISEASE OR DEFECT

§ 4241. Determination of mental competency to stand trial *or to undergo postrelease proceedings*

(a) MOTION TO DETERMINE COMPETENCY OF DEFENDANT.—At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, *or at any time after the commencement of probation or supervised release and prior to the completion of the sentence,* the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

* * * * * * *

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility—

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the **[**trial to proceed**]** *proceedings to go forward*; and

(2) for an additional reasonable period of time until—

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the **[**trial to proceed**]** *proceedings to go forward*; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the **[**trial to proceed**]** *proceedings to go forward*, the defendant is subject to the provisions of **[**section 4246**]** *sections 4246 and 4248*.

(e) DISCHARGE.—When the director of the facility in which a defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered to such an extent that he is able

to understand the nature and consequences of the proceedings against him and to assist properly in his defense, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. The court shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial *or other proceedings*. Upon discharge, the defendant is subject to the provisions of [chapter 207] *chapters 207 and 227*.

* * * * * * *

§ 4247. General provisions for chapter

(a) DEFINITIONS.—As used in this chapter—

(1) "rehabilitation program" includes—

(A) * * *

* * * * * * *

[(C) drug, alcohol, and other treatment programs that will assist the individual in overcoming his psychological or physical dependence; and]

(C) drug, alcohol, and sex offender treatment programs, and other treatment programs that will assist the individual in overcoming a psychological or physical dependence or any condition that makes the individual dangerous to others; and

(D) organized physical sports and recreation programs;

(2) "suitable facility" means a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant; [and]

(3) "State" includes the District of Columbia[.]*;*

(4) "bodily injury" includes sexual abuse;

(5) "sexually dangerous person" means a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others; and

(6) "sexually dangerous to others" means that a person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION.—A psychiatric or psychological examination ordered pursuant to this chapter shall be conducted by a licensed or certified psychiatrist or psychologist, or, if the court finds it appropriate, by more than one such examiner. Each examiner shall be designated by the court, except that if the examination is ordered under section [4245 or 4246] *4245, 4246, 4248*, upon the request of the defendant an additional examiner may be selected by the defendant. For the purposes of an examination pursuant to an order under section 4241, 4244, or 4245, the court may commit the person to be examined for a reasonable period, but not to exceed thirty days, and under sec-

tion 4242, 4243[, or 4246], *4246, or 4248*, for a reasonable period, but not to exceed forty-five days, to the custody of the Attorney General for placement in a suitable facility. Unless impracticable, the psychiatric or psychological examination shall be conducted in the suitable facility closest to the court. The director of the facility may apply for a reasonable extension, but not to exceed fifteen days under section 4241, 4244, or 4245, and not to exceed thirty days under section 4242, 4243[, or 4246], *4246, or 4248*, upon a showing of good cause that the additional time is necessary to observe and evaluate the defendant.

(c) PSYCHIATRIC OR PSYCHOLOGICAL REPORTS.—A psychiatric or psychological report ordered pursuant to this chapter shall be prepared by the examiner designated to conduct the psychiatric or psychological examination, shall be filed with the court with copies provided to the counsel for the person examined and to the attorney for the Government, and shall include—

(1) * * *

* * * * * * *

(4) the examiner's opinions as to diagnosis, prognosis, and—

(A) * * *

* * * * * * *

(D) if the examination is ordered under section 4248, whether the person is a sexually dangerous person;

[(D)] *(E)* if the examination is ordered under section 4244 or 4245, whether the person is suffering from a mental disease or defect as a result of which he is in need of custody for care or treatment in a suitable facility; or

[(E)] *(F)* if the examination is ordered as a part of a presentence investigation, any recommendation the examiner may have as to how the mental condition of the defendant should affect the sentence.

* * * * * * *

(e) PERIODIC REPORT AND INFORMATION REQUIREMENTS.—(1) The director of the facility in which a person is hospitalized pursuant to—

(A) section 4241 shall prepare semiannual reports; or

(B) section 4243, 4244, 4245[, or 4246], *4246, or 4248* shall prepare annual reports concerning the mental condition of the person and containing recommendations concerning the need for his continued hospitalization. The reports shall be submitted to the court that ordered the person's commitment to the facility and copies of the reports shall be submitted to such other persons as the court may direct. A copy of each such report concerning a person hospitalized after the beginning of a prosecution of that person for violation of section 871, 879, or 1751 of this title shall be submitted to the Director of the United States Secret Service. Except with the prior approval of the court, the Secret Service shall not use or disclose the information in these copies for any purpose other than carrying out protective duties under section 3056(a) of this title.

(2) The director of the facility in which a person is hospitalized pursuant to section 4241, 4243, 4244, 4245[, or 4246], *4246, or*

4248 shall inform such person of any rehabilitation programs that are available for persons hospitalized in that facility.

* * * * * * *

(g) HABEAS CORPUS UNIMPAIRED.—Nothing contained in section **[**4243 or 4246**]** *4243, 4246, or 4248* precludes a person who is committed under either of such sections from establishing by writ of habeas corpus the illegality of his detention.

(h) DISCHARGE.—Regardless of whether the director of the facility in which a person is hospitalized has filed a certificate pursuant to the provisions of subsection (e) of section 4241, 4244, 4245**[**, or 4246**]***, 4246, or 4248*, or subsection (f) of section 4243, counsel for the person or his legal guardian may, at any time during such person's hospitalization, file with the court that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility, but no such motion may be filed within one hundred and eighty days of a court determination that the person should continue to be hospitalized. A copy of the motion shall be sent to the director of the facility in which the person is hospitalized and to the attorney for the Government.

(i) AUTHORITY AND RESPONSIBILITY OF THE ATTORNEY GENERAL.—The Attorney General—

(A) * * *

(B) may apply for the civil commitment, pursuant to State law, of a person committed to his custody pursuant to section **[**4243 or 4246**]** *4243, 4246, or 4248*;

(C) shall, before placing a person in a facility pursuant to the provisions of section 4241, 4243, 4244, 4245**[**, or 4246**]***, 4246, or 4248*, consider the suitability of the facility's rehabilitation programs in meeting the needs of the person; and

* * * * * * *

§ 4248. Civil commitment of a sexually dangerous person

(a) INSTITUTION OF PROCEEDINGS.—In relation to a person who is in the custody of the Bureau of Prisons, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons relating to the mental condition of the person, the Attorney General or any individual authorized by the Attorney General or the Director of the Bureau of Prisons may certify that the person is a sexually dangerous person, and transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is a sexually dangerous person. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall place the person for treatment in a suitable facility, until—

(1) such a State will assume such responsibility; or

(2) the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment;

whichever is earlier. The Attorney General shall make all reasonable efforts to have a State to assume such responsibility for the person's custody, care, and treatment.

(e) DISCHARGE.—When the Director of the facility in which a person is placed pursuant to subsection (d) determines that the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the person or, on motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person's condition is such that—

(1) he will not be sexually dangerous to others if released unconditionally, the court shall order that he be immediately discharged; or

(2) he will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the court shall—

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the Director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(f) REVOCATION OF CONDITIONAL DISCHARGE.—The director of a facility responsible for administering a regimen imposed on a per-

son conditionally discharged under subsection (e) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that he is sexually dangerous to others in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

(g) RELEASE TO STATE OF CERTAIN OTHER PERSONS.—If the director of the facility in which a person is hospitalized or placed pursuant to this chapter certifies to the Attorney General that a person, against him all charges have been dismissed for reasons not related to the mental condition of the person, is a sexually dangerous person, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than 10 days after certification by the director of the facility.

* * * * * * *

TITLE I OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

* * * * * * *

PART JJ—SEX OFFENDER APPREHENSION GRANTS

SEC. 3011. AUTHORITY TO MAKE SEX OFFENDER APPREHENSION GRANTS.

(a) IN GENERAL.—From amounts made available to carry out this part, the Attorney General may make grants to States, units of local government, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia thereof for activities specified in subsection (b).

(b) COVERED ACTIVITIES.—An activity referred to in subsection (a) is any program, project, or other activity to assist a State in enforcing sex offender registration requirements.

SEC. 3012. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for fiscal years 2006 through 2008 to carry out this part.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

* * * * * * *

TITLE XVII—CRIMES AGAINST CHILDREN

Subtitle A—Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act

[SEC. 170101. JACOB WETTERLING CRIMES AGAINST CHILDREN AND SEXUALLY VIOLENT OFFENDER REGISTRATION PROGRAM.

[(a) IN GENERAL.—

[(1) STATE GUIDELINES.—The Attorney General shall establish guidelines for State programs that require—

[(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address for the time period specified in subparagraph (A) of subsection (b)(6); and

[(B) a person who is a sexually violent predator to register a current address unless such requirement is terminated under subparagraph (B) of subsection (b)(6).

[(2) DETERMINATION OF SEXUALLY VIOLENT PREDATOR STATUS; WAIVER; ALTERNATIVE MEASURES.—

[(A) IN GENERAL.—A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies.

[(B) WAIVER.—The Attorney General may waive the requirements of subparagraph (A) if the Attorney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.

[(C) ALTERNATIVE MEASURES.—The Attorney General may also approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.

[(3) DEFINITIONS.—For purposes of this section:

[(A) The term "criminal offense against a victim who is a minor" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:

[(i) kidnapping of a minor, except by a parent;

[(ii) false imprisonment of a minor, except by a parent;

[(iii) criminal sexual conduct toward a minor;

[(iv) solicitation of a minor to engage in sexual conduct;

[(v) use of a minor in a sexual performance;

[(vi) solicitation of a minor to practice prostitution;

[(vii) any conduct that by its nature is a sexual offense against a minor;

[(viii) production or distribution of child pornography, as described in section 2251, 2252, or 2252A of title 18, United States Code; or

[(ix) an attempt to commit an offense described in any of clauses (i) through (vii), if the State—

[(I) makes such an attempt a criminal offense; and

[(II) chooses to include such an offense in those which are criminal offenses against a victim who is a minor for the purposes of this section.

For purposes of this subparagraph conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

[(B) The term "sexually violent offense" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18, United States Code, or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of title 18, United States Code, or as described in the State criminal code).

[(C) The term "sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

[(D) The term "mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

[(E) The term "predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

[(F) The term "employed, carries on a vocation" includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

[(G) The term "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.

[(b) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, SUPERVISED RELEASE, OR PROBATION.—An approved State registration program established under this section shall contain the following elements:

[(1) DUTIES OF RESPONSIBLE OFFICIALS.—

[(A) If a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State prison officer, the court, or another responsible officer or official, shall—

[(i) inform the person of the duty to register and obtain the information required for such registration;

[(ii) inform the person that if the person changes residence address, the person shall report the change of address as provided by State law;

[(iii) inform the person that if the person changes residence to another State, the person shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student;

[(iv) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

[(v) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

[(B) In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection (a)(1), the State prison officer, the court, or another responsible officer or official, as the case may be, shall obtain the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.

[(2) TRANSFER OF INFORMATION TO STATE AND FBI; PARTICIPATION IN NATIONAL SEX OFFENDER REGISTRY.—

[(A) STATE REPORTING.—State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.

[(B) NATIONAL REPORTING.—A State shall participate in the national database established under section 170102(b) in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines.

[(3) VERIFICATION.—

[(A) For a person required to register under subparagraph (A) of subsection (a)(1), State procedures shall provide for verification of address at least annually.

[(B) The provisions of subparagraph (A) shall be applied to a person required to register under subparagraph (B) of subsection (a)(1), except that such person must verify the registration every 90 days after the date of the initial release or commencement of parole.

[(4) NOTIFICATION OF LOCAL LAW ENFORCEMENT AGENCIES OF CHANGES IN ADDRESS.—A change of address by a person required to register under this section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system.

[(5) REGISTRATION FOR CHANGE OF ADDRESS TO ANOTHER STATE.—A person who has been convicted of an offense which requires registration under this section and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration.

[(6) LENGTH OF REGISTRATION.—A person required to register under subsection (a)(1) shall continue to comply with this section, except during ensuing periods of incarceration, until—

[(A) 10 years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or

[(B) for the life of that person if that person—

[(i) has 1 or more prior convictions for an offense described in subsection (a)(1)(A); or

[(ii) has been convicted of an aggravated offense described in subsection (a)(1)(A); or

[(iii) has been determined to be a sexually violent predator pursuant to subsection (a)(2).

[(7) REGISTRATION OF OUT-OF-STATE OFFENDERS, FEDERAL OFFENDERS, PERSONS SENTENCED BY COURTS MARTIAL, AND OFFENDERS CROSSING STATE BORDERS.—As provided in guidelines issued by the Attorney General, each State shall include in its registration program residents who were convicted in another State and shall ensure that procedures are in place to accept registration information from—

[(A) residents who were convicted in another State, convicted of a Federal offense, or sentenced by a court martial; and

[(B) nonresident offenders who have crossed into another State in order to work or attend school.

[(c) REGISTRATION OF OFFENDER CROSSING STATE BORDER.—Any person who is required under this section to register in the State in which such person resides shall also register in any State in which the person is employed, carries on a vocation, or is a student.

[(d) PENALTY.—A person required to register under a State program established pursuant to this section who knowingly fails

to so register and keep such registration current shall be subject to criminal penalties in any State in which the person has so failed.

[(e) RELEASE OF INFORMATION.—

[(1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

[(2) The State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released. The release of information under this paragraph shall include the maintenance of an Internet site containing such information that is available to the public and instructions on the process for correcting information that a person alleges to be erroneous.

[(f) IMMUNITY FOR GOOD FAITH CONDUCT.—Law enforcement agencies, employees of law enforcement agencies and independent contractors acting at the direction of such agencies, and State officials shall be immune from liability for good faith conduct under this section.

[(g) COMPLIANCE.—

[(1) COMPLIANCE DATE.—Each State shall have not more than 3 years from the date of enactment of this Act in which to implement this section, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.

[(2) INELIGIBILITY FOR FUNDS.—

[(A) A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3765).

[(B) REALLOCATION OF FUNDS.—Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.

[(h) FINGERPRINTS.—Each requirement to register under this section shall be deemed to also require the submission of a set of fingerprints of the person required to register, obtained in accordance with regulations prescribed by the Attorney General under section 170102(h).

[(i) GRANTS TO STATES FOR COSTS OF COMPLIANCE.—

[(1) PROGRAM AUTHORIZED.—

[(A) IN GENERAL.—The Director of the Bureau of Justice Assistance (in this subsection referred to as the 'Director') shall carry out a program, which shall be known as the "Sex Offender Management Assistance Program" (in this subsection referred to as the "SOMA program"), under which the Director shall award a grant to each eligible State to offset costs directly associated with complying with this section.

[(B) USES OF FUNDS.—Each grant awarded under this subsection shall be—

[(i) distributed directly to the State for distribution to State and local entities; and

[(ii) used for training, salaries, equipment, materials, and other costs directly associated with complying with this section.

[(2) ELIGIBILITY.—

[(A) APPLICATION.—To be eligible to receive a grant under this subsection, the chief executive of a State shall, on an annual basis, submit to the Director an application (in such form and containing such information as the Director may reasonably require) assuring that—

[(i) the State complies with (or made a good faith effort to comply with) this section; and

[(ii) where applicable, the State has penalties comparable to or greater than Federal penalties for crimes listed in this section, except that the Director may waive the requirement of this clause if a State demonstrates an overriding need for assistance under this subsection.

[(B) REGULATIONS.—

[(i) IN GENERAL.—Not later than 90 days after the date of enactment of this subsection, the Director shall promulgate regulations to implement this subsection (including the information that must be included and the requirements that the States must meet) in submitting the applications required under this subsection. In allocating funds under this subsection, the Director may consider the annual number of sex offenders registered in each eligible State's monitoring and notification programs.

[(ii) CERTAIN TRAINING PROGRAMS.—Prior to implementing this subsection, the Director shall study the feasibility of incorporating into the SOMA program the activities of any technical assistance or training program established as a result of section 40152 of this Act. In a case in which incorporating such activities into the SOMA program will eliminate duplication of efforts or administrative costs, the Director shall take administrative actions, as allowable, and make recommendations to Congress to incorporate such activities into the SOMA program prior to implementing the SOMA program.

[(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of the fiscal years 2004 through 2007 such sums as may be necessary to carry out the provisions of section 1701(d)(10) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(d)(10)), as added by the PROTECT Act.

[(j) NOTICE OF ENROLLMENT AT OR EMPLOYMENT BY INSTITUTIONS OF HIGHER EDUCATION.—

[(1) NOTICE BY OFFENDERS.—

[(A) IN GENERAL.—In addition to any other requirements of this section, any person who is required to register in a State shall provide notice as required under State law—

[(i) of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student; and

[(ii) of each change in enrollment or employment status of such person at an institution of higher education in that State.

[(B) CHANGE IN STATUS.—A change in status under subparagraph (A)(ii) shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated information is promptly made available to a law enforcement agency having jurisdiction where such institution is located and entered into the appropriate State records or data system.

[(2) STATE REPORTING.—State procedures shall ensure that the registration information collected under paragraph (1)—

[(A) is promptly made available to a law enforcement agency having jurisdiction where such institution is located; and

[(B) entered into the appropriate State records or data system.

[(3) REQUEST.—Nothing in this subsection shall require an educational institution to request such information from any State.

[SEC. 170102. FBI DATABASE.

[(a) DEFINITIONS.—For purposes of this section—

[(1) the term "FBI" means the Federal Bureau of Investigation;

[(2) the terms "criminal offense against a victim who is a minor", "sexually violent offense", "sexually violent predator", "mental abnormality", "predatory", "employed, carries on a vocation", and "student" have the same meanings as in section 170101(a)(3); and

[(3) the term "minimally sufficient sexual offender registration program" means any State sexual offender registration program that—

[(A) requires the registration of each offender who is convicted of an offense in a range of offenses specified by State law which is comparable to or exceeds that described in subparagraph (A) or (B) of section 170101(a)(1);

[(B) participates in the national database established under subsection (b) of this section in conformity with guidelines issued by the Attorney General;

[(C) provides for verification of address at least annually;

[(D) requires that each person who is required to register under subparagraph (A) shall do so for a period of not less than 10 years beginning on the date that such person was released from prison or placed on parole, supervised release, or probation.

[(b) ESTABLISHMENT.—The Attorney General shall establish a national database at the Federal Bureau of Investigation to track the whereabouts and movement of—

[(1) each person who has been convicted of a criminal offense against a victim who is a minor;

[(2) each person who has been convicted of a sexually violent offense; and

[(3) each person who is a sexually violent predator.

[(c) REGISTRATION REQUIREMENT.—Each person described in subsection (b) who resides in a State that has not established a minimally sufficient sexual offender registration program shall register a current address, fingerprints of that person, and a current photograph of that person with the FBI for inclusion in the database established under subsection (b) for the time period specified under subsection (d).

[(d) LENGTH OF REGISTRATION.—A person described in subsection (b) who is required to register under subsection (c) shall, except during ensuing periods of incarceration, continue to comply with this section—

[(1) until 10 years after the date on which the person was released from prison or placed on parole, supervised release, or probation; or

[(2) for the life of the person, if that person—

[(A) has 2 or more convictions for an offense described in subsection (b);

[(B) has been convicted of aggravated sexual abuse, as defined in section 2241 of title 18, United States Code, or in a comparable provision of State law; or

[(C) has been determined to be a sexually violent predator.

[(e) VERIFICATION.—

[(1) PERSONS CONVICTED OF AN OFFENSE AGAINST A MINOR OR A SEXUALLY VIOLENT OFFENSE.—In the case of a person required to register under subsection (c), the FBI shall, during the period in which the person is required to register under subsection (d), verify the person's address in accordance with guidelines that shall be promulgated by the Attorney General. Such guidelines shall ensure that address verification is accomplished with respect to these individuals and shall require the submission of fingerprints and photographs of the individual.

[(2) SEXUALLY VIOLENT PREDATORS.—Paragraph (1) shall apply to a person described in subsection (b)(3), except that such person must verify the registration once every 90 days after the date of the initial release or commencement of parole of that person.

[(f) COMMUNITY NOTIFICATION.—

[(1) IN GENERAL.—Subject to paragraph (2), the FBI may release relevant information concerning a person required to register under subsection (c) that is necessary to protect the public.

[(2) IDENTITY OF VICTIM.—In no case shall the FBI release the identity of any victim of an offense that requires registration by the offender with the FBI.

[(g) NOTIFICATION OF FBI OF CHANGES IN RESIDENCE.—

[(1) ESTABLISHMENT OF NEW RESIDENCE.—For purposes of this section, a person shall be deemed to have established a new residence during any period in which that person resides for not less than 10 days.

[(2) PERSONS REQUIRED TO REGISTER WITH THE FBI.—Each establishment of a new residence, including the initial estab-

lishment of a residence immediately following release from prison, or placement on parole, supervised release, or probation, by a person required to register under subsection (c) shall be reported to the FBI not later than 10 days after that person establishes a new residence.

[(3) INDIVIDUAL REGISTRATION REQUIREMENT.—A person required to register under subsection (c) or under a State sexual offender offender registration program, including a program established under section 170101, who changes address to a State other than the State in which the person resided at the time of the immediately preceding registration shall, not later than 10 days after that person establishes a new residence, register a current address, fingerprints, and photograph of that person, for inclusion in the appropriate database, with—

[(A) the FBI; and

[(B) the State in which the new residence is established.

[(4) STATE REGISTRATION REQUIREMENT.—Any time any State agency in a State with a minimally sufficient sexual offender registration program, including a program established under section 170101, is notified of a change of address by a person required to register under such program within or outside of such State, the State shall notify—

[(A) the law enforcement officials of the jurisdiction to which, and the jurisdiction from which, the person has relocated; and

[(B) the FBI.

[(5) VERIFICATION.—

[(A) NOTIFICATION OF LOCAL LAW ENFORCEMENT OFFICIALS.—The FBI shall ensure that State and local law enforcement officials of the jurisdiction from which, and the State and local law enforcement officials of the jurisdiction to which, a person required to register under subsection (c) relocates are notified of the new residence of such person.

[(B) NOTIFICATION OF FBI.—A State agency receiving notification under this subsection shall notify the FBI of the new residence of the offender.

[(C) VERIFICATION.—

[(i) STATE AGENCIES.—If a State agency cannot verify the address of or locate a person required to register with a minimally sufficient sexual offender registration program, including a program established under section 170101, the State shall immediately notify the FBI.

[(ii) FBI.—If the FBI cannot verify the address of or locate a person required to register under subsection (c) or if the FBI receives notification from a State under clause (i), the FBI shall—

[(I) classify the person as being in violation of the registration requirements of the national database; and

[(II) add the name of the person to the National Crime Information Center Wanted person file and create a wanted persons record: *Provided,*

That an arrest warrant which meets the requirements for entry into the file is issued in connection with the violation.

[(h) FINGERPRINTS.—

[(1) FBI REGISTRATION.—For each person required to register under subsection (c), fingerprints shall be obtained and verified by the FBI or a local law enforcement official pursuant to regulations issued by the Attorney General.

[(2) STATE REGISTRATION SYSTEMS.—In a State that has a minimally sufficient sexual offender registration program, including a program established under section 170101, fingerprints required to be registered with the FBI under this section shall be obtained and verified in accordance with State requirements. The State agency responsible for registration shall ensure that the fingerprints and all other information required to be registered is registered with the FBI.

[(i) PENALTY.—A person who is—

[(1) required to register under paragraph (1), (2), or (3) of subsection (g) of this section and knowingly fails to comply with this section;

[(2) required to register under a sexual offender registration program in the person's State of residence and knowingly fails to register in any other State in which the person is employed, carries on a vocation, or is a student;

[(3) described in section 4042(c)(4) of title 18, United States Code, and knowingly fails to register in any State in which the person resides, is employed, carries on a vocation, or is a student following release from prison or sentencing to probation; or

[(4) sentenced by a court martial for conduct in a category specified by the Secretary of Defense under section 115(a)(8)(C) of title I of Public Law 105–119, and knowingly fails to register in any State in which the person resides, is employed, carries on a vocation, or is a student following release from prison or sentencing to probation, shall, in the case of a first offense under this subsection, be imprisoned for not more than 1 year and, in the case of a second or subsequent offense under this subsection, be imprisoned for not more than 10 years.

[(j) RELEASE OF INFORMATION.—The information collected by the FBI under this section shall be disclosed by the FBI—

[(1) to Federal, State, and local criminal justice agencies for—

[(A) law enforcement purposes; and

[(B) community notification in accordance with section 170101(d)(3); and

[(2) to Federal, State, and local governmental agencies responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a).

[(k) NOTIFICATION UPON RELEASE.—Any State not having established a program described in section 170102(a)(3) must—

[(1) upon release from prison, or placement on parole, supervised release, or probation, notify each offender who is convicted of an offense described in subparagraph (A) or (B) of section 170101(a)(1) of their duty to register with the FBI; and

[(2) notify the FBI of the release of each offender who is convicted of an offense described in subparagraph (A) or (B) of section 170101(a)(1).]

* * * * * * *

SECTION 8 OF THE PAM LYCHNER SEXUAL OFFENDER TRACKING AND IDENTIFICATION ACT OF 1996

[SEC. 8. IMMUNITY FOR GOOD FAITH CONDUCT.

[State and Federal law enforcement agencies, employees of State and Federal law enforcement agencies, and State and Federal officials shall be immune from liability for good faith conduct under section 170102.]

SECTION 210304 OF THE DNA IDENTIFICATION ACT OF 1994

SEC. 210304. INDEX TO FACILITATE LAW ENFORCEMENT EXCHANGE OF DNA IDENTIFICATION INFORMATION.

(a) ESTABLISHMENT OF INDEX.—The Director of the Federal Bureau of Investigation may establish an index of—

(1) DNA identification records of—

(A) * * *

* * * * * * *

(C) other persons whose DNA samples are collected under applicable legal authorities[, provided that DNA profiles from arrestees who have not been charged in an indictment or information with a crime, and DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the National DNA Index System];

* * * * * * *

[(d) EXPUNGEMENT OF RECORDS.—

[(1) BY DIRECTOR.—(A) The Director of the Federal Bureau of Investigation shall promptly expunge from the index described in subsection (a) the DNA analysis of a person included in the index on the basis of a qualifying Federal offense or a qualifying District of Columbia offense (as determined under sections 3 and 4 of the DNA Analysis Backlog Elimination Act of 2000, respectively) if the Director receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

[(B) For purposes of subparagraph (A), the term "qualifying offense" means any of the following offenses:

[(i) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

[(ii) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

[(iii) A qualifying military offense, as determined under section 1565 of title 10, United States Code.

[(C) For purposes of subparagraph (A), a court order is not "final" if time remains for an appeal or application for discretionary review with respect to the order.

[(2) BY STATES.—(A) As a condition of access to the index described in subsection (a), a State shall promptly expunge from that index the DNA analysis of a person included in the index by that State if—

[(i) the responsible agency; or official of that State receives, for each conviction of the person of an offense on the basis of which that analysis was or could have been included in the index, a certified copy of a final court order establishing that such conviction has been overturned; or

[(ii) the person has not been convicted of an offense on the basis of which that analysis was or could have been included in the index, and all charges for which the analysis was or could have been included in the index have been dismissed or resulted in acquittal.

[(B) For purposes of subparagraph (A), a court order is not "final" if time remains for an appeal or application for discretionary review with respect to the order.

[(e) AUTHORITY FOR KEYBOARD SEARCHES.—

[(1) IN GENERAL.—The Director shall ensure that any person who is authorized to access the index described in subsection (a) for purposes of including information on DNA identification records or DNA analyses in that index may also access that index for purposes of carrying out a one-time keyboard search on information obtained from any DNA sample lawfully collected for a criminal justice purpose except for a DNA sample voluntarily submitted solely for elimination purposes.

[(2) DEFINITION.—For purposes of paragraph (1), the term "keyboard search" means a search under which information obtained from a DNA sample is compared with information in the index without resulting in the information obtained from a DNA sample being included in the index.

[(3) NO PREEMPTION.—This subsection shall not be construed to preempt State law.]

* * * * * * *

SECTION 3 OF THE DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000

SEC. 3. COLLECTION AND USE OF DNA IDENTIFICATION INFORMATION FROM CERTAIN FEDERAL OFFENDERS.

(a) COLLECTION OF DNA SAMPLES.—

(1) FROM INDIVIDUALS IN CUSTODY.—[The Director]

(A) The Attorney General may, as provided by the Attorney General by regulation, collect DNA samples from individuals who are arrested, detained, or convicted under the authority of the United States. The Attorney General may delegate this function within the Department of Justice as provided in section 510 of title 28, United States Code, and may also authorize and direct any other agency of the United States that arrests or detains individuals or

supervises individuals facing charges to carry out any function and exercise any power of the Attorney General under this section.

(B) The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d)) or a qualifying military offense, as determined under section 1565 of title 10, United States Code.

* * * * * * *

(3) INDIVIDUALS ALREADY IN CODIS.—For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as "CODIS") of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, or if a DNA sample has been collected from that individual under section 1565 of title 10, United States Code, the **[**Director of the Bureau of Prisons**]** *Attorney General, the Director of the Bureau of Prisons,* or the probation office responsible (as applicable) may (but need not) collect a DNA sample from that individual.

(4) COLLECTION PROCEDURES.—(A) The **[**Director of the Bureau of Prisons**]** *Attorney General, the Director of the Bureau of Prisons,* or the probation office responsible (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The **[**Director of the Bureau of Prisons**]** *Attorney General, the Director of the Bureau of Prisons,* or the probation office, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

* * * * * * *

(b) ANALYSIS AND USE OF SAMPLES.—The **[**Director of the Bureau of Prisons**]** *Attorney General, the Director of the Bureau of Prisons,* or the probation office responsible (as applicable) shall furnish each DNA sample collected under subsection (a) to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS.

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TITLE 28, UNITED STATES CODE

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PART V—PROCEDURE

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CHAPTER 119—EVIDENCE; WITNESSES

§ 1826A. Marital communications and adverse spousal privilege

The confidential marital communication privilege and the adverse spousal privilege shall be inapplicable in any Federal proceeding in which a spouse is charged with a crime against—

(1) a child of either spouse; or

(2) a child under the custody or control of either spouse.

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PART VI—PARTICULAR PROCEEDINGS

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CHAPTER 153—HABEAS CORPUS

* * * * * * *

§ 2254. State custody; remedies in federal courts

(a) * * *

* * * * * * *

(j)(1) A court, justice, or judge shall not have jurisdiction to consider any claim relating to the judgment or sentence in an application described under paragraph (2), unless the applicant shows that the claim qualifies for consideration on the grounds described in subsection (e)(2). Any such application that is presented to a court, justice, or judge other than a district court shall be transferred to the appropriate district court for consideration or dismissal in conformity with this subsection, except that a court of appeals panel must authorize any second or successive application in conformity with section 2244 before any consideration by the district court.

(2) This subsection applies to an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court for a crime that involved the killing of a individual who has not attained the age of 18 years.

(3) For an application described in paragraph (2), the following requirements shall apply in the district court:

(A) Any motion by either party for an evidentiary hearing shall be filed and served not later than 90 days after the State files its answer or, if no timely answer is filed, the date on which such answer is due.

(B) Any motion for an evidentiary hearing shall be granted or denied not later than 30 days after the date on which the party opposing such motion files a pleading in opposition to such motion or, if no timely pleading in opposition is filed, the date on which such pleading in opposition is due.

(C) Any evidentiary hearing shall be—

(i) convened not less than 60 days after the order granting such hearing; and

(ii) completed not more than 150 days after the order granting such hearing.

(D) A district court shall enter a final order, granting or denying the application for a writ of habeas corpus, not later than 15 months after the date on which the State files its answer or, if no timely answer is filed, the date on which such answer is due, or not later than 60 days after the case is submitted for decision, whichever is earlier.

(E) If the district court fails to comply with the requirements of this paragraph, the State may petition the court of appeals for a writ of mandamus to enforce the requirements. The court of appeals shall grant or deny the petition for a writ of mandamus not later than 30 days after such petition is filed with the court.

(4) For an application described in paragraph (2), the following requirements shall apply in the court of appeals:

(A) A timely filed notice of appeal from an order issuing a writ of habeas corpus shall operate as a stay of that order pending final disposition of the appeal.

(B) The court of appeals shall decide the appeal from an order granting or denying a writ of habeas corpus—

(i) not later than 120 days after the date on which the brief of the appellee is filed or, if no timely brief is filed, the date on which such brief is due; or

(ii) if a cross-appeal is filed, not later than 120 days after the date on which the appellant files a brief in response to the issues presented by the cross-appeal or, if no timely brief is filed, the date on which such brief is due.

(C)(i) Following a decision by a panel of the court of appeals under subparagraph (B), a petition for panel rehearing is not allowed, but rehearing by the court of appeals en banc may be requested. The court of appeals shall decide whether to grant a petition for rehearing en banc not later than 30 days after the date on which the petition is filed, unless a response is required, in which case the court shall decide whether to grant the petition not later than 30 days after the date on which the response is filed or, if no timely response is filed, the date on which the response is due.

(ii) If rehearing en banc is granted, the court of appeals shall make a final determination of the appeal not later than 120 days after the date on which the order granting rehearing en banc is entered.

(D) If the court of appeals fails to comply with the requirements of this paragraph, the State may petition the Supreme Court or a justice thereof for a writ of mandamus to enforce the requirements.

(5)(A) The time limitations under paragraphs (3) and (4) shall apply to an initial application described in paragraph (2), any second or successive application described in paragraph (2), and any redetermination of an application described in paragraph (2) or related appeal following a remand by the court of appeals or the Supreme Court for further proceedings.

(B) In proceedings following remand in the district court, time limits running from the time the State files its answer under paragraph (3) shall run from the date the remand is ordered if further briefing is not required in the district court. If there is further briefing following remand in the district court, such time limits shall run from the date on which a responsive brief is filed or, if no timely responsive brief is filed, the date on which such brief is due.

(C) In proceedings following remand in the court of appeals, the time limit specified in paragraph (4)(B) shall run from the date the remand is ordered if further briefing is not required in the court of appeals. If there is further briefing in the court of appeals, the time limit specified in paragraph (4)(B) shall run from the date on which a responsive brief is filed or, if no timely responsive brief is filed, from the date on which such brief is due.

(6) The failure of a court to meet or comply with a time limitation under this subsection shall not be a ground for granting relief from a judgment of conviction or sentence, nor shall the time limitations under this subsection be construed to entitle a capital applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

* * * * * * *

SECTION 471 OF THE SOCIAL SECURITY ACT

STATE PLAN FOR FOSTER CARE AND ADOPTION ASSISTANCE

SEC. 471. (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) * * *

* * * * * * *

(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks*, including checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28, United States Code),* for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child ❲on whose behalf foster care maintenance payments or adoption assistance payments are to be made❳ *regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child* under the State plan under this part, including procedures requiring that—

(i) in any case *involving a child on whose behalf such payments are to be so made* in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) in any case *involving a child on whose behalf such payments are to be so made* in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

(B) subparagraph (A) shall not apply to a State plan if*, on or before September 30, 2005,* the Governor of the State has notified the Secretary in writing that the State has elected to make subparagraph (A) inapplicable to the State, or if*, on or before such date,* the State legislature, by law, has elected to make subparagraph (A) inapplicable to the State; and

(C) provides that the State shall—

(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part;

(ii) comply with any request described in clause (i) that is received from another State; and

(iii) have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this subparagraph from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases;

[Pursuant to section 502(c)(2) of HR 3132, effective October 1, 2007 paragraph (20) reads as follows:]

(20)(A) **[**unless an election provided for in subparagraph (B) is made with respect to the State,**]** provides procedures for criminal records checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are to be made under the State plan under this part, including procedures requiring that—

(i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) in any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

[(B) subparagraph (A) shall not apply to a State plan if the Governor of the State has notified the Secretary in writing that the State has elected to make subparagraph (A) inapplicable to the State, or if the State legislature, by law, has elected to make subparagraph (A) inapplicable to the State; and]

[(C)] *(B)* provides that the State shall—

(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part;

(ii) comply with any request described in clause (i) that is received from another State; and

(iii) have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this subparagraph from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases;

* * * * * * *

COMMITTEE JURISDICTION LETTERS

Congress of the United States
U.S. House of Representatives
COMMITTEE ON WAYS AND MEANS
1102 LONGWORTH HOUSE OFFICE BUILDING
(202) 225–3625
Washington, DC 20515–6348
http://waysandmeans.house.gov

September 8, 2005

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

I am writing concerning H.R. 3132, the "Children's Safety Act of 2005," which was ordered reported to the House by the Committee on the Judiciary on July 27, 2005.

As you know, the Committee on Ways and Means has jurisdiction over matters concerning certain child welfare programs, particularly as they pertain to foster care and adoption. I am pleased to acknowledge the agreement, outlined in the attached chart, between our Committees to address changes you will include in the Manager's Amendment to the bill. Thus, in order to expedite this legislation for floor consideration, the Ways and Means Committee agrees to forgo action on this bill based on the agreement reached by our Committees and that no other provisions affecting the jurisdiction of the Ways and Means Committee are included in the Manager's Amendment. This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 3132, and would ask that a copy of our exchange of letters on this matter be included in your committee report.

Best regards,

Bill Thomas

Bill Thomas
Chairman

Attachment

cc: The Honorable J. Dennis Hastert
The Honorable Tom DeLay
The Honorable Roy Blunt
The Honorable Nancy Pelosi
The Honorable Steny Hoyer
The Honorable John Conyers, Jr.
The Honorable Charles B. Rangel
Mr. John Sullivan, Parliamentarian

bcc: Allison Giles
Shahira Knight
David Kavanaugh
Matt Weidinger
Carren Turko
Diane Kirkland
Peter Sloan
Chron File

ATTACHMENT

WAYS AND MEANS AMENDMENTS RELATED TO INTRODUCED VERSION OF H.R. 3132, THE "CHILDREN'S SAFETY ACT OF 2005"

Issue	Judiciary and Ways and Means Agreed Changes
Sec. 503 (b) Limitation	• Should read "(b) Limitation - An officer may use the authority under subsection (a) only for the purpose of conducting the background checks required under section 471(a)(20) of the Social Security Act."
Sec. 503 (e) Child Welfare Agency Defined	• Strike "placement of foster or adoptive children." and replace with "licensing or approval of prospective foster or adoptive parents."

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6216
(202) 225–3951
http://www.house.gov/judiciary

September 8, 2005

The Honorable William M. Thomas
Chairman
House Committee on Ways and Means
1102 Longworth HOB
Washington, D.C. 20515

Dear Chairman Thomas:

This letter responds to your letter dated September 8, 2005, concerning H.R. 3132, the "Children's Safety Act of 2005." I agree that the bill contains matters within the jurisdiction of the House Committee on Ways and Means and appreciate your willingness to waive your right to a referral of consideration of H.R. 3132, so that we may proceed to the floor. Your waiver does not prejudice the jurisdictional interest and prerogatives of your committee.

Pursuant to your request, a copy of your letter and this letter will be included in the Committee report.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JULY 27, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:38 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

[Intervening business.]

Chairman SENSENBRENNER. Pursuant to notice, I now call up the bill H.R. 3132, the "Children's Safety Act of 2005," for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 3132, follows:]

I

109TH CONGRESS
1ST SESSION

H. R. 3132

To make improvements to the national sex offender registration program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 2005

Mr. SENSENBRENNER (for himself, Mr. GREEN of Wisconsin, Mr. DELAY, Mr. FOLEY, Mr. CHABOT, Mr. POE, Ms. GINNY BROWN-WAITE of Florida, Mr. GILLMOR, Mr. POMEROY, Mr. CRAMER, and Mr. GRAVES) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To make improvements to the national sex offender registration program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Children's Safety Act of 2005''.

(b) TABLE OF CONTENTS.—

TITLE I—SEX OFFENDER REGISTRATION AND NOTIFICATION ACT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Sex Offender Registration and Notification Act''.

SEC. 102. DECLARATION OF PURPOSE.

In response to the vicious attacks by violent sexual predators against the victims listed below, Congress in this Act establishes a comprehensive national system for the registration of sex offenders:

(1) Jacob Wetterling, who was 11 years old, was abducted in 1989 in Minnesota, and remains missing.

(2) Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted and murdered in 1994, in New Jersey.

(3) Pam Lychner, who was 31 years old, was attacked by a career offender in Houston, Texas.

(4) Jetseta Gage, who was 10 years old, was kidnapped, sexually assaulted, and murdered in 2005 in Cedar Rapids, Iowa.

(5) Dru Sjodin, who was 22 years old, was sexually assaulted and murdered in 2003, in North Dakota.

(6) Jessica Lunsford, who was 9 years, was abducted, sexually assaulted, buried alive, and murdered in 2005, in Homosassa, Florida.

(7) Sarah Lunde, who was 13 years old, was strangled and murdered in 2005, in Ruskin, Florida.

(8) Amie Zyla, who was 8 years old, was sexually assaulted in 1996 by a juvenile offender in Waukesha, Wisconsin, and has become an advocate for child victims and protection of children from juvenile sex offenders.

(9) Christy Ann Fornoff, who was 13 years old, was abducted, sexually assaulted and murdered in 1984, in Tempe, Arizona.

(10) Alexandra Nicole Zapp, who was 30 years old, was brutally attacked and murdered in a public restroom by a repeat sex offender in 2002, in Bridgewater, Massachusetts.

Subtitle A—Jacob Wetterling Sex Offender Registration and Notification Program

SEC. 111. RELEVANT DEFINITIONS, INCLUDING AMIE ZYLA EXPANSION OF SEX OFFENDER DEFINITION AND EXPANDED INCLUSION OF CHILD PREDATORS.

In this title the following definitions apply:

(1) SEX OFFENDER REGISTRY.—The term ''sex offender registry'' means a registry of sex offenders, and a notification program, maintained by a jurisdiction.

(2) JURISDICTION.—The term jurisdiction means any of the following:

(A) A State.

(B) The District of Columbia.

(C) The Commonwealth of Puerto Rico.

(D) Guam.

(E) American Somoa.

(F) Northern Mariana Islands.

(G) The United States Virgin Islands.

(H) A federally recognized Indian tribe.

(3) AMIE ZYLA EXPANSION OF SEX OFFENDER DEFINITION.—The term ''sex offender'' means an individual who, either before or after the enactment of this Act, was convicted of, or adjudicated a juvenile delinquent for, an offense (other than an offense involving sexual conduct where the victim was at least 13 years old and the offender was not more than 4 years older than the victim and the sexual conduct was consensual, or an offense consisting of consensual sexual conduct with an adult) whether Federal, State, local, tribal, foreign (other than an offense based on conduct that would not be a crime if the conduct took place in the United States), military, juvenile or other, that is—

(A) a specified offense against a minor;

(B) a serious sex offense; or

(C) a misdemeanor sex offense against a minor.

(4) EXPANSION OF DEFINITION OF OFFENSE TO INCLUDE ALL CHILD PREDATORS.—The term ''specified offense against a minor'' means an of-

fense against a minor that involves any of the following:

(A) Kidnapping (unless committed by a parent).

(B) False imprisonment (unless committed by a parent).

(C) Solicitation to engage in sexual conduct.

(D) Use in a sexual performance.

(E) Solicitation to practice prostitution.

(F) Possession, production, or distribution of child pornography.

(G) Criminal sexual conduct towards a minor.

(H) Any conduct that by its nature is a sexual offense against a minor.

(I) Any other offense designated by the Attorney General for inclusion in this definition.

(J) Any attempt or conspiracy to commit an offense described in this paragraph.

(5) SEX OFFENSE.—The term ''sex offense'' means a criminal offense that has an element involving sexual act or sexual contact with another, or an attempt or conspiracy to commit such an offense.

(6) SERIOUS SEX OFFENSE.—The term ''serious sex offense'' means—

(A) a sex offense punishable under the law of a jurisdiction by imprisonment for more than one year;

(B) any Federal offense under chapter 109A, 110, 117, or section 1591 of title 18, United States Code;

(C) an offense in a category specified by the Secretary of Defense under section 115(a)(8)(C) of title I of Public Law 105–119 (10 U.S.C. 951 note);

(D) any other offense designated by the Attorney General for inclusion in this definition.

(7) MISDEMEANOR SEX OFFENSE AGAINST A MINOR.— The term ''misdemeanor sex offense against a minor'' means a sex offense against a minor punishable by imprisonment for not more than one year.

(8) STUDENT.—The term ''student'' means an individual who enrolls or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.

(9) EMPLOYEE.—The term ''employee'' includes an individual who is self-employed or works for any other entity, whether compensated or not.

(10) RESIDES.—The term ''resides'' means, with respect to an individual, the location of the individual's home or other place where the individual lives.

(11) MINOR.—The term ''minor'' means an individual who has not attained the age of 18 years.

SEC. 112. REGISTRY REQUIREMENTS FOR JURISDICTIONS.

Each jurisdiction shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this title. The Attorney General shall issue and interpret guidelines to implement the requirements and purposes of this title.

SEC. 113. REGISTRY REQUIREMENTS FOR SEX OFFENDERS.

(a) IN GENERAL.—A sex offender must register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student.

(b) INITIAL REGISTRATION.—The sex offender shall initially register—

(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

(2) not later than 5 days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

(c) KEEPING THE REGISTRATION CURRENT.—A sex offender must inform each jurisdiction involved, not later than 5 days after each change of residence, employment, or student status.

(d) RETROACTIVE DUTY TO REGISTER.—The Attorney General shall prescribe a method for the registration of sex offenders convicted before the enactment of this Act.

(e) STATE PENALTY FOR FAILURE TO COMPLY.—Each jurisdiction shall provide a criminal penalty, that includes a maximum term of imprisonment that is greater than one year, for the failure of a sex offender to comply with the requirements of this title.

SEC. 114. INFORMATION REQUIRED IN REGISTRATION.

(a) PROVIDED BY THE OFFENDER.—The sex offender must provide the following information to the appropriate official for inclusion in the sex offender registry:

(1) The name of the sex offender (including any alias used by the individual).

(2) The Social Security number of the sex offender.

(3) The address and location of the residence at which the sex offender resides or will reside.

(4) The place where the sex offender is employed or will be employed.

(5) The place where the sex offender is a student or will be a student.

(6) The license plate number of any vehicle owned or operated by the sex offender.

(7) A photograph of the sex offender.

(8) A set of fingerprints and palm prints of the sex offender, if the appropriate official determines that the jurisdiction does not already have available an accurate set.

(9) A DNA sample of the sex offender, if the appropriate official determines that the jurisdiction does not already have available an appropriate DNA sample.

(10) Any other information required by the Attorney General.

(b) PROVIDED BY THE JURISDICTION.—The jurisdiction in which the sex offender registers shall include the following information in the registry for that sex offender:

(1) A statement of the facts of the offense giving rise to the requirement to register under this title.

(2) The criminal history of the sex offender.

(3) Any other information required by the Attorney General.

SEC. 115. DURATION OF REGISTRATION REQUIREMENT.

A sex offender shall keep the registration current—

(1) for the life of the sex offender, if the offense is a specified offense against a minor, a serious sex offense, or a second misdemeanor sex offense against a minor; and

(2) for a period of 20 years, in any other case.

SEC. 116. IN PERSON VERIFICATION.

A sex offender shall appear in person and verify the information in each registry in which that offender is required to be registered not less frequently than once every six months.

SEC. 117. DUTY TO NOTIFY SEX OFFENDERS OF REGISTRATION REQUIREMENTS AND TO REGISTER.

An appropriate official shall, shortly before release from custody of the sex offender, or, if the sex offender is not in custody, immediately after the sentencing of the sex offender, for the offense giving rise to the duty to register—

(1) inform the sex offender of the duty to register and explain that duty;

(2) require the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement; and

(3) ensure that the sex offender is registered.

SEC. 118. JESSICA LUNSFORD ADDRESS VERIFICATION PROGRAM.

(a) ESTABLISHMENT.—There is established the Jessica Lunsford Address Verification Program (hereinafter in this section referred to as the ''Program'').

(b) VERIFICATION.—In the Program, an appropriate official shall verify the residence of each registered sex offender not less than monthly or, in the case of a sex offender required to register because of a misdemeanor sex offense against a minor, not less than quarterly.

(c) USE OF MAILED FORM AUTHORIZED.—Such verification may be achieved by mailing a nonforwardable verification form to the last known address of the sex offender. The date of the mailing may be selected at random. The sex offender must return the form, including a notarized signature, within a set period of time. A failure to return the form as required may be a failure to register for the purposes of this title.

SEC. 119. NATIONAL SEX OFFENDER REGISTRY.

The Attorney General shall maintain a national database at the Federal Bureau of Investigation for each sex offender and other person required to register in a jurisdiction's sex offender registry. The database shall be known as the National Sex Offender Registry.

SEC. 120. DRU SJODIN NATIONAL SEX OFFENDER PUBLIC WEBSITE.

(a) ESTABLISHMENT.—There is established the Dru Sjodin National Sex Offender Public Website (hereinafter referred to as the ''Website'').

(b) INFORMATION TO BE PROVIDED.—The Attorney General shall maintain the Website as a site on the Internet which allows the public to obtain relevant information for each sex offender by a single query in a form established by the Attorney General.

(c) ELECTRONIC FORWARDING.—The Attorney General shall ensure (through the National Sex Offender Registry or otherwise) that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions, unless the Attroney General determines that each jurisdiction has so modified its sex offender registry and notification program that there is no longer a need for the Attorney General to do.

SEC. 121. PUBLIC ACCESS TO SEX OFFENDER INFORMATION THROUGH THE INTERNET.

Each jurisdiction shall make available on the Internet all information about each sex offender in the registry, except for the offender's Social Security number, the identity of any victim, and any other information exempted from disclosure by the Attorney General. The jurisdiction shall provide this information in a manner that is readily accessible to the public.

SEC. 122. MEGAN NICOLE KANKA AND ALEXANDRA NICOLE ZAPP COMMUNITY NOTIFICATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—There is established the Megan Nicole Kanka and Alexandra Nicole Zapp Community Program (hereinafter in this section referred to as the ''Program'').

(b) NOTIFICATION.—In the Program, as soon as possible, and in any case not later than 5 days after a sex offender registers or updates a registration, an appropriate official in the jurisdiction shall provide the information in the registry (other than information exempted from disclosure by the Attorney General) about that offender to the following:

(1) The Attorney General, who shall include that information in the National Sex Offender Registry.

(2) Appropriate law enforcement agencies (including probation agencies, if appropriate), and each school and public housing agency, in each area in which the individual resides, is employed, or is a student.

(3) Each jurisdiction from or to which a change of residence, work, or student status occurs.

(4) Any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a).

(5) Social service entities responsible for protecting minors in the child welfare system.

(6) Volunteer organizations in which contact with minors or other vulnerable individuals might occur.

SEC. 123. ACTIONS TO BE TAKEN WHEN SEX OFFENDER FAILS TO COMPLY.

An appropriate official shall notify the Attorney General and appropriate State and local law enforcement agencies of any failure by a sex offender to comply with the requirements of a registry. The appropriate official, the Attorney General, and each such State and local law enforcement agency shall take any appropriate action to ensure compliance.

SEC. 124. IMMUNITY FOR GOOD FAITH CONDUCT.

Law enforcement agencies, employees of law enforcement agencies and independent contractors acting at the direction of such agencies, and officials of jurisdictions and other political subdivisions shall not be civilly or criminally liable for good faith conduct under this title.

SEC. 125. DEVELOPMENT AND AVAILABILITY OF REGISTRY MANAGEMENT SOFTWARE.

The Attorney General shall develop and support software for use to establish, maintain, publish, and share sex offender registries.

SEC. 126. FEDERAL DUTY WHEN STATE PROGRAMS NOT MINIMALLY SUFFICIENT.

If the Attorney General determines that a jurisdiction does not have a minimally sufficient sex offender registration program, the Department of Justice shall, to the extent practicable, carry out the duties imposed on that jurisdiction by this title.

SEC. 127. PERIOD FOR IMPLEMENTATION BY JURISDICTIONS.

Each jurisdiction shall implement this title not later than 2 years after the date of the enactment of this Act. However, the Attorney General may authorize a one-year extension of the deadline.

SEC. 128. FAILURE TO COMPLY.

(a) IN GENERAL.—For any fiscal year after the end of the period for implementation, a jurisdiction that fails to implement this title shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under each of the following programs:

(1) BYRNE.—Subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), whether characterized as the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, the Edward Byrne Memorial Justice Assistance Grant Program, or otherwise.

(2) LLEBG.—The Local Government Law Enforcement Block Grants program.

(b) REALLOCATION.—Amounts not allocated under a program referred to in paragraph (1) to a jurisdiction for failure to fully implement this title shall be reallocated under that program to jurisdictions that have not failed to implement this title.

SEC. 129. SEX OFFENDER MANAGEMENT ASSISTANCE (SOMA) PROGRAM.

(a) IN GENERAL.—The Attorney General shall establish and implement a Sex Offender Management Assistance program (in this title referred to as the ''SOMA program'') under which the Attorney General may award a

grant to a jurisdiction to offset the costs of implementing this title.

(b) APPLICATION.—The chief executive of a jurisdiction shall, on an annual basis, submit to the Attorney General an application in such form and containing such information as the Attorney General may require.

(c) BONUS PAYMENTS FOR PROMPT COMPLIANCE.—A jurisdiction that, as determined by the Attorney General, has implemented this title not later than two years after the date of the enactment of this Act is eligible for a bonus payment. Such payment shall be made under the SOMA program for the first fiscal year beginning after that determination. The amount of the payment shall be—

(1) 10 percent of the total received by the jurisdiction under the SOMA program for the preceding fiscal year, if implementation is not later than one year after the date of enactment of this Act; and

(2) 5 percent of such total, if not later than two years after that date.

(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts otherwise authorized to be appropriated, there are authorized to be appropriated such sums as may be necessary to the Attorney General, to be available only for the SOMA program, for fiscal years 2006 through 2008.

SEC. 130. DEMONSTRATION PROJECT FOR USE OF ELECTRONIC MONITORING DEVICES.

(a) PROJECT REQUIRED.—The Attorney General shall carry out a demonstration project under which the Attorney General makes grants to jurisdictions to demonstrate the extent to which electronic monitoring devices can be used effectively in a sex offender management program.

(b) USE OF FUNDS.—The jurisdiction may use grant amounts under this section directly, or through arrangements with public or private entities, to carry out programs under which the whereabouts of sex offenders are monitored by electronic monitoring devices.

(c) PARTICIPANTS.—Not more than 10 jurisdictions may participate in the demonstration project at any one time.

(d) FACTORS.—In selecting jurisdictions to participate in the demonstration project, the Attorney General shall consider the following factors:

(1) The total number of sex offenders in the jurisdiction.

(2) The percentage of those sex offenders who fail to comply with registration requirements.

(3) The threat to public safety posed by those sex offenders who fail to comply with registration requirements.

(4) Any other factor the Attorney General considers appropriate.

(e) DURATION.—The Attorney General shall carry out the demonstration project for fiscal years 2007, 2008, and 2009.

(f) REPORTS.—The Attorney General shall submit to Congress an annual report on the demonstration project. Each such report shall describe the activities carried out by each participant, assess the effectiveness of those activities, and contain any other information or recommendations that the Attorney General considers appropriate.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

SEC. 131. NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN ACCESS TO INTERSTATE IDENTIFICATION INDEX.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Attorney General shall ensure that the National Center for Missing and Exploited Children has access to the Interstate Identification Index, to be used by the Center only within the scope of its duties and responsibilities under Federal law. The access provided under this section shall be authorized only to personnel

of the Center that have met all the requirements for access, including training, certification, and background screening.

(b) IMMUNITY.—Personnel of the Center shall not be civilly or criminally liable for any use or misuse of information in the Interstate Identification Index if in good faith.

SEC. 132. LIMITED IMMUNITY FOR NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN WITH RESPECT TO CYBERTIPLINE.

Section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032) is amended by adding at the end the following new subsection:

''(g) LIMITATION ON LIABILITY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the National Center for Missing and Exploited Children, including any of its directors, officers, employees, or agents, is not liable in any civil or criminal action for damages directly related to the performance of its CyberTipline responsibilities and functions as defined by this section.

''(2) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Paragraph (1) does not apply in an action in which a party proves that the National Center for Missing and Exploited Children, or its offi-

cer, employee, or agent as the case may be, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this section.

''(3) ORDINARY BUSINESS ACTIVITIES.—Paragraph (1) does not apply to an act or omission related to an ordinary business activity, such as an activity involving general administration or operations, the use of motor vehicles, or personnel management.''.

Subtitle B—Criminal Law Enforcement of Registration Requirements

SEC. 151. AMENDMENTS TO TITLE 18, UNITED STATES CODE, RELATING TO SEX OFFENDER REGISTRATION.

(a) CRIMINAL PENALTIES FOR NONREGISTRATION.—Part I of title 18, United States Code, is amended by inserting after chapter 109A the following:

''CHAPTER 109B—SEX OFFENDER AND CRIMES AGAINST CHILDREN REGISTRY

"§ 2250. Failure to register

"Whoever receives a notice from an official that such person is required to register under the Sex Offender Registration and Notification Act and—

"(1) is a sex offender as defined for the purposes of that Act by reason of a conviction under Federal law; or

"(2) thereafter travels in interstate or foreign commerce, or enters or leaves Indian country;

and knowingly fails to register as required shall be fined under this title and imprisoned not less than 5 years nor more than 20 years.".

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 109A the following new item:

"109B. Sexual offender and crimes against children registry ..... 2250".

(c) FALSE STATEMENT OFFENSE.—Section 1001(a) of title 18, United States Code, is amended by adding at the end the following: "If the matter relates to an offense under chapter 109A, 109B, 110, or 117, then the term of imprisonment imposed under this section shall be not less than 5 years nor more than 20 years."

(d) PROBATION.—Paragraph (8) of section 3563(a) of title 18, United States Code, is amended to read as follows:

''(8) for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act; and''.

(e) SUPERVISED RELEASE.—Section 3583 of title 18, United States Code, is amended—

(1) in subsection (d), in the sentence beginning with ''The court shall order, as an explicit condition of supervised release for a person described in section 4042(c)(4)'', by striking ''described in section 4042(c)(4)'' and all that follows through the end of the sentence and inserting ''required to register under the Sex Offender Registration and Notification Act that the person comply with the requirements of that Act.''

(2) in subsection (k)—

(A) by striking ''2244(a)(1), 2242(a)(2)'' and inserting ''2243, 2244, 2245, 2250'';

(B) by inserting ''not less than 5,'' after ''any term of years''; and

(C) by adding at the end the following: ''If a defendant required to register under the Sex

Offender Registration and Notification Act violates the requirements of that Act or commits any criminal offense for which imprisonment for a term longer than one year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years, and if the offense was an offense under chapter 109A, 109B, 110, or 117, not less than 10 years.'' .

(f) DUTIES OF BUREAU OF PRISONS.—Paragraph (3) of section 4042(c) of title 18, United States Code, is amended to read as follows:

''(3) The Director of the Bureau of Prisons shall inform a person who is released from prison and required to register under the Sex Offender Registration and Notification Act of the requirements of that Act as they apply to that person and the same information shall be provided to a person sentenced to probation by the probation officer responsible for supervision of that person.''.

(g) CONFORMING AMENDMENT OF CROSS REFERENCE.—Paragraph (1) of section 4042(c) of title 18,

United States Code, is amended by striking ''(4)'' and inserting ''(3)''.

(h) CONFORMING REPEAL OF DEADWOOD.—Paragraph (4) of section 4042(c) of title 18, United States Code, is repealed.

SEC. 152. INVESTIGATION BY UNITED STATES MARSHALS OF SEX OFFENDER VIOLATIONS OF REGISTRATION REQUIREMENTS.

(a) IN GENERAL.—The Attorney General shall use the authority provided in section 566(e)(1)(B) of title 28, United States Code, to assist States and other jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for fiscal years 2006 through 2008 to implement this section.

SEC. 153. SEX OFFENDER APPREHENSION GRANTS.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by adding at the end the following new part:

"PART JJ—SEX OFFENDER APPREHENSION GRANTS

"SEC. 3011. AUTHORITY TO MAKE SEX OFFENDER APPREHENSION GRANTS.

''(a) IN GENERAL.—From amounts made available to carry out this part, the Attorney General may make grants to States, units of local government, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia thereof for activities specified in subsection (b).

''(b) COVERED ACTIVITIES.—An activity referred to in subsection (a) is any program, project, or other activity to assist a State in enforcing sex offender registration requirements.

"SEC. 3012. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated such sums as may be necessary for fiscal years 2006 through 2008 to carry out this part.''.

SEC. 154. USE OF ANY CONTROLLED SUBSTANCE TO FACILITATE SEX OFFENSE.

(a) INCREASED PUNISHMENT.—Chapter 109A of title 18, United States Code, is amended by adding at the end the following:

"§ 2249. Use of any controlled substance to facilitate sex offense

''(a) Whoever, knowingly uses a controlled substance to substantially impair the ability of a person to appraise or control conduct, in order to commit a sex offense, other than an offense where such use is an element of the offense, shall, in addition to the punishment provided for the sex offense, be imprisoned for any term of years not less than 10, or for life.

''(b) As used in this section, the term 'sex offense' means an offense under this chapter other than an offense under this section.''.

(b) AMENDMENT TO TABLE.—The table of sections at the beginning of chapter 109A of title 18, United States Code, is amended by adding at the end the following new item:

''2249. Use of any controlled substance to facilitate sex offense.''.

SEC. 155. REPEAL OF PREDECESSOR SEX OFFENDER PROGRAM.

Sections 170101 (42 U.S.C. 14071) and 170102 (42 U.S.C. 14072) of the Violent Crime Control and Law Enforcement Act of 1994, and section 8 of the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 (42 U.S.C. 14073), are repealed.

TITLE II—DNA FINGERPRINTING

SEC. 201. SHORT TITLE.

This title may be cited as the ''DNA Fingerprinting Act of 2005''.

SEC. 202. EXPANDING USE OF DNA TO IDENTIFY AND PROSECUTE SEX OFFENDERS.

(a) EXPANSION OF NATIONAL DNA INDEX SYSTEM.—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132) is amended—

(1) in subsection (a)(1)(C), by striking '', provided'' and all that follows through ''System''; and

(2) by striking subsections (d) and (e).

(b) DNA SAMPLE COLLECTION FROM PERSONS ARRESTED OR DETAINED UNDER FEDERAL AUTHORITY.—

(1) IN GENERAL.—Section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a) is amended

(A) in subsection (a)—

(i) in paragraph (1), by striking ''The Director'' and inserting the following:

''(A) The Attorney General may, as provided by the Attorney General by regulation, collect DNA samples from individuals who are arrested or detained under the authority of the United States. The Attorney General may dele-

gate this function within the Department of Justice as provided in section 510 of title 28, United States Code, and may also authorize and direct any other agency of the United States that arrests or detains individuals or supervises individuals facing charges to carry out any function and exercise any power of the Attorney General under this section.

''(B) The Director''; and

(ii) in paragraphs (3) and (4), by striking ''Director of the Bureau of Prisons'' each place it appears and inserting ''Attorney General, the Director of the Bureau of Prisons,''; and

(B) in subsection (b), by striking ''Director of the Bureau of Prisons'' and inserting ''Attorney General, the Director of the Bureau of Prisons,''.

(2) CONFORMING AMENDMENT.—Subsections (b) and (c)(1)(A) of section 3142 of title 18, United States Code, are each amended by inserting ''and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimi-

nation Act of 2000 (42 U.S.C. 14135a)'' after ''period of release''.

(c) TOLLING OF STATUTE OF LIMITATIONS IN SEXUAL ABUSE CASES.—Section 3297 of title 18, United States Code, is amended by striking ''except for a felony offense under chapter 109A,''.

SEC. 203. STOPPING VIOLENT PREDATORS AGAINST CHILDREN.

In carrying out Acts of Congress relating to DNA databases, the Attorney General shall give appropriate consideration to the need for the collection and testing of DNA to stop violent predators against children.

SEC. 204. MODEL CODE ON INVESTIGATING MISSING PERSONS AND DEATHS.

(a) MODEL CODE REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Attorney General shall publish a model code setting forth procedures to be followed by law enforcement officers when investigating a missing person or a death. The procedures shall include the use of DNA analysis to help locate missing persons and to help identify human remains.

(b) SENSE OF CONGRESS.—It is the sense of Congress that each State should, not later than 1 year after the date on which the Attorney General publishes the model code, enact laws implementing the model code.

(c) GAO STUDY.—Not later than 2 years after the date on which the Attorney General publishes the model code, the Comptroller General shall submit to Congress a report on the extent to which States have implemented the model code. The report shall, for each State—

(1) describe the extent to which the State has implemented the model code; and

(2) to the extent the State has not implemented the model code, describe the reasons why the State has not done so.

TITLE III—PREVENTION AND DETERRENCE OF CRIMES AGAINST CHILDREN ACT OF 2005

SEC. 301. SHORT TITLE.

This title may be cited as the ''Prevention and Deterrence of Crimes Against Children Act of 2005''.

SEC. 302. ASSURED PUNISHMENT FOR VIOLENT CRIMES AGAINST CHILDREN.

(a) SPECIAL SENTENCING RULE.—Subsection (d) of section 3559 of title 18, United States Code, is amended to read as follows:

''(d) MANDATORY MINIMUM TERMS OF IMPRISONMENT FOR VIOLENT CRIMES AGAINST CHILDREN.—A person who is convicted of a felony crime of violence

against the person of an individual who has not attained the age of 18 years shall, unless a greater mandatory minimum sentence of imprisonment is otherwise provided by law and regardless of any maximum term of imprisonment otherwise provided for the offense—

''(1) if the crime of violence results in the death of a person who has not attained the age of 18 years, be sentenced to death or life in prison;

''(2) if the crime of violence is kidnapping, aggravated sexual abuse, sexual abuse, or maiming, or results in serious bodily injury (as defined in section 2119(2)) be imprisoned for life or any term of years not less than 30;

''(3) if the crime of violence results in bodily injury (as defined in section 1365) or is an offense under paragraphs (1), (2), or (5) of section 2244(a), be imprisoned for life or for any term of years not less than 20;

''(4) if a dangerous weapon was used during and in relation to the crime of violence, be imprisoned for life or for any term of years not less than 15; and

''(5) in any other case, be imprisoned for life or for any term of years not less than 10.''.

SEC. 303. ENSURING FAIR AND EXPEDITIOUS FEDERAL COLLATERAL REVIEW OF CONVICTIONS FOR KILLING A CHILD.

(a) LIMITS ON CASES.—Section 2254 of title 28, United States Code, is amended by adding at the end the following:

''(j)(1) A court, justice, or judge shall not have jurisdiction to consider any claim relating to the judgment or sentence in an application described under paragraph (2), unless the applicant shows that the claim qualifies for consideration on the grounds described in subsection (e)(2). Any such application that is presented to a court, justice, or judge other than a district court shall be transferred to the appropriate district court for consideration or dismissal in conformity with this subsection, except that a court of appeals panel must authorize any second or successive application in conformity with section 2244 before any consideration by the district court.

''(2) This subsection applies to an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court for a crime that involved the killing of a individual who has not attained the age of 18 years.

''(3) For an application described in paragraph (2), the following requirements shall apply in the district court:

''(A) Any motion by either party for an evidentiary hearing shall be filed and served not later than 90 days after the State files its answer or, if no timely answer is filed, the date on which such answer is due.

''(B) Any motion for an evidentiary hearing shall be granted or denied not later than 30 days after the date on which the party opposing such motion files a pleading in opposition to such motion or, if no timely pleading in opposition is filed, the date on which such pleading in opposition is due.

''(C) Any evidentiary hearing shall be—

''(i) convened not less than 60 days after the order granting such hearing; and

''(ii) completed not more than 150 days after the order granting such hearing.

''(D) A district court shall enter a final order, granting or denying the application for a writ of habeas corpus, not later than 15 months after the date on which the State files its answer or, if no timely answer is filed, the date on which such answer is due, or not later than 60 days after the case is submitted for decision, whichever is earlier.

''(E) If the district court fails to comply with the requirements of this paragraph, the State may

petition the court of appeals for a writ of mandamus to enforce the requirements. The court of appeals shall grant or deny the petition for a writ of mandamus not later than 30 days after such petition is filed with the court.

''(4) For an application described in paragraph (2), the following requirements shall apply in the court of appeals:

''(A) A timely filed notice of appeal from an order issuing a writ of habeas corpus shall operate as a stay of that order pending final disposition of the appeal.

''(B) The court of appeals shall decide the appeal from an order granting or denying a writ of habeas corpus—

''(i) not later than 120 days after the date on which the brief of the appellee is filed or, if no timely brief is filed, the date on which such brief is due; or

''(ii) if a cross-appeal is filed, not later than 120 days after the date on which the appellant files a brief in response to the issues presented by the cross-appeal or, if no timely brief is filed, the date on which such brief is due.

''(C)(i) Following a decision by a panel of the court of appeals under subparagraph (B), a petition for panel rehearing is not allowed, but rehearing by the court of appeals en banc may be requested. The court of appeals shall decide whether to grant a petition for rehearing en banc not later than 30 days after the date on which the petition is filed, unless a response is required, in which case the court shall decide whether to grant the petition not later than 30 days after the date on which the response is filed or, if no timely response is filed, the date on which the response is due.

''(ii) If rehearing en banc is granted, the court of appeals shall make a final determination of the appeal not later than 120 days after the date on which the order granting rehearing en banc is entered.

''(D) If the court of appeals fails to comply with the requirements of this paragraph, the State may petition the Supreme Court or a justice thereof for a writ of mandamus to enforce the requirements.

''(5)(A) The time limitations under paragraphs (3) and (4) shall apply to an initial application described in paragraph (2), any second or successive application described in paragraph (2), and any redetermination of an

application described in paragraph (2) or related appeal following a remand by the court of appeals or the Supreme Court for further proceedings.

''(B) In proceedings following remand in the district court, time limits running from the time the State files its answer under paragraph (3) shall run from the date the remand is ordered if further briefing is not required in the district court. If there is further briefing following remand in the district court, such time limits shall run from the date on which a responsive brief is filed or, if no timely responsive brief is filed, the date on which such brief is due.

''(C) In proceedings following remand in the court of appeals, the time limit specified in paragraph (4)(B) shall run from the date the remand is ordered if further briefing is not required in the court of appeals. If there is further briefing in the court of appeals, the time limit specified in paragraph (4)(B) shall run from the date on which a responsive brief is filed or, if no timely responsive brief is filed, from the date on which such brief is due.

''(6) The failure of a court to meet or comply with a time limitation under this subsection shall not be a ground for granting relief from a judgment of conviction or sentence, nor shall the time limitations under this subsection be construed to entitle a capital applicant to a stay

of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.''.

(b) VICTIMS' RIGHTS IN HABEAS CASES.—Section 3771(b) of title 18, United States Code, is amended by adding at the end the following: ''The rights established for crime victims by this section shall also be extended in a Federal habeas corpus proceeding arising out of a State conviction to victims of the State offense at issue.''.

(c) APPLICATION TO PENDING CASES.—

(1) IN GENERAL.—The amendment made by this section apply to cases pending on the date of the enactment of this Act as well as to cases commenced on and after that date.

(2) SPECIAL RULE FOR TIME LIMITS.—In a case pending on the date of the enactment of this Act, if the amendment made by subsection (a) provides that a time limit runs from an event or time that has occurred before that date, the time limit shall instead run from that date.

TITLE IV—PROTECTION AGAINST SEXUAL EXPLOITATION OF CHILDREN ACT OF 2005

SEC. 401. SHORT TITLE.

This title may be cited as the ''Protection Against Sexual Exploitation of Children Act of 2005''.

SEC. 402. INCREASED PENALTIES FOR SEXUAL OFFENSES AGAINST CHILDREN.

(a) SEXUAL ABUSE AND CONTACT.—

(1) AGGRAVATED SEXUAL ABUSE OF CHILDREN.—Section 2241(c) of title 18, United States Code, is amended by striking '', imprisoned for any term of years or life, or both.'' and inserting ''and imprisoned for not less than 30 years or for life.''.

(2) ABUSIVE SEXUAL CONTACT WITH CHILDREN.—Section 2244 of chapter 109A of title 18, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1), by inserting ''subsection (a) or (b) of'' before ''section 2241'';

(ii) by striking ''or'' at the end of paragraph (3);

(iii) by striking the period at the end of paragraph (4) and inserting ''; or''; and

(iv) by inserting after paragraph (4) the following:

''(5) subsection (c) of section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title and imprisoned for not less than 10 years and not more than 25 years;''; and

(B) in subsection (c), by inserting ''(other than subsection (a)(5))'' after ''violates this section''.

(3) SEXUAL ABUSE OF CHILDREN RESULTING IN DEATH.—Section 2245 of title 18, United States Code, is amended—

(A) by inserting '', chapter 110, chapter 117, or section 1591'' after ''this chapter'';

(B) by striking ''A person'' and inserting ''(a) IN GENERAL.—A person''; and

(C) by adding at the end the following:

''(b) OFFENSES INVOLVING YOUNG CHILDREN.—A person who, in the course of an offense under this chapter, chapter 110, chapter 117, or section 1591 engages in conduct that results in the death of a person who has not attained the age of 12 years, shall be punished by death or imprisoned for not less than 30 years or for life.''.

(4) DEATH PENALTY AGGRAVATING FACTOR.—Section 3592(c)(1) of title 18, United States Code, is amended by inserting ''section 2245 (sexual abuse resulting in death),'' after ''(wrecking trains),''.

(b) SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN.—

(1) SEXUAL EXPLOITATION OF CHILDREN.—Section 2251(e) of title 18, United States Code, is amended—

(A) by striking ''15 years nor more than 30 years'' and inserting ''25 years or for life'';

(B) by inserting ''section 1591,'' after ''this chapter,'' the first place it appears;

(C) by striking ''the sexual exploitation of children'' the first place it appears and inserting ''aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography'';

(D) by striking ''not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or

under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), 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 35 years nor more than life.'' and inserting ''life.''; and

(E) by striking ''any term of years or for life'' and inserting ''not less than 30 years or for life.''.

(2) ACTIVITIES RELATING TO MATERIAL INVOLVING THE SEXUAL EXPLOITATION OF CHILDREN.—Section 2252(b) of title 18, United States Code, is amended—

(A) in paragraph (1)—

(i) by striking ''paragraphs (1)'' and inserting ''paragraph (1)'';

(ii) by inserting ''section 1591,'' after ''this chapter,'';

(iii) by inserting '', or sex trafficking of children'' after ''pornography'';

(iv) by striking ''5 years and not more than 20 years'' and inserting ''25 years or for life''; and

(v) by striking ''not less than 15 years nor more than 40 years.'' and inserting ''life.''; and

(B) in paragraph (2)—

(i) by striking ''or imprisoned for not more than 10 years'' and inserting ''and imprisoned for not less than 10 nor more than 30 years'';

(ii) by striking '', or both''; and

(iii) by striking ''10 years nor more than 20 years.'' and inserting ''30 years or for life.''.

(3) ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.—Section 2252A(b) of title 18, United States Code, is amended—

(A) in paragraph (1)—

(i) by inserting ''section 1591,'' after ''this chapter,'' the first place it appears;

(ii) by inserting '', or sex trafficking of children'' after ''pornography'';

(iii) by striking ''5 years and not more than 20 years'' and inserting ''25 years or for life''; and

(iv) by striking ''not less than 15 years nor more than 40 years'' and inserting ''life''; and

(B) in paragraph (2)—

(i) by striking ''or imprisoned not more than 10 years, or both'' and inserting ''and imprisoned for not less than 10 nor more than 30 years''; and

(ii) by striking ''10 years nor more than 20 years'' and inserting ''30 years or for life''.

(4) USING MISLEADING DOMAIN NAMES TO DIRECT CHILDREN TO HARMFUL MATERIAL ON THE INTERNET.—Section 2252B(b) of title 18, United States Code, is amended by striking ''or imprisoned not more than 4 years, or both'' and inserting '' and imprisoned not less than 10 nor more than 30 years''.

(5) PRODUCTION OF SEXUALLY EXPLICIT DEPICTIONS OF CHILDREN.—Section 2260(c) of title 18, United States Code, is amended by striking paragraphs (1) and (2) and inserting the following:

''(1) shall be fined under this title and imprisoned for any term or years not less than 25 or for life; and

''(2) if the person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), shall be fined under this title and imprisoned for life.''.

(c) MANDATORY LIFE IMPRISONMENT FOR CERTAIN REPEATED SEX OFFENSES AGAINST CHILDREN.—Section 3559(e)(2)(A) of title 18, United States Code, is amended—

(1) by striking ''or 2423(a)'' and inserting ''2423(a)''; and

(2) by inserting '', 2423(b) (relating to travel with intent to engage in illicit sexual conduct), 2423(c) (relating to illicit sexual conduct in foreign places), or 2425 (relating to use of interstate facilities to transmit information about a minor)'' after ''minors)''.

TITLE V—FOSTER CHILD PROTECTION AND CHILD SEXUAL PREDATOR DETERRENCE

SEC. 501. SHORT TITLE.

This title may be cited as the ''Foster Child Protection and Child Sexual Predator Sentencing Act of 2005''.

SEC. 502. REQUIREMENT TO COMPLETE BACKGROUND CHECKS BEFORE APPROVAL OF ANY FOSTER OR ADOPTIVE PLACEMENT AND TO CHECK NATIONAL CRIME INFORMATION DATABASES AND STATE CHILD ABUSE REGISTRIES; SUSPENSION AND SUBSEQUENT ELIMINATION OF OPT-OUT.

(a) REQUIREMENT TO COMPLETE BACKGROUND CHECKS BEFORE APPROVAL OF ANY FOSTER OR ADOPTIVE PLACEMENT AND TO CHECK NATIONAL CRIME INFORMATION DATABASES AND STATE CHILD ABUSE REGISTRIES; SUSPENSION OF OPT-OUT.—

(1) REQUIREMENT TO CHECK NATIONAL CRIME INFORMATION DATABASES AND STATE CHILD ABUSE REGISTRIES.—Section 471(a)(20) of the Social Security Act (42 U.S.C. 671(a)(20)) is amended—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i)—

(I) by inserting ", including checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28, United States Code)," after "criminal records checks"; and

(II) by striking ''on whose behalf foster care maintenance payments or adoption assistance payments are to be made'' and inserting ''regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child''; and

(ii) in each of clauses (i) and (ii), by inserting ''involving a child on whose behalf such payments are to be so made'' after ''in any case''; and

(B) by adding ''and'' at the end of subparagraph (B); and

(C) by adding at the end the following:

''(C) provides that the State shall—

''(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and ne-

glect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part;

''(ii) comply with any request described in clause (i) that is received from another State; and

''(iii) have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this subparagraph from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases;''.

(2) SUSPENSION OF OPT-OUT.—Section 471(a)(20)(B) of such Act (42 U.S.C. 671(a)(20)(B)) is amended—

(A) by inserting '', on or before September 30, 2005,'' after ''plan if''; and

(B) by inserting ", on or before such date," after "or if".

(b) ELIMINATION OF OPT-OUT.—Section 471(a)(20) of such Act (42 U.S.C. 671(a)(20)), as amended by subsection (a) of this section, is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking "unless an election provided for in subparagraph (B) is made with respect to the State,"; and

(B) by adding "and" at the end of clause (ii); and

(2) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall take effect on October 1, 2005, and shall apply with respect to payments under part E of title IV of the Social Security Act for calendar quarters beginning on or after such date, without regard to whether regulations to implement the amendments are promulgated by such date.

(2) ELIMINATION OF OPT-OUT.—The amendments made by subsection (b) shall take effect on October 1, 2007, and shall apply with respect to

payments under part E of title IV of the Social Security Act for calendar quarters beginning on or after such date, without regard to whether regulations to implement the amendments are promulgated by such date.

(3) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan under section 471 of the Social Security Act to meet the additional requirements imposed by the amendments made by a subsection of this section, the plan shall not be regarded as failing to meet any of the additional requirements before the first day of the first calendar quarter beginning after the first regular session of the State legislature that begins after the otherwise applicable effective date of the amendments. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

SEC. 503. ACCESS TO FEDERAL CRIME INFORMATION DATABASES BY CHILD WELFARE AGENCIES FOR CERTAIN PURPOSES.

(a) IN GENERAL.—The Attorney General shall, upon request of the chief executive of a State, ensure that appropriate officers of child welfare agencies have the authority for ''read only'' online access to the databases of the national crime information databases (as defined in section 534 of title 28, United States Code) to carry out criminal history records checks, subject to subsection (b).

(b) LIMITATION.—An officer may use the authority under subsection (a) only in furtherance of the purposes of the agency and only on an individual relevant to casework of the agency.

(c) PROTECTION OF INFORMATION.—An individual having information derived as a result of a check under subsection (a) may release that information only to appropriate officers of child welfare agencies or another person authorized by law to receive that information.

(d) CRIMINAL PENALTIES.—An individual who knowingly exceeds the authority in subsection (a), or knowingly releases information in violation of subsection (c), shall be imprisoned not more than 10 years or fined under title 18, United States Code, or both.

(e) CHILD WELFARE AGENCY DEFINED.—In this section, the term ''child welfare agency'' means—

(1) the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act; and

(2) any other public agency, or any other private agency under contract with the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act, that is responsible for the placement of foster or adoptive children.

SEC. 504. PENALTIES FOR COERCION AND ENTICEMENT BY SEX OFFENDERS.

Section 2422(a) of title 18, United States Code, is amended by striking ''or imprisoned not more than 20 years, or both'' and inserting ''and imprisoned not less than 10 years nor more than 30 years''.

SEC. 505. PENALTIES FOR CONDUCT RELATING TO CHILD PROSTITUTION.

Section 2423 of title 18, United States Code, is amended—

(1) in subsection (a), by striking ''5 years and not more than 30 years'' and inserting ''30 years or for life'';

(2) in subsection (b), by striking ''or imprisoned not more than 30 years, or both'' and inserting

''and imprisoned for not less than 10 years and not more than 30 years'';

(3) in subsection (c), by striking ''or imprisoned not more than 30 years, or both'' and inserting ''and imprisoned for not less than 10 years and not more than 30 years''; and

(4) in subsection (d), by striking ''imprisoned not more than 30 years, or both'' and inserting ''and imprisoned for not less than 10 nor more than 30 years''.

SEC. 506. PENALTIES FOR SEXUAL ABUSE.

(a) AGGRAVATED SEXUAL ABUSE.—Section 2241 of title 18, United States Code, is amended—

(1) in subsection (a), by striking '', imprisoned for any term of years or life, or both'' and inserting ''and imprisoned for any term of years not less than 30 or for life''; and

(2) in subsection (b), by striking '', imprisoned for any term of years or life, or both'' and inserting ''and imprisoned for any term of years not less than 25 or for life''.

(b) SEXUAL ABUSE.—Section 2242 of title 18, United States Code, is amended by striking '', imprisoned not more than 20 years, or both'' and inserting ''and imprisoned not less than 15 years nor more than 40 years''.

(c) ABUSIVE SEXUAL CONTACT.—Section 2244(a) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking '', imprisoned not more than three years, or both'' and inserting ''and imprisoned not less than 5 years nor more than 30 years'';

(2) in paragraph (3), by striking '', imprisoned not more than two years, or both'' and inserting ''and imprisoned not less than 4 years nor more than 20 years''; and

(3) in paragraph (4), by striking '', imprisoned not more than six months, or both'' and inserting ''and imprisoned not less than 2 years nor more than 10 years''.

SEC. 507. SEX OFFENDER SUBMISSION TO SEARCH AS CONDITION OF RELEASE.

(a) CONDITIONS OF PROBATION.—Section 3563(a) of title 18, United States Code, is amended——

(1) in paragraph (8), by striking ''and'' at the end;

(2) in paragraph (9), by striking the period and inserting ''; and''; and

(3) by inserting after paragraph (9) the following:

''(10) for a person who is a felon or required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.''.

(b) SUPERVISED RELEASE.—Section 3583(d) of title 18, United States Code, is amended by inserting after ''1994).'' the following: ''The court shall order, as an explicit condition of supervised release for a person who is a felon or required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful

conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.''

SEC. 508. KIDNAPPING PENALTIES AND JURISDICTION.

Section 1201 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by striking ''if the person was alive when the transportation began'' and inserting '', or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense''; and

(2) in subsection (b), by striking ''to interstate'' and inserting ''in interstate''.

SEC. 509. MARITAL COMMUNICATION AND ADVERSE SPOUSAL PRIVILEGE.

(a) IN GENERAL.—Chapter 119 of title 28, United States Code, is amended by inserting after section 1826 the following:

''§ 1826A. Marital communications and adverse spousal privilege

''The confidential marital communication privilege and the adverse spousal privilege shall be inapplicable in any Federal proceeding in which a spouse is charged with a crime against—

''(1) a child of either spouse; or

''(2) a child under the custody or control of either spouse.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 119 of title 28, United States Code, is amended by inserting after the item relating to section 1826 the following:

''1826A. Marital communications and adverse spousal privilege.''.

SEC. 510. ABUSE AND NEGLECT OF INDIAN CHILDREN.

Section 1153(a) of title 18, United States Code, is amended by inserting ''felony child abuse or neglect,'' after ''years,''.

SEC. 511. CIVIL COMMITMENT.

Chapter 313 of title 18, United States Code, is amended—

(1) in the chapter analysis—

(A) in the item relating to section 4241, by inserting ''or to undergo postrelease proceedings'' after ''trial''; and

(B) by inserting at the end the following:

''4248. Civil commitment of a sexually dangerous person.'';

(2) in section 4241—

(A) in the heading, by inserting ''**OR TO UNDERGO POSTRELEASE PROCEEDINGS**'' after ''**TRIAL**'';

(B) in the first sentence of subsection (a), by inserting ''or at any time after the commencement of probation or supervised release and prior to the completion of the sentence,'' after ''defendant,'';

(C) in subsection (d)—

(i) by striking ''trial to proceed'' each place it appears and inserting ''proceedings to go forward''; and

(ii) by striking ''section 4246'' and inserting ''sections 4246 and 4248''; and

(D) in subsection (e)—

(i) by inserting ''or other proceedings'' after ''trial''; and

(ii) by striking ''chapter 207'' and inserting ''chapters 207 and 227'';

(3) in section 4247—

(A) by striking '', or 4246'' each place it appears and inserting '', 4246, or 4248'';

(B) in subsections (g) and (i), by striking ''4243 or 4246'' each place it appears and inserting ''4243, 4246, or 4248'';

(C) in subsection (a)—

(i) by amending subparagraph (1)(C) to read as follows:

''(C) drug, alcohol, and sex offender treatment programs, and other treatment programs that will assist the individual in overcoming a psychological or physical dependence or any condition that makes the individual dangerous to others; and'';

(ii) in paragraph (2), by striking ''and'' at the end;

(iii) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(iv) by inserting at the end the following:

''(4) 'bodily injury' includes sexual abuse;

''(5) 'sexually dangerous person' means a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others; and

''(6) 'sexually dangerous to others' means that a person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.'';

(D) in subsection (b), by striking ''4245 or 4246'' and inserting ''4245, 4246, or 4248''; and

(E) in subsection (c)(4)—

(i) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F) respectively; and

(ii) by inserting after subparagraph (C) the following:

''(D) if the examination is ordered under section 4248, whether the person is a sexually dangerous person;''; and

(4) by inserting at the end the following:

''§ 4248. Civil commitment of a sexually dangerous person

''(a) INSTITUTION OF PROCEEDINGS.—In relation to a person who is in the custody of the Bureau of Prisons, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons relating to the mental condition of the person, the Attorney General or any individual authorized by the Attorney General or the Director of the Bureau of Prisons may certify that the person is a sexually dangerous person, and transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was com-

mitted pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is a sexually dangerous person. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

''(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

''(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

''(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume

such responsibility, the Attorney General shall place the person for treatment in a suitable facility, until—

''(1) such a State will assume such responsibility; or

''(2) the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment;

whichever is earlier. The Attorney General shall make all reasonable efforts to have a State to assume such responsibility for the person's custody, care, and treatment.

''(e) DISCHARGE.—When the Director of the facility in which a person is placed pursuant to subsection (d) determines that the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the person or, on motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section

4247(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person's condition is such that—

''(1) he will not be sexually dangerous to others if released unconditionally, the court shall order that he be immediately discharged; or

''(2) he will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the court shall—

''(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the Director of the facility in which he is committed, and that has been found by the court to be appropriate; and

''(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regi-

men of medical, psychiatric, or psychological care or treatment.

''(f) REVOCATION OF CONDITIONAL DISCHARGE.—The director of a facility responsible for administering a regimen imposed on a person conditionally discharged under subsection (e) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that he is sexually dangerous to others in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

''(g) RELEASE TO STATE OF CERTAIN OTHER PERSONS.—If the director of the facility in which a person is hospitalized or placed pursuant to this chapter certifies to the Attorney General that a person, against him all charges have been dismissed for reasons not related to the mental condition of the person, is a sexually dangerous

person, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than 10 days after certification by the director of the facility.''.

SEC. 512. MANDATORY PENALTIES FOR SEX-TRAFFICKING OF CHILDREN.

Section 1591(b) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking ''or imprisonment'' and inserting ''and imprisonment'';

(B) by inserting ''not less than 20'' after ''any term of years''; and

(C) by striking '', or both''; and

(2) in paragraph (2)—

(A) by striking ''or imprisonment for not'' and inserting ''and imprisonment for not less than 10 years nor''; and

(B) by striking '', or both''.

SEC. 513. SEXUAL ABUSE OF WARDS.

Chapter 109A of title 18, United States Code, is amended—

(1) in section 2243(b), by striking ''one year'' and inserting ''five years'';

(2) in section 2244(a)(4), by striking ''six months'' and inserting ''two years'';

(3) in section 2244(b), by striking ''six months'' and inserting ''two years''; and

(4) by inserting after ''Federal prison,'' each place it appears , other than the second sentence of section 2241(c), the following: '', or being in the custody of the Attorney General or the Bureau of Prisons or confined in any institution or facility by direction of the Attorney General or the Bureau of Prisons,''.

○

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes to explain the bill.

On June 30th, I introduced, along with 11 original and bipartisan cosponsors, the Children's Safety Act of 2005. This bill addresses the growing epidemic of violence against children and enhances the safety of children and the security of our communities by enhancing protection from convicted sex offenders through coordinated State registration and coordination programs. In recent months, our country has been devastated by a series of brutal attacks against our children.

In June, America was shocked by the kidnapping of 8-year-old Shasta Groene and the abduction and murder of her 9-year-old brother Dylan. Joseph Duncan, a convicted sex offender, kidnapped these kids from their homes after murdering their older brother, mother, and her boyfriend. Duncan repeatedly sexually abused both Dylan and Shasta before he killed Dylan, dumped his body in a Montana campground, and reportedly boasted to Shasta about using a hammer and shotgun to kill her family. Duncan had previously been convicted for molesting two young boys near a school playground, was released on bail, and subsequently failed to check in with his probation officer.

In March, 9-year-old Jessica Lunsford was abducted, raped, and buried alive. In April, 13-year-old Sarah Lundy was murdered. Both were murdered by convicted sex offenders.

While horrific violence against children is by no means uncommon, statistics show that one in five girls and one in ten boys were sexually exploited before they reached adulthood. And yet less than 50—excuse me, less than 35 percent of these assaults are reported to the authorities.

According to the Department of Justice, one in five children 10 to 17 years old received unwanted sexual solicitations online; 67 percent of all the victims of sexual assault are under age 18; and 34 percent are under the age of 12. One out of every seven victims of sexual assault is under the age of 6.

Last month, the Subcommittee on Crime, Terrorism, and Homeland Security held three hearings focusing on violent crimes against children, sexual exploitation of children, the sex offender registration and notification program, and related issue. Yesterday, I participated in a news conference focusing on this legislation and the urgent need to better protect America's children against sexual predators.

John Walsh of "America's Most Wanted," Ernie Allen from the National Center for Missing and Exploited Children, and Robbie Callaway from the Boys and Girls Clubs, and other victims and representatives of victims organizations urged Congress to enact this legislation. As their testimonials demonstrate, violence against children occurs with heart-breaking regularity and the time for action is now.

This bill helps eliminate loopholes in the sex offender and registration program in important ways. It expands coverage of registration and notification requirements; increases the duration of registration requirements for sex offenders; requires States to provide Internet availability of sex offender information; ensures timely registration by sex offenders and verification; requires sex offenders to register in person and on a regular basis and to provide

details personal information whenever they move to a new area to live, attend school, or work; requires States to notify the Attorney General, law enforcement agencies, schools, housing agencies and development background check agencies, social service agencies, and volunteer organizations in the area where a sex offender may live, work, or attend school; and authorizes demonstration programs for a new electronic monitoring program, such as DPS monitoring, which will requires examination of multijurisdictional monitoring procedures; creates a new national sex offender registry; establishes a new Federal crime for a sex offender's failure to register; authorizes U.S. Marshals to apprehend sex offenders who fail to register; and increases grants to States to apprehend sex offenders who are in violation of registration requirements.

The legislation also revises law relating to the use of DNA evidence; increases penalty for violent crimes committed against children or sexual exploitation of children; streamlines habeas review of State death sentences imposed against child killers; and enhances protection of foster children by requiring foster parents to complete criminal background checks, authorizing child welfare agencies to obtain access to national criminal history databases, and requiring sex offenders to submit to searches as a condition of supervised release or probation.

It's a good bill. I would urge that it be enacted, and I yield to the gentleman from Michigan.

Mr. CONYERS. Thank you, Mr. Chairman. Well, here we are again with a bill that combines several bills. There have been partial hearings on some of them.

Now, all the parts of the bill that deal with trying to invest in preventive solutions that get to the root of this serious social problem—the vulnerability of children to molesters that prey on them—I support. But here is a measure that just incidentally creates about 36 new mandatory minimum criminal penalties.

I have a deep, long-lasting opposition about mandatory minimum sentences, which have been proven arbitrary, ineffective at reducing crime, and a rather considerable waste of our tax money.

Mandatory sentences now constitute almost 10 percent of all those who are incarcerated in State and Federal prisons, are serving life sentences, an 83-percent increase since 1992.

What do we have to show for these statistics? The answer is simple: the largest prison system in the world, roughly quadruple the number of individuals incarcerated in 1985 in this country, at a cost of about $40 billion a year to run and operate.

So my appeal is to Members of this Committee to move past the emotional side of this issue and let's work together to come up with solutions to prevent such tragedies from occurring in the future. And to the extent that we look at registration, Internet consideration, Attorney General and other kinds of notification, fine. But when we start talking about mandatory minimums at about the rate of about three dozen a bill, I know we're rushing to get out of here, but this is sort of going over the top.

Did you know there were two new death penalty eligible offenses installed at a time when all available evidence suggests to many that the death penalty should be curbed, if not eliminated, but certainly not expanded? This spring, 120 death row inmates so far have been exonerated due to new proof of innocence.

What is the point? That the death penalty fails to serve as an adequate deterrent, unfairly punishes the poor, and is very definitely racially biased.

So, in the end, if we're truly serious about protecting our children from the acts of sexual exploitation and violence, we need to invest in solutions of a preventive nature that try more carefully to get at the root of the problem. The measure before us, 3132, fails in that respect in a very large way.

I return any time that may be unused, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, all Members may include opening statements in the record at this point.

[The prepared statement of Mr. Green follows:]

PREPARED STATEMENT OF THE HONORABLE MARK GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Good morning, I want to first thank the Chairman for working with me and many other colleagues to put together this comprehensive bill that will help protect children from violent predators.

Unfortunately the news is all too often riddled with stories of children being abducted, assaulted and/or murdered. Each story is shocking, heartbreaking to see, and, more importantly, means a family's life is forever changed.

Sadly, there are too many examples of brutal acts of violence and exploitation of our children occurring every day. Just think, statistics show that *1 in 5 girls* and *1 in 10 boys* are sexually exploited before they reach adulthood. 67 percent of all victims of sexual assault were juveniles under the age of 18, 34 percent were under the age of 12 and *one of every seven victims of sexual assault was under the age of 6.*

One job our government must do is protect us. That begins with protecting our most vulnerable of citizens—our children. It means ensuring we are giving law enforcement the tools they need to catch the criminals before they escalate to worse crimes. This begins with allowing the police to take a DNA sample when they are booking criminals—DNA fingerprinting. We know that criminals escalate their behavior and that breaking and entering can evolve into violent sexual assault. By expanding the DNA database we will help the police find matches to sex crimes faster which will get these criminals off of the streets. This is a common sense step to help protect our communities.

We also must increase penalties for crimes against children. If for no other reason we need longer sentences because it will keep these monsters off the streets and away from our children. Sexual predators are the worst kind of criminals, not only violating their victim but leaving them with fear, guilt and hurt many years after the attack. These cases lead to suicidal thoughts and actions—I met with a family whose five-year-old was molested and she, at the age of six, is displaying suicidal tendencies. These predators are monsters in every sense of the word and must be locked up for a long time—if not forever. The measures in this legislation will ensure these criminals can be taken off the streets and out of our lives.

This legislation will help protect children, ensure their safety and, hopefully, prevent another tragedy—like the tragedies that struck Amie Zyla, Jessica Lunsford, Sarah Lunde or the many other children we have heard about. It is imperative that we act quickly and send a strong message that we will not allow our children to be victimized. This bill does that and I urge my colleagues to support it.

Thank you.

ATTACHMENT

Chairman F. James Sensenbrenner
House Committee on Judiciary
2138 Rayburn HOB
Washington, DC 20515

Dear Chairman Sensenbrenner:

I am writing to let you know of my gratitude for the introduction of the Child Safety Act of 2005 and my enthusiastic support of this measure. This legislation will help protect children, ensure their safety and, hopefully, prevent another tragedy – like the tragedies that struck Jessica Lunsford, Sarah Lunde and my daughter Amie Zyla.

I am, of course, especially supportive of the provisions in this bill that come from Representative Mark Green's bill, H.R. 2797. Representative Green listened to Amie and helped ease her pain by introducing the Amie Zyla Act in Congress and ensuring that serious juvenile sex offenders will be held to the same key requirements as any other sexual predator.

There are many other provisions that are also very valuable in the fight against sex offenders. For example, I strongly support the provisions to increase the penalties for crimes against kids. If nothing else, we know tougher penalties will keep these monsters off the streets, away from our children for a longer period of time. I also want to specifically endorse another provision in the Child Safety Act that will allow police to take a DNA sample when they are booking a perpetrator. This is critical information in helping to identify offenders – especially repeat offenders.

There are many other provisions in this bill that will help save our children from harm. The bill improves the Sex Offender Registration and Notification Program to ensure that sex offenders register, and keep current, information about where they reside, work and attend school, requires public access to the sex offender registry and requires states to notify other states when a sex offender crosses the border. These requirements are critical steps in keeping our neighborhoods safe for our kids.

I also want to personally thank you and the other members involved in this effort for your dedication to keeping our children safe. I have no doubt the Child Safety Act of 2005 will prevent future victims and save many lives.

Sincerely,

Mark Zyla

Chairman SENSENBRENNER. Are there amendments? Are there amendments? The gentleman from California, Mr. Schiff, for what purpose do you seek recognition?

Mr. SCHIFF. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3132, offered by Mr. Schiff of California. Insert after section 130 the following new section: Section 130A. Bonus Payments to States That Implement Electronic Monitoring. (a) In General.—A State that, within 3 years after the date of the enactment of this Act, has in effect laws and policies described in subsection (b) shall be eligible for a bonus payment described in subsection——

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 3132

OFFERED BY MR. SCHIFF OF CALIFORNIA

Insert after section 130 the following new section:

SEC. 130A. BONUS PAYMENTS TO STATES THAT IMPLEMENT ELECTRONIC MONITORING.

(a) IN GENERAL.—A State that, within 3 years after the date of the enactment of this Act, has in effect laws and policies described in subsection (b) shall be eligible for a bonus payment described in subsection (c), to be paid by the Attorney General from any amounts available to the Attorney General for such purpose.

(b) ELECTRONIC MONITORING LAWS AND POLICIES.—

(1) IN GENERAL.—Laws and policies referred to in subsection (a) are laws and policies that ensure that electronic monitoring is required of a person if that person is released after being convicted of a State sex offense in which an individual who has not attained the age of 18 years is the victim.

(2) MONITORING REQUIRED.—The monitoring required under paragraph (1) is a system that actively monitors and identifies the person's location and timely reports or records the person's presence

near or within a crime scene or in a prohibited area or the person's departure from specified geographic limitations.

(3) DURATION.—The electronic monitoring required by paragraph (1) shall be required of the person—

(A) for the life of the person, if—

(i) an individual who has not attained the age of 12 years is the victim; or

(ii) the person has a prior sex conviction (as defined in section 3559(e) of title 18, United States Code); and

(B) for the period during which the person is on probation, parole, or supervised release for the offense, in any other case.

(4) STATE REQUIRED TO MONITOR ALL SEX OFFENDERS RESIDING IN STATE.—In addition, laws and policies referred to in subsection (a) also includee laws and policies that ensure that the State frequently monitors each person residing in the State for whom electronic monitoring is required, whether such monitoring is required under this section or under section 3563(a)(9) of title 18, United States Code.

(c) BONUS PAYMENTS.—The bonus payment referred to in subsection (a) is a payment equal to 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under each of the following programs:

(1) BYRNE.—Subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), whether characterized as the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, the Edward Byrne Memorial Justice Assistance Grant Program, or otherwise.

(2) LLEBG.—The Local Government Law Enforcement Block Grants program.

(d) DEFINITION.—In this section, the term ''State sex offense'' means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by the following:

(1) Kidnapping of a minor, except by a parent of the minor.

(2) False imprisonment of a minor, except by a parent of the minor.

(3) Criminal sexual conduct toward a minor.

(4) Solicitation of a minor to engage in sexual conduct.

(5) Use of a minor in a sexual performance.

(6) Solicitation of a minor to practice prostitution.

(7) Any conduct that by its nature is a sexual offense against a minor.

(8) Possession, production, or distribution of child pornography, as described in section 2251, 2252, or 2252A of title 18, United States Code.

(9) Use of the Internet to facilitate or commit an offense described in this subsection against a minor.

(10) An attempt to commit an offense described in this subsection against a minor.

Chairman SENSENBRENNER. The gentleman from California is recognized for 5 minutes.

Mr. SCHIFF. I thank the Chairman.

At the outset I want to express my support for the legislation. I have expressed many reservations during the course of time, particularly last year since the *Booker* decision with the growth of proposals that provide mandatory minimums, and those concerns are certainly implicated in this bill. But there are cases, I think, where an exception is warranted, where I can support an exception, and this is one of them.

I have been very discouraged, I know as many around the country, that people that prey on children that are sexual predators recidivate. They do not have a good rate of rehabilitation, and the consequences are devastating.

I had the opportunity just a few weeks ago to sit down with Mark Lunsford, Jessica Lunsford's father, and talk about his terrible experience. And, frankly, I'm much less concerned about those of us on this panel being potential victims of crime than our children being victims of crime or our grandchildren. And we have the highest obligation to keep our kids safe.

So I support the legislation even if there are some provisions in it that I would write differently. But one I wanted to propose as an amendment is one that draws on Florida's experience, Florida's tragic experience, but also their legislative response. Specifically, Florida law establishes a mandatory sentence of 25 years to life behind bars for people convicted of certain sex crimes against children 11 and younger, with lifetime tracking by global positioning satellites after they're released. All other offenders would have to be monitored electronically only during their probation, not for life.

The State of Oklahoma has also passed an electronic monitoring law that applies to repeat offenders.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. SCHIFF. Yes, Mr. Chairman.

Chairman SENSENBRENNER. I have reviewed—I thank the gentleman for yielding. I have reviewed the amendment, and I think the amendment is a great step in the right direction because it does incentivize the States to do the right thing, to track these folks.

The concern that I have with the gentleman's amendment is that the definition of the sex crime in the amendment is not the same as the definition of the sex crime that is in the bill. And I would be willing to work with the gentleman from California, if he would withdraw the amendment at this point, so that we have an identical definition of sex crimes in the bill and in the amendment so there is not any confusion. And either the gentleman can offer, reoffer his amendment that is corrected later on today, or we can offer it when the bill reaches the floor in September.

But at this point I'd like to ask the gentleman to withdraw the amendment so that we have an identical definition of sex crimes in both the bill and the amendment.

Mr. SCHIFF. Mr. Chairman, thank you. I'd be more than willing to do that, and depending on the length of the hearing, perhaps we can correct it in time to take it up again.

Chairman SENSENBRENNER. If the staff will work on that, and I'd like to get it out before the bill is reported, so they've got some-

thing to do between now and the end of the consideration of this bill.

Mr. SCHIFF. Mr. Chairman, if I might just conclude for a moment on the bill itself, again, it's with great reluctance that I embrace a bill that has as many mandatory minimums as this one. But I just don't see, frankly, another way to make sure these people never commit these crimes again. And when I learned, for example, recently of the murder of this family and the kidnapping of these two children, the murder of one of them, the molestation of the other, and the person who did this was out on $15,000 bail, which the judge defended, the prosecutor in that case argued, well, hey, the prosecutor asked for $25,000 bail, which I found equally inexplicable. This was somebody who had a prior conviction for molestation of a child at gunpoint who was now brought up on subsequent charges of molesting another child, and the prosecutor was only asking for $25,000 bail.

You know, I think the vast majority of prosecutors and judges do good, difficult work, but these cases are all too common and too terrifying for parents and too devastating for children. And I'm prepared to embrace the strong measures that are in this bill, and I yield back.

Chairman SENSENBRENNER. Does the gentleman——

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentleman withdraw his amendment?

Mr. SCHIFF. Yes, Mr. Chairman.

Ms. LOFGREN. Would the gentleman yield?

Chairman SENSENBRENNER. The amendment is withdrawn.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. Are there further amendments?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York.

Mr. NADLER. I do not have an amendment. I have a—I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. I just wanted to ask a question in view of the comments of the gentleman from California a moment ago about this tragedy in which the perpetrator was free on bail. That was pre-trial bill? If the gentleman would yield?

Mr. SCHIFF. if the gentleman would yield, as I understand it, yes, it was pre-trial——

Mr. NADLER. Reclaiming my time, I don't believe—and I hope the Chairman or someone will correct me if I'm wrong—that this bill would do anything about pre-trial bail, would it?

Mr. SCHIFF. Would the gentleman yield?

Mr. NADLER. Yes, sir.

Mr. SCHIFF. You know, again, I don't know all the particulars of this case. What it would potentially have had the most significant impact on is the prior conviction for which he had served his time and was out and would have prevented the subsequent—potentially prevented the subsequent molestation, depending on the age of the first victim, which is a question I don't know. But not only would it have had an impact potentially——

Mr. NADLER. Reclaiming my time, this bill would do a lot of things, but I want to be very clear. People make statements about people being released on bail and he should have been on a $15,000 bail or he should have been on $25,000 bail. But the fact of the matter is bail is a question that has to be set—that has to be dealt with on its own merits. And this bill would do nothing about the question of bail. It would do nothing good, it would do nothing bad. As far as I can tell, it would have no impact on that and we shouldn't bring it into this discussion for emotional purposes. I yield back——

Mr. ISSA. Would the gentleman yield?

Mr. NADLER. I'll yield—if I can reclaim my time, I'll yield.

Mr. ISSA. I thank the gentleman. I might only bring to the gentleman's attention that consideration of bail in a judge's mind includes what he's charged with and the length of time of incarceration. The higher the penalty for which he is charged, such as a life imprisonment charge, the greater the flight risk. So very well had there been high minimum penalties, it could have affected his flight risk characteristics and——

Mr. NADLER. Reclaiming my time, that is possible. It might have affected the judge's consideration. I will grant that. But the bill itself—but the bill does nothing specifically about bail, and I don't want to leave anybody with the impression that it does, because there's too much misinformation about this kind of legislation all around, anyway.

Ms. LOFGREN. Would the gentleman yield?

Mr. NADLER. Yes, I'll yield.

Ms. LOFGREN. I thank the gentleman for yielding.

I would just like to note that we can—there's no way to know what a judge would have done on a bail motion with a different set of facts. But I would like to—there has been—I think my colleague Mr. Schiff and others have talked about the issue of mandatory minimums, which I think have had an adverse impact that has not promoted necessarily the goals of justice in America when it comes to drug crimes. I think that has become clear.

However, you know, I formed my opinion in a positive sense on mandatory minimums when it came to child molestation when I was in local government and had occasion to review the sentencing patterns on a daily basis because of our jail overcrowding lawsuit on who was in jail and why. And it was absolutely shocking to me the kind of sentences that were being handed down for people who victimized children. And I came to the conclusion over a period of time, without mentioning any individual judges, that it was because, really, this is a crime that is a majority of the time committed by white men because white men are the majority of men in America and this is a crime that is not—and I think the judges who were of a similar racial and economic background were unwilling to sentence these offenders in a way that their crime deserved.

And I think that the mandatory minimum in this case is really a necessity to overcome that institutional bias on the part of the bench to really be too easy on the offenders who look just like them and who are from an economic class just like them. And it's—I support this bill. It's not perfect, but I just thought it was worthwhile to share that personal experience that I had in local government.

I thank the gentleman for yielding.

Mr. NADLER. Thank you. I thank the gentlelady for her comments, and I yield back the balance of my time.

Mr. COBLE. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. COBLE. And, Mr. Chairman and colleagues, I will not take the full 5 minutes, but I just want to weigh in.

I have previously during this session expressed some reservation about mandatory minimums ad infinitum. I think maybe we can go overboard sometimes with imposing mandatory minimums, but when citizens commit crimes against the most innocent and the most vulnerable in our society, i.e., children, I think perhaps at that point mandatory minimums might well be in order. The gentlelady from California has touched on it. The gentleman from California touched on it. Perhaps the Chairman did.

But that's the extent of my comments, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. Are there amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, number one.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3132, offered by Mr. Scott of Virginia. On page 6, line 19, after the semi-colon, insert "or," and on line 20 strike "or" and all that follows through line 22.

[The amendment follows:]

AMENDMENT TO H.R. 3132
OFFERED BY MR. SCOTT OF VIRGINIA
#1

On page 6, line 19, after the semi-colon, insert "or", and on line 20 strike "or" and all that follows through line 22.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, the intent of this amendment is to remove misdemeanor offenses from the coverage of the bill. This way, the way the scheme works is an offender could be required to register and be subjected to a 5-year mandatory minimum felony for some technical problem with the registration requirement that could be deemed failure to register. For example, a homeless person may have problems registering and may find himself subject to a 5-year mandatory minimum because he didn't get a shelter or where—whether it was a shelter or where he last lived, or whatever.

Once someone is labeled a sex offender under these requirements, people are not likely to make the distinction about how they respond or treat anyone whose name is published. Employment or

other normal activities will not be feasible for anybody on the list because as the list gets more publicity and promotion to protect families from the potential ridicule or harassment that they may be subject to by anxious and sometimes hysterical public with the notoriety of the incidents that has occurred, many offenders will have to leave their homes or be forced out of their families who are trying to avoid the impact on their children or adults with the situation associated with the registry.

Sometimes this registry can have a counter—can have a counterproductive effect. One incidence that has been listed was where a grade school teacher trying to protect their students read the names of everybody on the list to a class. At the mention of one of those names, a student blurted out to another student, "Isn't that your father?"

And so, Mr. Chairman, I'd like—we would hope that if we're going to have this list, it would not include misdemeanor offenses, and I'd hope the Committee would adopt another amendment which I'll offer, which would classify offenders by their assessed risk rather than just the fact that they were convicted. The extent to which we apply such measures will be working its way through the courts, and I hope we will have a much better chance than having those—this scheme actually found constitutional if we put some limitations on it. So I would hope it would be the pleasure to adopt this amendment to eliminate misdemeanor offenses from the coverage of the bill.

Mr. LUNGREN. Would the gentleman yield on that point?

Mr. SCOTT. I yield.

Mr. LUNGREN. I'm just interested in the particular incident the gentleman mentioned. It's been my experience that at times child molestation takes place by the parent or guardian of another child. And you object to the fact that information would be given that a particular child's parent happened to be a registered sex offender when, in fact, at least on numerous occasions that's the avenue by which a child molestation takes place?

Mr. SCOTT. Reclaiming my time, the gentleman is exactly right, but if you're going to be spreading this information all over town, the question is what kind of offenses should be included. This amendment would delete misdemeanor sexual offenses. It could not be the kind of predatory offenses. It could be just a misdemeanor. And you're going to—somebody commits a misdemeanor like that early in their life, for the rest of their life they're on this registry.

Ms. WASSERMAN SCHULTZ. Would the gentleman yield?

Mr. SCOTT. I yield.

Ms. WASSERMAN SCHULTZ. Can you give me an example of the kinds of misdemeanor sex offenses that you're talking about so we can be more clear about what you'd be removing from the bill?

Mr. SCOTT. Contributing to the delinquency of a minor, exposure, some things that would be misdemeanors, early in life.

Ms. WASSERMAN SCHULTZ. What would be an example of contributing to the delinquency of a minor? A sex crime that would be——

Mr. SCOTT. It would be the court rules that it's a sex offense, but it's contributing—well, having sex with a friend that happens to be a 19-year-old and a 15-year-old, having sex, you're on the sexual registry. Of course, that's a felony for which you can get life without parole if you cross a State line under one of those bills. But if

it was just a misdemeanor, you'd still be—these are teenagers—you know, teenagers can be committing these offenses.

Ms. WASSERMAN SCHULTZ. The reason I'm asking——

Mr. SCOTT. Touching.

Ms. WASSERMAN SCHULTZ. I just want to figure out specifically what kinds of crimes—misdemeanor sex crimes are that you'd be removing to ensure that I would feel comfortable knowing that I wouldn't want that type of criminal to be on a sex registry.

Mr. SCOTT. First of all, it can't be too serious because it's a misdemeanor.

Ms. WASSERMAN SCHULTZ. Right.

Mr. SCOTT. And, second of all, it could be committed by someone who is, in fact, a teenager, would have this registry for life. So when they're 43 years old, they're still being registered as a sex offender, having their name read to children in the neighborhood.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. I rise in strong opposition to——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. The accuracy and completeness of the sexual offender registry system is vitally important to our national efforts to fight crimes against kids. It is essential.

One of the opening statements today said that we need to focus more on prevention. This is one of the ways we focus on prevention, by creating usable tools where communities have the information they need to take steps to be safe. It is very important that we build up this registry system so that it is accessible, that it is usable, that it contains the kind of information that we need for communities to be able to make choices and to take into account the actions of those who may move into their community. It is awfully important.

I have far more faith than the gentleman does of the ability of communities, of citizens, of organizations to judge the seriousness of a crime. And so it may be a misdemeanor that is reported, and that can be taken into account when people are able to access that information. But they need to know it.

If someone is convicted of a sex crime against a kid and that person moves into my neighborhood, as a father I demand the right to know that he's there. I cannot take steps to prevent my kids if I don't have that information. It is vitally important.

The bottom line for me is real simple. If people who commit these misdemeanor offenses are worried about being part of the registry, don't commit the crime. They have chosen to commit the crime. And when they chose to commit the crime, yes, they surrendered certain things; and, yes, people are going to find out about what they did. I'm sorry if that's unpleasant for them.

I yield back——

Mr. LUNGREN. Would the gentleman yield for a moment? Would the gentleman yield?

Mr. GREEN. I would be happy to yield to the gentleman.

Mr. LUNGREN. The fact of the matter is if you know anything about these cases, you understand how difficult it is to prosecute sex cases because of the complaining witness is a child. In many

cases, there's on corroborating witness. So oftentimes prosecutors accept a plea to a lesser offense, and for someone to suggest that an inappropriate touching of a sexual nature is—if it's classified as a misdemeanor is an insignificant crime for which we ought not to be aware, I would just—I would just register opposition to that.

The nature of these crimes have in the past been extremely difficult to prosecute. When we first came up with a public registry in California, I heard the same arguments the gentleman has registered, that it would embarrass people, that there would be vigilantes, that they would be targeted, that they would have to move out of town. That may have happened in a very, very, very few cases. I can think of one vigilante case in California since we did that some 12 years ago where someone burned an automobile of someone who was a registered sex offender.

We have penalties in the law for people who would use the registry for purposes of taking violent action against an individual. So I would just say this is—some might call it a unique area of the law, but because of the nature of the crimes, because of the difficulty in prosecuting, because of oftentimes the acceptance of a plea to a lesser offense, I think there is a reason for us to treat these categories of crimes differently.

Ms. LOFGREN. Would the gentleman yield?

Mr. GREEN. Mr. Chairman, in the limited time I have left, I guess I'd also like to bring out another point, and I hope I'll have a chance to talk about it a little bit further on. But a well-publicized case back in my home State of Wisconsin led to the passage in Wisconsin of the Aime Zyla Act, and she was brutally assaulted, but she was assaulted by a young man, a juvenile, I guess a youthful error, some might call it. But the offense he committed was serious. The record had been sealed, so when he was released back into the community, people weren't notified. And, of course, he went on to commit a number of offenses and molest a number of other children, and I blame the incompleteness and the inaccessibility of the sexual offender registry.

It is vitally important that we are able to count upon that registry, and that means making sure that it is complete, that we have the information in there that parents can use, that communities can use, and organizations can use. That's why I think it's so important that this kind of information remain part of the registry, which is warning letter under this legislation.

And with that, Mr. Chairman——

Ms. LOFGREN. Would the gentleman yield?

Mr. GREEN.—I yield back.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you. Mr. Chairman, I rise in support of the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, and I'd like to address some of the arguments.

The idea of a sex—of a registry which follows you for life, while we have to do it in some cases, it is fundamentally against our normal sense of justice. Our normal sense of justice says someone who

commits a crime should be punished for that crime with an appropriate punishment, and once that appropriate punishment is finished, should be free of it and go about his business and try to be—fit into society. That's our normal sense of justice.

Because we know that certain types of crime, certain types of sex crimes tend to have a great degree of recidivism and we want to protect our children and protect our people from them, we say, okay, we'll suspend some of our normal objections to a lifetime hounding of a person, and in order to protect society, we'll have a sexual offenders registry.

I go along with that. That's fine. But it's not the ideal. We don't live an ideal world. We have to do that. But we have to do that only—we should limit it to the seriousness of what we're doing and to the risk that promotes it. And I would submit that if the predicate offense is a misdemeanor, it doesn't justify it.

Now, two arguments are advanced against this. One, there are some serious things that are misdemeanors. Well, if they're serious things, the State or the Federal Government should amend the law and they shouldn't be misdemeanors. They should be felonies. If they're misdemeanors, they're by definition not to serious that you should get a lifetime registry to follow a person for life. And maybe something should be reclassified from misdemeanors to felonies, but that's a different law, that's a different bill. This bill should say that for serious sex offenses, we will strengthen our law on sex registries, and it would be a fine bill if it did that. But that doesn't mean misdemeanors.

Mr. Lungren raises the issue that, well, because of the difficulty of prosecuting some of these offenses, on occasion, maybe many occasions, you get a situation where a prosecutor will accept a plea to a misdemeanor when what was really committed was a felony and, therefore, we better have the sex registry because this guy's really a dangerous guy.

Well, that amendment—or that comment is not totally fallacious, but it's fundamentally subversive of our notion of justice, because what you're really saying is you should punish someone not for what he was convicted of but for what he might have been guilty of but you couldn't prove.

What you're saying is that this guy—we know he committed a felony or we think he committed a felony. The prosecutor thinks he committed a felony. We'll take the prosecutor's word for it, even though he couldn't convict him of it and he took a plea to a misdemeanor. Well, sometimes you have to take pleas to misdemeanors, and sometimes the guy didn't commit the felony. Sometimes people plead to misdemeanors because they can't afford a good lawyer even though they're entirely innocent. It works both ways.

So to predicate a lifetime hounding of a person, which is what a sex registry amounts to, which we may have to do sometimes to protect our children, granted, but to predicate it on something that isn't really serious, on a misdemeanor, on the off chance that maybe the guy really committed a serious crime but you couldn't convict him of it, that is fundamentally subversive of our notion of justice that we punish people for crimes they are convicted of. What this is saying is that we are going to protect ourselves by punishing a person for something of which he was not convicted or

really making a much too serious punishment for a light crime because maybe he was really guilty of a more serious crime.

That doesn't make sense. That we shouldn't do because it destroys our entire system of justice. It destroys the difference between felonies and misdemeanors. It destroys the difference between serious and non-serious crimes. And it destroys the notion of proving guilt beyond a reasonable doubt if we start putting heavy penalties on things because maybe he committed a more serious crime than what he was convicted of.

So if it's not a misdemeanor, if it's a serious crime, use the sex registry. If it's a misdemeanor, it's too light a crime to justify it, and you can't justify it by saying, well, maybe he's really guilty of a more serious crime. So I urge the adoption of this amendment.

Thank you and I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments?

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I have an amendment at the desk, number two.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3132, offered by Mr. Scott of Virginia. On page 7, line 17 strike subsection (I), and redesignate the succeeding subsection accordingly.

[The amendment follows:]

AMENDMENT TO H.R. 3132
OFFERED BY MR. SCOTT OF VIRGINIA
#2

On page 7, line 17 strike subsection (I), and redesignate the succeeding subsection accordingly.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, could I have number three and we can take them en bloc because they're very similar?

Chairman SENSENBRENNER. The clerk will report amendment number three.

The CLERK. Amendment to H.R. 3132, offered by Mr. Scott of Virginia. On page 8, line 13 strike subsection (D).

[The amendment follows:]

AMENDMENT TO H.R. 3132
OFFERED BY MR. SCOTT OF VIRGINIA
#3

On page 8, line 13 strike subsection (D).

Chairman SENSENBRENNER. Without objection, the amendments are considered en bloc, and the gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman amendment two would delete the authority of the Attorney General to essentially legislate who is a sexual predator by delegating to the Attorney General the ability to designate any other offense—any other offense for inclusion in the definition of a specified offense against a minor.

Amendment three deals with the authority of the Attorney General to designate what constitutes a serious sex offense. And both of those, it is unfair for the defendant in an adversarial situation to give the ability of the other side the ability to essentially legislate whether they're guilty or not. If we're going to have standards, we ought to put the standards on who has to register, who doesn't register, and we shouldn't designate to the Attorney General the ability to kind of make it up as he goes along.

There may be, in fact, an unconstitutional delegation of legislative authority to the executive branch under several Supreme Court decisions by giving the Attorney General the ability to make that designation. So I would hope that we would delete that provision.

I yield back.

Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I rise in opposition. These amendments together would take away, as I understand it, the ability, the authority of the Attorney General to add serious sex offenses to the list of offenses for which registration would be required. The sad reality is that Congress is a slow-moving body, and I believe that in this case, these crimes are so serious that the Attorney General needs the ability to add offenses, again, because the registry is such an important part of our national effort against crimes against kids. I think it is appropriate that he have that ability to add those offenses.

Again, what we are talking about here is not putting new penalties. We are talking about making a registry accurate and complete so that communities and parents and organizations can use it and rely upon it. I think it is important that the Attorney General have that authority, and with that I yield back.

Chairman SENSENBRENNER. The question is on the amendments en bloc offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it. The amendments are not agreed to.

Are there further amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, number four.

Chairman SENSENBRENNER. The clerk will report amendment number four.

The CLERK. Amendment to H.R. 3132, offered by Mr. Scott of Virginia. On page 24, line 11 and starting on line 21, strike "less than 5 years nor."

[The amendment follows:]

AMENDMENT TO H.R. 3132
OFFERED BY MR. SCOTT OF VIRGINIA
#4

On page 24, line 11and starting on line 21, strike "less than 5 years nor".

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this amendment would change two mandatory minimum sentences related to the registration requirements to a scheme with a maximum number of years and leave it to the Sentencing Commission and the courts to determine the gradation of seriousness and punishment and the appropriate punishment.

We have been told by the Judicial Conference time and time again that mandatory minimum sentences violate common sense. For someone who deserves the time, they have no effect because they'll get that time. For someone who clearly does not deserve the time, they'll get that time, anyway, whether it makes sense or not.

In our everyday experience, judges can see differences small and great in the facts and circumstances of the cases before them. The name of the crime is often a very poor reflector of the facts and circumstances of the crime, and it makes sense to have a rational assessor who has heard and seen the evidence and the facts and circumstances in the case making the decision of the appropriate sentence within a range that relates to the gradations of seriousness of the crime and the characteristics of the offender. That system was what we established in 1984 with the Sentencing Reform and establishing the Sentencing Commission. Yet we are constantly violating that system with mandatory minimum sentences. Those sentences are not based on any rational determination of their impact but, unfortunately, often just the politics of the day.

The Sentencing Commission has recently substantially enhanced the punishment guidelines for sex offenses against children, and we've already seen the harsh mandatory minimums that we've set in the PROTECT Act. Here we are back again to increase those

mandatory minimums and more before we have even see—had an opportunity to see whether they have an effect or not.

There's one caveat. When we do these mandatory minimums, it's just those with Federal jurisdiction, which means that our Native Americans will bear the unfortunate brunt of this rhetorical flourish. About 70 percent of the cases in Federal jurisdiction involve Native Americans, and there's no suggestion that Native Americans have more problem in this area than others.

And before I finish, Mr. Chairman, I just want to remind everyone that 90 to 95 percent of those who are committing sexual crimes against children are not going to be covered by these registrations, anyway, and 99 percent of those covered and having to register are not a threat. It is a very inefficient way to have registrations and jailings and the expense involved in that. It's a very inefficient way to try to protect children. There are a lot of other things we can do in a much more cost-effective way to prevent child abuse against—child and sexual abuse against children, and this bill is certainly not one of them.

I would hope that we would eliminate this mandatory minimum, and I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I rise in opposition to this amendment, and strongly so.

First off, before I deal specifically with the points of the amendment, the gentleman just made an argument that I think he's going to try to make over and over again today. He's arguing—making an argument that we are unfairly focusing on offenses that may take place in reservations, in tribal jurisdictions. Remember—and I represent as many reservations and as much tribal land as probably anybody in this House. Children of Native Americans are no less worthy of protection, no less deserving of protection than anyone else. And when the argument is made that somehow this shouldn't apply to tribal lands, I think that's offensive.

We need to make sure that children are protected. And it is true that a large part of Federal jurisdiction, Federal lands, may be lands that are in trust. But, nonetheless, those children, many of whom I am fortunate to represent in my neck of the woods, are certainly deserving of our strongest possible protection.

Now to the question of the registry, and the gentleman would remove the mandatory minimum penalty for failing to register as a sex offender when you cross State lines. Again, I've said it before and I think it's so crucial today. We know that the information that can be gleaned from the sexual offender registry is effective. It can help communities, it can help parents, it can help organizations take precautions to keep kids safe. It is vitally important—vitally important—that sex offenders are required to register and required to update the registry when their lives change, when they move, when they change careers. That is information that we must have, that we need to have if we're going to keep our kids safe.

So removing the mandatory minimum here is a terrible idea. It is the heart of this bill that we update our registry and we make

it more accessible, we make it more effective. And taking away the penalty for those who would avoid the accuracy and the reach that the sexual offender registry provides, removing the penalty I think is a terrible idea.

With that I yield back.

Chairman SENSENBRENNER. The question is on the amendment number——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Scott.

Mr. WATT. Mr. Watt, you mean.

Chairman SENSENBRENNER. Mr. Watt. I'm sorry.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman Mr. Watt is recognized for 5 minutes.

Mr. WATT. And I yield to Mr. Scott.

Mr. SCOTT. Mr. Chairman, you had it right. [Laughter.]

Chairman SENSENBRENNER. I'm not fooled.

Mr. SCOTT. Mr. Chairman, I would just point out that this mandatory minimum is not for committing another offense. On page 24, line 11, the section—it says knowingly fails to register as required shall be fined and imprisoned for not less than 5, no more than 20 years. This is not for committing another offense.

Mr. GREEN. Would the gentleman yield?

Mr. SCOTT. This is just failing to register. You can get up to 20 years whether you eliminate the mandatory minimum or not. We're just talking about failing to register.

Mr. GREEN. Would the gentleman yield?

Mr. WATT. I would yield to the gentleman.

Mr. GREEN. So the gentleman does not believe that failing to register is an offense.

Mr. SCOTT. Reclaiming—would the gentleman yield?

Mr. WATT. I would yield to the gentleman.

Mr. SCOTT. I would say that failing to register should subject you to a punishment of up to 20 years.

Mr. GREEN. So it should be—but it is an offense. You agree with that.

Mr. SCOTT. Up to 20 years. But not a mandatory minimum.

Mr. NADLER. Would the gentleman yield?

Mr. WATT. I will yield to the gentleman from New York.

Mr. NADLER. Thank you. I think the distinction here which may be being lost is that it's a heck of a thing to say something is a 5-year minimum, 5 to 20, as opposed to saying up to 20 years. And what the gentleman is saying, I think—correct me if I'm wrong—is that failing to register as opposed to a sex offense itself, but failing to register should be an offense for up to 20 years, but should not have a mandatory minimum of 5 years, just the offense of failing to register. Letting a judge have discretion of saying—it's a serious crime. Up to 20 years in prison, it's a serious crime. You don't need the minimum of 5 years in prison simply for failing to register. So the judge can make that determination.

I think that's what the gentleman is saying. It's clearly an offense. It's clearly a serious offense. It's not a sex offense, and it shouldn't have the mandatory minimum of 5 years, but it could be a serious offense of up to 20 years.

I yield back to the gentleman. I thank the gentleman for yielding.

Mr. WATT. I yield to the gentleman from Virginia.

Mr. SCOTT. I thank the gentleman for yielding.

I want to remind everyone who just voted against my last amendment that this entire process can be provoked with a misdemeanor for which the punishment was less than 1 year, and you're going to get as a result of the punishment for that failing to register for what you committed, the offense was less than 1 year, you can get 5 years mandatory minimum if you fail to register. The original offense was an offense that the Government thought wasn't worth even 12 months, and here you are giving a 5-year mandatory minimum.

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Keller.

Mr. KELLER. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KELLER. And I will yield to Mr. Green.

Mr. GREEN. I thank the gentleman for yielding. Everything that my friend Mr. Scott has said may be on occasion true, but, again, the importance of the registry is so great that I believe that when you are required to report and fail to do so, you have, in fact, committed a very serious offense. And it is a serious offense because you have, at least in part, hurt the accuracy and the completeness of that registry.

Mr. NADLER. Would the gentleman yield?

Mr. GREEN. And as we have heard in case after case in recent months, where the tragedies have arisen in part because of the lack of completeness of that registry, it is a very serious offense when you fail to do something that you have been ordered to do.

I think it should be a mandatory minimum. The gentleman disagrees and that's a fair philosophical difference. But in my view, if we are going to begin to get our arms around the problem of sex crimes against kids, if we are, in fact, going to take steps to prevent future crimes against kids, we have to have tools like this registry. They have to be complete. People have to be able to count upon them. It is in my view a very serious offense.

Mr. NADLER. Would the gentleman yield?

Mr. GREEN. It's not my time.

Chairman SENSENBRENNER. The time belongs to the gentleman from Florida.

Mr. KELLER. Yes, I'll yield.

Mr. NADLER. Thank you. I thank the gentleman for yielding. But the fact is that it is a very serious offense. You're leaving—without the mandatory minimum, it's up to 20 years imprisonment. Normally we write laws that say this shall be punished by a fine not exceeding X thousand dollars and a term of imprisonment not more than 5 years or 20 years or whatever. Twenty years is a very serious sentence, up to 20 years is a very serious sentence. Five years—what you're really saying with this, with the mandatory minimum, is that you should not leave to the judge any discretion to look at what's happening here. And certainly I think that depending on what the initial predicate offense was and what the evidence was, if it was a serious crime, 5 to 20 might be reasonable

for not registering. Maybe 10 to 20 would be reasonable for not registering.

Mr. KELLER. Reclaiming my time——

Mr. NADLER. But if it was not a serious crime——

Mr. KELLER. Reclaiming my time, and I yield to the gentleman from Wisconsin, Mr. Green.

Mr. GREEN. I thank the gentleman for yielding. The problem is under your approach the person may get a month or 2 months. That hardly sends a serious, clear message that this is a serious offense. Yes, it is possible they get 20 years. It is also possible to get a matter of months.

Mr. NADLER. Would the——

Mr. GREEN. I believe that this is a case where we do need to send a very strong signal, and I think that's what a mandatory minimum here does. So that's the difference that we have.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentleman from Florida yield back?

Mr. KELLER. I'll yield back.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you. I strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you. It is theoretically possible that someone could get a month, but the reality is that the Sentencing Commission, which is what we have—we've established a Sentencing Commission to set up ranges for all different types of circumstances. We cannot sitting here envision the different crimes, the different circumstances, the different situations. That's why we have, A, a Sentencing Commission and, B, a judge.

We've all been offended at times by reading of grossly disproportionate sentences for trivial crimes or grossly light sentences for heavy crimes, and that's what inevitably happens when you try to dictate from this Committee room. That's why we have a Sentencing Commission, to make it somewhat finer. That's why we have judges.

And, again, the fact is that if we're saying up to 20 years, you've got to allow a judge, you've got to allow the Sentencing Commission some discretion to look at the situation of this case and say, well, this was a serious sex offense this guy was committed for, and he tried to evade registering and he fled the jurisdiction and he moved next to a school and we're going to hit him with 20 years, or, well, it was only a misdemeanor he was convicted of and it was really trivial, it was only a technicality that we call it under the law a sex offense, and it wasn't as serious—serious enough to be labeled as such, but not as serious. And, anyway, his crime was coming in on the sixth day instead of the fifth day to register and it's technically a violation because we're only giving him 5 days. So we'll give him a year.

You've got to allow some discretion for circumstances that you can't foresee because, otherwise, you get great miscarriages of justice in all directions. And that's why mandatory minimums as a result are not a good idea. And certainly when you're allowing—when

you're talking not about the crime itself but simply failing to register, and when the predicate for that failing to register can be a misdemeanor, a 5-year mandatory minimum does not make any sense at all.

It makes no sense, frankly, to have a mandatory minimum on a failure to register when the predicate is much less than—the predicate offense can be much less than 5 years. The failure to register is much more seriously punished than the sex offense that you're talking about? That doesn't make any sense at all.

Now, if you're saying that this only applies to felonies, to underlying felonies whose minimum sentence is 5 years, maybe. But you got to have some flexibility in the law; otherwise, you're setting up very, very unjust situations, and situations that we can't now foresee. All wisdom does not reside in this room. That's why we have a Sentencing Commission, that's why we have judges, and that's why we shouldn't have this mandatory minimum in this situation.

Mr. SCOTT. Would the gentleman yield?

Mr. NADLER. So I support the amendment, and I yield to gentleman from Virginia.

Mr. SCOTT. Thanks for yielding. I remind people that if the appropriate sentence says usually at least 5 to 20, there could be circumstances where 5 years for something that started off as a misdemeanor—it might have been a technical violation—5 years might be too much in a given circumstance. That's why the Sentencing Commission has explained to us time and time again that mandatory minimums violate common sense. When it violates common sense, you got to impose it anyway.

I would hope that we would allow the Sentencing Commission and the Judge looking at the facts and circumstances to give a punishment up to 20 years but not be bound by a 5-year mandatory minimum in all circumstances.

Thank the gentleman for yielding.

Mr. NADLER. I thank the gentleman. I yield back.

Chairman SENSENBRENNER. The gentleman from South Carolina, Mr. Inglis.

Mr. INGLIS. Move to strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. INGLIS. I'm inclined to agree with the gentleman from Virginia, Mr. Scott. I think that he's got a reasonable amendment. I also agree with Chairman Coble in what he said about my misgivings about mandatory minimum don't apply so much in the case of sexual predators, and the underlying bill I'm happy with. But here we really could be talking about a technical violation that could end up with a 5-year mandatory minimum, which could work great injustice.

For example, I'm working right now with a fellow who's a contractor in Iraq. He has a sexual crime in his background. By all accounts that I have heard from some people in our community, he really has cleaned up his act. He wants back in the active duty. It's going to be hard to get him there. Maybe he gets National Guard, let's say. Maybe he gets called up, and maybe in the calling up process there's confusion about where the gentleman lives. In that case he comes before a judge and he has technically failed to register within 5 days of moving jurisdictions, he's facing a mandatory

minimum of 5 years in that confusion. And I can see some judges saying, "I can't believe I'm going to have to give this guy 5 years."

So it seems to me reasonable to give the judge discretion in a technical violation like that where somebody just fails to register, perhaps because of good reason, confusing about where he's residing and where he is at the moment, say, of call up in this fellow's case.

This hasn't happened. This is a hypothetical. This has not happened to this fellow, but I can see something like that happening, in which case why not make it so that it's just up to 20 years, rather than mandatory 5 and up to 20? It seems reasonable to me.

Mr. GREEN. Would the gentleman yield?

Mr. INGLIS. Happy to yield.

Mr. GREEN. First off, let me say my guess is a fair number of folks who are caught in that situation are going to say it's a technical violation even if it isn't a technical violation. What else are you going to say? But remember who we are talking about here. We are talking about sex offenders, and as we know, the recidivism rates for sex offenders much higher than for other types of crimes. And we also know that each subsequent crime committed against a child is a life in some cases destroyed, a family upended and seriously damaged for many, many years. The tools that they have to take steps to keep their kids safe include an accurate and complete sexual offender registry.

That's why we hold it up to be so important. That's why we have in past Congresses and this Congress and I suspect in future Congresses will take such strides, such important steps to build upon it to make sure that the funding is there for it, to make sure that it is accessible, because it is that important. Some may say a technical violation, but again, remember, on the other hand, creating loopholes and cracks in a system that we have to be able to rely upon, is so very, very important, and that's something I would remind the gentleman of, the types of offenses that we're talking here——

Mr. INGLIS. If I may reclaim my time, it's this, the underlying bill, as I say, requires mandatory minimums for the offense, and I don't have a problem with that. I join Mr. Coble and some others on the Democratic side in saying even though I have real hesitations about mandatory minimums because of the recidivism problem, I'm willing to go with it in this case. But you really are talking about potentially some technical violations, and in those cases, I'm willing to trust a judge. I mean, after all, we do confirm these judges——

Mr. GREEN. If the gentleman will yield?

Mr. INGLIS. Happy to yield.

Mr. GREEN. We are here because unfortunately, judges have failed us in these types of cases. That's one of the reasons that we are here. That's why some of these families are here, that sadly, some judges, a small number, but some judges have failed. Where the discretion has existed, the discretion I'm afraid has—and my colleague and friend, Mr. Schiff, has raised the case early on—I'm afraid that we have an obligation to take strong steps here because in too many cases judicial discretion has failed families and has failed children. That's why we're here taking up this strong legislation.

Chairman SENSENBRENNER. The gentleman's time has expired. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye.

Opposed, no.

The noes appear to have it—recorded vote is ordered. The question is on agreeing to the Scott amendment. Those in favor will, as your names are called, answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

The CLERK. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

Mr. INGLIS. Aye.

The CLERK. Mr. Inglis, aye. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no. Mr. Flake?

Mr. FLAKE. Aye.

The CLERK. Mr. Flake, aye. Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Feeney?

Mr. FEENEY. No.

The CLERK. Mr. Feeney, no. Mr. Franks?

Mr. FRANKS. No.

The CLERK. Mr. Franks, no. Mr. Gohmert?

Mr. GOHMERT. Aye.

The CLERK. Mr. Gohmert, aye. Mr. Conyers?

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers, aye. Mr. Berman?

Mr. BERMAN. Aye.

The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their votes? Gentleman from Texas, Mr. Smith?
Mr. SMITH. I vote no.
The CLERK. Mr. Smith, no.
Chairman SENSENBRENNER. Gentleman from California, Mr. Lungren?
Mr. LUNGREN. Aye.
The CLERK. Mr. Lungren, aye.
Chairman SENSENBRENNER. Further Members who wish to cast of change their votes? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 16 ayes and 17 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to. Are three further amendments? The gentleman from Virginia, Mr. Scott.
Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, Amendment 6,
Chairman SENSENBRENNER. The clerk will report Scott No. 6.
The CLERK. Amendment to H.R. 3132 offered by Mr. Scott of Virginia.
On page 12, line 24, insert "and" after the semicolon; strike subsection "(2)" and redesignate subsections accordingly.
[The amendment follows:]

AMENDMENT TO H.R. 3132
OFFERED BY MR. SCOTT OF VIRGINIA
#6

On page 12, line 24 insert "and" after the semicolon, strike subsection "(2)" and redesignate subsections accordingly.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this strikes section 117, subsection 3, which, quote, "requires the sex offender to read and sign a form stating that the duty to register has been explained and the sex offender understands the registration requirement." The purpose of this is—I mean the statement of understanding is required whether the person actually understands or not. The registration requirement of this and other registry laws are complex. Lawyers who represent sex offenders report their clients often believe that they are in compliance, but are in fact confused, and even the police do not always understand or accurately convey the registration requirement.

This section would essentially relieve the prosecution of the burden of proof as to an essential element of the offense, that as we just provided, will carry a 5-year mandatory minimum. We defeated another amendment so it includes misdemeanors, 5 years mandatory minimum, and in fact the person didn't understand, thought they were in compliance when they actually weren't.

Mr. Chairman, these things can be complex because you have to register where you live or where you work, and where you work can be sometimes confusing. If you're a carpenter and go from place to place, you have to register in all of the jurisdictions. Well, if you thought you just had to work at your employer's place of business and you're registered, and you go somewhere around, are you still in compliance? You could be technically out of compliance, convicted because you signed the statement. And the only purpose of the statement is to relieve the prosecution of the burden of actually having to prove that you understood it, so you have a misdemeanor offense, 5-year mandatory minimum, and you thought you were in compliance when you actually weren't.

I would hope that we would delete the section and I yield back the balance of my time.

Chairman SENSENBRENNER. Gentleman from Wisconsin, Mr. Green?

Mr. GREEN. I move to strike the last word.

Chairman SENSENBRENNER. Gentleman's recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I rise in opposition to the amendment, and the amendment very simply ensures that the sex offender is apprised of his rights and his requirements and his obligations under the registry. I think that's a good thing. Again, we are attaching serious consequences to it. I think it is appropriate that they be fully informed and they be required to read the requirements and sign. I think it makes sense, and quite frankly, I'm

somewhat confused that this is the target of the gentleman's amendment.

Mr. BERMAN. Would the gentleman yield for a question?

Mr. GREEN. Sure, I'd yield for the gentleman.

Mr. BERMAN. The gentleman from Virginia mentioned a requirement to register at your home. Is it "and" at your work or is it "or" at your work?

Mr. GREEN. Well, this provision deals with——

Mr. BERMAN. The registration requirement I'm talking about.

Mr. GREEN. Right, but that's elsewhere in the bill and I'll be happy to get that answer to you later to make sure I'm absolutely accurate. This provision in the gentleman's amendment——

Mr. BERMAN. Is about the understanding, I understand.

Mr. GREEN. Correct, yes.

Mr. BERMAN. But I was just curious——

Mr. GREEN. I will get—I will be happy to get the answer for the gentleman so I am absolutely certain shortly, although that might affect——

Mr. BERMAN. Well, in other words, is there something that——

Mr. GREEN. Reclaiming my time, that doesn't get to this provision because this provision simply says that the person questioned should be notified and have their obligations explained to them, and sign accordingly, correct.

Mr. BERMAN. I tend to agree with the gentleman's arguments. All I'm trying to understand, is there something so incredibly complicated about the obligation of where one registers, that if one—is the place of jurisdiction the county, the State?

Mr. GREEN. I'll be happy to find the answer off of that gentleman, but let me say this, I don't believe that anything we are talking about—I guess the gentleman's question really gets more to the information that's explained to the offender, how well it's explained, the detail that's involved, and of course, we don't deal with that explicitly here in this provision, so I'm afraid I can't provide an entirely satisfactory answer to the gentleman.

I yield back my time, Mr. Chairman.

Chairman SENSENBRENNER. The question is on the——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. Gentleman from North Carolina, Mr. Watt.

Mr. WATT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. WATT. Yield to the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you. I thank the gentleman for yielding. On page 9, line 17, it says—and I apologize to the gentleman from California—I said "or." That was imprecise. It is "and." The language is: A sex offender must register and keep the registration current in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student.

It says where you have to initially register before completing a sentence of imprisonment, or not less than 5 days after being sentenced for that offense if the sex offender is not sentenced to a term of imprisonment, and it says that a sex offender—keeping current, a sex offender must inform each jurisdiction involved, not later

than 5 days after each change of residence, employment or student status.

Now, again, if you're a carpenter or a plumber and cross jurisdictional lines, what does "employee" mean? I don't know. And if you guess wrong, you're looking at a 5-year mandatory minimum. Also, I'll remind people, that this whole thing could have started off with a misdemeanor and you're going to get 5 years mandatory minimum if you guess wrong.

While I have the floor, Mr. Chairman, I just want to remind people of the Department of Justice offender statistics. Overall, sex offenders are less likely than non-sex offenders to be rearrested for any offense within 3 years of release. Generally, non-sex offenders are arrested 68 percent of the time, sex offenders 43 percent of the time, and of the approximately 4,300 child molesters released from prisons in 15 States in 1994, 3.3 percent were arrested for another sex crime against a child within 3 years. In comparison, released offenders with—who are robbers were rearrested 70 percent of the time, burglars 74 percent of the time, larceny 74 percent of the time, motor vehicle thieves 78 percent of the time, possession of stolen property 77 percent of the time, illegal weapons 70 percent of the time——

Mr. GREEN. Would the gentleman yield?

Mr. SCOTT. I yield. It's not my time.

Mr. GREEN. Is the gentleman aware of the studies which suggest——

Mr. WATT. I'll yield to the gentleman.

Mr. GREEN. I thank the gentleman from North Carolina for yielding.

Is the gentleman from Virginia aware of the numerous studies showing that in the area of sex crimes, particularly sex crimes against children, that those crimes are dramatically under reported. And in fact, the actual numbers, one study suggests that from 2001 or at least 2.4 times higher, and that when admitted sex offenders are interviewed under polygraph, the number of offenses that they confess to having been involved with is dramatically higher than what some of the studies the gentleman is citing would suggest.

Mr. SCOTT. Would the gentleman yield?

Mr. WATT. Yield to the gentleman from Virginia.

Mr. SCOTT. I would think that—that's nice speculation. I'm just reading what the Department of Justice has published as the recidivism rates showing child offenders much lower than about anything else. So the suggestion that there is a higher recidivism rate is inconsistent with the numbers the Department of Justice has published.

And so the amendment we're talking about here is just the amendment to keep the offender from getting caught up in a complex requirement, having to sign a form saying he understands it, when in fact he did not, thereby relieving the prosecution of that essential element of the offense having to be proved. And we've indicated that we didn't know and couldn't answer the question as to whether you had to register in your place of residence or employment, or is it and employment? And what does employment mean? Does that mean everywhere you work or just the base of the operations? Do we know? Well, we don't have to worry about it, because

if they guess wrong, they'll be subject to a 5-year mandatory minimum as a result of failing to register for something that started off as a misdemeanor. They're going to end up with 5 years in prison.

Mr. GREEN. Will the gentleman yield? I don't remember whose time it is.

Mr. WATT. It's my time, and I'm looking at Mr. Green. He appears to have been confused by the facts here, so if he wants me to yield to him, I'll yield.

Mr. GREEN. I appreciate it. I am far from confused by the facts, though the gentleman from Virginia may be apparently. First off, the requirements of registration are laid out pretty clearly in section 1 to 14 on pages 10 to 11 of the bill, so I refer the gentleman to those. But I am confused by the numbers that the gentleman from Virginia was citing, and apparently he isn't aware—he didn't answer my question—about the 2001 report from the Center for Sex Offender Management, which dealt head on with the study to which the gentleman refers, and again, the numbers here are dramatically higher——

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. WATT. I yield back.

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. I just wanted to ask the gentleman from Virginia what the impact of the proposed amendment is? As I read section 117, if we strike the semicolon and add an "and" and collapse subsections 1 and 2, is that effectively what we would be doing? How does that affect substantively what's being required? Because as I read the current section I would think you're required to do No. 1 and No. 2 and No. 3. Is it your sense, reading the statute, or reading the bill, that all three things are not currently required and this would change that?

Mr. SCOTT. If the gentleman would yield.

Mr. SCHIFF. Yes.

Mr. SCOTT. The registration process would require the sex offender—inform the sex offender of his duty to register and explain that duty, and ensure that the sex offender is registered. That's 1 and 3. But the idea that you have to sign a form stating that you have received information and that you understand it, only serves the purpose of relieving the prosecution from proving that particular element of the case. If in fact you can show that you had registered in your place of employment, but they have concluded that you should have registered in all the places that you worked, not just the home office, then they don't have to worry about that because you understood it.

Mr. SCHIFF. If I could reclaim my time, I see. I misunderstood the amendment. So you would strike section 2 effectively?

Mr. SCOTT. Right.

Mr. SCHIFF. Reclaiming my time, you know, I guess the concern I would have with that, I think No. 2 is actually designed to be a safeguard so that you don't have a situation where the official says

they inform the sex offender of their duty, but in fact never did, or there's a question about whether in fact they gave them the information. Having the sex offender sign the form, I think improves the likelihood that the appropriate official will actually go through the drill of making sure that they're given this information.

So I guess I view it in a little different context. I view it more as a safeguard than as something curtailing the obligation of the official to really explain what the requirements are.

I'll yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments? The gentleman from California, Mr. Schiff?

Mr. SCHIFF. Mr. Chairman, I have an amendment labeled 95 revised 2 at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3132 offered by Mr. Schiff of California.

Insert after section 130 the following new section.

Section——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman from California is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 3132

OFFERED BY MR. SCHIFF OF CALIFORNIA

Insert after section 130 the following new section:

SEC. 130A. BONUS PAYMENTS TO STATES THAT IMPLEMENT ELECTRONIC MONITORING.

(a) IN GENERAL.—A State that, within 3 years after the date of the enactment of this Act, has in effect laws and policies described in subsection (b) shall be eligible for a bonus payment described in subsection (c), to be paid by the Attorney General from any amounts available to the Attorney General for such purpose.

(b) ELECTRONIC MONITORING LAWS AND POLICIES.—

(1) IN GENERAL.—Laws and policies referred to in subsection (a) are laws and policies that ensure that electronic monitoring is required of a person if that person is released after being convicted of a State sex offense in which an individual who has not attained the age of 18 years is the victim.

(2) MONITORING REQUIRED.—The monitoring required under paragraph (1) is a system that actively monitors and identifies the person's location and timely reports or records the person's presence

near or within a crime scene or in a prohibited area or the person's departure from specified geographic limitations.

(3) DURATION.—The electronic monitoring required by paragraph (1) shall be required of the person—

(A) for the life of the person, if—

(i) an individual who has not attained the age of 12 years is the victim; or

(ii) the person has a prior sex conviction (as defined in section 3559(e) of title 18, United States Code); and

(B) for the period during which the person is on probation, parole, or supervised release for the offense, in any other case.

(4) STATE REQUIRED TO MONITOR ALL SEX OFFENDERS RESIDING IN STATE.—In addition, laws and policies referred to in subsection (a) also includee laws and policies that ensure that the State frequently monitors each person residing in the State for whom electronic monitoring is required, whether such monitoring is required under this section or under section 3563(a)(9) of title 18, United States Code.

(c) BONUS PAYMENTS.—The bonus payment referred to in subsection (a) is a payment equal to 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under each of the following programs:

(1) BYRNE.—Subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), whether characterized as the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, the Edward Byrne Memorial Justice Assistance Grant Program, or otherwise.

(2) LLEBG.—The Local Government Law Enforcement Block Grants program.

(d) DEFINITION.—In this section, the term ''State sex offense'' means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by the following:

(1) a specified offense against a minor; or

(2) a serious sex offense

Chairman SENSENBRENNER. And will the gentleman yield?

Mr. SCHIFF. Yes, Mr. Chairman.

Chairman SENSENBRENNER. I am pleased to support the amendment. I think it cleans up the objection I expressed to his earlier amendment, and I hope we can adopt it.

Mr. SCHIFF. I thank the Chairman, and very briefly, this will help incentivize States to develop the kind of tracking systems that Florida and Oklahoma are pioneering, regrettably as a result of their bad experiences, and I would urge my colleagues to support it.

Mr. NADLER. Would the gentleman yield for a question?

Mr. SCHIFF. Yes.

Mr. NADLER. And perhaps the Chairman would answer the question or the gentleman. What definition was changed, and what is that definition now?

Mr. SCHIFF. The definition section that was changed appears at the end of the amendment under the section labeled "definition." And the term "state sex offense" means any criminal offense in a range of offenses specified by State law, which is comparable to or which exceeds the range of offenses encompassed the following: (1) a specified offense against a minor; or (2) a serious sex offense.

In fact, if I can go on to say we had a third section that included misdemeanor offenses, and we actually struck that because it was not our intention to provide this kind of monitoring for misdemeanor offenses.

Mr. NADLER. Thank you. Reclaiming my time, would the gentleman yield again? In this definition it says the term "state sex offense" means any criminal offense in a range of offenses specified by State law, which is comparable to or which exceeds the range of offenses encompassed by the following: (1) a specified offense against a minor; or (2) a serious sex offense. That 1 and 2, are they defined defenses in Federal law?

Mr. SCHIFF. Reclaiming my time, yes, they are. They're defined in the bill. If you look at page 7 of the bill, the term "sex offense" means a criminal offense that has as an element involving a sexual act or sexual contact with another, or an attempt or conspiracy to commit such an offense. It then goes into serious sex offenses and misdemeanor sex offenses. So we are drawing——

Mr. NADLER. That's on page 7?

Mr. SCHIFF. That's on page 7 of the bill. So we're drawing on the definitions of sex offense that are in the legislation, and the only change really is we have narrowed it not to include misdemeanors because the goal is not to provide in some cases lifetime monitoring for a misdemeanor sex offense, but it is designed to cover specific offenses and serious sex offenses.

Mr. NADLER. Thank you.

Mr. SCHIFF. And with that, I'll yield back the balance of my time.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from California, Mr. Schiff. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it and the amendment is agreed to.

Are there further amendments?

Ms. WASSERMAN SCHULTZ. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Florida, Ms. Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman. Mr. Chairman, Members of the—I'm sorry. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3132 offered by Ms. Wasserman Schultz of Florida.

Add at the end of title V the following:

Sec. 5_____. Non-Federal Civil Confinement Programs for Sexually Violent Predators.

(a) Guidelines.—(1) The Attorney General shall establish guidelines for State programs that require a person who is a——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentlewoman from Florida is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 3132

OFFERED BY MS. WASSERMAN SCHULTZ OF FLORIDA

Add at the end of title V the following:

SEC. 5___. NON-FEDERAL CIVIL CONFINEMENT PROGRAMS FOR SEXUALLY VIOLENT PREDATORS.

(a) GUIDELINES.—(1) The Attorney General shall establish guidelines for State programs that require a person who is a sexually violent predator be ordered by the State to civil confinement in a secure facility immediately following completion of the person's imprisonment if—

(A) upon voluntary disclosure and psychiatric or psychological evaluation, or psychiatric or psychological evaluation as ordered by a court, there is significant reason to believe the person poses a high risk of recidivism; and

(B) the person would not otherwise be subject to confinement.

(2) The guidelines shall include procedures for—

(A) determining probable cause for civil confinement;

(B) reevaluation of the person while confined; and

(C) discharge when it is determined that the person's condition is such that the person is no longer sexually dangerous to others, or will not be sexually dangerous to others, if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment.

(b) DETERMINATION OF SEXUALLY VIOLENT PREDATOR STATUS; WAIVER; ALTERNATIVE MEASURES.—

(1) IN GENERAL.—A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of psychological and psychiatric experts in the behavior and treatment of sex offenders victims' rights advocates, and representatives from the appropriate State law enforcement agencies.

(2) WAIVER.—The Attorney General may waive the requirements of paragraph (1) if the Attorney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.

(3) STATE PREEMPTIONS.—The Attorney General may also approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sex-

ual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.

(c) DEFINITIONS.—For purposes of this section:

(1) The term ''sexually dangerous person'' means a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others.

(2) The term ''sexually dangerous to others'' means that a person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.

(3) The term ''sexually violent offense'' means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18 or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sec-

tions of title 18 or as described in the State criminal code).

(4) The term ''sexually violent predator'' means a person who has been adjudicated a sexual violent predator or convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(5) The term ''mental abnormality'' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a danger to the health and safety of other persons.

(6) The term ''civil confinement'' means placement into the custody of the State confinement facility for control, care, and treatment, in a manner segregated by sight and sound from prisoners in the custody of a correctional facility.

(d) COMPLIANCE.—

(1) COMPLIANCE DATE.—Each State shall have not more than 12 months from the date of enactment of this Act in which to implement this section, except that the Attorney General may grant an addi-

tional 6 months to a State that is making good faith efforts to implement this section.

(2) REIMBURSEMENT OF FUNDS.—

(A) IN GENERAL.—A State that fails to implement this section shall reimburse the Department of Justice for the salaries, equipment, and administrative costs associated with Federal investigation assistance of a crime committed by a person adjudicated and convicted as a sexually violent predator of or from that State.

(B) MERGER.—Funds received by the Department of Justice under this paragraph shall be merged with and available for amounts made available to carry out section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3765), to be allocated to States that have implemented this section.

(e) GRANTS TO STATES FOR COSTS OF COMPLIANCE.—

(1) PROGRAM AUTHORIZED.—

(A) IN GENERAL.—The Director of the Bureau of Justice Assistance (in this subsection referred to as the ''Director'') shall carry out a program, which shall be known as the ''Civil

Confinement Assistance Program'' (in this subsection referred to as the ''CCAP program''), under which the Director shall award a grant to each eligible State to offset costs directly associated with complying with this section.

(B) USES OF FUNDS.—Each grant awarded under this subsection shall be—

(i) distributed directly to the State for distribution to State entities to implement this section; and

(ii) used for training, salaries, equipment, materials, and other costs directly associated with complying with this section.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $20,000,000 to carry out this subsection for each of fiscal years 2006 and 2007.

(2) APPLICATION.—To be eligible to receive a grant under this subsection, the chief executive of a State shall, on an annual basis, submit to the Director an application (in such form and containing such information as the Director may reasonably require) assuring that—

(A) the State complies with (or is making a good faith effort to comply with) this section; and

(B) where applicable, the State has penalties comparable to or greater than Federal penalties for crimes covered by this section.

(3) REGULATIONS.—

(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Director shall promulgate regulations to implement this subsection, including the information that must be included and the requirements that the States must meet in submitting the applications required under this subsection.

(B) ALLOCATIONS.—In allocating funds under this subsection, the Director shall consider each State's annual number of sexually violent offenses committed, sexually violent predator adjudications, recidivism rate for sexually violent predators, and release data for sexually violent offenders.

(4) EVALUATION AND REPORT.—

(A) CONTINUING EVALUATIONS REQUIRED.— The Director shall, on a continuing

basis, study and evaluate the operations of the CCAP program and report on best practices.

(B) ATTORNEY GENERAL REPORT.—Not later than January 31 of each year, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the progress of States in implementing this section and the rate of sexually violent offenses for each State.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman. Mr. Chairman and Members of the Committee, I'm offering an amendment that provide guidelines and incentives for States to civilly confine violent sexual predators. This amendment, in addition to the provision already in the bill that covers Federal sexual violent offenders, would guide States to adopt their own civil confinement laws. Most criminals deemed as sexually violent have broken State rather than Federal laws. This amendment would ensure that we keep many more of them off the street.

The amendment offers a carrot and a stick approach to States by requiring them to reimburse the Federal Government for the cost of Federal investigation assistance for a sexually violent predator. It also provides for a grant assistance program to assist States in implementing a civil confinement law in their State.

As of 2002, 16 States and the District of Columbia have some form of a civil confinement law. Under this amendment, civil confinement would not be limited only to those who admit their illness, but also to those who are deemed too dangerous to return to society without proper treatment and rehabilitation. This diagnosis would be determined by a panel of experts, including psychiatrists, psychologists, law enforcement agencies and mental health professionals.

Texas prison inmate Larry Don McQuay is a convicted child molester, who describes himself as, alternatively, scum of the earth, and a monster. McQuay is currently serving a 20-year sentence for molesting 3 children. Prior to this conviction, McQuay served 6 years of a 8-year sentence for molesting the 6-year-old son of a former girlfriend. He was then released by the State of Texas.

He claims to have molested more than 240 children and has said that he would attack again given the opportunity. We have no idea how many of his victimizations occurred during his period of release.

In my home State of Florida, the pedophile who confessed to killing young Jessica Lunsford, John Couey, had a long history of inappropriate contact with children, and a rap sheet totaling 25 arrests for various crimes. Following a 1991 arrest in central Florida in which Couey admitted to exposing himself to another young girl, he admitted to molesting numerous children over the years, but this was the first time he had been caught.

In his confession to Kissimmee Police, Couey told investigators that the 5-year prison sentence he was about to serve would not cure his desires. State courts and the U.S. Supreme Court have all upheld civil confinement laws that recognize the need for continued confinement in a non-correctional setting when the person is still considered sexually violent after serving his criminal sentence.

According to the Department of Justice, sex offenders are 4 times more likely than non-sex offenders to be arrested for another sex crime after being discharged from prison. Furthermore, of released sex offenders who allegedly committed another sex crime, 40 percent perpetrated the new offense within a year or less of their prison discharge. Among child molesters, 60 percent are in prison for molesting a child 13 years old or younger.

Case studies show that treatment of sexual offenders contributes to community safety, and that persons who attend and cooperate

with these programs are less likely to re-offend and commit another sexual crime, according to several published studies.

But civil confinement by itself is not enough. It is only one part of a comprehensive approach that provides our justice system with all the tools necessary to keep violent criminals off of our streets as long as they remain a threat to society, and particularly, our most vulnerable, our children.

This amendment will allow States to protect communities and provide treatment where possible to a small but extremely dangerous segment of society. When successful treatment is not possible, civil confinement will ensure that our children are protected by ensuring that these violent sexual predators cannot break the heart of one more parent by keeping them confined and our children safer.

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. WASSERMAN SCHULTZ. Yes.

Chairman SENSENBRENNER. I have reviewed the amendment, and I think the gentlewoman is on the right track. There are some drafting problems with the amendment, and if she will withdraw the amendment, I will give her a commitment that between now and the time that this bill goes to the floor in September, we'll get this drafted right, and we'll incorporate it as a part of the bill that passes the House and is sent to the Senate.

Ms. WASSERMAN SCHULTZ. I thank the Chairman for that kind offer. I withdraw the amendment.

Chairman SENSENBRENNER. Any further amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, No. 15.

Chairman SENSENBRENNER. The clerk will report Scott 15.

The CLERK. Mr. Chairman, I don't have amendment No.——

Chairman SENSENBRENNER. Do you have amendment No. 15 now? The clerk will report.

The CLERK. Amendment to H.R. 3132 offered by Mr. Scott of Virginia.

Strike Section 303.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 3132
OFFERED BY MR. SCOTT OF VIRGINIA
#15

Strike Section 303.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, section 303 is the habeas corpus provision of the bill. Section 303 substantially strips the Federal Courts of jurisdiction to entertain habeas corpus petitions in cases involving killing of persons age 18 or

under, under the age of 18, and sets up procedural problems of having to be able to get habeas corpus review.

First, Mr. Chairman, as a constitutional matter, it may be difficult to justify the basis on which this restriction is made. There's no evidence of any constitutional error is less likely to be occurring in cases involving young children, thereby warranting the wholesale preclusion or review. If anything, it's just these kinds of crimes, because of the passions they arise in local communities, that are more likely to be tainted with unfairness.

Second, Mr. Chairman, the provisions are unjust and unpractical. The circumstances which the jurisdiction would be permitted are unjustifiably narrow. It says that a factual predicate would have to—could not have been previously discovered through the exercise of diligence, and the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for the constitutional error, no reasonable fact finder would have found the applicant guilty of an underlying offense.

You can have gross constitutional violations of rights, but still not be able to overcome the no "reasonable fact finder would have found the person guilty." This is an unreasonable restriction, Mr. Chairman, and I would hope that we would put more thought into the significant deletion of habeas corpus review, put more thought into it than just sticking it into a bill that appears to be on its way to passage.

I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. LUNGREN. And rise in opposition to the amendment. Mr. Chairman, this again goes back to the debate as to whether or not the trial experience ought to be the prime experience in the process. As Chief Justice Rehnquist has said many times, under our justice system the trial is supposed to be the main event. It's not supposed to be a mere lounge act in Las Vegas that prepares you for the big act which is the Federal courts coming in and telling us by their wisdom what ought to be done.

Currently, many Federal habeas corpus cases require 10, 15, even 20 years to complete. These delays burden the courts, but more importantly, deny justice to defendants with meritorious claims. They also are deeply unfair to the victims of serious violent crimes. We've had testimony here from a parent whose child has been murdered, and they've been waiting for as long as 20, 25 years for final resolution whether there really is no question about the guilt or innocence, but there's the question about when the Federal courts are going to get finally around to reviewing it.

There seems to be this sense that only the Federal courts can do justice. I mean if that's the case, let's get rid of all the State courts. Let's just go directly to the Federal courts because they have the wisdom within themselves to decide these particular issues.

This bill does nothing to limit State appeals. We should note that the provision does not in any way limit the State court's review of State criminal convictions, nor does it affect the U.S. Supreme Court's review of either a defendant's direct appeals or State ha-

beas petition. The provision only restricts the Federal habeas review that begins in the lower Federal courts after—and I repeat—after all State appeals and U.S. Supreme Court cert review are completed.

Congress unquestionably has the authority to limit such review. Some people have said in debate that we're doing something to the great writ. This has nothing to do with the great writ that's in the Constitution. This is the statutory writ that was created I believe in 1867, a statutory writ that doesn't have to exist. Congress has the full power to eliminate this if they wish to, or to limit it in any way, shape or form. And under the circumstances we're talking about, with the testimony that we have received from parents who have suffered such a delay, let me just refer you to the testimony we heard from Ms. Carol Fornoff, whose 13-year-old daughter was raped and murdered in Tempe, Arizona in 1984. The evidence of the guilt of the man convicted of killing her daughter is overwhelming. Yet today, 21 years after Christy Ann Fornoff was murdered, the defendant is still litigating the habeas appeals in the Federal courts.

Mrs. Fornoff asked us this: "I understand that the Federal Government has a right to create such a system. It can let the Federal courts hear any challenge to a State conviction at any time with no limits. My question to you, Mr. Chairman, is why would we want such a system? Why would we want a system that forces someone like me to relive my daughter's murder again and again and again. My daughter's killer already litigated all the challenges to his case in the State courts. Why should we let him bring all the same legal claims again for another round of lawsuits in the Federal courts? Why should this killer get a second chance? My daughter never had a second chance."

The gentleman has talked about the clear and convincing standard. It is appropriate and necessary, and the reason for requiring that habeas evidence be able to show clear and convincing proof of innocence rather than just a preponderance is simple and basic: it is the jury, the jury that saw all of the witnesses testify and that heard all of the evidence when it was fresh. If the jury comes to a conclusion about the facts after reviewing all the evidence at trial, that conclusion is entitled to deference. Otherwise they're just wasting their time. It should not be overruled if a contrary conclusion appears probable but is not clear and convincing.

The jury's finding should be set aside only if a contrary finding is clear enough that it outweighs the superior access to the evidence enjoyed by the jury. The jury sees the witnesses. It sees their demeanor. It gets to check them to see if they're honest or not. We're talking about a review years after by a Federal judge that doesn't have the opportunity to do that, and because of that, the evidence standard should be clear and convincing, not mere a preponderance of the evidence.

The decades long delays in Federal habeas corpus are unfair to everyone, especially the victims and the victim's family. That simply is why we have this in this bill. It is that important. People understand it now. Remember, we are not denying any constitutional right. This is a statutory creation of Congress. We have the right and the ability to change it as we see fit, and for those rea-

sons, I would suggest that the gentleman's amendment ought to be voted down.

Chairman SENSENBRENNER. The gentleman's time is expired.

The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. In 1996 this Committee and this Congress passed the Antiterrorism and More Effective Death Penalty Act of 1996. I voted against that bill, but that bill, which is now the law, severely restricted habeas corpus access to the Federal courts against State court decisions on death penalties or other serious crimes. We've already severely restricted habeas corpus access. What this bill does is to say that when you're talking about alleged acts of crimes against children, sexual crimes against children, we should further severely restrict habeas corpus acts more than we have already done for all crimes or for all allegations of crimes which this includes.

Mr. LUNGREN. Will the gentleman yield?

Mr. NADLER. No, I will not at this point.

Now, habeas corpus is not something you do because you want to be nice to the prisoner. It is something that we have done in order to provide procedural due process to increase the odds that we get the right results, that we do not convict innocent people, and thereby, if we've convicted an innocent person, the real child molester is walking free in society because we think we've got the real guy behind bars.

Now, the fact is that the effect of the provision to further restrict habeas corpus would be to bury meritorious claims, when they occur, of innocence, and for each innocent defendant precluded from court, a guilty murderer or a guilty child molester is remaining free, at liberty to strike again.

Now, the specifics here, this says that you cannot get habeas corpus review, is a factual—unless a—well, a factual predicate that could not have been—you have to establish a factual predicate that could not have been previously discovered through the exercise of due diligence, but that would preclude the vast majority of claims, which, however meritorious, however innocent the alleged person may be, might have been discovered through the exercise of due diligence but wasn't because very often the court-appointed counsel in some of our States that get paid pennies a day, didn't do the job. We know that in the majority of cases where people sentenced to death were found innocent by DNA proof, the real reason the miscarriage of justice occurred, that an innocent person was found guilty of murder and the murderer is walking free, was because of ineffective assistance of court-appointed counsel who was paid pennies a day. This would simply help us keep that situation going.

It also would exclude all cases in which the factual predicate was indeed previously discovered and presented to the State court but the State court disregarded it.

Second claim is that the facts underlying the claim would be sufficient to establish—second provision of the bill, rather—the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense, close quote.

This is unfair because many gross constitutional violations of fair trial rights would pass this test. For example, you could prove that

a juror would bribed, and it would pass this test. You could prove that the appointed defense lawyer was asleep, and it would pass this test. Because the court can still say, well, maybe a juror was bribed, but no reasonable fact finder would have found to the contrary anyway, guessed the judge.

Many capital cases turn on egregious errors at the sentencing phase, and such claims would be excluded. We know that many of the cases where people have been proven innocent by DNA would be excluded from habeas corpus review by these tests which we're putting into this bill.

I submit, Mr. Chairman, that, you know, we heard from Mr. Lungren, that why are you retrying the case? You're not retrying the case. The person is in jail, and even if it takes a few years, he's in jail. It does it no harm. Where there may in fact be real innocence, real constitutional objections, a real objection where—we heard that the jury has seen all the facts. Very often the jury hasn't seen all the facts because the sleeping defense attorney didn't bother to bring the facts, or because the prosecution hid the facts, or because no one knew the facts.

The fact is that we know that a fairly high proportion, where we have actual scientific evidence, a fairly high proportion of our convictions are erroneous. Very often we don't find them because we don't have the scientific evidence, but that should tell us to be humble. Human justice, human institutions are not perfect. Only God's justice is perfect, and as long as we know that our justice is not perfect, we ought to allow the possibility of review while the offender is safely in jail, and we should not cut it off when we know that by so doing many innocent people will be—will remain convicted, and many guilty people will remain free to roam the streets and molest our children.

I suggest——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. NADLER. I ask unanimous consent for one additional minute.

Chairman SENSENBRENNER. Without objection.

Mr. NADLER. I thank the Chairman.

So I suggest that we rethink this, that we pass the gentleman's amendment. These additional restrictions of habeas corpus over and above those that we placed in the bill, that we were told then were fine, were completely sufficient, that we placed in the law 9 years ago, we don't have to place further restrictions on habeas corpus just in these crimes as if it is likely that because these are particularly heinous crimes, that somehow the people accused are more likely to be guilty than in other crimes. They may be guilty, they may be innocent. We should—our courts of law should give every avenue of proof both ways so we can maximize the odds that we get it right.

So I urge the gentleman's amendment to be adopted. I thank you.

Chairman SENSENBRENNER. The gentleman's time has once again expired.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Mr. Chairman, I yield to the gentleman from California.

Mr. LUNGREN. I thank the gentleman for yielding.

The gentleman from New York I hope misspoke when he referred to these cases as someone who has been alleged to have committed these crimes. We're talking about habeas corpus. That is after a conviction. This person has been charged, probably indicted as a result of a grand jury, has been prosecuted, has been found guilty by a jury of his or her peers, has had the judge with the opportunity to overrule that if he or she believes that ought to be the case. If it's a capital case, has had a bifurcated trial in which after guilt or innocence they make the determination as to whether or not it qualifies for the death penalty, and then whether the aggravating circumstances outweigh the mitigating circumstances, and then at least in my State of California, one has a direct combined appeal to the California Supreme Court and the habeas, then has an opportunity to go to cert directly to the Supreme Court. Then we're talking about habeas corpus.

This is hardly someone who is alleged to have committed a crime. This is a convicted individual who has had greater processes—and we're talking the death penalty——

Mr. NADLER. Would the gentleman yield?

Mr. LUNGREN.—than anybody else. No. I'm responding to what the gentleman said. The gentleman made a statement about alleged perpetrator of a crime.

Then with respect to the processes that we have, why the due diligence predicate? It is appropriate and necessary. State prosecutors have stressed the importance of using this standard as a gateway for allowing procedurally improper claims to proceed for the following reasons.

First, it is necessary to prevent exception from being used to relitigate the same evidence presented at trial. The purpose of habeas review is not simply to relitigate the trial, to reweigh the same evidence that the jury already considered. Yet if the standard for an exception to procedural rules were just a claim of innocence, any defendant who went to trial could simply present the same evidence that he presented to and was rejected by the jury.

Secondly, it's necessary to present claims based on insubstantial or cumulative evidence that defense counsel had access to and chose not to use. In every criminal trial, as we know, the defense counsel would choose not to use some of the exculpatory evidence that's available to him. Such evidence may be cumulative. It merely reproves a fact whose existence already is strongly proved by other evidence, or the evidence may be insubstantial. It does not show much. A system or procedure simply could not function if all such evidence could be used as a basis for further litigation and further hearings.

There must be a gatekeeper in place for narrowing the range of evidence to that which is truly worth a second look. Evidence that previously was not available to the defense meets this standard.

Now, the gentleman said, what's the harm? They're sitting there in jail or they're sitting there in prison. Listen to the testimony of the parents of the people who have been killed. Listen to what they

say. Listen to the harm that they undergo. I mean I got a case in my old district, Robin Samsoe, 12 years old, 1979, shortly after I was here in the Congress the first time. Huntington Beach, California. This person brutally raped and murdered. And yet after all the evidence is in that goes to the proof of absolute guilt in this case, in June 2003, 24 years after this child was murdered, the Federal Court of Appeals on the Ninth Circuit granted the man a new trial.

There's no evidence whatsoever, in my judgment, that that person in fact did not commit the crime, but in any event, why did it take 24 years for that to happen? What does that do to the parent who has to go through that? Listen to these people talking about what they go through. So I reject absolutely the notion of the gentleman from New York, it does no harm. It does tremendous harm to the families involved. It does tremendous harm to the people, the public who believes in a system of justice, that what's going to happen to them? They can be left slowly twisting in the wind for years and years and years and years because somehow some people believe that because you put a Federal judge's robe on, you know far more than the State court judge.

I've said this before. We had a Federal District Court judge in California named Malcolm Lucas. He was named by George Deukmejian, our Governor, as Chief Justice of the California Supreme Court. Suddenly he lost all of his wisdom. He lost all of his constitutional knowledge. He lost all of his fairness because he had taken off the Federal robe and instead put on the robe of the Chief Justice of the California Supreme Court.

I reject that notion absolutely and utterly. There ought to be limitations on the abuse of habeas corpus.

Thank you very much.

Mr. BERMAN. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose the gentleman from California, Mr. Berman, seek recognition?

Mr. BERMAN. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. BERMAN. I yield to the gentleman from New York.

Mr. NADLER. I thank the gentleman for yielding.

Mr. Chairman, I must comment on a number of things. I probably shouldn't have used the word "alleged," but the fact is—and obviously if someone's been adjudged guilty, he has to be presumed guilty—but the fact is that 44 percent of the death penalty convictions that reach a Federal court on habeas corpus are found to have violated procedural due process and are remanded for retrial, and a fair percentage of those people are found to be innocent at the end. Our system of justice is not perfect.

Number 2. Most of the time, you talk about 24 years till it came—till a new trial was granted. Most of the time that is spent on Federal review these days is spent on wasting time, going back and forth to see whether or not the procedural hurdle that we have enacted to getting a habeas review of the conviction, whether you have met those hurdles. Once you've met those hurdles, the habeas review is fairly quickly. If we'd take down those hurdles, you wouldn't have all the litigation on whether they jump through the hoops properly.

Certainly, this fellow spent 24 years in jail and then was granted a new trial, and you think that he was guilty. Well, the Federal Court, after 24 years, obviously felt that he didn't get a fair trial. Maybe he was guilty, maybe he wasn't. I have no idea, I don't know the case. But if in fact he wasn't guilty, he spent 24 years in jail, and he wasn't guilty. And the fact is that we know from scientific evidence, where the scientific evidence, the DNA evidence is available, that a lot of our convictions are wrong. So it is not harmless error to allow habeas review, to allow another review.

And when 44 percent of the death penalties—we're not talking just about death penalties here—but if 44 percent of the death penalties that get habeas review are found that the conviction violate fair trial standards and they have to be retried, that tells you that too many of the States are cutting too many corners. And you talk about a trial attorney, a defense attorney, who chose not to use certain evidence, we know that in a fair number of States, the judge appoints or the court appoints a defense attorney.

That defense attorney has 500 cases pending, doesn't bother hiring expert witnesses, doesn't bother getting a handwriting expert, doesn't bother doing—performing due diligence, and you don't get a real fair trial. He didn't choose, as a matter of trial strategy not to introduce this evidence. He didn't bother because he was only being paid $2 an hour or whatever. That happens in many of our States. That's one of the reasons we must have habeas review, and that's why a lot of people don't get fair trials and we have a lot of reversals in habeas review because there wasn't a fair trial in the first place.

So to limit—if we were to require, if the Federal Government were to require—and no one's suggesting this because it would violate States' rights—but if we were to require and say, okay, you've got to provide a defense attorney, which they have to provide, and you've got to pay him at least $300 an hour, and you've got to provide money for handwriting experts and ballistics experts and all the other things the prosecution has, and you have to provide a really fair trial, then you may—then it might be okay to say we'll greatly restrict habeas corpus review.

But to allow the kind of justice that we have in many of our States now, frankly, not because our judges on State levels have any less brains or any less integrity than our Federal judges, but because they don't want to appropriate the money, and we haven't required that they appropriate the money. And then to have the restrictions on the habeas review guarantees that what we know to be happening already will happen in greater numbers, namely that innocent people will sit in jail and guilty people will continue to roam free to molest our children. Greater habeas review is not a question, was not primarily a question of not getting closure, it's a question of making sure the right person is in jail and the wrong person isn't roaming free.

Since we know that human justice isn't perfect, and since we know that our justice, governed as it is to a large extent by restrictions on resources made available to the defense, and for that matter less so the prosecution is far from perfect, then these safeguards are very, very necessary, and we have some proof that they're very necessary, is that 44 percent of the death penalty convictions that get to the Federal courts through the hurdles we set

up for various—to get habeas review, when they finally get reviewed are set aside because exculpatory evidence wasn't provided, because the defense attorney didn't do his job, because the court determines there was not a fair trial, and the jury did not have all the information necessary to it.

And we should not make it more likely that guilty people will go free and innocent persons will be executed or sit in jail, and our children subject to the mercies of the guilty people roaming the streets, who we don't know about because the innocent people who we think are guilty are in jail.

And so I support the gentleman's amendment.

Mr. SMITH. (Presiding.) The gentleman's time has expired.

Are there any other Members who wish to——

Mr. CHABOT. Mr. Chairman, could I ask the gentleman to yield just one additional minute.

Mr. SMITH. The gentleman's time has expired.

Mr. CHABOT. Could I ask unanimous consent the gentleman get one more minute?

Mr. SMITH. Without objection, the gentleman is recognized for 1 minute.

Mr. CHABOT. Thank you. And I'll be very brief if the gentleman would yield.

The 44 percent figure that the gentleman uses, I just want to make clear that we're not talking about 44 percent of the cases the people were determined to be innocent of the crime. We're talking about some technicality or something because they weren't——

Mr. NADLER. Would the gentleman yield?

Mr. CHABOT. Yeah.

Mr. NADLER. I think I said this is 44 percent of the cases that went to habeas, it was determined that the trial wasn't fair—either that the person was innocent or that the trial wasn't fair. It was remanded. And there have been a technicality or it may have been something very serious.

Mr. CHABOT. I understand that, but oftentimes that's loosely thrown around that they were innocent, and I thought the gentleman did that——

Mr. NADLER. I made very clear that 44 percent of——

Mr. SMITH. The gentleman's time has expired.

Are there any other Members with an amendment? The gentleman from Virginia, Mr. Forbes is recognized.

Mr. FORBES. I move to strike the last word.

Mr. SMITH. The gentleman is recognized for 5 minutes.

Mr. FORBES. Mr. Chairman, I yield to the gentleman from California.

Mr. LUNGREN. I thank the gentleman. I don't want to belabor this point, but the gentleman did talk about the case that I mentioned, and let me just give you the outline of the case because it goes right to the core of what we're talking about.

Robin Samsoe, 12 years old, 1979. In the first 6 months I was here in the Congress, sitting in this very place. She was kidnaped on a beach in Huntington Beach, California, and murdered in June of '79. A friend who had been with her on the beach described a strange man had taken pictures of her. Police produced a composite sketch of the man who was soon recognized by his parole officer.

He had a history of kidnaping and sexually assaulting young girls. He had raped and nearly killed an 8-year-old girl, for which he had served just 2 years in prison. And he was awaiting trial for raping another girl at the time that Robin disappeared. He had taken that girl to the mountains outside of Los Angeles, which is also where Robin's body was found. He attacked a third girl at the same point on the beach where Robin was last seen.

When police tracked him down after TV news began broadcasting his composite sketch, he had just cut his hair short and straightened it, and was beginning to make plans to leave town.

A friend of Robin's family recognized him as the man who was with Robin on the beach. In a locker that he rented, police officers found an earring that Robin had borrowed from her mother. Robin's mother recognized the earring as hers because of changes that she had made to it with a nail clipper.

Yet despite all this evidence, in June 2003, exactly 24 years after she was murdered, the Federal Court of Appeals for the Ninth Circuity—yes, the famous Ninth Circuit—granted the man a new trial.

This is a terrible burden on her mother. According to one newspaper story, she described the decision as "like someone had slapped me hard in the face." In Robin Samsoe's case at least the family can know that the killer will almost certainly never be free. At the same time, he was granted a new trial in Robin's killing, DNA evidence linked him to a rape and murder that he committed in 1977, and police have said they'll prosecute him for that after his trial in Robin's case.

Nevertheless, the impact on the family in the way that this case has been handled in the course of the courts' consideration has been horrific. One of the news stories notes that the families even lost their house because they spent so much time away from work at the trials and hearings in the case.

Today Robin's family is preparing for another trial of the man who killed their 12-year-old daughter. If she had lived, she'd be 37 years old today. This is the outrageous actions of the Federal courts with the abuse of habeas corpus that I'm talking about. It's as if the courts had punished her family instead of the man who had killed her.

And if the gentleman would like I could recite case after case after case in California when this has occurred. I will admit we are in the Ninth Circuit Court of Appeals, but I will also say to you that we in the Ninth Circuit Court of Appeals utilizing our best efforts to try and reform habeas corpus. And I wasn't in the House when it was reformed in '96, but my office did write the statutory language that was adopted at that time. And we thought it would be sufficient. It has proven to be insufficient. And if there are cases that cry out more for justice in the area of reform of habeas corpus than these cases of child molestations, rapes and killings, I don't know what they are.

I thank the gentleman for yielding.

Mr. SMITH. The gentleman's time has expired.

The gentleman from California, Mr. Schiff, is recognized.

Mr. SCHIFF. Thank you, Mr. Chairman. I move to strike the last word.

Mr. SMITH. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. I think the gentleman from California, Mr. Lungren, has highlighted with the case he cited, some of the tragedy of cases that are drawn out, and the enormous impact it has on the victims and their families, and I think that's very real.

I think there are ways to streamline the process. I'm not sure this is the right formula, and I think, frankly, I don't think any of us here on this panel can tell whether what's contained in this quite detailed reform, proposed reform of the Federal Court processes is the right remedy. I see nothing in the majority summary or the minority summary that sheds light, for example, on what the Judicial Council has said about these proposed timetables or reforms.

And I question whether this is the bill to enact this kind of a sweeping reform.

Mr. Lungren has a stand-alone bill to reform habeas corpus, the Streamline Procedures Act of 2005. It's had, as I understand it, in Subcommittee a partial hearing. A further hearing on that bill was postponed and has not taken place yet. None of us—well, maybe some of us have been privy to partial hearing on this issue. I don't know that the murders—cases of murder of a child are different in terms of the evidence than cases of murder of an adult that warrant different habeas procedures. My guess is that this is being put in this bill because it's a moving vehicle, but I'm not sure that's how we ought to reform the Federal Court system.

Again, I think there are changes that need to be made to prevent exactly the situation which Mr. Lungren describes. But I don't think we ought to do it in a piecemeal way. It's one thing to increase the penalties for sex offenders that prey on kids, to increase the monitoring, to increase the registration to make sure these people are taken off the street, and I fully support that.

It's another as part of that same legislation to take actions which may have the effect of reducing the confidence in whether the right people have been convicted. And regrettably, although there is seldom a number, we have found through the success of DNA evidence that we have sent on occasion the wrong people to death row. And so I would like to see us have a full Judiciary Committee Oversight Hearing of how to expedite the habeas process in murder cases. I think it's a very important issue, but without having the benefit of the feedback from the judges themselves, without having the ability to hear witnesses talk about what these very detailed changes in procedures would do, I just don't think this is the right place to make this change.

I understand why it's been incorporated in this bill, but I support the gentleman's amendment. I think this provision doesn't belong in this bill, and I think we ought to treat this problem across the board, perhaps in the oversight and potential markup of Mr. Lungren's standalone bill.

And with that, Mr. Chairman, I'll yield back the balance of my time.

Mr. SMITH. The gentleman yields back the balance of his time. Are there other Members who wish to be heard on this amendment. The gentleman from Texas, Mr. Gohmert is recognized.

Mr. GOHMERT. Thank you, Mr. Chairman. First of all, I have to address comments by the gentleman from New York regarding defense in felony cases. There are allegations about many of our

States. Those kind of generalities do a great disservice to the people that defend criminal cases. Having handled thousands of felony cases as a judge, I'm telling you if somebody does the things that you have said they do by not calling witnesses they should have, by not presenting defenses they should have, by not properly representing their defendants, those things are raised on appeal, direct appeal.

Those things are raised in State *habeas corpus* proceedings and, besides that, if you could be more specific and give me examples of attorneys who have acted in the manner in you alleged, then I will help you work to get them disbarred. They have no business practicing law. Anybody who will not live up to their oath as an attorney to represent their clients to the full extent of the law should not be practicing, not now, not ever.

So I would be delighted to work with you in those situations and as someone who has been one of those who was appointed to handle cases I didn't want to handle, I did the best job I could and that includes appeal of a capital murder case that I did a great job on on behalf of my client.

So I could not sit here and allow those kind of comments to go on. Let's get specific if you have them——

Mr. SCHIFF. Would the gentleman yield?

Mr. GOHMERT. Not yet.

I also would like to address the comments of Mr. Schiff. I tend to agree. He says he's not sure that the murder of a child should be treated differently from other cases. And I'd be open to amending this to make this apply across the board the restrictions on habeas corpus not only for murder of children, but also adults.

And also one other comment regarding the timetable. It says under subsection D that the district court should act not later than 15 months. I don't know why we have to wait 15 months. There are State remedies for habeas corpus. There are State remedies for direct appeal. There are grievances that should be filed against people who are not properly representing their client.

Mr. SCHIFF. Would the gentleman yield?

Mr. GOHMERT. And——

Mr. LUNGREN. Mr. Gohmert?

Mr. GOHMERT. Yeah.

Mr. LUNGREN. Mr. Schiff.

Mr. GOHMERT. I yield.

Mr. SCHIFF. If I might pose a question to the gentleman from California, does your bill, the Streamlined Procedures Act of 2005, apply in murder cases of both adults and children?

Mr. LUNGREN. If the gentleman will yield, whoever has time, yes.

Mr. SCHIFF. So we do have a bill that is across the board, and I would submit that's the right venue to really hear and resolve this issue. And I thank the gentleman for yielding.

Mr. GOHMERT. Thank you. I yield back.

Ms. JACKSON LEE. Mr. Chairman?

Mr. SMITH. The gentleman yields back the balance of his time. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much. I simply want to acknowledge that the habeas is constitutionally grounded, which warrants this Committee with such a high responsibility to look at it

as a separate issue. I also admit that there is an epidemic in child murders and child molestation.

I believe the habeas issue, however, should be separated, and I rise to support the gentleman's amendment; and I yield to the gentleman, Mr. Scott.

Mr. SCOTT. Thank you, and I thank the gentlelady for yielding.

Mr. Chairman, the discussion we've had I think points to some fundamental questions of our concept of justice. How you got into Federal court or what the State court should have done, the fact is that this amendment requires that you rely on facts that could not have previously been discovered to show the error and by clear and convincing evidence that no reasonable fact finder could have found you guilty.

Now, if you believe that a person is guilty, and if the recitation of the facts that the gentleman from California made, if you believe a person is guilty, do you believe that the guilty person is entitled to a fair trial, because under this amendment if you can prove that the trial was clearly unfair, but you are guilty, you still believe the person is guilty, then they do not have access to habeas corpus consideration.

So is guilty person entitled to fair trial?

The other is if you know there's an unfair trial, should an innocent person have to prove innocence by showing that they're innocent using only evidence that could not have been reasonably obtained before the trial and that innocent to the point where no reasonable fact finder could believe other than not guilty.

Now, we've had situations where a person could have an unfair trial. Does the burden shift? Suppose you have an unfair trial where it is clear that the person is probably innocent. But some fact finder might have not believed a witness or two and concluded not sure whether they are guilty or not.

In that circumstance, according to this language, they would not be entitled to consideration. An allegation that you're probably innocent isn't enough. You got to show that you're innocent by clear and convincing evidence and that no reasonable fact finder could have concluded otherwise.

Now, Mr. Chairman, we talk about this alleged—whether they're alleged or whether they're actually guilty, we've had documented cases, case after case, where someone was indicted; had what appeared to be a fair trial; had all those endless, exhausted appeals; and then through DNA evidence well after the fact found they just didn't—weren't the ones. It was somebody else. The DNA evidence didn't even—not only showed they were not guilty, but pinpointed the guilty offender.

They had gone through the indictment, the trial, the appeal, and the system just got it wrong.

So when you say well, we believe the person is guilty and they've had the fair process, sometimes we just don't get it right. And here you have a situation where someone didn't have a fair trial, but you'd think somebody might have considered them innocent should we be able to review the case, and what do you do with somebody that's probably innocent? Do you put them to death? They're probably innocent, but some fact finder might have found them guilty. Now, what do you do in those circumstances?

These are somewhat fundamental questions. Is a guilty person entitled to a fair trial and should an innocent person with an unfair trial have to prove their innocence?

I would hope that we would, as the gentleman from California suggested, consider these issues independently and not part of a bill that's on the fast track to passage.

I yield back to the gentlelady.

Mr. SMITH. Does the gentlewoman yield back her time?

Ms. JACKSON LEE. I would yield to the distinguished gentleman from New York.

Mr. NADLER. Thank you. Thank you. I want to associate myself with the remarks of the gentleman from Virginia, but I would also say going back to Mr. Lungren's case, after 24 years, I don't know the circumstances of that case, and he gave us all the allegations of what happened and that those allegations are truly horrible, but the fact is maybe that individual is the one who did it, and maybe it's somebody else. Now, a court, a lower court, found that that individual did it. Twenty-four years later, a Federal court said in effect I gather that the original trial failed in some way. It wasn't a fair trial. It violated constitutional processes and ordered a retrial.

At that point, you can no longer say this person is guilty. This person is now again allegedly guilty, because there's been no fair trial that found him guilty.

And maybe he was guilty and maybe not. I don't know the facts of the case, but reciting the horrors of the crime doesn't affect the question of whether you got the right person. And you can sit here and recite the horrors of the crime. You get everybody emotionally upset, but did you get the right person.

And when the Federal court says 24 years later—and it's an indictment of the system that it took 24 years to get to that point. It's not an indictment that they finally got to that point, that the court said you didn't get a fair trial. It's an indictment that it took 24 years to get to that point.

Mr. SMITH. The gentlewoman's time has expired.

Mr. NADLER. Can I ask unanimous consent for one additional minute.

Mr. SMITH. Without objection, the gentlewoman is recognized for another minute.

Ms. JACKSON LEE. I yield to the gentleman.

Mr. NADLER. Thank you. It's an indictment that it took 24 years to get to the point of recognizing that the original trial was not fair. So we ought to streamline the process but not reduce the safeguards that we have to make sure that the trial and the proceedings are fair and that we got the right person. And the gentleman from Texas asked me for specifics. I don't have any specifics here. But I will say—and the gentleman from Texas I'm sure was a wonderful defense attorney—but from what I have read, one of the worst offenders among the States in giving incompetent counsel to people who go to death row is the State of Texas.

I yield back.

Mr. GOHMERT. Mr. Chairman?

Mr. SMITH. The gentlewoman's time has expired. The gentleman from Texas has already I believe spoken on this amendment.

The gentleman from Iowa is recognized.

Mr. KING. Mr. Chairman, I move to strike the last word.

Mr. SMITH. The gentleman is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman, and I'd yield to the gentleman from Texas.

Mr. GOHMERT. Thank you. Mr. Chairman and the gentleman from New York, I really do want specifics when you talk about Texas, and I hope you won't refer to one case that came from my county where he was tried three, maybe four times, and each time ended up the court flips it back on a writ, and each time more evidence was cut out and he's probably one of these 44 percent you're referring to, and even though he was a hero to some when the case was finally thrown out, the last straw was when the court said the one key witness was dead; and the court's allowing his prior testimony at the prior trials no longer could be used in the last case. The DA had no choice but to dismiss the case.

There was nothing left, and that's outrageous.

Now, that—three or four times in one case adds to your percentages, and I'm telling you Texas does a good job. There was some guy that went to sleep. The case got flipped, and did another shot.

But those are isolated cases, and I know that Texas has been taking a lot of shots, but I would be prepared to defend any specific case you want to give, whether we agree or disagree. Texas is a shining example of good trial procedure, and we put our lawyers up against any State. Thank you very much.

Mr. SMITH. The gentleman yields back the balance of his time.

Mr. KING. I yield back.

Mr. SMITH. The question occurs on the amendment. All those in favor say aye.

All those opposed nay?

The nays have it. The amendment is not agreed to.

Are there any other amendments?

Mr. SCOTT. Mr. Chairman, I ask for a rollcall vote.

Mr. SMITH. The gentleman requests rollcall on his amendment. The Clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

[No response.]

The CLERK. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye..
The CLERK. Mr. Nadler, aye.. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler.
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.

The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. (Presiding.) No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes?
The gentleman from California, Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye.
Chairman SENSENBRENNER. The gentleman from Florida, Mr. Wexler.
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Chairman SENSENBRENNER. The gentleman from Tennessee, Mr. Jenkins.
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 12 ayes and 18 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?
The gentlewoman from Texas, Ms. Jackson Lee.
Ms. JACKSON LEE. Thank you, Mr. Chairman. I have an amendment at the desk, number two.
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Amendment to H.R. 3132, offered by Ms. Jackson Lee of Texas. Under section 202, page 30, line 24, after the word arrest——
Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentlewoman is recognized for 5 minutes.
[The amendment follows:]

Amendment # 2

Amendment To H.R. 3132 the "Children's Safety Act"

Offered By Ms. Jackson-Lee of Texas

Under sec. 202, page 30 line 24, after the word arrested insert "," strike "or" and insert after the word detained "or convicted" .

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Mr. Green knows that in the course of the work that many of us have done on this issue of child predators that I offered legislation regarding DNA and a DNA bank dealing with the question of convicted child predators.

This helps refine this particular section by adding the language "or convicted." And I hope to work with the Committee as we move toward the House and, of course, the Senate to provide that separate and distinctive DNA bank on the basis of providing for——

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. JACKSON LEE. I'd be happy to yield.

Chairman SENSENBRENNER. I believe this a very constructive amendment and am prepared to accept it.

Ms. JACKSON LEE. I thank the distinguished gentleman for his accepting, and I'd like to conclude by thanking him for accepting it saying that I hope as recognize that there is an epidemic in the nation frankly, maybe in around the world, on the attacks on children, brutal attacks on children, that we will work toward making sure that this legislation provides some long-standing tools for our law enforcement, which would include this DNA bank.

I ask my colleagues to support the amendment. I thank the Chairman for supporting it by adding the language "or convicted" to this, and I ask for my statement to be in its entirety submitted into the record.

Chairman SENSENBRENNER. Without objection, so ordered.

[The prepared statement of Ms. Jackson Lee follows:]

********** COMMITTEE INSERT **********

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentlewoman from Texas, Ms. Jackson Lee. Those in favor will say aye.

Opposed, no?

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

The gentleman from New York, Mr. Nadler?

Mr. NADLER. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3132, offered by Mr. Nadler.

At the end of Title IV, insert the following: 18 USC 922(d) is amended by inserting the following at the end: '(10).

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman from New York is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO HR 3132
OFFERED BY MR. NADLER

At the end of Title IV insert the following:

"18 USC 922(d) is amended by inserting the following at the end:

'(10) has been convicted in any court of a sex offense against a minor.'

18 USC 922(g) is amended by inserting at the end the following:

'(10) has been convicted in any court of a sex offense against a minor.'"

Mr. NADLER. Thank you, Mr. Chairman. Under current law, it is illegal to transfer a gun to anyone convicted of a crime punishable by more than 1 year.

It is also illegal for any such individual to posses a gun. However, for some crimes that we consider to be particularly serious, we prohibit all transfers of guns to or possession of guns by individuals convicted of any such crime.

For example, we prohibit anyone convicted of a crime of domestic violence whether a felony or a misdemeanor from purchasing or possessing a gun. I believe child sex crimes are such a case. We should not treat child sex offenders any more leniently with respect to possessing guns than we do domestic abusers.

I ask my colleagues to support this amendment to close this loophole. I yield back.

Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Mr. Speaker, or, Mr. Chairman, you have me saying it now. I'm still studying the amendment, so don't wish to be recognized at this time.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from New York, Mr. Nadler. Those in favor—the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KING. And I'll be brief, Mr. Chairman. But I just wanted to speak to this issue and I recall that I have in the past for this Committee listed the exceptions to gun rights that's in the Federal Code, and they're called those rights are disabled, according to the Federal Code. I have the section here in front of me that already covers this amendment. So I would suggest and submit that this is a redundant amendment that's already covered by another section of the code, which I believe is 922(g). And I——

Mr. NADLER. Would the gentleman yield?

Mr. KING. I would yield.

Mr. NADLER. Yeah. I think it's incorrect. It covers more than 1 year. It does not cover any crime committed against a child—any crime of violence committed against a child.

Mr. KING. Reclaiming my time, I'm suggesting that this section of the code covers any crime committed that precludes a person from having a gun. That's a felony. Anything that's a felony——

Mr. NADLER. If the gentleman would yield?

Mr. KING. I would yield.

Mr. NADLER. It has to be a felony. This does not have to be a felony. You're quite correct. It—well, you're correct in that sentence. It covers any crime committed, punishable by more than a year. It does not cover crimes of violence against a child or child sex crimes rather. It does not cover child sex crimes punishable by less than a year, and we had part of that discussion with respect to making that a predicate for a 5-year sentence for failure to register earlier today. But that is not covered. This amendment would cover that for possession or transfer of a gun.

Mr. KING. Reclaiming my time, if the gentleman could cite that section of the Code, I'm sure this Committee would be interested in that section. Otherwise, I'll be opposing this amendment. Thank you, and I yield back.

Mr. NADLER. Would the gentleman—Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York has already been recognized.

Mr. NADLER. I ask unanimous consent for 30 seconds.

Chairman SENSENBRENNER. Without objection, the gentleman is recognized.

Mr. NADLER. Thank you. The section is 18 U.S.C., 922(d). It's cited right in the amendment. I yield back.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from New York. Those in favor will say aye. Opposed, no?

The noes appear to have it.

Mr. NADLER. Mr. Chairman, I ask for the ayes and nays.

Chairman SENSENBRENNER. A rollcall is ordered. Those in favor of the Nadler Amendment will, as your names are called, answer aye. Those opposed, no, and the clerk will call the roll.

The Clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

[No response.]

The CLERK. Mr. Lungren?

[No response.]

The CLERK. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
[No response.]
The CLERK. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye..
The CLERK. Mr. Nadler, aye.. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler.
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.

The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their votes?
The gentleman from California, Mr. Lungren.
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no.
Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith.
Mr. SMITH. No.
The CLERK. Mr. Smith, no.
Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their vote. If not, the clerk will report.
The CLERK. Mr. Chairman, there are 9 ayes and 17 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?
The gentleman from Virginia, Mr. Scott.
Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, number 13.
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Amendment to H.R. 3132, offered by Mr. Scott of Virginia. On page 40, line 21, insert the following: Section 304, Sex Offender Treatment Programs. The Federal Bureau of Prisons shall establish sufficient——
Chairman SENSENBRENNER. Without objection, the amendment is considered as read.
The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.
[The amendment follows:]

AMENDMENT TO H.R. 3132
OFFERED BY MR. SCOTT OF VIRGINIA
#13

On page 40, line 21 insert the following:

"Sec. 304. Sex Offender Treatment Programs

The federal Bureau of Prisons shall establish sufficient Sex Offender Treatment programs such that all prisoners required to register under the provisions of this Act have access to an evidence-based program of sex offender treatment deemed by a treatment professional to be appropriate to the particular offender's treatment needs, prior to the release of such prisoner."

Mr. SCOTT. Mr. Chairman, the Department of Justice statistics reveals that the recidivism rate among child sex offenders is about 3 percent. This came from a comprehensive study tracking thousands of offenders over a 3-year period. And we've heard documented evidence during our hearings that intensive sex offender treatment cuts the recidivism rate in half.

Despite that fact that we can cut the recidivism rate in half, the Federal Bureau of Prisons has only one sex offender treatment program, and that program turns away many inmates who seek treatment. As a result, only 1 percent of sex offenders in Federal prison receive treatment before they're released, notwithstanding the fact that we could reduce recidivism——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. I think the gentleman has gone down the right road with this amendment. I would like to see the amendment be made more specific and more targeted so that the Federal Bureau of Prisons will have a precise idea of what the Congress wants them to do in this area.

If the gentleman will withdraw the amendment now, I'll be willing to work with him between now and the floor so we can sharpen up the razor so that it is a very targeted amendment, and we'll do the job.

Mr. SCOTT. With that, Mr. Chairman, reclaiming my time, I would withdraw the amendment.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, number 9.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3132, offered by Mr. Scott of Virginia. On page 12, line 4, insert the following section and redesignate each succeeding section accordingly. Section 1——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman from Virginia will be recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 3132
OFFERED BY MR. SCOTT OF VIRGINIA
#9

On page 12, line 4 insert the following section and redesignate each suceeding section accordingly:

"Sec. 115. Risk Classification, Corresponding Dissemination, Procedures.

(a) Each jurisdiction shall establish three risk levels reflecting the offender's risk of re-offense and degree of dangerousness to the public in accordance with the following:

(1) LEVEL ONE OFFENDER – The designation given to a sex offender when it has been determined that the individual's risk of re-offense is low and the degree of dangerousness posed to the public is not such that a public safety interest is served by public access to information pertaining to the offender. A Level 1 Offender's sex offender registry information may be disseminated to the jurisdiction's correctional, parole, probation, youth services, social services, and mental health services authorities; all state, city and town police departments; the Federal Bureau of Investigation; and any victim who submits a victim impact statement.

(2) LEVEL TWO OFFENDER – The designation given to a sex offender when it has been determined that the individual's risk of re-offense is moderate and the degree of dangerousness posed to the public is such that a public safety interest is served by public access to sex offender registry information. A Level Two Offender's sex offender registry information may be released to a person making a request for such information under procedures to be determined by the jurisdiction.

(3) LEVEL THREE OFFENDER – The designation given to a sex offender when it has been determined that the individual's risk of re-offense is high and the degree of dangerousness posed to the public is such that a substantial public safety interest is served by active dissemination of sex offender registry information. A Level Three Offender's sex offender registry information shall be disseminated to the National Sex Offender Registry and the community otherwise notified in accordance with procedures to be determined by the jurisdiction.

(b) Each jurisdiction shall provide for procedures to determine the offender's risk level, which must include notice, an opportunity to present evidence, including witnesses, to the trier of fact, appointed counsel upon proof of indigence, and the right to judicial review."

(c) Not later than 90 days after the date of enactment of this Act, the Attorney General shall publish a model classification system based on risk of re-offense and dangerousness, which each jurisdiction shall consult in classifying convicted offenders in accordance with subsection (a). In designing the risk classification system, the Attorney General

classification systems, the current literature on such classification systems, and account for the following relevant factors:

(1) mental abnormality;
(2) repetitive and compulsive behavior;
(3) adult offender with child victim, and whether the child was an intrafamilial, extrafamilial, or stranger victim;
(4) offender's age at first sex offense;
(5) adjudicated sexually dangerous person or released from civil commitment;
(6) whether the offender accepted or declined early release;
(7) relationship between offender and victim;
(8) weapon, violence or bodily injury;
(9) date(s), number, and nature of prior offenses;
(10) currently supervised by probation or parole;
(11) currently in sex offender-specific treatment;
(12) current home situation;
(13) physical condition;
(14) sex offender was a juvenile when he committed the offense, response to treatment and subsequent criminal history;
(15) psychological or psychiatric profiles indicating risk to reoffend;
(16) substance and/or alcohol abuse;
(17) sex offender treatment while incarcerated;
(18) sex offender treatment while on probation/parole;
(19) recent behavior while incarcerated;
(20) recent behavior while on probation/parole;
(21) recent threats;
(22) materials submitted by the sex offender concerning classification and recent behavior over the preceding 24 months;
(23) victim impact statement;
(24) sex offender-specific treatment progressing less than satisfactorily or successfully completed."

On page 15, line 9 before the period insert "in accordance with the classification system set forth in section 115".

On page 15, line 19, after "shall provide the" insert "applicable".

On page 15, line 20 after "registry" insert "in accordance with section 115".

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, the title of the bill is the Sex Offender Registration and Notification Act, and it states that its purpose is to respond to "vicious attacks by violent sexual predators." It would apply, however, to people who are not, in fact, sexual predators and pose—and also pose no risk of reoffense.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. I will make the same deal that I made on his previous amendment with this one. Sharpen it up.

Mr. SCOTT. I would withdraw the amendment, Mr. Chairman.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

Mr. SCOTT. I have an amendment at the desk, number 17.

Chairman SENSENBRENNER. The clerk will report Scott Number 17.

The CLERK. Amendment to H.R. 3132, offered by Mr. Scott of Virginia.

On page 57, line 15, strike "shall" and insert "may".

[The amendment follows:]

AMENDMENT TO H.R. 3132
OFFERED BY MR. SCOTT OF VIRGINIA

Amendment No. 17

On page 57, line 15 strike "shall" and insert "may".

Chairman SENSENBRENNER. The clerk is—or excuse me—the gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, this amendment is under the supervised release. The language in the bill says the court——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. This looks like a good and sharp amendment, and I'm prepared to accept it.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I withdraw the amendment. No, excuse me.

Chairman SENSENBRENNER. The Chair objects.

Mr. SCOTT. I yield back the balance of my time.

Chairman SENSENBRENNER. Yeah. The question is on agreeing to Scott Amendment Number 17. Those in favor will say aye. Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to. Are there further amendments?

Mr. SCOTT. Mr. Chairman, I would just like to mention the fact that I have another amendment at the desk, number 16.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3132, offered by Mr. Scott of Virginia.

Mr. SCOTT. I move that the reading of the amendment be waived.

Chairman SENSENBRENNER. Without objection. And the gentleman is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 3132
OFFERED BY MR. SCOTT OF VIRGINIA
#16

On page 41, strike subsection "(a)" and redesignate succeeding subsections accordingly, and on page 42, starting on line 7, strike "not less than 10 years and". On line 15, strike subsection "(A)".

On page 42, line 24 strike "punished by death or imprisoned for not less than 30" and insert "sentenced to any term of"

On page 43, strike subsection "(A)", subsection "(D)", and subsection "(E)" on page 44, and redesignate the remaining subsections accordingly

On page 44, line 22, strike subsection "(iv)" and all that follows through line 12 on page 45.

On page 45, line 22, strike "(iii)"and all that follows through line 18 on page 47.

On page 54, strike section 504 and all that follows through line 14 on page 56.

Mr. SCOTT. Mr. Chairman, this amendment would eliminate the death penalties and mandatory minimums from the bill. I would incorporate at this point the discussion that we have had on this and rather than waste the Committee's time just point out that we had an opportunity to eliminate all the mandatory minimums and the death penalty, and I would yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green.

Mr GREEN. Move to strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. I rise in opposition to the amendment, as the gentleman from Virginia would probably guess.

The crimes that we are talking about here today, the crimes that are dealt with in this legislation are among the most serious crimes that we can possibly have in society, because they strike at the heart of who we are, our sensibility, our families, our sense of security. I believe that these crimes are worthy in some cases the death penalty, and they are worthy of mandatory minimums. I believe that we do need to send a very strong signal about how society—what society's attitude is towards those who would prey upon our kids.

And they are mandatory minimums because, sadly, we have learned that judicial discretion in too many cases and too many places has been abused, and has given rise to some of the crimes that are really represented by those pictures over to the side of these chambers.

It is important for us as policy makers, as the elected representatives of families all across this country, to not only send a strong signal about our attitudes towards those who would prey upon our kids, but also to take steps to prevent future such actions.

You know, it's interesting in some of the opening statements, I heard some say that the penalties that we have in this legislation will not deter. I'm not sure deterrence is the purpose. One thing we do know: we do know that those who repeatedly prey upon our kids are likely to do it yet again.

But with this legislation, and the tough approach that we've taken, the mandatory minimums, in some places the most serious punishment, the capital punishment, we are taking steps to ensure that at least these offenders will not claim future victims.

I made reference earlier to some studies that have been done of admitted child molesters and the extraordinary likelihood that they will reoffend. Sexual offender recidivism is underreported. The rate that it's underreported by is at least two and half times.

When imprisoned sex offenders are interviewed in polygraph sessions, the numbers are truly frightening. In one study, sexual offenders had an average of 110 victims, and 318 offenses. And each one of those numbers represents a life destroyed, a family destroyed, a shattering of a community, the shaking of a neighborhood down to its very core.

Another study suggested that convicted sex offenders commit their sex crimes for an average of 16 years before they're caught.

So when you see those numbers, and you see the—or hear the stories of those victims, what makes it even worse is when you realize that it is extremely likely that there are many, many victims before the victim that you've seen on that TV screen or on that picture or read about in that story.

The chances are very likely that there have been a whole string of young lives destroyed. These are serious crimes. They deserve our most serious penalties.

The public is crying out for it. We have all seen the stories, and we've all been outraged. This legislation, in my view, takes a very strong step forward in providing new tools, in providing new penalties. It is an appropriate response.

This amendment will take away in so many ways the most important part of this: that strong stance; those tough penalties; those penalties that will remove those offenders from society that will keep our families safe and hopefully protect the innocent.

I strongly urge that you reject the amendment.

Mr. Chairman, with that I yield back.

Chairman SENSENBRENNER. The question is on agreeing to the Scott amendment number 16. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I ask unanimous consent that a letter from Professor Eric Friedman be entered into the record.

Chairman SENSENBRENNER. Without objection.

[The letter from Professor Friedman follows:]

Telephone: 516-463-5167
Facsimile: 516-463-5129
LAWEMF@Hofstra.edu

July 28, 2005

Re: H.R. 3132

Hon. F. James Sensenbrenner, Jr.
Hon. John Conyers, Jr.

Gentlemen:

As you may recall, when it considered legislation respecting the Terry Schiavo case the Committee sought my views as an expert on habeas corpus. In that capacity I would like to draw your attention to a relatively obscure section in the lengthy proposed "Children's Safety Act of 2005" that is likely to do significant harm to the justice system – and hurt rather than help the safety of children.

I refer to Section 303 of the proposed Act, which substantially strips the federal courts of jurisdiction to entertain habeas corpus petitions in cases involving the killing of persons under the age of 18 and then provides a stringent series of timelines to govern the few exceptional cases that would be permitted. The provision is similar to other somewhat broader ones contained in H.R. 3035/S. 1088, and I will be delivering to you shortly by way of background some of the extensive testimony submitted in opposition to the latter of these.

Section 303 specifically raises three broad areas of concern.

First, as a constitutional matter it may be rather difficult to justify the basis of this restriction on a permissible ground. Does the Committee have any evidence that constitutional errors are less likely in cases involving young victims, thereby warranting the wholesale preclusion of review? It would seem if anything that such crimes – precisely because of the passions they arouse in local communities as well as in Congress – are more likely than others to be tainted by unfairness.

Second, the primary victims of the provision would be young people. This is because:

A. Most killings of juveniles are committed by other juveniles. Thus it is juveniles

whose constitutional rights would be most severely curtailed. Quite apart from the obvious ironies of this situation, it means (since juveniles are no longer subject to execution) that the statute would shut the prison cell and throw away the key on precisely that sub-group of the population that is traditionally considered most amenable to rehabilitation.

B. As further discussed below, the effect of the provision would be to bury meritorious claims of innocence. For each innocent defendant precluded from court, a guilty murderer remains at liberty to strike again.

Third, the provisions of Section 303 are unjust and impractical. In particular:

A. The circumstances under which jurisdiction would be permitted are unjustifiably narrow. Leaving aside the extraordinarily rare circumstance of a declaration by the Supreme Court of a new retroactively applicable rule, the federal courts would be deprived of jurisdiction unless the applicant showed *both*

1. "A factual predicate that could not have been previously discovered through the exercise of due diligence." As a number of the forthcoming materials indicate this limitation precludes the vast majority of claims, which - however meritorious - might have been discovered through the exercise of due diligence but were not because counsel was ineffective. Moreover, it also excludes all cases in which the factual predicate was indeed previously discovered and actually presented (as the habeas statute requires) to the state courts, but the claim was rejected by those courts.

and

2. That "the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error no reasonable factfinder would have found the applicant guilty of the underlying offense." This limitation is both unfair and illusory.

It is unfair because there may be many gross constitutional violations of fair trial rights (e.g. a juror was bribed, the appointed defense lawyer was asleep) that would not meet this exception. Moreover, notwithstanding that many capital cases turn on grievous errors at the sentencing phase (e.g. the jury heard or was prevented from hearing particular evidence or was misinstructed or misled as to its role), such claims would be excluded.

The limitation is illusory in giving the impression that innocent prisoners will be protected. As Barry Scheck and his colleagues explained in their testimony on S. 1088 there are a large number of reported exonerations in which the defendant could not have met this high initial threshold because only after federal habeas proceedings provided procedural due process was previously unknown evidence of innocence revealed. As he noted, the whole purpose of procedural due process is to lead to accurate outcomes and to rely on constitutionally flawed proceedings to uncover innocence is unrealistic if not disingenuous.

B. Section 303 contains its own set of timelines similar in concept to but different in details from the ones that the Judicial Conference opposed in the context of S. 1088. This would sow yet additional confusion and complexity.

C. Section 303's application of the Crime Victims' Rights Act to habeas corpus proceedings has not been thought out and will surely not achieve its commendable purposes in its present form.

1. That Act was designed for criminal trials and many of its provisions (e.g. ones

allowing the victims to be heard in proceedings affecting sentencing) fit awkwardly if at all into the habeas context.

2. That Act was designed for non-capital proceedings. As the Supreme Court has recognized on many occasions, the involvement of victims in capital cases raises special legal and policy concerns that require specific attention.

In light of these serious defects, I urge the Committee to delete Section 303. If there is to be further reform of federal habeas corpus, it should be done on a comprehensive basis and take the direction indicated by the American Bar Association in it testimony on S. 1088.

I appreciate your consideration of these views and would be more than happy to work with your or your staffs on this matter.

Sincerely yours,

Eric M. Freedman
Maurice A. Deane Distinguished
Professor of Constitutional Law

CC: Members of the Committee

Chairman SENSENBRENNER. Are there further amendments? There are no further amendments.

A reporting quorum is present. The question occurs on the motion to report the bill H.R. 3132 favorably, as amended. All in favor will say aye? Opposed, no?

The ayes appear to have it.

Mr. GREEN. Mr. Chairman, on that I would request the ayes and nays.

Chairman SENSENBRENNER. rollcall will be ordered.

Those in favor of reporting the bill H.R. 3132 favorably, as amended, will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde?
[No response.]
The CLERK. Mr. Coble?
Mr. COBLE. Aye.
The CLERK. Mr. Coble, aye. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye. Mr. Lungren?
Mr. LUNGREN. Aye.
The CLERK. Mr. Lungren, aye. Mr. Jenkins?
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins, aye. Mr. Cannon?
Mr. CANNON. Aye.
The CLERK. Mr. Cannon, aye. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. Aye.
The CLERK. Mr. Inglis, aye. Mr. Hostettler?
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye. Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye. Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye. Mr. Issa?
[No response.]
The CLERK. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye. Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mr. Franks?
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye. Mr. Gohmert?

Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. No.
The CLERK. Ms. Sánchez, no. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? The gentleman from Texas, Mr. Smith?

Mr. SMITH. Mr. Chairman, I vote aye.

The CLERK. Mr. Smith, aye.

Chairman SENSENBRENNER. Further Members in the chamber who wish to cast or change their vote? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 22 ayes and 4 noes.

Chairman SENSENBRENNER. And the motion to favorably report the bill, as amended, is agreed to. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today.

Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by the House rules, in which to submit additional, dissenting, supplemental, or minority views.

[Intervening business.]

Chairman SENSENBRENNER. The business having been concluded, without objection the Committee stands adjourned.

[Whereupon, at 1:45 p.m., the Committee was adjourned.]

DISSENTING VIEWS

We strongly dissent from H.R. 3132. While we agree with the legislation's stated objective of tackling the problem of violence against children, in particular violent offenses committed by sexual offenders, it does so in a manner that trammels the Constitution beyond the justifications underlying the bill itself. Specifically, the legislation would impose unduly harsh and discriminatory mandatory minimum sentences; it would expand the use of the federal death penalty to new offenses; and it would limit habeas corpus review in certain cases, leading to an increase in the number of innocent people being executed or languishing in prison. In addition, the legislation would unwisely treat juvenile offenders on par with adults and would have a disproportionate impact on Native Americans. Multiplying these important substantive issues, we are also concerned that many provisions of the bill are being rushed through Committee without adequate debate, consideration or consultation.

Among the professionals who have opposed, or have expressed serious concerns with H.R. 3132 are scientific researchers, treatment professionals, and child advocates, including: Mark Chaffin, Ph.D., Professor and Director of Research, Center on Child Abuse and Neglect; Steven J. Ondersma, Ph.D. Editor-in-Chief, Child Maltreatment: The Journal of the American Professional Society on the Abuse of Children; Barbara L. Bonner, Ph.D., University of Oklahoma Health Sciences Center; David Finkelhor, Ph.D., Director, Crimes against Children Research Center; John E.B. Myers, Professor of Law, University of the Pacific; Benjamin E. Saunders, Ph.D. Professor and Director, Family and Child Program, National Crime Victims Research and Treatment Center; William N. Friedrich, Ph.D, Mayo Clinic and Mayo Medical School; Jill Levenson, Ph.D., L.C.S.W., Professor of Human Services, Board of Directors, Association for the Treatment of Sexual Abusers; David Prescott, Treatment Assessment Director, Sand Ridge Secure Treatment Center; Robert E. Longo, MRC; LPC, Sexual Abuse Prevention & Education Resources International; Toni Cavanagh Johnson, Ph.D., Author and Consultant; Jane F. Silovsky, Ph.D., Director, Child Sexual Behavior Problem Treatment Program; Paul Stern, J.D. Board of Directors, Association for the Treatment of Sexual Offenders; Daniel Smith, Ph.D. Associate Professor and Director of Training, National Crime Victims Research & Treatment Center; Lucy Berliner, Harborview Center for Sexual Assault & Traumatic Stress; and the American Civil Liberties Union.

For the reasons set forth herein, we respectfully dissent from H.R. 3132.

DESCRIPTION OF LEGISLATION [1]

Title I of H.R. 3132, entitled "Sex Offender Registration and Notification Act," would establish a mandatory sex offender registry and notification program to be implemented by all relevant jurisdictions, including every federally recognized Indian tribe, within two years.[2] It would require these jurisdictions to: (1) ensure that each person required to register does so; (2) collect specified information and prepare a statement of facts, criminal history and any other information required by the Attorney General; (3) publish this information on an internet website [3] ; (4) transmit the information to various federal, state and local agencies within 5 days of registration or any change in information; (5) verify the address of each registrant monthly for a sex offense against a minor (quarterly for a misdemeanor); and (6) enact a penalty of more than one year for failure to register. See Sections 112, 114, 117, 118, 119, 120, 121, and 127.

Under Title I, the term "sex offender" places juveniles in the same category as adults: it is one who has a conviction of or adjudication as a juvenile delinquent for a "specified offense against a minor," a "serious sex offense," or a "misdemeanor sex offense against a minor." See Sec. 111. More importantly, Title I imposes a myriad of registration requirements [4] and numerous mandatory minimums for even the slightest violation of these requirements. These mandatory minimums include, among others:

- Each jurisdiction must enact legislation requiring punishment of a maximum term of imprisonment exceeding one year (Sec. 113(e))
- Creates a new offense, Chapter 109B, 18 U.S.C. § 2250: A person who receives a notice from an official that s/he is required to register, and is a sex offender by reason of a conviction of one of the listed offenses or thereafter travels in interstate or foreign commerce or leaves Indian country, and knowingly fails to register is subject to imprisonment for a mandatory minimum of 5 years and not more than 20 years. (Sec. 151).[5]

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[1] H.R. 3132 is a compilation (with some modification) of five different bills: H.R. 2423, the "Sex Offender Registration and Notification Act of 2005;" H.R. 2796, the "DNA Fingerprinting Act of 2005;" H.R. 2388, the "Prevention and Deterrence of Crimes Against Children Act of 2005;" H.R. 2318, the "Protection Against Sexual Exploitation of Children Act of 2005;" and H.R. 3129, the "Foster Child Protection and Child Sexual Predator Sentencing Act of 2005."

[2] Relevant jurisdictions include every State, the District of Columbia, every federally recognized Indian tribe, Guam, American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands.

[3] This includes publication of "all" information about "each sex offender" except social security number, victim's identity and any other information exempted by the Attorney General, on the jurisdiction's own internet website. See Sec. 121.

[4] The registration requirements placed on sex offenders include:

- Registration in each jurisdiction where the individual resides, works or goes to school
- Initial registration before completion of a sentence of imprisonment or if not sentenced to imprisonment not later than 5 days after being sentenced
- Notice to each jurisdiction involved of any change in residence, work or school not later than 5 days after such change
- If convicted before enactment, retroactively registration under a method determined by the Attorney General (Sec. 113)
- Lifetime registration generally or for a first misdemeanor sex offense against a minor for twenty years (Sec. 115)
- Verification of information in person at least once every six months (Sec. 116).

[5] Note that shortly before release from custody or immediately after sentencing, an "appropriate official" must "require the sex offender to read and sign a form stating that the duty to

Continued

Title II of H.R. 3132 expands the national DNA Index System, but includes many controversial provisions in the process. For example, Section 202 amends Section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a) to give the Attorney General (or any agency within the Department of Justice or any agency that arrests, detains or supervises individuals facing charges) the power to collect DNA samples from persons who have not been found guilty, but are merely "arrested or detained under the authority of the United States."

Title III of the legislation, entitled "Prevention and Deterrence of Crimes Against Children Act," limits the ability of any individual convicted of killing a child to petition the court for habeas corpus review.[6] In addition, Title III adds a host of mandatory minimum sentences. For example, Sec. 302 would require for a "felony crime of violence against the person" of someone under 18, unless a higher mandatory minimum otherwise applies and regardless of any maximum:

- Life or death if death results—this would substantially broaden the offenses for which life or death may be imposed, and require a life sentence even in the absence of one of the mental culpability factors. That is, it would require a life sentence if death resulted from recklessness, negligence or by accident.
- Not less than 30 years or for life if the "crime of violence" is kidnapping, aggravated sexual abuse, sexual abuse, maiming, or results in serious bodily injury, i.e., involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss of the function of a bodily member, organ or mental faculty.
- Not less than 20 years or for life if the "crime of violence" is a sexual contact offense under 18 U.S.C. 2244(a)(1), (2) or (5), or results in bodily injury, i.e., a cut, abrasion, bruise, burn, or disfigurement, physical pain, illness, impairment of a bodily member, organ, or mental faculty, or any other injury to the body, no matter how temporary.
- Not less than 15 years or for life if a "dangerous weapon was used during and in relation to the crime of violence" (dangerous weapon is not defined in the federal criminal code, and has been held under state law to include anything from a firearm to a shoe, and even a pencil)
- Not less than 10 years or for life in any other case.

Title IV, entitled "Protection Against Sexual Exploitation of Children Act," and Title V, entitled "Foster Child Protection and Child Sexual Predator Deterrence Act," create a host of mandatory mini-

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register has been explained and that the sex offender understands the registration requirement," whether the person actually understands the registration requirement or not. (Sec. 117(2)).

[6] Sec. 303, entitled "Ensuring Fair and Expeditious Federal Collateral Review of Convictions for Killing a Child," would strip federal courts of jurisdiction to review claims on habeas corpus of persons in state custody for a "crime that involved the killing of" a person under 18 unless "(A) the claim relies on—(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense." The rare claim that cleared this hurdle would be subjected to a complex set of truncated timetables.

mums criminal penalties and increase a number of existing mandatory minimum sentences. For example, Title IV would create mandatory minimums for felonies under Title 18, Chapter 109A, §§ 2241, 2244, 2245, which are specifically included in the Major Crimes Act, 18 U.S.C. § 1153, and would add death as a possible penalty for offenses under Chapter 110, Chapter 117, and Section 1591. It would also increase mandatory minimums for offenses under Title 18, Chapter 110, §§ 2251, 2252, 2252A, 2252B and 2260, which are not specifically included in the Major Crimes Act. Title V would also provide for the civil commitment of individuals determined to be "sexually dangerous persons."

I. THE LEGISLATION IMPOSES INEFFECTIVE AND DISCRIMINATORY MANDATORY MINIMUMS

The premise underlying H.R. 3132 is that tough mandatory minimum sentences will solve the problem of sex crimes against minors.[6] The empirical evidence, however, does not support this premise. The Judicial Conference of the United States and the U.S. Sentencing Commission have found that mandatory minimums distort the sentencing process and have the "opposite of their intended effect."[7] Mandatory minimums "destroy honesty in sentencing by encouraging charge and fact plea bargains." Moreover, mandatory minimums result in unwarranted sentencing disparity. That is, "mandatory minimums * * * treat dissimilar offenders in a similar manner, although those offenders can be quite different with respect to the seriousness of their conduct or their danger to society * * *" and * * * "require the sentencing court to impose the same sentence on offenders when sound policy and common sense call for reasonable differences in punishment."[8]

In addition, mandatory minimums tend to discriminate against minorities. Both the Judicial Center in its study report entitled "The General Effects of Mandatory Minimum Prison Terms: a Longitudinal Study of Federal Sentences Imposed" and the United States Sentencing Commission in its study entitled "Mandatory Minimum Penalties in the Federal Criminal Justice System" found that minorities were substantially more likely than whites under comparable circumstances to receive mandatory minimum sentences. The Sentencing Commission study also reflected that mandatory minimum sentences increased the disparity in sentencing of like offenders with no evidence that mandatory minimum sentences had any more crime-reduction impact than discretionary sentences.

Finally, the mandatory minimum sentences prescribed in H.R. 3132 have an additional dimension of harshness and unfairness in the form of technical registration requirements. Under the bill, an offender who is required to register could be subjected to a 5 year mandatory minimum sentence for some technical problem with the

[6] The legislation establishes 36 new mandatory minimum sentences and increases the sentences in eight existing provisions.

[7] *See* U.S. Sentencing Commission, Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (August 1991).

[8] *Id.*

registration requirement that could be deemed a failure to register.[9]

H.R. 3132 simply takes the wrong approach. Instead of focusing on correctional and rehabilitative programs, it unduly focuses on registration requirements. For example, a recent report by the Ohio Department of Rehabilitation and Correction demonstrated that paroled sex offenders completing basic sex offender programming while incarcerated had a lower recidivism rate than those who did not have programming. This was true for both recidivism of any type (33.9% with programming recidivated compared with 55.3% without programming) and sex-related recidivism (7.1% with programming recidivated compared with 16.5% without programming).[10]

In fact, excluding those convicted of rape, numerous studies evidence that sex offenders are highly treatable and have very low recidivism rates.[11] For example, according to the latest comprehensive Department of Justice offender statistics, overall, sex offenders are less likely than non-sex offenders to be rearrested for any offense within 3 years of release—43 percent of sex offenders versus 68 percent of non-sex offenders. And of the approximately 4,300 child molesters released from prisons in 15 States in 1994, 3.3% of these were rearrested for another sex crime against a child within 3 years of release from prison. In comparison, released prisoners with the highest re-arrest rates were robbers (70.2%), burglars (74.0%), larcenists (74.6%), motor vehicle thieves (78.8%), those in prison for possessing or selling stolen property (77.4%), and those in prison for possessing, using or selling illegal weapons (70.2%). Therefore, there is little evidence that harsher penalties in the form of technical registration requirements are needed to solve the problem of sexual abuse of children.

II. THE LEGISLATION UNJUSTIFIABLY EXPANDS THE FEDERAL DEATH PENALTY

H.R. 3132 would create 2 new death penalty provisions at a time when evidence continues to expose the fallibility of the system and its discriminatory effects.

Numerous studies, including those conducted by the ACLU and the University of Michigan among others, have documented the exposure of innocent individuals to the death penalty system.[12] Last

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[9] In this regard, Mr. Scott offered an amendment that would have eliminated the mandatory minimum sentences related to the registration requirements in favor of a scheme with maximum sentences, granting discretion to the Sentencing Commission and the courts to determine the gradation of seriousness and punishment. Unfortunately, the amendment was narrowly defeated by a 17 to 16 vote.

[10] "Ten-Year Recidivism Follow-up of 1989 Sex Offender Releases," Department of Rehabilitation and Correction, Ohio (April 2001).

[11] *See* Orlando, Dennise, "Sex Offenders," Special Needs Offenders Bulletin, a publication of the Federal Judicial Center, No. 3, Sept. 1998, at 8; see also Alexander, M.A., "Sexual Offender Treatment Efficacy Revisited," 11 Sexual Abuse: A journal of Research and Treatment 2, at 101–117 (cited in Center for Sex Offender Management, "Recidivism of Sex Offenders," 13–14 (May 2001).

[12] *See* American Bar Association, "Gideon's Broken Promise: America's Continuing Quest for Equal Justice" (2005) (demonstrating that innocent people are wrongfully convicted in our criminal justice system due to the lack of effective defense representation for the poor). In fact, Governor Ryan of Illinois declared a moratorium in his state after 13 people were released from death row because of innocence. Ryan wanted assurances that the system was working before resuming executions. Some death penalty proponents have argued that the problems in Illinois are exceptional. In fact, however the error rate in Illinois is 66%, slightly lower than the national average of 68%.

year, a University of Michigan study identified 199 murder exonerations since 1989, 73 of them in capital cases. The same study found that death row inmates represent a quarter of 1 percent of the prison population but 22 percent of the exonerated. Since 1973, 119 innocent people have been released from death row. An earlier study found that more than two out of every three capital judgments reviewed by the courts during a 23-year period were seriously flawed. Moreover, when experts reviewed all the capital cases and appeals imposed in the United States between 1973 and 1995 at the state and federal levels, they found a national error rate of 68%. In other words, over two-thirds of all capital convictions and sentences are reversed because of serious error during trial or sentencing phase. This does not include errors that were not serious enough to warrant a reversal.[13]

In fact, due in part to the high number of wrongful convictions with respect to the death penalty, Congress passed the Justice for All Act of 2004,[14] which received strong bipartisan support. The Act increases federal resources available to state and local governments to combat crimes with DNA technology and provides safeguards to prevent wrongful convictions and executions. Title III of the Innocence Protection Act also provides access to post-conviction DNA testing in federal cases, helps States improve the quality of legal representation in capital cases and increases compensation in federal cases of wrongful conviction. By increasing the number of federal death penalty provisions, H.R. 3132 runs counter to the spirit of the Innocence Protection Act and would actually prevent that legislation from achieving its full purpose. Even worse, these new death penalties are being proposed at a time when the Innocence Protection Act has not even been funded.

Furthermore, the death penalty has been shown to be racially and economically discriminatory.[15] Studies which examine the relationship between race and the death penalty have now been conducted in every active death penalty state. In 96% of these reviews, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both. After its careful study of the death penalty in the United States, the United Nations' Human Rights Commission in 1998 issued a report which rightly concluded: "Race, ethnic origin and economic status appear to be key determinants of who will, and who will not, receive a sentence of death."[16]

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[13] *See* "A Broken System: Error Rates in Capital Cases", 1973–1995 (Retrieved April 26, 2005 from *http://justice.policy.net/jpreport/*).

[14] Pub. L. No. 108–405, S. 401–432 (2004).

[15] *See* Department of Justice Report, "The Federal Death Penalty System: A Statistical Survey" (1988–2000) (finding numerous racial and geographic disparities in the death penalty and revealing that 80% of the cases submitted by federal prosecutors for death penalty review in the past five years have involved racial minorities as defendants); *see also* University of Maryland Report, "An Empirical Analysis of Maryland's Death Sentencing System With Respect to the Influence of Race and Legal Jurisdiction," (2003) (available at *newsdesk.umd.edu/pdf/finalrep.pdf*) (concluding that defendants are much more likely to be sentenced to death if they have killed a Caucasian).

[16] Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Mission to the United States of America, U.N. ESCOR, Hum. Rts. Comm., 54th Sess., Agenda Item 10, P 62, U.N. Doc. E/CN.4/1998/68/Add.3 (1998).

III. THE LEGISLATION UNJUSTIFIABLY LIMITS THE RIGHT OF HABEAS CORPUS REVIEW

H.R. 3132 seeks to limit the ability of an individual to apply for a writ of habeas corpus in any case that involves the killing of a person under the age of eighteen. In essence, this bill completely strips federal judges, justices and courts of jurisdiction over this very rare class of claims.

The constitutional review of state cases assigned to federal courts is a serious matter, calling for careful consideration. It is a hallmark of the liberty that defines America. In the past, Congress has consistently avoided enacting such jurisdiction-stripping legislation. In fact, in 1996 when Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA), Congress intentionally decided against eliminating habeas jurisdiction, in its entirety, for any class of cases or claims.

Additionally, the need for such a measure is doubtful. Since passage of the AEDPA, there has been a clear decline in the number of state prisoners filing habeas corpus petitions in the federal district courts. Over the last five years, the number of state prisoners seeking federal habeas corpus review has declined 13%; the number of federal habeas corpus cases filed by state death-row inmates has declined 17% during that period.[17] Needless to say, these declines are quite significant, given that the 9% increase in the total state prison population.[18]

IV. THE LEGISLATION UNWISELY TREATS JUVENILES AS ADULTS

H.R. 3132 unwisely includes juveniles within its ambit and treats juvenile offenders on par with adult offenders. Under the current provisions of H.R. 3132, the legislation would mandate lifetime sex offender registration for children and youth.[19]

H.R. 3132 does not recognize the extensive research which underscores significant differences between youth who sexually abuse younger children and adult sex offenders. One significant difference is that the vast majority of children and teenagers adjudicated for sex crimes exhibit a high response rate to treatment and also do not progress onward to become adult sex offenders.[20]

Moreover, childhood and adolescent sexual offenses are different from adult sex offenses in their motivation, nature, and extent. For

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[17] *See*, Administrative Office of the United States Courts, Judicial Facts and Figures, Table 2.9, available at *http://www.uscourts.gov/judicialfactsfigures/table2.09.pdf.*

[18] *See*, Bureau of Justice Statistics, U.S. Department of Justice, Prison and Jail Inmates at Midyear 2000 and at Midyear 2004, available at *http://www.ojp.usdoj.gov/bjs/pub/pdf/pjm00.pdf* and *http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim04.pdf.*

[19] Youth in grade school or junior high will be swept up alongside paroled adult sex offenders. Many caught in it will be 13 and 14 year olds. In some states, children 10 and under would be registered.

[20] In fact, low recidivism rates are a consistent finding across over five decades of follow-up research and over 30 studies. For example, the Association for the Treatment of Sexual Abusers (ATSA), the largest international organization of professionals studying sex offender risk assessment and management approaches, states: "Recent research suggests that there are important distinctions between juvenile and adult sexual offenders, as well as the finding that not all juvenile sexual offenders are the same. There is little evidence to support the assumption that the majority of juvenile sexual offenders are destined to become adult sexual offenders * * * recent prospective and clinical outcome studies suggest that many juveniles who sexually abuse will cease this behavior by the time they reach adulthood, especially if they are provided with specialized treatment and supervision. Research also indicates that juvenile offenders may be more responsive to treatment than their adult counterparts due to their emerging development." (ATSA Position Paper, 2000).

example, a deviant sexual interest in young children, which is a major driving factor among persistent adult sex offenders, does not appear to play a role in the behavior of most children and teens. With rare exception, these youth are not pedophiles. Rather, for many children and youth, these behaviors are opportunistic, driven by curiosity and poor judgment, and are more impulsive rather than compulsive. Critical distinctions such as these between juveniles and adults have been clearly pointed out by blue-ribbon panels commissioned by the U.S. Department of Justice and by public information resources such as the Center for Sex Offender Management (CSOM), the National Center on the Sexual Behavior of Youth (NCSBY), and by professional and research organizations.

The United States has a century-long tradition of maintaining different standards and treatment for juvenile delinquents as opposed to adult criminals. Our values dictate that individuals should not be stigmatized for life based on childhood or early teenage behavior. Including juveniles under H.R. 3132 violates this tradition of American justice and creates a special class of juveniles mandated to bear lifetime public stigma.

V. THE LEGISLATION FAILS TO PROHIBIT THE SELL OF DANGEROUS FIREARMS TO CONVICTED SEX OFFENDERS

HR 3132 fails to address a glaring loophole that presently exists in our current system of gun laws. Namely, it fails to prohibit the sell of dangerous firearms to all convicted sex offenders.

Under current law, it is illegal to transfer a gun to anyone convicted of a crime punishable by more than one year. In addition, we also prohibit the transfer of such weapons to individuals convicted of committing misdemeanor crimes that we consider to be of a particularly serious nature. For example, we prohibit anyone convicted of committing a misdemeanor crime of domestic violence from purchasing or possessing a gun. Unfortunately, similar restrictions are not placed on individuals convicted of committing misdemeanor sex offenses.

Guaranteeing that all sex offenders are prevented from gaining access to dangerous firearms is of grave importance. Not long ago, Keith Dwayne Lyons, a high-risk sex offender, was convicted of engaging in unlawful sexual intercourse with a minor. According to filed police reports, Mr. Lyon was aided by the use of a firearm in carrying-out his crime.[21]

We also have been made painfully aware of the recent child molestations involving at least three Boy Scout officials who, over the course of the past several years, have been accused of molesting dozens of young boys. In the case of one of the alleged molesters in particular, Mr. Dennis Empey, we also learned he had been previously convicted of committing a sex offense after having been accused of "flashing a gun before sodomizing his victims."[22] During the course of the Committee's consideration of HR 3132, Representative Nadler offered an amendment to address this problem. Unfor-

[21] Reno Gazette-Journal, "High Risk Sex Offender Arrested", Page 5c December 10, 2004.
[22] Idaho's "Post Register" Uncovers Pedophiles Among Boy Scout Officials, Editor & Publisher, July 5, 2005.

tunately, that amendment was defeated on a straight party-line basis.

VI. THE LEGISLATION WILL HAVE A DISPROPORTIONATE IMPACT ON NATIVE AMERICANS

H.R. 3132's creation of additional federal crimes will disproportionately affect Native Americans who are significantly over-represented in the federal criminal system.[23] H.R. 3132 would add felony child abuse and neglect to the Major Crimes Act,[24] and would impose a host of harsh new mandatory minimum sentences for existing offenses under the Major Crimes Act. This will have a disproportionate impact on Native Americans because they comprise the vast majority of people prosecuted in federal court for offenses listed in the Major Crimes Act, and their sentences are already significantly longer than the sentences imposed in state courts on others for the same conduct.[25]

VII. PROVISIONS OF THE LEGISLATION ARE BEING RUSHED THROUGH WITHOUT ADEQUATE DEBATE

A number of substantive provisions of H.R. 3132 are being rushed through the House without adequate debate, consideration or consultation with relevant interest groups. For example, as mentioned above, Sec. 510 of the bill adds felony child abuse and neglect to the Major Crimes Act; however, to date there has been no deliberative consultation with the representatives from the group most affected by the legislation, Native Americans.[26] Moreover, no hearing has been held on some of the more controversial provisions of the bill, including the provision which authorizes the Attorney General to collect DNA samples from any person arrested or detained under federal authority. Finally, the Committee has yet to hold hearings on the mandatory mininum provisions of the legislation, a central aspect of how H.R. 3132 addresses sex offenses.

CONCLUSION

While there is no question that we must address the problem of violence against children and in particular violent offenses com-

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[23] As Indian reservations are considered federal reserves which fall under federal jurisdiction, a significant amount of federal criminal prosecution is focused on Indian reservations. Native Americans are consequently over-represented in the federal prison population. As of 2000, while Native Americans are roughly 1% of the population, they represent 1.5% of the prison population. The rate of incarceration for Native Americans increases significantly in states with larger reservations. For example, while Native Americans are 6% of the population of Montana, Native Americans account for more than 20% of those incarcerated there, and 32% of women incarcerated in that state. Overall, Native Americans are incarcerated there at a rate more than 4 times that of white residents.

[24] Under the Major Crimes Act, any "Indian" who commits one of a list of felonies in "Indian country" is subject to prosecution and sentencing exclusively under federal law. H.R. 3132 would add "felony child abuse or neglect" to the list of offenses in the Major Crimes Act.

[25] In June of 2002, the United States Sentencing Commission formed the Ad Hoc Advisory Group on Native American Sentencing Issues ("Advisory Group") in response to concerns that Native American defendants were treated more harshly under the U.S. Sentencing Guidelines than similarly situated defendants prosecuted by the states. Focusing solely on aggravated assault, sexual abuse, and manslaughter, the Advisory Group found that sentences for sexual abuse and aggravated assault under the U.S. Sentencing Guidelines were significantly longer than those imposed for the same conduct by state courts, and were either higher or lower with respect to manslaughter.

[26] There are a number of other provisions of the bill that would disproportionately affect Native Americans, but about which representative groups have not been consulted. See Sec. 302, 402, 504, 505, 506, 508, 512, and 513.

mitted by sexual offenders, the emphasis of H.R. 3132 on the death penalty, mandatory minimums, and unforgiving registration requirements is misplaced. Mandatory minimum sentences have been studied extensively and have been proven to be ineffective in preventing crime. Moreover, the death penalty system has numerous deficiencies, not to mention its discriminatory effects. The bill also unwisely advocates lumping juvenile offenders with adult criminals without recognizing the critical distinctions between the two. Unfortunately, instead of addressing the issues underlying violence against children, H.R. 3132 adopts a "lock 'em up and throw away the key" strategy with technical registration requirements and mandatory minimum sentences.

DESCRIPTION OF AMENDMENTS OFFERED BY DEMOCRATIC MEMBERS

1. Amendment offered by Rep. Adam Schiff

Description of amendment: The Schiff amendment proposed to award bonus payments to any state that implemented an electronic monitoring system of sex offenders following their release from prison.

Vote on Amendment: The amendment was agreed to by voice-vote.

2. Amendment offered by Rep. Bobby Scott (#1)

Description of amendment: The Scott amendment proposed to eliminate the registration requirements for any individual convicted of a misdemeanor sex offense.

Vote on Amendment: The amendment was defeated by voice-vote.

3. Amendment offered by Rep. Bobby Scott (#2)

Description of amendment: The Scott amendment proposed to delete the two provisions of the bill that authorized the Attorney General to determine who should be labeled a 'sexual predator' for purposes of the registry and the provision that authorized the AG to designate which crimes would constitute a 'serious sex offense' under the terms of the bill.

Vote on Amendment: The amendment was defeated by voice-vote.

4. Amendment offered by Rep. Bobby Scott (#3)

Description of amendment: The Scott amendment proposed to eliminate the five year mandatory minimum penalty for individuals who fail to register or make false statements when complying with the registration requirements, as prescribed by the bill.

Vote on Amendment: The amendment was defeated by voice-vote.

5. Amendment offered by Rep. Bobby Scott (#4)

Description of amendment: The Scott amendment proposed to strike the language in section 117, subsection 3 of the bill requiring a sex offender to "read and sign a form stating that the duty to register has been explained and the sex offender understands the registration requirement."

Vote on Amendment: The amendment was defeated by a vote of 16–17. Ayes: Representatives Conyers, Berman, Nadler, Scott, Watt, Jackson Lee, Waters, Meehan, Weiner, Sanchez, Van Hollen,

Wasserman Schultz, Lungren, Inglis, Flake, Gohmert. Nays: Representatives Sensenbrenner, Coble, Smith, Gallegly, Chabot, Jenkins, Cannon, Hostettler, Green, Keller, Issa, Pence, Forbes, King, Feeney, Franks, Schiff.

6. Amendment offered by Rep. Bobby Scott (#5)

Description of amendment: The Scott amendment proposed to strike section 303 of the bill in its entirety; thereby eliminating the restrictions that the bill places on applications for the writ of habeas corpus review.

Vote on Amendment: The amendment was defeated by a vote of 12–18. Ayes: Representatives Conyers, Berman, Nadler, Scott, Jackson Lee, Waters, Wexler, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz. Nays: Representatives Sensenbrenner, Coble, Smith, Chabot, Lungren, Jenkins, Cannon, Inglis, Hostettler, Green, Keller, Issa, Flake, Forbes, King, Feeney, Franks, Gohmert.

7. Amendment offered by Rep. Debbie Wasserman Schultz

Description of amendment: The Wasserman Schultz amendment directed the Attorney General to establish guidelines for the civil confinement of certain sexually violent predators within state institutions.

Vote on Amendment: The amendment was withdrawn.

8. Amendment offered by Rep. Sheila Jackson Lee

Description of amendment: The Jackson Lee amendment proposed to expand the authority of the Attorney General to collect DNA samples from anyone convicted of committing a federal crime.

Vote on Amendment: The amendment was agreed to by voice-vote.

9. Amendment offered by Rep. Jerrold Nadler

Description of amendment: The Nadler amendment proposed to amend section 922 of title 18 U.S.C. in order to prohibit the transfer or possession of a firearm by any individual who had been convicted of committing a sex offense against a minor.

Vote on Amendment: The amendment was defeated on a straight party-line basis by a vote of 9 to 17. Ayes: Representatives Conyers, Nadler, Scott, Meehan, Weiner, Schiff, Sanchez, Van Hollen, Wasserman Schultz. Nays: Representatives Sensenbrenner, Coble, Smith, Chabot, Lungren, Jenkins, Cannon, Inglis, Hostettler, Green, Keller, Issa, Flake, Forbes, King, Franks, Gohmert.

10. Amendment offered by Rep. Bobby Scott (#6)

Description of amendment: The Scott amendment directed the Federal Bureau of Prisons to establish and provide access to a sex offender treatment program for all federal inmates, prior to the time of their release.

Vote on Amendment: The amendment was withdrawn with the understanding that Majority and Minority staff would work out a mutually agreeable version to be accepted by the Majority.

11. Amendment offered by Rep. Bobby Scott (#7)

Description of amendment: The Scott amendment proposed to establish a comprehensive risk classification for all sex offenders based upon the offender's risk of re-offense and degree of dangerousness to the public.

Vote on Amendment: The amendment was withdrawn with the understanding that Majority and Minority staff would work out a mutually agreeable version to be accepted by the Majority.

12. Amendment offered by Rep. Bobby Scott (#8)

Description of amendment: The Scott amendment proposed to provide the court with greater discretion in establishing the terms of supervised release for individuals covered under the bill.

Vote on Amendment: The amendment was agreed to by voice-vote.

13. Amendment offered by Rep. Bobby Scott (#9)

Description of amendment: The Scott amendment proposed to strike all of the death penalty eligible offenses and mandatory minimum sentences included throughout the bill.

Vote on Amendment: The amendment was defeated by voice-vote.

JOHN CONYERS, Jr.
ROBERT C. SCOTT.
LINDA SÁNCHEZ.

ATTACHMENTS

August 15, 2005

Honorable Arlen Specter
Chairman
Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20515-6275

Honorable F. James Sensenbrenner, Jr.
Chairman
Honorable John Conyers
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Re: Pending Sex Offender Registry Legislation (HR 3132, S 792, S 1086)

Dear Congresspersons:

As researchers, treatment professionals, law enforcement officials, and child advocates, we have devoted our professional careers to preventing child abuse. The recent tragic events involving adult sex offenders are something about which the public is rightly concerned. We have followed with interest several legislative proposals regarding sexual offenders. We applaud your attention to this important problem. As child abuse researchers and advocates for children, however, we urge that such legislation be amended to make it more effective and cost-efficient in promoting community safety and prevention of sexual violence.

The Sex Offender Registration and Notification Act (H.R. 3132) states that its purpose is to respond to "vicious attacks by violent sexual predators." In fact, by being inclusive of anyone who has been convicted of any sexual offense, it applies to some who are not in fact violent sexual predators and do not pose a substantial risk of re-offense.

Association for the Treatment of Sexual Abusers
4900 S.W. Griffith Drive, Suite 274, Beaverton, Oregon 97005
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Specifically, we offer the following major recommendations for HR 3132, all of which can be supported with scientific data:

1. Delete the requirement of lifetime registration for juvenile offenders, who are very different from adult sex offenders in both their development and their risk for reoffense.
2. Require or at least encourage states to adopt a tiered approach to identifying "high risk" offenders based on empirically-based risk factors, such that aggressive notification and internet disclosure would be reserved for high-risk sex offenders.
3. Allow a reasoned process for low-risk offenders to be removed from state and federal registries.
4. Adopt a more accurate definition of the term "sexual predator" for the purposes of registration and notification.

Following, you will find more specific recommendations and research supporting them.

1. We respectfully but strongly suggest that the lifetime registration requirement for juvenile sex offenders be eliminated from this proposal.

- The vast majority of these youth remain free of sexual offense recidivism at long-term follow-up. Low sex offense recidivism rates are a consistent finding across over five decades of follow-up research comprising over 30 U.S. follow-up studies (e.g., less than 8% in most treatment follow-up studies).
- As many as 1/3 of sexually abused children will demonstrate some sort of sexual behavior problem, usually transient and minor, in response to their own abuse. In some cases, this behavior may even involve other children or younger children and result in a delinquent adjudication. However, the motivation and manifestation of these sexually inappropriate behaviors are very different from those of adult offenders. And, children with sexual behavior problems generally respond well to treatment interventions. As advocates for sexually abused children, we do not wish to see the added burden of mandatory lifetime public labeling as a "sex offender" adding to the stigma of abused children.
- The United States has a long tradition of separating our handling of juvenile delinquents from our handling of adult criminals. We recognize, and the data support, that most youth who break the law during their childhood or early adolescence can and will mature out of this behavior given appropriate guidance and limits. Consequently, our society believes that individuals should not be stigmatized for life on the basis of their childhood behavior. Including juveniles under H.R. 3132 violates this tradition of American justice and creates a unique class of juvenile delinquents who will be denied fair opportunities for employment, education, and housing, despite research evidence that very few of them will go on to commit new sexual or violent offenses. Juveniles should not be subjected to registration or notification.
- Additionally, we further suggest exemptions for young adults under age 22 who have had a consensual relationship with a minor not more than 4 years younger.

2. States should be required or strongly encouraged to adopt a tiered approach to identifying "high risk" offenders using research-based risk factors, such that aggressive notification and internet disclosure would be reserved for high-risk sex offenders. In fact, many states have decided that because the consequences of notification are so severe, they will only notify the public about offenders who pose a high risk. As well, some states have recognized that over-inclusive notification can actually be harmful to public safety by diluting the ability to identify truly dangerous offenders and by disrupting the stability

of low risk offenders in ways that may increase their risk. The careful work that these states have done to differentiate risk levels of sexual offenders can inform a national model of registration and notification.

- There is a perception that the vast majority of sex offenders will repeat their crimes. However, sex offenders comprise a very broad range of offense patterns and re-offense risk. Research studies by the US Dept. of Justice and the Canadian Government have found that sexual offense recidivism rates are much lower than commonly believed. The Bureau of Justice Statistics found that of 9,691 sex offenders released from prison in 1994, 5.3% were rearrested for a new sex crime within the 3-year follow-up period. Sex offenders were less likely than non-sex offenders to be rearrested for any offense — 43 percent of sex offenders versus 68 percent of non-sex offenders. The Solicitor General's Office of Canada, in a study of 29,000 sex offenders from Canada, the U.S., and England, found, on average, that 14% were rearrested for a new sex crime within 4 years. Some subgroups of sex offenders are more dangerous than others. Studies that have tracked sex offenders over longer follow-up periods have found that pedophiles who molest boys, and rapists of adult women, were most likely to recidivate. Sex offenders with past arrests are more likely to reoffend than first-time offenders. Those who comply with probation and treatment have lower reoffense rates than those who violate the conditions of their release. Sex offenders who target strangers are more dangerous than those with victims inside their own family. Although official recidivism rates may underestimate true offense rates, the most aggressive sex offender registration and notification strategies should be reserved for the sex offenders who pose a high risk to public safety.
- Progress has been made in the science of risk assessment, which allows us to estimate the likelihood that a sex offender will commit a new sex crime in the future. Although we cannot predict with certainty that any particular offender will act in a specific way, we can estimate, with moderate accuracy, whether or not an offender belongs to a high- or low-risk group. Using risk factors that have been empirically correlated with recidivism, qualified practitioners can use scientific risk assessment tools to screen offenders into risk categories. These procedures are similar to the ways in which insurance companies assess risk and assign premiums, and how doctors evaluate a patient's risk for developing a medical illness. Risk assessment allows us to identify the most dangerous sex offenders, and apply the most intensive interventions to those who need the greatest level of supervision, treatment, and restriction.
- It should be noted that there is no evidence that community notification reduces sex offense recidivism or increases community safety. The only study to date found no statistically significant difference in recidivism rates between offenders who were subjected to notification in Washington (19% recidivism) and those who were not (22% recidivism). Sex offenders who were subjected to community notification were, however, arrested more quickly for new sex crimes than those not publicly identified. It was found that 63% of the new sex offenses occurred in the jurisdiction where notification took place, suggesting that notification did not deter offenders or motivate them to venture outside their jurisdictions (where they would be less likely identified) to commit crimes. Based on these findings, community notification appears to have little effect on sex offense recidivism.
- Research suggests that about one-third to one-half of sex offenders subjected to community notification experience dire events such as the loss of a job or home, threats or harassment, or property damage. Physical assault seems to occur in 5-16% of cases. About 19% of sex offenders report that these negative consequences have affected other members their households. It has been suggested that notification may, ironically, interfere with its stated goal of enhancing public safety by exacerbating the stressors (e.g., isolation, disempowerment, shame, depression,

substance abuse, lack of social supports) that may trigger some sex offenders to relapse, or to commit other types of crimes. Such dynamic factors have been associated with increased recidivism, and although sex offenders inspire little sympathy from the public, ostracizing them may inadvertently increase their risk.

- Sexual offender policies are based partly on the myth that sex offenders cannot be treated. Early studies, conducted in the 70's and 80's, were unable to detect differences in recidivism rates between sex offenders who had undergone treatment and those who had not. This finding was widely publicized, leading to skepticism about the benefits of treatment, and opening the door to punitive public policies. Actually, although the research is not unequivocal, treatment has been found to decrease sex offense recidivism. Recent, statistically sophisticated studies with extremely large combined samples have found that contemporary cognitive-behavioral treatment does help to reduce rates of sexual reoffending by as much as 40%. However, treatment does not work equally well for all offenders (like any psychological or mental health treatment -- or medical interventions, for that matter). Treatment failure is associated with higher recidivism rates, and research indicates that sex offenders who *successfully* complete a treatment program reoffend less often than those who do not demonstrate that they "got it."

3. Allow for a reasoned process by which low risk offenders can petition to be removed from state and federal registries.

- There are times that public notification would cause undue harm to the offender's family such that the risks of notification would outweigh the benefits to the community. In particular, incestuous perpetrators have a low risk of re-offense, and their families and/or victims may be reluctant to report sexual abuse if it means loss of breadwinner's job and inadvertent public identification of the family.
- Lifetime registration may not be necessary for all sex offenders and may in fact interfere with the stability of low-risk offenders by limiting their employment and housing opportunities. Sex offenders represent a wide range of offense patterns and future risk. Research has found that community notification of low risk offenders may unnecessarily isolate them and lead to harassment and ostracism, which can inadvertently increase their risk.
- It is recommended that sex offenders should be allowed to petition for release from registration when the sex offender is deemed to pose a low risk to the community AND the offender has successfully completed a sex offender treatment program AND the offender has been living in the community offense-free for at least five years.
- Regarding strict culpability on those who fail to register or update their information, the penalty is so severe—5-10 years—that there should be some consideration for an honest mistake in reporting (especially for low-level/low-risk offenders).

4. We are concerned that the definition of "predator" in HB 3132 is too broad. We need to reserve such inflammatory terminology for the most dangerous and violent sex offenders. Using the label indiscriminately dilutes the public's ability to identify truly high risk offenders and to respond accordingly. If states require an individual to register as a "sexual predator," they should clearly distinguish such offenders as discussed below.

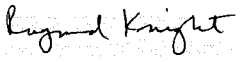
- The definition of "predator" differs from state to state, but is generally reserved for the most dangerous sex offenders. Many states use similar terminology to describe this type of sex offender and the offenses he perpetrates. The term should more accurately reflect the clinical

construct to which it refers, describing individuals who have longstanding patterns of sexually deviant behaviors and who meet criteria for paraphilic disorders. In the words of the Kansas Sexually Violent Predator Act, "predatory acts" are those "*acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization.*" The state of California states: "*'Predatory' means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.*" In some states, the definition includes criteria involving the use of violence, weapons, or causing injury during the commission of a sex crime, or those offenders who have had multiple victims. Repeat offenders, and those who have committed abduction of children or adults for sexual purposes may also be considered predators. Such definitions are more consistent with the term "sexually violent predator" as defined in civil commitment proceedings, which require a convicted sex offender to have a mental abnormality predisposing him to a likelihood of future sexually violent crimes.

- The term "sexual predator" should be reserved for sex offenders who have engaged in a long-term pattern of sexually deviant behavior, who are assessed to be at high risk to reoffend, who have assaulted strangers or non-relatives, who have used violence, weapons, or caused injuries to victims, who have had multiple victims and/or arrests, or who have committed abduction, kidnapping, false imprisonment, or sexually motivated murder or attempted murder.
- It is important to remember that although recent media attention has been focused on child abduction, rapists of adult women can also be highly dangerous sexual predators. They often have many victims, and are more likely than child molesters to use violence or weapons to gain compliance from victims. The majority of victims of sexually motivated murders are adult women.
- It is also important to remember that recent high-profile cases do not represent the "typical" sex offender. Sexually motivated abduction and murder are rare events, and such cases should not become the impetus for legislation affecting the heterogeneous group of sexual offenders.
- Electronic monitoring may be a useful tool for repeat offenders who have predatory offense patterns, a history of violence, a history of absconding or probation violations, and/or are considered at high risk for recidivism. Lifetime electronic monitoring, however, is neither necessary nor cost effective to implement with all sex offenders.

We hope that these ideas are useful to you in undertaking this most important task, and wish you the very best in your efforts. We believe our communities' safety is vitally important and thank you for the opportunity to contribute our recommendations.

Sincerely,



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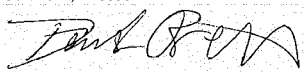

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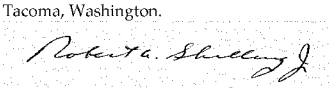

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About The Association for the Treatment of Sexual Abusers:

The Association for the Treatment of Sexual Abusers is an international, multi-disciplinary professional association dedicated to the research, treatment, and prevention of sexual assault. ATSA's members include the world's leading researchers in the study of sexual violence and also professionals who conduct evaluations and treat sexual offenders, sexually violent predators, and victims. Members work closely with public and private organizations such as prisons, probation departments, child protection agencies, State Attorney's Offices, Public Defender's Offices, the National Council Against Sexual Violence, and state Legislatures in an effort to protect citizens from sexual assault. We advocate for evidence-based practices and policies that are most likely to protect the public from sexual violence, while allowing for the rehabilitation of sexual offenders.
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August 30, 2005

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Honorable F. James Sensenbrenner
Chairman
Honorable John Conyers
Ranking Member
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United States House of Representatives
Washington, D.C. 20515-6275

Re: Federal sex offender registry legislation
S 792, S 1086 and HR 3132

Dear Senator Spector, Senator Leahy, Chairman Sensenbrenner, and Representative Scott:

In New Jersey, the Office of the Public Defender represents all indigent persons who are entitled to a court hearing concerning the Megan's Law tier classification or community notification proposed for them by the State. Over the past ten years the Office has represented registrants in approximately 3000 cases in a state where approximately 5000 cases have been adjudicated.

Our extensive contact with registrants and Megan's Law systems, which include due process protections, places us in a

unique position to provide the Judiciary Committee with comments concerning how a federal sex offender classification and notification system could best provide the public with needed information, without needlessly undermining community safety.

We are also interested in sharing our views with the Committee on the importance of due process hearings in the notification procedure, and how such hearings have operated successfully in New Jersey to avoid errors in offender risk assessments and community notification.

Based on NJOPD's extensive experience with Megan's Law, we wish to make three main points regarding the proposed federal legislation:

1. Existing evidence indicates that notification laws have no significant effect on lowering recidivism. At the same time, we have seen in our own cases that sex offender notification, especially when it occurs via the Internet, subjects registrants to violence and threats, and prevents or diminishes access to jobs, housing and treatment, each of which is essential to reducing recidivism levels. It also reduces the likelihood that child victims of intra-familial offenders will report abuse since the family name will be posted on the Internet. In such cases, Internet notification publically humiliates the victim thereby further victimizing the victims. Thus, such notification can actually decrease public safety rather than enhance it, and should only occur for high risk offenders.

2. The goal of a community notification system is to inform the public regarding convicted sex offenders who pose a true risk to public safety. Thus, any sex offender registry law should require risk assessment and a tiered approach to community notification tied to risk level. Placing all registered sex offenders on the Internet, even with a mention of their risk level, creates the mis-impression that all offenders on the website pose the same risk. This both dilutes the efficacy of public notification and unnecessarily deprives offenders who are not high risk of the basic means to live productively in society, thus increasing the risk of re-offense of some kind, whether it be a property crime, substance abuse, or a further sex offense.

3. Due process hearings for registered sex offenders are critical to avoiding errors in notification decisions, and to ensure that the information the public receives is accurate. Due process hearings serve to preserve the integrity of the notification system.

1. Effect of Community Notification

Existing evidence indicates that community notification has no significant effect in lowering re-offense rates, and that Internet publication leads to acts of violence, threats and loss of employment.

In the time since New Jersey's Megan's Law was enacted, New Jersey's Department of Corrections has conducted a number of

studies of the recidivism rates of released sex offenders. Those studies indicate that relatively few commit another sex offense.[1] Nationwide, sex offenders are 25% less likely to re-offend than non-sex offenders according to Justice Department statistics.[2]

Furthermore the common belief that community notification reduces recidivism has never been established. A Washington State

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[1]The conclusions reached by these studies included the following:

Of the 115 inmates released in 1994, from the sex offender treatment facility ("Avenel") where offenders found to be repetitive and compulsive are incarcerated, 7 (6%) where re-convicted of a sex offense within five years following their release.

Of the 123 inmates released from Avenel in 1995, 8 (6.5%) were re-convicted of a sex offense in five years following their release.

Of the 79 inmates released from Avenel in 1990, only 3 (3.8%) were re-convicted of a sex offense in the ten years following their release.

Of the 507 inmates released from Avenel during the years 1994-1997, 34 (6.7%) were re-arrested for a sex offense in the three years following their release. The recidivism rates for sex offenders studied were "substantially lower" than the rates for all inmates released in 1991. For example, the study that looked at sex offenders released between 1994-1997 concluded that these offenders were significantly less likely to be re-arrested (32% v. 53%), and less that half as likely to be re-convicted (20% v. 41%). Note, that these numbers are for re-arrests/re-convictions for any type of offense, not just sex offenses. Considering that in 1999, New Jersey enacted a civil commitment law for sexually violent predators, *N.J.S.A.* 30:4-27.24 *et seq.*, and, therefore the most dangerous offenders are now being civilly committed when their sentences are complete, presumably the recidivism rates would now be even lower.

[2]Department of Justice, Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994* at 2 (Re-arrest rate for sex offenders was 43% while re-arrest rate for non sex offenders was 68%.

study found "little evidence that community notification prevented recidivism among adult sex offenders." D. Schram, Ph.D., C. Milloy, Ph.C, Washington State Institute for Public Policy, *Community Notification: A Study of Offender Characteristics and Recidivism* at 16 (Oct. 1995). Similarly, a study conducted in Iowa found no significant difference in sex offense recidivism rates between sex offenders subject to that state's registration and community notification law, and sex offenders who were not. Iowa Dep't of Human Rights, *The Iowa Sex Offender Registry and Recidivism* 19 (Dec 2000). Even law enforcement agencies are doubtful that community notification is worthwhile; a Department of Justice survey of law enforcement agencies in Wisconsin found that "only 41 percent believed it improved management and containment of sex offender behavior through greater visibility." U.S. Dep't of Justice, National Institute of Justice, *Sex Offender Community Notification: Assessing the Impact in Wisconsin* at 6 (Dec. 2000).

While there is little, if any, evidence that notification laws are effective in reducing recidivism, our experience in New Jersey demonstrates that there is a very real likelihood that they lead to violence in the community, and increase the risk that an offender will commit another crime of some kind.

Sex offender notification has a devastating impact on sex offenders and their families. Since notification began in New Jersey in 1994, and despite government warnings, there have been a number of violent incidents following notification. F.G. was

paroled in 1992 and lived in the community without incident. In 1998, F.G. had the fact of his neighborhood notification published in the newspaper. A few days later, F.G. received an anonymous letter that read "We'll be watching you asshole." Late that same evening, someone fired five shots from a high caliber handgun into F.G.'s home. Several bullets almost hit one of F.G.'s family members. Due to this incident, F.G. checked himself into a hospital and was placed on a suicide watch.

In M.G.'s case, community notice occurred approximately two weeks after his release from prison. Eleven days later, two men broke into M.G.'s house in the middle of the night. A guest was sleeping on the sofa and one of the intruders began to beat the guest while yelling, "Are you the sex offender? Meanwhile the other intruder threw a beer bottle through the front window. When M.G. applied for employment he was told that because of the publicity, the company would not hire him.

C.D. had been classified as a low risk offender. In 2000, after someone began distributing copies of an old newspaper article about his offense in his neighborhood, C.D. began experiencing harassment such as having garbage dumped on his lawn and people ringing his doorbell at night. He also received verbal threats. Late one evening C.D. heard a knock at his front door. C.D. looked out the door's window and did not see anyone. However, when C.D. opened the door, a man who had been crouching down in front of the door stood up. The man was wearing a ski mask and carried a

handgun. He pointed the gun at C.D. and said, "If you don't get out of the neighborhood I'm going to kill you." The man turned and fled. We are aware of at least five other physical assaults resulting from notification. In addition, a suicide has been documented in the State of a 21 year old due to Megan's Law, and we have documentation of similarly related suicides occurring in Maine, California, New York, and Great Britain, and a suicide attempt in Texas. (We will be happy to provide you with that documentation upon request.)

Community notification has also led to many cases of threats or harassment. In one case, after community notification, a local newspaper published a front page story identifying L.M. as a "predator." L.M. then became the object of threatening gestures towards him, and he was informed that there was a contract out on his life. The local prosecutor confirmed that L.M.'s life was in danger, and he moved to a new residence. After notification another registrant had a large rock thrown through his window next to where he was sleeping.

Another registrant received anonymous calls stating his "house will be burned down" or "his body will be cut up in little pieces." Following notification another registrant also received a letter stating: "YOU SHOULDN'T BE ALLOWED TO LIVE ON OUR STREET. YOU ARE SCUM. YOU SHOULD DIE. WATCH YOUR BACK." We have documented through affidavits a dozen instances where registrants have been threatened with death or bodily harm following Megan's Law

notification. (We will be happy to provide a detailed summary of these affidavits to you upon request, they are currently filed under seal with the New Jersey Appellate Division.)

There have been dozens of documented cases of harassment of registrants following notification, including: having human feces placed on their front steps, ground glass placed under the tires of their car, telephone calls in the middle of the night, tires slashed and cars vandalized, raw eggs thrown at their car and home, mail boxes destroyed, and homes broken into. Often, registrants do not report these incidents to police because they believe, justifiably or not, that police will have little interest in protecting them.

Other documented examples of the response to community notification demonstrate at least five cases where community members have banded together and waged a coordinated campaign to drive an offender out of town; dozens of examples where community notification itself (not an employer's own knowledge of a registrant's offense), interfered with registrants' attempts to secure and maintain steady employment, or caused registrants to lose housing and housing opportunities; at least six instances where registrants were forced to relocate; and numerous cases of notification, not merely knowledge of the sex offense, resulting in lost relationships, including broken engagements and divorce.

All of these hardships exact a heavy toll psychologically. We have documented that serious bouts of depression and anxiety

frequently follow Internet notification, often requiring professional intervention, including prescribing anti-depressant medication. These factors can raise registrants' risk of re-offense.

For a registrant subject to notification the hope of redemption, or at least the possibility of leading a somewhat normal life, is truly unfounded. An isolated, unemployed and homeless sex offender clearly presents a greater risk than one who has the support of friends and family, is employed and has a place to live.[3] In addition, our experience has shown that the untoward effects of notification have been magnified by the broad Internet notification the State adopted in 2001, impacting many registrants' lives who had not been impacted previously by the State's original tailored notification. Moreover, the stress caused by community notification may trigger a new sex offense. *See* R. Karl Hanson & Andrew Harris, Solicitor General of Canada, *Dynamic Predictors of Sexual Recidivism*, 1998-1 at 2 ("recidivists showed increased anger and subjective distress just prior to offending")

Many of the professionals most directly involved in attempting to reduce recidivism - the therapists who treat sex offenders - believe that community notification is counterproductive.

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[3] *See e.g. Wisconsin Study* at 10 (many offenders interviewed for study "drew from their own embittered experience with community notification to suggest that the tremendous pressure placed on sex offenders by the public and the media would drive many of them back to prison").

Treatment has been shown to help reduce the risk that a sex offender will re-offend by more than half. *See* Center for Sex Offender Management, *Recidivism of Sex Offenders* ("Recidivism Study") at 12-14 (May 2001) (studies showing 18% with treatment v. 43% without treatment; 7.2% with relapse prevention treatment v. 13.2% of all treated offenders v. 17.6% for untreated offenders). *Ten Year Recidivism Followup of 1989 Sex Offender Releases*, State of Ohio Dept. of Rehabilitation and Correction (April 2001) (sex-related recidivism after basic sex offender programing was 7.1% as compared to 16.5% without programing).

However, notification laws interfere with treatment directly - the negative impact on the offender's prospects for employment leaves them less able to afford treatment - and indirectly - the belief that they will never be able to lead a normal life saps them of their motivation to pursue and complete therapy. Affidavit of Timothy P. Foley, Ph.D., dated October 1, 2001 (available upon request). Consistent with this, Dr. Foley has described a patient who was doing very well in sex offender therapy, but due to the stressors of community notification became suicidal and re-offended. Affidavit of Timothy Foley, Ph.D., dated May 15, 2001 (available upon request).

Justice Brennan's observations in *Trop v. Dulles*, 356 U.S. 86, 111 (1958) (Brennan, J., concurring), regarding a somewhat similar form of punishment - expatriation - are apt:

Instead of guiding the offender back into the useful

> paths of society it excommunicates him and makes him, literally, an outcast. I can think of no more certain way in which to make a man in whom, perhaps, rest the seeds of serious antisocial behavior more likely to pursue further a career of unlawful activity than to place on him the stigma of the derelict, uncertain of his basic rights.

2. Rating Registrants by Tier Level

The proposed federal legislation (HR 3132, S 792, and S 1086) would establish a mandatory, nationwide system for registering sex offenders, and would automatically disseminate information about them via local and national websites. Unlike New Jersey's current system, two of the proposed plans (HR 3132 and S 792) would disseminate information via the Internet without first determining registrant risk levels, and without affording due process safeguards to registrants. A 1086 would require a determination of risk level, but nonetheless require posting of every offender on the Internet. As outlined below, this type of offense-based approach to notification ignores dramatic differences among offenders, and would fail to provide law enforcement and the public with information needed to promote community safety.

It is essential that, to be effective, a public notification system contain a three-tiered risk classification system. In New Jersey, high risk and most moderate risk offenders are placed on the Internet. In addition to Internet notice, moderate risk offenders have notification provided directly to schools, community groups and agencies caring for woman and children in the area in

which the offender resides and works. All high risk offenders also have notification provided to schools and community groups and door-to-door to homes located in their neighborhoods. Low risk offenders have notification provided to local law enforcement. A three-tiered system makes meaningful distinctions among the thousands of persons convicted of a sex offense in their states.

The proposed federal notification laws each cover a broad range of offenses and offenders. All three of the bills, include everything from less serious offenses like statutory consensual offenses (depending on age or age difference), exhibitionism resulting in non-custodial sentences, to very serious crimes for which lengthy prison sentences are imposed. Both violent and consensual offenses are included, as are offenses against strangers and against victims residing within the offender's household. In addition, HR 3132 and S 1086 would give the Attorney General the power to designate sex offenders for the entire nation. The Attorney General's current regulation, 28 C.F.R. § 571.72, includes statutory offenses regardless of the age of the offender or the victim or the age difference, and a variety of offenses not contained in the existing federal statute or any of the proposed bills.

Formal studies of sex offender recidivism confirm that re-offense rates vary greatly among different categories of offenders. See United States Department of Justice, Center for Sex Offender Management, *Myths and Facts About Sex Offenders*, at 2 (August

2000). And many well-respected studies show that appropriate sex offender treatment cuts recidivism by more than half. *See, e.g.*, Recidivism Study, *supra,* (studies showing 18% recidivism rate with treatment v. 43% without treatment; 7.2% with relapse prevention treatment v. 13.2% of all treated offenders v. 17.6% for untreated offenders); Orlando, Dennise, *Sex Offenders*, Special Needs Offenders Bulletin, a publication of the Federal Judicial Center, No. 3, Sept. 1998, at 8 (analysis of 68 recidivism studies showed 10.9% for treated offenders v. 18.5% for untreated offenders, 13.4% with group therapy, 5.9% with relapse prevention combined with behavioral and/or group therapy).

Failing to distinguish the truly dangerous offenders from those unlikely to re-offend dilutes any public safety benefit to be derived from community notification. Many states like New Jersey, therefore, require notification to be tied to an offender-specific risk determination. It is crucial for the public and law enforcement officials to be able to make this differentiation. As discussed above, Internet notification can actually lead low risk offenders to be an increased risk by causing them loss of housing, employment and the opportunity for treatment.

Similarly, including low and all moderate risk offenders on an Internet website would also dilute the public safety purpose behind sex offender notification. New Jersey reserves Internet notification for its high risk, and the majority of its moderate risk, registrants thereby giving clear guidance to the public and

to law enforcement as to which offenders pose a significant risk. Inundating the public with notification on a website containing thousands of low risk offenders would only frustrate the public safety goal that community notification is designed to serve. In addition, very serious consideration should be given whenever notification is provided in an incest case since doing so will re-victimize the child involved, and will likely discourage reporting of incest offenses to the authorities.[4]

Thus, New Jersey does not subject registrants classified as a low risk subject to Internet notice. *N.J.S.A.* 2C:7-13f. Moreover, State law recognizes that certain types of registrants do not belong on the Internet because they typically do not pose a significant risk to the public, i.e., person's whose single sex offense was committed as a juvenile, involved a close family member, or was a consensual offense. *N.J.S.A.* 2C:7-13d (1)-(3).[5]

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[4] Many studies have concluded that incest offenders present little risk of re-offense. *See, e.g.*, United States Department of Justice, Center for Sex Offender Management, *Recidivism of Sex Offenders* (May 2001) (citing study which found a 4% rate of recidivism for incest offenders). New Jersey often considers incest offenders a low risk, and when only one offense exists such registrants, by law, are not subject to Internet notification. *N.J.S.A.* 2C:7-13d (2).

[5] In such lower risk cases, however, the State may, when appropriate, provide notification to schools, community groups and agencies caring for woman and children. In addition, the statute contains an override provision authorizing Internet notification when the State demonstrates by clear and convincing evidence that one of the above enumerated offenses was committed by a registrant who poses a risk of re-offense similar to an offender who does not qualify for an exception. *N.J.A.S.* 2C:7-13e.

2. Due Process Hearings

Providing the public with accurate information regarding sex offender risk levels is of paramount importance in a sex offender notification system. A due process hearing, as proposed in S 1086, is *essential* to not only protect registrants against errors occurring in the system, but to ensure that the information the public receives is an accurate reflection of a registrant's risk level. In New Jersey, in many instances due process hearings have successfully eliminated errors contained in notifications, and avoided errors regarding whether, or to what extent, notification should be disseminated.

Perhaps the most dramatic example of errors are the cases where the person's offense was not even subject to the community notification statute. This has occurred in approximately two dozen of our cases.

More commonly, due process review results in changes to a registrant's tier level. In New Jersey, registrants prevail in challenges to the tier classification proposed by the prosecutor in significant numbers of cases. *See AOC Report* at 19 (over 22% of hearings result in a reduction in a registrant's level of risk assessment).

At times these errors are basic, involving errors in numerical calculations on the actuarial scale used for assessing risk, inadvertent failure of the state to follow its own risk assessment

guidelines, or a failure to obtain or consider relevant information bearing upon the registrant's risk determination (e.g., records establishing successful treatment, employment, or demonstrating years of offense-free conduct since release from incarceration).

Several examples illustrate the many cases we see where basic errors are prevented through due process:

Registrant D.D. was an 18 year-old Central American high school student studying in New Jersey. D.D. had a consensual sexual relationship with a 15 year-old girl who attended the same school. The prosecutor scored the actuarial scale incorrectly basing her decision on records of another individual with the same name. As a result of the hearing, the low risk rating allowed D.D. to continue to attend college.

In another case, D.M. was able to establish from discovery that his sole underlying offense was intra-familial, and therefore of a low-risk nature, not posing a risk outside the family home. D.M. also provided evidence, missed by the state, that he had a good record of employment and residential supervision making him a low risk on the State's actuarial scale, and not subject to community notification. Due process hearings have made it possible for these types of corrections to occur in countless cases.

In other cases, due process review has allowed the prosecutor or the court to carefully re-examine whether the nature of an offense justified notification. For instance, at the age of 13 A.J. was found delinquent when, prior to Megan's Law and based on

his attorney's advice, he pled guilty to a sex offense and received probation. Both A.J.'s treating psychologist and the state's psychologist testified that A.J. did not commit the underlying offense. When a polygraph test confirmed the psychologists' opinions, A.J. was not made subject to community notification.

In F.M.'s case, Internet notification was avoided where a teenager's sole offense, eight years earlier, involved unlawful consensual sex with his girlfriend (and now fiancee) with whom he lives and has a child.

In addition, in R.C.'s case, the prosecutor's proposed notification was reversed based upon evidence demonstrating that R.C. has severe heart problems and suffered two strokes. R.C. is now non-communicative and confined to a wheelchair, information the prosecutor did not know when making the original risk classification decision.

Finally, in T.T.'s case the court declined to order notification when it was demonstrated, through expert testimony, that 13 year-old T.T.'s offense of giving an enema to his 6 year-old step brother and then to himself did not constitute a sex offense.

Furthermore, when given the opportunity to do so, the courts have recognized that certain categories of sex offenders raise special considerations and may not be appropriate for community notification. For example, in *In re Registrant J.G.*, 169 N.J. 304, 337 (2001), the Court held that special considerations may need to

be taken into account in cases where the offender was a pre-pubescent child (stating that "in many instances, sexually improper behavior by such young children is more a reflection of inadequate adult supervision, immaturity, inappropriate media exposure, or a prior history of emotional abuse than it is of irremediable sexually predatory inclinations."). *Id. at 340.* Thus, the court stressed that the offender's young age must be considered in any risk assessment, and provided a mechanism by which such offenders can apply to be excused from the requirements of Megan's Law. *Id.* 333-34, 340.

Courts have also recognized that widespread notification may be inappropriate where the underlying offense involved an immature young adult (age 21) having consensual sexual relations with an underage teenage girlfriend (age 15). *In re Registrant E.I.*, 300 N.J. Super. 519, 526 (App. Div. 1997) (stating that a "mechanical" application of the law to all cases will "impede [its] beneficial purpose.") *Id.* at 526.

Similarly, there has been a recognition that it is important to consider the *nature* of the risk presented by the offender. In *In re Registrant F.G.*, 317 N.J. Super. 379 (App. Div. 1998), *approved in part, disapproved in part, on other grounds, In re Registrant M.F.*, 169 N.J. 45 (2000), the Appellate Division concluded that a registrant who limited his offending behavior to a victim within his own household, and did not seek victims in the community-at-large, may not present a risk of the type community

notification is designed to address. *See also, In re Matter of T.S.*, 364 N.J. Super. 1 (App. Div. 2003) (holding that where an offense involved kidnaping a child as part of an escape from a grocery store robbery, and involved no intent to commit a sexual offense, Megan's Law community notification was inappropriate.)

As these examples illustrate, New Jersey, like other states, have risk classification systems that are working well. The one-size-fits-all approach proposed by the federal government would interfere with those systems, and would be prohibited by some state constitutions.

Respectfully submitted,

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cc: Members of the Senate Judiciary Committee
Members of the House Judiciary Committee