

STRENGTHENING CHILDREN'S SAFETY ACT OF 2017

MAY 22, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1842]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1842) to amend title 18, United States Code, to include State crimes of violence as grounds for an enhanced penalty when sex offenders fail to register or report certain information as required by Federal law, to include prior military offenses for purposes of recidivist sentencing provisions, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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Purpose and Summary

The Strengthening Children’s Safety Act of 2017, H.R. 1842, closes loopholes in the child exploitation statutes to ensure enhanced penalties apply equally to all dangerous sex offenders. It amends the Sex Offender Registration and Notification Act (SORNA) so that those offenders who fail to update and verify their whereabouts, and who have committed and been convicted of violence crimes at the state level, face higher penalties for their failure to register offenses—just as those offenders who have been convicted of federal crimes of violence must face. It also makes changes throughout Chapters 109A and 110 to add certain military convictions, which encompass conduct covered by Federal statutes, to recidivist provisions.

Background and Need for the Legislation

H.R. 1842 makes two changes to Federal law. First, H.R. 1842 amends 18 U.S.C. § 2250, the criminal provision of SORNA. Section 2250 provides that a sex offender who knowingly fails to register or update a registration as required by SORNA, or knowingly fails to provide information required by SORNA relating to intended travel in foreign commerce, may face a fine and imprisonment of up to ten years. Subsection (d) of this statute provides for an enhanced penalty of five to 30 years’ imprisonment, to be served consecutively if the offender committed a crime of violence under federal law, the Uniform Code of Military Justice (UCMJ), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States. However, the statute, inexplicably, does not reference sex offenders required to register under SORNA because of a conviction under state law. H.R. 1842 adds a reference to state crimes of violence in the list in the statute. This is a common-sense change to ensure the enhanced penalty applies to all dangerous offenders.

Second, the sentencing provisions in the Federal child exploitation laws consistently call for higher sentences when a defendant has a prior conviction for federal or state sex offenses. For example, 18 U.S.C. § 2252(b) imposes an enhanced sentence if a defendant has a prior conviction for a variety of offenses, including those “under [chapter 110], section 1591, chapter 71, chapter 109A, 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.” Although the statute does contain a reference to Article 120 of the UCMJ, the sentencing provisions for federal child exploitation crimes do not consistently include all relevant sex offense convictions that arise under the UCMJ. That is because, with respect to military convictions, there are two relevant articles. Article 120b of the UCMJ does include several sex offenses that closely parallel the sex offenses described in Chapter 109A. However, child pornography-related offenses fall under Article 134, which prohibits any conduct that is prejudicial to good order and discipline or can be assimilated from valid state or Federal law.

Some child exploitation sentencing provisions omit any reference to Article 134 offenses, even though comparable convictions under

Federal and state law are referenced in the statute. This means that someone who has a military conviction under Article 134 for a child pornography-related offense would not receive a higher sentence, but a defendant with a prior conviction for identical conduct under Federal or state law would receive the higher penalty. Other child exploitation sentencing provisions do not refer to military sex offense convictions at all. H.R. 1842 would amend sections 2241, 2426, and 3559, and the offenses in Chapter 110, to appropriately subject all child sexual exploitation offenses under the UCMJ to the recidivist provisions that exist under current law.

Hearings

The Committee on the Judiciary held no hearings on H.R. 1842, but held a hearing on the subject of child exploitation generally on March 16, 2017.

Committee Consideration

On April 5, 2017, the Committee met in open session and ordered the bill, H.R. 1842, favorably reported, without amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 1842.

1. An Amendment, offered by Mr. Conyers to eliminate the mandatory minimum enhancements under current law for those who fail to register as a sex offender who are subject to the enhancement having been convicted of a state crime of violence, and for individuals convicted for certain violations of the Uniform Code of Military Justice. The amendment was defeated by a roll-call vote of 6 to 16.

ROLLCALL NO. 1

| | Ayes | Nays | Present |
|------------------------------------|------|------|---------|
| Mr. Goodlatte (VA), Chairman | | X | |
| Mr. Sensenbrenner, Jr. (WI) | | X | |
| Mr. Smith (TX) | | X | |
| Mr. Chabot (OH) | | | |
| Mr. Issa (CA) | | X | |
| Mr. King (IA) | | X | |
| Mr. Franks (AZ) | | X | |
| Mr. Gohmert (TX) | | X | |
| Mr. Jordan (OH) | | | |
| Mr. Poe (TX) | | X | |
| Mr. Chaffetz (UT) | | X | |
| Mr. Marino (PA) | | | |
| Mr. Gowdy (SC) | | X | |
| Mr. Labrador (ID) | | | |
| Mr. Farenthold (TX) | | | |
| Mr. Collins (GA) | | | |

ROLLCALL NO. 1—Continued

| | Ayes | Nays | Present |
|---|-------------|-------------|----------------|
| Mr. DeSantis (FL) | | X | |
| Mr. Buck (CO) | | | |
| Mr. Ratcliffe (TX) | | X | |
| Ms. Roby (AL) | | X | |
| Mr. Gaetz (FL) | | X | |
| Mr. Johnson (LA) | | X | |
| Mr. Biggs (AZ) | | X | |
| Mr. Conyers, Jr. (MI), Ranking Member | X | | |
| Mr. Nadler (NY) | X | | |
| Ms. Lofgren (CA) | | | |
| Ms. Jackson Lee (TX) | | | |
| Mr. Cohen (TN) | | | |
| Mr. Johnson (GA) | X | | |
| Mr. Deutch (FL) | | | |
| Mr. Gutierrez (IL) | | | |
| Ms. Bass (CA) | | | |
| Mr. Richmond (LA) | | | |
| Mr. Jeffries (NY) | | | |
| Mr. Cicilline (RI) | | | |
| Mr. Swalwell (CA) | | | |
| Mr. Lieu (CA) | X | | |
| Mr. Raskin (MD) | | | |
| Ms. Jayapal (WA) | X | | |
| Mr. Schneider (IL) | X | | |
| Total | 6 | 16 | |

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises 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.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1842, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 22, 2017.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1842, the Strengthening Children's Safety Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese, who can be reached at 226–2860.

Sincerely,

KEITH HALL.

Enclosure

cc: Honorable John Conyers, Jr.
 Ranking Member

H.R. 1842—Strengthening Children's Safety Act of 2017

As ordered reported by the House Committee on the Judiciary on
 April 5, 2017

H.R. 1842 would amend federal criminal law to broaden the scope of certain criminal fines and minimum prison sentences for individuals who have committed criminal offenses against minors.

Under the bill, more people may be convicted of such offenses, which could increase the number of federally incarcerated people. Based on an analysis of information provided by the Administrative Office of the U.S. Courts and the U.S. Sentencing Commission, CBO estimates that the costs of incarcerating and monitoring the probation of any additional people pursuant to the bill would have no significant effect on the federal budget in any year.

Enacting H.R. 1842 could increase the number of criminal fines collected from people convicted of offenses against children. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation action. Because enacting H.R. 1842 could affect revenues and associated direct spending, pay-as-you-go procedures apply. However, CBO expects that any additional revenues and subsequent direct spending would not be significant because the legislation would probably affect only a small number of cases. The bill's net effect on the deficit would be negligible.

Enacting H.R. 1842 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1842 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and any costs incurred to governments to comply with the Sex Offender Registration and Notification Act would result from participation in a federal program.

The CBO staff contact for this estimate is Robert Reese. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 1842 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 1842 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. § 551.

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. 1842 closes loopholes in child exploitation laws to ensure that all individuals with relevant prior convictions are subject to the enhanced penalties under current law for recidivist sex offenders.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1842 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Section 1. Short Title. This section cites the short title of the bill as the “Strengthening Children’s Safety Act of 2017.”

Section 2. Failure of Sex Offenders to Register. Title 18, § 2250, is the criminal provision of the Sex Offender Registration and Notification Act (SORNA). It provides that a sex offender who, under circumstances supporting federal jurisdiction, knowingly fails to register or update a registration as required by SORNA or knowingly fails to provide information required by SORNA relating to intended travel in foreign commerce, may face a fine and imprisonment of up to ten years. Subsection (d) of this statute provides for an enhanced penalty of five to 30 years’ imprisonment to be served consecutively if the offender committed a crime of violence under Federal law, the Uniform Code of Military Justice, the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States while in non-compliant status. This section adds language referencing state crimes of violence to apply the enhanced penalty equally to all dangerous offenders.

Section 3. Prior Military Offenses Included for Purposes of Military Sentencing Provisions. The sentencing provisions in the Federal child exploitation laws consistently call for higher sentences when a defendant has a prior conviction for Federal or state sex offenses; however, the sentencing provisions for Federal child ex-

ploitation crimes do not consistently include all relevant sex offense convictions that arise under the Uniform Code of Military Justice (UCMJ). With respect to military convictions, there are two relevant articles. Article 120b of the UCMJ includes several sex offenses that closely parallel the sex offenses described in Chapter 109A. However, child pornography-related offenses fall under Article 134, which is a general provision that prohibits any conduct that is prejudicial to good order and discipline or can be assimilated from valid state or federal law. This section amends sections 2241, 2426, and 3559, and the offenses in Chapter 110 to include all child sexual exploitation offenses under the UCMJ in the recidivist provisions as appropriate.

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, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

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 in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly causes another person to engage in a sexual act—

(1) by using force against that other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) **BY OTHER MEANS.**—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly—

(1) renders another person unconscious and thereby engages in a sexual act with that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—

(A) substantially impairs the ability of that other person to appraise or control conduct; and
 (B) engages in a sexual act with that other person;
 or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(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 in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, 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 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 or an offense under the *Uniform Code of Military Justice* 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.

(d) STATE OF MIND PROOF REQUIREMENT.—In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

* * * * *

CHAPTER 109B—SEX OFFENDER AND CRIMES AGAINST CHILDREN REGISTRY

* * * * *

§ 2250. Failure to register

(a) IN GENERAL.—Whoever—

(1) is required to register under the Sex Offender Registration and Notification Act;

(2)(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

(B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

(3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act; shall be fined under this title or imprisoned not more than 10 years, or both.

(b) INTERNATIONAL TRAVEL REPORTING VIOLATIONS.—Whoever—

(1) is required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.);

(2) knowingly fails to provide information required by the Sex Offender Registration and Notification Act relating to intended travel in foreign commerce; and

(3) engages or attempts to engage in the intended travel in foreign commerce;

shall be fined under this title, imprisoned not more than 10 years, or both.

(c) **AFFIRMATIVE DEFENSE.**—In a prosecution for a violation under subsection (a) or (b), it is an affirmative defense that—

(1) uncontrollable circumstances prevented the individual from complying;

(2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and

(3) the individual complied as soon as such circumstances ceased to exist.

(d) **CRIME OF VIOLENCE.**—

(1) **IN GENERAL.**—An individual described in subsection (a) or (b) who commits a crime of violence under Federal law (including the Uniform Code of Military Justice), *State law*, the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States shall be imprisoned for not less than 5 years and not more than 30 years.

(2) **ADDITIONAL PUNISHMENT.**—The punishment provided in paragraph (1) shall be in addition and consecutive to the punishment provided for the violation described in subsection (a) or (b).

(3) **DEFINITION.**—*In this section, the term “crime of violence” has the meaning given such term in section 16.*

CHAPTER 110—SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

* * * * *

§ 2251. Sexual exploitation of children

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

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or

to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct shall be punished as provided under subsection (e) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

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

(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail; or

(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail.

(d)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering—

(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct;

shall be punished as provided under subsection (e).

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

(A) such person knows or has reason to know that such notice or advertisement will be transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed; or

(B) such notice or advertisement is transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed.

(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, 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 Uniform Code of Military Justice* or the laws of any State relating to 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 Uniform Code of Military Justice* or 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. 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 not less than 30 years or for life.

* * * * *

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

(a) Any person who—

(1) knowingly transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mails, any visual depiction, if—

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

(2) knowingly receives, or distributes, any visual depiction using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or through the mails, if—

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

(3) either—

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

(B) knowingly sells or possesses with intent to sell any visual depiction that has been mailed, shipped, or trans-

ported using any means or facility of interstate or foreign commerce, or has been shipped or transported in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported using any means or facility of interstate or foreign commerce, including by computer, if—

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

(ii) such visual depiction is of such conduct; or

(4) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

(B) knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if—

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

(ii) such visual depiction is of such conduct;

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

(b)(1) Whoever violates, or attempts or conspires to violate, 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, 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 Uniform Code of Military Justice* or 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.

(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, but if any visual depiction involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or 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*

Uniform Code of Military Justice or 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.

(c) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant—

(1) possessed less than three matters containing any visual depiction proscribed by that paragraph; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof—

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

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

(a) Any person who—

(1) knowingly mails, or transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography;

(2) knowingly receives or distributes—

(A) any child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(B) any material that contains child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(3) knowingly—

(A) reproduces any child pornography for distribution through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer; or

(B) advertises, promotes, presents, distributes, or solicits through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains—

(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or

(ii) a visual depiction of an actual minor engaging in sexually explicit conduct;

(4) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly sells or possesses with the intent to sell any child pornography; or

(B) knowingly sells or possesses with the intent to sell any child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(5) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or

(B) knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—

(A) that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer;

(B) that was produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(C) which distribution, offer, sending, or provision is accomplished using the mails or any means or facility of interstate or foreign commerce,

for purposes of inducing or persuading a minor to participate in any activity that is illegal; or

(7) knowingly produces with intent to distribute, or distributes, by any means, including a computer, in or affecting interstate or foreign commerce, child pornography that is an adapted or modified depiction of an identifiable minor.

shall be punished as provided in subsection (b).

(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, 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 Uniform Code of Military Justice* or 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.

(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, but, if any image of child pornography involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or 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 Uniform Code of Military Justice* or 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.

(3) Whoever violates, or attempts or conspires to violate, subsection (a)(7) shall be fined under this title or imprisoned not more than 15 years, or both.

(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) that—

(1)(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

(B) each such person was an adult at the time the material was produced; or

(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense under subsection (c)(2) shall be available in any prosecution that involves child pornography as described in section 2256(8)(C). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 14 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph

(1), (2), (3)(A), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.

(d) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (a)(5) that the defendant—

(1) possessed less than three images of child pornography; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof—

(A) took reasonable steps to destroy each such image; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

(e) ADMISSIBILITY OF EVIDENCE.—On motion of the government, in any prosecution under this chapter or section 1466A, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.

(f) CIVIL REMEDIES.—

(1) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) or section 1466A may commence a civil action for the relief set forth in paragraph (2).

(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—

(A) temporary, preliminary, or permanent injunctive relief;

(B) compensatory and punitive damages; and

(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.

(g) CHILD EXPLOITATION ENTERPRISES.—

(1) Whoever engages in a child exploitation enterprise shall be fined under this title and imprisoned for any term of years not less than 20 or for life.

(2) A person engages in a child exploitation enterprise for the purposes of this section if the person violates section 1591, section 1201 if the victim is a minor, or chapter 109A (involving a minor victim), 110 (except for sections 2257 and 2257A), or 117 (involving a minor victim), as a part of a series of felony violations constituting three or more separate incidents and involving more than one victim, and commits those offenses in concert with three or more other persons.

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CHAPTER 117—TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES

* * * * *

§ 2426. Repeat offenders

(a) **MAXIMUM TERM OF IMPRISONMENT.**—The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term of imprisonment otherwise provided by this chapter, unless section 3559(e) applies.

(b) **DEFINITIONS.**—In this section—

(1) the term “prior sex offense conviction” means a conviction for an offense—

(A) under this chapter, chapter 109A, chapter 110, or section 1591; or

(B) under State law or *the Uniform Code of Military Justice* for an offense consisting of conduct that would have been an offense under a chapter referred to in paragraph (1) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States; and

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

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PART II—CRIMINAL PROCEDURE

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CHAPTER 227—SENTENCES

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SUBCHAPTER A—GENERAL PROVISIONS

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§ 3559. Sentencing classification of offenses

(a) **CLASSIFICATION.**—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is—

(1) life imprisonment, or if the maximum penalty is death, as a Class A felony;

(2) twenty-five years or more, as a Class B felony;

(3) less than twenty-five years but ten or more years, as a Class C felony;

(4) less than ten years but five or more years, as a Class D felony;

(5) less than five years but more than one year, as a Class E felony;

(6) one year or less but more than six months, as a Class A misdemeanor;

(7) six months or less but more than thirty days, as a Class B misdemeanor;

(8) thirty days or less but more than five days, as a Class C misdemeanor; or

(9) five days or less, or if no imprisonment is authorized, as an infraction.

(b) **EFFECT OF CLASSIFICATION.**—Except as provided in subsection (c), an offense classified under subsection (a) carries all the inci-

dents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the law describing the offense.

(c) IMPRISONMENT OF CERTAIN VIOLENT FELONS.—

(1) MANDATORY LIFE IMPRISONMENT.—Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if—

(A) the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of—

(i) 2 or more serious violent felonies; or

(ii) one or more serious violent felonies and one or more serious drug offenses; and

(B) each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

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

(A) the term “assault with intent to commit rape” means an offense that has as its elements engaging in physical contact with another person or using or brandishing a weapon against another person with intent to commit aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242);

(B) the term “arson” means an offense that has as its elements maliciously damaging or destroying any building, inhabited structure, vehicle, vessel, or real property by means of fire or an explosive;

(C) the term “extortion” means an offense that has as its elements the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person;

(D) the term “firearms use” means an offense that has as its elements those described in section 924(c) or 929(a), if the firearm was brandished, discharged, or otherwise used as a weapon and the crime of violence or drug trafficking crime during and relation to which the firearm was used was subject to prosecution in a court of the United States or a court of a State, or both;

(E) the term “kidnapping” means an offense that has as its elements the abduction, restraining, confining, or carrying away of another person by force or threat of force;

(F) the term “serious violent felony” means—

(i) a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242); abusive sexual contact (as described in sections 2244(a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in sec-

tion 46502 of Title 49); robbery (as described in section 2111, 2113, or 2118); carjacking (as described in section 2119); extortion; arson; firearms use; firearms possession (as described in section 924(c)); or attempt, conspiracy, or solicitation to commit any of the above offenses; and

(ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense;

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

(H) the term “serious drug offense” means—

(i) an offense that is punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)); or

(ii) an offense under State law that, had the offense been prosecuted in a court of the United States, would have been punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)).

(3) NONQUALIFYING FELONIES.—

(A) ROBBERY IN CERTAIN CASES.—Robbery, an attempt, conspiracy, or solicitation to commit robbery; or an offense described in paragraph (2)(F)(ii) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(i) no firearm or other dangerous weapon was used in the offense and no threat of use of a firearm or other dangerous weapon was involved in the offense; and

(ii) the offense did not result in death or serious bodily injury (as defined in section 1365) to any person.

(B) ARSON IN CERTAIN CASES.—Arson shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(i) the offense posed no threat to human life; and

(ii) the defendant reasonably believed the offense posed no threat to human life.

(4) INFORMATION FILED BY UNITED STATES ATTORNEY.—The provisions of section 411(a) of the Controlled Substances Act (21 U.S.C. 851(a)) shall apply to the imposition of sentence under this subsection.

(5) RULE OF CONSTRUCTION.—This subsection shall not be construed to preclude imposition of the death penalty.

(6) SPECIAL PROVISION FOR INDIAN COUNTRY.—No person subject to the criminal jurisdiction of an Indian tribal govern-

ment shall be subject to this subsection for any offense for which Federal jurisdiction is solely predicated on Indian country (as defined in section 1151) and which occurs within the boundaries of such Indian country unless the governing body of the tribe has elected that this subsection have effect over land and persons subject to the criminal jurisdiction of the tribe.

(7) RESENTENCING UPON OVERTURNING OF PRIOR CONVICTION.—If the conviction for a serious violent felony or serious drug offense that was a basis for sentencing under this subsection is found, pursuant to any appropriate State or Federal procedure, to be unconstitutional or is vitiated on the explicit basis of innocence, or if the convicted person is pardoned on the explicit basis of innocence, the person serving a sentence imposed under this subsection shall be resentenced to any sentence that was available at the time of the original sentencing.

(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.

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

(1) IN GENERAL.—A person who is convicted of a Federal sex offense in which a minor is the victim shall be sentenced to life imprisonment if the person has a prior sex conviction in which a minor was the victim, unless the sentence of death is imposed.

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

(A) the term “Federal sex offense” means an offense under section 1591 (relating to sex trafficking of children), 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) (relating to transportation of minors);

(B) the term “[State sex offense] *State or Military sex offense*” means an offense under State law or *the Uniform Code of Military Justice* that is punishable by more than one year in prison and consists of conduct that would be a Federal sex offense if, to the extent or in the manner specified in the applicable provision of this title—

(i) the offense involved interstate or foreign commerce, or the use of the mails; or

(ii) the conduct occurred in any commonwealth, territory, or possession of the United States, within the special maritime and territorial jurisdiction of the United States, in a Federal prison, on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country (as defined in section 1151);

(C) the term “prior sex conviction” means a conviction for which the sentence was imposed before the conduct occurred constituting the subsequent Federal sex offense, and which was for a Federal sex offense or a *State or Military sex offense*;

(D) the term “minor” means an individual who has not attained the age of 17 years; and

(E) the term “State” has the meaning given that term in subsection (c)(2).

(3) NONQUALIFYING FELONIES.—An offense described in section 2422(b) or 2423(a) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(A) the sexual act or activity was consensual and not for the purpose of commercial or pecuniary gain;

(B) the sexual act or activity would not be punishable by more than one year in prison under the law of the State in which it occurred; or

(C) no sexual act or activity occurred.

(f) MANDATORY MINIMUM TERMS OF IMPRISONMENT FOR VIOLENT CRIMES AGAINST CHILDREN.—A person who is convicted of a Federal offense that is a 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 is murder, be imprisoned for life or for any term of years not less than 30, except that such person shall be punished by death or life imprisonment if the circumstances satisfy any of subparagraphs (A) through (D) of section 3591(a)(2) of this title;

(2) if the crime of violence is kidnapping (as defined in section 1201) or maiming (as defined in section 114), be imprisoned for life or any term of years not less than 25; and

(3) if the crime of violence results in serious bodily injury (as defined in section 1365), or 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 10.

(g)(1) If a defendant who is convicted of a felony offense (other than offense of which an element is the false registration of a domain name) knowingly falsely registered a domain name and knowingly used that domain name in the course of that offense, the maximum imprisonment otherwise provided by law for that offense shall be doubled or increased by 7 years, whichever is less.

(2) As used in this section—

(A) the term “falsely registers” means registers in a manner that prevents the effective identification of or contact with the person who registers; and

(B) the term “domain name” has the meaning given that term is section 45 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes” approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”) (15 U.S.C. 1127).

* * * * *

Dissenting Views

H.R. 1842, the “Strengthening Children’s Safety Act of 2017,” would broaden section 2250 of title 18 of the United States Code to (1) include state crimes of violence as grounds for enhanced punishment for sex offenders who commit a crime of violence and fail to register or report certain information; (2) clarify the definition of “crime of violence” as it pertains to that Code section; and (3) expand several child sexual exploitation statutes to include prior military convictions for child sex exploitation offenses under the Uniform Code of Military Justice as predicate offenses for recidivist treatment. These expansions would subject more individuals to mandatory minimum sentences, which are the penalties for these offenses under current law. We have long-opposed the imposition of mandatory minimum sentences because of their extraordinary injustice, role in causing prison overcrowding, and the excessive costs to taxpayers they cause. Mandatory minimum sentences have had a particularly devastating impact on minority communities across our Nation. Given the fact that H.R. 1842 would subject more individuals to mandatory minimum sentences, we must respectfully dissent and urge our colleagues to oppose this legislation when it comes to the floor.

DESCRIPTION AND BACKGROUND

DESCRIPTION

Section 2 of the bill amends section 2250(d) of title 18 of the United States Code to include state crimes of violence as a basis for the enhanced penalty for commission of a crime of violence and failure to register or update registration. In addition, it includes the definition of crime of violence, as provided in section 16 of title 18.

Section 3 makes a number of amendments to title 18. First, it amends section 2241(c) to include prior convictions of aggravated sexual abuse offenses against a child under the Uniform Code of Military Justice (UCMJ) as predicates for imposition of a mandatory term of life in prison. Second, it amends section 2251(e) to in-

clude prior convictions of sexual exploitation of children offenses (production of child pornography) under the UCMJ as predicates for imposition of a mandatory 25–50 years for a second conviction or 35 years to life in prison for a third. Third, it amends sections 2252(b)(1) and (b)(2) to include prior convictions for certain activities related to material involving the sexual exploitation of minors (distribution and transportation of child pornography) under the UCMJ as predicates for imposition of a mandatory term of 10–20 years in prison or 15–40 years in prison. Fourth, it amends section 2252A(b)(1) and (b)(2) to include prior convictions for certain activities related to child pornography (distribution and transportation of child pornography, including computer-generated sexually explicit images that involve an actual minor) under the UCMJ as predicates for imposition of a mandatory term of 10–20 years in prison or 15–40 years in prison. Fifth, it expands the definition of “prior sex offense conviction” in section 2426(b)(1)(B), which doubles the maximum term of imprisonment possible for repeat offenders, to include offenses under the UCMJ. And, sixth, it amends the definition of a “prior sex conviction” in 3559(e)(2)(B) and (e)(2)(C) to include military sex offenses under the UCMJ which may serve as a predicate for imposition of a mandatory term of life in prison.

BACKGROUND

Section 2250 of title 18 of the United States Code is the criminal provision for the Sex Offender Registration and Notification Act (SORNA).¹ The statute provides that a sex offender who knowingly fails to register or update a registration as required by SORNA or knowingly fails to provide information required by SORNA relating to travel in interstate or foreign commerce faces a fine and/or imprisonment of up to ten years. Subsection (d) provides for an enhanced penalty of *at least* five years to 30 years imprisonment if, while in noncompliant status, the offender committed a crime of violence under federal law, including the UCMJ. The sentence for failure to register must be served consecutively to the punishment imposed for the crime of violence committed while in non-compliant status. Currently, only the commission of a crime of violence under federal law triggers the enhanced penalty. H.R. 1842 would add language providing that state crimes of violence that would also trigger the enhanced penalty.

The bill would also expand the scope of individuals subject to the recidivist sentencing provisions of federal child exploitation laws, which require longer sentences for defendants who have been previously convicted for sex offenses. These provisions consistently base recidivist treatment on previous convictions for federal or state sex offenses. Previous convictions for sex offenses under military criminal law are included in some of the recidivist provisions while other provisions do not reference military sex convictions at all.

¹ Section 2250 provides that an individual who is required to register under SORNA; is a sex offender by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and knowingly fails to register or update registration as required by SORNA; shall be imprisoned not more than 10 years. 18 U.S.C. § 2250 (2017).

Of the provisions that reference prior military convictions, only sex offenses under article 120 of the UCMJ currently serve as the basis for recidivist treatment. Yet, there are two articles of the UCMJ that involve child sexual exploitation crimes. Article 120b includes several sex offenses that closely parallel sex offenses described in chapter 109A of title 18; and child pornography related offenses fall under article 134. Article 134 is a general provision that prohibits any conduct that is prejudicial to good order and discipline or can be assimilated from state or federal law. Curiously, federal child exploitation recidivist provisions do not reference article 134 offenses even though comparable state and federal offenses serve as the basis for recidivist treatment. As a result, there are recidivist sentencing provisions that do not apply to some military offenses where these same provisions apply to comparable state or federal offenses. H.R. 1842 would amend sections 2241², 2251³, 2252⁴, 2252A⁵, 2426⁶, and 3559⁷ to allow the recidivist provisions of each statute to be predicated upon all child sexual exploitation offenses under the UCMJ.

CONCERNS

I. THE BILL WOULD SUBJECT MORE INDIVIDUALS TO THE IMPOSITION OF MANDATORY MINIMUM SENTENCES

Our concerns with this bill primarily stem from the expanded application of mandatory minimum sentences that would result from expanding the scope of individuals who would be subject to them under the bill. H.R. 1842 would amend section 2250(d) of title 18 to include state crimes of violence as a predicate for imposition of the enhanced penalty, thereby adding a new class of offenders subject to mandatory minimum sentences of at least 5 years imprisonment. Additionally, this bill would amend nine provisions of title 18, which cover recidivist punishment, to include convictions for military child sexual exploitation offenses. Each of the provisions that would be amended by this bill involves the imposition of sentences for offenders, who commit certain sex-related crimes involving children or minors after having been previously convicted of similar sex-related offenses. Consequently, this bill would subject several new classes of repeat offenders to mandatory minimum sentencing, including mandatory sentences of life in prison.

² 18 U.S.C. § 2241(c) (2017) provides that if a defendant who violates this section has a prior conviction for a similar federal or state offense, he or she must be sentenced to life in prison.

³ 18 U.S.C. § 2251(e) (2017) provides that if a defendant who violates this section has a prior conviction for a similar federal, state, or military (under article 120 of the UCMJ) offense, then he or she must be sentenced to a minimum of 25 years, but not more than 50 years in prison.

⁴ 18 U.S.C. § 2252(b)(1) and (b)(2) (2017) provides that if a defendant who violates this section has a prior conviction for a similar federal, state offense, or military (under article 120 of the UCMJ) offense, the defendant must be sentenced to a minimum of 15 years, but not more than 40 years in prison or ten years, but not more than 20 years in prison, respectively.

⁵ 18 U.S.C. § 2252A(b)(1) and (b)(2) (2017) provide that if a defendant who violates this section has a prior conviction for a similar federal, state offense, or military (under article 120 of the UCMJ) offense, the he or she must be sentenced to a minimum of 15 years, but not more than 40 years in prison or ten years, but not more than 20 years in prison, respectively.

⁶ Pursuant to 18 U.S.C. § 2426 (2017), the maximum term of imprisonment for a violation of a chapter 117 offense (Transportation for Illegal Sexual Activity and Related Crimes) after a prior sex offense conviction is twice the term of imprisonment otherwise provided in the chapter, unless section 3559(e) (mandatory life imprisonment) applies.

⁷ 18 U.S.C. § 3559(e) (2017) provides that the mandatory term of imprisonment for a person convicted of a federal sex offense involving a minor is life imprisonment if the person has a prior sex conviction involving a minor; as discussed previously, a prior conviction presently includes state sex offenses.

During the Committee's consideration of this bill, Ranking Member John Conyers, Jr. offered an amendment to address these concerns. Unfortunately, that amendment was defeated by a vote of 6–16. While we would prefer that mandatory minimum sentences be removed from federal law altogether, we believe the amendment offered by Ranking Member John Conyers, Jr. represented a reasonable compromise that would have addressed some of our concerns without undermining the goal of the bill.

First, the amendment would have addressed penalties that would apply to the bill's addition of state crimes of violence as predicates for the offense in current law consisting of failure to register and committing a crime of violence. The current penalty for this violation is imprisonment for at least 5 years and up to 30 years. As applied only to the newly-added state law violations as predicates, the amendment would have eliminated the 5-year minimum but still allowed for up to 30 years imprisonment. The amendment would have also addressed the application of mandatory minimum penalties for the bill's addition of offenses under the Uniform Code of Military Justice as predicates for penalties under certain child exploitation statutes. These recidivist penalties carry mandatory minimums for at least 15 years and for some offenses, life in prison. With respect to the expansion of the predicates for the recidivist penalties, the amendment would have eliminated application of the mandatory minimum penalties to these newly-added military offenses as predicates, but allowed sentences to still be imposed up to the current statutory maximums. Because the amendment was limited to only the expansions that would be provided by H.R. 1842, it would not have impacted the application of these penalties to the offenses already provided in current law.

II. H.R. 1842 WOULD ONLY EXACERBATE THE PROBLEMS CAUSED BY MANDATORY MINIMUM SENTENCES

Congress should work to eliminate mandatory minimum sentences altogether, not expand them as would be the result under H.R. 1842. Mandatory minimum sentences are the wrong way to determine punishment. They not only lead to unjust outcomes for individuals, but also have serious systemic consequences by contributing to the problem of overincarceration. Since Congress enacted harsh mandatory minimums in the 1980s, the federal prison population has exploded by over 700% to more than 188,000 inmates today.³

In addition, higher than warranted sentences resulting from mandatory minimum sentencing strain public finances. Expenditures for the federal Bureau of Prisons have risen to comprise approximately 25 percent of the total budget of the Department of Justice.⁸ Every dollar expended on lengthy mandatory minimum incarcerations is a dollar that cannot be spent on crime prevention, victim services, training, investigation, and prosecution. Absent smarter sentencing policies and reformation of mandatory minimum sentences, prison populations and their associated costs will

³Bureau of Prisons, Historical Information, at <http://www.bop.gov/about/history/> and Inmate Statistics: Offenses, at http://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp.

⁸The Charles Colson Task Force on Federal Corrections, *Consequences of Growth in the Federal Prison Population* (May 2015). (available at <http://www.urban.org/sites/default/files/publication/52636/2000221-Consequences-of-Growth-in-the-Federal-Prison-Population.pdf>)

continue to escalate. We need to take steps to ensure that sentences are appropriately severe, but are not set beyond levels that no longer serve legitimate criminal justice purposes.

While long sentences may be appropriate under the facts of a particular violation of law, Congress cannot know the facts of every case in advance. Judges are in the best position to impose sentences that are appropriate for the facts and circumstances of each case. Removing mandatory minimums, while still permitting the lengthy statutory maximum penalty of life imprisonment, would provide the appropriate spectrum of sentences for culpability and proportionate punishment.

CONCLUSION

Without question, crimes against children are particularly egregious. Congress must do everything it can to prevent these crimes and, when they do occur, hold offenders accountable. Expanding the scope of individuals subject to mandatory minimum sentences, however, is the wrong answer. Such offenders would still be subject to appropriately severe penalties if minimums were eliminated and judges imposed sentences based on the facts and circumstances of each case, up to the already-lengthy statutory maximum sentences. Unfortunately, H.R. 1842 fails to address this critical concern with respect to new classes of offenders who would be subject to punishment under the bill.

Accordingly, we must oppose H.R. 1842 and we urge our colleagues to join us in opposition.

MR. CONYERS, JR.
MS. JACKSON LEE.
MR. JOHNSON, JR.
MR. GUTIERREZ.
MS. BASS.
MR. RICHMOND.
MR. JEFFRIES.

